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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

MARLEY CASTRO and LUCIA MARMOLEJO,  
on behalf of themselves and all others similarly  
situated,

Plaintiffs,

vs.

ABM INDUSTRIES, INC.; ABM ONSITE  
SERVICES — WEST, INC.; ABM SERVICES,  
INC.; ABM JANITORIAL SERVICES —  
NORTHERN CALIFORNIA, INC.; and ABM  
JANITORIAL SERVICES, INC.,

Defendants.

Case No.: 4:17-cv-03026-YGR

**REVISED ~~PROPOSED~~ ORDER  
GRANTING PRELIMINARY  
APPROVAL OF PROPOSED CLASS  
ACTION SETTLEMENT**

Hon. Yvonne Gonzalez Rogers  
Hearing Date: February 12, 2019  
Time: 2:00 p.m.  
Location: Courtroom 1, 4th Floor

1 Having considered the Parties' written and oral submissions regarding Plaintiffs' Motion  
 2 for Preliminary Approval of Class Action Settlement ("the Motion"), the Court finds and  
 3 determines pursuant to Federal Rule of Civil Procedure 23 that the Motion should be granted.

4 THEREFORE, IT IS HEREBY ORDERED THAT:

5 1. This Order incorporates by reference the definitions in the Parties' Joint  
 6 Stipulation and Settlement Agreement ("Settlement"), attached hereto as Exhibit 1. Defendants  
 7 are ABM Onsite Services – West, Inc.; ABM Services, Inc.; ABM Janitorial Services – Northern  
 8 California; and ABM Janitorial Services – Southwest, Inc. (collectively, now known as ABM  
 9 Industry Groups, LLC) ("Defendants," and together with Named Plaintiffs, "the Parties").

10 2. The Settlement is hereby PRELIMINARILY APPROVED as appearing on its  
 11 face to be fair, reasonable, and adequate; to have been the product of serious, informed, and  
 12 extensive arms-length negotiations between the Parties; having no obvious deficiencies; not  
 13 improperly granting preferential treatment to the class representative or segments of the  
 14 Settlement Class; and falling within the range of possible approval.

15 3. The Court conditionally certifies a Settlement Class, for settlement purposes only,  
 16 of Cleaners who worked for Defendants in California from October 24, 2010 through the date of  
 17 this Order, with the following Subclasses:

- 18 a. A Labor Code 2802 Subclass, defined as all non-exempt hourly employees  
 19 who worked as a Cleaner for Defendants in California for the period  
 20 starting October 24, 2010, to the date of this Order, except that for those  
 21 Cleaners who are subject to a collective bargaining agreement ("CBA")  
 22 which contains an operative arbitration clause<sup>1</sup>, this Subclass shall exclude

23  
 24 <sup>1</sup> The applicable CBAs are the San Diego and Imperial Counties Maintenance Contractors  
 25 Agreement by and between ABM Industry Groups, LLC and SEIU United Service Workers  
 26 West, CTW of San Diego California, effective June 1, 2016; the Los Angeles/Orange County  
 Maintenance Contractors Agreement by and between ABM Industry Groups, LLC and SEIU  
 United Service Workers West, effective May 1, 2016; and the Northern California Maintenance

all claims arising under and after the effective date of the relevant CBA;  
and

b. A PAGA Subclass, defined as all non-exempt hourly employees who  
worked as a Cleaner for Defendants in California for the period starting  
November 4, 2013, to the date of this Order.

4. As to the Settlement Class and Subclasses, the Court finds that for settlement  
purposes only the requirements of Rule 23(a) and Federal Rule of Civil Procedure 23(b)(3) are  
satisfied, with the exception of the manageability requirement of Rule 23(b)(3), which the Court  
need not address for purposes of settlement. The Court determines it is appropriate to modify  
for settlement purposes only the Classes previously certified by the Court.

5. The Court appoints the Named Plaintiffs Marley Castro and Lucia Marmolejo as  
representatives of the Settlement Class and Subclasses.

6. The Court appoints Hunter Pyle Law and Feinberg Jackson Worthman &  
Wasow LLP as Class Counsel for the Class.

7. The Court appoints RG/2 Claims Administration, LLC ("RG/2") as the Claims  
Administrator.

8. A hearing (the "Final Approval and Fairness Hearing") pursuant to Rule 23(e) is  
hereby SCHEDULED to be held before the Court on August 20, 2019 at the United States  
District Court, Northern District of California, Courtroom 1, 4th Floor, 1301 Clay Street,  
Oakland, California, for the following purposes:

- a. to determine whether the proposed Settlement is fair, reasonable and  
adequate and should be approved by the Court;
- b. to determine whether the Order of Final Approval as provided under the  
Settlement should be entered, and to determine whether the Defendants

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Contractors Agreement by and between ABM Industry Groups, LLC and the SEIU United  
Service Workers West, effective May 1, 2016.

should be released of and from the Released Claims as provided in the Settlement;

- c. to consider Named Plaintiffs' application for service awards;
- d. to consider Class Counsel's application for an award of attorney's fees and expenses; and
- e. to rule upon such other matters as the Court may deem appropriate.

9. The form and content of Settlement Notice attached hereto as Exhibit A is hereby APPROVED. Each Settlement Class member will receive both English and Spanish versions of the approved Settlement Notice.

10. Notice shall be provided to Settlement Class Members in the following manner: Within sixty (60) calendar days of this Order, Defendants will provide Settlement Class Member data to the Claims Administrator and to Class Counsel. Twenty-one (21) calendar days after Defendants provide the Settlement Class Member data to the Claims Administrator, the Claims Administrator shall send a Settlement Notice to all Settlement Class Members by first-class U.S. Mail, postage prepaid and supplement with e-mail notice, if feasible. In order to provide the best notice practicable, any Settlement Notice returned as undelivered shall be sent to the forwarding address affixed thereto, if any. If no forwarding address is provided for a Settlement Notice that is returned as undelivered, the Claims Administrator will use reasonable methods to locate a current address, including a skip trace. If no current address is located, the Settlement Notice for that individual will be deemed undeliverable.

11. The Claims Administrator will maintain a website with links to documents relating to the Settlement and Plaintiffs' motion for attorneys' fees, costs and class representative service awards. The Motion for Attorney's Fees and any related filings shall be available on the website for a reasonable period of time of no less than thirty-five (35) calendar days prior to the deadline for class members to file an objection to the Settlement Agreement.

12. Class Counsel shall file the Motion for Attorney's Fees (including expenses) and

1 service awards no later than thirty-five (35) calendar days prior to the deadline for class  
2 members to file an objection to the Settlement Agreement. The Motion for Attorney's Fees shall  
3 be heard at the time of the Final Approval and Fairness Hearing.

4 13. The form and manner of delivery of Settlement Notice directed hereby meet the  
5 requirements of Rule 23(c)(2)(B) and due process, constitute the best notice practicable under  
6 the circumstances, and shall constitute due and sufficient notice to all Settlement Class  
7 Members.

8 14. Any Settlement Class Member who intends to object to the settlement or this  
9 Settlement Agreement must submit a written objection, along with any supporting documents, to  
10 the Court, no later than sixty (60) calendar days after the postmark date of the Settlement Notice  
11 by mailing it to or filing it in person with the Court. Settlement Class Members who timely  
12 submit a written objection have the option to appear at the Final Approval Hearing, either in  
13 person or through their own counsel. To appear, Settlement Class Members must include in  
14 their written objection a statement that they intend to appear at the Final Approval Hearing or  
15 otherwise receive permission of the Court. The written objection must include copies of any  
16 papers, exhibits, or other evidence that the objecting Settlement Class Member will present to  
17 the Court in connection with the Final Approval Hearing. Any person or entity who fails to  
18 submit a written objection or make an objection at the Final Approval hearing shall forever  
19 waive his, her, or its objection, except by special permission of the Court. Class Counsel shall  
20 file any written objections with the Court with the Motion for Final Approval.

21 15. The Parties shall abide by the terms of the Settlement.

22 16. Pending the Court's further review of the Settlement, all proceedings in the  
23 Class Action, other than proceedings pursuant to the Settlement, shall be stayed, and all Class  
24 Members shall be enjoined from commencing any other action based upon any of the claims at  
25 issue in the Litigation.

26 17. If the Court fails to approve the Settlement, either settling Party may terminate

this Settlement by giving written notice (through counsel) to the other Party within 30 days. In that event, the Settlement shall be deemed null and void and shall have no further force and effect, and neither the Settlement nor the negotiations leading to it shall be used or referred to by any person or entity in this or in any other action or proceeding for any purpose. The Parties shall then be restored to their respective positions in the Class Action as of January 4, 2019, except that the trial and pretrial dates previously scheduled in this matter shall be re-set to available future dates on the Court's calendar. The rights and duties of the Parties shall revert to their status prior to the Settlement, and the Class Action shall continue as if the Settlement had not been reached. In such event, any order entered by this Court in accordance with the terms of the Settlement shall be treated as vacated.

18. [Proposed] implementation schedule for further proceedings, consistent with this Order and the Settlement:

Event	Event Date
Defendants to provide Settlement Class data to Claims Administrator and Class Counsel	Sixty (60) calendar days after this Order of Preliminary Approval is entered
Settlement Administrator to mail Settlement Notice to the Settlement Class	Twenty-one (21) calendar days after Defendants provide Settlement Class data to the Claims Administrator and Class Counsel
Class Counsel to file Motion for Attorneys' Fees and Named Plaintiffs' Service Payments	No later than thirty-five (35) calendar days prior to the deadline for Settlement Class Members to Object
Deadline for Settlement Class Members to object or opt-out of the settlement	Sixty (60) calendar days after the postmark date of the Settlement Notice
Class Counsel to file Motion for Final Approval	July 16, 2019
Claims Administrator to provide declaration	July 30, 2019

of due diligence and report on opt outs (to be filed with Court by Class Counsel)	
Final Approval Hearing and Hearing on Motion for Attorney's Fees and Named Plaintiffs' Service Payments	August 20, 2019

**IT IS SO ORDERED.**

Date: February 14, 2019



Yvonne Gonzalez Rogers  
United States District Court Judge

# **EXHIBIT 1**



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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

MARLEY CASTRO and LUCIA  
MARMOLEJO, on behalf of themselves and  
all others similarly situated,

Plaintiff,

v.

