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Attorneys for Defendant American Family Housing

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

JAMES VINCENT GUTIERREZ,
individually, and on behalf of all others
similarly situated,

Plaintiff,

vs.

AMERICAN FAMILY HOUSING, a
California corporation; and DOES 1 through
10, inclusive,

Defendants

Case No.: 30-2022-01283058-CU-OE-CXC

**SETTLEMENT AGREEMENT AND
RELEASE OF PAGA CLAIMS**

Complaint filed: September 22, 2022
Trial date: Not Set

1 **SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS**

2 Plaintiff James Vincent Gutierrez (“Plaintiff”), individually and in his capacity as a
3 representative of the State of California on behalf of other allegedly aggrieved employees, and
4 Defendant American Family Housing (“Defendant”), hereby enter into this Settlement Agreement and
5 Release of Private Attorneys General Act of 2004 Claims (“Settlement”) as follows:

6 **DEFINITIONS**

7 1. “**Action**” means and refers to *Gutierrez v. American Family Housing, et al.* Case No.
8 30-2022-01283058-CU-OE-CXC, which is currently pending in the Orange County Superior Court
9 of the State of California.

10 2. The terms “**Agreement**,” “**Settlement**,” and “**Settlement Agreement**” mean this
11 Agreement for PAGA Representative Action Settlement, which the Parties acknowledge sets forth
12 all material terms and conditions of the Settlement between them, and which is subject to Court
13 approval pursuant to Section 2699(1) of the California Labor Code Private Attorneys General Act
14 of 2004, Labor Code §§ 2698, *et seq.*

15 3. “**Court**” means the California Superior Court, County of Orange.

16 4. “**Defendant**” means American Family Housing.

17 5. “**Defendant’s Counsel**” means Berger Kahn, A Law Corporation, and Kahana &
18 Feld LLP.

19 6. “**Effective Date**” The Effective Date of this Agreement shall be the date the Court
20 enters an order approving this Agreement.

21 7. “**Gross Settlement Amount**” or “**GSA**” means a maximum total of 92,500.00,
22 which includes all payments owing as a result of this Agreement and includes: the Net Settlement
23 Amount; Settlement Administration Costs; and PAGA Counsel Attorneys’ Fees and Costs as
24 awarded by the Court.

25 8. “**LWDA Payment**” means a payment to the California Labor Workforce and
26 Development Agency (“LWDA”) in an amount equal to 75% of the Net Settlement Amount.

27 9. “**Net Settlement Amount**” is the Gross Settlement Amount less (1) PAGA
28 Counsel’s Attorneys’ Fees and Costs, and (2) Settlement Administration Costs.

10. **“Operative Complaint”** means and refers to the First Amended Complaint filed on December 8, 2022, in the Action, which supersedes the complaint filed on September 22, 2022. On December 19, 2022, the Court granted Plaintiff’s request to dismiss the class allegations in the Operative Complaint, without prejudice.

11. **“PAGA”** means the California Labor Code Private Attorneys General Act of 2004, codified at California Labor Code §§ 2698 *et seq.*

12. **“PAGA Aggrieved Employee Payment”** means a payment of 25% of the Net Settlement Amount, which the Parties have agreed to pay the Aggrieved Employees in connection with the settlement of the PAGA Claim.

13. **“PAGA Claim”** means the claim for civil penalties under PAGA alleged in the Action and stated in Plaintiff’s September 18, 2022 notice letter to the LWDA.

14. **“PAGA Counsel”** means Moon Law Group, PC.

15. **“PAGA Period”** means September 22, 2021, through August 15, 2023.

16. **“PAGA Settlement Members”** The PAGA Settlement Members (also referred to herein as the **“Aggrieved Employees”**) included in the Settlement shall be all individuals at-issue who are or were employed as hourly and/or non-exempt employees by Defendant in California at any time during the PAGA Period.

17. **“Released Claims”** means all claims or causes of action for civil penalties that were, or could have reasonably been asserted based on the facts in Plaintiff’s September 18, 2022 letter to the LWDA or the Operative Complaint, that arose during the PAGA Period, including but not limited to alleged: failure to pay minimum wages, failure to pay overtime compensation, failure to provide meal periods, failure to pay meal premiums, failure to authorize and permit rest breaks, failure to pay rest premiums, failure to indemnify necessary business expenses, failure to pay all earned wages twice per month, failure to maintain accurate payroll records and records of hours worked and meal periods taken or missed, failure to timely pay final wages at termination, failure to timely pay accrued vacation wages at termination, and failure to provide accurate itemized wage statements.

