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16

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF LOS ANGELES**
19

20 VANESSA TATE-ROBINSON,
individually, on behalf of all others
21 similarly situated, and as a representative of
other aggrieved employees,

22 Plaintiff,

23 v.

24 B&I CORPORATION, a New Jersey
corporation; and DOES 1 through 250,
25 inclusive,

26 Defendants.
27
28

Case No. BC616265

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

Judge:	Hon. Maren E. Nelson
Dep't:	307
Action Filed:	April 12, 2016
Hearing:	December 18, 2017
Trial Date:	None set

**I.
PREAMBLE**

1. This Joint Stipulation of Class Action Settlement and Release (“Settlement” or “Agreement”) is entered into between Plaintiff Vanessa Tate-Robinson (“Robinson” or the “Named Plaintiff”) individually and as the representative on behalf of all additional putative class members and/or aggrieved employees (collectively, with Robinson, the “Settlement Class”) as further defined in Section III of this Agreement, and defendant B&I Group Home, Inc. (“B&I”). The Settlement Class and B&I will be referred to collectively herein as the “Settling Parties.”

2. On April 7, 2016, Robinson, an employee of B&I, filed the instant action (“Action”) in Los Angeles Superior Court (“Court”). Robinson, on behalf of herself, a class of aggrieved employees, and all others similarly situated, alleges claims for each of the following: (1) Unpaid Overtime Resulting in Violations of California Labor Code (“Labor Code”) §§ 510, 1194, and 1198; (2) Unpaid Meal Period Premiums Resulting in Violations of Labor Code §§ 226.7 and 512(a); (3) Failure to pay Minimum Wage Resulting in Violations of Labor Code §§ 1194, 1194.2, 1197, and California Wage Orders; (4) Wages Not Timely Paid Upon Termination Resulting in Violations of Labor Code §§ 201 and 202; (5) Non-Compliant Wage Statements Resulting in Violation of Labor Code § 226(a); (6) Violations of California Business & Professions Code §§ 17200 *et seq.*; and (7) penalties pursuant to California’s Private Attorneys General Act (“PAGA”) §§ 2698 *et seq.*

3. On June 20, 2017, the Settling Parties attended a private mediation before Mr. Steve Cerveris and reached a preliminary agreement, which is now set forth in this document.

4. During the course of this Action, the Settling Parties have engaged in significant investigation of the facts at issue and have exchanged extensive documents and information, which has allowed the Settling Parties to fully assess the value of the claims involved. During the discovery process, the parties exchanged hundreds of pages of documents in response to multiple discovery requests.

5. The Settling Parties have now agreed to avoid further litigation and to settle and resolve all existing and potential disputes, actions, lawsuits, charges and claims that the

1 Settlement Class has or may have against B&I, to the fullest extent permitted by law and without
2 any admission of liability or wrongdoing by either party. Robinson and her counsel have
3 concluded that the Settlement reflected herein is fair, reasonable, and in the best interests of the
4 Settlement Class and respectfully request that the Settlement be approved by the Court.

5 6. This Agreement shall become effective upon the “Effective Date,” as set forth in
6 Section VI below. The Settling Parties hereby agree to do all things and to engage in all
7 procedures reasonably necessary and appropriate to obtain final Court approval of this
8 Agreement, in consideration for: (a) the payment by B&I of the consideration described herein,
9 subject to the terms, conditions and limitations of this Agreement; and (b) the release of claims by
10 the members of the Settlement Class (including, without limitation, the Named Plaintiff), as
11 described in Paragraphs 48, 49, and 50 of this Agreement, and entry of Judgment thereafter.

12 **II.**
13 **PAYMENTS TO THE SETTLEMENT CLASS, CLASS COUNSEL, THE NAMED**
14 **PLAINTIFF, AND THE CLAIMS ADMINISTRATOR**

15 7. Subject to Court approval and the provisions of this Agreement, B&I shall pay a
16 total of one-hundred and forty-four thousand U.S. dollars and no cents (\$144,000.00), in
17 consideration for the settlement of this Action and the related release of all claims the members of
18 the Settlement Class (including, without limitation, the Named Plaintiff) may have against B&I,
19 as contained in Paragraphs 48, 49, and 50 of this Agreement. The term “Gross Settlement Value”
20 or “GSV” is used in this Agreement to mean the total amount of money B&I will pay in
21 consideration for the Settlement. The GSV is non-reversionary and shall not exceed \$144,000.00.

22 8. No portion of the GSV shall be disbursed or distributed until after the Effective
23 Date.

24 9. The Gross Settlement Value is the maximum amount that B&I shall be required to
25 pay for settlement of this Action. The GSV will cover compensation to the Settlement Class,
26 additional compensation to Robinson as class representative, the cost of claims administration and
27 notice, compensation to the Labor and Workforce Development Agency (“LWDA”) under the
28 PAGA, attorneys’ fees and reimbursement of litigation costs and expenses to Class Counsel, and
B&I’s portion of all payroll taxes resulting from the settlement.

**III.
CERTIFICATION FOR SETTLEMENT PURPOSES**

10. Solely for the purposes of effectuating this Settlement, and subject to Court approval, the Settling Parties hereby stipulate to class certification of a Settlement Class comprised of all current and former non-exempt employees of B&I that worked in the State of California from April 7, 2012, through the date of the Court's Order Granting Preliminary Approval of this Settlement (the "Class Period"), excluding putative members who file valid and timely Requests for Exclusion with the Claims Administrator.

11. Persons who properly exclude themselves from this Settlement in accordance with the provisions of this Agreement shall not share in the distribution of the GSV, are not included in the Settlement Class, and will not be bound by the terms of this Agreement.

