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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO**

Almidia Esteban Melendez, as an individual
and on behalf of others similarly situated,

Plaintiff,

v.

Genesis Building Services, Inc., Eat My Dust,
Inc., and DOES 1 through 10,

Defendants.

CASE NO. 20-CIV-00453

ASSIGNED FOR ALL PURPOSES TO HON.
DANNY Y. CHOU, DEPARTMENT 22

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT**

1 This Joint Stipulation of Settlement and Release (“Stipulation of Settlement” or
2 “Settlement”) is made and entered into by and between Plaintiff Almidia Esteban Melendez
3 individually and on behalf of all others similarly situated (“Plaintiffs” or “Class
4 Representative”) and Defendants Genesis Building Services, Inc. and Eat My Dust, Inc.
5 (collectively, “Defendants”). Subject to the terms and conditions hereof and the approval of the
6 Court, this Settlement shall be binding on the Class Representatives and those persons they
7 represent, and on Defendants and their present and former parent companies, shareholders,
8 officers, directors, employees, agents, attorneys, insurers, successors, and assigns.

9 **THE PARTIES STIPULATE AND AGREE** as follows:

- 10 1. Plaintiffs and Defendants are collectively referred to herein as “the Parties.”
- 11 2. On January 24, 2020, Plaintiff Melendez filed a Class Action Complaint (“the
12 Action”) in San Mateo County Superior Court, Case No. 20-CIV-00453, captioned *Melendez, et*
13 *al. v. Genesis Building Services, Inc., et al.*, for several alleged wage and hour violations and for
14 an individual claim of wrongful termination. The Complaint includes claims for unpaid wages
15 and overtime, meal period violations, rest period violations, waiting time penalties, record
16 keeping violations, unlawful business practices, unfair business practices, and Private Attorney
17 General Act (“PAGA”) violations as well as Plaintiff Melendez’s individual claim for wrongful
18 termination. The Complaint seeks recovery of compensatory damages, penalties, restitution,
19 interest, and attorneys’ fees and costs.
- 20 3. The Parties and their counsel of record participated in mediation sessions on two
21 occasions—on May 18, 2021 with the Honorable Jamie Jacobs May, (Ret.) and on November
22 12, 2021 with the Hon. Ernest Goldsmith, (Ret.) The discussions at each mediation were
23 vigorous and conducted at arm’s length. The Parties reached an agreement at the close of the
24 second mediation on November 12, 2021.
- 25 4. The Parties hereby stipulate and agree that, for purposes of the Settlement, to the
26 following: “Class Members,” “Plaintiff Class,” and “Settlement Class” mean the following:
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1 “All hourly, non-exempt, non-collectively bargained employees employed by Defendants at any
2 point from January 24, 2016 through November 12, 2021.”

3 5. Defendants deny any liability or wrongdoing of any kind whatsoever associated
4 with the claims alleged in Plaintiffs’ Complaint. With respect to Plaintiffs’ claims, Defendants
5 contend, among other things, that they have complied with all applicable state, federal, and
6 local laws affecting Plaintiffs and the Settlement Class regarding hours worked, unpaid wages,
7 unpaid overtime, unpaid minimum wages, meal and rest periods, record-keeping violations,
8 wage statements, and as to all claims alleged in the Action.

9 6. It is the intention of the Parties that this Stipulation of Settlement shall constitute
10 a full and complete settlement and release of all class claims arising from or related to the
11 allegations of this class action case against Defendants, which release includes in its effect all
12 present and former parent companies, subsidiaries, related or affiliated companies,
13 shareholders, officers, directors, employees, agents, attorneys, insurers, and successors and
14 assigns of Defendants, and any individual or entity that could be jointly liable with Defendants.
15 The Parties acknowledge that this Stipulation of Settlement shall not be construed as an
16 admission of liability whatsoever by any Party, or by any officers, directors, agents, or
17 employees of Defendants. After the Parties agreed to terms on which to settle the Class claims
18 against Defendants, the Parties separately negotiated a resolution to Plaintiff Melendez’s
19 wrongful termination claim, which shall be subject to a separate settlement agreement.

20 7. Counsel for the Plaintiff Class have conducted a thorough investigation into the
21 facts of this Action, including a review of relevant documents and data, and have diligently
22 pursued an investigation of Class Members’ claims against Defendants. Based on their own
23 independent investigation and evaluation, Class Counsel are of the opinion that the Settlement
24 with Defendants for the consideration and on the terms set forth in this Stipulation of Settlement
25 is fair, reasonable, and adequate and is in the best interest of the Plaintiff Class in light of all
26 known facts and circumstances, including the risk of significant delay, the risks of
27 demonstrating liability and damages at trial, defenses asserted by Defendants, and numerous
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1 potential appellate issues. Defendants and Defendants' counsel also agree that the Settlement is
2 fair and reasonable in light of the circumstances of the case.

3 8. The Parties agree to cooperate and to take all steps necessary and appropriate to
4 consummate this Settlement and to dismiss this Action with prejudice after all Settlement sums
5 have been paid out in accordance with this Stipulation of Settlement.

