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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF RIVERSIDE**

11
12 CHRISTIAN MATTHEW MARTINEZ, JOEL
SUAREZ, and HUGO GAMEZ, as aggrieved
13 employees and on behalf of all other aggrieved
employees under the Labor Code Private
14 Attorney's General Act of 2004,

15
16 Plaintiffs,

17 v.

18 BUILDER SERVICES GROUP, INC., dba
TRUTEAM OF CALIFORNIA, a Florida
19 Corporation; ERIK BRAND, an individual;
JEFFREY UTEGG, an individual; and DOES 1
20 through 100, inclusive,

21 Defendants.
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27
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Case No. CVRI2305906

PAGA SETTLEMENT AGREEMENT

Consolidated/Related Actions:

- Suarez v. Builder Services Group; San Bernardino Superior Court; Case No. CIVSB2316043;
- Gamez v. Builder Services Group.; Sacramento Superior Court; Case No. 23CV009171
- Martinez v. Builder Services Group, *et al.*, Riverside Superior Court, Case No. CVRI2304542

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1 This PAGA Settlement Agreement (“Agreement” or “Settlement”) is made by and
2 between plaintiffs Hugo Gamez, Joel Suarez, and Christian Matthew Martinez (hereafter
3 collectively “Plaintiffs”) and defendant Builder Services Group, Inc. (“Defendant”). The
4 Agreement refers to Plaintiffs and Defendant collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Actions” collectively refers to the following four separate wage-and-hour actions
brought by Plaintiffs Joel Suarez, Christian Martinez and Hugo Gamez:

- 7 • *Suarez v. Builder Services Group, Inc.*, San Bernardino Superior Court, Case
8 No. CIVSB2316043 (“*Suarez Action*”);
- 9 • *Martinez v. Builder Services Group, Inc. dba TruTeam of California, Erik Brand*
10 *and Jeffrey Utegg*, Riverside Superior Court, Case Nos. CVRI2304542 and
11 CVRI2305906 (“*Martinez Action*”) and;
- 12 • *Gamez v. Builder Services Group, Inc dba TruTeam of California; TopBuild*
13 *Home Services, Inc., TopBuild Support Services, Inc. and American National*
14 *Insulation, Inc.*, Sacramento Superior Court, Case No. 23CV009171 (“*Gamez*
Action”).

15 1.2. “Administrator” means Simpluris, Inc., the neutral entity the Parties have agreed
16 to appoint to administer the Settlement.

17 1.3. “Administration Expenses Payment” means the amount the Administrator will be
18 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
19 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
with approval of the Settlement.

20 1.4. “Aggrieved Employees” means all persons employed by Defendant and worked as
21 a non-exempt employee in California at any time during the PAGA Period.

22 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information
23 in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing
24 address, Social Security number, and number of PAGA Pay Periods.

25 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation
26 and search for current Aggrieved Employee mailing addresses using all reasonably available
27 sources, methods and means including, but not limited to, the National Change of Address
28 database, skip traces, and direct contact by the Administrator with Aggrieved Employees.

1 1.7. “Consolidated Action” or “Consolidated Lawsuit” means and refers to the related
2 and/or consolidated actions of *Martinez v. Builder Services Group, Inc. dba TruTeam of*
3 *California, Erik Brand and Jeffrey Utegg*, Riverside Superior Court, Case No. CVRI2304542 and
4 CVRI2305906 (“Martinez Action”), *Suarez v. Builder Services Group, Inc.*, San Bernardino
5 Superior Court, Case No. CIVSB2316043 (“Suarez Action”), and *Gamez v. Builder Services*
6 *Group, Inc dba TruTeam of California; TopBuild Home Services, Inc., TopBuild Support*
7 *Services, Inc. American National Insulation, Inc., TrueTeam of California, Inc., and Capital*
8 *Insulation, Inc.* Sacramento Superior Court, Case No. 23CV009171 (“Gamez Action”). Each of
these actions are further defined and discussed in Paragraph 2.1 below.

9 1.8. “Consolidated Complaint” refers to the operative First Amended Complaint to be
10 filed in the Consolidated Action, which will consolidate and incorporate the *Martinez Action*,
11 *Suarez Action* and *Gamez Action* into the *Martinez Action*, and will incorporate all claims alleged
12 in all actions therein, such that the Consolidated Complaint will allege all of the Released PAGA
Claims.

13 1.9. “Court” means the Superior Court of California, County of Riverside.

14 1.10. “Defendant” means named Defendant Builder Services Group, Inc.

15 1.11. “Defense Counsel” means Jon Daryanani and Jill L. Ripke of Squire Patton Boggs
16 (US) LLP.

17 1.12. “Effective Date” means the date by when both of the following have occurred: (a)
18 the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment
19 is final. The Judgment is final as of the latest of the following occurrences: (i) if no objections to
20 the settlement are filed, no third party intervenes, and the LWDA does not comment on the
21 settlement, the day the Court enters Judgment; (ii) if any objection to the settlement is filed, any
22 party intervenes, or the LWDA comments on the settlement, but no appeal of the Judgment is
23 filed, the day after the deadline for filing a notice of appeal from the Judgment; (iii) if there is an
24 appeal of the Court’s Judgment, the latest of the date the Judgment is affirmed on appeal and a
25 remittitur is issued, the date of dismissal of such appeal, or the expiration of the time to file a
26 petition for writ of certiorari to the California Supreme Court; or (iv) if a petition for writ of
certiorari to the California Supreme Court is filed, the date of denial of the petition for writ of
certiorari, or the date the Judgment is affirmed in the event the petition is granted.