12. The certification of the Settlement Class, the Settling Parties' settlement of this Action, and their rights and obligations hereunder, are contingent upon final approval by the Court of this Agreement as to the Settlement Class. The Settlement Class recognizes and agrees that—in consideration of the covenants undertaken herein by B&I, including, without limitation, B&I's agreement to pay an amount not to exceed the Gross Settlement Value—this Agreement settles any and all claims that the Settlement Class has or may have against B&I, as provided herein.

13. Subject to Court approval, the Settling Parties jointly propose Simpluris, Inc. as the third-party company to be appointed as "Claims Administrator" for this Settlement. The Claims Administrator will be responsible for calculating the share of the Settlement to be made available to each putative member of the Settlement Class; mailing the Class Notice; receiving and logging Requests for Exclusion; receiving, logging, and forwarding to counsel for the Settling Parties all written objections to the Settlement; researching and updating addresses through skip-traces and similar means; answering questions from Settlement Class members; reporting on the status of the Settlement to the Settling Parties; preparing declarations regarding its due diligence in completing and facilitating the claims administration process; providing the Settling Parties with data regarding the filing of Requests for Exclusion, and the calculation of distributions;

1 establishing and maintaining a non-interest-bearing distribution account for purposes of
2 distributing settlement checks and distributions of attorneys' fees and costs, the Enhancement
3 Award, PAGA payments, and B&I's share of any standard tax deductions and withholdings
4 applicable to the payments made pursuant to this Settlement ("Settlement Payments"), including,
5 but not limited to, payroll taxes; and performing such other tasks as required to administer this
6 Agreement or as directed by the Settling Parties.

7 **IV.**
8 **APPOINTMENT OF NAMED PLAINTIFF'S COUNSEL AS SETTLEMENT CLASS**
9 **COUNSEL**

10 14. Subject to the Court's approval, the Settling Parties hereby stipulate to the Court's
11 appointment of Brent S. Buchsbaum and Jean Buchanan of the Law Offices of Carlin &
12 Buchsbaum LLP, 555 East Ocean Boulevard, Suite 818, Long Beach, California 90802, (562)
13 432-8933 (phone), (562) 435-1656 (facsimile), as class settlement counsel ("Class Counsel") with
14 respect to the Settlement Class.

15 **V.**
16 **SETTLEMENT APPROVAL PROCEDURES AND NOTICE TO CLASS MEMBERS**

17 15. The Settling Parties' settlement of this Action, and their rights and obligations
18 hereunder, are expressly conditioned on both the Court's preliminary and final approval of this
19 Settlement as to the Settlement Class defined in Section III of this Agreement. Preliminary
20 approval shall be through the entry of an "Order of Preliminary Approval."

21 16. Class Counsel shall submit a copy of this Agreement to the LWDA at the same
22 time it files a motion with the Court for preliminary approval of the Settlement and for an order
23 certifying the Settlement Class for settlement purposes only, and setting a date for the settlement
24 fairness hearing ("Final Approval Hearing"). In conjunction with this motion, Class Counsel
25 shall submit this Agreement and supporting papers, which shall set forth the terms of this
26 Agreement, and will include proposed forms of all notices and other documents, as attached
27 hereto, necessary to implement the Settlement Agreement. The Order of Preliminary Approval
28 shall provide for notice of the Settlement and related matters to the Settlement Class ("Class
Notice") as specified herein, including notice of the procedure through which a Settlement Class

1 member may exclude him or herself from the Settlement Class or object to the Settlement (with
2 the exception of the Named Plaintiff, who shall not exclude herself or object). Said Class Notice
3 shall be in substantially the form attached hereto as Exhibit A, and as further described in
4 Paragraphs 38 through 41 of this Agreement.

5 17. Not later than thirty (30) calendar days after receipt of notice of the Court's entry
6 of an Order of Preliminary Approval, and to the extent possible based on the presence of
7 information in its records, B&I shall provide to the Claims Administrator a spreadsheet in
8 electronic format that contains the name, social security number, last known mailing address, and
9 phone number of every member of the Settlement Class, as well as the total number of Eligible
10 Pay Periods for each member of the Settlement Class ("Eligible Pay Period(s)"). For purposes of
11 this Agreement, a member of the Settlement Class will be deemed to have worked an "Eligible
12 Pay Period" to the extent he or she was employed for at least five (5) calendar days during any
13 B&I bi-weekly pay period and had payroll activity (i.e., ultimately received wages for that pay
14 period) during said bi-weekly pay period within the Class Period. The information concerning
15 Eligible Pay Periods shall be based on B&I's records and shall be presumed to be correct, unless
16 proof to the contrary is provided to the Claims Administrator.

17 18. B&I shall meet-and-confer with the Claims Administrator regarding the format of
18 the spreadsheet referenced in Paragraph 17 of this Agreement and cooperate to provide any
19 additional information which the Claims Administrator may request that is reasonable and
20 necessary for the purpose of giving Class Notice and otherwise administering the Agreement.

21 19. Prior to mailing, the Claims Administrator shall perform a search based on the
22 National Change of Address Database for information to update and correct for any known or
23 identifiable address changes. Any Class Notices returned to the Claims Administrator as non-
24 deliverable on or before the Response Deadline, as defined by Paragraph 39 of this Agreement,
25 shall be sent promptly via regular first-class U.S. mail to the forwarding address affixed thereto
26 and the Claims Administrator shall indicate the date of such re-mailing on the Class Notice. If no
27 forwarding address is provided, the Claims Administrator shall promptly attempt to determine the
28 correct address using a skip-trace, or other search using the name, address and/or Social Security

1 number of the Settlement Class member involved, and shall then perform a single re-mailing.
2 Those Settlement Class members who receive a re-mailed Class Notice shall have the latter of (i)
3 an additional ten (10) calendar days from the postmarked date of re-mailing or (ii) the Response
4 Deadline to postmark a written Request for Exclusion or a written objection to the Settlement.