ABM INDUSTRIES, INC.; ABM ONSITE  
SERVICES - WEST, INC.; ABM SERVICES,  
INC.; ABM JANITORIAL SERVICES -  
NORTHERN CALIFORNIA, INC.; and  
ABM JANITORIAL SERVICES, INC.,

Defendant.

CASE NO. 4:17-cv-03026-YGR

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

Judge: Hon. Yvonne Gonzalez Rogers

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Plaintiffs Marley Castro and Lucia Marmolejo (“Named Plaintiffs”) and Defendants ABM Onsite Services – West, Inc.; ABM Services, Inc.; ABM Janitorial Services – Northern California; and ABM Janitorial Services – Southwest, Inc. (collectively, now known as ABM Industry Groups, LLC) (“Defendants” and together with Named Plaintiffs, “the Parties”), subject to the terms and conditions hereof and final approval by the Court, hereby enter into this Joint Stipulation of Class Action Settlement and Release (“Settlement Agreement”). This Settlement Agreement is intended to fully, finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to the terms and conditions set forth in this settlement.

## I. RECITALS

### A. Background and Procedural History

1. Named Plaintiffs commenced the Class Action on October 24, 2014, by filing a class action complaint against Defendants in *Castro v. ABM Industries, Inc.*, Case No. RG14745764, in the Superior Court of California, County of Alameda. On May 25, 2017, the case was removed to the Northern District of California and assigned Case No. 4:17-cv-03026-YGR.

2. Named Plaintiffs allege that Defendants violated California Labor Code section 2802 when they allegedly did not reimburse Named Plaintiffs or other similarly situated non-exempt janitorial employees for their use of personal cell phones when (1) clocking in and out of work, and (2) communicating with leads and supervisors. Named Plaintiffs also assert derivative claims under the Unfair Competition Law, California Business & Professions Code section 17200, and the Labor Code Private Attorneys General Act of 2004 (“PAGA”), California Labor Code section 2698 et seq.

3. In October 2017, Named Plaintiffs moved for class certification, seeking to represent a class of “[a]ll employees who were, are, or will be employed by ABM in the State of California with the Employee Master Job Description Code Cleaner” (“Cleaners”) beginning from October 24, 2010. Dkt. 31. On January 26, 2018, the Court certified three classes:

- An “EPAY Class” of Cleaners “who used a personal cell phone to punch in and out of the EPAY system and who (a) worked at an ABM facility which did not contain biometric clock, and were (b) not offered an ABM-provided cell phone” from January 1, 2012, to present.

- A “Suspicious Incidents Class” of Cleaners “who used a personal cell phone to report unusual or suspicious circumstances to supervisors and were not offered an (a) ABM-provided cell phone[] or (b) two-way radio” from October 24, 2010 to present.
- A “Supervisor Communications Class” of Cleaners “who used a personal cell phone to respond to communications from supervisors and were not offered an (a) ABM-provided cell phone[] or (b) two-way radio” from October 24, 2010 to present.

Dkt. 49.

4. On March 20, 2018, Defendants moved to dismiss and to compel absent class members who were bound by one of three collective bargaining agreements (“CBAs”) to arbitrate their non-PAGA claims against Defendants on an individual basis. Dkt. 58. Defendants argued that the claims of Cleaners bound by these CBAs should be excluded in their entirety, whether or not they arose before the effective date of the CBAs. *Id.* On May 14, 2018, the Court modified the class definitions to exclude union Cleaners’ claims arising after the effective date of the CBAs. Dkt. 78. ABM appealed the Court’s order on June 6, 2018 to the Ninth Circuit. Dkt. 80.

5. On October 15, 2018, the Parties participated in mediation with Mark Rudy and reached a class action settlement of this Class Action.

#### **B. Parties’ Statements and Recognition of the Benefits of the Settlement**

6. Class Counsel has conducted extensive investigation into the facts of the Class Action, including depositions of two of ABM’s 30(b)(6) witnesses and of a supervisor witness, defending the depositions of the Named Plaintiffs and of Plaintiffs’ expert, discovery of relevant ABM e-mails and records, and other investigation undertaken by counsel for Plaintiffs. Class Counsel is aware of Defendants’ practices and procedures concerning clocking in and out, reimbursement for business expenses, and Cleaners’ communications with leads and supervisors. The Parties have engaged in extensive negotiations and exchange of data, documents, and information. This case has been vigorously litigated at all stages, and has resulted in the filing of several petitions for review in the Ninth Circuit, a petition for a writ of certiorari filed in the U.S. Supreme Court, and a pending appeal before the Ninth Circuit. Based on a thorough investigation and evaluation of this case, Class Counsel and Plaintiffs have concluded that the settlement with Defendants for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest

of the class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendants, and potential appellate issues.

7. Defendants deny each and all of the claims that Plaintiffs allege in the Class Action. Defendants expressly deny any and all charges of wrongdoing or liability arising out of any of the acts, omissions, facts, matters, transactions, or occurrences alleged, or that could have been alleged, in the Class Action. Nevertheless, Defendants have taken into account the uncertainty and risks inherent in any litigation and have also concluded that further litigation of this action would be protracted and expensive. Defendants have therefore determined that it is desirable and beneficial that this action be settled in the manner and upon the terms and conditions set forth in the Settlement Agreement. Neither this Settlement Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Settlement Agreement, is, may be construed as, or may be used as an admission, concession, or indication by or against Defendants of any fault, wrongdoing, or liability whatsoever.

## II. DEFINITIONS

8. “Administrative Costs” shall mean the estimated cost of administering the settlement process, including providing the Settlement Notice, various efforts to locate Settlement Class Members, and coordinating the payment of claims on behalf of the Settlement Class Members.

9. “Attorney’s Fees and Costs” shall mean the amount to be paid to Class Counsel under the terms of this Settlement Agreement.

10. “Claims Administrator” shall mean RG/2 Claims Administration LLC, P.O. Box 59479, Philadelphia, PA 19102-9479, which is the entity that has been selected to provide notice of this proposed class action settlement to the Settlement Class Members and to perform other related functions to administer the settlement contemplated by this Settlement Agreement as described herein.

11. “Class Action” shall mean the civil action entitled *MARLEY CASTRO and LUCIA MARMOLEJO, individually and on behalf of all similarly situated current and former employees, v. ABM Industries, Inc.; ABM Onsite Services – West, Inc. (now known as ABM Industry Groups, LLC); ABM Services, Inc. (now known as ABM Industry Groups, LLC); ABM Janitorial Services – Northern California (now known as ABM Industry Groups, LLC); and ABM Janitorial Services – Southwest, Inc. (now known as ABM Industry Groups, LLC)*, Case No. 4:17-cv-03026-YGR.

12. “Class Counsel” shall mean the attorneys representing Plaintiffs in the Class Action: Hunter Pyle and Chad Saunders of Hunter Pyle Law, and Todd Jackson, Catha Worthman, and Genevieve Casey of Feinberg, Jackson, Worthman & Wasow.

13. “Class Period” shall mean October 24, 2010, to the date of the Order Granting Preliminary Approval, inclusive.

14. “Defense Counsel” shall mean the attorneys representing Defendants in the Class Action: Theodore J. Boutrous Jr., Theane Evangelis, Katherine V.A. Smith, and Bradley Hamburger of Gibson, Dunn & Crutcher LLP.

15. “Defendants” or “ABM” shall mean Defendants ABM Onsite Services – West, Inc.; ABM Services, Inc.; ABM Janitorial Services – Northern California; ABM Janitorial Services – Southwest, Inc.; and ABM Industry Groups, LLC.

16. The “Effective Date” of this Settlement Agreement shall mean seven (7) calendar days after all of the following conditions have been satisfied:

- a. Execution of this Settlement Agreement by all Parties, Class Counsel and Defense Counsel;
- b. Submission of this Settlement Agreement to the Court, along with appropriate motions and requests for approval of this Settlement Agreement by the Court;
- c. Preliminary Approval of the settlement by the Court;
- d. Mailing of the Settlement Notice to the Settlement Class Members in accordance with the Court’s Order of Preliminary Approval;
- e. Expiration of the opt-out date as defined in the Settlement Notice;
- f. Less than five percent (5%) of the number of individuals in the Settlement Class submit timely and valid requests to opt out (or if Defendants do not exercise their right to rescind and void the Settlement Agreement due to the number of opt out requests);
- g. A Final Approval Hearing, Final Approval of the Settlement Agreement by the Court, and entry of a written final order by the Court approving this Settlement Agreement and entering final judgment with respect to the Class Action. Except

1 that, in the event there are any objections to the Settlement Agreement made  
2 prior to or at the Fairness Approval Hearing, or an appeal of the Court's Final  
3 Approval of the Settlement Agreement is taken, then the Effective Date shall be  
4 the later of the following events: when the period for filing any appeal, writ or  
5 other appellate proceeding opposing the settlement has elapsed without any  
6 appeal, writ or other appellate proceeding having been filed; or when any appeal,  
7 writ or other appellate proceeding opposing the settlement has been dismissed  
8 finally and conclusively with no right to pursue further remedies or relief; or  
9 when any appeal, writ or other appellate proceeding has upheld the Court's final  
10 order with no right to pursue further remedies or relief. The Parties intend that  
11 the Effective Date shall not occur until the Court's order approving the  
12 Settlement is completely final, and there is no further recourse by any individual  
13 who contests the Settlement or any rulings of the Court in connection with the  
14 Settlement.