27 1.13. “Gross Settlement Amount” means \$2,445,000.00 which is the total amount
28

1 Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross
2 Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment,
3 PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the
4 Administrator's Expenses Payment.

5 1.14. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of
6 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved
7 Employee worked during the PAGA Period.

8 1.15. "Judgment" means the judgment entered by the Court based upon the Court's
9 approval of the Settlement.

10 1.16. "LWDA" means the California Labor and Workforce Development Agency, the
11 agency entitled, under Labor Code section 2699, subd. (i).

12 1.17. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the
13 LWDA under Labor Code section 2699, subd. (i).

14 1.18. "PAGA Counsel" means David Glenn Spivak and Caroline Tahmassian of The
15 Spivak Law Firm, Louis M. Benowitz of Benowitz Law Corporation, David Bibiyan and Vedang
16 J. Patel of Bibiyan Law Group, P.C., and Brian J. Mankin and Peter J. Carlson of Lauby, Mankin
17 & Lauby LLP, the attorneys representing the Plaintiffs in the Action.

18 1.19. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses
19 Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable
20 attorneys' fees and expenses, respectively, incurred to prosecute the Action.

21 1.20. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee
22 worked for Defendant for at least one day during the PAGA Period.

23 1.21. "PAGA Period" means the period from May 8, 2022 through February 2, 2025.

24 1.22. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

25 1.23. "PAGA Notices" means Plaintiff Suarez's May 8, 2023, Plaintiff Martinez's
26 August 23, 2023 and Plaintiff Gamez's September 26, 2023 letters to Defendant and the LWDA
27 providing notice pursuant to Labor Code section 2699.3, subd.(a).

28 1.24. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from
the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA
in settlement of PAGA claims. The PAGA Penalties is the Gross Settlement Amount, less the
following payments in the amounts approved by the Court: PAGA Counsel Fees Payment, PAGA

Counsel Litigation Expenses Payment, and the Administration Expenses Payment.

1.25. “Plaintiffs” mean Hugo Gamez, Joel Suarez, and Christian Matthew Martinez, the named Plaintiffs in the Action.

1.26. “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.

1.27. “Released PAGA Claims” means the claims being released as described in Paragraph 5 below.

1.28. “Released Parties” means: Defendant and its officers, directors, employees, and agents. For the avoidance of doubt, because Erik Brand and Jeff Utegg were named as defendants, they are also included in the definition of Released Parties.

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

2. RECITALS.

2.1. The following is a summary of the *Suarez Action*, *Martinez Action*, and *Gamez Action*.

2.1.1. *Suarez Action*: Plaintiff Suarez filed his operative PAGA-only complaint in San Bernardino Superior Court on July 13, 2023, alleging PAGA claims for: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to pay vested vacation, (7) failure to timely pay wages, (8) failure to timely pay final wages, and (9) failure to provide accurate itemized wage statements (“*Suarez Action*”). The Parties shall ask the Court to stay the case pending the Approval Order in the Consolidated Action. After the Effective Date in the Consolidated Action, the Suarez Action will be dismissed with prejudice.

2.1.2. *Martinez Action*: On or about August 29, 2023, Plaintiff Martinez filed a wage and hour putative class action in Riverside County Superior Court (CVRI2304542) for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) waiting time penalties; (6) wage statement violations; (7) failure to timely pay wages; (8) violation of Labor Code section 227.3; and (9) unfair competition. On approximately April 2, 2024, following Defendant’s Motion to Compel Arbitration, the court dismissed Plaintiff Martinez’ class claims. This case is referred to as the “*Martinez Individual Case*.” On or about

1 November 1, 2023, Plaintiff Martinez filed a second action in Riverside Superior Court (Case
2 No. CVRI2305906) pursuant PAGA against Defendant for civil penalties (collectively, the
3 “*Martinez Action*”). As discussed below, the *Martinez Action* will be amended to include the
4 *Suarez Action* and *Gamez Action* and to incorporate all claims alleged in all actions therein.
5 Martinez’s individual wage and hour claims in the *Martinez* Individual Case, Riverside Superior
6 Court, Case No. CVRI2304542, will be dismissed with prejudice. In connection with filing the
7 Consolidated Complaint, Plaintiff Martinez will dismiss the claims against Erik Brand and
8 Jeffrey Utegg without prejudice in the *Martinez Action*. Judgment in the Consolidated Action
will specifically include a dismissal with prejudice of Erik Brand and Jeffrey Utegg.

9 2.1.3. *Gamez Action*: Plaintiff Gamez filed his putative class action lawsuit in
10 the Sacramento County Superior Court on September 27, 2023. On December 6, 2023, Plaintiff
11 Gamez filed a First Amended Complaint adding the PAGA cause of action (“*Gamez Action*”).
12 Gamez will request a dismissal *without* prejudice of all pending putative class claims against all
13 defendants in the *Gamez* case, Sacramento Superior Court, Case No. 23CV009171. Such a
14 dismissal must be entered by the Court prior to Defendant’s obligation to make payment of the
15 Gross Settlement Amount or the amounts for the Individual Settlements. The Parties shall ask
16 the Court to stay the case pending the Approval Order in the Consolidated Action. After the
Effective Date in the Consolidated Action, the *Gamez* PAGA claims and Gamez’s individual
claims will be dismissed with prejudice.

