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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

**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 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

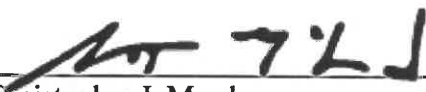
Dated: _____

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

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3 Dated: August 25, 2022

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