15 17. Either settling Party may terminate this Settlement by giving written notice (through  
16 counsel) to the other Party no later than thirty (30) calendar days after receiving notice that one or the  
17 following has occurred: (1) the Court declines to enter Preliminary Approval, Final Approval, or final  
18 judgment in substantially the form submitted by the Parties; (2) the Settlement does not become final  
19 because of any appellate court action; or (3) the Court's Final Approval of the Settlement is reversed  
20 or materially modified on appellate review. Should the Settlement be terminated according to the  
21 foregoing provisions (or in accordance with paragraph 72), the Settlement will be null and void, with  
22 the following effects:

- 23 a. Defendants shall have no obligation to make any payments under this  
24 Settlement, except that if Defendants terminate the Settlement, Defendants will  
25 pay the Claims Administrator's reasonable fees and expenses incurred as of the  
26 date that the Settlement is terminated;



- b. If the Named Plaintiffs terminate the Settlement, Class Counsel will pay the Claims Administrator's reasonable fees and expenses incurred as of the date that the Settlement is terminated;
- c. The Order Granting Preliminary Approval, Order of Final Approval Order and any order of judgment shall be vacated;
- d. The Settlement and all negotiations, statements and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in the Action prior to the Settlement; and
- e. Neither this Settlement nor any ancillary documents, actions, statements or filings in furtherance of settlement (including all matters associated with the mediation) shall be admissible or offered into evidence in the Action or any other case or proceeding for any purpose whatsoever.

18. "Final Approval Hearing" means the hearing to be conducted by the Court, or any other court taking jurisdiction of this matter, to determine whether to grant Final Approval of the Settlement.

19. "Labor Code 2802 Subclass" or "Labor Code 2802 Subclass Members" shall mean all non-exempt hourly employees who worked as a Cleaner for Defendants in California for the period starting October 24, 2010, to the date of Preliminary Approval, except that for those Cleaners who are subject to a collective bargaining agreement ("CBA") which contains an operative arbitration clause, this Subclass shall exclude all claims arising under and after the effective date of the relevant CBA.

20. "Order of Final Approval" and "Final Approval" means an order that finally and unconditionally grants final approval of this Settlement Agreement, enters final judgment with respect to the Class Action, and authorizes payments to the Claims Administrator, the Settlement Class Members and Class Counsel as provided in this Settlement Agreement.

21. "Order Granting Preliminary Approval" and "Preliminary Approval" refers to the Court order or statement of decision granting preliminary approval to this Settlement Agreement.

22. "PAGA Subclass" or "PAGA Subclass Members" shall mean all non-exempt hourly employees who worked as a Cleaner for Defendants in California for the period starting November 4, 2013, to the date of Preliminary Approval.

23. “Plaintiffs” shall mean any Cleaner employed by ABM from October 24, 2010 through the date of Preliminary Approval, including Named Plaintiffs.

24. “Released Parties” shall mean Defendants ABM Onsite Services – West, Inc.; ABM Services, Inc.; ABM Janitorial Services – Northern California; ABM Janitorial Services – Southwest, Inc.; and ABM Industry Groups, LLC, including their predecessors, successors, affiliates, subsidiaries, parent companies, partners, current and past employees, insurers, agents, consultants, legal representatives and any other related entities and all of their past, present and future officers, shareholders, owners, members, directors, partners, agents, managers, lawyers, employees, assigns, insurers, predecessors-in-interest, successors-in-interest, and underwriters.

25. “Service Award” shall mean a Court-approved sum to be paid to the Named Plaintiffs in accordance with Section III.B.

26. “Settlement Class” or “Settlement Class Members” shall mean all Labor Code 2802 Subclass Members and the PAGA Subclass Members, i.e., all Cleaners who worked for ABM from October 24, 2010 through the date of preliminary approval.

27. “Settlement Fund” refers to the gross settlement amount of five million and four hundred thousand dollars (\$5,400,000), which is the total and maximum amount Defendants will be required to pay under this settlement. The Settlement Fund will include the following elements: (i) payments to Settlement Class Members, as described herein; (ii) the payment of seventy-five percent (75%) of the PAGA Payment to the California Labor and Workforce Development Agency (“LWDA”); (iii) Service Awards to the Named Plaintiffs, as described herein; (iv) Class Counsel’s Attorneys’ Fees and Costs, as described herein; and (v) Administrative Costs, as described herein.

28. “PAGA Payment” means a total payment of \$440,000 out of the Settlement Fund. Seventy-five percent (75%) of this amount (or \$330,000) shall be paid to the LWDA, and twenty-five percent (25%) (or \$110,000) shall be distributed to the PAGA Subclass according to the formula in paragraph 46. “PAGA Employee Share” means the \$110,000 to be distributed to the PAGA Subclass.

29. “Settlement Notice” refers to the official notice of settlement of class action, attached hereto as Exhibit A.

### III. TERMS OF SETTLEMENT AGREEMENT

30. IT IS HEREBY STIPULATED AND AGREED by and among the Named Plaintiffs (for themselves and the Settlement Class Members) and Defendants, by and through their respective attorneys, that, subject to the approval of the Court, the Class Action will be finally and fully compromised, released, resolved, discharged, and settled, and will be dismissed with prejudice as to Defendants, subject to the terms and conditions of this Settlement Agreement, as follows:

#### A. Settlement Fund

31. In consideration for settlement of the Class Action and the release of claims of the Settlement Class Members, Defendants agree to pay the sum of five million and four hundred thousand dollars (\$5,400,000) (the "Settlement Fund"). Any Administrative Costs, Attorney's Fees and Costs, payment to the LWDA under PAGA, and Service Awards for the Named Plaintiffs shall be deducted from the Settlement Fund. The Settlement Fund is the maximum total amount Defendants are required to pay for any and all purposes under this Settlement Agreement.

32. This is a non-reversionary settlement in which Defendants are required to pay the entire gross settlement amount, which includes the Net Settlement Proceeds, the Service Awards for the Named Plaintiffs, LWDA payment, Administrative Costs, and Attorney's Fees and Costs. No portion of the Settlement Fund will revert to Defendants.

#### B. Named Plaintiffs' Service Awards

33. In addition to the amounts determined to be due to the Named Plaintiffs as Settlement Class Members under this Settlement Agreement, Class Counsel and Plaintiffs intend to apply to the Court for Service Awards for Named Plaintiffs, in the total amount of no more than ten thousand dollars (\$10,000) per person. Plaintiffs intend to request an enhancement for the Named Plaintiffs' roles in prosecuting the Class Action, taking the risks of serving as the named representatives, providing factual information and documentation necessary to the prosecution of the Class Action, attending depositions, agreeing to a General Release of all claims, maintaining contact with Class Counsel, and other participation necessary to the successful prosecution of the Class Action. Any such motion shall be filed concurrently with Class Counsel's application for Attorneys' Fees and Costs. Any Service Award approved by the Court in conjunction with the Settlement shall be paid from the Settlement Fund and

1 shall reduce the amount of the Settlement Fund payable to the Settlement Class Members. Defendants  
2 will not oppose a request up to \$10,000 per Named Plaintiff for a Service Award. The Service Awards  
3 will be reported to the IRS on a Form 1099.

4 34. In exchange for this Service Award, the Named Plaintiffs have agreed to a General  
5 Release as to any and all claims they might have against Defendants and the Released Parties, whether  
6 such claim is known or unknown, as provided for by Section IV.C.

7 35. In the event that the Court denies, modifies, or reduces any request for a Service Award,  
8 Named Plaintiffs, Class Counsel, and the Settlement Class Members may not seek to modify, revoke,  
9 cancel, terminate, or void this Settlement Agreement and will not seek, request, or demand an increase  
10 in the Settlement Amount.

11 36. By entering into this Settlement Agreement, Named Plaintiffs waive their right to appeal  
12 the Court's ruling on Plaintiffs' request for a Service Award for Named Plaintiffs.

13 37. Notwithstanding the above, the Named Plaintiffs shall receive payment of Service  
14 Awards only after the Effective Date has passed.

15 **C. Attorneys' Fees and Costs**

16 38. Class Counsel may request a reasonable award of attorneys' fees and costs from the  
17 Court which will compensate Class Counsel for fees and costs incurred for work already performed in  
18 this Action, the work remaining to be performed in documenting the Settlement Agreement, securing  
19 Court approval of the Settlement Agreement, administering the Settlement Agreement, obtaining  
20 dismissal of the Action with prejudice, and defending against any appeals, as well as all associated  
21 expenses. The amount awarded to Class Counsel shall be left to the discretion of the Court. Defendants  
22 will not oppose a reasonable request for attorneys' fees and costs.

23 39. Class Counsel will submit an application for Attorneys' Fees and Costs to the Court for  
24 approval prior to the date of the Final Fairness Hearing. The Parties agree that, over and above the  
25 total amount of court-approved Attorneys' Fees and Costs award in this Class Action, the Parties will  
26 bear their own fees and costs.

27 40. The Parties agree that Class Counsel shall be solely responsible for the division and  
28 distribution of any and all Court-approved Attorneys' Fees and Costs awarded in the Class Action to

1 Class Counsel, and that Class Counsel agree to release Defendants and the Released Parties from any  
2 responsibility for or liability arising out of or related to the division and distribution of any Court-  
3 approved Attorneys' Fees and Costs to Class Counsel.

4 41. In the event that the Court denies, modifies, or reduces Class Counsel's request for  
5 Attorneys' Fees and Costs, then Plaintiffs, Class Counsel, and the Settlement Class Members may not  
6 seek to modify, revoke, cancel, terminate, or void this Settlement Agreement and will not seek, request,  
7 or demand an increase in the Settlement Amount.

8 42. All claims for attorneys' fees or costs or expenses arising out of the Class Action that  
9 Class Counsel and Plaintiffs may possess against Defendants have been compromised and resolved in  
10 this Settlement Agreement.