17 2.2. As part of the request for settlement approval, Plaintiff Martinez will file a
18 Consolidated Complaint against Builder Services Group, Inc. in the *Martinez Action* to add
19 Plaintiff Gamez and Plaintiff Suarez as named Plaintiffs and to allege the Released PAGA Claims.
20 The Consolidated Complaint in the *Martinez Action* will be the operative complaint. The
21 Consolidated Complaint also will reference (and attach as exhibits) the three LWDA notices filed
22 by Suarez, Martinez and Gamez, and will assert all claims set forth in each of the three LWDA
23 notices. Plaintiffs will provide Defendant with a draft of the Consolidated Complaint for review
24 and comment prior to filing with the *Martinez* court. The Parties will enter a stipulation to allow
25 Plaintiffs to file the Consolidated Complaint in the *Martinez Action*. Plaintiff Martinez must take
26 all steps to effectuate the filing of the Consolidated Complaint as required by the Court, if
27 additional steps are needed in addition to filing the stipulation. Defendant’s obligation to file an
28 answer to the Consolidated Complaint is stayed pending the hearing on approval of the Settlement

1 and will be mooted by Judgment in the Action.

2 2.3. Upon filing the Consolidated Complaint, entry of the Approval Order by the
3 Court and the Effective Date, Plaintiffs Gamez and Suarez shall take all steps necessary to
4 effectuate the dismissals set forth above. Obtaining dismissals in the *Martinez Individual Case*,
5 the *Gamez Action* and *Suarez Action* are material terms of this Agreement. Should the courts in
6 the *Gamez Action*, the *Suarez Action* or in the *Martinez Individual Case* decline to grant the
7 requested dismissals, the Parties shall meet and confer about a mutually acceptable method to
8 request the court close the Actions in a manner consistent with the terms of this Settlement.

9 2.4. Defendant denies the allegations in the Consolidated Complaint, denies any
10 failure to comply with the laws identified in the Consolidated Complaint and denies any and all
11 liability for the causes of action alleged in the Consolidated Complaint or the separate complaints
12 filed in the *Gamez*, *Suarez* and *Martinez Actions*.

13 2.5. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave timely written
14 notice to Defendant and the LWDA by sending the PAGA Notices.

15 2.6. On December 4, 2024, the Parties participated in an all-day mediation presided
16 over by the Hon. Carl West (ret.) which led to this Agreement to settle the Consolidated Action.

17 2.7. Prior to mediation, Plaintiffs obtained, through informal discovery, the number of
18 comparable employees, the number of pay periods, average rates of pay, sample time records,
19 sample payroll records, written policies, and related information.

20 2.8. The Parties, PAGA Counsel and Defense Counsel represent that they are not
21 aware of any other pending matter or action asserting claims that will be extinguished or affected
22 by the Settlement other than the Individual Settlement Agreements that they will execute
23 separately with Defendants.

24 2.9. Plaintiff Suarez, Plaintiff Martinez, and Plaintiff Gamez along with Aggrieved
25 Employees Fernando Rodriguez, Francisco Rodriguez, Juan Rodriguez, and Julio Rodriquez,
26 shall enter into separate confidential individual Settlement Agreements and Release of All Claims
27 (“Individual Settlement Agreements”) with Defendant for a payment to each individual to settle
28 their individual wage and hour claims and a California Civil Code section 1542 release, in the
following amounts:

- Plaintiff Suarez in the amount of \$15,000.00.
- Plaintiff Martinez in the amount of \$15,000.00.
- Plaintiff Gamez in the amount of \$15,000.00.
- Fernando Rodriguez in the amount of \$2,500.00.
- Francisco Rodriguez in the amount of \$2,500.00.
- Juan Rodriguez in the amount of \$2,500.00.
- Julio Rodriguez in the amount of \$2,500.00.

2.10. Should the Court require submission of the separate Individual Settlement Agreements for review, Plaintiffs shall be permitted to either: (a) submit such documents to the Court for in camera inspection or (b) publicly file the agreements to obtain approval of this Settlement based on the Court's instructions.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay \$2,445,000.00 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Court's Approval order:

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33 and 1/3%, which is currently estimated to be \$815,000.00 and a PAGA Counsel Litigation Expenses Payment of not more than \$50,000.00. Defendant will not oppose requests for these payments provided that the requests do not exceed these amounts. Plaintiffs and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the PAGA Penalties. Released Parties shall have no liability to PAGA Counsel or any other Plaintiffs' Counsel arising from any claim to any portion of any PAGA

1 Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator
2 will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or
3 more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed
4 on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and
5 holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding
any division or sharing of any of these Payments.

6 3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed
7 \$30,000.00 except for a showing of good cause and as approved by the Court. To the extent the
8 Administration Expenses are less or the Court approves payment less than \$30,000.00, the
9 Administrator will retain the remainder in the PAGA Penalties.

10 3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties
11 (currently estimated to be \$1,550,000.00) to be paid from the Gross Settlement Amount, with 75%
12 allocated to the LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments.

13 3.2.3.1. The Administrator will calculate each Individual PAGA Payment
14 by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the
15 total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period
16 and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved
Employees assume full responsibility and liability for any taxes owed on their Individual PAGA
Payment.

17 3.2.3.2. If the Court approves PAGA Penalties of less than the amount
18 requested, the Administrator will allocate the remainder to the PAGA Penalties. The
19 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

20 21 **4. SETTLEMENT FUNDING AND PAYMENTS.**

22 4.1. Aggrieved Employee Pay Periods. Based on a review of its records prior to the
23 mediation date, Defendant estimated there were a total of approximately 96,513 PAGA Pay
Periods through the date of mediation.

24 4.2. Aggrieved Employee Data. Within thirty (30) days after the Approval Order,
25 Defendant will deliver the Aggrieved Employee Data to the Administrator in the form of a
26 password protected Microsoft Excel spreadsheet. To protect Aggrieved Employees' privacy
27 rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the
28

1 Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and
2 restrict access to the Aggrieved Employee Data to Administrator employees who need access to
3 the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a
4 continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee
5 Data omitted employee identifying information and to provide corrected or updated Aggrieved
6 Employee Data as soon as reasonably feasible. Without any extension of the deadline by which
7 Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their
8 counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any
9 issues related to missing or omitted Aggrieved Employee Data.