18. **“Released Parties”** shall mean Defendant, and all of its current, past, present, and/or

future subsidiary companies, affiliates, holding companies, successors, partners, shareholders, insurers, legal representatives, assigns, employees, benefit plan administrators, vendors, officers, directors, attorneys, agents, successors and predecessors in interest, parents, as well as any individual or entity that could be jointly liable with Defendant or any other Released Party.

19. **“Representative Plaintiff” or “Plaintiff”** means Plaintiff James Vincent Gutierrez.

20. **“Settled Claims”** This Settlement is a settlement of all PAGA Claims alleged or which could have been alleged based on the facts identified in Plaintiff’s PAGA notice letter, dated September 18, 2022, and/or in the Operative Complaint, which arose during the PAGA Period.

21. **“Settlement Administrator”** shall mean Phoenix Settlement Administrators, a neutral third-party administrator chosen by the Parties, subject to approval by the Court.

RECITALS

22. On September 18, 2022, Plaintiff sent a letter to the LWDA and Defendant giving notice of his intent to pursue a representative action pursuant to PAGA on behalf of himself and the State of California, as well as on behalf of a proposed group of aggrieved employees (“PAGA Notice”). On September 22, 2022, Plaintiff filed a class action complaint in the Action, alleging that Defendant failed to properly pay minimum wages, overtime wages, provide lawful meal periods or compensation in lieu thereof, authorize or permit lawful rest breaks or provide compensation in lieu thereof, indemnify necessary business expenses, timely pay all wages at the termination of employment, and provide accurate itemized wage statements.

23. On December 8, 2022, Plaintiff filed a first amended complaint in the Action to add the PAGA Claim.

24. The PAGA Claim seeks civil penalties and an award of reasonable attorneys’ fees and costs.

25. Prior to mediation, Defendant provided Plaintiff with a copy of the arbitration agreement containing a class action waiver signed by Plaintiff. On December 19, 2022, the Court granted Plaintiff’s request to dismiss the class allegations in the Operative Complaint, without prejudice. The Parties therefore agreed to attend mediation and enter into this Settlement as to the PAGA Claim and Plaintiff’s individual claims only.

1 26. The Parties have conducted a thorough investigation into the facts of the Action.
2 This included exchanging data and information as well as documents relating to the underlying
3 alleged violations. After attending a mediation with Marc Feder, Esq., on August 15, 2023, the
4 Parties reached the Settlement described in this Agreement. The Parties understand, acknowledge,
5 and agree that this Settlement Agreement constitutes a compromise of Plaintiff's Representative and
6 the Aggrieved Employees' PAGA Claim, and that it is the desire and intention of the Parties to
7 effectuate a final and complete resolution of the PAGA Claim that the Representative Plaintiff and
8 the Aggrieved Employees have against Defendant or any persons or companies affiliated with
9 Defendant.

10 27. Defendant denies any liability or wrongdoing of any kind associated with the claims
11 alleged in the Action, denies liability for the Released Claims, and further denies that the Action is
12 appropriate for representative treatment for any purpose other than settling this Action. Defendant
13 contends, among other things, that it has complied at all times with the California Labor Code and
14 the related applicable Industrial Welfare Commission Wage Orders, all other state and federal wage
15 laws, and further contend that all of their respective employees were and are paid properly and that
16 the Action is without merit. Defendant has denied and continues to deny each and every material
17 factual allegation and all alleged claims asserted against it in the Action.

18 28. The Parties recognize that the issues presented in the Action are likely only to be
19 resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause
20 inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits
21 of litigation. The Parties have accounted for the risk and uncertainty of the outcome inherent in any
22 litigation.

23 29. Based on their own independent investigations and evaluations, the Parties and their
24 respective counsel are of the opinion that the settlement for the consideration and on the terms set
25 forth in this Agreement is fair, reasonable, adequate, and is in the best interests of Plaintiff,
26 Aggrieved Employees, the State of California, and Defendant in light of all known facts and
27 circumstances and the risks inherent in litigation, including the potential appellate issues. Further,
28 PAGA Counsel believes that the settlement amount entered into is in the best interests of the

Aggrieved Employees and the State of California, and is fair, reasonable, and adequate given the inherent risk of litigation.

