

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff JOSEPH CRISTOBAL
6
7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SOLANO**
10

11 JOSEPH CRISTOBAL, individually and on
behalf of all other similarly situated
12 employees,

13 Plaintiff,

14 vs.

15 BAT RESIDENTIAL SERVICES, INC., a
16 California Corporation; and DOES 1 to 100,
17 inclusive,

18 Defendants.
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Case No. FCS056331

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Date: March 28, 2023

Time: 9:30 a.m.

Dept.: 22

Judge: Hon. Alesia F. Jones

Filed: April 5, 2021

FAC Filed: August 30, 2021

Trial Date: None Set
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1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on March 28, 2023, at 9:30 a.m., or as soon thereafter as the
3 matter may be heard in Department 22 of the above-entitled Court, Plaintiff Joseph Cristobal,
4 individually and on behalf of all other similarly situated individuals, hereby moves for entry of an Order
5 for the following:

- 6 1. Certifying the proposed class herein for purposes of settlement;
- 7 2. Appointing Plaintiff Joseph Cristobal as class representative for purposes of settlement;
- 8 3. Appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of settlement;
- 9 4. Approving the proposed total maximum gross class action and Private Attorneys General Act
10 settlement, in the amount of \$250,000, which is incorporated herein by reference;
- 11 5. Approving the application for payment to Class Counsel of attorneys' fees in the amount of
12 \$87,500 (35% of the Gross Settlement Amount);
- 13 6. Approving the application for payment to Class Counsel of reasonable costs in the amount of
14 \$7,803.92;
- 15 7. Approving the Class Representative Enhancement Payment of \$15,000 to Plaintiff Joseph
16 Cristobal;
- 17 8. Approving the appointment of ILYM Group, Inc. as the Claims Administrator and for
18 payment to ILYM Group, Inc. for administering said class action settlement in the amount of
19 \$7,000;
- 20 9. Approving the settlement of claims under the Private Attorneys General Act for the total
21 amount of \$10,000, 75% of which will be paid to the Labor and Workforce Development
22 Agency and 25% of which will be paid to Aggrieved Employees;
- 23 10. Directing that any residue from settlement checks that were not cashed by the check cashing
24 deadline be donated equally, *i.e.*, 50/50, to Capital Pro Bono, Inc., and the Center for
25 Workers' Rights under the doctrine of *cy pres*;
- 26 11. Approving and adopting the Proposed Order and its implementation schedule, which is filed
27 herewith and incorporated by reference.

1 This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
2 2699(l), and California Rules of Court 3.769 and 3.764, on the grounds that the proposed class action
3 and Private Attorneys General Act settlement is fair, reasonable, and adequate as to all Class Members
4 and should be given final approval by the Court. This motion will be based on the notice of motion,
5 memorandum of points and authorities, the Declaration of Brittany V. Berzin, the Declaration of Joseph
6 Cristobal, the Declaration of Cassandra Polites, exhibits, the record and files of this case, and any further
7 oral or documentary evidence introduced at the hearing of this motion.

8
9 **Notice: The Superior Court in and for Solano County has adopted a tentative ruling system that is**
10 **described in the court's local Rule 3.9. Failure to comply with Rule 3.9 may seriously affect**
11 **parties' rights in this case.**

12 Dated: March 2, 2023

Shimoda & Rodriguez Law, PC

13
14 By: *Brittany Berzin*
15 Galen T. Shimoda
16 Justin P. Rodriguez
17 Brittany V. Berzin
18 Attorneys for Plaintiff
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Case No. FCS056331

CLASS ACTION

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: March 28, 2023

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1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2 This Motion is brought seeking final approval of a wage and hour class action settlement in the
3 gross amount of \$250,000. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and
4 PAGA Settlement and Release). Plaintiff Joseph Cristobal (“Plaintiff”) brought this class action
5 individually and on behalf of other similarly situated employees employed by Defendant BAT
6 Residential Services, Inc. (“Defendant”). Plaintiff worked for Defendant in California from June 22,
7 2020 to February 16, 2021 and was subject to all the same policies and practices that are alleged to be
8 unlawful in this litigation. *See generally* Exhibit B (Plaintiff’s Operative Complaint); Declaration of
9 Joseph Cristobal (“Decl. Cristobal”) ¶ 2.

10 Plaintiff has alleged that Defendant failed to pay overtime wages, failed to provide rest periods
11 or pay premiums in lieu thereof, failed to provide accurate wage statements, failed to pay final wages,
12 engaged in unfair competition, and failed to pay sick time. *See generally* Exhibit B. Plaintiff has also
13 alleged Defendant is liable for a civil penalties under the Private Attorneys General Act (“PAGA”)
14 based on these violations. *See id.*; Exhibit C (Plaintiff’s Ltr. to the Labor and Workforce Development
15 Agency [“LWDA”] Regarding PAGA Claims). These violations primarily stem from Plaintiff’s
16 allegations that Defendant violated California law by 1) failing to incorporate the value of non-
17 discretionary bonuses into Class Members’ regular rates of pay for the purpose of calculating overtime
18 premiums and paid sick time; 2) paying Class Members two different rates of pay in the same
19 workweek and failing to use the weighted average method to calculate putative class members’ regular
20 rates of pay; 3) requiring Class Members to remain on duty during rest periods; and 4) failing to include
21 the correct address on wage statements issued to Class Members. The waiting time, unfair competition
22 and PAGA claims derive from these violations. Plaintiff also alleged derivative wage statement
23 violations for failing to correctly itemize gross and net wages earned and all applicable hourly rates in
24 effect with the corresponding number of hours worked at each rate. *See* Exhibit B. Plaintiff has
25 contended that this is a meritorious class action lawsuit and that this case is appropriate for class
26 certification for settlement purposes as the requisites for class certification in this case can be satisfied.
27 *See* Exhibit B.

28 //

1 Defendant has denied all of Plaintiff's allegations in their entirety and any liability or
2 wrongdoing of any kind. *See* Declaration of Brittany V. Berzin ("Decl. Berzin"), ¶ 5. Defendant has
3 denied that this case is appropriate for class certification other than for purposes of settlement and
4 maintains that Plaintiff would have difficulty proving class certification is proper here. *See id.*
5 However, subject to approval by the Court, the parties have been able to compromise and settle all
6 asserted claims for monetary compensation as a result of extensive investigations, informal document
7 and data exchanges, and extended negotiations relating to all aspects of the asserted claims. *See*
8 Exhibit A. Plaintiff's counsel is convinced that the proposed settlement is in the best interest of the
9 putative class based on the discovery, investigations, negotiations, and a detailed knowledge of the
10 issues in this case. *See* Decl. Berzin, ¶¶ 3, 6-10. The prospect of potential class certification issues and
11 the uncertainty of class certification, difficulties of complex litigation, the lengthy process of
12 establishing specific damages and various possible delays and appeals were carefully considered by
13 Plaintiff and Plaintiff's counsel in agreeing to the proposed settlement. *See id.*

14 It is well within the discretion of this Court to grant final approval of the Agreement, which
15 satisfies all of the criteria for final settlement approval under California law. Accordingly, Plaintiff
16 request that the Court: (1) certify the proposed settlement class; (2) grant final approval of the proposed
17 Agreement (Exhibit A); (3) adopt the implementation schedule contained in the proposed order.

18 **II. PROCEDURAL AND LITIGATION HISTORY**

19 Plaintiff filed a class action complaint on approximately April 5, 2021, in Solano County
20 Superior Court against Defendant. Plaintiff exhausted administrative remedies under the PAGA by
21 providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code § 2699.3(a),
22 (c); Decl. Berzin, ¶ 3. Then, Plaintiff filed a First Amended Class Action Complaint on approximately
23 August 30, 2021 to include a PAGA claim. *See id.*; Exhibit B. There is no date set for a motion for
24 certification or trial in this matter. *See* Decl. Berzin, ¶ 4.

25 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

26 Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and
27 potential damages for such claims. *See id.* Plaintiff worked during the time all of Defendant's policies
28 and practices at issue in the Complaint were in effect and provided information regarding these policies

and practices, enabling pre-filing investigations to take place. *See id.* The parties engaged in formal discovery and an informal exchange of documents and information for mediation, including employee data, such as timecards, paystubs, payroll data and relevant policies for the entirety of the statute of limitations applicable to the alleged claims. The discovery covered all aspects of the asserted claims, including certification issues, merits issues, damages, the scope and configuration of Class Members, the content and implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas. *See id.* The information allowed Plaintiff to determine the extent and frequency of any violations in accordance with Plaintiff's contentions and create an accurate damages model to assess the reasonableness of any settlement. *See id.*

IV. NEGOTIATION AND PROPOSED SETTLEMENT

a. Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiations

The final settlement occurred only after extended, and sometimes contentious, arm's length negotiations. Over the course of more than one year, Plaintiff has been investigating the claims and discussing with Defendant's counsel the merits of the claims and certification issues present in this case. *See id.* at ¶¶ 6-10. The parties exchanged substantial amounts of information and legal analysis regarding the asserted claims. *See id.* Then, only after more than one year of litigation and negotiation, the parties able to reach a mutually agreeable settlement. *See id.* at ¶ 8. In light of the claims and defenses at issue, the parties agreed to a Gross Settlement Amount of \$250,000. *See* Exhibit A.

b. The Terms of the Settlement

Under the Agreement, Defendant and its principals, Dalmacio Temporal Lete ("Lete") and Elena Monette Herting ("Herting") have agreed to the following:

1. The following groups of individuals are covered by the Settlement (*See* Exhibit A, ¶¶ 1.2, 1.8, 1.9, 1.26):

Aggrieved Employees: all non-exempt employees who have worked, or continue to work, for BAT Residential Services, Inc. in California during the PAGA Claim Period (April 2, 2020 up to September 25, 2022).

Class Members: all non-exempt employees who have worked, or continue to work, for BAT Residential Services, Inc. in California during the Class Period (April 5, 2017 up to September 25, 2022).

1 2. Pay Gross Settlement Amount of \$250,000, exclusive of the employer's share of payroll
2 taxes, to resolve and release the claims alleged in the Complaint. *See id.* at ¶¶ 5.1, 5.2. No portion of
3 the Gross Settlement Amount will revert to Defendant, Lete or Herting. *See id.* at ¶ 5.6. Aggrieved
4 Employees will still be paid their share of the PAGA Payment regardless of whether they opt out of
5 being Class Members. *See id.* at 7.5.1.

6 3. The parties agree that up to \$15,000 for Plaintiff Joseph Cristobal will be paid as a Class
7 Representative Enhancement Payment. This amount will be in addition to any amount Plaintiff may be
8 entitled to under the terms of the Agreement. *See id.* at ¶ 5.4. Plaintiff also agrees to a general release
9 of any claims arising from his employment with Defendant pursuant to section 1542 of the California
10 Civil Code. *See id.* at ¶ 1.11.

11 4. The parties agree that the cost of administering this class action settlement shall be paid
12 from the settlement proceeds. Subject to Court approval, the parties have selected ILYM Group, Inc. to
13 act as the Claims Administrator, who has provided a final cost estimate of \$7,000 for the administration
14 work that has been performed and will be performed in the future. *See Declaration of Cassandra*
15 *Polites* ("Decl. Polites") ¶ 17. The difference between the actual administration costs and the \$10,000
16 originally allocated will be added to the Net Settlement Amount. *See Exhibit A*, ¶ 5.3.

17 5. The parties agree that \$10,000 of the Gross Settlement Amount shall be allocated to
18 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
19 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See Exhibit A*, ¶
20 5.5.

21 6. The parties agree that up to thirty five percent (35%) of the Gross Settlement Amount
22 (\$87,500) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant
23 will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.
24 Additionally, the parties agree that Plaintiff will also be entitled to the actual litigation costs as
25 approved by the Court which are \$7,803.92. *See id.* The difference between any actual costs and the
26 \$10,000 will be added to the Net Settlement Amount. *See Exhibit A*, ¶ 5.2. The proposed notice to be
27 sent to Class Members will state this information. *See Exhibit F*.

28 //

1 7. Any Claims Administrator Costs, any amounts paid for attorneys' fees and costs, the
2 Class Representative Enhancement Payment, and PAGA Payment will be paid out from the Gross
3 Settlement Amount, not in addition to the Gross Settlement Amount. *See* Exhibit A, ¶¶ 5.1-5.5.

4 8. For any portion of the Net Settlement Amount or PAGA Payment allocated to Qualified
5 Claimants and/or Aggrieved Employees that is not claimed by them by cashing their respective
6 settlement checks within 120 days, the remaining amount shall be paid 50/50 to Capital Pro Bono, Inc.,
7 and the Center for Workers' Rights under the doctrine of *cy pres*. *See* Exhibit A, at ¶ 5.6.

8 **c. Allocation of Settlement Funds**

9 Payment to Qualified Claimants and Aggrieved Employees of their Claim Amount will not
10 require the submission of a claim form. A Net Settlement Amount will be determined by subtracting
11 from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any
12 Enhancement Payment to the Class Representative, the Claims Administrator Costs, and the PAGA
13 Payment. Each Class Member's share will be determined by dividing their total weeks worked within
14 the Class Period by the total weeks worked by all Class Members within the Class Period. That
15 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's
16 individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion
17 of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA
18 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.
19 That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the
20 Aggrieved Employee's individual share. *See* Exhibit A, at ¶ 5.8.

21 **V. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND THE**
22 **SUBSEQUENT CLASS ACTION ADMINISTRATION**

23 Plaintiff's motion for preliminary approval of the class action settlement was approved by the
24 Court, in its entirety on January 10, 2023. To comply with the class members' due process rights, the
25 parties enlisted an exhaustive method to ensure the best practical means possible was used to provide
26 notice to the class. The parties provided the class action administrator the names, last known address,
27 and social security numbers for the class. The class action administrator then updated this information
28 by doing an address trace for each individual using this information. *See* Decl. Polites, ¶¶ 4-5. If the

1 Notice Packets were returned as undeliverable, further investigation was performed and they were re-
2 mailed using updated information. *See id.* at ¶ 8. Of the 106 Notice Packets mailed, only 6 were
3 undeliverable after use of these methods. *See id.* at ¶ 9. The Notice Packets included information
4 regarding the requested attorneys’ fees, costs, payment to the LWDA, administration costs, and tax
5 allocations. *See Decl. Polites, Exh. A.*

6 The average distribution to participating class members is approximately \$1,181.10, the
7 maximum distribution is approximately \$4,639.72. *See id.* at ¶ 15. No objections to the proposed
8 settlement have been received and no class members opted out. *See Decl. Polites, ¶¶ 10-11.*

9 VI. ARGUMENT

10 a. Class Action Settlements are Subject to Court Review and Approval Under the 11 California Rules of Court

12 A class action may not be dismissed, compromised, or settled without Court approval and the
13 decision to approve or reject a settlement is committed to the Court’s sound discretion. *See Cal. Rules*
14 *of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)*¹; *Wershba v. Apple Computer, Inc.*, 91 Cal. App.
15 4th 224, 234-35 (2001); *see also Cal. Lab. Code §§ 2699(1)(2)* (requiring Court review of PAGA
16 settlements). However, courts should give “proper deference to the private consensual decision of the
17 parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement negotiated
18 between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment
19 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
20 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
21 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Where a settlement is reached on terms
22 agreeable to all parties, a court should disapprove of the settlement “only with considerable
23 circumspection.” *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975). The law favors
24 settlement of lawsuits, particularly class actions and other complex cases where substantial resources
25 can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of*
26 *Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

27
28 ¹The California Supreme Court has authorized California’s trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 **b. The Terms of The Settlement Are Fair and Within the Range of Reasonableness**

2 The purpose of the Court’s final evaluation of a proposed class action settlement is to determine
3 only whether the proposed settlement is within the range of reasonableness. *See Wershba*, 91 Cal. App.
4 4th at 234-35. If the Court finds a proposed settlement falls within “the range of reasonableness,” it
5 should grant final approval of the class action settlement. *See, e.g., North County Contr.’s Assn., Inc. v.*
6 *Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994); *Kullar v. Foot Locker Retail, Inc.*, 168
7 Cal. App. 4th 116, 133 (2008). To make the fairness determination, the Court must consider several
8 factors, including:

9 the strength of the Plaintiff’s case, the risk, expense, complexity and likely
10 duration of further litigation, the risk of maintaining class action status
11 through trial, the amount offered in settlement, the extent of discovery
12 completed and the stage of the proceedings, the experience and views of
counsel, the presence of a governmental participant, and the reaction of the
class members to the proposed settlement.

13 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). However, this Court should begin its
14 analysis with a presumption that the settlement is fair. “A presumption of fairness exists where: (1) the
15 settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to
16 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
17 the percentage of objectors is small.” *Id.* at 1802; *see also In re Heritage Bond Litig.*, 2005 WL
18 1594403, at *10 (C.D. Cal. June 10, 2005) (“It is established that the absence of a large number of
19 objectors to a proposed class action settlement raises a strong presumption that the terms of a proposed
20 class settlement action are favorable to the class members”).

21 **i. The Settlement is a Result of Extensive, Non-Collusive Arm’s Length**
22 **Negotiations Between the Parties**

23 Settlement in this case was reached only after litigation and extensive arm’s length negotiations
24 lasting over one year. *See Decl. Berzin*, ¶¶ 6-10. At all times, the negotiations were adversarial and
25 contentious, although still professional in nature. *See id.* Further, while Plaintiff contends he would
26 ultimately prevail on the claims and the issue of certification, this is not a certainty and there is
27 substantial risk in proceeding to further litigation. *See id.* at ¶¶ 6-10. The ability to secure a guaranteed
28 settlement now and ensure Class Members receive some compensation, rather than proceed to further
litigation and potentially recover nothing, was a motivating factor in reaching this settlement. *See id.*

1 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
2 **Information to Enter Into an Informed and Reasonable Settlement**

3 The parties were in possession of all necessary information during the negotiations. The parties
4 engaged in substantial formal and informal discovery, including employee data, such as timecards,
5 paystubs, payroll data and relevant policies for the entirety of the statute of limitations applicable to the
6 alleged claims, which covered all aspects of the class claims and helped thoroughly vet the extent of
7 Plaintiff's claims against Defendant and create an accurate damages model. *See id.* at ¶ 6-10. Plaintiff
8 was in possession of this information prior to calculating the potential damages in this case. *See id.* As
9 a result, Plaintiff was able to make a reasonable estimation of Defendant's potential liability. *See id.*
10 For these reasons, the settlement now before the Court was reached at a stage where "the parties
11 certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the
12 settlement. *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

13 **iii. Plaintiff's Counsel Is Experienced In Similar Litigation and No Class Member**
14 **Made Objections to the Settlement**

15 Plaintiff's counsel has considerable experience in class and PAGA actions and wage and hour
16 litigation. Plaintiff's counsel has brought and are currently bringing several wage and hour class and/or
17 PAGA actions. Thus, Plaintiff's counsel are qualified to evaluate the class claims, value of settlement
18 versus moving for certification and going to trial, and the viability of possible affirmative defenses. *See*
19 *Decl. Berzin*, ¶¶ 11-15. Plaintiff's counsel believes that the settlement is fair and reasonable in light of
20 the complexities of the case, the uncertainties of class certification and litigation, and the secured
21 benefit to the class. *See id.* at ¶ 6. This belief is bolstered by the fact that no objections to the
22 settlement have been made by class members and no class members opted out. *See Decl. Polites*, ¶¶ 10-
23 11.

24 **iv. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff's Case**
25 **and the Risks and Costs of Further Litigation**

26 A review of the Agreement's terms does not give rise to any doubts about its fairness. Based on
27 the records and facts of this case, Plaintiff has secured a gross recovery of approximately 13.8% and a
28 net recovery of approximately 6.8% of the claims' maximum potential value. *See Decl. Rodriguez* at
¶¶ 9-10. Additionally, on average class members will receive a net award of approximately \$1,181.10

1 and the highest recovery is approximately \$4,639.72. *See* Decl. Polites, ¶¶ 10-11. This settlement is a
2 reasonable compromise of the class and PAGA claims, and is within the percentile ranges of the total
3 available damages that have been approved in other class settlements. *See Wershba*, 91 Cal. App. 4th
4 at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers for Justice v.*
5 *Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.*,
6 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of 6% of maximum
7 potential recovery after reduction for attorney’s fees was higher than median percentage for recoveries
8 in shareholder class action settlements, averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale*
9 *Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving a settlement where the net
10 recovery to class members was approximately 7.5% of the projected maximum recovery amount); *Avila*
11 *v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017): (approving a settlement
12 with a gross recovery of 11% of the projected maximum damages available and a net recovery of
13 approximately 6.7% of the projected maximum recovery); *Bellinghausen v. Tractor Supply Co.*, 306
14 F.R.D. 245 (N.D. Cal 2015) (approving a settlement where the gross recovery was approximately 8.5%
15 of the projected maximum recovery).

16 **v. The Proposed Settlement is a Reasonable Compromise of Claims**

17 The case of *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) requires additional
18 information be presented to the Court, acting as a fiduciary for the absent class members “to ensure that
19 the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims
20 being released, discounted by the risks and expenses of attempting to establish and collect on those
21 claims by pursuing the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los*
22 *Angeles*, 186 Cal. App. 4th 399 (2010), clarified that a *Kullar* showing does not require the parties to
23 submit an illusory prediction of the outer reaches of exposure without taking into account the actual
24 risks of certification, decertification, dispositive motions, and trial. *Kullar* also does not require an
25 explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its
26 claims provided there is a record that allows “an understanding of the amount that is in controversy and
27 the realistic range of outcomes of the litigation.” *Id.* at 409. The *Munoz* Court found that the record
28 before the trial court was sufficient, having included the number of class members, payroll data,

1 declarations describing hours and overtime worked, as well as variances in duties and rest and meal
2 period experience, and a companion action alleging less than \$5,000,000 in damages. This information
3 constituted “an adequate basis from which to garner a reasonably adequate understanding of the amount
4 that is in controversy within the meaning of *Kullar*.” *Id.*

5 Plaintiff similarly relied upon payroll data and Class Members’ data to determine the realistic
6 potential damages suffered by the class as a whole. *See* Decl. Berzin, ¶¶ 6-10. This analysis allowed
7 Plaintiff to determine the extent and frequency of potential violations on all claims as to all Class
8 Members. *See id.* Ultimately, Plaintiff secured a percentage of the total demand for the putative class
9 that is within the range of what has been found to be sufficient in several other cases. *See, supra*,
10 Section V.c.iv; *see also, e.g., In re Omnivision Technologies, Inc.*, 559 F.Supp.2d at 1042; *Reed v. 1-*
11 *800 Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014) (approving a settlement of \$11.7
12 million where the maximum range of damages was \$5,000 for each of the alleged 300,000 instances of
13 unlawful recording violations (\$1.5 billion), equaling approximately .78% of the total demand and
14 approximately \$800 per class member). This settlement represents a reasonable compromise given the
15 percentage of the total demand that was secured, the average recovery per class member, the Court’s
16 ability and discretion to cut PAGA penalties, and the uncertainty of class certification. *See* Decl.
17 Berzin, ¶¶ 9-10.

18 **vi. The Enhancement Payment to the Named Plaintiff for Plaintiff’s Services to the**
19 **Putative Class Is Reasonable and Routinely Awarded by Courts**

20 The Enhancement Payment to the named Plaintiff is intended to recognize the time and effort
21 expended on behalf of the class. Indeed, Courts routinely approve enhancement payments to
22 compensate named plaintiffs for the services they provide and the risks they incurred during the course
23 of the class action litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001).
24 In *Ingram*, the Court approved enhancement payments of \$300,000.00 to each named plaintiff in
25 recognition of the services they provided to the class by responding to discovery, participating in the
26 mediation process, and taking the risk of stepping forward on behalf of the class. *See Id.* at 694; *see*
27 *also Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00
28 enhancement payment).

1 In this case, Plaintiff provided and explained documents, participated in discovery, participated
2 in mediation, and was available at all times to discuss the case with Plaintiff's counsel. *See Decl.*
3 *Berzin*, ¶ 7; *Decl. Cristobal*, ¶¶ 3-5. Plaintiff spent approximately fifty (50) hours pursuing this
4 litigation for the benefit of all Class Members. *See id.* Plaintiff brought this action knowing there
5 would be a delay in any payment as the litigation progressed, rather than proceeding on individual
6 claims in front of the California Labor Commissioner. *See id.* Payment of \$15,000 to Plaintiff is
7 appropriate given the risk, assistance, time required in bringing this case and resolution of this case.

8 **vii. Awarding Attorneys' Fees as a Percentage of the Common Fund Is Reasonable**
9 **and Customarily Approved by Courts**

10 California state and federal courts have recognized that when a litigant's efforts create or
11 preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally
12 among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*,
13 444 U.S. 472, 477-478 (1980) ("A lawyer who recovers a common fund for the benefit of persons other
14 than . . . her client is entitled to a reasonable attorney's fee from the fund as a whole."); *Vincent v.*
15 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375
16 (1970); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *see also Serrano v.*
17 *Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016).
18 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation
19 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
20 burden alone." *Vincent*, 557 F.2d at 769; *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026,
21 1027 (9th Cir. 1977). California state courts have approved use of a percentage of the fund to calculate
22 reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable
23 sum of money. *See Dunk*, 48 Cal. App. 4th at 1808.