10 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
11 Settlement Amount by transmitting the funds to the Administrator no later than thirty (30) days
12 after the Effective Date.

13 4.4. Payments from the Gross Settlement Amount. No earlier than (30) days after
14 Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all
15 Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment,
16 the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses
17 Payment shall not precede disbursement of Individual PAGA Payments.

18 4.4.1. The Administrator will issue checks for the Individual PAGA Payments
19 and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face
20 of each check shall prominently state the date (not less than 180 days after the date of mailing)
21 when the check will be voided. The Administrator will cancel all checks not cashed by the void
22 date. Before mailing any checks, the Administrator must update the recipients' mailing addresses
23 using the National Change of Address Database. The Administrator must send **Exhibit A** with
24 the Individual PAGA Payments. The Administrator shall translate Exhibit A into Spanish and
25 include the Spanish translation in the mailing.

26 4.4.2. The Administrator must conduct an Aggrieved Employee Address Search
27 for all other Aggrieved Employees whose checks are returned undelivered without USPS
28 forwarding address. Within seven (7) days of receiving a returned check the Administrator must
re-mail checks to the USPS forwarding address provided or to an address ascertained through the
Aggrieved Employee Address Search. The Administrator need not take further steps to deliver
checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The

1 Administrator shall promptly send a replacement check to any Aggrieved Employee whose
2 original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

3 4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is
4 uncashed and cancelled after the void date, the Administrator shall transmit the funds represented
5 by such check to the California Controller's Unclaimed Property Fund in the name of the
6 Aggrieved Employee.

7 4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant
8 to confer any additional benefits or make any additional payments to Aggrieved Employees (such
9 as 401(k) contributions or bonuses) beyond those specified in this Agreement.

10 **5. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire
11 Gross Settlement Amount, Plaintiffs and PAGA Counsel will release claims against all Released
12 Parties as follows:

13 5.1. Plaintiffs' Release. Plaintiffs and their respective former and present spouses,
14 representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors,
15 and assigns generally, release and discharge Released Parties from all claims, transactions, or
16 occurrences that occurred during the PAGA Period, including, but not limited to: (a) all claims
17 that were, or reasonably could have been, alleged, based on the facts contained in the Consolidated
18 Complaint and the PAGA Notices ("Plaintiffs' Release"). Plaintiffs' Release does not extend to
19 any claims or actions to enforce this Agreement, or to any claims for vested benefits,
20 unemployment benefits, disability benefits, social security benefits, workers' compensation
21 benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiffs
22 acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts
23 or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release
24 shall be and remain effective in all respects, notwithstanding such different or additional facts or
25 Plaintiffs' discovery of them.

26 5.1.1. Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For
27 purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights,
28 and benefits, if any, of section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims that the creditor or releasing party
does not know or suspect to exist in his or her favor at the time of executing**

1 **the release, and that if known by him or her would have materially affected**
2 **his or her settlement with the debtor or Released Party.**

3 The Parties agree that Plaintiffs' Releases exclude any claims covered by the Individual
4 Settlement Agreements that Plaintiffs and Defendant will enter into. Further, the Parties also
5 agree that nothing in the Individual Settlement Agreements deprive Plaintiffs standing to obtain
6 approval of this Settlement or prevent Plaintiffs from or waives Plaintiffs' rights to recover the
7 Individual PAGA Payments that they are entitled to under this Agreement.

8 5.2. PAGA Release: Plaintiffs release all claims for civil penalties and statutory
9 penalties that could have been sought by the Labor Commissioner for the violations identified in
10 Plaintiff Suarez, Plaintiff Martinez and/or Plaintiff Gamez's pre-filing letters to the LWDA as set
11 forth in the Consolidated Complaint. Plaintiffs do not release any Aggrieved Employee's non-
12 PAGA claims such as claims for wages or damages.

13 **6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** Plaintiff, with
14 input from Defendant, agrees to file an application or motion for approval of this Settlement.

15 6.1 Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense
16 Counsel all documents necessary for obtaining approval of this Settlement under Labor Code
17 Section 2699, subd. (f)(2)) including (i) a draft application or motion for approval, a draft
18 proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the
19 Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to
20 its willingness to serve; competency; operative procedures for protecting the security of
21 Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of
22 funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with
23 Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with
24 Plaintiffs, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel
25 firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial
26 notice of violations (Labor Code section 2699.3, subd. (a)), Consolidated Complaint (Labor Code
27 section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined
28 version of the parties' Agreement showing all modifications made to the Los Angeles Superior
29 Court Model Agreement-which could be filed with the Court (to the extent that the Court seeks a
30 redlined version); and (v) all facts relevant to any actual or potential conflict of interest with
31 Aggrieved Employees and/or the Administrator. At this time, no other Aggrieved Employee or

1 other individual has retained PAGA Counsel to file a lawsuit against Defendant, American
2 National Insulation, Inc., or any Released Party and PAGA Counsel are currently not aware of
3 any Aggrieved Employees or other individuals who intend to file individual or representative
4 actions (including putative class actions) against Defendant, American National Insulation, Inc.
5 or any Released Party. For the avoidance of doubt, PAGA Counsel confirms that they do not
6 currently represent Ahidee Arellano, Jose Juan Solorio, Fernando Fragoso Montano, and
7 Guillermo Gonzalez with respect to any potential claims against Defendant, American National
8 Insulation, Inc. or any Released Party. In their Declarations, Plaintiffs and PAGA Counsel shall
9 aver that they are not aware of any other pending matter or action asserting claims that will be
extinguished or adversely affected by the Settlement.