6 9. This Stipulated Settlement Agreement has the following requirements:

7 a. Defendants will pay a total of six hundred and five thousand dollars (\$605,000),
8 the "Total Settlement Amount." As described in further detail below, this
9 amount will be paid through an initial lump-sum payment of \$205,000 to be paid
10 no later than December 15, 2021 (which at the time of this Settlement
11 Agreement, has been deposited with the administrator by Defendants); \$200,000
12 to be paid no later than August 15, 2022; and \$200,000 due no later than
13 September 30, 2023.

14 b. It is further understood and agreed that Defendants shall have no obligation to
15 pay any person, entity, or organization more than the Total Settlement Amount

16 c. The Total Settlement Amount shall be used to make all payments of class
17 settlement awards, enhancement awards to the Class Representatives, all fees
18 and expenses of the Settlement Administrator, all attorneys' fees and costs,
19 employer's share of payroll taxes and PAGA payments.

20 10. This Settlement provides that two installment check payments shall be made to
21 each Class Member. Settlement Checks will go directly to all Class Members without the need
22 to file a claim form. In other words, no Class Member will have to fill out and submit a claim
23 form in order to receive a payment under this Settlement. The amount in each Settlement Check
24 will be calculated using the specified workweek formula described in paragraph 11.f(1), below.

25 TERMS OF THE SETTLEMENT

26 11. NOW THEREFORE, in consideration of the mutual covenants, promises, and
27 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

1 a. It is agreed by and among Plaintiffs and Defendants that the Action, and
2 any class action claims, damages, or causes of action arising out of the facts, circumstances and
3 disputes which are the subject of this Action, be fully and finally settled and compromised as
4 between the Plaintiffs and Defendants, subject to the terms and conditions set forth in this
5 Stipulation of Settlement and the approval of the Superior Court of California, San Mateo
6 County.

7 b. Effective Date: The Settlement embodied in this Stipulation of
8 Settlement shall become effective when all of the following events have occurred: (1) this
9 Stipulation of Settlement has been executed by all Parties and by counsel for the Plaintiff Class
10 and Defendants; (2) the Court has given preliminary approval to the Settlement; (3) notice has
11 been given to the Class Members, as provided herein; (4) the Court has held a Final Fairness
12 Hearing and entered a final order approving this Settlement Agreement, entering a non-
13 monetary judgment which allows the Court to retain jurisdiction over the parties and the case to
14 enforce the terms of the Settlement Agreement, as necessary; (5) all payments are made to the
15 Settlement Fund by Defendant as described in Paragraph 11.d, below; and (6) the following
16 event occurs: (a) the order containing the Court's Final Approval of this settlement ("Final
17 Approval Order") is filed, if no objections by Class Members have been filed or if any
18 objections by Class Members have been withdrawn in writing prior to, or on the record at the
19 Final Fairness Hearing, (b) the time for appeal expires, if an objection has been filed and not
20 withdrawn, or (c) the final resolution of any appeal of objections occurs, if an appeal has been
21 filed and not dismissed. In this regard, it is the Parties' intention that the Settlement shall not
22 become effective until the Court issues its Final Approval Order, and there is no further
23 recourse by an appellant or objector who seeks to contest the Settlement.

24 c. Total Settlement Amount: To implement the terms of this Settlement,
25 Defendant agrees to pay Six Hundred and Five Thousand Dollars (\$605,000), the "Total
26 Settlement Amount." Defendants represent that 412 persons worked as hourly, non-exempt,
27 non-collectively bargained employees of Defendants in the State of California from January 24,
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1 2016 through November 12, 2021; if further information reveals that the number of Class
2 Members employed by Defendants in California between from January 24, 2016 through
3 November 12, 2021, is greater than 10% more than 412, the Parties agree that the Total
4 Settlement Amount will be increased accordingly by the percentage that is greater than 10
5 percent.

6 d. Settlement Consideration: Subject to the provisions hereof, the following
7 sets forth the settlement consideration. The parties acknowledge and agree that before
8 December 15, 2021, Defendants deposited \$205,000 with the settlement administrator that shall
9 be held in escrow pending preliminary approval (the "First Payment") No later than August 15,
10 2022, Defendants shall deposit \$200,000 with the settlement administrator (the "Second
11 Payment") No later than December 15, 2023, Defendants shall deposit \$200,000 with the
12 settlement administrator as a final payment (the "Final Payment"). These monies will be made
13 by wire transfer to the Settlement Administrator using wire instructions provided by the
14 Settlement Administrator and into an interest-bearing account held and administered by the
15 Settlement Administrator. The Settlement Administrator will be responsible for any tax filings
16 required under the law and will make any required tax payments out of the Settlement Fund. In
17 the event that Defendants do not make a payment on the scheduled date, the Settlement
18 Administrator will give notice to the Parties and their respective counsel within five (5) days.
19 Plaintiffs will have the option to file a Stipulation of Judgment with the Court if Defendants
20 have failed to make the timely payment within 30 days and after Plaintiffs have given 14 days'
21 written notice to Defendants of the default.