11 **D. Administrative Costs**

12 43. The Administrative Costs associated with administering the settlement and claims  
13 process shall be deducted from the Settlement Fund. The Administrative Costs are estimated to be up  
14 to \$125,000. No fewer than ten (10) court days prior to the Final Approval Hearing, the Claims  
15 Administrator shall provide the Court and all counsel for the Parties with a statement detailing the  
16 Administrative Costs. The Parties agree to cooperate in the settlement administration process and to  
17 make all efforts to control and minimize the costs and expenses incurred in the administration of this  
18 Settlement.

19 **E. No Effect on Benefits for Settlement Class Members**

20 44. Plaintiffs agree, on behalf of all Settlement Class Members, that this Settlement  
21 Agreement and any payments under this Settlement Agreement shall not have any effect on the  
22 eligibility or calculation of employee benefits with respect to the Settlement Class Members. This  
23 Settlement Agreement does not represent any modification of any previously credited hours of service,  
24 income, or other eligibility criteria under any employee pension benefit plan, employee welfare benefit  
25 plan, or other program or policy.

26 **F. Allocation**

27 45. The "Net Settlement Proceeds" shall equal the Settlement Fund minus the total of  
28 (i) court-approved Attorneys' Fees and Costs; (ii) court-approved Service Awards to the Named

1 Plaintiffs; (iii) all fees, costs, and expenses of the Claims Administrator in connection with settlement  
 2 administration services including, without limitation, those connected with providing notice to the  
 3 Settlement Class Members and making settlement distributions to Settlement Class Members; and (iv)  
 4 a payment to the LWDA of seventy-five percent (75%) of the total PAGA Payment.

5 46. The Net Settlement Proceeds shall be allocated such that each member of the Settlement  
 6 Class who does not opt out receives a payment of at least \$20. The Labor Code 2802 Subclass Members  
 7 who do not opt out will receive additional per member payments, as well as compensation for  
 8 Qualifying Months, as defined below. The distributions shall be as follows:

9 a. For each member of the Labor Code 2802 Subclass who does not opt out:

10 i. A payment of \$56 per member; and

11 ii. An additional payment of approximately \$12<sup>1</sup> for each month in the  
 12 Class Period in which a personal cell phone number associated with the  
 13 member appears in either ABM-provided phone records or EPAY punch  
 14 records produced by Defendants in this Class Action (“Qualifying  
 15 Months”);<sup>2</sup>

16 b. For each member of the PAGA Subclass who is not a Labor Code 2802 Subclass  
 17 member and who does not opt out, a payment of \$20 will be allocated out of the PAGA  
 18 Employee Share to each such member. The remainder of the PAGA Employee Share  
 19 will be allocated pro rata to each additional member of the PAGA Subclass who does  
 20 not opt out.

---

21  
 22  
 23 <sup>1</sup> The amount of the additional payment is an estimate because the exact amount depends upon the  
 24 total numbers of Settlement Class Members (including the numbers in each Subclass); any additional  
 25 ABM-provided phone records or EPAY punch records produced by Defendants in this Class Action;  
 and any additional information submitted by Settlement Class Members in response to the Notice of  
 Settlement (such as additional cell phone numbers they used during the Class Period).

26 <sup>2</sup> By agreeing to this method of allocation, Defendants do not admit or concede that the fact that a  
 27 personal cell phone number associated with an employee appears in its records means that the  
 28 employee was required to use his or her personal cell phone or that any such personal cell phone  
 usage was subject to reimbursement under California Labor Code section 2802. In addition,  
 Defendants will not be responsible for any costs associated with the determination of Qualifying  
 Months, other than the costs associated with obtaining and producing additional records pursuant to  
 paragraph 59 of this Agreement.

1           47. Each Settlement Class Member's "Individual Settlement Award" shall equal the sum of  
2 the individual's allocated payments pursuant to the formula set forth in paragraph 46.

3           48. The Claims Administrator will pay Individual Settlement Awards to all Settlement Class  
4 Members on a confidential basis and issue IRS tax forms. Each Settlement Class Member's Individual  
5 Settlement Award will be reported to the IRS on a Form 1099.

6                   **IV. CLAIMS RELEASED BY SETTLEMENT AGREEMENT**

7           **A. Claims Released by Labor Code 2802 Subclass**

8           49. In exchange for the payments by Defendants as described herein, upon the Effective  
9 Date of this Settlement Agreement, and except as to such rights or claims as may be created by this  
10 Settlement Agreement, the Labor Code 2802 Subclass and each member of that Subclass who does not  
11 opt out, including the Named Plaintiffs (who shall not opt out), their heirs, assigns, and estates, jointly,  
12 severally, shall, and hereby do fully release and discharge Defendants and Released Parties from any  
13 and all claims, debts, liabilities, demands, obligations, guarantees, penalties, costs, expenses, attorneys'  
14 fees, damages, liquidated damages, action or causes of action whatever kind in nature, whether known  
15 or unknown, contingent or accrued, arising out of the dispute which is the subject of the Class Action  
16 or which are asserted or could have been asserted in the Class Action based on the allegations in the  
17 pleadings or Plaintiffs' PAGA letter regarding the events that occurred or alleged to have occurred,  
18 whether in contract, based on putative violations of any federal, state, or local statute, rule or regulation  
19 pertaining to unreimbursed business expenses for the business-related use of personal cell phones or  
20 unfair business practices based on the foregoing during the Class Period ("Labor Code 2802 Released  
21 Claims"). The Labor Code 2802 Released Claims do not include any workers' compensation claims,  
22 claims for physical bodily harm, discrimination claims, claims for benefits arising under the Employee  
23 Retirement Income Security Act ("ERISA"), claims that arise in the future, or any other claims not  
24 directly related to the unreimbursed business expenses for the business-related use of personal cell  
25 phones or unfair business practices based on the foregoing. The Labor Code 2802 Released Claims do  
26 not include any claims excluded from the Labor Code 2802 Subclass in paragraph 19.



**B. Claims Released by the PAGA Subclass**

50. In exchange for the payments by Defendants as described herein, upon the Effective Date of this Settlement Agreement, and except as to such rights or claims as may be created by this Settlement Agreement, the PAGA Subclass and each member of that Subclass who does not opt out, including the Named Plaintiffs (who shall not opt out), their heirs, assigns, and estates, jointly, severally, shall, and hereby do fully release and discharge Defendants and Released Parties from any and all PAGA claims which are asserted or could have been asserted in this Class Action based on the allegations in the pleadings or Plaintiffs' PAGA letter regarding the events that occurred or are alleged to have occurred, whether in contract, based on putative violations of any federal, state, or local statute, rule, or regulation, pertaining to unreimbursed business expenses for the business-related use of personal cell phones or unfair business practices based on the foregoing from November 4, 2013 through the date of Preliminary Approval ("PAGA Released Claims").

**C. Claims Released by Named Plaintiffs**

51. Following the Effective Date and upon distribution by Defendants of Named Plaintiffs' Individual Settlement Awards and Service Award payments pursuant to paragraph 33 (if such an award is granted by the Court), Named Plaintiffs fully and finally release Defendants and Released Parties from any and all claims, known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, including but not limited to, all claims arising from or related to their employment with Defendants and their compensation and wage statements while an employee of Defendants.

52. Named Plaintiffs hereby agree that, notwithstanding section 1542 of the California Civil Code, all claims that Named Plaintiffs may have, known or unknown, suspected or unsuspected, in the Action and any claims arising out of or related to the Action are hereby released. Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.



1 Named Plaintiffs expressly waive the provisions of section 1542 of the California Civil Code with full  
 2 knowledge and with the specific intent to release all known or unknown, suspected or unsuspected  
 3 claims arising on or before the date of the final approval of the Settlement, and therefore specifically  
 4 waive the provisions of any statute, rule, decision or other source of law of the United States or of any  
 5 state of the United States or any subdivision of a state which prevents release of unknown claims.  
 6 Provided however, that Named Plaintiffs do not release their rights to any claims for earned benefits  
 7 under the terms of any employee benefit plan applicable to them, claims to enforce rights provided by  
 8 this Settlement Agreement, claims that arise after the execution of this Settlement Agreement, and  
 9 claims that cannot be released as a matter of law.

#### 10 **D. Binding Releases**

11 53. The Releases in this Settlement Agreement shall be binding on all non-opt-out members  
 12 of the Settlement Class, as of the date their Individual Settlement Awards are mailed. This Settlement  
 13 Agreement shall constitute, and may be pleaded as, a complete and total defense to any Labor 2802  
 14 Subclass Released Claims and PAGA Subclass Released Claims if raised in the future by non-opt-out  
 15 members of the Settlement Class.

#### 16 **V. SCHEDULE FOR APPROVAL OF SETTLEMENT AGREEMENT**

17 54. Plaintiffs and Defendants stipulate and agree to the following schedule and procedures  
 18 for obtaining the Court's approval of the settlement, including notifying the Settlement Class  
 19 Members and processing all benefits provided under this Settlement Agreement:

##### 20 **A. Seeking Preliminary Approval of Settlement Agreement**

21 55. Upon the execution of this Settlement Agreement, Plaintiffs will move the Court for  
 22 (a) preliminary approval of the terms of this Settlement Agreement, (b) certification of a Settlement  
 23 Class, for settlement purposes only, which shall include (i) the Labor Code 2802 Subclass, and (ii) the  
 24 PAGA Subclass; (c) approval of the Settlement Notice and settlement notice procedure, and (d) the  
 25 scheduling of a settlement fairness hearing on the question of whether the terms of this Settlement  
 26 Agreement should be finally approved as fair, reasonable, and adequate as to the Named Plaintiffs and  
 27 the Settlement Class Members (collectively, "Motion for Preliminary Approval"). As a part of this  
 28 motion, Plaintiffs will submit a copy of this Settlement Agreement. Defendants' stipulation to the

1 certification of the Settlement Class, the Labor Code 2802 Subclass and PAGA Subclass for settlement  
2 purposes shall not be construed as an admission or acknowledgement of wrongdoing of any kind, or  
3 that any litigation class should be certified or given collective or representative action treatment.