10 6.2 Responsibilities of Counsel. PAGA Counsel and Defense Counsel are jointly
11 responsible for expeditiously finalizing and filing the application or motion for approval of this
12 Settlement as soon thereafter as practical after the full execution of this Agreement and, if
13 necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in
14 favor of the motion. PAGA Counsel is responsible for delivering the Court's Approval to the
15 Administrator. PAGA Counsel will provide Defense Counsel a courtesy copy of the motion or
16 application for approval for review and comment at least seven (7) calendar days prior to filing
the motion or application with the Court.

17 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed
18 application or motion for approval of this Settlement and/or the supporting declarations and
19 documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of
20 the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement.
21 If the Court does not grant the motion for approval of this Settlement or conditions its approval
22 on any material change to this Agreement, PAGA Counsel and Defense Counsel will
23 expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in
good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

24 **7. SETTLEMENT ADMINISTRATION.**

25 7.1 Selection of Administrator. The Parties have jointly selected Simpluris, Inc. to
26 serve as the Administrator and verified that, as a condition of appointment, Simpluris, Inc. agrees
27 to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
28

1 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel
2 represent that they have no interest or relationship, financial or otherwise, with the Administrator
3 other than a professional relationship arising out of prior experiences administering settlements.

4 7.2 Employer Identification Number. The Administrator shall have and use its own
5 Employer Identification Number for purposes of providing reports to state and federal tax
6 authorities.

7 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
8 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
9 Regulation section 468B-1.

10 7.4 Administrator Duties. The Administrator has a duty to perform or observe all
11 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.
12 The Administrator will mail the letter attached as **Exhibit A** along with settlement payments to
13 Aggrieved Employees. The Parties will ask the Court to approve the mailing of this letter as part of
14 the request for approval of the Settlement.

15 **8. NUMBER OF AGGRIEVED EMPLOYEES and ESCALATOR CLAUSE.** Based on
16 its records, Defendant estimates that, during the period May 8, 2022, to December 3, 2024, there
17 were approximately 96,513 Pay Periods. If the PAGA Pay Periods exceeds the estimated PAGA
18 Pay Periods by more than 10% (i.e., the estimated number of pay periods is greater than 106,164
19 (i.e., 96,513 + 10%)), then Defendant has the option to either: (1) Increase the Gross Settlement
20 Amount (including the PAGA Counsel Fees Payment) by a pro-rata dollar value equal to the
21 number of PAGA Pay Periods in excess of 106,164 PAGA Pay Periods (the 10% escalation limit)
22 or (2) Adjust the PAGA Period End Date and the PAGA Release end date so that the PAGA Pay
23 Periods at issue are no more than 96,513 plus 10% percent, or 106,164 pay periods in total.
24 Defendant will make this election prior to the submission of the motion for approval of the
25 settlement. The Parties will confer about this provision prior to the filing of the motion for
26 approval of the settlement.

27 **9. CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry
28 of Judgment, the Court will retain jurisdiction over the Parties, the Consolidated Action, and the
Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing
settlement administration matters, and (iii) addressing such post-Judgment matters as are

1 permitted by law.

2 9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
3 and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and
4 PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights
5 to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the
6 right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals.
7 The waiver of appeal does not include any waiver of the right to oppose such motions, writs or
8 appeals. If another party appeals the Judgment, the Parties' obligations to perform under this
9 Agreement will be suspended until such time as the appeal is finally resolved and the Judgment
becomes final, except as to matters that do not affect the amount of the PAGA Penalties.

10 **10. ADDITIONAL PROVISIONS.**

11 10.1 No Admission of Liability or Representative Manageability for Other Purposes.
12 This Agreement represents a compromise and settlement of highly disputed claims. Nothing in
13 this Agreement is intended or should be construed as an admission by Defendant that any of the
14 allegations in the Consolidated Complaint have merit or that Defendant has any liability for any
15 claims asserted; nor should it be intended or construed as an admission by Plaintiffs that
16 Defendant's defenses in the Action have merit. The Parties agree that representative treatment is
17 for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement,
18 Defendant reserves all available defenses to the claims in the Action, and Plaintiffs reserve the
19 right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to
20 settle the Action will have no bearing on, and will not be admissible in connection with, any
21 litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
Finally, the Parties agree that the Settlement shall not be deemed a finding or determination that
any of Defendant's policies or practices were unlawful in this Action or any other action.

22 10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this
23 Agreement together with its attached exhibits shall constitute the entire agreement between the
24 Parties relating to the Settlement, superseding any and all oral representations, warranties,
covenants, or inducements made to or by any Party.

25 10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant
26 and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all
27 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
28

1 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
2 terms of this Agreement including any amendments to this Agreement.

3 10.4 Cooperation. The Parties and their counsel will cooperate with each other and
4 use their best efforts, in good faith, to implement the Settlement by, among other things,
5 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
6 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
7 the form or content of any document necessary to implement the Settlement, or on any
8 modification of the Agreement that may become necessary to implement the Settlement, the
9 Parties will seek the assistance of a mediator and/or the Court for resolution.

10 10.5 No Prior Assignments. The Parties separately represent and warrant that they
11 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
12 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
13 action, or right released and discharged by the Party in this Settlement.

14 10.6 No Tax Advice. Neither Plaintiffs, PAGA Counsel, Defendant nor Defense
15 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
16 Settlement be relied upon as such within the meaning of United States Treasury Department
17 Circular 230 (31 CFR Part 10, as amended) or otherwise.