22 e. Net Settlement Amount and Settlement Payments: All settlement checks,
23 all attorneys' fees and costs, any enhancement awards to the Class Representatives, the fees and
24 expenses of the Settlement Administrator, and any other payments provided by this Settlement
25 shall be paid out of the Total Settlement Amount. The Net Settlement Amount ("Net Settlement
26 Amount") shall be calculated by deducting from the Total Settlement Amount all attorneys'
27 fees and litigation costs, as approved by the Court, the enhancement awards to the Class
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1 Representatives, in an amount to be decided by the Court, but which shall not exceed \$1,500
2 (One Thousand, Five Hundred Dollars) for Plaintiff Melendez, and the fees and expenses of the
3 Settlement Administrator (estimated to be \$14,500 (Fourteen Thousand, Five Hundred
4 Dollars)).

5 f. The amounts in the Class Members' settlement payments will be
6 calculated by the Settlement Administrator and paid out of the Net Settlement Amount, as set
7 forth below. Ninety (90) days after the second set of Settlement Checks have been issued and
8 dispersed, any uncashed Settlement Checks will be cancelled, and the unclaimed sum will be
9 distributed as described below in Paragraph 24. Thirty days prior to the 90-day deadline, the
10 Settlement Administrator will send a reminder postcard to all Class Members who have not yet
11 cashed their settlement checks, reminding them of the deadline for doing so.

12 (1) Settlement Awards to Class Members: Settlement Awards to Class
13 Members will be disbursed by the Settlement Administrator based on the number of weeks
14 worked by the individual Class Member for Defendants in a covered position during the Class
15 Period. The settlement amount shall be paid from the "Net Settlement Amount" according to
16 the following formula: a *pro rata* share of the Net Settlement Amount shall be paid to each
17 Class Member, based on the total number of work weeks actually worked during the Class
18 Period (the time period between January 24, 2016 through November 12, 2021) by each Class
19 Member for Defendants in a covered position divided by the total number of weeks actually
20 worked during the Class Period by all Class Members. In other words, each Class Member's
21 *pro rata* share of the Net Settlement Amount is a fraction, with the individual Class Member's
22 actual weeks worked as the numerator and the total number of weeks actually worked by all
23 Class Members as the denominator.

24 The number of weeks actually worked by individual Class Members during the Class
25 Period will be calculated by reference to Defendants' records, which will be presumed to be
26 correct unless the Class Member timely disputes those records telephonically or in writing to
27 the Settlement Administrator. The amount of time worked will be rounded to the nearest
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1 workweek. Class Members who worked at least one day will be treated as working one
2 workweek for purposes of their settlement share calculation. The Settlement Administrator will
3 determine both the number of weeks actually worked by the individual Class Members and the
4 estimated individual settlement awards to be paid to each Class Member. The Settlement
5 Administrator will provide these initial estimates to the Class in the Class Member Information
6 Form ("Information Form"), which will be included as a part of the proposed Notice Proposed
7 Settlement, and Final Fairness Hearing Date for Court Approval ("Class Notice" or "Notice").

8 Following receipt of the Class Notices and Information Forms, Class Members may
9 review the initial workweeks and Settlement Check amount estimates and send any proposed
10 corrections back to the Settlement Administrator. Class Members may either postmark their
11 corrected Information Forms and/or place a telephone call to the Settlement Administrator with
12 their proposed correction within sixty (60) calendar days after the mailing of the Class Notices
13 and Information Forms. Class Members may—but are not required to—submit evidence to the
14 Settlement Administrator demonstrating that the Class Members' corrections are accurate. All
15 disputes regarding weeks worked will be resolved and decided by the Settlement Administrator,
16 and the Settlement Administrator's decision on all such disputes will be final, binding, and non-
17 appealable.

18 (2) Allocation of Settlement Awards: All Class Members will be paid a
19 settlement award (divided into two installments) based on the formula identified in the
20 paragraph above. The individual Settlement Awards shall be paid from the Net Settlement
21 Amount, with no more due and owing from Defendants, and payable to eligible Class Members
22 according to the following allocation: 70% of the Class Members' settlement payments will be
23 characterized as penalties, for which the Settlement Administrator will issue IRS Forms 1099,
24 10% of the Class Members' settlement payments will be characterized as wages, for which the
25 Settlement Administrator will issue IRS Forms W-2, and 20% of the Class Members'
26 settlement payments will be characterized as interest, for which the Settlement Administrator
27 will issue IRS Forms 1099 .
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1 g. Attorneys' Fees and Litigation Costs: Subject to Court approval and/or
2 modification, Defendant agrees not to object to an award to Class Counsel for attorneys' fees,
3 up to a maximum of 33.33% of the Total Settlement Amount, and an award of costs up to a
4 maximum of Twenty-Five Thousand dollars (\$25,000). These fees and costs will be paid out by
5 the Settlement Administrator from Total Settlement Amount. Should the Court approve
6 attorneys' fees and costs payments in an amount less than that set forth above, the difference
7 between the lesser amount approved by the Court and the requested amounts shall be included
8 within the Net Settlement Amount. Provided that all required payments have been made to the
9 Total Settlement Fund, the attorneys' fees and costs approved by the Court shall be paid from
10 the Total Settlement Fund by the Settlement Administrator to Class Counsel within seven (7)
11 days after the Effective Date, as described in Paragraph 11.