5 20. Not later than ten (10) calendar days after the Claims Administrator receives the
6 information described in Paragraph 17, the Claims Administrator shall mail Class Notices to all
7 members of the Settlement Class whose address information is known. This mailing will be sent
8 by first-class U.S. mail.

9 **VI.**
10 **THE EFFECTIVE DATE**

11 21. This Agreement shall become final and effective on the occurrence of all of the
12 following events described in Paragraphs 21(a) through 21(c) (the “Effective Date”):

13 (a) Entry by the Court of an Order of Preliminary Approval as discussed in
14 Paragraphs 15 and 16 of this Agreement, appointment of Class Counsel as described in
15 Paragraph 14 of this Agreement, appointment of a Claims Administrator as described in
16 Paragraph 13 of this Agreement, and expiration of the time period for B&I to withdraw
17 from this Agreement as described in Paragraph 23 of this Agreement.

18 (b) Class Counsel filing, at or before the Final Approval Hearing, a
19 declaration from the Claims Administrator:

20 (i) Certifying that a Class Notice was sent to each Settlement Class
21 member in accordance with Section XI of this Agreement and the Order of Preliminary
22 Approval; and

23 (ii) Delineating the number of Settlement Class members who
24 submitted timely Requests for Exclusion.

25 (c) The occurrence of the “Effective Date of Judgment,” which shall be
26 deemed to be the last to occur of the following:
27
28

1 (i) If an appeal or other review is not sought from the Order and
2 Judgment Granting Final Approval and Dismissing Action with Prejudice (“Final
3 Approval Order and Judgment”), the day the Judgment is signed by the Court; or

4 (ii) If an appeal or other review is sought from the Final Approval
5 Order and Judgment, the next day after the Court’s judgment is affirmed or the appeal or
6 other review is dismissed or denied, and the judgment is no longer subject to judicial
7 review or other challenge.

8 22. The Settling Parties shall jointly prepare a proposed Order and Judgment to this
9 effect, which shall reflect, inter alia, the settlement and entry of judgment of this Action and the
10 Court’s approval of the settlement pursuant to the terms of this Agreement, including but not
11 limited to the releases set out in Paragraphs 48, 49, and 50. Said proposed Order and Judgment
12 shall be lodged with the Court no later than sixteen (16) calendar days before the Final Approval
13 Hearing.

14 **VII.**
15 **EFFECT OF NON-APPROVAL, FAILURE OF THE EFFECTIVE DATE TO OCCUR,**
16 **OR OPT-OUTS IN EXCESS OF SEVEN AND ONE-HALF PERCENT**

17 23. If the Effective Date does not occur, this Agreement shall be void. In such event:

18 (a) Nothing in this Agreement shall be construed as a determination,
19 admission, or concession of any substantive or procedural issue in this Action, and
20 nothing in this Agreement may be offered into evidence in any hearing or trial, or in any
21 subsequent pleading or in any other judicial, arbitral, or administrative proceeding;

22 (b) The Settling Parties expressly reserve their rights with respect to the
23 prosecution and defense of this Action as if this Agreement never existed. In particular,
24 B&I does not waive, but rather expressly reserves, all rights to challenge any and all
25 claims and allegations asserted in this Action upon all procedural and substantive
26 grounds, including, without limitation, the ability to challenge class action treatment on
27 any grounds and to assert any and all potential defenses or privileges. The Settling
28 Parties agree that B&I retains and reserves these rights, and they agree not to take a
position to the contrary. Specifically, the Settling Parties agree that, if this Action were

1 to proceed, they will not present any argument based on this Agreement, or any exhibit,
2 attachment, act performed or document executed pursuant to this Agreement; and

3 (c) The Settling Parties shall each bear half (50%) of any costs for notice or
4 claims administration incurred by the Claims Administrator through the date that the
5 Settlement is determined to be void.

6 24. The Claims Administrator shall provide written notice to Class Counsel and B&I
7 no later than fifteen (15) calendar days after the Response Deadline—as defined in Paragraph 39
8 of this Agreement—with a complete list of all putative members of the Settlement Class who
9 have timely requested exclusion from the class. B&I, in its sole and independent discretion, shall
10 have the right, but not the obligation, to revoke this Agreement if Requests for Exclusion from the
11 settlement are filed by members of the Settlement Class representing more than fifteen percent
12 (15%) of all members of the Settlement Class. If B&I chooses to exercise this option, the effect
13 will be precisely the same as if one of the events specified in Paragraph 21 did not occur. B&I
14 must exercise this right, if at all, within ten (10) calendar days after receipt of the written notice
15 from the Claims Administrator discussed in this Paragraph 24.

16 **VIII.**
17 **ATTORNEYS' FEES, COSTS AND EXPENSES, PAYMENT TO THE LWDA, AND**
18 **ENHANCEMENT AWARD**

19 25. This Action alleges a claim for attorneys' fees and costs pursuant to, *inter alia*, the
20 California Labor Code. The Settling Parties agree that any and all such claims for attorneys' fees
21 and costs have been settled as a part of this Agreement.

22 26. B&I recognizes that Class Counsel will apply to the Court for an award of
23 attorneys' fees in an amount up to, but not more than, thirty-three and one-third percent (33.33%)
24 of the GSV (i.e., \$47,952) as well as an award for reasonable and necessary costs and expenses
25 incurred up to the date of filing of said application, currently estimated to be \$7,000.00. B&I will
26 not oppose Class Counsel's application under this Paragraph 26 for said amount, and Class
27 Counsel's application under this Paragraph 26 shall be scheduled for determination at the Final
28 Approval Hearing. The Named Plaintiff, Class Counsel, and putative or actual members of the

1 Settlement Class shall not seek payment of attorneys' fees or reimbursement of costs or expenses
2 except as set forth herein.