4 56. Class Counsel shall provide Defendants with a reasonable opportunity to review, and  
5 provide comments to the Motion for Preliminary Approval, before the motion and supporting papers  
6 are filed with the Court. Defendant shall not oppose the Motion for Preliminary Approval filed by  
7 Class Counsel pursuant to this Settlement Agreement, so long as the motion and supporting papers are  
8 consistent with the terms of this Settlement Agreement.

9 57. Within ten (10) days after the filing of the Motion for Preliminary Approval, Defendants  
10 shall comply with the “Notification of Settlement” requirements of the Class Action Fairness Act (28  
11 U.S.C. § 1715). Defendant shall provide Class Counsel with a copy of the notices provided to the  
12 appropriate state officials, as defined under 28 U.S.C. § 1715. Prior to the date set for the preliminary  
13 approval hearing, Defendants shall file a proof of service with the Court indicating compliance with 28  
14 U.S.C. § 1715.

15 **B. Providing Class Data to Claims Administrator and Class Counsel**

16 58. Within sixty (60) calendar days of the Order Granting Preliminary Approval,  
17 Defendants agree to provide to the Claims Administrator a “class list” with the following information  
18 for each Class Member: (a) name; (b) last-known address and phone number(s); (c) social security  
19 number; (d) work site(s) where he or she was employed by Defendants during the Class Period and  
20 relevant dates; and (e) identification of whether the Class Member is eligible to participate in the Labor  
21 Code 2802 Subclass (and if so, for what dates and work sites, including data sufficient for Class  
22 Counsel to verify this information). The above-described information will be provided to Claims  
23 Administrator on a confidential basis, and the Claims Administrator agrees to use this information only  
24 for purposes of verifying the accuracy of the information. The Claims Administrator agrees not to use  
25 the information for any purpose other than the administration of the settlement of the Class Action, and  
26 agrees not to disclose the information to any third party.

27 59. Within sixty (60) calendar days of the Order Granting Preliminary Approval,  
28 Defendants will produce to Class Counsel (i) a “class list” with the following information for each

Class Member: (a) name; (b) last-known address and phone number(s); (c) work site(s) where he or she was employed by Defendants during the Class Period and relevant dates; and (d) identification of whether the Class Member is eligible to participate in the Labor Code 2802 Subclass (and if so, for what dates and work sites, including data sufficient for Class Counsel to verify this information); and (ii) to the extent they have not already been produced by Defendants to Class Counsel, any additional ABM-provided phone records and EPAY punch records through the end of the Class Period relevant to the determination of Qualifying Months as set forth in paragraph 46. With respect to the records described in (ii), Defendants will take the following steps to ensure their timely production: (a) request within two business days of the Order Granting Preliminary Approval via e-mail and telephone that its third-party vendors provide the additional records described in (ii), (b) explain to these third-party vendors that these records are needed to comply with a court-supervised settlement, and (c) follow-up with the third-party vendors on at least a weekly basis until the additional records described in (ii) are provided. If some or all of the records described in (ii) are not yet available as of the deadline for production, the Parties will confer over the issue and seek Court guidance if necessary.

#### **C. Settlement Notice**

60. If the Court grants Preliminary Approval of the settlement terms described in this Settlement Agreement, a Settlement Notice shall be provided to the Settlement Class Members as follows:

- a. Twenty-one (21) calendar days after Defendants provide to the Claims Administrator the data referenced in Paragraph 58, the Claims Administrator shall send a Settlement Notice to all Settlement Class Members by first-class U.S. Mail, postage prepaid and supplement with e-mail notice, if feasible. In order to provide the best notice practicable, any Settlement Notice returned as undelivered shall be sent to the forwarding address affixed thereto, if any. If no forwarding address is provided for a Settlement Notice that is returned as undelivered, the Claims Administrator will use reasonable methods to locate a current address, including a skip trace. If no current address is located, the Settlement Notice for that individual will be deemed undeliverable. If the

1 procedures herein are followed, Defendants, Class Counsel, and the Claims  
2 Administrator shall be deemed to have satisfied their obligation to provide the  
3 Settlement Notice to the Settlement Class Members. A copy of the proposed  
4 Settlement Notice is attached hereto as Exhibit A.

5 b. The Settlement Notice shall, at a minimum, include the following: identification  
6 of whether the Settlement Class Member is part of the Labor Code 2802  
7 Subclass and/or is part of the PAGA Subclass; for Labor Code 2802 Subclass  
8 Members, the number of Qualifying Months; the estimated amount of the  
9 Individual Settlement Award the Settlement Class Member can expect to  
10 receive; the contact information for Class Counsel and Defense Counsel; the  
11 address for a website maintained by the Claims Administrator; instructions on  
12 how to access the case docket via PACER or in person at any of the Court's  
13 locations; the date of the Final Approval Hearing; information informing  
14 Settlement Class Members of their right to opt out of the Settlement; a statement  
15 that the Settlement Agreement may have preclusive effect and participation in  
16 the Settlement shall result in a release of Labor Code 2802 Released Claims  
17 and/or the PAGA Released Claims; and notification that Settlement Class  
18 Members are solely responsible for determining the tax consequences of  
19 payments made pursuant to this Settlement Agreement.

20 c. The Settlement Notice shall inform Settlement Class Members of their right to  
21 opt out of the Settlement, and to be excluded from receiving any of the benefits  
22 related to the Settlement under the Settlement Agreement by completing and  
23 mailing a written opt-out request to the Claims Administrator no later than sixty  
24 (60) calendar days after the postmark date of the Settlement Notice. Any persons  
25 who submit a timely and valid request for exclusion will not be bound by the  
26 terms of the Settlement Agreement, and will not have any right to object, appeal,  
27 or comment thereon. Late-submitted opt-out requests will not be accepted by  
28 the Claims Administrator and shall not be effective. The Claims Administrator

1 will certify jointly to Class Counsel and Defense Counsel which requests for  
2 exclusion were valid and timely submitted.

- 3 d. If a Settlement Class Member disagrees with the number of Qualifying Months,  
4 the member must complete and send a notice of dispute using a unique web-  
5 based form on the website maintained by the Claims Administrator, or by  
6 sending a letter to the Claims Administrator, together with any supporting  
7 written documentation. To be considered, the notice of dispute and supporting  
8 written documentation must be received by the Claims Administrator no later  
9 than thirty (30) calendar days after the postmark date of the Settlement Notice.
- 10 e. The Claims Administrator shall immediately notify both Class Counsel and  
11 Defense Counsel of any disputes submitted by Settlement Class Members. The  
12 Claims Administrator shall share with both Class Counsel and Defense Counsel  
13 the notice of dispute and any documentation submitted by a Settlement Class  
14 Member in support of his or her dispute. Class Counsel shall make the final  
15 determination regarding the dispute within ten (10) calendar days of receipt of  
16 the notice of dispute and supporting written documentation, or no later than forty  
17 (40) calendar days after the postmark date of the Settlement Notice. The Claims  
18 Administrator shall inform each Settlement Class Member of the final  
19 determination by a telephone call, followed by an e-mail or regular U.S. Mail if  
20 no e-mail for that Settlement Class Member is available.
- 21 f. The Claims Administrator shall create and maintain a website, which will  
22 include links to the Class Notice, Motions for Preliminary and Final Approval  
23 and Motion for Attorney's Fees as they become available, until the Effective  
24 Date. The website shall also include links to any other documents or information  
25 the Claims Administrator deems necessary to perform its duties. The Motion  
26 for Attorney's Fees and any related filings shall be available on the website for  
27 a reasonable period of time of no less than thirty-five (35) calendar days prior to  
28 the deadline for class members to file an objection to the Settlement Agreement.

g. At least twenty-one (21) calendar days before the Final Fairness Hearing, the Claims Administrator shall prepare and provide a declaration of due diligence and proof of mailing with regard to the mailing of the Settlement Notice, and any attempts by the Claims Administrator to locate the Settlement Class Members (“Due Diligence Declaration”), to Class Counsel and Defense Counsel for presentation to the Court. The Claims Administrator will attach to the Due Diligence Declaration a report showing the name of each individual who submitted a timely and valid opt-out. Class Counsel shall be responsible for filing the Due Diligence Declaration with the Court.

h. If at any point the Claims Administrator determines that it needs additional time, the Claims Administrator shall inform the Parties, and the Parties will seek from the Court a modification of the schedules contained in this Settlement Agreement or any Court Order, to be consistent with the recommendations and requests of the Claims Administrator. However, the Claims Administrator shall not make a request for a time modification if the need for additional time is a result of any party failing to provide information as required in this Settlement Agreement on a timely basis. If a Party fails to provide required information according to this schedule, any other Party reserves the right to seek the Court’s intervention to ensure compliance with the agreed terms of this Settlement Agreement.

#### **D. Objections to Settlement Agreement after Preliminary Approval**

61. Any Settlement Class Member who intends to object to the settlement or this Settlement Agreement must submit a written objection, along with any supporting documents, to the Court, no later than sixty (60) calendar days after the postmark date of the Settlement Notice by mailing it to or filing it in person with the Court. The written objection must set forth the basis for the objection.

62. Settlement Class Members who fail to make objections in the manner specified in Paragraphs 61-63 shall be deemed to have waived any and all objections and shall be foreclosed from making any objection, whether by appeal or otherwise, to this Settlement Agreement.

63. Settlement Class Members who timely submit a written objection have the option to appear at the Final Approval Hearing, either in person or through their own counsel. To appear, Settlement Class Members must include in their written objection a statement that they intend to appear at the Final Approval Hearing or otherwise receive permission of the Court. The written objection must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing.

64. The filing of an objection allows Class Counsel or Defense Counsel, upon reasonable notice, to take the deposition of the objecting Settlement Class Member, and to seek any documentary evidence or other tangible things that are relevant to the objection. Failure by the Settlement Class Member to make himself or herself available for a deposition or comply with expedited discovery requests may result in the Court striking the Settlement Class Member's objection and otherwise denying him or her the opportunity to make an objection or be further heard.