12 h. Class Representative's Enhancement Awards: Subject to Court approval,
13 Defendants further agree to pay the Named Plaintiff an enhancement award ("Enhancement
14 Award") from the Total Settlement Amount for her service as Class Representative, up to a
15 maximum of \$1,500 (One Thousand, Five Hundred dollars) for Plaintiff Melendez. This
16 enhancement award shall be paid from the Total Settlement Amount. Defendants will not object
17 to Class Counsel's application for Court approval of these enhancement awards to the Named
18 Plaintiff. It is understood that the Enhancement Award payments are in addition to any claimed
19 individual Settlement Award to which the Named Plaintiff is entitled as a Class Member and in
20 addition to any payment Defendants make to Plaintiff Melendez in settlement of her individual
21 wrongful termination claim. The Settlement Administrator will issue an IRS Form 1099 for the
22 enhancement award payment to the Named Plaintiff for her service as Class Representative.
23 Should the Court approve the enhancement award payment to the Named Plaintiff in an amount
24 less than that set forth above, the difference between the lesser amount approved by the Court
25 and the enhancement awards set forth above shall be included within the Net Settlement
26 Amount.

1 i. Right of Class Members to Object or Request Exclusion: Class Members
2 will have sixty (60) calendar days from the mailing of the Class Notice and Information Form
3 within which to postmark an objection to the Settlement or to request exclusion (“opt out”)
4 from the Class. Only Class Members who have not opted out may object. To object, a Class
5 Member must mail a letter to the Settlement Administrator stating that he or she objects to the
6 Settlement. This letter must include the Class Member’s name, address, telephone number,
7 signature, and the reasons for the objection to the Settlement. To opt out, a Class Member must
8 mail a letter to the Settlement Administrator stating that he or she wants to “opt out” or be
9 excluded from this lawsuit. The Class Member requesting to opt out must include his or her
10 name, address, telephone number, and signature on this letter. The Parties agree that upon
11 receipt of a letter objecting to the Settlement or a letter requesting exclusion or opt out from the
12 lawsuit or a letter stating a Class Member’s intent to appear at the Final Fairness Hearing, the
13 Settlement Administrator shall contact Plaintiffs’ and Defendant’s Counsel and provide them
14 with a copy of the letter. The Settlement Administrator shall contact Counsel within two (2)
15 business days of receipt of such a letter. If a Class Member submits both an objection and a
16 request to opt out, the Settlement Administrator and Class Counsel may contact the Class
17 Member to clarify what the Class Member wishes to do with regard to the Settlement.

18 k. No Reversion to Defendant: The Parties agree that no amount from any
19 uncashed Settlement Checks or any other portion of the Total Settlement Fund will revert to
20 Defendants.

21 **SETTLEMENT ADMINISTRATION**

22 12. The Parties have mutually agreed to seek Court appointment of CPT Group as
23 the Settlement Administrator to perform the customary duties of the Settlement Administrator.
24 The fees of the Settlement Administrator for work done shall be paid from the Total Settlement
25 Amount, is estimated to be \$14,500 (Fourteen Thousand, Five Hundred Dollars) and shall not
26 exceed \$15,000.00 (Fifteen Thousand Dollars). The Settlement Administrator will send out to
27 the Class Members the Notice and the Information Form within twenty (20) calendar days after
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1 the date the Court issues its order granting preliminary approval of the Settlement. The
2 Settlement Administrator will independently review the Information Forms and documentation,
3 based on Defendants' records, as to the number of weeks worked by the Class Members and
4 will calculate the amounts due to Class Members in accordance with this Stipulation of
5 Settlement. Defendants shall grant the Settlement Administrator reasonable access to
6 Defendants' records in order to perform its duties. The Settlement Administrator shall report, in
7 summary or narrative form, the substance of its findings. The Settlement Administrator shall
8 maintain the confidentiality of the Class Members.

9 13. Provided that all required payments have been made to the Total Settlement
10 Fund, the Settlement Administrator will issue and send out Settlement award checks to Class
11 Members as described below in the "Settlement Award Process." The Settlement Administrator
12 shall make all required tax withholdings and deposits, and timely prepare and file all required
13 payroll tax paperwork. Tax treatment of the Settlement awards will be as set forth herein and in
14 accordance with state and federal tax laws. All disputes relating to the Settlement
15 Administrator's performance of its duties shall be referred to the Court, if necessary, which will
16 have continuing jurisdiction over the terms and conditions of this Stipulation of Settlement until
17 all payments and obligations contemplated by this Stipulation of Settlement have been fully
18 carried out.