24 The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of
25 beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be
26 shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v. Graulity*, 886
27 F.2d 268, 271 (9th Cir. 1989). These criteria are "easily met" when "each member of a certified class
28 has an undisputed and mathematically ascertainable claim to part of a lump-sum settlement recovered

1 on her behalf.” *Id.* at 271 (citations omitted). Under the three (3) factors set forth in *Paul, Johnson,*
2 *Alston & Hunt*, the common fund doctrine applies in this case because there is a sufficiently identifiable
3 class of beneficiaries (*e.g.* the settlement class), the benefits can be accurately traced to the settlement
4 Plaintiff and Plaintiff’s counsel were able to negotiate on behalf of the class, and the fee can be shifted
5 with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the common
6 fund. As set forth in the fee award examples provided below for the Court’s reference, it is an accepted
7 practice in wage and hour class action settlements to award attorneys’ fees based on a percentage of the
8 common fund. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 967-972 (9th Cir. 2003); *Sanders v. City*
9 *of Los Angeles*, 3 Cal.3d 252, 261, 263 (1970); *Wershba*, 91 Cal. App. 4th at 254; *Bell v. Farmers Ins.*
10 *Exchange*, 115 Cal. App. 4th 715, 726, 765 (2004).

11 Historically, attorneys’ fee awards in common fund cases in general range from 20% to 50% of
12 the fund, depending on the circumstances of the case. *See Newberg on Class Actions*, (3rd Ed.), 1992,
13 §14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
14 generally approved as reasonable in wage and hour settlements below \$10 million:

15 More particularly, courts may award attorneys fees in the 30-40% range in wage and hour
16 class actions that result in recovery of a common fund under \$10 million. *See Vasquez v.*
17 *Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-492 (E.D. Ca. 2010) (citing to five
18 recent wage and hour class actions where federal district courts approved attorney fee
19 awards ranging from 30 to 33%); *Singer v. Becton Dickinson and Co.*, 2010 U.S. Dist.
20 LEXIS 53416, 2010 WL 2196104, *8 (S.D. Ca. June 1, 2010) (approving attorney fee
award of 33.33% of the common fund and holding that award was similar to awards in
three other wage and hour class action cases where fees ranged from 33% to 40%);
Romero v. Producers Dairy Foods, Inc., 2007 U.S. Dist. LEXIS 86270, 2007 WL
3492841 (E.D. Ca. Nov. 14, 2007).

21 *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011). Plaintiff’s
22 request of thirty five percent (35%) of the settlement sum for attorneys’ fees is within established rates
23 for fee awards in class settlements pursuant to the common fund doctrine, especially in light of the
24 excellent results achieved in this case. *See In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379
25 (N.D. Cal. 1989); *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-00634;
26 *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745; *Green, et al. v.*
27 *Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069; *Benitez et al. v.*
28 *Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122; *Chavez et al. v. Petrissans et al.*, USDC

1 Eastern District, Case No. 1:08-cv-00122; *Willis et al. v. Cal-Western Transport*, USDC Eastern
2 District, Case No. 1:00-cv-05695. To determine whether a percentage is reasonable, a court should
3 consider: (1) the percentage that would likely be negotiated between parties in a similar case; (2) the
4 percentage applied in other class actions; (3) the quality of class counsel; (4) the size of the award; and
5 (5) whether there are any objections by class members. *See In re Ikon Office Solutions, Inc. Secur.*
6 *Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000); *In re Heritage Bond Litig.*, 2005 WL 1594403, at *21
7 (C.D. Cal. June 10, 2005) (“the absence of objections or disapproval by class members to class
8 counsel’s fee request further supports finding the fee request reasonable”).

9 These factors support Plaintiff’s request for reasonable attorneys’ fees. The typical percentage
10 negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation
11 depending on the complexity of the case. In class action litigation, the typical percentage negotiated
12 between parties ranges from thirty to forty percent (30% to 40%) based on the same factors. Plaintiff’s
13 request of 35% falls within these typical fee arrangements. *See Decl. Berzin*, ¶ 18. The quality of
14 counsel and the average size of settlement payments to Class Members and Aggrieved Employees
15 (\$1,181.10) also support the fee request when compared to other settlements courts have considered as
16 good results. *See Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal.
17 2012) (“Class Members will receive an average of approximately \$198.70, with the highest payment to
18 a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
19 highlighted by the fact that there was no objection to the settlement amount or the attorneys’ fees
20 requested.”); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) (“the
21 results achieved in this case were very favorable. Class members are provided with immediate
22 monetary relief, with an average award of around several hundred dollars and a minimum award of
23 \$50”). Furthermore, no objections to the settlement have been made by class members and only no
24 class members opted out. *See Decl. Polites*, ¶¶ 10-11.

25 To the extent the Court wishes to exercise its discretion to conduct a lodestar cross check, the
26 cross check only validates the fee request. *See Laffitte*, 1 Cal. 5th at 503-506. Plaintiff has provided a
27 summary chart, which shows the types of tasks performed and total amount of time spent performing
28 the tasks by each timekeeper. *See Exhibit F (Attorney Hours Summary Chart)*; *Syers Props. III, Inc. v.*

1 *Rankin*, 226 Cal. App. 4th 691, 699 (2014) (“Because time records are not required under California
2 law ... , there is no required level of detail that counsel must achieve.”) (internal quotations omitted).
3 As set forth in the summary chart and in Plaintiff’s counsel’s declaration, Plaintiff’s counsel reasonably
4 spent a substantial amount of hours in this class action case. *See* Exhibit F; Decl. Berzin, ¶ 22;
5 *Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001) (fee award should be “fully compensatory [and]
6 absent circumstances rendering the award unjust, an attorney fee award should ordinarily include
7 compensation for *all* the hours reasonably spent.”) (emphasis in original); *Serrano v. Priest*, 20 Cal. 3d
8 25, 49 (1977). Plaintiff’s counsel’s hourly rates also reasonably reflect the prevailing market rates for
9 attorneys of similar skill and experience practicing within Solano County. *See* Decl. Berzin, ¶ 23;
10 Exhibit G (Sacramento Superior Court November 2022 Order); *Children’s Hosp. and Med. Ctr. v.*
11 *Bonta*, 97 Cal.App.4th 740, 783 (2002). Based on Plaintiff’s counsel’s hourly rates and hours worked
12 on this case, the lodestar calculation equals \$134,115.00.

13 Plaintiff’s counsels’ request for attorney’s fees of \$87,500 is reasonable considering their
14 lodestar of \$134,115.00, which results in a negative multiplier. *See* Decl. Berzin ¶ 22; *see also Laffitte*
15 *v. Robert Half Internat., Inc.*, 1 Cal.5th 480 (2016) (finding the trial court did not abuse its discretion in
16 approving a fee award of 1/3 of the common fund, cross-checked against a lodestar resulting in a
17 multiplier of 2.03 to 2.13); *Wershba*, 91 Cal. App. 4th at 255 (“Multipliers can range from 2 to 4 or
18 even higher”).

19 **c. Certification of the Class is Appropriate**

20 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
21 defined community of interest in the questions of law and fact involved affecting the parties to be
22 represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three
23 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
24 defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.*
25 Here, the parties agree that, for the purposes of settlement, these prerequisites are met. *See* Exhibit A.

26 **i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous**

27 The proposed settlement class is ascertainable because all putative class members can be readily
28 identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7 Cal.5th

1 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166
2 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 106 individuals
3 who fall within the definition of Class Member, which makes joinder of all members impracticable.
4 *See Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff'd* 694 F.2d 531
5 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no set minimum to
6 meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus,
7 these requirements are satisfied.

8 **ii. The Commonality, Predominance, and Typicality Requirements are Met**

9 The commonality requirement is met when there are questions of law or fact regarding the class
10 as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or
11 factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See*
12 *Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d
13 447, 460 (1974). Common questions of law or fact must also predominate over individual questions
14 and class-wide treatment of a dispute must be superior to individual litigation.² *See Richmond*, 29
15 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication
16 by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the
17 named representative are typical of those of the class, though “they need not be substantially identical.”
18 *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

19 The common questions of law and fact in this case stem from Plaintiff's contention that
20 Defendant 1) failing to incorporate the value of non-discretionary bonuses into Class Members' regular
21 rates of pay for the purpose of calculating overtime premiums and paid sick time; 2) paying Class
22 Members two different rates of pay in the same workweek and failing to use the weighted average
23 method to calculate putative class members' regular rates of pay; 3) requiring Class Members to remain
24 on duty during rest periods; and 4) failing to include the correct address on wage statements issued to
25 Class Members. *See Exhibit B*. The waiting time, unfair competition and PAGA claims derive from
26 these violations. Plaintiff also alleged derivative wage statement violations for failing to correctly
27

28 ²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 itemize gross and net wages earned and all applicable hourly rates in effect with the corresponding
2 number of hours worked at each rate. *See id.* Plaintiff and the Class Members seek the same remedies
3 under state law. Under these specific circumstances, the commonality and predominance requirements
4 are satisfied. Regarding the typicality requirement, Plaintiff contends he suffered from the same
5 unlawful policies, treatment, and circumstances as Class Members did, will request the same remedies,
6 and will rely on the same methods of proof to establish liability and damages. *See id.* Thus, the
7 typicality requirement is also satisfied for settlement purposes.

8 **iii. The Adequacy Requirement is Met**

9 The adequacy of representation requirement is met if the named representative and counsel have
10 no interests adverse to those of the putative class members and are committed to vigorously prosecuting
11 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60
12 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the preliminarily approved
13 settlement, Plaintiff and the putative Class Members will receive a pro rata share of the settlement
14 based on the number of workweeks they worked for Defendant. *See Exhibit A.* Finally, any settlement
15 class member who wishes to opt-out of the settlement may do so, and he or she may also dispute the
16 number of workweeks stated in the Notice of Settlement (Exhibit F).

17 There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's
18 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.
19 Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by
20 speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter
21 engaged Defendant's counsel in settlement discussions over the course of over one year. Moreover,
22 Plaintiff's counsel has experience defending and bringing wage and hour claims. Because Plaintiff's
23 counsel has vigorously pursued Plaintiff's and the Class Members' claims, the adequacy requirement is
24 met. *See generally* Decl. Berzin.

25 **VII. CONCLUSION**

26 For all of the foregoing reasons, Plaintiff respectfully requests that this Court certify the class
27 for settlement purposes; grant final approval to the proposed settlement, including the Plaintiff's Class
28 Representative Enhancement Payment, the payment to the LWDA under PAGA, and Class Counsel's

1 application for reasonable attorneys' fees and costs; find that the Notice of Pendency of Class Action
2 and Disbursement Form and administration process satisfied class members' due process rights; and
3 approve the proposed order submitted concurrently herewith.
4

5 Dated: March 2, 2023

Shimoda & Rodriguez Law, PC

6
7 By: *Brittany Berzin*
8 Galen T. Shimoda
9 Justin P. Rodriguez
10 Brittany V. Berzin
11 Attorneys for Plaintiff
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28

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff JOSEPH CRISTOBAL
6
7

8 **SUPERIOR COURT OF CALIFORNIA**

9 **FOR THE COUNTY OF SOLANO**
10

11 JOSEPH CRISTOBAL, individually and on
behalf of all other similarly situated
12 employees,

13 Plaintiff,

14 vs.

15 BAT RESIDENTIAL SERVICES, INC., a
16 California Corporation; and DOES 1 to 100,
inclusive,

17 Defendants.
18
19
20
21

Case No. FCS056331

CLASS ACTION

**DECLARATION OF BRITTANY V. BERZIN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: March 28, 2023

Time: 9:30 a.m.

Dept.: 22

Judge: Hon. Alesia F. Jones

Filed: April 5, 2021

FAC Filed: August 30, 2021

Trial Date: None Set

1 I, Brittany V. Berzin, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Joseph Cristobal ("Plaintiff") herein. I am making this
4 declaration on behalf of the named Plaintiff, the putative class members, and in support of Plaintiff's
5 Motion for Final Approval of Class Action and PAGA Settlement ("Motion"). A true and correct copy
6 of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release ("Agreement") in
7 this matter is filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiff's contention
9 that Defendant BAT Residential Services, Inc. ("Defendant") failed to pay overtime wages, failed to
10 provide rest periods or pay premiums in lieu thereof, failed to provide accurate wage statements, failed
11 to pay final wages, engaged in unfair competition, and failed to pay sick time. Plaintiff also alleged
12 liability for civil penalties under the Private Attorneys General Act ("PAGA"). These claims were
13 based allegations that Defendant violated California law by 1) failing to incorporate the value of non-
14 discretionary bonuses into Class Members' regular rates of pay for the purpose of calculating overtime
15 premiums and paid sick time; 2) paying Class Members two different rates of pay in the same
16 workweek and failing to use the weighted average method to calculate putative class members' regular
17 rates of pay; 3) requiring Class Members to remain on duty during rest periods; and 4) failing to include
18 the correct address on wage statements issued to Class Members. The waiting time, unfair competition
19 and PAGA claims derive from these violations. Plaintiff also alleged derivative wage statement
20 violations for failing to correctly itemize gross and net wages earned and all applicable hourly rates in
21 effect with the corresponding number of hours worked at each rate.

22 3. Plaintiff is the only named representative in this matter. From our initial investigations
23 of Plaintiff's claims and documents, we believed these claims had merit and could be maintained as a
24 class action. We filed the action on or about April 5, 2021. Plaintiff exhausted administrative remedies
25 through the Labor and Workforce Development Agency ("LWDA") prior to amending the Complaint
26 to add a PAGA claim. Plaintiff filed a notice with the LWDA on April 2, 2021, setting forth the facts
27 and theories of liability. A true and correct copy of the notice filed with the LWDA is being filed with
28 this Motion as Exhibit C. A copy of the notice was also sent to Defendant via certified mail and the

1 \$75.00 filing fee was remitted to the LWDA at that time. There was no response by the LWDA
2 regarding its intent to investigate the claims alleged in Plaintiff's notice for more than 65 days. As
3 such, Plaintiff became authorized to commence a civil action under the PAGA and filed a First
4 Amended Complaint on August 30, 2021. A true and correct copy of Plaintiff's operative Complaint is
5 filed with this Motion as Exhibit B. A copy of the Complaint was uploaded to the LWDA on
6 September 10, 2021, after we received an endorsed copy back from Court.

7 4. Currently, there is no date set for a motion to certify the class and there is no trial date.

8 5. Defendant is represented in this matter by Womble Bond Dickinson (US) LLP. From
9 the beginning, Defendant has contested the merits of this case, the suitability of the case for class action
10 or representative treatment, the manageability of the case at trial, and Plaintiff's ability to prove a
11 violation in each pay period for each employee among other defenses and contentions they made
12 challenging the propriety of this action. Defendant further contended, even assuming there was a
13 finding supporting the imposition of PAGA penalties, that the Court would likely exercise its discretion
14 to substantially reduce any such penalties owed based on evidence of good faith attempts to comply
15 with California Labor Code obligations by Defendant. Notwithstanding its agreement to settle this
16 matter, Defendant believe the practices Plaintiff is contending are unlawful either do not exist or, to the
17 extent they do exist, fully comply with all state and federal employment laws with respect to Plaintiff
18 and Class Members. Also, Defendant has contended that this matter is not appropriate for class
19 certification outside of this proposed class settlement.

20 6. Based on the expected testimony from Plaintiff and Class Members, a review of
21 Defendant's policies and procedures and other documents relating to the alleged claims, information on
22 the number of Class Members, Class Members' dates of employment, and Class Members' time and
23 payroll data, the scope of the potential damages to Plaintiff and Class Members in light of the claims
24 alleged, the uncertainty in the law with regard to certification, and the negotiations that have taken place,
25 I am convinced that the proposed settlement is in the best interest of the class. The length and risks of
26 trial and other normal perils of litigation that impact the value of the claims were also considered and
27 weighed in reaching the Agreement. In addition, I carefully considered the prospect of potential class
28 certification issues as well as the uncertainty of class certification, the difficulties of complex litigation,

1 and the lengthy process of establishing specific damages and various possible delays and appeals in
2 agreeing to the proposed settlement. I further considered the fact that penalties under the PAGA could
3 be substantially cut at the discretion of the Court even if Plaintiff was successful proving those claims,
4 the relatively small amount of underpayment due to Defendant's failure to use the weighted average
5 method if Plaintiff was successful proving that claim, Defendant's arguments that bonuses paid to Class
6 Members were discretionary, Defendant's arguments regarding an exception to the off duty rest period
7 requirement for certain 24-hour care workers, and the risk that a Court could find no willfulness in the
8 failure to pay wages at separation, which would eliminate the value of the waiting time penalty claim
9 entirely. Overall, I believe it is more beneficial to secure a guaranteed benefit to the class now rather
10 than to proceed with litigation and potentially obtain zero funds to the class due to legal or factual issues
11 in the case.

12 7. My office, including the partners Galen T. Shimoda and Justin P. Rodriguez, our
13 paralegals, and myself, along with Plaintiff's assistance, thoroughly investigated the merits of the claims
14 and potential damages for such claims. The parties engaged in formal discovery and an informal
15 exchange of documents and information for mediation, including Class Members' timecards, Class
16 Members' payroll documents, and relevant policies for the entirety of the statute of limitations
17 applicable to the alleged claims. The discovery covered all aspects of the asserted claims, including
18 certification issues, merits issues, damages, the scope and configuration of Class Members, the content
19 and implementation of the wage and hour policies at issue, issues relating to manageability concerns at
20 trial, among other relevant areas. From this production we were able to determine information critical to
21 a reliable damages analysis such as the average hourly rate, average daily hours worked, average
22 number of workweeks and pay periods that had potential violations based on the asserted claims, the
23 frequency with which violations occurred in a given week and/or pay period, and the number of former
24 employees. This information allowed my office to assess both liability and damages and create an
25 accurate damages model. Plaintiff assisted in all aspects of this litigation including providing factual
26 information relating to Plaintiff's and Class Members' employment conditions, providing a substantial
27 number of documents, and answering questions regarding Defendant's factual contentions in this matter.
28

1 This was important because it directly related to our ability to maintain this case as a class action and
2 our ability to obtain a favorable settlement for the class.

3 8. Throughout this litigation our office had numerous communications with Defendant's
4 Counsel discussing our respective positions. It was only after over one year of extensive, arm's length
5 negotiations that the parties were able to reach a settlement. The negotiations were at all times
6 contentious and adversarial, though still professional in nature.

7 9. The parties reviewed and analyzed substantial amounts of data regarding the class
8 claims. Based on our analysis and review of all relevant documents and Class Member information, I
9 have determined that the likely damages for the asserted class claims if Plaintiff was successful at
10 certification and trial would be between approximately \$38,030 and \$1,811,560.06, which includes
11 civil penalties under the PAGA. The basis for this estimate on a claim by claim basis is as follows:

- 12 • Failure to include bonuses in the regular rate of pay. This claim was based on our contention
13 that Defendant paid non-discretionary bonuses to Class Members that should have been
14 incorporated when calculating the regular rate of pay for the purpose of calculating overtime
15 and paid sick time. Defendant claimed that the bonuses were discretionary. If the bonuses were
16 discretionary, there would be zero damages for this claim. Based on the policy documents and
17 payroll documents I reviewed, I believe this claim has a potential value of approximately \$0 to
18 \$12,201.56.
- 19 • Failure to correctly calculate the regular rate of pay when there were multiple different rates
20 paid within the same week. This claim was based on our contention that Defendant paid Class
21 Members multiple different rates of pay within the same workweek but failed to use the
22 weighted average method to calculate the regular rate of pay for the purpose of calculating
23 overtime and paid sick time. Plaintiff used a representative sample of payroll records to
24 determine the frequency of this alleged violation and calculate damages. Defendant contended
25 that the frequency of this alleged violation was very low based on a separate analysis using all
26 the payroll records. Based on the payroll documents I reviewed and Defendant's separate
27 analysis, I believe this claim has a potential value of approximately \$3,130 to \$17,446.

- 1 • On duty rest periods. This claim was based on our contention that Defendant required Class
2 Members to remain on duty during rest periods. Defendant argued that an exception in Wage
3 Order No. 5 for 24-hour care workers applied and permitted on duty rest periods. However,
4 even if the exception did not apply, there was a factual dispute regarding whether in practice
5 Class Members took off duty rest periods or not. Based on the policy documents and payroll
6 documents I reviewed, as well as the information obtained from Plaintiff and other class
7 members, I believe this claim has a potential value of approximately \$0 to \$760,512.50.
- 8 • Failure to pay final wages. This claim was based on our contention that at the time of Class
9 Members' termination or separation they were owed overtime wages and rest period premiums
10 that were not paid. There was a risk that to the extent there were unpaid wages owed to Class
11 Members, the Court would find that Defendant attempted to comply with the law in good faith.
12 If Defendant prevailed on its good faith defense, the damages for this claim would be zero
13 dollars. Based on the policy documents and payroll documents I reviewed, I believe this claim
14 has a potential value of approximately \$0 to \$231,000.
- 15 • Wage Statement Violations. This claim was based on our contention that wage statements
16 issued to Class Members did not have the correct employer address, did not correctly state all
17 hourly rates in effect and the hours worked at those rates, and did not correctly state gross and
18 net wages earned. Defendant contended that the address was accurate because it was the
19 address of one of Defendant's residential care facilities and that any error in the overtime rate
20 on wage statements would not constitute a violation pursuant to *Maldonado v. Epsilon Plastics,*
21 *Inc.*, 22 Cal. App. 5th 1308, 1337 (2018). Based on the policy documents, paystubs and payroll
22 documents I reviewed, I believe this claim has a potential value of approximately \$34,900 to
23 \$69,800.
- 24 • Civil Penalties under PAGA. This claim was derivative of the other asserted claims and,
25 therefore, any risk associated with those claims would apply here as well. PAGA penalties are
26 regularly reduced in the discretion of the Court where a higher award might produce results that
27 are unjust, oppressive, or confiscatory. It is highly likely, given the derivative nature of the
28 penalties, that a Court would substantially reduce any PAGA penalty award. *See Fleming v.*

1 *Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction). Based
2 on the payroll records and policy documents I reviewed, as well as the information obtained
3 from Plaintiff and other class members, and intervening case law, I believe that this claim has a
4 potential maximum value of approximately \$720,600 (assuming no reduction) and a minimum
5 value of \$0. Because it is much more likely in my opinion, that any PAGA award would be
6 closer to the minimum value due to the derivative nature of this claim, I conclude that the
7 \$10,000 the parties allocated to PAGA, \$7,500 of which will be paid to the LWDA, is a
8 reasonable settlement of that claim.

- 9 • Unfair competition. This claim is derivative of the other claims that were already been valued
10 under their direct cause of action. Accordingly, the damages available under this cause of action
11 were not independently valued.

12 10. Settlements, by their nature, must account for the risks inherent in every case, especially
13 class action litigation. Furthermore, there were many legal and factual defenses that were asserted by
14 Defendant. Plaintiff's proposed class action settlement of \$250,000 is reasonable in light of the estimated
15 potential outcomes, equating to approximately 13.8% of the maximum potential outcome and substantially
16 exceeding the minimum potential value. After deducting the amounts allocated for attorney's fees
17 (\$87,500), costs (\$7,803.92), class representative enhancement award (\$15,000), the PAGA payment
18 (\$10,000), and settlement administration costs (\$7,000), the Net Settlement Amount is approximately
19 \$122,696.08. The net settlement value is approximately 6.8% of the maximum potential recovery. Based
20 on the final numbers from the administrator, the average recovery for class members is approximately
21 \$1,181.10 and the maximum recovery is approximately \$4,639.72.

22 11. In agreeing to take on this case, our office agreed to take this case on a contingency
23 basis, meaning that we would take a percentage of any settlement or judgment should we recover a
24 monetary amount. We took a risk that we would not recover any money in this matter if we were
25 unsuccessful at trial. We also took on the risk that the case may be subject to an unfavorable summary
26 judgment ruling. However, we believe it is important to make sure employees are able to find
27 affordable representation in order to ensure that employers are complying with all their legal
28 obligations towards employees and paying employees all their hard-earned wages. We rely on

1 attorneys' fee awards in order to continue working to ensure California wage and hour protections are
2 enforced. Recovery of our full lodestar plus an appropriate multiplier is necessary to compensate for
3 the risk undertaken. Otherwise, we could not continue to represent employees who are denied wages,
4 but whose cases may be time-consuming and difficult to prove. There have many class cases we have
5 litigated where ultimately we get zero for our time because we are unable to meet certification
6 requirements or the company becomes financially insolvent. Additionally, there are occasions, where
7 the fee recovered actually results in a negative multiplier of our lodestar.