3 27. B&I recognizes that, at the same time the application under Paragraph 26 is made,
4 Class Counsel will also apply to the Court for an additional award to the Named Plaintiff of five-
5 thousand U.S. Dollars and no cents (\$5,000.00), as reasonable additional compensation for her
6 prosecution of this case, the time and effort expended by her in doing so, and in consideration for
7 the claims released herein (the "Enhancement Award"). B&I will not oppose Class Counsel's
8 application under this Paragraph 27. Any Enhancement Award will be in addition to the amount
9 that the Named Plaintiff may be entitled to receive on account of her own individual claim
10 pursuant to Section X of this Agreement; however, the releases set out in Paragraphs 48, 49, and
11 50 of this Agreement shall bind Robinson regardless of whether and to what extent she recovers
12 as a Settlement Class member, and the Enhancement Award shall be adequate consideration for
13 said releases. The Named Plaintiff, Class Counsel, and putative and/or actual members of the
14 Settlement Class shall not seek payment of any additional enhancement awards except as set forth
15 herein.

16 28. The Parties also agree that the Claims Administrator will allocate five-thousand
17 U.S. dollars and no cents (\$5,000.00) of the GSV to penalties under the PAGA and pay seventy-
18 five percent (75%) of this sum (i.e., \$3,750.00) to the LWDA pursuant to California Labor Code
19 Section 2699(i). The remaining twenty-five percent (25%) of this sum shall be returned to the
20 Net Settlement Value, as that term is defined in Paragraph 32 of this Agreement, and disbursed to
21 the Settlement Class as set forth herein.

22 29. Any awards pursuant to Paragraphs 26 and/or 27, as well as payment to the
23 LWDA pursuant to Paragraph 28, will be funded solely and completely from the GSV.

24 30. If the Court does not approve the total amount of attorneys' fees, costs, and/or
25 Enhancement Award requested by Class Counsel pursuant to Paragraphs 26 and/or 27 of this
26 Agreement, any remaining portion of the requested amount will be added to the Net Settlement
27 Value (as that term is defined in Paragraph 32 of this Agreement).
28

31. Any proceedings or Court decisions related to Class Counsel's application for attorneys' fees, costs and expenses, and/or the Enhancement Award shall not terminate or cancel this Agreement, or otherwise affect the finality of the Final Approval Order and Judgment, or affect the settlement and releases set forth herein concerning this Action. Further, nothing in this Agreement shall prevent, waive, impair or impinge upon Class Counsel's right to appeal the Court's decision related to the application for attorneys' fees, costs and expenses, and/or the Enhancement Award.

IX. PLAN OF ALLOCATION AND DISTRIBUTION OF THE SETTLEMENT FUND

32. The GSV, shall be payable within 5 years of the Effective Date, in 60 equal installments, paid to the claims administrator, and due on the 15th of each month, until the total GSV has been paid in full. The parties agree that the third party administrator shall distribute the funds once per year, to reduce the cost of administration. The payments shall be allocated, proportionately and in order, as follows:

(a) First, to any attorneys' fees and reasonable and necessary costs and expenses of Class Counsel, as may be awarded by the Court pursuant to Paragraph 26 of this Agreement.

(b) Second, to any Enhancement Award, as may be awarded by the Court pursuant to Paragraph 27 of this Agreement.

(c) Third, to the costs and expenses incurred by, or fees imposed by, the Claims Administrator in performing its duties under this Agreement, which is estimated to be \$8,500.

(d) Fourth, to the payment to the LWDA of penalties under the PAGA pursuant to Paragraph 28 of this Agreement.

(e) Fifth, to B&I's share of any standard tax deductions and withholdings applicable to the Settlement payments, including, but not limited to, payroll taxes; and

(f) Sixth, to the “Net Settlement Value” or “NSV.” The Net Settlement Value shall be defined as the maximum possible value of the GSV less the items described in

Paragraphs 32(a), 32(b), 32(c), 32(d) and 32(e) above. The Net Settlement Value shall be made available to the Settlement Class as described in Section X of this Agreement. The Claims Administrator shall be responsible for the allocation and distribution of the Net Settlement Value to Settlement Class members.

33. The Claims Administrator shall make payments from the distribution account only pursuant to the terms of this Agreement and only after the Effective Date.

34. For the purposes of calculating applicable taxes:

(a) Each Settlement Payment shall be classified as follows: (1) twenty-five percent (25%) to unpaid wages from which the Claims Administrator shall make appropriate withholdings for the payment of taxes; (2) thirty-seven and one-half percent (37.5%) to interest; and (3) thirty-seven and one-half percent (37.5%) to penalties.

(b) Each member of the Settlement Class shall be individually responsible for his or her share of taxes attributable to receipt of the Settlement Payment.

(c) The Claims Administrator shall pay from the GSV to the appropriate government authorities B&I's portion of all taxes applicable to the Settlement Payments, including, but not limited to, payroll taxes.

(d) One hundred percent (100%) of the Enhancement Award will be allocated to ordinary income, reported on a Form 1099.

X. CALCULATION OF DISTRIBUTIONS TO SETTLEMENT CLASS MEMBERS

35. As soon as practicable after receiving the spreadsheet referenced in Paragraph 17, the Claims Administrator shall perform the following calculations for use in allocation and distribution of the NSV to Settlement Class members.

36. The Claims Administrator will allocate the NSV to the Settlement Class and divide said amount by the total number of the Eligible Pay Periods, as defined by Paragraph 17, worked by all Settlement Class members during the Class Period in order to calculate the "Pay Period Settlement Value."

37. The amount of the Settlement Payment disbursed to each member of the Settlement Class shall equal the number which results from multiplying the number of Eligible Pay Periods the Settlement Class member worked during the Class Period by the Pay Period Settlement Value.

XI. GIVING CLASS NOTICE AND PROCESSING REQUESTS FOR EXCLUSION

38. The Class Notice mailed to members of the Settlement Class shall be individualized for each member of the Settlement Class and contain each Settlement Class Member's number of Eligible Pay Periods as determined by the Claim Administrator based on the information provided by B&I pursuant to Paragraph 17 of this Agreement.