**E. Duties of the Parties in Connection with Final Court Approval**

65. In connection with final approval by the Court of this Settlement Agreement, Class Counsel will submit a proposed Judgment and a proposed Order Granting Final Approval of Class Action Settlement: approving the settlement, adjudicating the terms thereof to be fair, reasonable, and adequate, and directing consummation of all terms and provisions as provided in this Settlement Agreement.

**F. Timing and Manner of Payments**

66. Defendants shall execute an election statement provided by the Claims Administrator which shall be affixed to the initial tax return of the Qualified Settlement Fund in order to establish the start date of the Qualified Settlement Fund. The gross settlement amount shall thereafter be administered and distributed as set forth in this Settlement Agreement. All interest with respect to the gross settlement amount shall accrue to the benefit of the Settlement Class Members.

67. Within fourteen (14) calendar days of the Effective Date, Defendants will wire the Settlement Fund of five million and four hundred thousand dollars (\$5,400,000) to fund the Settlement to the Administrator, which shall be deposited by the Administrator into a Qualified Settlement Fund



pursuant to Internal Revenue Code §1.468B-1. These funds shall be under the exclusive control of the Administrator, and shall be used solely for the purpose of fulfilling the terms of the Agreement.

68. Within five (5) calendar days after the funding of the Settlement Fund as set forth in Paragraph 67, the Claims Administrator shall make payment to Class Counsel from the Settlement Fund of the Attorneys' Fees and Costs consisting of the total court-approved attorneys' fees, as well as the total court-approved litigation costs accrued as of the date of the Final Approval Hearing.

69. The Claims Administrator shall take all reasonable efforts to make payments from the Settlement Fund within twenty-one (21) days after the Effective Date. The Administrator will send individual checks by regular U.S. Mail to the address provided to the Claims Administrator for mailing of the Settlement Notice. Each Settlement Class Member who is entitled to a payment under this Settlement Agreement will receive a single check for the total of his or her settlement payment.

70. Checks sent to Settlement Class Members under this Settlement Agreement shall remain valid and negotiable for 180 calendar days from the date of their mailing, and thereafter may be automatically canceled if not cashed by the payee within that time. During this 180-day period, the Administrator will coordinate with Class Counsel regarding attempts to locate Class Members whose checks are returned or uncashed; any checks that are re-issued will have an expiration date 180 days following the re-issuing of the checks. After the expiration of all re-issued settlement checks, any funds remaining in the Qualified Settlement Fund (less any remaining Administrative Costs) will be distributed to cy pres beneficiaries as follows: 50% of the funds to Centro Legal de la Raza and 50% of the funds to the Wage Justice Center. No person shall have any claim against Defendants, Released Parties, Defense Counsel, the Named Plaintiffs, any Settlement Class Member, Class Counsel, or the Claims Administrator based on distributions and payments made in accordance with this Settlement Agreement.

## VI. OTHER PROVISIONS

### A. Defendants' Representations Regarding Policy Changes Related to Personal Cell Phones

71. ABM intends to modify its existing written policies to expressly confirm that ABM service workers, including Cleaners, are not required to use personal cell phones for work purposes. ABM will take reasonable steps to notify ABM service workers, including Cleaners, of this



modification of its written policies. To the extent that ABM in the future changes its policies relating to personal cell phone usage, ABM will take reasonable steps to notify ABM service workers, including Cleaners, of any such changes.

#### **B. Voiding the Settlement Agreement**

72. If five percent (5%) or more of the number of individuals in the Settlement Class submit timely and valid requests for exclusion from the Settlement pursuant to the terms and procedures of the Settlement Notice, this entire Settlement Agreement shall become voidable and unenforceable as to Plaintiffs and Defendants, at Defendants' sole discretion. Defendants may exercise such option by giving notice, in writing, to Class Counsel and to the Court at any time prior to Final Approval of this Settlement Agreement by the Court.

#### **C. Notices**

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

##### **TO THE SETTLING CLASS:**

Hunter Pyle  
Chad Saunders  
HUNTER PYLE LAW  
428 Thirteenth Street, 11th Floor  
Oakland, CA 94612  
Telephone: 510.444.4400  
Facsimile: 510.444.4410

Todd Jackson  
Catha Worthman  
Genevieve Casey  
FEINBERG, JACKSON, WORTHMAN & WASOW  
2030 Addison, Suite 500  
Berkeley, CA 94704  
Telephone: 510.269.7998  
Facsimile: 510.269.7994

##### **TO DEFENDANTS:**

Theodore J. Boutrous Jr.  
Theane Evangelis  
Katherine V.A. Smith  
Bradley J. Hamburger  
GIBSON, DUNN & CRUTCHER LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-3197  
Telephone: 213.229.7000  
Facsimile: 213.229.7520

**D. Mutual and Full Cooperation**

74. Plaintiffs, Defendants, Class Counsel, and Defense Counsel agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement and its approval by the Court, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms herein. The parties agree to use their best efforts, including all efforts contemplated by this Settlement Agreement, and any other efforts that may become necessary by Order of the Court, or otherwise, to effectuate this Settlement Agreement.

75. The Parties agree that they will not attempt to encourage Settlement Class Members to object to the proposed settlement or to opt out. Plaintiffs and Class Counsel will make every reasonable effort to accurately explain the benefits of this Settlement Agreement in response to any questions from any Settlement Class Members.

**E. No Admission of Liability**

76. Nothing herein shall constitute any admission by Defendants of wrongdoing or liability or of the truth of any factual allegations in the Class Action. Nothing herein shall constitute an admission by Defendants that the Class Action was properly brought as a class or representative action other than for settlement purposes. To the contrary, Defendants have denied and continue to deny each and every material factual, procedural, and/or legal allegation and alleged claim asserted in the Class Action. To this end, the settlement of the Action, the negotiation and execution of this Settlement Agreement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement Agreement or the settlement are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendants, or any of them, or of the truth of any of the factual allegations in the operative complaints, and are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Defendants, or any of them, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.

**F. Binding Nature of Settlement Agreement**

77. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Released Parties. The Named Plaintiffs represent, covenant, and warrant

1 that they have not, directly or indirectly, assigned, transferred, or encumbered any claim, demand,  
2 action, cause of action, or rights released in the Labor Code 2802 Released Claims and PAGA Released  
3 Claims in this Settlement Agreement.

4 78. This Settlement Agreement may be amended or modified only by a written instrument  
5 signed by Class Counsel and the Named Plaintiffs, as well as Defense Counsel and Defendants. No  
6 rights under this Settlement Agreement may be waived except in writing.

7 79. This Settlement Agreement and any attached exhibits constitute the entire Settlement  
8 Agreement between the Named Plaintiffs, Settlement Class Members, and Defendants relating to the  
9 terms contained herein. All prior or contemporaneous settlement agreements, understandings, and  
10 statements, whether oral or written, whether express or implied, and whether by a Party or its counsel,  
11 are merged herein. No oral or written representations, warranties, or inducements have been made to  
12 any Party concerning this Settlement Agreement or its exhibits other than the representations,  
13 warranties, and covenants contained and memorialized in such documents.

14 80. Paragraph titles or captions contained herein are inserted as a matter of convenience and  
15 for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement  
16 or any of its provisions. Each term of this Settlement Agreement is intended to be contractual and not  
17 merely a recital.

#### 18 **G. Dispute Resolution**

19 81. Except as authorized herein, all disputes concerning the interpretation, implementation,  
20 calculation, or payment of the Settlement Amount or other disputes regarding compliance with this  
21 Settlement Agreement will be resolved by the Court.

#### 22 **H. Restriction on Publicity**

23 82. Class Counsel agree to no affirmative press, which shall include without limitation no  
24 press release and no soliciting the media regarding this case or settlement.

25 83. Class Counsel shall maintain any references on their website and social media related  
26 to this case as it currently reads until the time of Preliminary Approval, at which point Class Counsel  
27 may update to include information about the Settlement.  
28

**I. Governing Law and Joint Drafting of Settlement Documents**

84. All terms of this Settlement Agreement and related documents shall be governed by and interpreted according to the laws of the State of California, without respect to choice of law provisions of any state.

85. Class Counsel and Defense Counsel have arrived at this Settlement Agreement as a result of a series of arm's-length negotiations, taking into account all relevant factors, present and potential.

86. This Settlement Agreement has been drafted jointly by Class Counsel and Defense Counsel and, therefore, in any construction or interpretation of this Settlement Agreement, the same shall not be construed against any of the Parties.

87. The Named Plaintiffs and Class Counsel agree that none of the documents provided to them by Defendants shall be used for any purpose other than the prosecution and settlement of the Class Action. Specifically, none of the documents provided shall be used to pursue any subsequent claims or litigation against Defendants or the Released Parties.

**J. Counterparts**

88. This Settlement Agreement may be executed in one or more counterparts, which may be filed with the Court. All executed counterparts, and each of them, shall be deemed to be one and the same instrument. Once available, a complete set of executed counterparts shall be filed with the Court. All executed copies of this Settlement Agreement and photocopies thereof (including facsimile and/or e-mailed copies of the signature pages) shall have the same force and effect and shall be as legally binding and enforceable as the original.

**K. Execution of Settlement Agreement**

89. This Settlement Agreement may be executed in one or more counterparts and by scanned copies or facsimile. All executed copies of this Settlement Agreement and photocopies thereof shall have the same force and effect and shall be as legally binding and enforceable as the original.

**L. Parties' Authority**

90. The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and are fully authorized to bind the Named Plaintiffs, Settlement Class Members, and Defendants to all terms stated herein.