19 NOTICE TO THE SETTLEMENT CLASS

20
21 14. Within ten (10) calendar days of preliminary approval of this Settlement by the
22 Court, Defendants shall provide to the Settlement Administrator all of the following
23 information about each Class Member in a format requested by the Settlement Administrator:
24 (1) Class Member's name, (2) last-known address, (3) last-known telephone number, (4) Social
25 Security Number, and (5) dates of employment with Defendants as hourly, non-exempt, non-
26 collectively bargained employees of Defendants in the State of California during the Class
27 Period. This database shall be based on Defendants' payroll and other business records. The
28 Settlement Administrator will maintain this database and all data contained within the database,

1 as private and confidential and shall not disclose such data to any persons or entities. If, as
2 described above, a Class Member files both an objection and a request to opt out of the
3 Settlement, the Settlement Administrator may provide Plaintiffs' Counsel the Class Member's
4 name and contact information. Prior to any mailing, the Settlement Administrator will run a
5 check of the Class Members' addresses against those on file with the U.S. Postal Service's
6 National Change of Address List. Within twenty (20) calendar days of preliminary approval of
7 this Settlement, the Settlement Administrator will mail the Notice and the Information Form to
8 the Class Members.

9 15. The Class Notice, as approved by the Court, shall be sent by the Settlement
10 Administrator to the Class Members by first class mail. The Class Notice will be in English on
11 one side of the Notice and in Spanish on the other. Accompanying the Notice will be an
12 Information Form as approved by the Court. The front of each envelope mailed to Class
13 Members shall prominently display the following language in English and Spanish: "Court-
14 Ordered Genesis Building Services, Inc. and Eat My Dust, Inc. Class Action Notice and Class
15 Member Information Form Inside. Please Open Immediately. You May be Entitled to Recover
16 Money in this Class Action Settlement."

17 16. Additionally, the Parties agree that a Notice of Settlement shall be posted in
18 English and Spanish at Defendants' headquarters, as approved by the Court. The Notice shall
19 alert Class Members to look for the envelope and the Notice shall make explicit that there will
20 be no retaliation against Class Members regardless of whether Class Members stay in the class
21 settlement or decide to opt out. The same non-retaliation notice shall be included at the bottom
22 of the first page of the mailed notice.

23 17. Any Notices and Information Forms returned to the Settlement Administrator as
24 non-delivered during the ninety (90) calendar day period for returning corrected Information
25 Forms shall be resent to the forwarding address, if any, on the returned envelope. The
26 Settlement Administrator shall use all reasonably available means, such as NCOA searches and
27 skip traces, to find Class Members. The Settlement Administrator will also collaborate with
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1 Plaintiffs' Counsel to find former-employee Class Members. Upon completion of these steps by
2 the Settlement Administrator, the Parties and the Settlement Administrator shall be deemed to
3 have satisfied their obligations to provide reasonable Notice to the members of the Class. The
4 affected members of the Class (that is, Class Members who do not validly request to be
5 excluded from the Class) shall remain members of the Class and shall be bound by all the terms
6 of the Stipulation of Settlement and the Court's Final Approval Order and Final Judgment.

7 18. Plaintiffs' Counsel shall provide to the Court, at least twenty-one (21) calendar
8 days prior to the Final Fairness Hearing, a declaration by the Settlement Administrator of due
9 diligence and proof of mailing with regard to the mailing of the Class Notice and the
10 Information Form.

11 SETTLEMENT AWARD PROCESS

12 19. Defendants shall transfer the Total Settlement Amount to the Settlement
13 Administrator in separate installments—the first installment of \$205,000 was paid into the CPT
14 Escrow Account on or before December 15, 2021 (the First Payment); the Second Payment will
15 be in the amount of \$200,000 made no later than August 15, 2022; the Final Payment shall be
16 made no later than September 30, 2023 in the amount of \$200,000. All these monies will be paid
17 into an interest-bearing escrow account, held and administered by the Settlement Administrator.

18 20. Within fourteen (14) days after the Second Payment (to take place on or about
19 August 15, 2022), the Settlement Administrator will mail the first of two installment payments
20 to Settlement Class Members, amounting to approximately 35% of their individual settlement
21 payments. Within 14 days after the Final Payment is made to the Settlement Administrator (to
22 take place on or about September 30, 2023), the Settlement Administrator will mail the second
23 of two installment payments to the Settlement Class Members, amounting to approximately 65%
24 of their Individual Settlement Payment.

25 21. Within fourteen (14) days after the Second Payment by Defendants (to take place
26 on or about August 15, 2022), the Settlement Administrator will also transfer approximately
27 35% of any attorneys' fees and costs approved by the Court to Class Counsel and mail
28 approximately 35% of any Enhancement Award approved by the Court to the Class

1 Representative. Within 14 days after the Final Payment by Defendants, the Settlement
2 Administrator will transfer the remaining fees and costs approved by the Court to Class Counsel
3 and mail the remaining amount of any Enhancement Award approved by the Court to the Class
4 Representative.

5 22. Within fourteen (14) days after the Second Payment by Defendants (to take place
6 on or about August 15, 2022), the Settlement Administrator will mail approximately 35% of the
7 PAGA penalties payment to the LWDA. Within 14 days after the after the Final Payment by
8 Defendants is made to the Settlement Administrator, the Settlement Administrator will transfer
9 the remaining PAGA penalty amount to the LWDA.