8 12. I am a Senior Associate at Shimoda & Rodriguez Law, PC. Our law firm is a boutique
9 law practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I
10 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Psychology. I
11 received my J.D. from the University of the Pacific McGeorge School of Law. I joined Shimoda &
12 Rodriguez Law, PC as a law clerk in February 2015 where I gained civil litigation experience working
13 on individual, class action and PAGA employment cases throughout law school. I also participated in
14 an employment law clinic in 2015 and 2016 that helps low-income workers by providing free legal
15 consultations, advising employees of their legal remedies on a variety of matters (*e.g.*, wage and hour,
16 discrimination/harassment, California leave laws, unemployment, workers' compensation, retaliation,
17 and wrongful termination, etc.) under the supervision of an attorney, preparing wage claims, and
18 providing representation in wage claims before the California Labor Commissioner. From 2016-2017,
19 I completed an externship at the Federal Public Defenders Office as a Certified Law Student where I
20 obtained discovery, completed legal research, drafted motions, negotiated plea deals, represented
21 clients in a variety of hearings (*e.g.*, arraignments, motion hearings, sentencing hearings, etc.), and
22 defended a client against five misdemeanor charges in a jury trial in the United States District Court for
23 The Eastern District of California. I was also a member of the nationally recognized McGeorge Mock
24 Trial Team and went on to coach a high school Mock Trial team in 2018 after graduating from law
25 school. In May 2017, I graduated from the University of the Pacific, McGeorge School of Law with
26 Great Distinction and was inducted into the Order of the Coif, graduating in the top 10% of my class. I
27 received the Witkin Award for Academic Excellence in Legal Research and Writing, Civil Procedure,
28 Bankruptcy, and Criminal Procedure. From 2020 to present, I have been recognized as a Super

1 Lawyer (Rising Star). I have been a member of the executive committee of the Sacramento County Bar
2 Association Labor & Employment Section since January 2020, serving as Co-Chair of the committee in
3 2021. I have over seven years of experience working on civil litigation and employment law matters.
4 Most of that experience has been specific to analyzing and litigating wage and hour claims. As an
5 associate, I have worked on a variety of individual, class action, and PAGA cases involving wage and
6 hour claims, such as failure to pay overtime, failure to pay minimum wages, failure to provide meal and
7 rest periods, failure to pay reimbursement expenses, unlawful deductions, failure to keep accurate time
8 records, failure to provide paid sick leave, failure to pay all wages upon separation, unfair competition,
9 breach of contract, independent contractor misclassification, and salaried misclassifications. Some of
10 the class action and/or PAGA cases I am litigating and/or have litigated as lead or co-counsel include
11 the following:

- 12 • *Arosemena v. Ranchhodrai, Inc., et al.*, Case No. STK-CV-UOE-2019-15963 (San Joaquin
13 Sup. Ct.);
- 14 • *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634 (Sac. Sup. Ct.);
- 15 • *Balli v. Brown Box Investments, Inc., et al.*, Case No. 34-2018-00232656 (Sac. Sup. Ct.);
- 16 • *Barkhousen, et al. v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin
17 Sup. Ct.);
- 18 • *Barrios v. American Property Management, Inc.*, Case No. 1:18-cv-00352-AWI-SKO (E.D.
19 Cal.);
- 20 • *Callahan v. Creative Alternatives, Inc., et al.*, Case No. 2027518 (Stanislaus Sup. Ct.);
- 21 • *Collazo v. T.O.P. Marketing Group, Inc.*, Case No. 34-2022-00314092 (Sac. Sup. Ct.);
- 22 • *Coronado v. MGD, Inc.*, Case No. STK-CV-UOE-2021-893 (San Joaquin Sup. Ct.);
- 23 • *Estrada v. MAD Security Services, Inc.*, Case No. 34-2021-00300627 (Sac. Sup. Ct.);
- 24 • *Ferreira v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 25 • *Finance of America Wage And Hour Cases*, Case No. JCCP 5081 (Orange County Sup. Ct.);
- 26 • *Gomez, et al. v. Kleary Masonry, Inc.*, Case No. 34-2020-00278067 (Sac. Sup. Ct.);
- 27 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- 28 • *Gordon, et al. v. Hospice Source, LLC*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);

- *Green v. Warden Security Associates, Inc.*, Case No. 22CV396140 (Santa Clara Sup. Ct.);
- *Hampton v. Unlimited Security Specialists, Inc.*, Case No. CV2021-2130 (Yolo Sup. Ct.);
- *Hercules, et al. v. Maximus Services, LLC*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- *Insixiengmay v. Hyatt Corporation*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal);
- *Kurtz v. Perimeter Security Group, LLC, et al.*, Case No. CU19-083650 (Nevada Sup. Ct.);
- *Leong-Call v. MRB Foods, Inc.*, Case No. 34-2020-00287486 (Sac. Sup. Ct.);
- *Magat v. Medical Care Professionals, Inc., et. al.*, Case No. SCV0042579 (Placer Sup. Ct.);
- *Mayorga v. Brown Strauss, Inc.*, Case No. STK-CV-UOE-2020-0010906 (San Joaquin Sup. Ct.);
- *McGhee v. Salute Incorporated*, Case No. 34-2022-00315317 (Sac Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Meals v. Grass Valley Extended Care, Inc., et al.*, Case No. CU19-083606 (Nevada Sup. Ct.);
- *Munoz v. Wilmor And Sons Plumbing And Construction*, Case No. 34-2021-00306609 (Sac. Sup. Ct.);
- *Neufield v. Professional Transportation, Inc.*, Case No. 34-2021-00309849 (Sac. Sup. Ct.);
- *Ruiz v. CTE Cal, Inc.*, Case No. 34-2020-00289168 (Sac. Sup. Ct.);
- *Saavedra, et al. v. SMF Global, Inc.*, Case No. 34-2018-00243363 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc., et al.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Scoggins, et al. v. Energy Star Construction, Inc.*, Case No. 34-2018-00243048 (Sac. Sup. Ct.);
- *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Tracy v. Von Housen's Sacramento, Inc.*, Case No. 34-2020-00282778 (Sac. Sup. Ct.);
- *Uribe v. Ecoguard Pest Management, Inc.*, Case No. 34-2021-00300650 (Sac. Sup. Ct.);
- *Vasquez v. Chriswell Home Improvements, Inc.*, Case No. 34-2021-00305938 (Sac. Sup. Ct.);

- 1 • *Villarruel, et al. v. General Produce Company, et al.*, Case No. 34-2021-00311463 (Sac.
2 Sup. Ct.);
- 3 • *Walker v. Yan Kalika Dental Corporation*, Case No. 34-2021-00305106 (Sac. Sup. Ct.); and
- 4 • *Webb v. Professional Healthcare At Home, LLC*, Case No. FCS055317 (Solano Sup. Ct.).

5 13. The preceding list of cases does not include those where, for a variety of reasons, the
6 case was initially filed as a class and/or PAGA action, but did not maintain that status through the end
7 of the case.

8 14. The partners, Justin P. Rodriguez, Esq. and Galen T. Shimoda, Esq., also worked with
9 me on this matter and were critical in assisting with all aspects of the litigation of this case. Mr.
10 Rodriguez attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy
11 and the Departmental Citation for Academic Achievement in the Philosophy program. He was one of
12 only two recipients of this award out of the entire Philosophy Department. After U.C. Davis, Mr.
13 Rodriguez attended the University of the Pacific, McGeorge School of Law, graduating in 2011 and
14 receiving a Juris Doctorate. He graduated in the top 20% of his class and was a member of the Traynor
15 Honor Society at McGeorge. Other academic achievements of his include receiving a Witkin Award
16 (top grade) in his legal research and writing course, a Witkin Award in complex civil litigation, being a
17 member of the Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law*
18 *Review* from 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global*
19 *Business & Development Law Journal* from 2010–2011, and being selected as a Sacramento County
20 Bar Association Diversity Fellow in 2009. Mr. Rodriguez was also a member of the Employment and
21 Labor Law Society and an officer for the Latino Law Students Association from 2009 to 2010.

22 15. Mr. Rodriguez was an associate of the Shimoda Law Corp from 2011 to 2016 and
23 became a partner in 2017. Shimoda Law Corp. became Shimoda & Rodriguez Law, PC, in 2022.
24 Since 2017, he has received an AV Preeminent rating from Martindale-Hubbell for his legal ability and
25 ethical standards. From 2018 to present, he has been recognized as a Super Lawyer (Rising Star). Mr.
26 Rodriguez has been a panel speaker and presented a number of seminars covering issues wage and hour
27 litigation in general and complex class and PAGA litigation in particular. These engagements include
28 the following: (1) *Epic Systems*, PAGA, and the Future of Employment Arbitration in California

(Sacramento County Bar Assoc., Sept. 2018); (2) Class Actions and PAGA Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020); (3) Mediation: The Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept. 2020); (4) How to Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar. 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a Post-*Viking River Cruises* World (Sacramento County Bar Assoc., Nov. 2022). Mr. Rodriguez was elected to the Sacramento County Bar Association Labor and Employment Law Section's executive committee in 2019 and was the Chair of the executive committee for 2022. Mr. Rodriguez has also been a member of the Presiding Judge Civil Law Advisory Committee for Sacramento County Superior Court since August 2020. His practice focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act ("FLSA") claims. He is actively involved in most of the complex litigation handled by our firm. Class and/or PAGA actions he has litigated or is currently litigating include, but is not limited to, the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080 (San Joaquin Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-00271174 (Sac. Sup. Ct.);

- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
- *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-00222101 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);

- *Hellum v. AI Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 34-2019-00263185 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

1 16. The preceding list of cases does not include those where, for a variety of reasons, the
2 case was initially filed as a class and/or PAGA action, but did not maintain that status through the end
3 of the case.

4 17. Mr. Shimoda graduated from the University of Utah in 2000 with a B.S. in Business
5 Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and
6 graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in
7 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the
8 Coif and Traynor Honor Society. Since graduating from McGeorge, he has authored a number of
9 employment law articles for journals and regularly publishes articles on our firm's website.

10 18. He has been a regular panel speaker for the CEB (Continuing Education of the Bar)
11 Employment Review seminars from 2014 to the present. His speaking engagements include the
12 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual
13 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
14 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
15 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
16 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
17 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
18 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
19 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
20 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
21 Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance
22 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
23 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
24 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
25 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
26 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
27 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
28 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a

Venue Roundup (May 17, 2019). He has been AV rated by Martindale Hubbell since 2013, was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized as a Super Lawyer from 2014 to present.

19. He has practiced law in California since being admitted to the State Bar in 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases. He began practicing class action law on the defense side at the firm of Orrick, Herrington & Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is in wage and hour law. He has litigated several class action cases in California State and Federal Courts, including up to certification, settlement, preliminary and final approval, and disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel. Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel over the past nineteen (19) years include, but are not limited to, the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.

- Sup. Ct.);
- *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
 - *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
 - *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
 - *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
 - *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
 - *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
 - *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
 - *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
 - *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
 - *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);
 - *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
 - *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
 - *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac. Sup. Ct.);
 - *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
 - *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
 - *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
 - *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
 - *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
 - *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
 - *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
 - *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
 - *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);

- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

20. The preceding list also does not include those cases where, for various reasons, the case was filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

21. My office is requesting attorneys' fees pursuant to the common fund doctrine pursuant to *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v.*

Grauly, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980). Plaintiff and Plaintiff's Counsel have been able to secure an identifiable benefit on behalf of the class and equity counsels that the cost of the representation should be born equally amongst all class members receiving these benefits. The settlement recovery provides an excellent result and is the product of substantial time and effort in analyzing the facts and law applicable to this case. There was substantial risk in agreeing to take this case on a contingency basis and as a class action with the possibility that Plaintiff's Counsel would not receive any compensation their time and efforts due to issues regarding the merits and/or certification and have carried that risk over the course of the case. In my experience, the attorney's fee request of thirty-five percent (35%) of the common fund is within ranges typically approved in wage and hour class action litigation.

22. I believe a lodestar cross check supports finding a 35% fee award is appropriate in this case. The total lodestar is approximately \$134,115.00 based on approximately 234.4 hours, which include approximately 10 hours of time for myself preparing for and attending the final approval hearing, ensuring compliance and the disbursement of funds consistent with a final approval order. I have reviewed our firm's billing records with Mr. Shimoda and Mr. Rodriguez and have created a summary chart showing the task categories and hours worked by each billing attorney in each category. A true and correct copy of this summary chart is being filed with this Motion as Exhibit F. In reviewing the entries with Mr. Shimoda and Mr. Rodriguez, I believe the hours reported are accurate. To the extent we believe it appropriate to do so in any given assignment, we attempt to assign tasks to the billing attorney with the lower rate in order to reduce costs that otherwise might inhibit the likelihood a case will resolve. Our firm uses billing software, which tracks the entries by day and time. Our billing software also records time in 1/10 of an hour increments. Our billing software also enables the use of a start/stop timer that can be used to more accurately record how long a particular task takes. A summary of the entries in Exhibit F by timekeeper is as follows:

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Galen T. Shimoda	64.1	\$725	\$46,472.50
Justin P. Rodriguez	57.2	\$625	\$35,750.00

Brittany V. Berzin	122.1	\$425	\$51,892.50
Total:	243.4		\$134,115.00

23. I believe the requested rates of \$425 per hour for myself, \$625 per hour for Mr. Rodriguez, and \$725 per hour for Mr. Shimoda are within the prevailing market rates for Solano County and elsewhere. We have approximately 4 years, 12 years, and 19 years of experience, respectively, litigating complex wage and hour class and PAGA actions. In November 2022, the Sacramento County Superior Court approved Mr. Shimoda, Mr. Rodriguez, and myself at these rates in connection with a motion for final approval of a wage and hour class action settlement in *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.). I believe hourly rates in Sacramento County are representative of rates in Solano County given the close proximity between the two counties. A true and correct copy of the final approval order in the *Strawn* matter is being filed with this Motion as Exhibit G. Awarding fees at the hourly rate in effect at the time of the fee request is an appropriate and judicially approved method. See *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 283 (1989). For the foregoing reasons, I believe the request of \$87,500 (35%) for attorneys' fees is justified given the results obtained on behalf of the class.

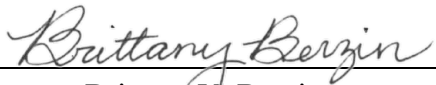
24. Although the Agreement set out a maximum of \$10,000 for potential attorney's costs, the total costs incurred or that will be incurred through a compliance hearing by Class Counsel is \$7,803.92. A true and correct copy of my firm's itemized costs incurred prior to the filing of this Motion and the expected costs incurred through the final approval and compliance hearing is attached to this declaration as Exhibit D. The difference in the actual costs and the maximum amount allocated under the Agreement will be added to the Net Settlement Amount and disbursed to Class Members.

25. A copy of the Agreement and the entire Motion was submitted to the LWDA for review at the same time the Motion was submitted to the Court pursuant to California Labor Code section 2699(1)(2). A true and correct copy of documents demonstrating the settlement documents were provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as Exhibit E.

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1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed this 2 day of March 2023 in Elk Grove, California.

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6 Brittany V. Berzin
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1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff JOSEPH CRISTOBAL
6
7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SOLANO**
10

11 JOSEPH CRISTOBAL, individually and on
behalf of all other similarly situated
12 employees,

13 Plaintiff,

14 vs.
15

16 BAT RESIDENTIAL SERVICES, INC., a
California Corporation; and DOES 1 to 100,
17 inclusive,

18 Defendants.
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Case No. FCS056331

CLASS ACTION

**DECLARATION OF PLAINTIFF JOSEPH
CRISTOBAL IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: March 28, 2023

Time: 9:30 a.m.

Dept.: 22

Judge: Hon. Alesia F. Jones

Filed: April 5, 2021

FAC Filed: August 30, 2021

Trial Date: None Set

1 I, Joseph Cristobal, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support
4 of Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement.

5 2. I worked for Defendant BAT Residential Services, Inc. ("Defendant") from
6 approximately June 22, 2020 to February 16, 2021 as a non-exempt employee. I was subject to all of
7 Defendant's policies and practices that have been alleged as unlawful in the Complaint and the notice
8 sent to the Labor and Workforce Development Agency, including the following: failing to include the
9 value of bonuses in the regular rate of pay, failing to correctly calculate the regular rate of pay when
10 two different base hourly rates were paid within the same week, failing to pay premiums for on duty
11 rest periods, and failing to provide accurate wage statements.

12 3. I have actively participated in the litigation of this case. I estimate in total I have spent
13 approximately 50 hours assisting with this case. I have given a detailed account of all the facts related
14 to my employment and the claims asserted in the Complaint. I provided documentation related to my
15 employment and in support of the claims brought against Defendant including paystubs, timesheets,
16 schedules, documentation identifying Defendant's CEO, Vice President, and Facility Administrator,
17 documentation evidencing Defendant's license to operate and maintain 24-hour care residential
18 facilities, and correspondence from Defendant relevant to the case. In addition, I reviewed documents
19 produced by Defendant in discovery and assisted my attorneys in understanding the documents and
20 providing context for Defendant's employment policies and practices as they applied to me and how I
21 believe they applied to Defendant's other employees.

22 4. My attorneys explained to me the risks and benefits of bringing a class action and a
23 claim under the Private Attorneys General Act. I understood that I took on the risk, both professionally
24 and financially, in pursuing the case as a class and representative action rather than pursuing my claims
25 individually. I understood that pursuing the case as a class action meant that it would take substantially
26 longer than pursuing a claim with the California Labor Commissioner and that I risked getting nothing
27 in the end, but I believed it was important to make sure that Defendant followed the law for everyone.

7. As a Class Representative, I took on the risk of having to pay Defendant's costs if we were unsuccessful in bringing our claims. In addition, I agreed to a general release of my claims arising from my employment with Defendant pursuant to section 1542 of the California Civil Code as part of the settlement agreement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 02 of March 2023 in Lodi, California.

JC DECL. ISO MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff JOSEPH CRISTOBAL
6
7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SOLANO**
10

11 JOSEPH CRISTOBAL, individually and on
behalf of all other similarly situated
12 employees,

13 Plaintiff,

14 vs.
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16 BAT RESIDENTIAL SERVICES, INC., a
California Corporation; and DOES 1 to 100,
17 inclusive,

18 Defendants.
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Case No. FCS056331

CLASS ACTION

**DECLARATION OF CASSANDRA POLITES
OF ILYM GROUP, INC. IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: March 28, 2023

Time: 9:30 a.m.

Dept.: 22

Judge: Hon. Alesia F. Jones

Filed: April 5, 2021

FAC Filed: August 30, 2021

Trial Date: None Set
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1 I, Cassandra Polites declare as follows:

2 1. I am a resident of the United States of America and am over the age of 18. I am a Case
3 Manager for ILYM Group, Inc., (herein after referred to as “ILYM Group”), the professional settlement
4 services provider who has been retained by the parties’ counsel and subsequently appointed by the Court
5 to serve as the Claims Administrator for the above captioned matter. I am authorized to make this
6 declaration on behalf of ILYM Group and myself. I have personal knowledge of the facts herein, and, if
7 called upon to testify, I could and would testify competently to such facts.

8 2. ILYM Group has extensive experience in administering class action settlements, including
9 direct mail services, database management, claims processing and settlement fund distribution services
10 for class actions ranging in size from 26 to 4.5 million settlement class members.

11 3. ILYM Group was engaged by the parties’ counsel and subsequently approved and
12 appointed by the Court to provide notification services and settlement administration, pursuant to the
13 terms of the Agreement, in the above referenced Action. Duties performed to-date and to be performed
14 after Final Approval of the Agreement is granted, include: (a) printing and mailing the *Notice of Proposed*
15 *Class Action and PAGA Settlement, And Hearing Date For Final Approval of Settlement* (referred to as
16 “Notice Packet”); (b) receiving and processing requests for exclusion; (c) resolving Class Members’
17 disputes over the number of workweeks Defendant has record of them working during the Class Period,
18 which was pre-printed on their individualized Notice of Settlement; (d) calculating individual settlement
19 award amounts; (e) processing and mailing settlement award checks; (f) handling tax withholdings as
20 required by the Agreement and the law; (g) preparing, issuing and filing tax returns and other applicable
21 tax forms; (h) handling the distribution of any unclaimed funds pursuant to the terms of the Agreement;
22 (i) maintaining a website with a copy of this Notice Packet, the settlement agreement, and motion papers;
23 and (j) performing other tasks as the parties mutually agree to and/or the Court orders ILYM Group to
24 perform.

25 4. On January 5, 2023, ILYM Group received the class data file from counsel for Defendant,
26 which contained the name, social security number, last known mailing address, and the dates of
27 employment for each Class Member. The data file was uploaded to our database and checked for
28

1 duplicates and other possible discrepancies. The Class List contained 106 individuals who worked 7,660
2 work weeks.

3 5. As part of the preparation for mailing, all 106 names and addresses contained in the Class
4 List were processed against the National Change of Address (“NCOA”) database, maintained by the
5 United States Postal Service (“USPS”), for purposes of updating and confirming the mailing addresses
6 of the Class Members before mailing of the Notice Packet. The NCOA contains requested change of
7 addresses filed with the USPS. To the extent that an updated address was found in the NCOA database,
8 the updated address was used for the mailing of the Notice Packet. To the extent that no updated address
9 was found in the NCOA database, the original address provided by counsel for Defendant was used for
10 the mailing of the Notice Packet.

11 6. On January 12, 2023, the Notice Packet was mailed, via U.S First Class Mail, to all 106
12 individuals contained in the class list. Attached hereto, as **Exhibit A**, is a true and correct copy of the
13 mailed Notice Packet.

14 8. As of the date of this declaration, 10 Notice Packets have been returned to our office. Of
15 the 10 returned Notice Packets, 1 returned with a forwarding address. ILYM Group performed a
16 computerized skip trace on the 9 returned Notice Packets that did not have a forwarding address, in an
17 effort to obtain an updated address for purpose of re-mailing the Notice Packet. As a result of ILYM
18 Group’s skip tracing efforts, 3 updated addresses were obtained and the Notice Packet was promptly re-
19 mailed to those Settlement Class Members, via U.S First Class Mail.

20 9. As of the date of this declaration, a total of 6 Notice Packets have been deemed
21 undeliverable as no updated address was found notwithstanding the skip tracing.

22 10. As of the date of this declaration, ILYM Group has not received any request for exclusion
23 from the Agreement. The deadline to request exclusion from the Settlement was February 27, 2023.

24 11. As of the date of this declaration, ILYM Group has not received any objections to the
25 Settlement. The deadline to file an objection to the Agreement was February 27, 2023.

26 12. As of the date of this declaration, ILYM Group has not received any work week disputes.
27 The deadline to submit a dispute was February 27, 2023.

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1 13. The Net Settlement Fund available to Settlement Class Members is \$122,696.08 and was
2 calculated by subtracting the requested attorneys' fees (\$87,500.00), the amount allocated for litigation
3 costs and expenses (\$7,803.92), the requested Enhancement Payment (\$15,000.00), the requested
4 Settlement Administration Costs (\$7,000.00), and the PAGA Payment (\$10,000.00) from the Gross
5 Settlement Amount (\$250,000.00).

6 14. As of this date, there are 106 Qualified Claimants, *i.e.*, Class Members who did not submit
7 requests for exclusion. Each Qualified Claimant's share of the settlement was determined by dividing
8 their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks worked by
9 all Class Members within the Class Period. That fraction was then multiplied by the Net Settlement
10 Amount to arrive at the Class Members' individual share of the Net Settlement Amount. Each Aggrieved
11 Employee's share of the 25% portion of the PAGA Payment was determined by dividing their total
12 Qualifying Workweeks within the PAGA Claim Period by the total Qualifying Workweeks worked by
13 all Aggrieved Employees within the PAGA Claim Period. That fraction was then multiplied by the 25%
14 portion of the PAGA Payment to arrive at Aggrieved Employees' individual share.

15 15. The *highest* individual settlement share to a Qualified Claimant is approximately
16 \$4,639.72, the *average* individual settlement share to a Qualified Claimant is approximately \$1,181.10.

17 17. ILYM Group's total fees and costs for services in connection with the administration of
18 this Settlement, which includes fees and costs incurred to-date, as well as anticipated fees and costs for
19 completion of the settlement administration, are \$7,000.00. ILYM Group's work in connection with this
20 matter will continue with the calculation of the settlement award payments, issuance and mailing of the
21 settlement award checks, the necessary tax filing and reporting on such payments, and any other tasks that
22 the Parties mutually agree to and/or the Court orders ILYM Group to perform.

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1 I declare under penalty of perjury under the laws of the State of California and the United States
2 that the foregoing is true and correct to the best of my knowledge and that this Declaration was executed
3 this 28th day of February 2023, at Tustin, California.
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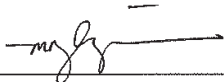
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8 CASSANDRA POLITES
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EXHIBIT “A”

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SOLANO

JOSEPH CRISTOBAL, individually and on behalf of all
other similarly situated employees,

Plaintiff,

vs.