30. The Parties enter into this Settlement Agreement on a conditional basis. In the event the Court does not approve the Settlement, this Settlement Agreement will be deemed null and void *ab initio* and will be of no force or effect whatsoever, and will not be referred to or utilized for any purpose whatsoever.

31. Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations upon all legal, procedural and factual grounds should this Settlement Agreement not become final.

32. The Parties stipulate and agree to the following terms of this Settlement Agreement with the intent that this Agreement finally disposes of the Action with prejudice.

TERMS AND CONDITIONS

33. **Settlement Payments and Calculation of Claims.** The following table summarizes the allocation of the Gross Settlement Amount:

<u>Gross Settlement Amount of \$92,500.00 Is Broken Down As Follows:</u>
• PAGA Counsel Attorneys' Fees not to exceed 33 1/3% (or \$30,833.33). • PAGA Counsel Costs not to exceed \$16,000.00. • Settlement Administration Costs not to exceed \$8,000.00 • Remaining Net Settlement Amount: ○ 25% of the Net Settlement Amount for the PAGA Aggrieved Employee Payment ○ 75% of the Net Settlement Amount for the LWDA Payment

34. Subject to Court approval of the Settlement and the conditions specified in this Agreement, and in consideration of the mutual covenants and promises set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount of \$92,500.00. The Gross Settlement Amount includes, but is not limited to, payments to be made to PAGA Counsel's attorneys' fees and costs, LWDA Payment, and Settlement Administration Costs.

35. **Escalator Clause:** The Parties agree that as of August 15, 2023, the number of pay periods worked by PAGA Settlement Members is approximately 3,119. If the actual number of pay

1 periods during the PAGA Period is more than 10% greater than this number (i.e., if there are more
2 than 3,431 pay periods in the PAGA Period), Defendant shall increase the settlement payment in
3 proportion to the increase in pay periods beyond 3,431 (e.g., if the number of pay periods is higher
4 by 11% the Gross Settlement Amount will increase by one percent (1%)). Defendant also retains
5 the option of shortening the PAGA Period end date to where the total pay periods do not exceed
6 110% of 3,119.

7 36. The Parties agree, subject to Court approval, that the Gross Settlement Amount shall
8 be apportioned as follows:

9 a. Settlement Administration Fees And Costs: The fees and costs associated
10 with settlement administration (e.g., preparing and mailing payments to the Aggrieved Employees,
11 Spanish translation of the PAGA Settlement Notice, tax documentation, etc.) (the “**Settlement**
12 **Administration Costs**”) will be paid from the Gross Settlement Amount and are estimated to be up
13 to \$8,000.00. The Parties agree to use Phoenix Settlement Administrators as the Settlement
14 Administrator. Any unused portion of the Settlement Administration Costs shall be distributed to
15 the Aggrieved Employees and LWDA on a pro-rata basis.

16 b. PAGA Counsel’s Attorneys’ Fees and Costs: The Parties agree that, subject
17 to the Court’s review and approval, PAGA Counsel will be paid from the Gross Settlement Amount
18 an amount that is up to 33 1/3% of the Gross Settlement Amount for attorneys’ fees (\$30,833.33)
19 plus actual litigation costs, not to exceed \$16,000.00. Payment of PAGA Counsel’s attorneys’ fees
20 and costs will be reflected in an IRS Form 1099 to PAGA Counsel, who shall assume full
21 responsibility and liability for the payment of taxes due on such payments.

22 c. Net Settlement Amount: After deducting PAGA Counsel’s Attorneys’ Fees
23 and Costs, and Settlement Administration Costs from the Gross Settlement Amount, the remaining
24 amount will comprise the Net Settlement Amount. The Net Settlement Amount is comprised of the
25 LWDA Payment and the PAGA Aggrieved Employee Payment. The Net Settlement Amount shall
26 be allocated 75% to the LWDA Payment. The remaining 25% of the Net Settlement Amount, shall
27 be allocated to the PAGA Aggrieved Employee Payment to be paid to the Aggrieved Employees on
28 a *pro rata* basis as noted below, which shall be referred to as the Aggrieved Employees’ “**Individual**

1 **PAGA Payment.”**

2 d. Plaintiff's Individual Settlement: Plaintiff and Defendant have entered into
3 a separate settlement and general release of Plaintiff's individual claims. Plaintiff is entitled to no
4 further payment pursuant to this Agreement other than the portion that he is entitled to as a PAGA
5 Settlement Member.