18 10.7 Modification of Agreement. This Agreement, and all parts of it, may be
19 amended, modified, changed, or waived only by an express written instrument signed by all
20 Parties or their representatives, and approved by the Court.

21 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and
22 inure to the benefit of, the successors of each of the Parties.

23 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will
24 be governed by and interpreted according to the internal laws of the state of California, without
25 regard to conflict of law principles.

26 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and
27 preparation of this Agreement. This Agreement will not be construed against any Party on the
28 basis that the Party was the drafter or participated in the drafting.

10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders
entered during Action and in this Agreement relating to the confidentiality of information shall
survive the execution of this Agreement. Plaintiff, PAGA Counsel, Defendant, and Defense

1 Counsel agree that, other than with respect to the motion for settlement approval, and related
2 filings and actions to give effect or enforce its terms, they will not disclose, disseminate and/or
3 publicize or cause or permit another person to disclose, disseminate or publicize, any of the terms
4 of the Agreement directly or indirectly, specifically or generally, to any person, corporation,
5 association, government agency, or other entity except: (1) to the Parties' attorneys, accountants,
6 or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in any
7 potentially-related matter; (3) to the extent necessary to report income or other amounts to
8 appropriate taxing authorities; (4) in response to a court order or subpoena or as otherwise
9 required to comply with law or government orders including the Securities and Exchange
10 Commission (SEC); (5) in response to an inquiry or subpoena issued by a state or federal
11 government agency or (6) with respect to Defendant, to provide information with respect to
12 resolution to employees/managers/board members/members regarding the status and fact of the
13 settlement. Each Party agrees to immediately notify each other Party of any judicial or agency
14 order, inquiry, or subpoena seeking such information. This paragraph does not restrict
15 communications with Aggrieved Employees nor does it restrict communications acknowledging
16 the filing of the complaint, denying the allegations in the complaint or stating that the matter was
17 resolved/settled.

18 10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA
19 Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data
20 provided to PAGA Counsel by Defendant in connection with the mediation, other settlement
21 negotiations, or in connection with the Settlement, may be used only with respect to this
22 Settlement, and no other purpose, and may not be used in any way that violates any existing
23 contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator
24 discharges its obligation to pay out of all Settlement funds, Plaintiffs shall destroy all paper and
25 electronic versions of Aggrieved Employee Data received from Defendant unless, prior to the
26 Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA
27 Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

28 10.13 Headings. The descriptive heading of any section or paragraph of this Agreement
is inserted for convenience of reference only and does not constitute a part of this Agreement.

10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a

1 weekend or federal legal holiday, such date or deadline shall be on the first business day
2 thereafter.

3 10.15 Notice. All notices, demands or other communications between the Parties in
4 connection with this Agreement will be in writing and deemed to have been duly given as of the
5 third business day after mailing by United States mail, or the day sent by email or messenger,
6 addressed as follows:

7 **To Plaintiffs:**

8 David Glenn Spivak, Esq.
9 The Spivak Law Firm
10 8605 Santa Monica Bl
11 PMB 42554
12 West Hollywood, CA 90069
13 david@spivaklaw.com

14 BIBIYAN LAW GROUP, P.C.
15 David D. Bibiyan (Cal. Bar No. 287811)
16 david@tomorrowlaw.com
17 Vedang J. Patel (Cal. Bar. No. 328647)
18 vedang@tomorrowlaw.com
19 1460 Westwood Boulevard
20 Los Angeles, California 90024
21 Telephone: (310) 438-5555
22 Facsimile: (310) 300-1705

23 Brian J. Mankin, Esq.
24 Lauby, Mankin, & Lauby LLP
25 5198 Arlington Ave., PMB 513
26 Riverside, CA 92504
27 brian@lmlfirm.com

28 **To Defendant:**

Jon Daryanani
Jill L. Ripke
SQUIRE PATTON BOGGS (US) LLP
555 South Flower Street, 31st Floor
Los Angeles, CA 90071
Telephone: 213-689-6510
Facsimile: 213-623-4581

10.16 Execution in Counterparts. This Agreement may be executed in one or more
counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this

1 Agreement shall be accepted as an original. All executed counterparts and each of them will be
2 deemed to be one and the same instrument if counsel for the Parties will exchange between
3 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
4 the existence and contents of this Agreement.

5 10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement
6 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
7 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
8 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
9 process.

10 10.18 Severability. In the event one or more of the provisions contained in this
11 Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such
12 invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendant's
13 Counsel and PAGA Counsel, on behalf of the Parties and Aggrieved Employees, mutually elect
14 in writing to proceed as if such invalid, illegal, or unenforceable provision had never been
15 included in this Agreement.

16 APPROVAL AND EXECUTION BY PARTIES

17 Dated: ____, 2025

18 By: _____
HUGO GAMEZ

19
20 Dated: 08/26/2025, 2025

21 By: Christian Martinez
CHRISTIAN MATTHEW
22 MARTINEZ

23
24 Dated: ____, 2025

25 By: _____
JOEL SUAREZ

1 Agreement shall be accepted as an original. All executed counterparts and each of them will be
2 deemed to be one and the same instrument if counsel for the Parties will exchange between
3 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
4 the existence and contents of this Agreement.

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13 Counsel and PAGA Counsel, on behalf of the Parties and Aggrieved Employees, mutually elect
14 in writing to proceed as if such invalid, illegal, or unenforceable provision had never been
15 included in this Agreement.