BAT RESIDENTIAL SERVICES, INC., a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. **FCS056331**

CLASS ACTION

**NOTICE OF PROPOSED CLASS ACTION AND
PAGA SETTLEMENT, AND HEARING DATE FOR
FINAL COURT APPROVAL OF SETTLEMENT**

ATTENTION: All non-exempt employees who have worked, or continue to work, for BAT Residential Services, Inc. in California from April 5, 2017 up to September 25, 2022 (the “Class Members”).

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

Pursuant to an order from the Solano County Superior Court (“Court”) granting preliminary approval of this class action settlement, entered on January 10, 2023, you are receiving notice of a proposed class action settlement between Plaintiff Joseph Cristobal (“Plaintiff” or “Class Representative”) and Defendant BAT Residential Services, Inc. (“Defendant”) and its principals, Dalmacio Temporal Lete (“Lete”) and Elena Monette Herting (“Herting”), on behalf of Class Members as defined above (“Plaintiff” and “Defendant” sometimes referred to as “the Parties”). You are receiving this notice because Defendant’s records indicate you fall within the definition of “Class Member.” Defendant’s records also indicate that you worked «Class_Week_Counts» workweeks during the applicable Class Period (as defined below), which means your share of the settlement proceeds is estimated to be \$«Estimated_Class_Award». Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate, and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On April 5, 2021, Plaintiff, a former employee, filed a Complaint against Defendant in the California Superior Court for the County of Solano on behalf of himself and Class Members. The term “Action” means this putative class action pending in the Superior Court of California for the County of Solano, Case No. FCS056331. The Class Period is April 5, 2017 up to September 25, 2022 (the “Class Period”).

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself and Class Members. Plaintiff alleged that Defendant violated California law by 1) failing to pay overtime wages; 2) failing to provide rest periods or pay premiums in lieu thereof; 3) failing to provide accurate wage statements; 4) failing to pay all final wages; 5) violation of provisions regulating hours and days of work in an Industrial Welfare Commission Order; 6) failing to provide all paid sick leave; and 7) engaging in unfair competition. Defendant has denied all of Plaintiff’s allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant denies all allegations and claims. Defendant, Lete and Herting entered into this settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Parties, Lete and Herting have entered into a Joint Stipulation of Regarding Class Action PAGA Settlement and Release (“Agreement”), which has been preliminarily approved by the Court. The Agreement applies to any and all Class Members as defined above. “Class Member” does not include persons who submit valid request to opt out (as explained below). If you are a Class Member, you have the opportunity to participate in the settlement, or to exclude yourself (“opt out”) from the settlement. This notice is to advise you of how you can either participate in the settlement or be excluded from the settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant, Lete and Herting agree to pay a total sum of Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed 35% of the Gross Settlement Amount which equals \$87,500, attorneys’ costs not to exceed \$10,000, Claims Administrator Costs estimated not to exceed \$10,000, Class Representative’s Enhancement Payment of \$15,000, and \$10,000 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant, Lete and Herting in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$10,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees, which are defined as all non-exempt employees who have worked, or continue to work, for BAT Residential Services, Inc. in California from April 2, 2020 up to September 25, 2022.

The number of weeks you worked during the Class Period and your estimated share of the Net Settlement Amount and PAGA Payment (“Claim Amount”) is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by participating Class Members, the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees’ allocations for the PAGA claims.

B. Claim Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant, Lete and Herting will pay Claim Amounts through the Claims Administrator, as described below, to each Class Member who does not opt out of the settlement and to Aggrieved Employees. All Claim Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Claim Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Class Members who do not opt out and Aggrieved Employees will not require the submission of a claim form. Each Class Member’s share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member’s individual share of the Net Settlement Amount. Each Aggrieved Employee’s share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee’s individual share. Receipt of the Claim Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant’s Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Claims Administrator from Defendant’s records. Defendant’s records will be presumed correct unless evidence to the contrary is provided to the Claims Administrator. Defendant’s records and any additional evidence will be reviewed by the Claims Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant’s records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than February 27, 2023. The dispute will be resolved by the Claims Administrator based on the records and evidence provided. The Claims Administrator’s decision on all disputes will be final and binding.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released any and all claims contained in the operative Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period, including but not limited to claims under Labor Code sections 201, 202, 203, 226, 226.7, 510, 511, 1194, IWC Wage Order 5, sections 3 & 12, as well as any civil penalty claims predicated on such claims. This release excludes the release of claims not permitted by law. This release excludes claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims for civil penalties that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in Plaintiff's operative Complaint and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the operative Complaint during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include means Defendant, Lete and Herting as well as Defendant's officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if Class Members have questions about the released claims and what they mean.

E. Attorneys' Fees and Costs

Defendant, Lete and Herting have agreed to pay Class Counsel's attorneys' fees and costs to be approved by the Court, up to a maximum of 35% of the Gross Settlement Amount which equals \$87,500, and attorneys' costs not to exceed \$10,000. Class Counsel's attorneys' fees and costs will be paid and deducted from the Gross Settlement Amount.

F. Reasonableness of Settlement

All attorneys for the Parties to the Action believe the amounts payable to Class Members, Aggrieved Employees, and amounts for attorneys' fees and costs requested are fair and reasonable. The Class Representative and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement

If you wish to participate in the settlement and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement

If you do not wish to participate in the settlement, you may be excluded (*i.e.*, "opt out") by submitting a timely written request to the Claims Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or wants to be excluded from this settlement; (c) identify the case name and number (*i.e.* Cristobal v. BAT Residential Services, Inc., FCS056331); (d) be signed; and (e) be post-marked no later than **February 27, 2023**. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

ILYM Group, Inc.
P.O. Box 2031
Tustin, CA 92781

The request to opt out must be postmarked no later than **February 27, 2023**. If you submit a request to opt out which is not postmarked by **February 27, 2023**, your request to opt out will be rejected, and you will be bound by the release and all other terms of

the Agreement. If the request to opt out is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Claims Administrator, no longer be a Class Member and not receive their share of the class settlement payment. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (i.e. Cristobal v. BAT Residential Services, Inc., FCS056331) (e) be signed; and (f) be post-marked no later than **February 27, 2023**. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiff and Defendant at the addresses identified in section VI of this notice.

If you have submitted a written objection as outlined above, you may also appear at the Final Approval Hearing, either in person or through your own attorney, to state your objection. However, you must file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

After final approval of the settlement has been granted by the Court, each and every Class Member who does not opt out of the settlement and Aggrieved Employee, will release Defendant and the Released Parties from the released claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the settlement, you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this settlement. If the settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 22 at the Old Solano Courthouse, 580 Texas St Fairfield, California 94533, on March 28, 2023 at 9:30 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

VI. ADDITIONAL INFORMATION

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or Defendant' Counsel as follows:

Justin P. Rodriguez
Brittany V. Berzin
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Christopher J. Mead
Scott M. McLeod
Cooper White & Cooper LLP
201 California Street, 17th Floor
San Francisco, CA 94111
Telephone: (415) 433-1900
Facsimile: (415) 433-5530
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL 1-888-250-6810

BY ORDER OF THE COURT

Cristobal v. BAT Residential Services, Inc.

c/o ILYM Group, Inc.

P.O. Box 2031

Tustin, CA 92781

ILYM ID: «ILYMID»

«First_Name» «Last_Name»

«Address_1».

«City», «State» «Zip_Code»

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff JOSEPH CRISTOBAL
6
7

8 **SUPERIOR COURT OF CALIFORNIA**

9 **FOR THE COUNTY OF SOLANO**
10

11 JOSEPH CRISTOBAL, individually and on
12 behalf of all other similarly situated
employees,

13 Plaintiff,

14 vs.

15 BAT RESIDENTIAL SERVICES, INC., a
16 California Corporation; and DOES 1 to 100,
inclusive,

17 Defendants.
18
19
20
21
22

Case No. FCS056331

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT**

Date: March 28, 2023

Time: 9:30 a.m.

Dept.: 22

Judge: Hon. Alesia F. Jones

Filed: April 5, 2021

FAC Filed: August 30, 2021

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the LWDA Regarding PAGA Claims
D	Plaintiff's Itemized Costs
E	Proof of Submission of Proposed Settlement Agreement to LWDA
F	Attorney Hours Summary Chart
G	November 2022 Sacramento Superior Court Order

Dated: March 2, 2023

Shimoda & Rodriguez Law, PC

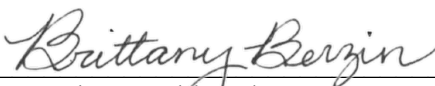
By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Brittany V. Berzin
 Attorneys for Plaintiff

EXHIBIT A

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff JOSEPH CRISTOBAL

Christopher J. Mead (Cal. State Bar No. 115091)
Scott M. McLeod (Cal State Bar No. 242035)
Cooper White & Cooper LLP
201 California Street, 17th Floor
San Francisco, CA 94111
Telephone: (916) 830-6518
Facsimile: (916) 920-4402

Attorneys for BAT RESIDENTIAL SERVICES, INC.

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SOLANO

JOSEPH CRISTOBAL, individually and on
behalf of all other similarly situated employees,

Plaintiff,

vs.

BAT RESIDENTIAL SERVICES, INC., a
California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No.: FCS056331

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: April 5, 2021
FAC Filed: August 30, 2021
Trial Date: None Set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and
2 entered into between the Plaintiff Joseph Cristobal ("Plaintiff"), on behalf of himself, the Labor and
3 Workforce Development Agency, Class Members, and Aggrieved Employees, and Defendant BAT
4 Residential Services, Inc., and its principals, Dalmacio Temporal Lete ("Lete") and Elena Monette Herting
5 ("Herting"). This Agreement is subject to the terms and conditions set forth below and the approval of the
6 Court.

7 **1. DEFINITIONS**

8 The following terms, when used in this Agreement, have the following meanings:

9 1.1 "Action" means the above stated lawsuit, *Cristobal v. BAT Residential Services, Inc.*,
10 Solano County Superior Court, Case No. FCS056331, filed April 5, 2021.

11 1.2 "Aggrieved Employee(s)" means all non-exempt employees who have worked, or continue
12 to work, for BAT Residential Services, Inc. in California during the PAGA Claim Period.

13 1.3 "Agreement" or "Settlement" or "Settlement Agreement" means this Joint Stipulation
14 Regarding Class Action and PAGA Settlement and Release.

15 1.4 "Claim Amount" means an individual Qualified Claimant's and Aggrieved Employee's
16 allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in Sections 1.21,
17 1.25, 5.5, and 5.8.

18 1.5 "Claims Administrator" means and refers to ILYM Group, Inc., the third-party entity that
19 will administer the Agreement as outlined in Sections 4 and 7, or any other third-party class action
20 settlement claims administrator agreed to by the Parties and approved by the Court for the purposes of
21 administering this Agreement. The Parties each represent that they do not have any financial interest in
22 the Claims Administrator or otherwise have a relationship with the Claims Administrator that could create
23 a conflict of interest.

24 1.6 "Claims Administrator Costs" means the fees and expenses reasonably incurred by the
25 Claims Administrator as a result of the procedures and processes expressly required by this Agreement,
26 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
27 preparation, custodial fees, and accounting fees incurred by the Claims Administrator; all costs and fees
28 associated with preparing, issuing and mailing any and all notices and other correspondence to Class

Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class Members and/or Aggrieved Employees, Class Counsel, and Defendant's Counsel; all costs and fees associated with computing, processing, reviewing, and paying the Claim Amounts, and resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under the Agreement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering Claim Amounts; and any other costs and fees incurred and/or charged by the Claims Administrator in connection with the execution of its duties under this Agreement.

1.7 "Class Counsel" means Galen T. Shimoda, Justin P. Rodriguez and Brittany V. Berzin of Shimoda & Rodriguez Law, PC.

1.8 "Class Member(s)" means all non-exempt employees who have worked, or continue to work, for BAT Residential Services, Inc. in California during the Class Period.

1.9 "Class Period" means from April 5, 2017 up to up to either (1) the Preliminary Approval Date, or (2) September 25, 2022, whichever is earlier.

1.10 "Class Representative" means Plaintiff Joseph Cristobal.

1.11 "Class Representative's Released Claims" means a general release including any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, arising from the beginning of time through the date the Court grants Preliminary Approval, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to his employment with BAT Residential Services, Inc. or the remuneration for, or termination of, such employment. Class Representative expressly waives any and all rights and benefits conferred upon him by the provisions of section 1542 of the California Civil Code which provides as follows:

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

6 1.12 "Complaint" means the operative Complaint on file in the Action with the Court.

7 1.13 "Court" means the Solano County Superior Court.

8 1.14 "Defendant" means BAT Residential Services, Inc.

9 1.15 "Defendant's Counsel" means Cooper White & Cooper LLP or its successor, Womble
10 Bond Dickinson.

11 1.16 "Enhancement Payment" means the amount approved by the Court to be paid to the Class
12 Representative in recognition of the time and effort expended on behalf of Class Members for the benefit
13 of Class Members, which is in addition to any Claim Amount paid to the Class Representative as a
14 Qualified Claimant.

15 1.17 "Effective Date" means either (a) the 60th calendar day after a signed order approving this
16 settlement has been filed provided no appellate proceeding having been filed; or (b) seventh (7th) calendar
17 day after any appellate proceeding opposing the settlement has been finally dismissed with no material
18 change to the terms of this settlement and there is no right to pursue further remedies or relief, whichever
19 is later.

20 1.18 "Final Approval Date" means the date a signed order granting final approval of this
21 Agreement is filed with the Court.

22 1.19 "Gross Settlement Amount" is the sum of Two Hundred Fifty Thousand Dollars and No
23 Cents (\$250,000).

24 1.20 "LWDA" means the California Labor and Workforce Development Agency.

25 1.21 "Net Settlement Amount" is the portion of the Gross Settlement Amount available for
26 distribution to Qualified Claimants, as described in this Agreement, after deduction of Class Counsel's
27 attorneys' fees and litigation costs, Claims Administrator Costs, the PAGA Payment, and Enhancement
28 Payment to the Class Representative.

1 1.22 "Notice of Settlement" means the document substantially in the form attached hereto as
2 Exhibit 1.

3 1.23 "Notice Period" means forty-five (45) calendar days from the initial mailing of the Notice
4 of Settlement to Class Members and Aggrieved Employees.

5 1.24 "PAGA" means Private Attorneys General Act.

6 1.25 "PAGA Payment" means the amount allocated from the Gross Settlement Amount towards
7 resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

8 1.26 "PAGA Claim Period" means April 2, 2020 up to up to either (1) to the Preliminary
9 Approval Date or (2) September 25, 2022, whichever is earlier.

10 1.27 "Parties" means Defendant and Plaintiff.

11 1.28 "Preliminary Approval Date" means the date a signed order granting preliminary approval
12 of this Agreement is filed with the Court.

13 1.29 "QSF" means a Qualified Settlement Fund set up by the Claims Administrator for the
14 benefit of the Qualified Claimants and/or Aggrieved Employees and from which the payments under this
15 Agreement shall be made. Any amounts Defendant, Lete, and Herting have agreed to pay under this
16 Agreement shall remain the property of Defendant, Lete, and Herting until the payments required under
17 the Agreement are made.

18 1.30 "Qualified Claimant" means any and all Class Members who have not made any timely
19 request to opt-out of the Agreement.

20 1.31 "Qualified Claimant's Released Claims" means any and all claims contained in the
21 Complaint, and any additional wage and hour claims that could have been brought based on the facts
22 alleged in the Complaint, through the Class Period, including but not limited to claims under Labor Code
23 sections 201, 202, 203, 226, 226.7, 510, 511, 1194, IWC Wage Order 5, sections 3 & 12, as well as any
24 civil penalty claims predicated on such claims. This release excludes the release of claims not permitted
25 by law. The Qualified Claimant's Released Claims exclude claims for workers' compensation or
26 unemployment insurance benefits. This release will cover all Class Members who do not opt out.

27 1.32 "Qualifying Workweeks" are weeks worked by Class Members and/or Aggrieved
28 Employees during the Class Period and/or PAGA Claim Period, respectively, in California. For Class

Members, workweeks shall be defined as the total length of service (in days) in California during the Class Period divided by seven. For Aggrieved Employees workweeks shall be defined as the total length of service (in days) in California during the PAGA Claim Period divided by seven. The calculation of a Class Member's and/or Aggrieved Employee's workweeks and a determination as to whether a Class Member and/or Aggrieved Employee was actively employed in California in a particular workweek shall be construed from Defendant's records.

1.33 "Released PAGA Claims" means any and all claims for civil penalties that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in Plaintiff's Complaint and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the Complaint during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

1.34 "Released Parties" means Defendant, Lete, and Herting as well as Defendant's officers, shareholders, directors, agents, employees, attorneys, and insurers.

2. DESCRIPTION OF THE LITIGATION

2.1 On or about April 2, 2021, Plaintiff sent notice to the LWDA to exhaust administrative remedies under the PAGA for failure to pay overtime wages, failure to provide rest periods or pay premiums in lieu thereof, failure to provide accurate wage statements, failure to pay final wages, violation of provisions regulating hours and days of work in an Industrial Welfare Commission Order, and failure to provide paid sick leave. The LWDA did not respond to the notice within the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorney General on all alleged PAGA claims.

2.2 On or about April 5, 2021, Plaintiff filed a class action Complaint in Solano County Superior Court on behalf of himself and Class Members alleging claims for failure to pay overtime wages, rest period violations, wage statement violations, waiting time penalties, and unfair competition. Plaintiff filed a First Amended Complaint on approximately August 30, 2021, to add a PAGA cause of action based on the violations alleged in the April 2, 2021 notice to the LWDA on behalf of himself and Aggrieved Employees.

1 2.3 Through formal discovery, Defendant and Defendant's Counsel provided Class Counsel
2 with copies of all applicable versions of its policies and procedures, employee handbooks, information
3 on Class Members including, but not limited to, Class Members' dates of employment, total number of
4 Class Members, as well as time records and payroll records for Class Members.

5 2.4 On July 27, 2022, the Parties participated in a full day mediation with private mediator
6 Monique Olivier, Esq. At the conclusion of the mediation, the Parties were able to come to a resolution.
7 At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

8 2.5 Discussions between Plaintiff and Class Counsel, between counsel for the Parties,
9 document productions, extensive legal analysis, the provision of information by Defendant to Plaintiff and
10 the detailed analysis of the records, have permitted each side to assess the relative merits of the claims and
11 the defenses to those claims.

12 2.6 In the Action, Plaintiff contends that Defendant violated California law by 1) failing to
13 incorporate the value of non-discretionary bonuses into putative class members' regular rates of pay for
14 the purpose of calculating overtime premiums and paid sick time; 2) paying putative class members two
15 different rates of pay in the same workweek and failing to use the weighted average method to calculate
16 putative class members' regular rates of pay; 3) requiring putative class members to remain on duty during
17 rest periods; and 4) failing to include the correct address on wage statements issued to putative class
18 members. Defendant has denied these allegations and have denied that this Action is appropriate for class
19 certification for anything other than settlement purposes. The agreed upon Gross Settlement Amount was
20 reached after evaluating the Parties' theories of potential exposure for the underlying claims and the class
21 data regarding these claims. The Parties, with the assistance of the mediator, also assessed appropriate
22 discounts to the potential liability based on Defendant's factual and legal contentions and defenses.

23 2.7 The Parties agree that the above-described investigation and evaluation, as well as
24 discovery and the information exchanged to date, are more than sufficient to assess the merits of the
25 respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class
26 Counsel, Defendant, and Defendant's Counsel have concluded that it is desirable that the Action be settled
27 in a manner and upon such terms and conditions set forth herein in order to avoid further expense,
28 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the

Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action. Plaintiff, Class Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.

3. THE CONDITIONAL NATURE OF THIS AGREEMENT

3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a conditional basis. If the Court does not enter an order granting final approval of the Agreement, or if the Court's approval of the settlement is reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

3.2 Defendant, Lete, and Herting have denied all claims as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant, Lete, and Herting have agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or the Final Approval Date does not occur, Defendant, Lete, and Herting do not waive, but rather expressly reserve, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

4. SCOPE OF THE CLASS

4.1 The scope of the class of individuals encompassed under the Agreement, who are entitled to all benefits as authorized under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Class Members as defined in Section 1.8 and all Aggrieved Employees

as defined in Section 1.2. However, it shall not include any Class Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in Section 7.5.1.

4.2 Individuals entitled to recover under this Agreement will include only those individuals who are identified as being within the scope of this Agreement under Section 4.1.

4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and wishes to participate in the Agreement but did not receive a Notice of Settlement because his or her name did not appear on the class list provided to the Claims Administrator prior to mailing, may submit a data request to the Claims Administrator. The data request must contain all of the following information: (a) the full name and, if applicable, Social Security Number of the individual making the request; (b) the name used by such employee as of the time his or her employment with Defendant ended; (c) the years during which such employee was employed with Defendant; and (d) a return address to which a response may be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or otherwise submitted to the Claims Administrator such that it is received before the conclusion of the Notice Period. Upon receipt of any data requests, the Claims Administrator shall promptly (in no event more than two business days) transmit the data requests to Defendant's Counsel and request that Defendant review its records.

4.4 If Defendant agrees that the person listed in a data request is a Class Member and/or Aggrieved Employee, the Claims Administrator shall promptly mail a Notice of Settlement to the person who submitted the data request, at the address designated for that purpose in the data request. All provisions of this Agreement relating to the Notice of Settlements shall apply to Notice of Settlements sent in response to data requests, and any person who submits a data request and is sent a Notice of Settlement in response shall be treated by the Claims Administrator as a Class Member and/or Aggrieved Employee for all other purposes.

4.5 If Defendant disagrees that the person listed in a data request is a Class Member and/or Aggrieved Employee, Defendant's Counsel and Class Counsel shall attempt to resolve any such dispute in good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request dispute. Defendant's records shall control unless the individual submitting the data request provides persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendant's

Counsel and Class Counsel cannot timely resolve shall be resolved by the Claims Administrator. The Claims Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve the dispute. The Claims Administrator must resolve any dispute submitted to it within seven (7) calendar days after Defendant's Counsel and Class Counsel submit the dispute to the Claims Administrator. The decision by the Claims Administrator shall be final and there shall be no right of appeal.

5. TERMS OF THE SETTLEMENT

The Parties agree as follows:

5.1 Gross Settlement Amount: In consideration and exchange for the releases described in Section 6, Defendant, Lete, and Herting shall pay the Gross Settlement Amount (\$250,000). Funding of the Gross Settlement Amount shall occur within 21 calendar days after the Effective Date, and it will be held in trust in a QSF by the Claims Administrator. The Gross Settlement Amount includes payments to Qualified Claimants, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering the Agreement (including Claims Administrator Costs), and obtaining final approval of the Agreement, the Enhancement Payment to the Class Representative and the PAGA Payment. Any monies necessary to satisfy Defendant's, Lete's, or Herting's tax obligations (*e.g.* employer FICA, FUTA and SDI contributions on wage payments) on any monies distributed to Qualified Claimants will be paid in addition to the Gross Settlement Amount.

5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of 35% of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendant, Lete, and Herting have agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the 35% threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to exceed \$10,000, which shall be paid from the Gross Settlement Amount. Defendant, Lete, and Herting have agreed to not oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not exceed the \$10,000 threshold. The Claims Administrator will issue Class Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less than the requested attorney's fees and/or costs, the

1 portion of the requested amounts not awarded to Class Counsel shall be added to the Net Settlement
2 Amount to be distributed to Qualified Claimants on a pro rata basis.

3 5.3 Claims Administrator Costs: The Claims Administrator Costs shall be paid from the Gross
4 Settlement Amount and shall not exceed \$10,000. The difference between any actual costs and the
5 allocated \$10,000 shall be added to the Net Settlement Amount to be distributed to Qualified Claimants
6 on a pro rata basis.

7 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for
8 an Enhancement Payment to the Class Representative in an amount not to exceed \$15,000 (Fifteen
9 Thousand Dollars and No Cents) to compensate for the risks, time, and expense of his involvement in the
10 Action and securing the benefits of this Agreement for Class Members. The Enhancement Payment is in
11 addition to the Claim Amount Plaintiff would otherwise be due under the Agreement as a Qualified
12 Claimant. Defendant, Lete, and Herting have agreed to not oppose Class Counsel's request for an
13 Enhancement Payment to Plaintiff so long as it does not exceed the amount stated herein. The
14 Enhancement Payment will be designated as a non-wage payment and reported on an IRS Form 1099-
15 MISC. In the event that the Court awards less than the Enhancement Payment amount requested, then
16 any portion of the requested amount not awarded to the Class Representative shall be added to the Net
17 Settlement Amount to be distributed to Qualified Claimants on a pro rata basis.

18 5.5 PAGA Payment: \$10,000 (Ten Thousand Dollars and No Cents) of the Gross Settlement
19 Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA
20 Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees
21 on a pro rata basis as described below in Section 5.8. Any amount not approved by the Court for the
22 allocated PAGA Payment shall be added to the Net Settlement Amount to be distributed to Qualified
23 Claimants on a pro rata basis.