6 e. Taxes and Reporting: The Individual PAGA Payments will be treated as non-
7 wage income to the Aggrieved Employees and reported by the Settlement Administrator on IRS
8 Form 1099. Nothing in this Settlement is intended to constitute legal advice regarding federal, state
9 and/or local tax obligations. Plaintiff acknowledges that he has obtained no tax advice from
10 Defendant and that neither Defendant nor Defendant's Counsel has made any representation
11 concerning the tax consequences, if any, of the Settlement payment in this Agreement. Defendant
12 is not responsible for any employee tax obligations regarding the allocation of the Settlement
13 payment.

14 f. No Effect on Employee Benefits: The payments made to Plaintiff and other
15 PAGA Settlement Members pursuant to this Agreement are not intended to count as earnings by
16 Plaintiff or the PAGA Settlement Members, and will not entitle Plaintiff or the PAGA Settlement
17 Members to any additional compensation and/or benefits under any retirement, benefit, bonus,
18 incentive, pension, welfare, and/or any other plan of or sponsored by Defendant. Defendant shall
19 not make as part of this Agreement, nor be required to make, any deductions, nor pay any monthly
20 contributions for any insurance, retirement, bonuses, 403(b), or profit sharing plans related to
21 monies paid as a result of this Agreement. The Individual PAGA Payments paid to PAGA
22 Settlement Members shall not have any effect on the eligibility for, or calculation of, any of the
23 employee benefits (e.g., bonuses, vacation, holiday pay, retirement plans, etc.) of PAGA Settlement
24 Members. The Parties agree that any Individual PAGA Payments paid to PAGA Settlement
25 Members under the terms of this Agreement do not represent any modification of PAGA Settlement
26 Members' previously credited hours of service or other eligibility criteria under an employee benefit
27 plan sponsored by Defendant. Further, any Individual PAGA Payments are penalties and thus shall
28 not be considered compensation in any year for purposes of determining eligibility for, or benefit

1 accrual within, and employee benefit plan or bonus plan sponsored by Defendant.

2 37. **Release By PAGA Settlement Members**

3 a. **PAGA Settlement Members Limited Release.** Each PAGA Settlement
4 Member (including Plaintiff) shall, for the PAGA Period, fully release and forever discharge
5 Released Parties from any and all Released Claims. The State of California shall fully release and
6 forever discharge Released Parties from the Released Claims as they pertain to PAGA Settlement
7 Members (including Plaintiff).

8 b. **No Claims Based On Agreement.** No Aggrieved Employee will have any
9 claim against any of the Released Parties, Defendant's Counsel, the Representative Plaintiff, or
10 PAGA Counsel, based on errors in administering claims or performing the mailing and skip-tracing
11 requirements of the Settlement Administrator under this Agreement.

12 38. **Settlement Funding**

13 Subject to Court approval of the Settlement, the court-approved PAGA Counsel's Attorneys
14 Fees and Costs, Settlement Administration Costs, LWDA Payment, and the PAGA Aggrieved
15 Employee Payment to be paid to the Aggrieved Employees will be paid within thirty (30) days after
16 a court approves the PAGA Settlement.

17 39. The Settlement Administrator will establish a Qualified Settlement Fund within the
18 meaning of Treasury Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.* for the benefit of Aggrieved
19 Employees and the State of California. Defendant shall transmit the Settlement payments due under
20 this Agreement into the established Qualified Settlement Fund.

21 40. **PAGA List**

22 Within thirty (30) days after the Effective Date, Defendant will compile a PAGA Settlement
23 Member list containing the following information for each PAGA Settlement Member: (1) name;
24 (2) last known home address and telephone number; (3) number of pay periods as a PAGA
25 Settlement Member during the PAGA Period; and (4) social security number. The PAGA
26 Settlement Member list will be produced confidentially, and can only be used by the parties and the
27 settlement administrator for purposes of settling the case and to effectuate the terms of the
28 settlement.

1 41. **Allocation and Calculation of the Individual PAGA Payments.**

2 The PAGA Settlement Members shall receive a pro-rata share of the PAGA Aggrieved
3 Employee Payment, which will be calculated using a ratio of (a) the number of pay periods worked
4 by the PAGA Settlement Member during the PAGA Period; to (b) the total number of pay periods
5 worked by all PAGA Settlement Members during the PAGA Period.