16 APPROVAL AND EXECUTION BY PARTIES

17 Dated: ____, 2025

18 By: _____
HUGO GAMEZ

19
20 Dated: ____, 2025

21 By: _____
CHRISTIAN MATTHEW
22 MARTINEZ

23
24 Dated: 8/23, 2025

25 By: _____
Joel Suarez (Aug 22, 2025 09:08:29 PDT)
26 JOEL SUAREZ

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Dated: ____, 2025

By: _____

Printed Name: _____

Its: _____

for BUILDER SERVICES GROUP,
INC.

APPROVED AS TO FORM BY
COUNSEL

THE SPIVAK LAW FIRM

Dated: August 5, 2025

By: 

DAVID GLENN SPIVAK, Attorneys
for Plaintiffs

BENOWITZ LAW CORPORATION

Dated: August 5, 2025

By: 

LOUIS M. BENOWITZ, Attorneys for
Plaintiffs

BIBIYAN LAW GROUP, P.C.

Dated: ____, 2025

By: _____
DAVID D. BIBIYAN,
VEDANG J. PATEL
Attorneys for Plaintiffs

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Dated: ____, 2025

By: _____

Printed Name: _____

Its: _____

for BUILDER SERVICES GROUP,
INC.

APPROVED AS TO FORM BY
COUNSEL

THE SPIVAK LAW FIRM

Dated: ____, 2025

By: _____

DAVID GLENN SPIVAK, Attorneys
for Plaintiffs

BENOWITZ LAW CORPORATION

Dated: ____, 2025

By: _____

LOUIS M. BENOWITZ, Attorneys for
Plaintiffs

BIBIYAN LAW GROUP, P.C.

Dated: 9/11 ____, 2025

By: Vedang J. Patel

DAVID D. BIBIYAN,
VEDANG J. PATEL
Attorneys for Plaintiffs

By:

Rob Kuhn

095A61BF9F38447

Its: CFO

APPROVED AS TO FORM BY
COUNSEL

Dated: _____, 2025

By:

DAVID GLENN SPIVAK, Attorneys
for Plaintiffs

BENOWITZ LAW CORPORATION

Dated: _____, 2025

By:

LOUIS M. BENOWITZ, Attorneys for
Plaintiffs

BIBIYAN LAW GROUP, P.C.

Dated: _____, 2025

By:

DAVID D. BIBIYAN,
VEDANG J. PATEL
Attorneys for Plaintiffs

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LAUBY, MANKIN & LAUBY LLP

Dated: _____, 2025

By: _____
Brian J. Mankin, Attorneys for Plaintiffs

SQUIRE PATTON BOGGS (US) LLP

Dated: 8/21, 2025

By: *Jill F Ripke*
JON DARYANANI and JILL L.
RIPKE, Attorneys for Defendant
BUILDER SERVICES GROUP, INC.

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EXHIBIT A

1 **NOTICE OF PAGA SETTLEMENT**

2 *Suarez, Martinez, and Gamez v. Builder Services Group, Inc.*

3 *Superior Court of California, Riverside County*

4 *Case No. CVRI2305906*

5 <<Simpluris, Inc.>>

6 []

7 []

8 Telephone: []

9 «Barcode» «BarcodeString»

10 SIMID «SIMID»

11 «FirstName»

12 «LastName»

13 «Address1» «Address2»

14 «City» «State» «Zip»

15 You are receiving this notice as a result of a lawsuit brought on a representative basis
16 under the Private Attorneys General Act, Labor Code §§ 2698, *et seq.* (“PAGA”) (“the Action”).
17 The Plaintiffs in the Action are Hugo Gamez, Joel Suarez, and Christian Matthew Martinez
18 (hereafter collectively “Plaintiffs”) and the defendant is Builder Services Group, Inc.
19 (“Defendant”). The Action seeks civil penalties for purported violations of the California Labor
20 Code on behalf of all Defendant’s current and former California hourly, non-exempt employees
21 (“Aggrieved Employees”) who Defendant employed during the PAGA Period of May 8, 2022
22 through February 2, 2025. Defendant denies all claims and allegations in the Action, denies that
23 it owes any penalties, and asserts that it has fully complied with all applicable Labor Code
24 provisions. Nevertheless, to avoid further costs and time in defending the Action, Defendant has
25 agreed to settle the case and the Court has approved the settlement and release of claims. By
26 settling the Action, Defendant is not admitting that it has done anything wrong and the Court has
27 not made any finding that Defendant has done anything wrong. As of and subject to the
28 occurrence of the Effective Date of the Settlement, the Settlement resolves all claims for PAGA
penalties that were alleged, or could have been alleged, based on the PAGA Period facts alleged
in the Consolidated Complaint and the PAGA Notices (“Released PAGA Claims”). The
“Released Parties” are Erik Brand, Jeff Utegg, Defendant and each of its former and present
directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors,
assigns subsidiaries, and affiliates.

By Order dated <<court approval order date>>, the Superior Court of the State of
California, Riverside County approved the Settlement of the PAGA claims.

According to the Defendant’s records, you are an Aggrieved Employee and therefore
entitled to an Individual PAGA Payment, a share of the settlement based upon the Court approved
allocation. Enclosed with this Notice is your check for your Individual PAGA Payment. The
settlement check shall remain valid for 180 days. Thereafter, all uncashed checks shall be
distributed to California State Controller’s Office Unclaimed Property Fund with an
identification of the amount of unclaimed funds attributable to each Aggrieved Employee. This

1 is not a class action settlement, and you cannot opt out of receiving this payment or being bound
2 by the release by Aggrieved Employees contained in the Settlement Agreement.