24 5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or
25 PAGA Payment allocated to Qualified Claimants and/or Aggrieved Employees that were not claimed by
26 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be
27 donated equally, *i.e.*, 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights. No portion of
28 the Gross Settlement Amount will revert to Defendant, Lete, and Herting for any reason.

1 5.7 No Additional Benefits Contributions: All Claim Amounts paid to Qualified Claimants
2 and Aggrieved Employees shall be deemed to be income solely in the year in which such amounts were
3 actually received. It is expressly understood and agreed that the receipt of such Claim Amounts will not
4 entitle any Qualified Claimant or Aggrieved Employee to any new or additional compensation or benefits
5 under any company bonus or other compensation or benefit plan or agreement in place during the period
6 covered by the Agreement, nor will it entitle any Qualified Claimant or Aggrieved Employee to any
7 increased retirement, 401(k) and/or 403(b) benefits or matching benefits, or deferred compensation
8 benefits. It is the intent of this Agreement that the Claim Amounts provided for in this Agreement are the
9 sole payments to be made by Defendant, Lete, and Herting to the Qualified Claimants and Aggrieved
10 Employees in connection with this Agreement (notwithstanding any contrary language or agreement in
11 any benefit or compensation plan document that might have been in effect during the period covered by
12 this Agreement).

13 5.8 Pro Rata Distribution Formula: Payment to Qualified Claimants and Aggrieved
14 Employees of their Claim Amount will not require the submission of a claim form. A Net Settlement
15 Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved
16 attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Claims
17 Administrator Costs, and the PAGA Payment. Each Class Member's share will be determined by dividing
18 their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks by all Class
19 Members. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class
20 Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25%
21 portion of the PAGA Payment will be determined by dividing their total Qualifying Workweeks within
22 the PAGA Claim Period by the total Qualifying Workweeks by all Aggrieved Employees within the
23 PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to
24 arrive at the Aggrieved Employee's individual share.

25 5.9 Tax Allocation: The Parties recognize that the Claim Amounts to be paid to Qualified
26 Claimants and/or Aggrieved Employees reflect a settlement of a dispute over claimed penalties and wages.
27 The Claims Administrator shall calculate the employer's share of payroll taxes on the amounts paid to
28 Qualified Claimants as wages as well as calculating all required withholdings and deductions from said

1 wage payments. The characterization of Claim Amounts to Qualified Claimants and Aggrieved
2 Employees are as follows:

3 5.9.1 One third (1/3) of each Qualified Claimant's Claim Amount shall be allocated for
4 payment of disputed wages and shall be subject to required employer taxes. Qualified Claimants shall
5 receive an IRS Form W-2 for reporting of this portion of their Claim Amount.

6 5.9.2 Two thirds (2/3) of each Qualified Claimant's Claim Amount shall be allocated for
7 disputed statutory penalties and interest, and no amount shall be deducted for any taxes. This portion of
8 the Claim Amount consists of other income, not wages, for which the Qualified Claimants shall receive
9 an IRS Form 1099-MISC.

10 5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the
11 PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted
12 for any taxes. This portion of the Claim Amount consists of other income, not wages, for which the
13 Aggrieved Employees shall receive an IRS Form 1099-MISC.

14 5.10 Qualified Claimants and Aggrieved Employees shall be solely responsible for the reporting
15 and payment of their share of any federal, state and/or municipal income or other taxes on payments made
16 pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendant's Counsel free and
17 harmless from any claims resulting from treatment of such payments as non-taxable, including the
18 treatment of such payments as not subject to withholding or deduction for payroll and employment taxes.
19 No party has made any representation to any of the other Parties as to the taxability of any payments
20 pursuant to this Agreement, including the payments to Qualified Claimants, the payments to Aggrieved
21 Employees, the payments to Class Counsel, the payments to the Class Representative, the payroll tax
22 liability of Defendant, Lete, and Herting, or the allocation of the Net Settlement Amount or PAGA
23 Payment to wage and non-wage income as provided in this Section, or otherwise as to tax implications of
24 any provision of this Agreement.

25 5.11 No Additional Contribution by Defendant, Lete, and Herting; Defendant's, Lete's, and
26 Herting's monetary obligation under this Agreement is limited to the Gross Settlement Amount and any
27 employer side payroll taxes owed on amounts characterized as wages under this Agreement. All other
28 costs and expenses arising out of or in connection with the performance of this Agreement shall be paid

from the Gross Settlement Amount, unless expressly provided otherwise herein. However, in the event this agreement is deemed null and void as described in Section 3 because the Court, in its independent determination, finds that the Agreement does not meet the standards for settlement approval, then Defendant, Lete, and Herting and Plaintiff shall be equally responsible for the costs of the Claims Administrator incurred between the date the Agreement was executed and the date of such event.

5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement only, certification of the class as defined in Section 1.8 and 4.1 is appropriate and the requisites for establishing class certification have been met and are met.

5.13 Adequacy of Class Counsel and Class Representative: The Parties agree that, for purposes of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and Aggrieved Employees.

6. RELEASE

6.1 Release of Claims by Qualified Claimants: Upon the Effective Date, all Qualified Claimants will be deemed to fully, finally and forever release Qualified Claimants' Released Claims as to all Released Parties. In addition, on the Effective Date, all Qualified Claimants and their successors in interest will be permanently enjoined and forever barred from prosecuting any of Qualified Claimant's Released Claims against any of the Released Parties.

6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA Claims against any of the Released Parties.

6.3 Release by Plaintiff: Upon the Effective Date, and upon Defendant, Lete, and Herting depositing the Gross Settlement Amount with the Claims Administrator, Plaintiff, his spouse, heirs, successors, and assigns, will be deemed to fully, finally and forever release the Qualified Claimant's Released Claims, Released PAGA Claims, and Class Representative's Released Claims as to all Released Parties. In addition, on the Effective Date, Plaintiff and his spouse, heirs, successors, and assigns will be permanently enjoined and forever barred from prosecuting any of the Qualified Claimants' Released

1 Claims, Released PAGA Claims, and Class Representative's Released Claims against any of the Released
2 Parties.

3 **7. SETTLEMENT ADMINISTRATION**

4 7.1 Duties of Claims Administrator: The Claims Administrator shall be responsible for: 1)
5 receiving Class Member and Aggrieved Employee contact information and confirming addresses are
6 valid; 2) calculating estimated Claim Amounts and any and all taxes associated with the Claim Amounts,
7 including Employer taxes; 3) taking appropriate steps to trace and locate any individual Class Members
8 and Aggrieved Employees whose address or contact information as provided to the Claims Administrator
9 is inaccurate or outdated and mailing the Notice of Settlement to Class Members; 4) providing notification
10 to the appropriate state and federal officials of this Agreement as required under the law; 5) receiving,
11 independently reviewing, and resolving any challenges (in consultation with Class Counsel and
12 Defendant's Counsel) from Class Members or Aggrieved Employees, including any associated
13 documentation, regarding their Qualified Workweek calculations; 6) receiving and serving on Class
14 Counsel, Defendant's Counsel, and the Court, copies of any written objections, and/or any opt out
15 statements; 7) establishing a toll free telephone line and responding to inquiries and requests for
16 information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9)
17 determining and paying the final amounts due to be paid under the Agreement after resolution of all
18 challenges, disputes, opt-outs, awarded attorneys' fees and costs, Claims Administrator Costs, PAGA
19 Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability
20 to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late
21 opt-outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual
22 funds from uncashed checks; 12) reporting to Class Counsel and Defendant's Counsel regarding the
23 statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b) the
24 number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the
25 number of total undeliverable Notice of Settlements; (e) the number of address traces performed for
26 undeliverable Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced
27 addresses; (g) the number of total objections received; (h) the number of opt-out requests received; (i) the
28 number of disputes received; (j) the number of disputes resolved; 13) providing a declaration to the Court

1 regarding the final statistics of the administration and compliance with all payment obligations under the
2 Agreement; 14) completing all necessary tax reporting on the QSF and payment of the Claim Amounts to
3 Qualified Members and Aggrieved Employees; and 15) carrying out other related tasks as necessary to
4 effectuate the terms of this Agreement and any Order of the Court. All disputes relating to the Claims
5 Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which
6 will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and
7 obligations contemplated by the Agreement have been fully executed.

8 7.2 Notice to Class Members and Aggrieved Employees: The Notice of Settlement will
9 provide Class Members and Aggrieved Employees with a summary of the terms and conditions of the
10 Agreement, how to participate in the settlement, how to object to the Agreement, how to dispute the
11 individual's Qualifying Workweeks, and how to opt-out from the Agreement. The Notice of Settlement
12 will also inform Class Members and Aggrieved Employees of the Gross Settlement Amount, Net
13 Settlement Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement Payments,
14 proposed Claims Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the
15 class, the nature and extent of the released claims, dates set for a fairness hearing and hearing on Class
16 Counsels' motion for attorneys' fees and costs. The Notice of Settlement shall include information
17 regarding each Class Member's and each Aggrieved Employee's estimated Claim Amount. The Notice
18 of Settlement will provide information on how to access electronic copies online of the Notice of
19 Settlement, any motions for approval of the Agreement, any motions for approval of attorneys' fees and
20 costs, and any other documents as the Court directs.

21 7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the
22 Preliminary Approval Date, Defendant shall provide the Claims Administrator with the name, last known
23 mailing address, last known telephone number, Social Security Number, start and end date of employment
24 (if any) of each Class Member and Aggrieved Employee, and any other information the Claims
25 Administrator needs to effectuate notice to Class Members and Aggrieved Employees as outlined herein.
26 The Claims Administrator shall review the data to determine the number of Qualifying Workweeks for
27 each Class Member and Aggrieved Employee. No later than fourteen (14) calendar days after receipt of
28 such address information, the Claims Administrator will perform a national change of address ("NCOA")

1 search, update the addresses per the results of the NCOA search, and then mail the Notice of Settlement,
2 substantially in the form attached as Exhibit 1, to each Class Member and Aggrieved Employee by first-
3 class mail, postage prepaid. The Claims Administrator shall maintain all information received from
4 Defendant confidential to itself, and Defendant's Counsel. However, Class Counsel shall be able to review
5 the breakdown of Qualified Workweeks and estimated Claim Amounts for Class Members and Aggrieved
6 Employees prior to mailing for quality assurance provided the personal identifying information is redacted
7 and/or omitted.

8 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
9 is returned to the Claims Administrator as undeliverable on or before the conclusion of the Notice Period,
10 the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5) calendar
11 days. If no forwarding address is provided, then the Claims Administrator shall promptly attempt to
12 determine a correct address using a skip-trace, computer or other search using the name, address and/or
13 Social Security number of the individual involved, and shall then perform a single re-mailing within five
14 (5) calendar days to any more recent address found as a result of the search. Following each search that
15 does not result in a corrected address, for those Class Members who appear to be current employees of
16 Defendant at the time of the Preliminary Approval Date, the Claims Administrator shall contact
17 Defendant's Counsel for assistance and Defendant shall cooperate in good faith with the Claims
18 Administrator's reasonable efforts to obtain valid mailing addresses for Class Members to the extent they
19 are active employees of Defendant. In the event the Notice of Settlement is forwarded to a new address
20 and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out,
21 a dispute, or an objection shall be the end of the Notice Period or 10 days from the date of the re-
22 mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are
23 followed and the Class Member does not timely and properly request to opt-out, the Class Member shall
24 be bound by all terms of the Agreement, including the releases contained in Section 6.

25 7.5 Responses to Notice of Settlement:

26 7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish
27 to exclude themselves from the Agreement must submit a request to opt-out as provided in this Section.
28 The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that

he or she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be excluded from the settlement; (c) identify the case name and number (i.e. Cristobal v. BAT Residential Services, Inc., FCS056331); (d) be signed; and (e) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class Members. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request to opt-out has been timely submitted. Any Class Member who requests to opt-out of the Agreement will not be entitled to any benefit of the Agreement or any portion of the Net Settlement Amount, will not be bound by the Agreement, nor will they have any right to object, appeal or comment thereon. Class Members who fail to submit a valid and timely request to opt-out shall be bound by all terms of the Agreement and any order or final judgment thereon, regardless of whether they otherwise have requested to opt-out of the Agreement. Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member.

7.5.2 Objection Procedures: Any Class Member who does not opt-out but who wishes to object to this Agreement or otherwise to be heard concerning this Agreement shall send their written objections to the Claims Administrator and also serve copies of the objections on Class Counsel and Defendant's Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (i.e. Cristobal v. BAT Residential Services, Inc., FCS056331) (e) be signed; and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The objecting Class Member must also file a notice of intent to appear with the Court and serve the notice on Class Counsel and Defendant's Counsel, if they intend to appear at the final approval hearing. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement Agreement or appeal from the Order and Judgment.

1 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
2 Workweeks on the Notice of Settlement shall contact the Claims Administrator. The dispute must (a)
3 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute;
4 (c) be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing
5 timeline stated in Section 7.4. The Claims Administrator shall promptly (in no event more than two
6 business days) forward all such disputes to Defendant's Counsel and request that Defendant review the
7 dispute. Defendant's records shall presumptively control unless the Class Member can produce
8 documentation evidencing other periods of employment worked. If Defendant agrees with the submitted
9 information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with
10 their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that
11 Class Member's Claim Amount. If Defendant do not agree with the submitted information, Defendant's
12 Counsel will promptly advise Class Counsel of the dispute, which includes turning over any
13 documentation submitted by the Class Member as part of the dispute. Defendant's Counsel and Class
14 Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class
15 Counsel being advised of the dispute. Each dispute that Defendant's Counsel and Class Counsel cannot
16 timely resolve shall be resolved by the Claims Administrator or Court.

17 7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out,
18 objection, or dispute is received on or before the conclusion of the Notice Period, the Claims Administrator
19 shall mail a letter to the Class Member within five (5) calendar days informing them of the deficiency. If
20 a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure the deficiency
21 shall be the end of the Notice Period or 10 calendar days from the date of the deficiency letter, whichever
22 is later.

23 7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1
24 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and
25 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class
26 Counsel or Defendant's Counsel to provide notice of the proposed Agreement.

27 7.7 Claims Administrator Declaration Regarding Notice Period: Within fourteen (14) calendar
28 days after the conclusion of the Notice Period, the Claims Administrator shall provide Class Counsel and

1 Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and detailed
2 report regarding the statistics and responses of settlement administration to date and all the Claims
3 Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

4 7.8 Claims Administrator Payments to Qualified Claimants, Class Counsel and Plaintiff:

5 Within seven (7) calendar days after the Effective Date and the Court's determination of the amount of
6 attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiff, the
7 PAGA Payment, and Claims Administrator Costs, the Claims Administrator shall calculate the final Net
8 Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any
9 applicable taxes thereon, and report the results of these calculations Class Counsel and Defendant's
10 Counsel. Defendant, Lete, and Herting shall wire the Gross Settlement Amount and applicable taxes
11 necessary to fund the Settlement as described in Section 5.1 to the Claims Administrator within twenty-
12 one (21) calendar days after the Effective Date to be to be held in trust in a QSF. Within seven (7) calendar
13 days after Defendant, Lete, and Herting fund the settlement, the Claims Administrator shall deliver
14 payment of Class Counsels' attorney's fees and costs, the Enhancement Payment payable to Plaintiff, the
15 75% portion of the PAGA Payment payable to the LWDA, Claims Administrator Costs, and payment to
16 Qualified Claimants and/or Aggrieved Employees as required under this Agreement and approved by
17 Court.

18 7.8.1 The Claims Administrator shall wire the Court-approved attorneys' fees and costs
19 to Class Counsel unless another method is requested by Class Counsel. Class Counsel shall provide the
20 Claims Administrator with the pertinent taxpayer identification number and payment instructions after the
21 Final Approval Date.

22 7.8.2 The Claims Administrator shall send a check by mail for the Court-approved
23 Enhancement Payment to the Class Representative, care of Class Counsel unless another method is
24 requested by Class Counsel.

25 7.8.3 Only Qualified Claimants and Aggrieved Employees will receive their Claim
26 Amount.

27 7.8.4 The Claims Administrator shall remit and report the applicable portions of the
28 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this

Agreement. Defendant, Lete, and Herting agree to reasonably cooperate with the Claims Administrator to the extent necessary to determine the amount of the payroll tax payment required.

7.9 Settlement Check Expiration and Uncashed Checks: The Claims Administrator shall issue Claim Amounts to Qualified Claimants and Aggrieved Employees in the form of a check, which shall become null and void if not deposited within one hundred twenty (120) calendar days of issuance. After one hundred twenty (120) calendar days of issuance, the checks shall be voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The Claims Administrator shall deliver these funds within fourteen (14) calendar days after the check cashing deadline.

7.10 Claims Administrator Declaration Regarding Compliance and Settlement Administration: Within twenty-one (21) days after the last day for Qualified Claimants and Aggrieved Employees to cash their settlement checks, the Claims Administrator shall provide Class Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the settlement administration documenting that all payments under the Agreement have been made, that the Court's final approval order has been complied with, and that all the obligations of the Claims Administrator have been completed.

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members and Aggrieved Employees, and sets further hearings. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendant to provide Claims Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
Last day for Claims Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information

1 2 3	Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
4 5	Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
6 7 8 9 10	Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
11 12	Last day for Defendant, Lete, and Herting to fund settlement	Within 21 calendar days after the Effective Date
13 14 15 16	Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 7 calendar days after funding of the settlement
17 18 19	Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 calendar days after issuance of checks to Qualified Members and Aggrieved Employees
20 21 22	Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
23 24	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

1 **9. DUTIES OF THE PARTIES**

2 9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed
3 motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this
4 Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class
5 action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of
6 any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may
7 be requested by the Court relating to, or that are otherwise necessary to the approval and implementation
8 of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement
9 purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to
10 the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final
11 approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the
12 Preliminary Approval Motion to Defendant's Counsel. Defendant's Counsel will provide comments
13 and/or proposed revisions within one week after receipt of the draft Preliminary Approval Motion from
14 Class Counsel. With regard to the final approval documents, a similar one-week maximum review and
15 response time shall be observed by the Parties. The Parties will request that the Court's preliminary
16 approval of this Agreement be embodied in an Order Granting Preliminary Approval of Class Action and
17 PAGA Settlement.

18 9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement;
19 2) Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the
20 Notice of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily
21 appointing Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving
22 settlement administration services to be provided by the Claims Administrator; 6) Preliminarily approving
23 the proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment
24 of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8)
25 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally
26 approved as fair, reasonable and adequate as to the Class Members.

27 9.1.2 Defendant, Lete, and Herting shall not oppose Plaintiff's motion for approval of
28 the proposed Agreement.

1 9.1.3 The Parties shall cooperate with each other and the Claims Administrator during
2 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
3 appropriate to assure effective communication to individual Class Members of information about their
4 rights and obligations under this Agreement.

5 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
6 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
7 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
8 Agreement, a declaration by the Claims Administrator of due diligence and proof of mailing of the Notice
9 of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of
10 the Claim Administrator's mailings including tracing and re-mailing efforts.

11 9.2.1 Class Counsel will submit a proposed order and judgment for final approval, which
12 shall include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair,
13 reasonable and adequate, and directing that its terms and provisions be carried out; 2) Approving the
14 payment of an Enhancement Payment to the Class Representative; 3) Approving Class Counsel's
15 application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4)
16 Approving the Claims Administrator Costs; and 5) Providing that the Court will retain jurisdiction to
17 oversee administration and enforcement of the terms of the Agreement and the Court's orders.

18 9.2.2 Following entry of the Court's Order granting final approval of the Agreement, the
19 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the
20 following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside
21 the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class
22 Counsel will assist the Claims Administrator as needed or requested in the process of identifying and
23 locating Qualified Claimants and Aggrieved Employees entitled to payments under the Agreement and
24 assuring delivery of such payments; 3) Class Counsel and Defendant's Counsel will cooperate with each
25 other and assist the Claims Administrator as needed or requested in completing the distribution of any
26 residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with
27 the Claims Administrator, will certify to the Court completion of all payments required to be made by this
28 Agreement.

1 9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness
2 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action
3 and PAGA Settlement and Final Judgment.

4 9.4 Notice to LWDA: Plaintiff will provide notice to the Labor and Workforce Development
5 Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

6 **10. MISCELLANEOUS TERMS**

7 10.1 Defendant's, Lete's, and Herting's Right to Withdraw Based on Opt-Outs: If, prior to the
8 Final Approval Date, 10% or more of the Class Members have submitted proper and timely requests to
9 opt-out in accordance with the provisions of the Agreement, Defendant, Lete, and Herting may rescind
10 the Agreement and all actions taken in its furtherance will be thereby null and void. Defendant, Lete, and
11 Herting must exercise this right of rescission, in writing, to Class Counsel, within seven (7) calendar days
12 after the Claims Administrator notifies the Parties of the total number of opt-outs. If the option to rescind
13 is exercised, then any Claims Administrator Costs shall be paid by Defendant, Lete, and Herting.

14 10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
15 THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT
16 OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND
17 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
18 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
19 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
20 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
21 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
22 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
23 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
24 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
25 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
26 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
27 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
28 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY

1 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
2 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
3 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
4 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
5 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
6 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
7 BY THIS AGREEMENT.

8 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
9 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
10 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
11 and discharged in this Agreement.

12 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
13 signing this Agreement Plaintiff, Defendant, Lete, and Herting are waiving any rights to appeal from the
14 Court's approval of the settlement unless the Court materially modifies the settlement. Furthermore, by
15 signing this Agreement Plaintiff is waiving any right or ability to opt out of this Agreement during the
16 Notice Period or otherwise.

17 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
18 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
19 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

20 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment
21 will be entered according to this Agreement. The Parties stipulate and agree that the Solano County
22 Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil
23 Procedure Code section 664.6 and that the prevailing party any action necessary to enforce the terms of
24 the Agreement after default by the other party may recover reasonable attorney's fees and costs related
25 thereto.

26 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
27 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
28 execution of such other documents and the taking of such other action as may reasonably be necessary to

1 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including
2 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court
3 order, or otherwise, to effectuate this Agreement and the terms set forth herein.

4 10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendant,
5 Lete, and Herting of the terms of this Agreement, nor any of the related negotiations or proceedings, is or
6 shall be claimed to be, construed as, or deemed to be, an admission by Defendant, Lete, and Herting of
7 the truth of any of the allegations in the Complaint, the representative character of the Action, the validity
8 of any of the claims that were or could have been asserted by Plaintiff and/or Class Members in the Action,
9 or of any liability or guilt of Defendant, Lete, and Herting in the Action. Nothing in this Agreement shall
10 be construed to be or deemed an admission by Defendant, Lete, and Herting of any liability, culpability,
11 negligence, or wrongdoing toward Plaintiff, the Class Members, or any other person, and Defendant, Lete,
12 and Herting specifically disclaim any liability, culpability, negligence, or wrongdoing toward Plaintiff,
13 the Class Members, or any other person. Each of the Parties has entered into this Stipulation with the
14 intention to avoid further disputes and litigation.

15 10.9 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
16 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
17 the third business day after mailing by United States certified mail, return receipt requested, addressed as
18 follows:

19 To Plaintiff and the Class:

20 Justin P. Rodriguez
21 Brittany V. Berzin
22 Shimoda & Rodriguez Law, PC
23 9401 East Stockton Blvd., Suite 120
24 Elk Grove, CA 95624

25 To Defendant, Lete, and Herting:

26 Christopher J. Mead
27 Scott M. McLeod
28 Cooper White & Cooper LLP
29 201 California Street 17th Floor
30 San Francisco, CA 94111
31 Telephone: (916) 830-6518
32 Facsimile: (916) 920-4402

1 10.10 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
2 this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
3 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
4 party or its counsel participated in the drafting of this Agreement.

5 10.11 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys
6 acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover
7 any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except
8 as expressly provided in this Agreement.

9 10.12 No Modifications: This Agreement may be amended or modified only by a written
10 instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
11 discharged except by performance in accordance with its terms.

12 10.13 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
13 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement
14 and to take all appropriate action required or permitted to be taken by such Parties pursuant to this
15 Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of
16 this Agreement.

17 10.14 Class Member Signatories: Because the Action has not yet been certified, and the Class
18 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
19 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
20 may be executed on behalf of all Class Members by the Class Representative.

21 10.15 Counterparts: This Agreement shall become effective upon its execution by all of the
22 undersigned. Plaintiff, Class Counsel, Defendant, Lete, and Herting and Defendant's Counsel may execute
23 this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if
24 each had signed the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have
25 the same force and effect of originals.

26 10.16 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
27 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
28 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance

1 with, and governed by, the substantive laws of the State of California without giving effect to that State's
2 choice of law principles.

3 10.17 Headings and Captions: Section titles or captions contained in the Agreement are inserted
4 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
5 this Agreement, or any provision thereof.

6 10.18 No Retaliation or Discouragement: The Parties agree they will take no action that could
7 be construed as retaliation against any Class Members for participating or seeking to participate in this
8 class action settlement. The Parties will not discourage any class member from participating or seeking
9 to participate in this class action settlement. This is a material term of the Agreement and non-breaching
10 Parties may seek court intervention if this provision is breached.