10 23. If a Settlement Check sent to a Class Member is returned with a forwarding
11 address provided by the United States Postal Service, it shall be re-mailed to the forwarding
12 address provided. If a Settlement Check sent to a Class Member is returned as undeliverable by
13 the United States Postal Service or is otherwise designated by the United States Postal Service
14 as having been sent to an invalid address and the Class Member did not provide the Settlement
15 Administrator with additional address information after the mailing of the Settlement Check,
16 the Settlement Administrator shall contact Plaintiffs' Counsel to attempt to locate the Class
17 Member. Similar to the process for finding former employee Class Members in order to provide
18 Notice, the Settlement Administrator should use all reasonably available and accessible means,
19 such as skip traces, to find updated and current addresses.

20 24. Checks issued to Class Members pursuant to this Settlement shall remain
21 negotiable for a period of 90 calendar days from the date of the mailing of the second
22 installment payment. Class Members who fail to negotiate (*i.e.*, cash or deposit) their check(s)
23 in a timely fashion shall remain subject to the terms of this Settlement. Thirty days before the
24 end of the 90-day period, the Settlement Administrator will send a reminder email and/or post
25 card to those Class Members whose checks (one or both) remain uncashed, reminding them of
26 the stale date of the checks. Settlement payments not negotiated within the 90-day period shall
27 be distributed as follows:

28 (a) If the total amount of Class Member settlement checks negotiated within 90

1 days of mailing of the second payment does not equal or exceed 90% of the
2 Net Settlement Fund, then the difference between the total of the un-
3 negotiated Settlement payments and the total of the negotiated Settlement
4 payments shall revert to the Net Settlement Fund and shall be paid to the
5 participating Settlement Class Members on a pro rata basis pursuant to the
6 formula set forth in paragraph 11, above.

7 (b) If the total amount of Class Member settlement checks negotiated within
8 90 days of mailing of the second payment equals or exceeds 90%, but is
9 less than 100%, of the Net Settlement Fund, the remainder sum will be put
10 in a *cy pres* fund. If this occurs, subject to Court approval, the Parties agree
11 to distribute the money to the Legal Aid Society of San Mateo, a non-profit
12 organization.

13 **PAGA PENALTIES**

14 25. Plaintiffs' complaint alleges potential claims for penalties pursuant to the Private
15 Attorneys General Act ("PAGA"), California Labor Code sections 2698 *et seq.* The Parties
16 agree that all such claims for PAGA penalties have been settled in this Joint Stipulation, and
17 shall be paid from the Total Settlement Amount, in the amount of \$25,000, subject to approval
18 by the Court. The PAGA penalties shall be allocated as follows, to be paid out by the Settlement
19 Administrator: 75% (\$18,750) shall be paid to the LWDA, and the remaining 25% (\$6,250)
20 shall be distributed to the Settlement Class Members.

21 **RELEASE BY THE CLASS**

22 26. Upon final approval by the Court of this Settlement, and except as to such rights
23 or claims as may be created by this Stipulation of Settlement, Plaintiffs, on their own behalf and
24 as Class Representatives, and all Class Members ("Releasing Parties") shall release and
25 discharge Defendants and their present and former owners, parent companies, subsidiaries,
26 related or affiliated companies, partners, officers, directors, employees, agents, attorneys,
27 accountants, insurers, successors and assigns, and any other person acting on their behalf
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1 (“Released Parties”), from any and all causes of action, claims, rights, damages, punitive or
2 statutory damages, penalties, liabilities, attorneys’ fees, expenses, and losses and issues of any
3 kind or nature whatsoever that were alleged in the Complaint or that reasonably arise from the
4 facts alleged in the Complaint.

5 27. In addition, except for Plaintiff Melendez’s individual wrongful termination
6 claim (the resolution of which is discussed below), the Named Plaintiff understands and
7 expressly agrees that in exchange for receiving an enhancement awards of up to one thousand,
8 five hundred dollars (\$1,500) for Plaintiff Melendez, as approved by the Court, this Agreement
9 extends to all claims of every nature and kind whatsoever, known or unknown, suspected or
10 unsuspected, past or present, which the Named Plaintiff have or may have against the Released
11 Parties, and all rights under section 1542 of the California Civil Code are hereby expressly
12 waived. Such section reads as follows:

13 A general release does not extend to claims that the creditor or releasing party does not
14 know or suspect to exist in his or her favor at the time of executing the release and that,
15 if known by him or her, would have materially affected his or her settlement with the
debtor or released party.

16 As noted above, the release of Plaintiff Melendez’s individual wrongful termination claim is the
17 subject of a separate settlement agreement to be entered into by Defendants and Plaintiff
18 Melendez. Additionally, the Releasing Parties acknowledge that, pursuant to the terms of the
19 Settlement Agreement, they have released claims for unpaid wages, overtime and penalties in
20 this Agreement. Releasing Parties further acknowledge that Defendant contested these claims
21 on a factual basis and that the settlement reached herein is a compromised resolution of those
22 disputed claims.