3 Please Note: One hundred percent (100%) of your individual PAGA payment under this
4 Settlement will be considered penalties and may be subject to local, state, or federal tax
5 withholdings and will be reported to the IRS and state tax authorities. You should rely on your
6 own tax advisors as to the tax consequences of your individual PAGA payment. Neither Plaintiffs
7 nor Defendant have made any representations or warranties regarding the taxation of your
8 individual PAGA payment. Nothing within this notice or any other communication shall
9 constitute or be construed or relied upon as tax advice within the meaning of United States
10 Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate
11 tax forms pertaining to your payment.

12 Do not call or write the Court or Office of the Clerk to ask questions about the settlement
13 or to ask questions about the claims process. If you have any questions, you may call or write to
14 Simpluris, Inc. (the Administrator) using the contact information at the top of this
15 correspondence.
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EXHIBIT B

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE
(UNLIMITED JURISDICTION)

CHRISTIAN MATTHEW MARTINEZ, JOEL SUAREZ, and HUGO GAMEZ, as aggrieved employees and on behalf of all other aggrieved employees under the Labor Code Private Attorney’s General Act of 2004,

Plaintiffs,

v.

BUILDER SERVICES GROUP, INC., dba TRUTEAM OF CALIFORNIA, a Florida Corporation; ERIK BRAND, an individual; JEFFREY UTEGG, an individual; and DOES 1 through 100, inclusive,

Defendants.

Case No. CVRI2305906

**[PROPOSED] ORDER AND
JUDGMENT APPROVING PAGA
SETTLEMENT AGREEMENT**

1 Having considered the Parties' PAGA Settlement Agreement ("Agreement" or "PAGA
2 Settlement"), IT IS HEREBY ORDERED THAT:

3 1. To the extent required by Labor Code § 2699(l), the Settlement and its terms
4 represent a reasonable and adequate settlement of highly disputed claims to Hugo Gamez, Joel
5 Suarez, and Christian Matthew Martinez (hereafter collectively "Plaintiffs"), the "Aggrieved
6 Employees" (as the term is defined in the PAGA Settlement), the State of California, Plaintiffs'
counsel, and defendant Builder Services Group, Inc. ("Defendant"), and is approved.

7 2. Defendant shall pay the "Gross Settlement Amount" (as the term defined in the
8 Settlement) in the amount of \$2,445,000.00. The Gross Settlement Amount includes: (a) the
9 PAGA Counsel Fees Payment in the amount of \$815,000.00 and PAGA Counsel Litigation
10 Expenses Payment of \$50,000.00 to David Glenn Spivak and Caroline Tahmassian of The Spivak
11 Law Firm, Louis M. Benowitz of Benowitz Law Corporation, David Bibiyan and Vedang J. Patel
12 of Bibiyan Law Group, P.C., and Brian J. Mankin and Peter J. Carlson of Lauby, Mankin &
13 Lauby LLP as PAGA Counsel; (b) "PAGA Penalties" (as the term defined in the PAGA
14 Settlement) payable to the Aggrieved Employees and the Labor and Workforce Development
15 Agency ("LWDA"); and (c) Administration Expenses Payment of up to \$30,000.00 to Simpluris,
16 Inc. to administer the settlement, in accordance with the procedure as mentioned in the
Settlement.

17 3. The allocation of the Settlement payment among the Plaintiffs, the Aggrieved
18 Employees, the State of California, the Settlement Administrator and Plaintiffs' counsel is fair,
19 just, reasonable, adequate, and equitable to all concerned, and is approved to the extent required
20 under Labor Code§ 2699(l). The Court also approves as to form Exhibit A to the Settlement
21 Agreement, which the Settlement Administrator, Simpluris, shall include with all Individual
PAGA Payments.

22 4. The settlement is approved on the terms stated in the Agreement. Plaintiff has
23 filed all necessary paperwork to effectuate the settlement with the California Labor and
Workforce Development Agency.

24 5. Judgment in this matter is entered in accordance with, and incorporates by
25 reference, the terms and conditions of the Settlement. Instead of filing a request for dismissal to
26 terminate this action, this judgment will terminate the action and judgment will be issued in this
27
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1 case and it will be closed. In connection with judgment in this matter all claims against Erik
2 Brand and Jeffrey Utegg are dismissed with prejudice.

3 6. The PAGA Settlement is not an admission by Defendant, or any of the “Released
4 Parties” (as the term is defined in the Settlement), nor is this judgment a finding of the validity
5 of any allegations or of any wrongdoing by Defendant or the Released Parties. Neither this
6 judgment, the Agreement, nor any document referred to therein, nor any action taken to carry out
7 the PAGA Settlement, may be construed as, or may be used as, an admission of any fault,
8 wrongdoing, omission, concession, or liability whatsoever by or against Defendant or the
9 Released Parties.

10 7. The PAGA Settlement shall be binding on Plaintiffs, all Aggrieved Employees,
11 and the State of California, who are hereby barred from re-litigating any of the claims released
12 by the Settlement. For avoidance of doubt nothing herein precludes Defendant from filing the
13 Settlement Agreement or this order in any other matter to enforce the terms of the Settlement
14 against an Aggrieved Employee, including, for example, for *res judicata* or estoppel purposes.

15 8. The Court’s approval of the Settlement shall not be deemed a finding or
16 determination that any of Defendant’s policies or practices were unlawful in this Action or any
17 other action.

18 9. Pursuant to Code of Civil Procedure section 664.6 the Court shall retain exclusive
19 and continuing jurisdiction over the above-captioned action and the parties for purposes of
20 enforcing the terms of the PAGA Settlement.

21 10. The Court sets a Final Accounting (nonappearance) Hearing for _____,
22 _____ . The parties must file a report concerning the amount of money distributed and/or
23 uncashed by _____, _____.

24 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

25 _____
26 **DATE**

27 _____
28 **The Honorable Harold W. Hopp**
Superior Court Judge