11 10.19 Integrated Agreement: This Agreement sets forth the entire understanding between the
12 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
13 Each party acknowledges that there is no representation, inducement, promise or agreement which has
14 been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement,
15 which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent
16 that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

17 10.20 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to
18 the benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

19 10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
20 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
21 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

22 10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this
23 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
24 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

25 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
26 attorneys, as of the day and year herein set forth.

1 **For Plaintiff:**

2 Date: 8/24/2022

DocuSigned by:

Joseph Cristobal

C0D7EC95600D4CA...

Joseph Cristobal

4 **For Defendant:**

6 Date: _____

By: _____
For BAT Residential Services, Inc.

10 Date: _____

Dalmacio Temporal Lete

14 Date: _____

Elena Monette Herting

18 APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

20 Dated: 8/24/22

By: 
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorney for Plaintiff and Aggrieved
Employees

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For Plaintiff:

Date: _____

Joseph Cristobal

For Defendant:

Date: 8/24/22

By: Dalmacio Temporal Lete
For BAT Residential Services, Inc.

Date: 8/24/22

Dalmacio Temporal Lete

Date: 8/24/22

Elena Monette Herting

APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

Dated: _____

By: _____
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorney for Plaintiff and Aggrieved
Employees

1 APPROVED AS TO FORM

COOPER WHITE & COOPER LLP

2
3 Dated: August 25, 2022

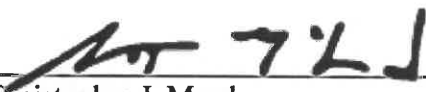
4 By: 
5 Christopher J. Mead
6 Scott M. McLeod
7 Attorney for Defendant
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EXHIBIT 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SOLANO

JOSEPH CRISTOBAL, individually and on
behalf of all other similarly situated employees,

Plaintiff,

vs.

BAT RESIDENTIAL SERVICES, INC., a
California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. **FCS056331**

CLASS ACTION

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: All non-exempt employees who have worked, or continue to work, for BAT Residential Services, Inc. in California from April 5, 2017 up to [REDACTED] (the "Class Members").

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

Pursuant to an order from the Solano County Superior Court ("Court") granting preliminary approval of this class action settlement, entered on [REDACTED], you are receiving notice of a proposed class action settlement between Plaintiff Joseph Cristobal ("Plaintiff" or "Class Representative") and Defendant BAT Residential Services, Inc. ("Defendant") and its principals, Dalmacio Temporal Lete ("Lete") and Elena Monette Herting ("Herting"), on behalf of Class Members as defined above ("Plaintiff" and "Defendant" sometimes referred to as "the Parties"). You are receiving this notice because Defendant's records indicate you fall within the definition of "Class Member." Defendant's records also indicate that you worked [REDACTED] workweeks during the applicable Class Period (as defined below), which means your share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate, and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court's order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On April 5, 2021, Plaintiff, a former employee, filed a Complaint against Defendant in the California Superior Court for the County of Solano on behalf of himself and Class Members. The term "Action" means this putative class action pending in the Superior Court of California for the County of Solano, Case No. FCS056331. The Class Period is April 5, 2017 up to [REDACTED] (the "Class Period").

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself and Class Members. Plaintiff alleged that Defendant violated California law by 1) failing to pay overtime wages; 2) failing to provide rest periods or pay premiums in lieu thereof; 3) failing to provide accurate wage statements; 4) failing to pay all final wages; 5) violation of provisions regulating hours and days of work in an Industrial Welfare Commission Order; 6) failing to provide all paid sick leave; and 7) engaging in unfair competition. Defendant has denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties

reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant denies all allegations and claims. Defendant, Lete and Herting entered into this settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Parties, Lete and Herting have entered into a Joint Stipulation of Regarding Class Action PAGA Settlement and Release ("Agreement"), which has been preliminarily approved by the Court. The Agreement applies to any and all Class Members as defined above. "Class Member" does not include persons who submit valid request to opt out (as explained below). If you are a Class Member, you have the opportunity to participate in the settlement, or to exclude yourself ("opt out") from the settlement. This notice is to advise you of how you can either participate in the settlement or be excluded from the settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant, Lete and Herting agree to pay a total sum of Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount which equals \$87,500, attorneys' costs not to exceed \$10,000, Claims Administrator Costs estimated not to exceed \$10,000, Class Representative's Enhancement Payment of \$15,000, and \$10,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant, Lete and Herting in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$10,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees, which are defined as all non-exempt employees who have worked, or continue to work, for BAT Residential Services, Inc. in California from April 2, 2020 up to [REDACTED].

The number of weeks you worked during the Class Period and your estimated share of the Net Settlement Amount and PAGA Payment ("Claim Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by participating Class Members, the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. Claim Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant, Lete and Herting will pay Claim Amounts through the Claims Administrator, as described below, to each Class Member who does not opt out of the settlement and to Aggrieved Employees. All Claim Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Claim Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Class Members who do not opt out and Aggrieved Employees will not require the submission of a claim form. Each Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. Receipt of the Claim Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Claims Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Claims Administrator. Defendant's

records and any additional evidence will be reviewed by the Claims Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [REDACTED]. The dispute will be resolved by the Claims Administrator based on the records and evidence provided. The Claims Administrator's decision on all disputes will be final and binding.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released any and all claims contained in the operative Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period, including but not limited to claims under Labor Code sections 201, 202, 203, 226, 226.7, 510, 511, 1194, IWC Wage Order 5, sections 3 & 12, as well as any civil penalty claims predicated on such claims. This release excludes the release of claims not permitted by law. This release excludes claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims for civil penalties that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in Plaintiff's operative Complaint and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the operative Complaint during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include means Defendant, Lete and Herting as well as Defendant's officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if Class Members have questions about the released claims and what they mean.

E. Attorneys' Fees and Costs

Defendant, Lete and Herting have agreed to pay Class Counsel's attorneys' fees and costs to be approved by the Court, up to a maximum of 35% of the Gross Settlement Amount which equals \$87,500, and attorneys' costs not to exceed \$10,000. Class Counsel's attorneys' fees and costs will be paid and deducted from the Gross Settlement Amount.

F. Reasonableness of Settlement

All attorneys for the Parties to the Action believe the amounts payable to Class Members, Aggrieved Employees, and amounts for attorneys' fees and costs requested are fair and reasonable. The Class Representative and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement

If you wish to participate in the settlement and believe your workweek information is accurate, **you do not need to take any further action.** Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement

If you do not wish to participate in the settlement, you may be excluded (*i.e.*, "opt out") by submitting a timely written request to the Claims Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or wants to be excluded from this settlement; (c) identify the

case name and number (i.e. Cristobal v. BAT Residential Services, Inc., FCS056331); (d) be signed; and (e) be post-marked no later than [REDACTED]. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

[admin info]

The request to opt out must be postmarked no later than [REDACTED]. If you submit a request to opt out which is not postmarked by [REDACTED], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. If the request to opt out is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Claims Administrator, no longer be a Class Member and not receive their share of the class settlement payment. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (i.e. Cristobal v. BAT Residential Services, Inc., FCS056331) (e) be signed; and (f) be post-marked no later than [REDACTED]. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiff and Defendant at the addresses identified in section VI of this notice.

If you have submitted a written objection as outlined above, you may also appear at the Final Approval Hearing, either in person or through your own attorney, to state your objection. However, you must file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

After final approval of the settlement has been granted by the Court, each and every Class Member who does not opt out of the settlement and Aggrieved Employee, will release Defendant and the Released Parties from the released claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the settlement, you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this settlement. If the settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department [REDACTED] at the Old Solano Courthouse, 580 Texas St Fairfield, California 94533, on [REDACTED] at [REDACTED] to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

VI. ADDITIONAL INFORMATION

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or Defendant' Counsel as follows:

Justin P. Rodriguez
Brittany V. Berzin
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624

Christopher J. Mead
Scott M. McLeod
Cooper White & Cooper LLP
201 California Street, 17th Floor
San Francisco, CA 94111

Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Telephone: (916) 830-6518
Facsimile: (916) 920-4402
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

EXHIBIT B

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
4 Shimoda Law Corp.
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff JOSEPH CRISTOBAL

FILED/ENDORSED
Clerk of the Superior Court

AUG 30 2021

By *D. Rusty*
DEPUTY CLERK

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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SOLANO

JOSEPH CRISTOBAL, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

BAT RESIDENTIAL SERVICES, INC., a
California Corporation; and
DOES 1 to 100, inclusive,

Defendants.

Case No. FCS056331

CLASS ACTION

FIRST AMENDED COMPLAINT FOR
DAMAGES:

1. Failure to Pay Overtime Wages
2. Rest Period Violations
3. Wage Statement Violations
4. Waiting Time Penalties
5. Unfair Competition
6. Private Attorneys General Act

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

1 Plaintiff JOSEPH CRISTOBAL ("Plaintiff"), on behalf of himself and all other similarly
2 situated employees, hereby files this Complaint against Defendants BAT RESIDENTIAL
3 SERVICES, INC., a California Corporation; and DOES 1 to 100, inclusive (hereinafter all
4 collectively referred to as "Defendants"). On information and belief, Plaintiff alleges the following:

5 **INTRODUCTION**

6 1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by
7 Plaintiff for failure to pay overtime, rest period violations, wage statement violations, waiting time
8 penalties, and unfair competition.

9 **JURISDICTION AND VENUE**

10 2. The Solano County Superior Court has jurisdiction in this matter pursuant to California
11 Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code,
12 California Business and Professions Code, and Wage Order No. 5.

13 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of
14 the wrongful acts and violations of law asserted herein occurred within Solano County and Defendants'
15 obligation to pay wages arose in Solano County pursuant to *Madera Police Officers Assn. v. City of*
16 *Madera*, 36 Cal.3d 403, 414 (1984) and *Crestwood Behavioral Health, Inc. v. Sup. Ct.*, 60 Cal. App. 5th
17 1069 (2021).

18 4. Plaintiff Joseph Cristobal has sought permission pursuant to California Labor Code
19 section 2699 et seq. to pursue the claims set forth in this Complaint against Defendants as a Private
20 Attorney General on behalf of himself and other Aggrieved Employees. Pursuant to California Labor
21 Code section 2699.3, Plaintiff gave written notice via online submission to the Labor and Workforce
22 Development Agency ("LWDA") on approximately April 2, 2021. Plaintiff provided facts and legal
23 bases for her claims within the notice to the LWDA on all violations asserted under the Private
24 Attorneys General Act cause of action. Plaintiff also submitted the \$75.00 filing fee. The April 2, 2021
25 notice was also sent via certified mail to Defendants on the same day. To date, the LWDA has
26 not provided any response to Plaintiff's notice correspondence. Accordingly, Plaintiff has exhausted all
27 administrative remedies pursuant to the Private Attorneys General Act ("PAGA") as to Defendants and
28 may bring this action on behalf of herself and all similarly situated employees, i.e., Aggrieved

1 Employees. See Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal.
2 App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees includes but is not limited to the
3 following: all non-exempt employees who have worked, or continue to work, for Defendants in
4 California from April 2, 2020 to the present.

5 **PARTIES**

6 5. JOSEPH CRISTOBAL is an individual over the age of eighteen (18) and is a resident
7 of the State of California.

8 6. On information and belief, Plaintiff alleges that BAT RESIDENTIAL SERVICES,
9 INC. is now and/or at all times mentioned in this Complaint was a California Corporation and the
10 owner and operator of an industry, business and/or facility doing business in the State of California.

11 7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
12 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
13 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
14 names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
15 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within
16 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
17 Plaintiff.

18 8. At all times mentioned herein, each Defendant was the agent or employee of each of the
19 other Defendants and was acting within the course and scope of such agency or employment. The
20 Defendants are jointly and severally liable to Plaintiff.

21 9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
22 were members of and/or engaged in a joint employment, joint venture, partnership and common
23 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
24 joint venture, partnership and common enterprise.

25 10. Defendants, and each of them, now and/or at all times mentioned in this Complaint
26 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

27 11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
28 wrongs, complaints, injuries and/or damages alleged in this Complaint.

1 **CLASS ALLEGATIONS**

2 12. Plaintiff brings the First through Fifth Causes of Action on behalf of himself and all
3 others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.
4 The class which Plaintiff seeks to represent is composed of, and defined, as follows:

5 all non-exempt employees who have worked, or continue to work, for
6 Defendants in California from April 5, 2017 to the present.

7 13. This action has been brought and may be properly maintained as a class action,
8 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
9 defined community of interests in the litigation and the proposed class is easily ascertainable.

10 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
11 is impracticable under the circumstances of this case. While the exact number of class
12 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
13 Defendants have employed as many as fifty (50) individuals falling within the above
14 stated class definition throughout the State of California during the applicable statute of
15 limitations, who were subjected to the policies and practices outlined in this Complaint.
16 As such, joinder of all members of the putative class is not practicable.

17 (b) Common Questions Predominate: Common questions of law and fact exist as to all
18 members of the putative class and predominate over questions that affect only individual
19 members of the class. These common questions of law and fact include, without
20 limitation, the following:

- 21 (1) Whether Defendants had a policy and/or practice of paying Plaintiff and putative
22 class members overtime wages at 1.5x their lowest hourly base rate of pay rather
23 than calculating a regular rate of pay to incorporate the value of nondiscretionary
24 bonuses and multiple hourly rates of pay paid within the same workweek;
25 (2) Whether Defendants had a policy and/or practice of paying Plaintiff and putative
26 class members paid sick time at their lowest hourly base rate of pay rather than
27 calculating a regular rate of pay to incorporate the value of nondiscretionary
28 bonuses and multiple hourly rates of pay paid within the same workweek;

- 1 (3) Whether Defendants had a policy and/or practice that failed to incorporate the
2 value of nondiscretionary remuneration, such as bonuses, and multiple rates of
3 pay into the calculation of Plaintiff's and putative class members' regular rates of
4 pay;
- 5 (4) Whether Defendants had a policy and/or practice of requiring Plaintiff and
6 putative class members to remain on the premises and on duty during their rest
7 periods;
- 8 (5) Whether as a result of Defendants' policies and/or practices Plaintiff and putative
9 class members received all wages, due and owing, at the time of their termination
10 or separation; and
- 11 (6) Whether Defendants provided Plaintiff and putative class members with wage
12 statements that complied with Labor Code section 226.
- 13 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
14 class. The putative class also sustained damages arising out of Defendants' common
15 course of conduct in violation of the law as complained of herein. Plaintiff and all
16 members of the putative class were non-exempt employees who worked overtime and
17 earned paid sick time in the same workweek they earned nondiscretionary remuneration
18 and/or were paid multiple hourly rates of pay and were required to take their rest periods
19 on Defendants' premises while on duty resulting in the failure to pay overtime, unfair
20 competition, and rest period violations. Additionally, for the reasons described above
21 and because an incorrect address was stated on Plaintiff's and putative class members
22 wage statements, Defendants issued Plaintiff and all members of the putative class wage
23 statements that did not comply with Labor Code section 226. As a result, Plaintiff and
24 each member of the putative class will have suffered the same type of harm and seek the
25 same type of recovery based on the same legal theories.
- 26 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
27 putative class. For all relevant times, Plaintiff resided in California and worked for
28 Defendants in California. Moreover, Plaintiff is an adequate representative of the

1 putative class as Plaintiff has no interests that are adverse to those of putative class
2 members. Additionally, Plaintiff has retained counsel who has substantial experience in
3 complex civil litigation and wage and hour matters.

- 4 (e) Superiority: A class action is superior to other available means for the fair and efficient
5 adjudication of the controversy since individual joinder of all members of the putative
6 class is impracticable. Class action treatment will permit a larger number of similarly
7 situated persons to prosecute their common claims in a single forum simultaneously,
8 efficiently, and without the unnecessary duplication of effort and expense that numerous
9 individual actions would engender. Further, as damages suffered by each individual
10 member of the class may be relatively small, the expenses and burden of the individual
11 litigation would make it difficult or impossible for individual members of the class to
12 redress the wrongs done to them, and an important public interest will be served by
13 addressing the matter as a class action. The cost to the court system of adjudication of
14 such individualized litigation would be substantial. Individualized litigation would also
15 present the potential for inconsistent or contradictory judgments.

- 16 14. Plaintiff is unaware of any difficulties that are likely to be encountered in the
17 management of this action that would preclude its maintenance as a class action.

18 **GENERAL ALLEGATIONS**

- 19 15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully
20 set forth herein.

21 16. Defendants run residential care facilities in multiple cities in California, including
22 Vacaville, Santa Rosa, Concord, Newark, Hayward, and San Leandro, to care for individuals with
23 developmental disabilities. Plaintiff was employed by Defendants as a non-exempt employee at their
24 Vacaville facility from approximately June 22, 2020 to February 16, 2021; however, the last day he
25 performed work for Defendants was on or about January 13, 2021. Similarly situated employees also
26 worked for Defendants within the last four years as non-exempt employees.

27 17. Defendants regularly required Plaintiff and similarly situated employees to work
28 overtime hours (*i.e.*, eight (8) hours in a day and/or forty (40) hours in a week). For example,

1 Defendants' 11/8/20 to 11/21/20 wage statement for Plaintiff reflects that Plaintiff worked six (6) hours
2 of overtime during that pay period and Defendants' 7/19/20 to 8/1/20 wage statement for Plaintiff
3 reflects that Plaintiff worked twelve (12) hours of overtime during that pay period. Defendants' time
4 records also reflect that Plaintiff worked ten (10) hours on 11/11/20 and forty-four (44) hours during the
5 11/8/20 to 11/14/20 workweek. Plaintiff is informed and believes that similarly situated employees
6 regularly worked similar schedules and earned overtime wages.

7 18. Plaintiff worked in two different roles during his employment – Direct Support
8 Professional and Lead. Plaintiff earned a different hourly rate performing work as a Direct Support
9 Professional than he did performing work as a Lead. Thus, during some workweeks Plaintiff would earn
10 two different hourly rates of pay. For example, Defendants' 11/8/20 to 11/21/20 wage statement for
11 Plaintiff indicates that he earned \$26.00 per hour for some of the hours he worked and \$28.00 per hour
12 for other hours he worked during the same pay period. Plaintiff believes he earned these different rates
13 of pay within each workweek in the pay period as well. Plaintiff is informed and believes that similarly
14 situated employees also worked in multiple roles for Defendants earning different rates of pay in the
15 same workweek. When Defendants paid Plaintiff and similarly situated employees two different hourly
16 rates of pay within the same workweek, Defendants did not use the weighted average method to
17 calculate Plaintiff's and similarly situated employees' regular rates of pay; rather, Defendants paid
18 overtime at the rate of 1.5x employees' lower base hourly rate. For example, Defendants' 11/8/20 to
19 11/21/20 wage statement for Plaintiff shows that he earned two different hourly rates – \$26.00 per hour
20 and \$28.00 per hour – and was paid overtime at the rate of \$39.00 per hour (\$26.00 x 1.5), rather than a
21 blended overtime rate.

22 19. Additionally, Defendants paid Plaintiff and similarly situated employees non-
23 discretionary remuneration, such as bonuses in the same workweeks they worked overtime hours.
24 However, Defendants failed to incorporate the value of nondiscretionary bonuses into employees'
25 regular rates of pay for the purpose of paying overtime wages. Instead, Defendants paid Plaintiff and
26 similarly situated employees 1.5 x their lower base hourly rate earned during that pay period. For
27 example, Defendants' 12/6/20 to 12/19/20 wage statement for Plaintiff reflects that Plaintiff was paid a
28 nondiscretionary bonus of \$100 and worked four (4) overtime hours that were paid at 1.5x his lower

1 base hourly rate with no adjustment made for the value of his nondiscretionary bonus. Plaintiff is
2 informed and believes that similarly situated employees regularly worked overtime and earned
3 nondiscretionary bonuses within the same workweek but were not paid overtime wages at the correct
4 rate of pay.

5 20. Defendants also paid Plaintiff and similarly situated employees paid sick time during
6 workweeks they earned multiple rates of pay and/or earned nondiscretionary remuneration, such as
7 bonuses. However, Defendants failed to pay Plaintiff's and similarly situated employees' paid sick time
8 at the correct regular rate of pay; instead, paid sick time was compensated at Plaintiff's and similarly
9 situated employees' lower base hourly rate of pay. For example, Defendants' 12/6/20 to 12/19/20 wage
10 statement for Plaintiff reflects that Plaintiff was paid multiple hourly rates of pay (\$26.00 per hour and
11 \$28.00 per hour) and earned a nondiscretionary bonus of \$100 but was compensated for sick time at his
12 lower base rate of \$26.00 per hour rather than a regular rate to account for the multiple rates of pay and
13 value of the nondiscretionary bonus.

14 21. Defendants did not have a policy or practice to authorize and permit Plaintiff and
15 similarly situated employees to take legally compliant rest periods. Defendants' policy and practice was
16 to require Plaintiff and similarly situated employees to remain on the premises and on duty during their
17 rest periods although they were not solely responsible for the supervision of Defendants' clients as there
18 were multiple employees working at any given time. Defendants did not pay Plaintiff and similarly
19 situated employees any rest period premiums.

20 22. As of the date of this Complaint, as a result of Defendants' failure to pay all overtime
21 wages, rest period premiums and paid sick time, Plaintiff and similarly situated employees who have
22 separated from Defendants or have been terminated have unpaid wages owed to them.

23 23. Defendants failed to provide Plaintiff and similarly situated employees with accurate
24 wage statements. The wage statements Defendants issued to Plaintiff and similarly situated employees
25 did not accurately state gross wages earned, net wages earned or all applicable hourly rates in effect
26 during the pay period and the corresponding number of hours worked at each hourly rate. The wage
27 statements also did not accurately state the address of the legal entity that employed Plaintiff and
28 similarly situated employees. The address on the wage statements – 1944 Hidden Valley Dr. Santa

1 Rosa, CA 95404 – did not correspond to any of Defendants' facilities. The address of Defendants'
2 Santa Rosa facility was located at a different address.

3 **CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**
5 **FAILURE TO PAY OVERTIME WAGES**
6 **(As to all Defendants)**

7 24. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 23 as though fully
8 set forth herein.

9 25. During the period Plaintiff was employed by Defendants, Defendants were required to
10 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
11 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
12 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 5, section (3)(A);*
13 *Cal. Lab. Code §§ 510, 1194.*

14 26. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
15 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
16 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
17 worked at their regular rate of pay.

18 27. Plaintiff and similarly situated employees were not exempt from overtime protections
19 employees under the California Wage Orders and Labor Code.

20 28. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
21 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
22 the extent pertinent as if set forth here in full.

23 **SECOND CAUSE OF ACTION**
24 **REST PERIOD VIOLATIONS**
25 **(As to all Defendants)**

26 29. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 28 as though fully
27 set forth herein.

28 30. An employer must provide an employee a rest period in accordance with the
applicable Wage Order and California Labor Code section 226.7.

1 31. California Labor Code section 226.7 and Wage Order No. 5, section 12(A) require an
2 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
3 four (4) hours or a major fraction thereof.

4 32. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
5 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
6 they worked more than four (4) hours or a major fraction thereof.

7 33. Defendants further failed to pay Plaintiff and similarly situated employees the
8 applicable rest period premiums for any such missed rest periods.

9 34. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
10 employees have been damaged as stated in the section below entitled "DAMAGES," which is
11 incorporated here to the extent pertinent as if set forth here in full.

12 **THIRD CAUSE OF ACTION**
13 **WAGE STATEMENT VIOLATIONS**
14 **(As to all Defendants)**

15 35. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 34 as though fully
16 set forth herein.

17 36. Pursuant to California Labor Code section 226(a), an employer must provide an itemized
18 statement to an employee, semimonthly or at the time of each payment of wages, showing:

19 *(1) gross wages earned, (2) total hours worked by the employee, except for*
20 *any employee whose compensation is solely based on a salary and who is*
21 *exempt from payment of overtime under subdivision (a) of Section 515 or*
22 *any applicable order of the Industrial Welfare Commission, (3) the*
23 *number of piece-rate units earned and any applicable piece rate if the*
24 *employee is paid on a piece-rate basis, (4) all deductions, provided that*
25 *all deductions made on written orders of the employee may be aggregated*
26 *and shown as one item, (5) net wages earned, (6) the inclusive dates of the*
27 *period for which the employee is paid, (7) the name of the employee and*
28 *the last four digits of his or her social security number or an employee*
identification number other than a social security number, (8) the name
and address of the legal entity that is the employer and, if the employer is
a farm labor contractor, as defined in subdivision (b) of Section 1682, the
name and address of the legal entity that secured the services of the
employer, and (9) all applicable hourly rates in effect during the pay
period and the corresponding number of hours worked at each hourly rate
by the employee. The deductions made from payment of wages shall be
recorded in ink or other indelible form, properly dated, showing the
month, day, and year, and a copy of the statement and the record of the
deductions shall be kept on file by the employer for at least three years at

1 *the place of employment or at a central location within the State of*
2 *California.*

3 37. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
4 itemized statement or failed to provide an accurate and complete itemized statement showing the
5 requirements set forth in California Labor Code section 226(a). Specifically, the wage statements
6 Defendants issued to Plaintiff and similarly situated employees did not accurately state gross wages
7 earned, net wages earned or all applicable hourly rates in effect during the pay period and the
8 corresponding number of hours worked at each hourly rate. The wage statements also did not
9 accurately state the address of the legal entity that employed Plaintiff and similarly situated
10 employees. As a result, Plaintiff and similarly situated employees suffered confusion over whether
11 they received all wages owed and were prevented from effectively challenging information on their
12 wage statements.