6 42. **List Of Individual PAGA Payment Amounts.**

7 Within seven (7) days after the Settlement Administrator receives the PAGA List, the
8 Settlement Administrator will provide to PAGA Counsel and Defendant's Counsel a Proceeds List
9 reflecting the Individual PAGA Payment amount for each Aggrieved Employee ("**Proceeds List**").
10 The Proceeds List provided to PAGA Counsel will not include the Aggrieved Employees' names,
11 social security numbers or contact information.

12 43. **Individual PAGA Payments to Aggrieved Employees.**

13 a. No later than seven (7) days after the GSA is fully funded, the Settlement
14 Administrator will mail to each Aggrieved Employee, via first-class United States Mail, the
15 following: (a) the PAGA Settlement Notice in English and Spanish, the English version of which is
16 attached as Exhibit A to this Agreement; and (b) their Individual PAGA Payment (collectively, the
17 "**PAGA Packet**").

18 b. Prior to mailing, the Settlement Administrator will update all addresses using
19 the National Change of Address System (NCOA). In the event that a PAGA Packet is returned to
20 the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send
21 the PAGA Packet to the forwarding address identified. If no forwarding address is provided, then
22 the Settlement Administrator will promptly conduct a "standard search," sometimes called, "Skip
23 Trace" or "Credit Header" searches, to locate a better address. If a better address is found, the
24 Settlement Administrator will promptly re-send the PAGA Packet. If a better address is not found
25 or the PAGA Packet is ultimately returned without a forwarding address, neither the Settlement
26 Administrator, Defendant, or PAGA Counsel shall be required to take further action.

27 c. Aggrieved Employees shall have 180 calendar days after the date the PAGA
28 Packet is mailed to them to cash their settlement payment checks. If any Aggrieved Employee's

1 check is not cashed within that period, the settlement payment check will be voided and a stop-
2 payment will be issued. Neither Defendant, Defendant's Counsel, Plaintiff, nor PAGA Counsel will
3 have any liability for lost or stolen settlement payment checks, forged signatures on settlement
4 payment checks, unauthorized negotiation of settlement payment checks or failure to timely cash a
5 settlement payment check within the 180-day period.

6 d. Any unpaid cash residue or unclaimed Aggrieved Employee funds, plus any
7 accrued interest that has not otherwise been distributed pursuant to order of the Court, shall be
8 transmitted to California State Controller's Office for Unclaimed Property in the name of each
9 Aggrieved Employee who failed to cash their Individual PAGA Payment prior to the void date.

10 44. **Payments Of Attorneys' Fees And Costs, and the LWDA Payment.**

11 a. No later than seven (7) days after the GSA is fully funded, the Settlement
12 Administrator will pay from the Gross Settlement Amount to PAGA Counsel its Court-approved
13 Attorneys' Fees and Costs, settlement administration costs, LWDA Payment, and Aggrieved
14 Employees' recovery.

15 45. **Deadlines.**

16 If any deadline specified in this Agreement falls on a Saturday, Sunday, or Court holiday,
17 the deadline will be automatically extended to the next regular business day. Unless specified
18 otherwise, all references to "days" shall mean calendar days.

19 46. **Enforcement and Continuing Jurisdiction of the Court.**

20 Pursuant to the Parties agreement, this Settlement Agreement will be approved by the Court
21 and will be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6.
22 Even after the entry of the Order approving the Settlement, this Court will have and retain continuing
23 jurisdiction over the Action and over all Parties and the Aggrieved Employees, to the fullest extent
24 necessary or convenient to enforce and effectuate the terms and intent of this Settlement Agreement
25 and all matters provided for in it, and to interpret it.

26 47. **Mutual Full Cooperation.**

27 The Parties will fully cooperate with each other to accomplish the terms of this Settlement
28 Agreement, including, but not limited to, execution of such documents and taking such other action

1 as may be reasonably necessary or convenient to implement it.