23 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

24 28. The Parties shall promptly submit this Stipulation of Settlement to the San
25 Mateo County Superior Court of California in support of Plaintiffs’ Motion for Preliminary
26 Approval and determination by the Court as to the Settlement’s fairness, adequacy, and
27 reasonableness. Promptly upon execution of this Stipulation of Settlement, the Parties shall
28

1 apply to the Court for the entry of an Order Preliminarily Approving the Settlement, and the
2 following:

- 3 a. Approving CPT Group as Settlement Administrator;
- 4 b. Approving as to form and content the Class Notice;
- 5 c. Approving as to form and content the Information Form;
- 6 d. Approving the manner and method for Class Members to request exclusion from
7 the Settlement;
- 8 e. Preliminarily approving the settlement subject only to the objections of Class
9 Members and final review by the Court;
- 10 f. Scheduling a Fairness Hearing on the question of whether the Settlement,
11 including payment of attorneys' fees and costs and the Class Representatives'
12 enhancement awards should be finally approved as fair, reasonable, and
13 adequate as to the members of the Class.

14 **DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL**

15 29. Following final approval by the Court of the Settlement provided for in this
16 Stipulation of Settlement, Counsel for the Class will submit a proposed Judgment on Final
17 Approval of Settlement and Retention of Jurisdiction:

- 18 a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and
19 adequate, and directing consummation of its terms and provisions;
- 20 b. Approving Class Counsel's application for an award of attorneys' fees and costs;
- 21 c. Approving the enhancement award payments to the Class Representatives; and
- 22 d. Retaining jurisdiction over the Parties to enforce the terms of the judgment,
23 pursuant to California Rules of Court, Rule 3.769 and California Code of Civil
24 Procedure § 664.6.

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SETTLEMENT TERMINATION

30. In the event that (a) the Court declines to enter final approval of the Settlement or to enter the Judgment or any part thereof as provided for herein, or the Parties hereto fail to consent to the entry of alternative forms of Judgment, in lieu thereof, or after such consent the Court declines to enter such alternate form of Judgment; or (b) any conditions to the Settlement are not satisfied; or (c) the Court disapproves this Settlement, including any amendments hereto, and such disapproval becomes final by reason of being affirmed on appeal or lapse of time or otherwise; or (d) the Court approves this Settlement, including any amendments hereto, but any such judgment and approval is finally reversed on appeal; in any such event ((a) through (d)), this Settlement shall be void, and the Preliminary Approval Order and the Final Approval Order and Judgment, if any, shall be vacated upon application to the Court. In such event, (1) this Stipulation and the Settlement shall be terminated and become void, (2) any actions taken or to be taken in connection with this Stipulation and the Settlement shall become void and of no effect; and (3) all pretrial proceedings, including discovery, shall resume 30 (thirty) days thereafter as if this Settlement had not been proposed for approval of the Court.

PARTIES' AUTHORITY

31. The signatories hereto hereby represent that they are fully authorized to enter into this Stipulation of Settlement and bind the Parties hereto to the terms and conditions thereof.

MUTUAL FULL COOPERATION

32. The Parties agree to fully cooperate with each other to accomplish the terms of this Stipulation of Settlement, including but not limited to, execution of such documents and taking such other actions as reasonably may be necessary to implement the terms of this Stipulation of Settlement. The Parties to this Stipulation of Settlement shall use their best efforts, including all efforts contemplated by this Stipulation of Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Stipulation of

1 Settlement and the terms set forth herein. As soon as practicable after execution of this
2 Stipulation of Settlement, Plaintiffs' Counsel shall, with the assistance and cooperation of
3 Defendants and their counsel, take all necessary steps to secure the Court's final approval of
4 this Stipulation of Settlement.

5 33. The Parties agree that they will not attempt to encourage or discourage Class
6 Members from submitting Requests for Exclusion and will not discourage Class Members from
7 participating in the Settlement.

8 **NO PRIOR ASSIGNMENTS**

9
10 34. The Parties represent, covenant, and warrant that they have not directly or
11 indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
12 any person or entity any portion of any liability, claim, demand, action, cause of action or right
13 herein released and discharged except as set forth herein.

14 **ENFORCEMENT ACTIONS**

15 35. In the event that one or more of the Parties to this Stipulation of Settlement
16 institutes any legal action or other proceeding against any other Party or Parties to enforce the
17 provisions of this Stipulation of Settlement or to declare rights and/or obligations under this
18 Stipulation of Settlement, the successful Party or Parties shall be entitled to recover from the
19 unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees
20 incurred in connection with any enforcement actions.

21 **CONSTRUCTION**

22
23 36. The Parties hereto agree that the terms and conditions of this Stipulation of
24 Settlement are the result of arm's-length negotiations between the Parties, and this Stipulation
25 of Settlement shall not be construed in favor of or against any Party by reason of the extent to
26 which any Party or his, her or its counsel participated in the drafting of this Stipulation of
27 Settlement.

1 **CAPTIONS AND INTERPRETATIONS**

2 37. Paragraph titles or captions contained herein are inserted as a matter of
3 convenience and for reference, and in no way define, limit, extend, or describe the scope of this
4 Stipulation of Settlement or any provision hereof. Each term of this Stipulation of Settlement is
5 contractual and not merely a recital.