39. The Class Notice shall direct that each Settlement Class member wishing to opt-out of the Settlement Agreement and exclude him/herself from the Settlement Class must sign and mail a written “Request for Exclusion,” as described in the Class Notice, to the Claims Administrator by first-class U.S. mail such that it is actually received by the Claims Administrator with a postmark reflecting a date within forty-five (45) calendar days from the date of mailing of the Class Notice (the “Response Deadline”). The date of the postmark on the return mailing envelope shall be the exclusive means to determine whether a Request for Exclusion has been timely submitted. The Class Notice shall provide instructions informing Settlement Class members how to submit a Request for Exclusion in this regard. The Class Notice shall also indicate that all members of the Settlement Class, except those who have submitted a Request for Exclusion, shall have the right to submit to the Claims Administrator written objections to the Settlement and/or to appear at the Final Approval Hearing (the then-current date of which shall be included in the Class Notice). Written objections, if any, must be actually received by the Claims Administrator with a postmark reflecting a date no later than the Response Deadline. The date of the postmark on the return mailing envelope shall be the exclusive means to determine whether a written objection has been timely submitted.

40. Any Settlement Class member who disagrees with the number of Eligible Pay Periods stated in his/her Class Notice may submit a statement in writing to that effect and enclose

1 documentation supporting said disagreement. The Class Notice will provide instructions about
2 how a Settlement Class member may state his/her disagreement in this regard. The Claims
3 Administrator will be solely responsible for resolving any discrepancies between B&I's
4 documentation and conflicting information provided by a Settlement Class member, and said
5 resolution by the Claims Administrator shall be final and binding on all parties, and non-
6 appealable. Once the Claims Administrator resolves a given discrepancy, it will notify the
7 Settlement Class member of its decision in writing and within ten (10) calendar days. B&I agrees
8 to provide additional information which is reasonable and necessary for the Claims Administrator
9 to resolve any such discrepancies, to the extent such information is available within its records
10 and reasonably accessible.

11 41. The Class Notice shall contain the release of claims against B&I contained in
12 Paragraphs 48, 49, and 50 of this Agreement, and an easily understood statement alerting putative
13 members of the Settlement Class that by failing to submit a Request for Exclusion the individual
14 is executing a release and waiver of all of the claims related to those alleged in this Action which
15 the Settlement Class members may have against B&I.

16 42. If a Settlement Class member files a timely Request for Exclusion on or before the
17 Response Deadline that is defective as to the requirements listed herein, that Settlement Class
18 member shall be given an opportunity to cure the defect(s). The Claims Administrator shall mail
19 the Settlement Class member a cure letter within three (3) business days of receiving the defective
20 submission to advise the Settlement Class member that his or her submission is defective and that
21 the defect must be cured to render the Request for Exclusion valid. The Settlement Class member
22 shall have until the later of (i) the Response Deadline or (ii) ten (10) calendar days from the
23 postmarked date of the mailing of the cure letter, to postmark or fax a revised Request for
24 Exclusion. If the revised Request for Exclusion is not postmarked or received by fax within that
25 period, it shall be deemed untimely.

26 43. Those Settlement Class members who have not returned a Request for Exclusion
27 by the Response Deadline shall be bound by the Final Approval Order and Judgment entered in
28 this Action and the release of claims set forth in Paragraphs 48, 49, and 50 of this Agreement.

**XII.
PROCESS FOR DISTRIBUTION OF THE SETTLEMENT**

44. B&I shall pay an initial installment of GSV to the Claims Administrator not later than thirty (30) days after the Effective Date, for distribution to Settlement Class members, Class Counsel's fees and costs, Named Plaintiff's Enhancement Award, Claims Administrator's costs, and payment to the LWDA under the PAGA, as provided for herein. The Claims Administrator shall deposit the GSV in a non-interest-bearing distribution account immediately upon receipt of the fund transfer discussed in this Paragraph 44.

45. Within ten (10) court days of its receipt of the GSV, the Claims Administrator shall make the payments stated in Paragraphs 32(a) through 32(e); and shall pay out the NSV to Settlement Class members who did not submit valid and timely Requests for Exclusion. The Claims Administrator shall make these distributions via first-class U.S. mail.

46. The Settling Parties intend for the entire NSV to be distributed to Settlement Class members. Any portion of the NSV not paid out through the process discussed in this Section XII, whether due to the filing of Requests for Exclusion or any other reason—shall be divided pro-rata among Settlement Class members through increasing the amount of money paid to Settlement Class members.

47. After the Claims Administrator mails out the Settlement Payments, as provided for in Paragraph 45, members of the Settlement Class shall have one hundred and eighty (180) calendar days to cash the check that was mailed to them. After one hundred and eighty (180) calendar days from the date of mailing, the checks shall become null and void, and any monies remaining in the distribution account shall be distributed, since this is an unpaid wages case, to the State of California Unclaimed Wages Fund, or if the court determines otherwise, in the manner prescribed in amended Code of Civil Procedure section 384.