2 48. **Non-Admission Of Liability.**

3 The Parties enter into this Agreement to resolve the dispute that has arisen between them
4 and to avoid the burden, expense and risk of continued litigation. In entering into this Agreement,
5 Defendant does not admit, and specifically denies, that it has violated any federal, state, or local
6 law; violated any regulations or guidelines promulgated pursuant to any statute or any other
7 applicable laws, regulations or legal requirements; violated or breached any duty; engaged in any
8 misrepresentation or deception; or engaged in any other unlawful conduct with respect to the Action.
9 Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected
10 with it, shall be construed as an admission or concession by Defendant of any such violations or
11 failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms
12 of this Agreement, this Agreement and its terms and provisions shall not be offered or received as
13 evidence in any action or proceeding to establish any liability or admission on the part of Defendant
14 or to establish the existence of any condition constituting a violation of, or a non-compliance with,
15 federal, state, local or other applicable law.

16 49. **Effective Date Of Defendant's Obligations Under This Agreement.**

17 Defendant's obligations under this Settlement Agreement will become final and effective
18 only upon the occurrence of the Effective Date. In the event that any of the conditions specified in
19 this Settlement Agreement are not satisfied, or in the event that this Settlement does not obtain
20 approval of the Court for any reason, all matters covered by this Agreement will be null and void.
21 In such event, neither this Agreement nor any negotiations leading to this Settlement will be used
22 or construed by or against any Party as a determination, admission, or concession of any issue of
23 law or fact in the litigation; and the Parties do not waive, and instead expressly reserve, their
24 respective rights regarding the prosecution and defense of the Action, including all available
25 defenses and affirmative defenses, and to challenge any claim, as if this Settlement Agreement never
26 existed.

27 50. **Nullification.**

28 If: (1) the Court should for any reason fail to approve the Settlement or dismiss the class

1 action claims; or (2) the Court's Order approving the Settlement is reversed or modified as to any
2 material term as defined above, or declared or rendered void as to any material term as defined
3 above, then (a) the Settlement Agreement shall become null and void; (b) the Parties will revert to
4 their respective positions immediately prior to reaching the Settlement; and (c) Defendant will be
5 responsible for any Settlement Administration Costs.

6 51. **Invalidation.**

7 Invalidation of any material term of this Settlement Agreement will invalidate this
8 Agreement in its entirety unless the Parties subsequently agree in writing that the remaining
9 provisions will remain in full force and effect.

10 52. **Confidentiality/No Publicity.**

11 Representative Plaintiff and his counsel agree that the terms of this Settlement Agreement
12 (including, but not limited to, the Gross Settlement Amount), the negotiations leading to the
13 execution of this Settlement Agreement, and the Settlement Agreement itself, shall not be discussed
14 with or publicized or promoted to the media (including, without limitation, legal periodicals and
15 publications such as "Jury Verdicts," disclosure of the Settlement Agreement on any web site of
16 Representative Plaintiff's counsel or any other website, or on any blogs, articles, or on any social
17 media platforms or channels), or the public at large, without the advance written consent of
18 Defendant. The Parties intend this paragraph to prohibit Plaintiff and his counsel from discussing,
19 answering questions about, promoting or publicizing the Settlement Agreement, its terms, or the
20 negotiations leading to the Settlement Agreement with anyone other than the Court or those
21 individuals necessary to effectuate the terms of the Agreement. Notwithstanding the foregoing,
22 Representative Plaintiff and his counsel (1) may tell the public in general only that certain claims
23 "have been resolved by the Parties;" and (2) may disclose the terms of the Settlement Agreement
24 (a) in appropriate filings with the Court in this case; (b) where required by law (e.g., income tax
25 returns); and (c) to accountants or other tax professionals for the purpose of preparing tax returns.
26 In addition, Plaintiff's counsel may respond to questions received from, and discuss any aspects of
27 this Agreement with Aggrieved Employees.

28 53. **Entire Agreement.**

1 This Settlement Agreement including the attached Exhibit A, which is incorporated by
2 reference, and Plaintiff's separate individual settlement, constitute the entire integrated agreement
3 between the Parties relating to the Action, and no oral representations, warranties, or inducements
4 have been made to any party concerning this Settlement Agreement other than the representations,
5 warranties, and covenants contained and memorialized in this Settlement Agreement.

6 54. **Authorization To Act.**

7 PAGA Counsel warrants and represents that they are authorized by the Representative
8 Plaintiff, and counsel of record for Defendant warrants that they are authorized by Defendant, to
9 take all appropriate action required or permitted to be taken by such Parties pursuant to this
10 Settlement Agreement to effectuate its terms, and to execute any other documents required to
11 effectuate the terms of this Settlement Agreement, except for any documents, including but not
12 limited to this Settlement Agreement, that are required to be executed by the Parties.