13 38. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
14 employees have been damaged as stated in the section below entitled "DAMAGES," which is
15 incorporated here to the extent pertinent as if set forth here in full.

16 **FOURTH CAUSE OF ACTION**
17 **WAITING TIME PENALTIES**
18 **(As to all Defendants)**

19 39. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 38 as though fully
20 set forth herein.

21 40. An employer must pay an employee who is terminated all unpaid wages immediately
22 upon termination. *See* Cal. Lab. Code § 201.

23 41. An employer must pay an employee who resigns all unpaid wages within seventy-two
24 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

25 42. Plaintiff and similarly situated employees did not receive all wages, including overtime
26 wages, rest period premiums and all paid sick time at their termination or within the required time after
27 their separation from employment.

28 43. An employer who willfully fails to pay an employee wages in accordance with California
Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
days. *See* Cal. Lab. Code § 203.

1 44. Defendants knew of their obligation to pay Plaintiff and similarly situated employees
2 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff
3 and similarly situated employees earned multiple rates of pay and nondiscretionary bonuses but failed to
4 take these payments into account to calculate Plaintiff's and similarly situated employees' regular rates
5 of pay. Defendants also had knowledge that their policies required Plaintiff and similarly situated
6 employees to unnecessarily remain on the premises and on duty during rest breaks but failed to pay any
7 rest period premiums. Such conduct shows Defendants had knowledge of earned, but unpaid wages at
8 the time of separation, yet Defendants still refused to pay the remaining wages owed.

9 45. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
10 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
11 thirty (30) days for Defendants' failure to pay all wages due.

12
13 **FIFTH CAUSE OF ACTION**
14 **UNFAIR COMPETITION**
 (As to all Defendants)

15 46. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 45 as though fully
16 set forth herein.

17 47. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
18 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
19 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See*
20 California Business and Professions ("B&P") Code § 17200.

21 48. Plaintiff and similarly situated employees were not paid all wages owed, including
22 overtime wages and paid sick time during their employment or any time thereafter.

23 49. Plaintiff further alleges that such actions and/or conduct constitute a violation of the
24 California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to
25 *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

26 50. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
27 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
28 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code

1 sections 17203, 17208, violations of California Labor Code sections 510, 1194, 246, 246.5, and 248.5
2 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this
3 Action.

4 **SIXTH CAUSE OF ACTION**
5 **PRIVATE ATTORNEY GENERAL ACT CLAIMS**
6 **(As to all Defendants)**

7 51. Plaintiff incorporated by reference and re-alleges paragraphs 1 through 50 as though fully
8 set forth herein.

9 52. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
10 following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated
11 current and former employees:

- 12 • Count One- Violation of Labor Code §§510, 1194; IWC Wage Order 5, § 3
(Failure to Pay Overtime Wages)
- 13 • Count Two- Violation of Labor Code § 226.7 and Wage Order No. 5, §12(A)
(Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- 14 • Count Three- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate
15 Wage Statements)
- 16 • Count Four- Violations of Labor Code §§ 201-203, 256 (Failure to Pay Final
17 Wages)
- 18 • Count Five- Violation of Labor Code §§558, 558.1 (Provisions Regulating Hours
19 and Days of Work in Any Industrial Welfare Commission Order)
- 20 • Count Six- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid
21 Sick Leave)

22 53. Plaintiff seeks civil penalties against Defendants as provided in the California Labor
23 Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section
24 2699(f)(2).
25

26 **DAMAGES**

27 WHEREFORE Plaintiff requests relief as follows:

- 28 1. A jury trial;

1 2. As to the First Cause of Action:

- 2 a. Wages in an amount to be proven at trial;
- 3 b. Interest for the wages due pursuant to California Labor Code section 1194;
- 4 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
- 5 Code section 1194;

6 3. As to the Second Cause of Action:

- 7 a. Wages in an amount to be proven at trial;
- 8 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 9 section 1021.5;

10 4. As to the Third Cause of Action:

- 11 a. Penalties as provided for in Labor Code section 226, including the greater of all
- 12 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
- 13 violation occurred and one hundred dollars (\$100.00) per employee for each
- 14 violation in the subsequent pay periods, but not to exceed four thousand dollars
- 15 (\$4,000.00);
- 16 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
- 17 226(e);

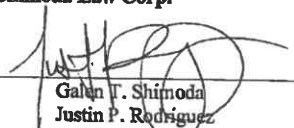
18 5. As to the Sixth Cause of Action:

- 19 a. For civil penalties as provided for in the Labor Code for each enumerated
- 20 violation;
- 21 b. For those Labor Code sections, the violation of which there is no civil penalty
- 22 provided, the default penalty provided in the Labor Code section 2699(f); for any
- 23 initial violation, one hundred dollars (\$100) for each Aggrieved Employee per pay
- 24 period; For any subsequent violation, two hundred dollars (\$200) for each
- 25 Aggrieved Employee per pay period;
- 26 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699; and
- 27 d. For any other remedies as allowed by law and/or deemed appropriate by the
- 28 Court.

- 1 6. For such other and further relief as this Court may deem just and proper,
2 including, but not limited to:
3 a. Wages as proved at trial;
4 b. Injunctive and Declaratory relief;
5 c. Attorney's fees and costs as provided for by law; and
6 d. Interest.
7

8 Dated: July 28, 2021
9

Shimoda Law Corp.

10 By: 

11 Galen T. Shimoda
12 Justin P. Rodriguez
13 Brittany V. Berzin
14 Attorneys for Plaintiff
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1 *Cristobal v. BAT Residential Services, Inc.*
2 *Solano County Superior Court, Case No. FCS056331*

3 **PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Erika F. Collazo, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to the
7 within above-entitled action.

8 On August 26, 2021, I served the following documents on the party below:

- 9 • First Amended Complaint for Damages

10 Chris Mead (SBN 115091)
11 Scott Michael McLeod (SBN 242035)
12 Cooper, White & Cooper LLP
13 201 California Street 17th Floor
14 San Francisco, CA 94111
15 Phone: (916) 830-6518
16 Facsimile: (916) 920-4402
17 Email: smcleod@grsm.com
18 cmead@cwclaw.com

19 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
20 processing of correspondence for mailing with the United States Postal
21 Service and that each day's mail is deposited with the United States Postal
22 Service that same day in the ordinary course of business. On the date set forth
23 above, I served the aforementioned document(s) on the parties in said action
24 by placing a true copy thereof enclosed in a sealed envelope with postage
25 thereon fully prepaid, for collection and mailing on this date, following
26 ordinary business practices, at Elk Grove, California, addressed as set forth
27 above.

28 [] [By Personal Service] By personally delivering a true copy thereof to the
office of the addressee above.

[] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service: UPS.

I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct, and that this declaration was executed on August 26, 2021, at Elk Grove, California.


Erika F. Collazo

PROOF OF SERVICE

60111-10000000

2001 AUG 30 AM 10:44

2001 AUG 30

EXHIBIT C



Shimoda Law Corp.
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

April 2, 2021

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Cristobal v. BAT Residential Services, Inc.*

Dear Labor Commissioner,

As counsel for Joseph Cristobal ("Plaintiff"), I am writing to provide you and the following "employers" notice pursuant to California Labor Code section 2699.3:

BAT Residential Services, Inc.
1146 Fay St
Redwood City, CA 94061

Dalmacio Temporal Lete
1146 Fay St
Redwood City, CA 94061

Elena Monette Herting
1146 Fay St
Redwood City, CA 94061

Val Abillar
1146 Fay St
Redwood City, CA 94061

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against BAT Residential Services, Inc., Dalmacio Temporal Lete, Elena Monette Herting and Val Abillar ("Defendants"). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all non-exempt employees who have worked, or continue to work, for Defendants in California. Plaintiff is entitled to bring a Private Attorneys General Act ("PAGA") claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA



standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Defendants run residential care facilities in multiple cities in California, including Vacaville, Santa Rosa, Concord, Newark, Hayward, and San Leandro, to care for individuals with developmental disabilities. Plaintiff was employed by Defendants as a non-exempt employee at their Vacaville facility from approximately June 22, 2020 to February 16, 2021; however, the last day he performed work for Defendants was on or about January 13, 2021. Aggrieved Employees also worked for Defendants within the last year as non-exempt employees.

Defendants regularly required Plaintiff and Aggrieved Employees to work overtime hours (*i.e.*, eight (8) hours in a day and/or forty (40) hours in a week). For example, Defendants' 11/8/20 to 11/21/20 wage statement for Plaintiff reflects that Plaintiff worked six (6) hours of overtime during that pay period and Defendants' 7/19/20 to 8/1/20 wage statement for Plaintiff reflects that Plaintiff worked twelve (12) hours of overtime during that pay period. Defendants' time records also reflect that Plaintiff worked ten (10) hours on 11/11/20 and forty-four (44) hours during the 11/8/20 to 11/14/20 workweek. Plaintiff is informed and believes that Aggrieved Employees regularly worked similar schedules and earned overtime wages.

Plaintiff worked in two different roles during his employment – Direct Support Professional and Lead. Plaintiff earned a different hourly rate performing work as a Direct Support Professional than he did performing work as a Lead. Thus, during some workweeks Plaintiff would earn two different hourly rates of pay. For example, Defendants' 11/8/20 to 11/21/20 wage statement for Plaintiff indicates that he earned \$26.00 per hour for some of the hours he worked and \$28.00 per hour for other hours he worked during the same pay period. Plaintiff believes he earned these different rates of pay within each workweek in the pay period as well. Plaintiff is informed and believes that Aggrieved Employees also worked in multiple roles for Defendants earning different rates of pay in the same workweek. When Defendants paid Plaintiff and Aggrieved Employees two different hourly rates of pay within the same workweek, Defendants did not use the weighted average method to calculate Plaintiff's and Aggrieved Employees' regular rates of pay; rather, Defendants paid overtime at the rate of 1.5x employees' lower base hourly rate. For example, Defendants' 11/8/20 to 11/21/20 wage statement for Plaintiff shows that he earned two different hourly rates – \$26.00 per hour and \$28.00 per hour – and was paid overtime at the rate of \$39.00 per hour (\$26.00 x 1.5), rather than a blended overtime rate.

Additionally, Defendants paid Plaintiff and Aggrieved Employees non-discretionary remuneration, such as bonuses in the same workweeks they worked overtime hours. However, Defendants failed to incorporate the value of nondiscretionary bonuses into employees' regular



rates of pay for the purpose of paying overtime wages. Instead, Defendants paid Plaintiff and Aggrieved Employees 1.5 x their lower base hourly rate earned during that pay period. For example, Defendants' 12/6/20 to 12/19/20 wage statement for Plaintiff reflects that Plaintiff was paid a nondiscretionary bonus of \$100 and worked four (4) overtime hours that were paid at 1.5x his lower base hourly rate with no adjustment made for the value of his nondiscretionary bonus. Plaintiff is informed and believes that Aggrieved Employees regularly worked overtime and earned nondiscretionary bonuses within the same workweek but were not paid overtime wages at the correct rate of pay.

Defendants also paid Plaintiff and Aggrieved Employees paid sick time during workweeks they earned multiple rates of pay and/or earned nondiscretionary remuneration, such as bonuses. However, Defendants failed to pay Plaintiff's and Aggrieved Employees' paid sick time at the correct regular rate of pay; instead, paid sick time was compensated at Plaintiff's and Aggrieved Employees' lower base hourly rate of pay. For example, Defendants' 12/6/20 to 12/19/20 wage statement for Plaintiff reflects that Plaintiff was paid multiple hourly rates of pay (\$26.00 per hour and \$28.00 per hour) and earned a nondiscretionary bonus of \$100 but was compensated for sick time at his lower base rate of \$26.00 per hour rather than a regular rate to account for the multiple rates of pay and value of the nondiscretionary bonus.

Defendants did not have a policy or practice to authorize and permit Plaintiff and Aggrieved Employees to take legally compliant rest periods. Defendants' policy and practice was to require Plaintiff and Aggrieved Employees to remain on the premises and on duty during their rest periods although they were not solely responsible for the supervision of Defendants' clients as there were multiple employees working at any given time. Defendants did not pay Plaintiff and Aggrieved Employees any rest period premiums.

As of the date of this letter, as a result of Defendants' failure to pay all overtime wages rest period premiums and paid sick time, Plaintiff and Aggrieved Employees who have separated from Defendants or have been terminated have unpaid wages owed to them.

Defendants failed to provide Plaintiff and Aggrieved Employees with accurate wage statements. The wage statements Defendants issued to Plaintiff and Aggrieved Employees did not accurately state gross wages earned, net wages earned or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. The wage statements also did not accurately state the address of the legal entity that employed Plaintiff and Aggrieved Employees. The address on the wage statements – 1944 Hidden Valley Dr. Santa Rosa, CA 95404 – did not correspond to any of Defendants' facilities. The address of Defendants' Santa Rosa facility was located at a different address.

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B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count Two – Violation of Labor Code § 226.7 and Wage Order No. 5, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 5, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

Count Three – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” For the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.



Count Four – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including overtime wages and paid sick time, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count Five – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf of an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and through Defendants' agents, violated Plaintiff and Aggrieved Employees' rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. Dalmacio Temporal Lete, Elena Monette Herting and Val Abillar are or were officers, directors, shareholders, and/or managing agents of Defendants responsible for the violations stated herein as they were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

Count Six – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy



Families Act of 2014 ("HWHFA") for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Any sick leave taken must be paid at the employee's regular rate of pay. For the reasons state above, Defendants failed to provide Plaintiff and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA. Plaintiff will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda Law Corp.

By: _____

Justin P. Rodriguez

JPR:bb

cc: Client via e-mail

1 *Cristobal v. BAT Residential Services, Inc.*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Caitlyn A. Lopez, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to
6 the within above-entitled action.

7 On April 2, 2021, I served the following documents on the party below:

- 8 • Private Attorney General Act Letter

BAT Residential Services, Inc. 1146 Fay St Redwood City, CA 94061	Dalmacio Temporal Lete 1146 Fay St Redwood City, CA 94061
Elena Monette Herting 1146 Fay St Redwood City, CA 94061	Val Abillar 1146 Fay St Redwood City, CA 94061

15 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
16 and processing of correspondence for mailing with the United States Postal
17 Service and that each day's mail is deposited with the United States Postal
18 Service that same day in the ordinary course of business. On the date set forth
19 above, I served the aforementioned document(s) on the parties in said action by
placing a true copy thereof enclosed in a sealed envelope with postage thereon
fully prepaid, for collection and mailing on this date, following ordinary business
practices, at Elk Grove, California, addressed as set forth above.

20 [] [By Personal Service] By personally delivering a true copy thereof to the office
of the addressee above.

21 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
22 personally delivered via the following overnight courier service:_____.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing
24 is true and correct, and that this declaration was executed on April 2, 2021, at Elk Grove, California.

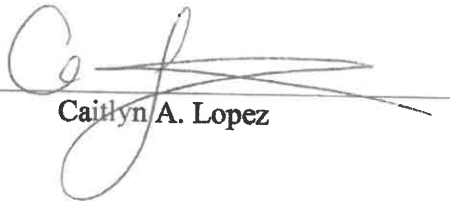
25
26 
27 Caitlyn A. Lopez
28

EXHIBIT D

Cristobal v. BAT Residential Services, Inc. - Shimoda & Rodriguez Law, PC Costs

4/2/21	Payment to LWDA - PAGA Letter	\$75.00
4/2/21	Certified Mail - PAGA Letter to Employers	\$17.24
4/2/21	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Westlaw Legal Research Fees	\$500.00
4/5/21	Payment to Court - Complaint	\$435.00
4/5/21	Payment to Court - E-file Complaint	\$15.56
4/5/21	Payment to Court - Complex Fees	\$1,000.00
4/5/21	Postage - Complex Fee to Court	\$7.40
6/9/21	Postage - Proposed Order Deeming Case Complex to Court	\$7.40
7/30/21	Postage - Stipulation to Amend and Case Management Conference Statement to Court	\$7.40
7/30/21	Payment to Court - Stipulation to Amend	\$20.00
8/27/21	Postage - First Amended Complaint to Court	\$7.40
12/21/21	Postage - Case Management Conference Statement to Court	\$8.15
1/19/22	Payment to Court - Stipulation and Proposed Protective Order	\$20.00
1/19/22	Postage - Stipulation to Amend and Case Management Conference Statement to Court	\$7.75
2/9/22	Postage - Name change to Court	\$7.75
4/29/22	CourtCall Appearance for CMC	\$94.00
5/9/22	One Legal Filing Fee - Case Management Conference Statement to Court	\$61.26
5/9/22	CourtCall Appearance	\$94.00
7/27/22	Mediation Meal	\$28.67
7/27/22	Mediation Fees	\$4,500.00
10/7/22	One Legal Filing Fee - Case Management Conference Statement to Court	\$61.26
10/31/22	One Legal Filing Fee - Update Counsel Contact Information	\$61.26
12/22/22	One Legal Filing Fee - Preliminary Approval Motion	\$277.42
12/22/22	Payment to Court - Preliminary Approval Motion	\$60.00
Anticipated	Payment to Court - Final Approval Motion	\$60.00
Anticipated	One Legal Filing Fee - Final Approval Motion	\$300.00
Anticipated	One Legal Filing Fee - Compliance Declarations	\$70.00
		\$7,803.92

EXHIBIT E

EXHIBIT F

<u>TASK CATEGORY</u>	<u>Galen Shimoda</u>	<u>Justin Rodriguez</u>	<u>Brittany Berzin</u>
Pre-filing investigation, Pleadings, Admin Exhaustion. Includes time spent speaking with potential client. Initial client meeting and review of claims and documents, pre-filing investigation/research. Public record searches and review of public record documents. Drafting pleadings, tolling agreements, stipulations, administrative filings and court filings and communications with opposing counsel regarding same regarding same, internal communications regarding same (email or otherwise), communications with client regarding same.	17.4	8.9	5.2
Case Review, Management, Strategy Meetings. Includes time spent discussing general plan of action updates and strategies in weekly meetings, general research and analysis regarding claims, case management conferences and related meet/confer, drafting of statements, and attendance for hearings. Communications with opposing counsel regarding same, communications with client regarding same.	7.4	4.4	10.4
Discovery (Non-Mediation Related). Includes time spent preparing discovery requests, Belaire Notices, Protective Orders, and meet and confer efforts. Reviewing discovery responses, witness information and communicating with witnesses. Communicate with client regarding same, communicate with opposing counsel regarding same. Includes legal research regarding same.	-	5.8	24.9
Discovery / Investigation for Mediation. Includes time spent preparing informal/formal discovery specifically geared towards mediation, reviewing informal mediation productions, including data, documents, and communications with client and opposing counsel regarding same.	6.4	7.1	2.5
Mediation / Settlement Conference. Includes time spent drafting mediation brief and accompanying exhibits, prepare for and attending mediation, drafting damages analysis, drafting notes for mediation, communications with client and mediator, communications with opposing counsel regarding same, solicit bids from settlement administrators, prepare MOU. Includes legal research relating to issues on day of mediation.	8.7	18	36.3
Drafting Settlement Agreements. Includes time spent preparing long form agreements and exhibits, revisions relating thereto, research regarding any approval procedures or issues regarding disputed terms. Communicating with client regarding same, communicating with opposing counsel regarding same.	2.8	3.4	8.1
Settlement Approval and Administration. Includes time spent drafting motion for preliminary approval and supporting declarations and order, supplemental briefing regarding approval, class data review, speaking with Settlement Administrator regarding calculations and distributions, analyze calculations and estimated disbursements, review notice updates and class member responses, drafting motion for final approval and supporting declarations and order, communicate with opposing counsel regarding same, communicate with client regarding same. Includes 10 hours for Brittany Berzin supervising final distributions and compliance with Court final approval order and compliance hearings	17.5	9.6	34.7
Total Per Billing Party:	64.1	57.2	122.1

EXHIBIT G

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
4 **Shimoda & Rodriguez Law, PC**
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff BRIAN STRAWN

10 [additional parties continued on next page]

11 **SUPERIOR COURT OF CALIFORNIA**
12 **FOR THE COUNTY OF SACRAMENTO**

13 BRIAN STRAWN, ESTABAN ESTRADA,
14 ADRIAN PULIDO, DOMINADOR DUAZ,
15 BRANDON NELSON and MATTHEW
16 FARWELL, on behalf of themselves and all
17 other similarly situated aggrieved employees,

18 Plaintiffs,

19 vs.

20 BRIDGESTONE RETAIL OPERATIONS,
21 LLC, a Delaware Limited Liability Company;
22 BRIDGESTONE AMERICAS, INC., a
23 Nevada Corporation;
24 GORDON KNAPP, an individual;
25 CHRISTOPHER NICASTRO, an individual;
26 AMANDA MATHIS, an individual;
27 MICHELLE ALMANDIGER, an individual;
28 WILLIAM THOMPSON, an individual;
DAMIEN HARMON, an individual;
ERIC TURNER, an individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2018-00242049

CLASS ACTION

Assigned to the Honorable Jill H. Talley for all purposes

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: November 15, 2022

Time: 1:30 p.m.

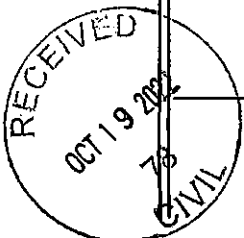
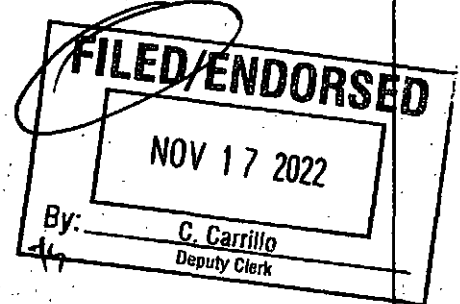
Dept.: 25

Judge: Hon. Jill H. Talley

Filed: October 5, 2018

FAC Filed: April 21, 2022

Trial Date: None Set



1 Kevin T. Barnes, Esq. (#138477)
2 Gregg Lander, Esq. (#194018)
3 LAW OFFICES OF KEVIN T. BARNES
4 1635 Pontius Avenue, Second Floor
5 Los Angeles, CA 90025-3361
6 Tel.: (323) 549-9100 / Fax: (323) 549-0101
7 Email: Barnes@kbarnes.com

8 Raphael A. Katri, Esq. (#221941)
9 LAW OFFICES OF RAPHAEL A. KATRI
10 8549 Wilshire Boulevard, Suite 200
11 Beverly Hills, CA 90211-3104
12 Tel.: (310) 940-2034 / Fax: (310) 733-5644
13 Email: RKatri@socalaborlawyers.com

14 Attorneys for Plaintiffs ESTEBAN ESTRADA and ADRIAN PULIDO

15 **PIMENTEL LAW, P.C.**
16 Gabriel J. Pimentel, Esq. (SBN 265328)
17 gpimentel@pimentellawfirm.com
18 30 N. Raymond Ave., Ste. 210
19 Pasadena, CA 91103
20 Tel: (626) 765-6505
21 Fax: (626) 628-3036

22 Attorney for Plaintiff DOMINADOR DAUZ

23 Reuben D. Nathan, Esq. (SBN: 208436)
24 rnathan@nathanlawpractice.com
25 **NATHAN & ASSOCIATES, APC**
26 2901 W. Coast, Suite 200
27 Newport Beach, California 92663
28 TEL: (949) 270-2798
FAX: (949) 209-0303

Ross Cornell, Esq. (SBN: 210413)
LAW OFFICES OF ROSS CORNELL, APC
P.O. Box 1989 #305
Big Bear Lake, CA 92315
rc@rosscornelllaw.com
TEL: (562) 612-1708
FAX: (562) 394-9556

Attorneys for Plaintiffs BRANDON NELSON and MATTHEW FARWELL

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 Plaintiffs' Motion for Final Approval of Class Action and PAGA Settlement came on for
3 regularly noticed hearing on November 15, 2022, before the Hon. Jill H. Talley, in Department 25 of
4 the above-entitled Court, as set forth in the Parties' Stipulation of Class Action Settlement and Release
5 ("Settlement Agreement"). Having considered the Parties' Settlement Agreement, Notice of Class
6 Action Settlement, and Memorandum of Points and Authorities filed in Support of the Unopposed
7 Motion for Final Approval of Class Action Settlement, the arguments and discussion of counsel for the
8 respective parties, the documents submitted in support therewith including, without limitation, the
9 Declarations submitted by the Parties and the Claims Administrator, as well as all supporting legal
10 authorities and documents filed herein, and having conducted an inquiry pursuant to California Rules of
11 Court, rule 3.769(g), including an inquiry into the notice to the Class, and good cause appearing therefor,
12 the court now finds and **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS**
13 **FOLLOWS:**

14 1. The Court, for purposes of this Final Judgment and Order ("Judgment"), adopts all
15 defined terms (i.e., terms with initial capitalization) as set forth in the Parties' Settlement Agreement.