1 Dated: 1/4/19

HUNTER PYLE LAW


FEINBERG, JACKSON, WORTHMAN &  
WASOW

4 By:   
5 Hunter Pyle

6 Attorneys for Plaintiff and the Class

7 Dated: 1/3/19

GIBSON, DUNN & CRUTCHER LLP

9 By:   
10 Theane Evangelis

11 Attorneys for Defendants

1 Dated: 1/04/2019

PLAINTIFF MARLEY CASTRO

2  
3 By: Marley Castro  
4 Marley Castro

5  
6 Dated: 1-4-2019

PLAINTIFF LUCIA MARMOLEJO

7 By: Lucia Marmolejo  
8 Lucia Marmolejo

9  
10 Dated: 1/3/2019

DEFENDANTS ABM ONSITE SERVICES –  
11 WEST, INC.; ABM SERVICES, INC.; ABM  
12 JANITORIAL SERVICES – NORTHERN  
13 CALIFORNIA; AND ABM JANITORIAL  
14 SERVICES – SOUTHWEST, INC.  
(COLLECTIVELY, NOW KNOWN AS ABM  
INDUSTRY GROUPS, LLC)

15 By: Miranda Tolar  
16 Miranda Tolar, Vice President and & Deputy  
17 General Counsel of ABM Industries  
18 Incorporated  
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# **EXHIBIT A**



**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**  
**AND CLASS ACTION SETTLEMENT HEARING**

*Castro, et al. v. ABM Industries, Inc. et al.*

United States District Court for the Northern District of California, Case No. 17-cv-3026-YGR

**THIS NOTICE CONTAINS IMPORTANT LEGAL INFORMATION THAT MAY AFFECT YOU**  
**YOU ARE NOT BEING SUED**

TO: ALL PERSONS WHO WORKED AS CLEANERS FOR ABM ONSITE SERVICES – WEST, INC.; ABM SERVICES, INC.; ABM JANITORIAL SERVICES – NORTHERN CALIFORNIA; AND/OR ABM JANITORIAL SERVICES – SOUTHWEST, INC. (COLLECTIVELY, NOW KNOWN AS ABM INDUSTRY GROUPS, LLC) BETWEEN OCTOBER 24, 2010 AND [DATE].

A proposed \$5,400,000 Settlement has been reached in the above-referenced class action lawsuit (the “Action”). Please read this Notice carefully. It may affect your legal rights to money you may be owed in connection with your employment with ABM Onsite Services – West, Inc., ABM Services, Inc., ABM Janitorial Services – Northern California, ABM Janitorial Services – Southwest, Inc., or ABM Industry Groups, LLC (collectively, “ABM”). In the Action, Plaintiffs allege that ABM failed to reimburse certain janitorial workers—those who have the master job code description of “Cleaner”—for work-related use of their personal cell phones in violation of California law. If you are member of the Settlement Class, you have three options under this Settlement, each of which is discussed below.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>Do Nothing: Receive a Payment</b>	If you do nothing, you will receive a payment and release all claims covered by the Settlement, as described in more detail in section 9, below.  <b>Your estimated share of the Settlement is [insert].</b>
<b>Exclude Yourself  (“Opt Out”) from the Settlement</b>	If you “opt out,” you will NOT receive any money and you will not release your claims against ABM, as described in more detail in section 7, below.
<b>Object to the Settlement</b>	If you wish to object, you must do so in writing, as described in more detail in section 8, below.

**1. Why did I receive this Notice?**

This Settlement affects certain Cleaners who worked for ABM from October 24, 2010 through [DATE] (the “Settlement Class”). Within the Settlement Class, there are two groups of Cleaners, called “Subclasses”:

- (1) Labor Code 2802 Subclass: All non-exempt hourly employees who worked as Cleaners for ABM in California at any time between October 24, 2010, through [DATE]. The Labor Code 2802

Subclass excludes all claims of those Cleaners who are subject to certain collective bargaining agreements (“CBAs”) arising under and after the effective date of the relevant CBA.<sup>1</sup>

- (2) PAGA Subclass: Non-exempt hourly employees who worked as Cleaners for ABM in California at any time between November 4, 2013, through [DATE].

According to ABM’s records, you are a member of the Settlement Class and of the [ADMINISTRATOR TO INSERT 2802 SUBCLASS, PAGA SUBCLASS, or BOTH].

Cleaners who worked or are working subject to the CBAs listed in the footnote on this page are also represented in a pending grievance brought by their union, SEIU United Service Workers West, regarding claims under Labor Code section 2802 for alleged work-related personal cell phone use arising under and after the effective date of the relevant CBA. That grievance is separate from this lawsuit.

## **2. What are the Settlement terms?**

ABM has agreed to pay a total of \$5,400,000 to settle this case. This money will be divided among all Class Members. It will also be used to make payments to Class Counsel for fees and costs of litigation, the California Labor Workforce Development Agency (“LWDA”) for its share of penalties under the Private Attorneys’ General Act, the Plaintiffs for their service to the Class, and the Settlement Administrator for calculating and distributing payments to Class Members. ABM will pay \$5,400,000 regardless of how many Class Members participate or cash their checks. Additionally, ABM has agreed to modify its existing written policies to expressly confirm that ABM service workers, including Cleaners, are not required to use personal cell phones for work purposes. ABM will take reasonable steps to notify ABM service workers, including Cleaners, of this modification of its written policies. To the extent that ABM in the future changes its policies relating to personal cell phone usage, ABM will take reasonable steps to notify ABM service workers, including Cleaners, of any such changes.

This Settlement is the result of good faith, arm’s length negotiations between the Class Representatives and ABM, through their respective attorneys. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Class Members.

The Court has not ruled on the merits of the Class Representatives’ claims or ABM’s defenses. The Settlement is a compromise and is not an admission of liability on the part of ABM. ABM denies the allegations in the case and contends that it has complied with California law.

## **3. How will my share of the Settlement be calculated?**

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<sup>1</sup> The CBAs are: The San Diego and Imperial Counties Maintenance Contractors Agreement by and between ABM Industry Groups, LLC and SEIU United Service Workers West, CTW of San Diego California, effective June 1, 2016; The Los Angeles/Orange County Maintenance Contractors Agreement by and between ABM Industry Groups, LLC and SEIU United Service Workers West, effective May 1, 2016; and The Northern California Maintenance Contractors Agreement by and between ABM Industry Groups, LLC and the SEIU United Service Workers West, effective May 1, 2016.

Class Members will be paid out of the Net Settlement Proceeds, which are the \$5,400,000 total settlement amount minus the payments described above: (1) fees to the Settlement Administrator (estimated at \$125,000); (2) the costs of litigation as approved by the Court in an amount not to exceed \$110,000; (3) a payment to the LWDA of \$330,000; (4) service awards to each of the two Class Representatives not to exceed \$10,000 each; and (5) attorneys' fees up to the amount approved by the Court, not to exceed 25% (\$1,350,000) of the total settlement amount.

If the Court approves these payments, \$3,465,000 will be distributed to the Settlement Class. There are approximately 34,000 Cleaners in the Settlement Class.

All members of the Settlement Class who do not opt out will receive a payment of at least \$20. Members of the Labor Code 2802 Subclass will receive additional amounts, as described below.

The Settlement Agreement allocates \$110,000 to be distributed to members of the PAGA Subclass (the "PAGA Employee Share"). Each member of the PAGA Subclass who is not a Labor Code 2802 Subclass member and who does not opt out will receive a payment of \$20 that will be allocated out of the PAGA Employee Share. The remainder of the PAGA Employee Share will be allocated pro rata to each additional member of the PAGA Subclass who does not opt out.

Each member of the Labor Code 2802 Subclass who does not opt out will receive (a) a payment of \$56 per member; and (b) an additional payment of approximately \$12 for each month from October 24, 2010, through [DATE] in which a personal cell phone number associated with the member appears in either ABM-provided phone records or EPAY punch records produced by ABM in this Action ("Qualifying Months").

Plaintiffs' Motion for Attorneys' Fees and for the Reimbursement of Costs will be available for review at [INSERT LINK TO WEBSITE PROVIDED BY ADMINISTRATOR], at least 35 calendar days prior to the deadlines for Class Members to opt out of the Settlement or object to the Settlement.

#### **4. How much is my share of the Settlement?**

Based on the information from ABM's records, under the formula described in section 3 of this Notice, your number of Qualifying Months is [insert] and your share of the settlement is estimated to be [insert]

This is just an estimate and is subject to final calculations by the Settlement Administrator.

If you participate in this Settlement, you are solely responsible for determining the tax consequences of payments made pursuant to this Settlement.

#### **5. What do I do if I wish to participate in the Settlement and do not wish to challenge the number of Qualifying Months indicated in section 4?**

If you **do not wish to challenge** the number of Qualifying Months indicated in section 4 of this Notice, and you wish to participate in the Settlement and receive a payment, you do **not** need to take any further action.

If the Settlement receives the Court's final approval, a check will be sent to you at the address to which this notice was sent unless you provide a different address to the Settlement Administrator.

**6. What do I do if I do NOT agree with the number of Qualifying Months indicated in Section 4 but I wish to participate in the Settlement?**

If you do NOT agree with the number of months indicated in section 4 of this Notice but you wish to participate in the settlement, you can either:

- (1) Send a letter to the Settlement Administrator explaining that you dispute the number of Qualifying Months, together with any supporting documents. These documents may consist of your personal cell phone records, but you do not have to submit records if you choose not to. To be considered, the letter and supporting written documentation must be received by the Settlement Administrator no later than **[30 DAYS AFTER THE POSTMARK DATE OF THE SETTLEMENT NOTICE]**, or
- (2) Instead of sending a letter, you may fill out a form online at this link **[ADMINISTRATOR TO INSERT]**. You must submit this form no later than **[30 DAYS AFTER THE POSTMARK DATE OF THE SETTLEMENT NOTICE]**.

Class Counsel will make a final and binding determination regarding any disputes. The Settlement Administrator shall inform each Settlement Class Member of the final determination by a telephone call, followed by an e-mail or regular U.S. Mail if no e-mail for that Settlement Class Member is available.