13 55. **Modification Only In Writing.**

14 This Settlement Agreement may be amended or modified only by a written instrument signed
15 by all Parties or their successors in interest.

16 56. **Binding On Successors.**

17 This Settlement Agreement is binding upon and will inure to the benefit of the Parties to this
18 Agreement, as well as their respective attorneys, past, present, and future predecessors, successors,
19 shareholders, officers, directors, employees, agents, trustees, representatives, administrators,
20 fiduciaries, assigns, insurers, executors, partners, parent corporations, subsidiaries, and related or
21 affiliated entities.

22 57. **No Prior Assignments.**

23 The Aggrieved Employees are deemed by operation of the Order approving the Settlement
24 to represent, covenant, and warrant that they have not directly or indirectly assigned, transferred,
25 encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any
26 liability, claim, demand, cause of action, or rights released and discharged by this Agreement.

27 58. **Governing Law.**

28 All terms of this Settlement Agreement will be governed by and interpreted according to the

1 laws of the State of California, without giving effect to conflicts of laws principles.

2 59. **Counterparts.**

3 This Settlement Agreement may be executed in one or more counterparts. All executed
4 counterparts and each of them will be deemed to be one and the same instrument. Counsel for the
5 Parties will exchange among themselves signed counterparts.

6 60. **Headings For Convenience Only.**

7 The descriptive headings of any paragraphs or sections of this Settlement Agreement are
8 inserted for convenience of reference only and do not constitute a part of this Settlement Agreement.

9 61. **Construction Of This Agreement.**

10 The Parties agree that the terms and conditions of this Settlement Agreement are the result
11 of arms-length negotiations between the Parties and that this Settlement Agreement will not be
12 construed in favor of or against any Party by reason of the extent to which any Party, or his or its
13 counsel participated in the drafting of this Agreement. This Settlement Agreement constitutes the
14 entire agreement between the Parties. Except as expressly provided in this Agreement, this
15 Settlement Agreement has not been executed in reliance upon any other oral or written
16 representations or terms and no such extrinsic oral or written representations or terms will modify,
17 vary or contradict the terms of this Settlement Agreement. In entering this Settlement Agreement,
18 the Parties explicitly recognize California Civil Code section 1625 and California Code of Civil
19 Procedure section 1856(a), which provide that a written agreement is to be construed according to
20 its terms and may not be varied or contradicted by extrinsic evidence. The Representative Plaintiff
21 and Defendant had available to them the advice and assistance of independent counsel. As such,
22 neither Representative Plaintiff nor Defendant may claim that any ambiguity in this Settlement
23 Agreement should be construed against the other.

24 62. **Corporate Signatories.**

25 Any person executing this Settlement Agreement or any related document on behalf of a
26 corporate signatory warrants and promises for the benefit of all Parties that such person has been
27 duly authorized by such corporation to execute this Settlement Agreement or any related document.

28 63. **Representation By Counsel.**

All of the Parties hereto acknowledge that they have been represented by counsel throughout all negotiations which preceded the execution of this Settlement Agreement and that this Agreement has been executed with the consent and advice of counsel.

64. **Attorneys' Fees And Costs.**

Except as otherwise provided in this Agreement, the Parties will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of this Action and will not seek reimbursement thereof from any Party to this Settlement Agreement. In the event of a proven breach of this Agreement, the breaching party will be required to pay the prevailing Party's reasonable attorneys' fees and costs incurred in enforcing this Agreement.

IT IS SO AGREED:

Dated: 9/19/2023

PLAINTIFF JAMES VINCENT GUTIERREZ

DocuSigned by:

James Gutierrez

DD62795D5224472...

James Vincent Gutierrez

Dated: 9/18/2023

DEFENDANT AMERICAN FAMILY HOUSING

Milo Peinemann

Myles A. Peinemann II
Chief Executive Officer
American Family Housing

APPROVED AS TO FORM ONLY:

Dated: 9/20/2023

MOON LAW GROUP, PC

Kane Moon

Enzo Nabiev
Attorneys for Plaintiff

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APPROVED AS TO FORM ONLY:

Dated: _____

Erin Ezra
Mallory Yumol
Attorneys for Defendant