16 2. The Court has jurisdiction over the subject matter over this Action, the Class Members,
17 the Named Plaintiffs, and Defendant.

18 3. The Court finds that the distribution of the Notice to Class Members, as provided for in
19 the Order Granting Preliminary Approval for the Settlement and as detailed in the Declaration of Lluvia
20 Islas of ILYM Group, Inc., constituted the best notice practicable under the circumstances to all Class
21 Members and fully met the requirements of California law and due process under the California and
22 United States Constitution. Based on evidence and other material submitted in conjunction with the
23 Preliminary and Final Approval Hearings, the actual notice to the class was adequate in all respects.

24 4. The Court finds that the instant Action presented a good faith dispute over unpaid wage
25 claims and reimbursement of business expenses and other relief, and the Court finds in favor of
26 settlement approval.

27 5. The Court approves the Settlement of the above-captioned action, as set forth in the
28 Settlement Agreement and each of the releases and other terms, as fair, just, reasonable, and adequate.

1 The Parties to the Settlement Agreement are directed to perform in accordance with the terms set forth
2 in the Settlement Agreement.

3 6. The Parties are to bear their own costs, except as otherwise provided in the Settlement
4 Agreement.

5 7. For purposes of effectuating this Judgment, this Court has certified a class of all
6 Settlement Class Members defined as follows: All current and former non-exempt employees who have
7 worked, or continue to work, for defendant Bridgestone Retail Operations, LLC in California from July
8 31, 2017 through July 21, 2022, who did not Opt-Out (collectively referred to as "Settlement Class").
9 The Court deems this definition sufficient for purposes of California Rules of Court, rule 3.765(a). Five
10 (5) Class Members submitted timely Opt-Out Requests to the class action portion of the Settlement
11 Agreement, including Chan Le, Charles Rivera, David Contizano, Ivan Perez, and Miguel A. Martinez.
12 These individuals will remain as PAGA Members under the terms of the Settlement Agreement, will
13 still receive their pro rata share of the PAGA Penalty Payment, and will still be subject to, and bound by,
14 the release of claims brought under the Private Attorneys General Act ("PAGA") in any of the Actions
15 or that could have been brought in any of the Actions based on the facts alleged therein. However, these
16 individuals will not be paid any portion of the Net Settlement Amount outside of their pro rata share of
17 the PAGA Penalty Payment.

18 8. With respect to the Settlement Class and for purposes of approving this Settlement, this
19 Court finds and concludes as follows: (a) the Class Members are ascertainable and so numerous that
20 joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement
21 Class Members, and there is a well-defined community of interest among the Settlement Class Members
22 with respect to the subject matter of the Action; (c) the claims of the Named Plaintiffs are typical of the
23 claims of the Class Members; (d) the Named Plaintiffs have fairly and adequately protected the interests
24 of the Class Members; (e) a class action is superior to other available methods for an efficient
25 adjudication of this controversy; and (f) the counsel of record for the Named Plaintiffs, *i.e.*, Class
26 Counsel, are qualified to serve as counsel for the Plaintiffs in their individual and representative
27 capacity, as well as for the Settlement Class.
28

1 9. By this Judgment, each of the Settlement Class Members shall be deemed to have, and by
2 operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged
3 all Released Claims, as defined in the Settlement Agreement. Specifically, the Settlement fully releases
4 and discharges Bridgestone Retail Operations, LLC and each of its former and present parents,
5 subsidiaries, affiliates, officers, directors, operators, principals, owners, heirs, representatives,
6 accountants, auditors, consultants, insurers and reinsurers, employees, partners, shareholders, members,
7 divisions, fiduciaries, trustees, agents, attorneys, investors, benefit plans, other successors and
8 predecessors in interest, assigns or legal representatives (including the parties named in the original
9 Complaint filed by Strawn on October 5, 2018: Bridgestone Americas, Inc., Gordon Knapp,
10 Christopher Nicastro, Amanda Mathis, Michelle Almandinger, William Thompson, Damien Harmon,
11 Eric Turner) of any all past, present and future claims, administrative or otherwise, actions, causes of
12 action, rights, or liabilities, up to July 21, 2022, whether known or unknown, whether in law or equity,
13 which were asserted or which could have been asserted based on the factual allegations in this Action,
14 including claims based on or arising out of the following categories of claims and allegations: (1) all
15 claims for unpaid wages, including any type of regular wages, minimum wages, overtime wages or an
16 overtime premium on non-hourly compensation, including bonus, SPIFF or other incentive pay, in
17 accordance with California state or federal law; (2) all claims for liquidated damages; (3) all claims
18 related to the provision or maintenance of tools, including any claim for two times the minimum wage
19 under the wage orders and indemnification under *Labor Code* Section 2802; (4) all claims for failure to
20 indemnify employees for hand tools, equipment (including personal safety equipment such as gloves and
21 glasses), mileage or other expense from personal vehicle usage and personal device usage (data, text or
22 phone); (5) all claims for the failure to provide meal breaks or rest breaks or premium pay in lieu
23 thereof; (6) all claims for the failure to keep accurate records, including records pertaining to hours
24 worked and start and stop time of meal breaks, due to time "edits" or any other reason; (7) all claims that
25 Defendant owed and failed to timely pay all wages due and owing during employment, or within the
26 required time at Class Members' termination, resignation or discharge; (8) all future claims for *Labor*
27 *Code* 203 penalties to the extent premised on a wage claim pled in the First Amended Complaint in this
28 case, with the alleged violation supposedly occurring prior to July 21, 2022; (9) all claims for the failure

1 to issue properly itemized wage statements pursuant to California *Labor Code* Section 226; (10) all
2 interest and statutory penalties based thereon, including those recoverable under the PAGA; (11) all
3 claims for violations of *Labor Code* Sections 201, 201.3, 202, 203, 204, 204b, 204.1, 204.2, 205, 205.5,
4 210, 218.6, 221-223, 226, 226.3, 226.7, 256, 500-508, 510, 512, 515, 516, 558, 558.1, 1174, 1174.5,
5 1182.12, 1194, 1194.2, 1197, 1197.5, 1198, 2698, 2699, 2699.3, 2699.5, 2802, 2810.5; 2926 and 2927;
6 (12) all claims for violations of any Wage Order issued by the Industrial Welfare Commission related to
7 any of the claims set forth herein; and (13) all claims for unfair competition pursuant to California
8 *Business and Professions Code* Section 17200, *et seq.* related to any of the claims set forth herein at any
9 time from July 31, 2017 through July 21, 2022.

10 10. As of the date of this Judgment and the Effective Date as set forth in the Settlement
11 Agreement, Named Plaintiffs Brian Strawn, Esteban Estrada, Adrian Pulido, Dominador Dauz, Brandon
12 Nelson, and Matthew Farwell hereby release and waive any and all claims of any kind whatsoever,
13 known or unknown, against the Released Parties through the execution of the Settlement Agreement.
14 Plaintiffs release the Released Parties from all claims, demands, rights, liabilities and causes of action of
15 every nature and description whatsoever, known or unknown, asserted or that might have been asserted,
16 whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of,
17 relating to, or in connection with any act or omission by or on the part of any of the Released Parties
18 committed or omitted prior to the execution hereof with the sole exception of workers' compensation
19 claims and any claims which cannot be released as a matter of law. The General Release includes any
20 unknown claims Plaintiffs do not know or suspect to exist in their favor at the time of the General
21 Release, which, if known by them, might have affected their settlement with, and release of, the
22 Released Parties or might have affected their decision not to object to this Agreement or the General
23 Release. By operation of the Stipulation and this Judgment, the Court further finds that Named
24 Plaintiffs have expressly waived and relinquished the provisions, rights, and benefits of Section 1542 of
25 the California Civil Code.

26 11. All Settlement Class Members and Named Plaintiffs are hereby permanently enjoined
27 and forever barred from instituting or prosecuting any action against Defendant or any other Released
28 Party for the Released Claims. Named Plaintiffs may take steps in *Bridgestone Retail Operations Wage*

1 and Hour Cases, Judicial Council Coordination Proceeding, Case No. 5054 to seek and effectuate
2 dismissal of the lawsuit with prejudice.

3 12. Neither the Settlement Agreement nor the Settlement contained therein, nor any act
4 performed or document executed pursuant to or in furtherance of the Settlement Agreement or the
5 Settlement (i) is, or may be deemed to be, or may be used as an admission of, or evidence of, the validity
6 of any Released Claim, or of any wrongdoing or liability of Defendant or any Released Party; or (ii) is,
7 or may be deemed to be, or may be used as an admission of, or evidence of, any fault or omission of
8 Defendant or any Released Party in any civil, criminal, or administrative proceeding in any court,
9 administrative agency, or other tribunal. Defendant or any of the Released Parties may file the
10 Settlement Agreement and/or the Judgment from this Action in any other action that may be brought
11 against it or them in order to support a defense or counterclaim based on principles of *res judicata*,
12 collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim
13 preclusion or issue preclusion or similar defense or counterclaim.

14 13. The only Class Members entitled to payment pursuant to this Judgment are Settlement
15 Class Members. Neither the Settlement Agreement nor this Judgment will result in the creation of any
16 unpaid residue or residual. Any funds that would have been paid to Settlement Class Members had they
17 cashed the check containing their respective Claim Amount within the Check-Cashing Period will be
18 paid to the State Controller Unclaimed Property Fund in the name of the Settlement Class Member for
19 whom the funds are designated in accordance with the Settlement Agreement. Pursuant to section 1.20
20 of the Settlement Agreement, no part of the Maximum Settlement Amount shall revert to Defendant.

21 14. The Court has reviewed Defendant's Hand Tool Policy attached as Exhibit A to the
22 Declaration of Erika Avila submitted in support of Plaintiff's unopposed Motion for Preliminary
23 Approval of Class Action Settlement, as well as Labor Code § 2802 and the applicable Wage Order
24 requirements concerning the provision of hand tools and finds that Defendant's Hand Tool Policy
25 facially complies with the California Labor Code and applicable Wage Order Requirements since
26 Defendant does not require its employees to provide tools or spend money on tools in order to do their
27 job. The Court makes no finding as to the legality of any acts in the administration of Defendant's Hand
28 Tool Policy. The applicable Tool Policy is attached as Exhibit A to this [Proposed] Judgment.

1 15. Class Counsel sought an award of attorneys' fees of \$805,000.00, litigation expenses of
2 \$61,480.58, Class Representative Service Fees for the Named Plaintiffs in the amount of \$15,000 each,
3 and for Claims Administration Costs in the amount of \$25,000.00. Defendant does not oppose these
4 requests. The Notice sent to Class Members included information regarding these amounts and that they
5 would be requested in connection with final approval of the Settlement Agreement. Class Members
6 have been given the opportunity to object to these amounts and not objections have been submitted in
7 any respect whatsoever. The Court has reviewed the evidence submitted by Class Counsel regarding
8 their hourly rates and the amount of time expended in the Actions for the benefit of Class Members.
9 The Court finds that the rates requested and hours expended are reasonable. This finding is further
10 supported by the lack of objection by Class Members to these amounts. The Court finds that these
11 amounts as set forth in the Settlement Agreement are fair and reasonable, and shall be awarded
12 accordingly as set forth herein.

13 16. The following payments, as required by the Settlement Agreement, are approved:

- 14 A) Payments to the Settlement Class Members for the full value of their Claim
15 Amount from the Net Settlement Amount and/or PAGA Penalty Payment in
16 accordance with the Settlement Agreement and as calculated by the Claims
17 Administrator;
18 B) \$805,000.00 in attorneys' fees awarded to Class Counsel;
19 C) \$61,480.58 for attorney' costs/expenses to be paid to Class Counsel;
20 D) \$25,000.00 to the Settlement Administrator, ILYM Group, Inc.;
21 E) \$15,000.00 each to Named Plaintiffs; and
22 F) \$37,500.00 to the Labor and Workforce Development Agency for PAGA
23 penalties.

24 17. Within one (1) business day after the Effective Date of this settlement (as that term is
25 defined in the Settlement Agreement), the Claims Administrator shall provide the Defendant with wire
26 and account information, and direct Defendant to deposit the amount of money necessary to fund the
27 Maximum Settlement Amount as set forth in the Settlement Agreement. Within nine (9) business days
28 of receiving the post-Effective Date notice from the Claims Administrator, Defendant shall wire the

1 funds requested by the Claims Administrator into a QSF. Within five (5) business days after receiving
2 the wire transfer from Defendant, the Claims Administrator shall prepare and wire the settlement funds
3 payable to Class Counsel for attorneys' fees and litigation costs awarded by the Court and the Named
4 Plaintiffs' Class Representative Service Fees. The Claims Administrator will calculate, withhold, and
5 remit all applicable taxes from the Maximum Settlement Fund, as well as comply with state, federal,
6 local or other tax reporting and tax return filing requirements, pursuant to the Settlement Agreement.
7 The Claims Administrator shall also distribute the funds to the Labor Workforce Development Agency,
8 Class Members, PAGA Members or State Unclaimed Property Fund, in accordance with the Settlement
9 Agreement.

10 18. This document shall constitute a Judgment for purposes of California Rule of
11 Court 3.769(h). Without affecting the finality of this Judgment in any way, the Court reserves exclusive
12 and continuing jurisdiction over the Action, the Named Plaintiffs, the Class Members, and Defendant for
13 the purposes of supervising the implementation, enforcement, construction, administration, and
14 interpretation of the Settlement Agreement and this Judgment.

15 IT IS SO ORDERED.

16 Dated: _____

11/17/22



17 Hon. Jill H. Talley
18 Judge of the Superior Court
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1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff JOSEPH CRISTOBAL
6
7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SOLANO**
10

11 JOSEPH CRISTOBAL, individually and on
behalf of all other similarly situated
12 employees,

13 Plaintiff,

14 vs.
15

16 BAT RESIDENTIAL SERVICES, INC., a
California Corporation; and DOES 1 to 100,
17 inclusive,

18 Defendants.
19
20
21

Case No. FCS056331

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: March 28, 2023

Time: 9:30 a.m.

Dept.: 22

Judge: Hon. Alesia F. Jones

Filed: April 5, 2021

FAC Filed: August 30, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement (“Motion”) in the above
3 referenced case came before this Court, on March 28, 2023, at 9:30 a.m., in Department 22 before the
4 Honorable Alesia F. Jones, presiding. Named Plaintiff Joseph Cristobal (“Plaintiff”) filed this putative
5 class action on April 5, 2021. The operative Complaint alleges that Defendant BAT Residential
6 Services, Inc. (“Defendant”) violated California law by failing to pay overtime wages, failing to
7 provide rest periods, failing to provide accurate wage statements, failing to pay all final wages, failing
8 to pay sick time, and engaging in unfair competition. Plaintiff has also alleged Defendant is liable for
9 civil penalties under the Private Attorneys General Act (“PAGA”) based on these violations. Plaintiff
10 sought attorneys’ fees and costs as part of this Action. Defendant denied all of Plaintiff’s claims and
11 denied that this case was appropriate for class treatment. No class has been certified. The class action
12 settlement was preliminarily approved by this Court on January 10, 2023.

13 The parties have agreed to settle the class and PAGA claims. Defendant and its principals,
14 Dalmacio Temporal Lete (“Lete”) and Elena Monette Herting (“Herting”), will provide monetary
15 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
16 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
17 (“Agreement”). Any capitalized terms herein shall have the same meaning as set forth in the
18 Agreement. The Court, having received and considered Plaintiff’s Motion for Final Approval of Class
19 Action and PAGA Settlement, the declarations in support, the Agreement, the Notice of Settlement,
20 and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:

21 **I. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
22 **REPRESENTATIVE; APPOINTMENT OF CLASS COUNSEL**

23 The Court finds that certification of the following class for settlement purposes only is
24 appropriate under the California Code of Civil Procedure and related case law:

25 All non-exempt employees who have worked, or continue to work, for
26 BAT Residential Services, Inc. in California from April 5, 2017 up to
September 25, 2022.

27 The Court recognizes that the foregoing definition is for Class Member identification purposes only and
28 is not intended to capture the claims at issue or limit or alter the released claims under the Agreement.

1 The Court finds that the definition of Class Members meets the ascertainability and numerosity
2 requirements because the parties can identify with a matter of certainty, based on payroll records,
3 individuals who fall within the definition and the number of Class Members would make joinder
4 impractical. The commonality and predominance requirements are met for settlement purposes since
5 there are questions of law and fact common to Class Members. The common questions of law or fact in
6 this case all stem from Plaintiff's contentions that Defendant caused the violations outlined above by 1)
7 failing to incorporate the value of non-discretionary bonuses into Class Members' regular rates of pay
8 for the purpose of calculating overtime premiums and paid sick time; 2) paying Class Members two
9 different rates of pay in the same workweek and failing to use the weighted average method to calculate
10 putative class members' regular rates of pay; 3) requiring Class Members to remain on duty during rest
11 periods; and 4) failing to include the correct address on wage statements issued to Class Members. The
12 waiting time, unfair competition and PAGA claims derive from these violations. Plaintiff also alleged
13 derivative wage statement violations for failing to correctly itemize gross and net wages earned and all
14 applicable hourly rates in effect with the corresponding number of hours worked at each rate.
15 Additionally, Class Members seek the same remedies under state law. The typicality requirement for
16 settlement purposes is also satisfied since the claims of the Class Representative is based on the same
17 facts and legal theories as those applicable to the class members.

18 The Court also finds that certifying the settlement class is required to avoid each Class Member
19 from litigating similar claims individually. This settlement will achieve economies of scale for Class
20 Members with relatively small individual claims and conserve the resources of the judicial system.

21 The Court finds that Plaintiff Joseph Cristobal and Plaintiff's counsel, Galen T. Shimoda,
22 Justin P. Rodriguez, and Brittany V. Berzin of Shimoda & Rodriguez Law, PC, to be adequate
23 representatives of the settlement class. The Court appoints them as Class Representative and Class
24 Counsel, respectively.

25 **II. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

26 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
27 A. The Court finds that the Agreement, which includes a total maximum gross payment of \$250,000,
28 falls within the range of reasonableness and is fair, reasonable, and adequate for the class. The Court

1 also acknowledges that Class Members were able to object to the settlement through the administration
2 process and at a fairness hearing. No such objections were made by the class members and no class
3 members opted out of the settlement.

4 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
5 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
6 preliminarily approves the Agreement and all terms therein as if stated here in full, including the
7 \$250,000 Gross Settlement Amount.

8 The Court orders that Plaintiff Joseph Cristobal will receive \$15,000 as a Class Representative
9 Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro
10 rata distribution formula for Plaintiff's time and effort on behalf of Class Members.

11 The Court orders and approves ILYM Group, Inc. to act as the Claims Administrator in this case.
12 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are stated by the
13 Administrator to be \$7,000. The difference between the actual cost of the Claims Administrator and the
14 originally allocated amount of \$10,000 will be added to the Net Settlement Amount.

15 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
16 because there is a sufficiently identifiable class of beneficiaries (*i.e.*, Class Members), the benefits can
17 be accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on
18 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
19 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*
20 *v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*
21 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of
22 thirty five percent (35%) of the Gross Settlement Amount, *i.e.*, \$87,500, to be appropriate compensation
23 for Class Counsel. The attorneys' fees request is within the range that has been approved by other
24 Courts in similar cases and is reasonable in light of the circumstances of this case, the substantial and
25 beneficial results obtained on behalf of Class Members, and the contingent nature of the recovery over
26 the course of this case, which included potential loss at summary judgment, certification, and/or trial
27 proceedings. Additionally, the Court orders that \$7,803.92 of the settlement proceeds will be paid to
28

1 Class Counsel for reasonable costs incurred in this case. The difference between the actual costs
2 incurred and the originally allocated amount of \$10,000 shall be added to the Net Settlement Amount.

3 The Court approves of the \$10,000 PAGA Payment, which shall be paid from the Gross
4 Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the alleged PAGA
5 claims. Seventy-five percent (75%) of the PAGA Payment will be paid to the Labor and Workforce
6 Development Agency (“LWDA”) and twenty-five percent (25%) will be paid to Aggrieved Employees
7 on a pro rata basis as described in the Agreement. The Court also finds that the Agreement provides a
8 recovery that creates an effective substantial deterrent to any potential future non-compliance, furthering
9 the purpose of the Labor Code and LWDA.

10 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
11 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be
12 donated equally, *i.e.*, 50/50, to Capital Pro Bono, Inc., and the Center for Workers’ Rights. No portion
13 of the Gross Settlement Amount will revert to Defendant for any reason.

14 The releases and waivers for Class Members who did not opt out of being bound by the
15 Agreement (*i.e.*, Qualified Claimants), Aggrieved Employees, and the Class Representative are also
16 approved by the Court as set forth in the Agreement.

17 **III. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,**
18 **OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT**

19 The Court finds that the Notice of Settlement, which was submitted with Plaintiff’s Motion as
20 Exhibit A to the Declaration of Cassandra Polites, fairly and adequately advised Class Members of the
21 terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number
22 of workweeks worked during the Class Period, their estimated pro rata share of the Net Settlement
23 Amount, how to participate in the settlement, how to file documentation in opposition to the proposed
24 settlement, and when to appear at the fairness hearing. The Court further finds that the Notice of
25 Settlement and distribution of such notice by first class mail to each identified Class Member at his or
26 her most recent address based on a National Change of Address database search from the Class
27 Members’ last known address and a skip trace on any Class Members who have the Notice of Settlement
28

returned as “undeliverable” or “not at this address” comported with all constitutional requirements, including those of due process.

IV. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant’s Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant, Lete, and Herting to fund settlement	Within 21 calendar days after the Effective Date
Last day for Claims Administrator to deliver payment of Class Counsel’s attorney’s fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 7 calendar days after funding of the settlement
Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 calendar days after issuance of checks to Qualified Members and Aggrieved Employees
Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the

1 Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved
2 Agreement.

3 **IT IS SO ORDERED.**

4
5 Date: _____

By: _____
Judge of the Superior Court

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff JOSEPH CRISTOBAL
6
7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SOLANO**
10

11 JOSEPH CRISTOBAL, individually and on
behalf of all other similarly situated
12 employees,

13 Plaintiff,

14 vs.

15 BAT RESIDENTIAL SERVICES, INC., a
16 California Corporation; and DOES 1 to 100,
17 inclusive,

18 Defendants.
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Case No. FCS056331

CLASS ACTION

PROOF OF SERVICE

Date: March 28, 2023

Time: 9:30 a.m.

Dept: 22

Judge: Hon. Alesia F. Jones

Filed: April 5, 2021

FAC Filed: August 30, 2021

Trial Date: None Set

Cristobal v. BAT Residential Services, Inc.
Solano County Superior Court, Case No. FCS056331

**PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5
and California Rules of Court, Rule 1.21 and Rule 2.150**

I, Shaniya Baird, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On March 2, 2023, I served the following documents on the party below:

- Plaintiff's Notice of Motion and Motion For Final Approval of Class Action and PAGA Settlement
- Memorandum of Points & Authorities In Support of Plaintiff's Motion For Final Approval of Class Action and PAGA Settlement
- Declaration of Brittany V. Berzin In Support of Plaintiff's Motion For Final Approval of Class Action and PAGA Settlement
- Declaration of Plaintiff Joseph Cristobal In Support of Motion For Final Approval of Class Action and PAGA Settlement
- Declaration of Cassandra Polites of ILYM Group, Inc. In Support of Plaintiff's Motion For Final Approval of Class Action and PAGA Settlement
- Exhibit List and Exhibits In Support of Plaintiff's Motion For Final Approval of Class Action and PAGA Settlement
- [Proposed] Order Granting Plaintiff's Motion For Final Approval of Class Action and PAGA Settlement

Chris Mead (SBN 115091) Scott Michael McLeod (SBN 242035) Womble Bond Dickinson (US) LLP 201 California Street 17th Floor San Francisco, CA 94111 Phone: (916) 830-6518 Facsimile: (916) 920-4402 Email: scott.mcleod@wbd-us.com chris.mead@wbd-us.com mercedes.stuefen@wbd-us.com	
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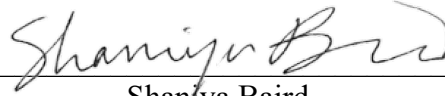
[] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Elk Grove, California, addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

1 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
2 personally delivered via the following overnight courier service: UPS.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing is
4 true and correct, and that this declaration was executed on March 2, 2023, at Salt Lake City, Utah.

5 

6 Shanyia Baird
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