**XIII.
RELEASES**

48. In exchange for the consideration, undertakings, and covenants agreed to by B&I in this Agreement, and to the fullest extent permitted by applicable law, the Settlement Class

1 hereby releases, discharges, and covenants not to sue B&I, and all of its respective past and
2 present employees, directors, officers, attorneys, representatives, insurers, agents, parents,
3 subsidiaries, affiliates, related companies, predecessors, successors, lessees, and assigns, and any
4 entity that could be jointly liable with any of these (individually and collectively “B&I
5 Releasees”) from and with respect to all actions, causes of action, suits, liabilities, claims, and
6 demands whatsoever, and each of them, from the beginning of the Class Period to the date this
7 Court’s Order Granting Preliminary Approval is entered, inclusive, which the Settlement Class, or
8 individual members thereof, has, had, or hereafter may claim to have, against B&I Releasees, or
9 any of them, which are based on, arise from, or in any way relate to any and/or all claims and
10 allegations of the Settlement Class set forth in the Complaint and/or any other pleadings filed in
11 this Action, as well as any and all claims and allegations that could have been asserted in the
12 Complaint and/or any other pleadings filed in this Action, which include, by way of description,
13 but not by way of limitation, any claims asserting failure to pay overtime, failure to provide meal
14 periods, failure to pay minimum wage, failure to timely pay wages upon termination, failure to
15 provide non-compliant wage statements, and failure to provide rest periods, under the California
16 Labor Code, any Wage Order of the California Industrial Welfare Commission (“IWC”),
17 California Business and Professions Code §§ 17200 *et seq.*, and/or any other federal or
18 applicable state, local, or territorial law (“the Settlement Class Released Claims”), and any claims
19 arising from the claims described above. The Settling Parties intend the Settlement Class’ release
20 to be comprehensive in nature, to the maximum extent permitted by law. The Settlement Class
21 Released Claims further include specifically, by way of further description, but not by way of
22 limitation, any and all claims the Settlement Class may have arising out of or in any way related
23 to:

24 (a) Any and all allegations set forth in the Complaint and/or any other
25 pleadings filed in this Action;

26 (b) Any and all alleged claims related to wages, hours, and/or working
27 conditions (including, but not limited to, any and all claims related to meal periods and/or
28 rest periods) that arose from or are related to the causes of action that were asserted or

1 could have been asserted in the Second Amended Complaint and/or any other pleadings
2 filed in this Action;

3 (c) Any and all claims under the PAGA, California Labor Code §§ 2698 *et*
4 *seq.*, predicated, in whole or in part, on some or all of the allegations that were or could
5 have been set out in the Second Amended Complaint and/or any other pleadings filed in
6 this Action;

7 (d) Any and all violations of California Business & Professions Code §§
8 17200 *et seq.*, predicated, in whole or in part, on any of the allegations that were or could
9 have been set out in the Second Amended Complaint and/or any other pleadings filed in
10 this Action;

11 (e) Any and all fines, penalties, wages, premium wages, interest, restitution,
12 liquidated damages, punitive damages, declaratory relief, and/or injunctive relief
13 allegedly due and owing by virtue of the allegations that were or could have been set out
14 in the Second Amended Complaint and/or any other pleadings filed in this Action,
15 whether based on statutory, regulatory, or common law; and/or

16 (f) Any and all claims for attorneys' fees and/or attorneys' costs/expenses.

17 Notwithstanding any other provision of this Agreement, including without limitation this
18 Paragraph 48, "Settlement Class Released Claims" shall not include claims under the federal Fair
19 Labor Standards Act ("FLSA") arising from a Settlement Class member's employment with B&I
20 unless the Settlement Class member has affirmatively opted-in to the case by cashing his/her
21 settlement check provided to him/her under this Agreement.

22 49. In exchange for the consideration, undertakings, and covenants undertaken by B&I
23 in this Agreement, including but not limited to the payment of the Enhancement Award, and to
24 the fullest extent permitted by applicable law, the Named Plaintiff hereby releases, discharges,
25 and covenants not to sue the B&I Releasees with respect to and from any and all claims, charges
26 of discrimination, demands, liens, agreements, contracts, covenants, actions, suits, causes of
27 action, disputed wages, obligations, debts, expenses, attorneys' fees, damages, penalties, interest,
28 judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, whether

1 now known or unknown, suspected or unsuspected, and whether or not concealed or hidden,
2 which she now owns or holds or she has at any time heretofore owned or held, arising out of or in
3 any way connected with her employment, separation of employment or any other relationship
4 with the B&I Releasees or any other transactions, occurrences, acts or omissions or any loss,
5 damage or injury whatever, known or unknown, suspected or unsuspected, resulting from any act
6 or omission by or on the part of said B&I Releasees, or any of them, committed or omitted prior
7 to the date of the Court's Order granting Preliminary Approval (collectively, "Named Plaintiff's
8 Claims"). The Settling Parties intend the Named Plaintiff's release to be general and
9 comprehensive in nature and to release all Named Plaintiff's Claims and potential Named
10 Plaintiff's Claims against the B&I Releasees to the maximum extent permitted by law. Named
11 Plaintiff's Claims being released include specifically, by way of description, but not by way of
12 limitation, any and all Named Plaintiff's Claims arising out of or in any way related to: (i) any
13 interactions between the Named Plaintiff and the B&I Releasees; (ii) the Named Plaintiff's
14 employment, separation of employment, contractual, and/or quasi-contractual relationship with
15 B&I Releasees; (iii) any allegations as to disputed wages, remuneration, and/or other
16 compensation, due by operation of statute, ordinance, regulation, wage order, contract, or quasi-
17 contract; (iv) any federal, state, or local law prohibiting discrimination or retaliation on any basis
18 of age, race, color, ancestry, religion, disability, sex, sexual orientation, gender identity, national
19 origin, or citizenship, including, without limitation, any such claims under Title VII, the
20 California Fair Employment and Housing Act, the California Labor Code, the California IWC
21 Wage Orders, the Employee Retirement Income Security Act, and the Americans With
22 Disabilities Act or any other similar statutes whatever the city, county, state, or country of
23 enactment; (v) any claims under the Family and Medical Leave Act of 1993 and/or the California
24 Family Rights Act; (vi) any transactions, occurrences, acts, statements, disclosures, or omissions
25 occurring prior to the date of the Court's order granting Preliminary Approval; and (vii) any other
26 tort or contract claims.