If this settlement receives the Court's final approval, a check will be sent to you at the address to which this notice was sent unless you provide a different address to the Settlement Administrator.

**Settlement Administrator:** **[Insert]**

**7. What do I do if I do NOT want to be bound by the Settlement?**

If you do not want to be part of the Settlement, you must submit a signed written request to be excluded from the Settlement ("Opt Out Request") to the Settlement Administrator, at the address listed above. In order to be valid, your Opt Out Request must be postmarked on or before no later than **[60 DAYS AFTER THE POSTMARK DATE OF THE SETTLEMENT NOTICE]**. If you do not timely submit an executed Opt Out Request (as evidenced by the postmark), your Opt Out Request will be rejected, you will be deemed a member of the Settlement Class, and you will be bound by the release of Released Claims as described in the "What Claims are Being Released by the Proposed Settlement?" in section 9 and all other Settlement terms. If the Opt Out Request is sent from within the United States, it must be sent through the U.S. Postal Service by First-Class U.S. Mail, or the equivalent.

If you timely submit an executed Opt Out Request, you will have no further role in the Action, and for all purposes, you will be regarded as if you never were either a party to this Action or a Class Member, and thus you will not be entitled to any benefit as a result of this Action and will not be entitled to or permitted to assert an objection to the Settlement.

**8. Can I object to the Settlement?**

Yes. If you believe the proposed Settlement is unfair or inadequate in any respect, you can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can

only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. You cannot object to the Settlement if you request exclusion from the Settlement (that is, if you submit an Opt Out Request as described in section 7).

You may object to the proposed settlement in writing. You may also appear at the Final Fairness Hearing to object, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers should (a) clearly identify the case name and number (*Castro, et al. v. ABM Industries, Inc. et al.*, Case No. 17-cv-3026-YGR), (b) be submitted to the Court either by mailing them to the United States District Court for the Northern District of California, 1301 Clay Street, Suite 400 S, Oakland, CA 94612, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before **[60 DAYS AFTER THE POSTMARK DATE OF THE SETTLEMENT NOTICE]**. At the same time, you must mail copies to the Settlement Administrator, to Class Counsel, and to ABM's Counsel, at the addresses below.

Your objection should clearly state: 1) the reasons why you believe the Court should find that the proposed Settlement is not in the best interest of the Settlement Class; and 2) the reasons why the Settlement should not be approved.

Any Class Member who does not object in the manner described above shall be deemed to have waived any objections, and shall be foreclosed from objecting to the fairness or adequacy of the proposed Settlement, the payment of attorneys' fees and costs, the service payments to the Class Representatives, the claims process, and any and all other aspects of the Settlement. Likewise, even if you file an objection, you will be bound by the terms of the Settlement, including applicable releases as set forth above, unless the Settlement is not finally approved by the Court.

<b>9. What claims are being released by the Proposed Settlement?</b>
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The Settlement Agreement contains the following releases of claims.

**A. Claims Released by Labor Code 2802 Subclass**

In exchange for the payments by Defendants as described herein, upon the date that individual settlement awards are mailed pursuant to this Settlement Agreement, and except as to such rights or claims as may be created by this Settlement Agreement, the Labor Code 2802 Subclass and each member of that Subclass who does not opt out, including the Named Plaintiffs (who shall not opt out), their heirs, assigns, and estates, jointly, severally, shall, and hereby do fully release and discharge Defendants and Released Parties from any and all claims, debts, liabilities, demands, obligations, guarantees, penalties, costs, expenses, attorneys' fees, damages, liquidated damages, action or causes of action whatever kind in nature, whether known or unknown, contingent or accrued, arising out of the dispute which is the subject of the Class Action or which are asserted or could have been asserted in the Class Action based on the allegations in the pleadings or Plaintiffs' PAGA letter regarding the events that occurred or are alleged to have occurred, whether in contract, based on putative violations of any federal, state, or local statute, rule or regulation pertaining to unreimbursed business expenses for the business-related use of personal cell phones or unfair business practices based on the foregoing from October 24, 2010, through **[DATE]** ("Labor Code 2802 Released Claims"). The Labor Code 2802 Released Claims do not include any workers'



compensation claims, claims for physical bodily harm, discrimination claims, claims for benefits arising under the Employee Retirement Income Security Act (“ERISA”), claims that arise in the future, or any other claims not directly related to unreimbursed business expenses for the business-related use of personal cell phones or unfair business practices based on the foregoing. The Labor Code 2802 Released Claims do not include any claims excluded from the Labor Code 2802 Subclass because they are covered by certain CBAs (as discussed in section 1).

## **B. Claims Released by the PAGA Subclass**

In exchange for the payments by Defendants as described herein, upon the date that individual settlement awards are mailed pursuant to this Settlement Agreement, and except as to such rights or claims as may be created by this Settlement Agreement, the PAGA Subclass and each member of that Subclass who does not opt out, including the Named Plaintiffs (who shall not opt out), their heirs, assigns, and estates, jointly, severally, shall, and hereby do fully release and discharge Defendants and Released Parties from any and all PAGA claims which are asserted or could have been asserted in this Class Action based on the allegations in the pleadings or Plaintiffs’ PAGA letter regarding the events that occurred or are alleged to have occurred, whether in contract, based on putative violations of any federal, state, or local statute, rule, or regulation, pertaining to unreimbursed business expenses for the business-related use of personal cell phones or unfair business practices based on the foregoing from November 4, 2013 through [the date of Preliminary Approval] (“PAGA Released Claims”).

With respect to both the Labor Code 2802 Released Claims and the PAGA Released Claims, “Released Parties” means “Defendants ABM Onsite Services – West, Inc.; ABM Services, Inc.; ABM Janitorial Services – Northern California; ABM Janitorial Services – Southwest, Inc.; and ABM Industry Groups, LLC, including their predecessors, successors, affiliates, subsidiaries, parent companies, partners, current and past employees, insurers, agents, consultants, legal representatives and any other related entities and all of their past, present and future officers, shareholders, owners, members, directors, partners, agents, managers, lawyers, employees, assigns, insurers, predecessors-in-interest, successors-in-interest, and underwriters.”

<b>10. What is the next step in the approval of the Settlement?</b>
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The Court will hold a Final Fairness Hearing on the fairness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel’s request for attorneys’ fees and costs, the settlement administration costs, and the service payment to the Class Representatives on, **DATE, 2019 at 2:00 p.m.** in Courtroom 1 of the United States District Court, Northern District of California, Oakland Courthouse, located at 1301 Clay Street, 4th Floor, Oakland, CA 94612.

The Final Fairness Hearing may be continued without further notice to Class Members. You are advised to check the settlement website at [**INSERT LINK TO WEBSITE PROVIDED BY ADMINISTRATOR**] or the Court’s Public Access to Court Electronic Records (PACER) website at <https://ecf.cand.uscourts.gov> to confirm that the date has not been changed.

You are not required to attend the Final Fairness Hearing to receive a share of the Settlement. You do not need to appear at this hearing unless you wish to object to the Settlement. If you have sent a written objection, you may appear at the hearing if you choose to do so.

**CONTACTING THE ATTORNEYS REPRESENTING THE PARTIES  
AND THE SETTLEMENT ADMINISTRATOR**

**11. Do I have an attorney in this case?**

As a member of the Settlement Class, you are represented by the law firms Hunter Pyle Law and Feinberg, Jackson, Worthman & Wasow. Together, these law firms are called “Class Counsel.”

Hunter Pyle  
Chad Saunders  
HUNTER PYLE LAW  
428 Thirteenth Street, 11th Floor  
Oakland, California 94612  
Telephone: (510) 444-4400  
Facsimile: (510) 444-4410

Catha Worthman  
Genevieve Casey  
Todd Jackson  
FEINBERG, JACKSON,  
WORTHMAN & WASOW  
2030 Addison, Suite 500  
Berkeley, California 94704  
Telephone: (510) 269-7998  
Facsimile: (510) 269-7994

**12. If I am a Class Member, can I get my own attorney?**

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, you have the right to retain your own personal lawyer at your own expense. If you hire your own lawyer, your lawyer must enter an appearance on your behalf by filing a Notice of Appearance with the Court and mailing it to Class Counsel at the addresses above.

**13. Who are the attorneys representing ABM?**

Theodore J. Boutrous Jr.  
Theane Evangelis  
Katherine V.A. Smith  
Bradley J. Hamburger  
GIBSON, DUNN & CRUTCHER LLP  
333 South Grand Avenue  
Los Angeles, California 90071-3197  
Telephone: (213) 229-7000  
Facsimile: (213) 229-7520

**14. What is the contact information for the Settlement Administrator?**

The Settlement Administrator is called RG/2 Claims Administration, and can be reached at:

[INSERT ADDRESS AND PHONE NUMBER]

## GETTING MORE INFORMATION

### **15. Where can I get more information?**

This Notice summarizes the Action, the basic terms of the Settlement, and other related matters. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at **[INSERT LINK TO WEBSITE PROVIDED BY ADMINISTRATOR]**. You may also obtain more information by contacting Class Counsel, at either address or telephone number listed above; by accessing the Court docket in this case through PACER at <https://ecf.cand.uscourts.gov>; or by visiting the office of the Clerk of the United States District Court, located in Suite 400 S of the United States District Court, Northern District of California, Oakland Courthouse, located at 1301 Clay Street, Oakland, CA 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays (you may also visit the Court at any of its other locations, listed at <https://cand.uscourts.gov/locations>).

Any questions regarding this Notice should be directed to the Settlement Administrator or to Class Counsel at the above addresses and telephone numbers.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.**

### **16. What if my address has changed?**

Your payment will be sent to the address to which this notice was sent unless you provide a different address to the Settlement Administrator. If your address changes or is different from the one this Notice was sent to, you must correct it as soon as possible by notifying the Settlement Administrator at the above address or phone number.

**PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE.**

Dated: \_\_\_\_\_

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA