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10 and all others similarly situated and aggrieved

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF LOS ANGELES**

14 ANA ORTIZ-GOMEZ, an individual, and on
15 behalf of all others similarly situated and
16 aggrieved,

17 Plaintiff,

18 v.

19 BEYOND RESOURCE SOLUTIONS, INC., a
20 California Corporation; CAPLUGS, INC., a
21 Delaware Corporation; GEORGE PORTILLO,
22 an individual; and DOES 1 through 100,
23 inclusive,

24 Defendants.

CASE NO.: 24STCV15833

Related to Case No.: 24STCV32252

[Assigned for all purposes to the Hon. Elaine
Lu in Dept. 9]

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT AND CERTIFYING
CLASS FOR SETTLEMENT PURPOSES
ONLY**

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21 (erroneously sued herein as GEORGE PORTILLO), an individual
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1 This Court, having considered the Motion of plaintiff Ana Ortiz-Gomez ("Plaintiff") for
2 Preliminary Approval of Class Action Settlement and Provisional Class Certification for Settlement
3 Purposes Only ("Motion for Preliminary Approval"), the Declarations of Keaton Mendoza, David
4 D. Bibiyan, Ana Ortiz-Gomez, and Jodey Lawrence, the Class and PAGA Settlement Agreement
5 ("Settlement," "Agreement" or "Settlement Agreement"), the proposed Notice of Proposed
6 Settlement ("Class Notice"), and other documents submitted in support of the Motion for
7 Preliminary Approval, hereby **ORDERS, ADJUDGES AND DECREES THAT:**

8 1. The definitions set out in the Settlement Agreement are incorporated by reference
9 into this Order; all terms defined therein shall have the same meaning in this Order.

10 1. The Court certifies the following Settlement Class Member ("Class Member" or
11 "Settlement Class Member") as "BRS Class" and "Caplugs Class" respectively, for the purpose of
12 settlement only:

13 i. All persons employed by Defendant Beyond Resource Solutions, Inc.
14 (Defendant "BRS") in California and classified as non-exempt, hourly-
15 paid employees, who were placed to work for Caplugs, during the
16 period from June 25, 2020, through (1) 90 days from the execution of
17 the Memorandum of Understanding ("MOU") executed by the Parties;
18 or (2) the date upon which the total number of workweeks from June
19 25, 2020 forward equals 9,460 workweeks; provided, however, that if
20 BRS elects to pay additional amounts pursuant to the Escalator Clause
21 in Paragraph 9.1 of Settlement Agreement rather than cut off the BRS
22 Class Period at 9,460 workweeks, the BRS Class Period shall extend to
23 include all workweeks for which such additional payment is made for
24 the Defendant Beyond Resource Solutions, Inc. ("BRS Class Period")
25 and;

26 ii. All persons directly employed by Defendant Caplugs, Inc. (Defendant
27 "Caplugs") and Jorge Mejia (erroneously sued as George Portillo) in
28 California and classified as non-exempt, hourly-paid employees who

1 worked for Caplugs during the period from August 26, 2021 through
2 the earlier of (1) the date of preliminary approval of the settlement; (2)
3 90 days from the execution of the Memorandum of Understanding
4 (“MOU”) executed by the Parties; or (3) the date upon which the total
5 number of workweeks from August 26, 2021 forward equals 24,640
6 workweeks; provided, however, that if Caplugs elects to pay additional
7 amounts pursuant to the Escalator Clause in Paragraph 9.1 rather than
8 cut off the Caplugs Class Period at 24,640 workweeks, the Caplugs
9 Class Period shall extend to include all workweeks for which such
10 additional payment is made. (“Caplug Class Period”).

11 2. The Court preliminarily appoints the named plaintiff Ana Ortiz-Gomez as Class
12 Representative, and the law firm of Bibiyan Law Group, P.C., as Class Counsel.

13 3. The Court preliminarily approves the proposed class settlement upon the terms and
14 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the
15 settlement appears to be within the range of reasonableness of settlement that could ultimately be
16 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement
17 amount is fair, adequate, and reasonable as to all potential class members when balanced against the
18 probable outcome of further litigation relating to liability and damages issues. It further appears that
19 extensive and costly investigation and research have been conducted such that counsel for the parties
20 at this time are reasonably able to evaluate their respective positions. It further appears to the Court
21 that the settlement at this time will avoid substantial additional costs to all parties, as well as the
22 delay and risks that would be presented by the further prosecution of the Action. It further appears
23 that the settlement has been reached as the result of intensive, non-collusive and arms-length
24 negotiations utilizing an experienced third-party neutral.

25 4. The Court approves, as to form and content, the Class Notice that has been submitted
26 herewith.

27 5. The Court directs the mailing of the Class Notice by first-class regular U.S. mail to
28 the Class Members in accordance with the procedures set forth in the Settlement Agreement. The

1 Court finds that dissemination of the Class Notice set forth in the Settlement Agreement complies
2 with the requirements of law and appears to be the best notice practicable under the circumstances.

3 6. The Court hereby preliminarily approves the definition and disposition of the Gross
4 Settlement Amount of \$900,000.00, in which Defendant Caplugs agrees to pay \$675,000.00 and
5 Defendant BRS agrees to pay \$225,000.00, which is inclusive of: attorneys' fees of not more than
6 thirty-five percent (35%) of the Gross Settlement Amount, which, if not escalated pursuant to the
7 Agreement, amounts to \$315,000.00, in addition to actual costs incurred of up to \$30,000.00; service
8 award of not more than \$10,000.00, to Plaintiff; and costs of settlement administration of no more
9 than \$8,000.00.

10 7. The Gross Settlement Amount expressly excludes Employer's Taxes, which will be
11 paid separately and apart by Defendants on the wages portion of the Gross Settlement Amount.

12 8. Class Member's "Workweek" shall mean any week during which a Class Member
13 worked for Defendants, for at least one day during the Class Period, based on hire dates, re-hire
14 dates (as applicable), and termination dates (as applicable).

15 9. Caplugs represents that there are no more than 22,400 Workweeks during the
16 Caplugs Class Period. In the event the number of Workweeks during the Caplugs Class Period
17 increases by more than 10%, or 2,240 Workweeks, then, at Caplugs' election: (1) the Gross
18 Settlement Amount shall be increased proportionally by the Workweeks in excess of 24,640
19 multiplied by the Workweek Value; or (2) the Caplugs Class Period shall end on the date the number
20 of Workweeks reaches 24,640. The Workweek Value shall be calculated by dividing the Gross
21 Settlement Amount by 31,000. The Parties agree that the Workweek Value amounts to \$29 per
22 Workweek (\$900,000.00 / 31,000 Workweeks). Thus, for example, should there be 24,700
23 Workweeks in the Caplugs Class Period, then the Gross Settlement Amount shall be increased by
24 \$1,740.00. (24,700 Workweeks – 24,640 Workweeks x \$29/Workweek.). Caplugs shall provide the
25 class data to the administrator no later than 7 days after the Court grants preliminary approval of the
26 Settlement. Caplugs shall make its election regarding the above no later than 7 days after receiving
27 information from the Administrator regarding the Workweek count. Should Caplugs fail to make its
28 election within the above timeframe, then option (1) shall automatically apply.

1 10. BRS represents that there are no more than 8,600 Workweeks during the BRS Class
2 Period. In the event the number of Workweeks during the BRS Class Period increases by more than
3 10%, or 860 Workweeks, then, at BRS' election: (1) the Gross Settlement Amount shall be increased
4 proportionally by the Workweeks in excess of 9,460 multiplied by the Workweek Value; or (2) the
5 BRS Class Period shall end on the date the number of Workweeks reaches 9,460. The Workweek
6 Value shall be calculated by dividing the Gross Settlement Amount by 31,000. The Parties agree
7 that the Workweek Value amounts to \$29 per Workweek ($\$900,000.00 / 31,000$ Workweeks). Thus,
8 for example, should there be 9,500 Workweeks in the BRS Class Period, then the Gross Settlement
9 Amount shall be increased by \$1,160. ($9,500 \text{ Workweeks} - 9,460 \text{ Workweeks} \times \$29/\text{Workweek}$).
10 BRS shall provide the class data to the administrator no later than 7 days after the Court grants
11 preliminary approval of the Settlement. BRS shall make its election regarding the above no later
12 than 7 days after receiving information from the Administrator regarding the Workweek count.
13 Should BRS fail to make its election within the above timeframe, then option (1) shall automatically
14 apply.

15 11. The Court deems Phoenix Settlement Administrators ("Phoenix" or "Settlement
16 Administrator"), the settlement administrator, and preliminarily approves payment of administrative
17 costs, not to exceed \$8,000.00 out of the Gross Settlement Amount for services to be rendered by
18 Apex on behalf of the class.

19 12. Within fifteen (15) calendar days after entry of the Preliminary Approval Order,
20 Defendants Beyond Resource Solutions, Inc., Caplugs, Inc., and Jorge Mejia, erroneously sued as
21 George Portillo (collectively, "Defendants") will provide the Settlement Administrator with the
22 name, last known address, and Social Security number of each Class Member, along with their
23 weeks worked during the Class Period. The Settlement Administrator uses such information for
24 purposes of calculating each Class Member's share of the Net Settlement Sum and for mailing of
25 the Class Notice.

26 13. The Settlement Administrator will keep this information confidential, use it only for
27 the purposes described herein, and not disclose the information to any other party unless written
28 permission is provided by Defendants allowing such disclosure.

1 14. Prior to mailing the Class Notices, the Settlement Administrator shall process the
2 class list through the United States Postal Service's National Change of Address database to
3 determine the most current address of all Class Members.

4 15. Within fifteen (15) calendar days after transfer of the above-referenced data for the
5 Class to the Settlement Administrator, the Settlement Administrator will send the Class Notice to
6 Class Members, by first-class mail, at their last known address.

7 16. After expiration of the time period for Class Members to timely request to exclude
8 themselves/opt out, or to submit an objection or dispute, the Settlement Administrator shall provide
9 counsel for the Parties hereto with a declaration setting forth: (a) due diligence and proof of mailing
10 of the Class Notice; (b) the total number of Class Members who were sent the Class Notice; (c) the
11 total number of Class Members who submitted documents that were deficient, or disputed the
12 Settlement Payment estimate or related data stated in their Class Notice; (d) the total number of
13 Class Members who submitted valid requests to exclude themselves/opt out, including the postmark
14 dates for each; and (e) the total number of Class Members who submitted timely objections to the
15 Settlement, along with complete (but anonymized) copies of all objections received, including the
16 postmark dates for each objection. If any additional events or changes in status have occurred with
17 respect to the matters addressed in the Settlement Administrator's declaration, the Settlement
18 Administrator shall provide an updated declaration on these matters three (3) calendar days prior to
19 the date of the Settlement Fairness Hearing, and again, in the event of such events or changes in
20 status, within three (3) calendar days after the Effective Date of the Settlement or such other later
21 date as the Court may order or the Parties may agree upon.

22 17. Class Members may choose to exclude themselves/opt out of this Settlement. To do
23 so, Class Members must within forty-five (45) calendar days after the Settlement Administrator first
24 mails the Class Notice, mail to the Settlement Administrator a written request to exclude
25 themselves/opt out of the Settlement which unambiguously requests to be excluded from the
26 Settlement, including the request for exclusion being signed by the Class Member, and including
27 his/her name, address, and last four digits of his/her social security number. Dates of mailing in
28 connection with this Settlement shall be determined by the postmark date.

1 18. A Class Member who does not timely exclude himself or herself from the Settlement
2 as described in the Agreement shall be bound by the terms and conditions of the Agreement, and
3 shall also be bound by the Court's judgment in this Action, including the release of claims against
4 the Released Parties as provided in the Agreement.

5 19. Any Class Member who does not validly exclude himself or herself from the
6 Settlement may object to the Settlement or dispute the workweek or other data used to calculate a
7 Class Member's individual settlement payment as provided herein. Objections and disputes must be
8 submitted to the Settlement Administrator within forty-five (45) calendar days from the postmark
9 date of when the Class Notice is initially sent and must be signed by the Class Member and provide
10 the information specified to be provided, as indicated in the Class Notice. A Class Member who
11 objects to the Settlement, or disputes the workweek or other data used to calculate a Class Member's
12 individual settlement payment, may enter an appearance *in propria persona*, or through his/her own
13 attorney. If the Court approves the Settlement, irrespective of a Class Member's objection or dispute,
14 the Class Member will receive a Settlement Payment and will be bound by the Settlement in all
15 respects, including the release of claims provided herein.

16 20. If a Class Member submits an objection or a dispute, and a request to exclude/opt
17 out, the exclusion/opt-out request will be voided and of no force or effect and the objection and/or
18 dispute will be treated as submitted as though without a request to exclude/opt out, unless otherwise
19 ordered by the Court.

20 21. Each Defendant shall fully fund its respective share in the Gross Settlement Amount
21 and also fund the amounts necessary to fully pay its share of payroll taxes by transmitting the funds
22 to the Administrator no later than 7 days after the Effective Date.

23 22. The Gross Settlement Sum, which shall be paid as set forth above, shall be distributed
24 in accordance with the Court's final approval and other orders to the following recipients: a) to
25 Settlement Class Members to pay sums owed to Settlement Class Members under the Distribution
26 Formula with each Settlement Class Member's share of payroll taxes and other withholdings
27 deducted therefrom being paid to the appropriate taxing and other authorities by the Settlement
28 Administrator; b) to Representative Plaintiff to pay for any service award approved by the Court; c)

1 to the Settlement Administrator to pay for administration fees and costs of the Settlement as
2 approved by the Court; and d) to Class Counsel to pay for attorneys' fees and costs as approved and
3 awarded by the Court. To clarify and for avoidance of doubt, this paragraph specifies the recipients
4 of the Gross Settlement Sum distributions, not the amount of or formula for such distributions or
5 the relative sequencing of such distributions to recipients. With respect to the timing of the
6 distribution of the Gross Settlement Sum, this shall be distributed by the Settlement Administrator
7 as provided herein on or before fourteen (14) calendar days after Defendants have deposited the
8 Gross Settlement Sum.

9 23. Any uncashed Settlement Payment check issued to a Class Member that remains
10 uncashed after one-hundred and eighty (180) calendar days after being issued shall be deemed null
11 and void, the Administrator shall transmit the funds represented by such checks to the *cy pres*
12 recipient, Legal Aid at Work.

13 24. All papers filed in support of final approval, including supporting documents for
14 attorneys' fees and costs, shall be filed by _____.

15 25. A Final Approval Hearing shall be held with the Court on _____
16 at _____ in Department 9 of the above-entitled Court to determine: (1) whether the proposed
17 settlement is fair, reasonable and adequate, and should be finally approved by the Court; (2) the
18 amount of attorneys' fees and costs to be awarded to Class Counsel; (3) the amounts of service
19 award to the Class Representative; and (4) the amount to be paid to the Settlement Administrator.

20 **IT IS SO ORDERED.**

21
22 Dated: _____

Judge of the Superior Court