27 **50. Waiver of California Civil Code Section 1542 by Named Plaintiff Only.**

28 The Named Plaintiff intends that this Agreement shall be effective as a bar to the claims released

1 by Paragraph 49 and expressly waives any and all rights or benefits under Section 1542 of the
2 California Civil Code, or any similar provisions under state, federal, or local law. California Civil
3 Code Section 1542 provides as follows:

4 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
5 **WHICH THE CREDITOR DOES NOT KNOW OR**
6 **SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE**
7 **TIME OF EXECUTING THE RELEASE, WHICH IF**
8 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY**
9 **AFFECTED HIS OR HER SETTLEMENT WITH THE**
10 **DEBTOR.**

11 As to any and all of the claims released in Paragraph 49, the Named Plaintiff understands
12 fully the statutory language of California Civil Code Section 1542, and, with this understanding,
13 assumes all risks for claims released hereunder that have already arisen or may in the future arise,
14 whether known or unknown, suspected or unsuspected, and specifically waives all rights she may
15 have under California Civil Code § 1542, or any similar provision under state, federal, or local
16 law. The Named Plaintiff understands that, if any of the facts relating in any manner to facts that
17 were alleged or could have been alleged in the Second Amended Complaint and/or any other
18 pleading filed in this Action, or to the release and dismissal of claims as provided in this
19 Agreement, are hereafter found to be other than or different from the facts now believed to be
20 true, she has expressly accepted and assumed that risk and agrees that this Agreement and the
21 release of claims as set forth in Paragraph 49 contained herein shall nevertheless remain effective.
22 As to any and all of the claims released by Paragraph 49, Named Plaintiff desires and intends, or
23 is deemed to desire and intend, that this Agreement shall be given full force and effect according
24 to each and all of its express terms and provisions, including those relating to unknown and
25 unsuspected claims, if any, as well as those relating to the claims referred to above.

26 51. Class Counsel and the Named Plaintiff represent and warrant that—aside from this
27 Action, and the individual action filed by Robinson—they have not filed any complaints, charges,
28 lawsuits, or other legal actions with any court or government agency relating to any claims being
released by the Settlement Class in Paragraphs 48 through 50 of this Agreement. Class Counsel
and the Named Plaintiff further represent and warrant that it and they have not heretofore
assigned or transferred to any person not a party to this Agreement any released matter.

**XIV.
ADDITIONAL TERMS AND CONDITIONS**

52. Final Approval Order: The Final Approval Order and Judgment shall contain findings and rulings to the effect that members of the Settlement Class who cash their settlement checks provided to them under this Settlement thereby indicate their desire to opt-in to a class settlement of FLSA claims. Accordingly, the cashing of a settlement check shall constitute binding and irrefutable evidence that the Settlement Class member in question desired and intended to, and did, opt in to an FLSA settlement and released all claims under the Fair Labor Standards Act of 1938, as amended.

53. Settlement Fair and Reasonable: Class Counsel has considerable experience in litigating and settling wage-and-hour class actions of this type, and is sufficiently familiar with the facts of this case and the applicable laws and regulations to make an informed judgment as to the fairness of this Settlement. In light of this experience, and for reasons that will be more fully explained in the Settling Parties' Motion for Preliminary Approval, Class Counsel and the Named Plaintiff believe that the settlement terms herein are fair and reasonable with regard to the interests of the Settlement Class.

54. Settlement the Result of Arm's-Length Bargaining: The terms of the Settlement of this Action resulted from a year of litigation and several months of intense arm's-length negotiations.

55. Notices: Except for Class Notices to Settlement Class members, which are required herein to be made to or by the Claims Administrator, all notices, requests, demands and other communications related to or in connection with this Agreement shall be in writing, and shall be provided by appropriate method depending on the urgency (e.g., personal delivery, facsimile, overnight delivery, or first-class U.S. mail) to:

TO THE SETTLEMENT CLASS:

GARY R. CARLIN
BRENT S. BUCHSBAUM
LAUREL N. HAAG
IAN M. SILVERS
LAW OFFICES OF CARLIN &
BUCHSBAUM LLP
555 East Ocean Boulevard, Suite 818
Long Beach, California 90802
Telephone: (562) 432-8933
Facsimile: (562) 435-1656

TO B&I CORPORATION:

ALFRED LANDEGGER
OSCAR RIVAS
LANDEGGER BARON LAW GROUP
15760 Ventura Blvd., Suite 1200
Encino, CA 91436
Telephone: (818)-986-7561
Facsimile: (818)986-5147

56. No Admission of Liability: Nothing herein shall constitute any admission by B&I of wrongdoing or liability or of the truth of any factual allegations in this Action. Nothing herein shall constitute an admission by B&I that this Action was properly brought as a class or representative action other than for settlement purposes. To the contrary, B&I has denied and continues to deny each and every material factual, procedural, and/or legal allegation and alleged claim asserted in this Action. To this end, the settlement of this Action, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of this Agreement or the Settlement are not, shall not be deemed to be, and may not be used as an admission or evidence of any wrongdoing or liability on the part of B&I, or of the truth of any of the factual allegations in this Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of B&I in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.

57. Modification by Writing Only: This Agreement, and its terms and Exhibits, may be modified only in a writing signed by all counsel of record for the parties, and will not become effective unless and until approved by the Court or otherwise as ordered by the Court.

58. Representations

(a) The Named Plaintiff and Class Counsel represent that they are presently unaware of any other lawsuit or administrative proceeding which alleges any of the claims asserted in this Action that is not already identified in this Agreement.

1 (b) The Named Plaintiff, on behalf of herself and the Settlement Class, has
2 expressly authorized Class Counsel to take all appropriate action required or permitted to
3 be taken pursuant to this Agreement to effectuate its terms.

4 (c) Each attorney executing this Agreement or any of its exhibits on behalf of
5 any party hereto hereby warrants that full authority to do so has been given by his/her
6 client(s).

7 (d) B&I, Class Counsel, and the Named Plaintiff waive their right to file an
8 appeal, writ, or any challenge whatsoever to the terms of this Agreement; provided,
9 however, that Class Counsel and the Named Plaintiff may appeal the Court's
10 determination with regard to the requests for attorneys' fees and costs and the
11 Enhancement Award set out in Paragraphs 26 and 27. Consistent with Paragraph 31,
12 however, any such appeal will have no effect whatsoever on the other terms and
13 provisions of this Agreement, including, by way of example but not of limitation, the
14 releases set out in Paragraphs 48, 49, and 50 of this Agreement.

15 (e) The Settling Parties represent and agree that neither have received and/or
16 relied upon any advice and/or representations from the other party and/or its attorneys as
17 to the necessity for withholding or the taxability of the consideration paid pursuant to this
18 Agreement, whether pursuant to federal, state or local income tax statutes or otherwise.

19 59. Further Cooperation: The Settling Parties and their respective counsel of record
20 shall proceed diligently to prepare and execute all documents, to seek the necessary Court
21 approvals, and to do all other things reasonably necessary to conclude this Settlement.

22 60. Construction and Integration: This Agreement, including its exhibits,
23 constitutes the entire agreement and understanding between the Settling Parties, and
24 supersedes any previous agreements or understandings between the Settling Parties. No
25 representations, warranties or inducements have been made to any party concerning the
26 subject matter of this Agreement and/or exhibits other than the representations, warranties
27 and covenants contained in such documents. This Agreement and related exhibits shall be
28 construed each as a whole, and with reference to one another, according to their fair

1 meaning and intent. Each of the Settling Parties represent that its/their counsel has
2 participated and cooperated in the drafting and preparation of this Agreement and related
3 exhibits; hence, in any construction to be made of this Agreement and/or exhibits, the
4 same shall not be construed against any party on the basis that said party was the drafter.

5 61. Governing Law: This Agreement and the exhibits hereto shall be deemed to have
6 been negotiated, executed and delivered, and to be wholly performed, in the State of California.
7 The rights and obligations of the parties under the Agreement shall be construed and enforced in
8 accordance with, and be governed by, the substantive and procedural laws of the State of
9 California without regard to California's choice of law principles.

10 62. Counterparts: This Agreement may be executed in one or more faxed
11 counterparts, which may be filed with the Court. All executed counterparts, and each of them,
12 shall be deemed to be one and the same instrument. Once available, a complete set of executed
13 counterparts shall be filed with the Court. Copies of the complete set of executed counterparts
14 may be used for all purposes in lieu of the originals, and shall have the same force and effect as
15 the originals.

16 63. Attorneys' Fees, Costs and Expenses: Except as otherwise specifically provided
17 for herein, each party shall bear his/her/its own attorneys' fees, costs and expenses, taxable or
18 otherwise, incurred by them in or arising out of this Action, and shall not seek reimbursement
19 thereof from any other party to this Agreement.

20 64. California Code of Civil Procedure Section 384 Does Not Apply: The Settling
21 Parties agree that California Code of Civil Procedure § 384 does not apply to this Agreement.
22 More specifically, the Settling Parties represent and agree that the Gross Settlement Value
23 represents an amount that has been made available by B&I to effectuate this Settlement, and that
24 this Settlement contemplates a process as set out in Sections IX through XII of this Agreement.
25 Accordingly, no obligation to pay or provide any benefit to any given member of the Settlement
26 Class is created until the Effective Date occurs.

27 65. Calculation of Time: To resolve ambiguity, any reference to a span of "days" in
28 this Agreement should be interpreted as a reference to calendar days unless stated to the contrary.

1 To the extent that a given span of days ends on a national holiday, or weekend, the calculation
2 should be deemed as ending on the next business day, e.g., a calculation that ends on a Saturday
3 will carry forward to the following Monday.

4 66. Publicity: The Named Plaintiff and Class Counsel (including, without limitation,
5 all counsel listed in Paragraph 14) agree that they will not publicize or announce this Settlement
6 in press releases, marketing materials, or on the internet until after the Effective Date, unless
7 required by the Court. After the Effective Date, Named Plaintiff and Class Counsel agree that
8 references to this Settlement on their websites, the internet or in other public communications will
9 not identify the claims asserted (except that reference to the matter as a “wage and hour class
10 action” is not prohibited) or B&I as the defendant, unless the case is being cited and/or mentioned
11 in a filing with any state or federal court in connection with Class Counsel seeking to obtain
12 approval from the court as appointment as class counsel, or in connection with a fee request.

13 67. Continuing Jurisdiction: Except as otherwise specifically provided herein,
14 Department 307 of the Superior Court of the State of California for the County of Los Angeles
15 shall retain jurisdiction to construe, interpret and enforce this Agreement and the Settlement, to
16 supervise all notices, the administration of the Settlement and this Agreement, and the distribution
17 of the settlement funds, and to hear and adjudicate any dispute arising from or related to the
18 Settlement and/or this Agreement.

19 **IN WITNESS WHEREOF**, the undersigned Settling Parties and their duly-authorized
20 representatives accept and agree to the terms of this Agreement and hereby execute it voluntarily
21 and with a full understanding of its consequences.

22
23 _____
24 Vanessa Tate-Robinson
25 Plaintiff, individually, and on behalf
26 of the Settlement Class as Class
27 Representative
28

Date

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on behalf of Defendant B&I, Inc.

Date

APPROVED AS TO CONTENT AND FORM:

**LAW OFFICES OF CARLIN &
BUCHSBAUM LLP**
Gary R. Carlin
Brent Buchsbaum
Jean Buchanan

By: Brent Buchsbaum
Attorneys for Plaintiff Christina
Robinson and the Settlement Class

Date

**LANDEGGER BARON LAW
GROUP**

By: Alfred Landegger
Attorneys for Defendant
B&I, Inc.

Date