6 **MODIFICATION**

7 38. This Stipulation of Settlement may not be changed, altered, or modified, except
8 in writing and signed by the Parties hereto, and approved by the Court. This Stipulation of
9 Settlement may not be discharged except by performance in accordance with its terms or by a
10 writing signed by the Parties hereto.

11 **INTEGRATION CLAUSE**

12 39. This Stipulation of Settlement contains the entire agreement between the Parties
13 relating to the Settlement and transaction contemplated hereby, and all prior or
14 contemporaneous agreements, understandings, representations, and statements, whether oral or
15 written and whether by a Party or such Party's legal counsel, are merged herein. No rights
16 hereunder may be waived except in writing.

17 **BINDING ON ASSIGNS**

18 40. This Stipulation of Settlement shall be binding upon and inure to the benefit of
19 the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and
20 assigns.

21 **CLASS MEMBER SIGNATORIES**

22 41. It is agreed that because the members of the Class are so numerous, it is
23 impossible or impractical to have each member of the Class execute this Stipulation of
24 Settlement. The Class Notice will advise all Class Members of the binding nature of the release.
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COUNTERPARTS

42. This Stipulation of Settlement may be executed in counterparts and by facsimile or electronically-scanned signatures, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Stipulation of Settlement, which shall be binding upon and effective as to all Parties.

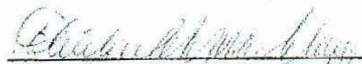
STIPULATION FOR ENTRY OF JUDGMENT

43. As part of this Settlement Agreement and to secure Defendants' obligations under this Agreement, the Parties shall execute a Stipulation for Entry of Judgment in the form attached as Exhibit A, in the amount of six hundred and-five thousand dollars (\$605,000) less any amounts paid into Escrow at CPT pursuant to this Agreement, plus reasonable attorneys' fees and costs incurred in enforcing the Settlement Agreement and collecting the settlement sums. The Stipulation shall be held in trust by Plaintiffs' Counsel and shall only be filed in the event of Defendants' default. In the event that Defendants fail to make timely payments of any payment called for above for thirty days, and Plaintiffs' Counsel gives Defendants fourteen days' written notice of the default, and Defendants fail to correct the default, Plaintiffs will have the option to file the Stipulation with the Court and may have judgment entered against Defendants and may enforce this judgment without further notice to Defendants and without further hearing before the Court, the rights to which are waived by Defendants.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Settlement and Release as of the dates set forth below:


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Dated: March 4, 2022


Almidia Esteban Melendez
Plaintiff

Dated: March 8, 2022

LIBERATION LAW GROUP PC

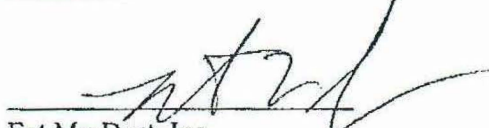
By: 
Arlo Uriarte

Attorneys for Plaintiff and the Plaintiff Class

Dated: March 3, 2022



Genesis Building Services, Inc.
Defendant

Dated: March 3, 2022


Eat My Dust, Inc.
Defendant

DATED: March 3, 2022

McPHARLIN SPRINKLES & THOMAS LLP


JEANINE DeBACKER

Attorneys for Defendants

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5 Attorneys for Plaintiff
Almidia Esteban Melendez

6 **MCPHARLIN SPRINKLES & THOMAS LLP**
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720 University Avenue, Suite 250B
8 Los Gatos, CA 95032
Telephone: (408) 293-1900
9 Facsimile: (408)293-1999

10 Attorneys for Defendants
Genesis Building Services, Inc., Eat My Dust, Inc.

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12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN MATEO

15 Almidia Esteban Melendez, as an individual
16 and on behalf of others similarly situated,

17 Plaintiff,

18 v.

19 Genesis Building Services, Inc., Eat My Dust,
20 Inc., and DOES 1 through 10,

21 Defendants.

Case no. 20-CIV-00453

CLASS ACTION – COMPLEX

**AMENDMENT TO JOINT STIPULATION
OF CLASS ACTION SETTLEMENT**

ASSIGNED FOR ALL PURPOSES TO HON.
DANNY Y. CHOU, DEPARTMENT 22

1 This Amendment to the Joint Stipulation of Class Action Settlement (the “Agreement”) is
2 entered in the above-captioned action (the “Action”) between and among the Plaintiff Almidia
3 Esteban Melendez (“Plaintiff”), on behalf of herself and the Settlement Class (as defined in the
4 Agreement), and Defendants Genesis Building Services, Inc. and Eat My Dust, Inc. (“Defendants”)
5 (collectively, the “Parties”). The Parties hereby stipulate and agree as follows:

6 **RECITALS**

- 7 1. WHEREAS, the Parties entered into the Agreement in good faith in March 2022.
- 8 2. WHEREAS, Plaintiff submitted her motion for Preliminary Approval of Class
9 Action Settlement on March 15, 2022.
- 10 3. WHEREAS, the Court entered a tentative ruling in response to Plaintiff’s motion for
11 Preliminary Approval of Class Action Settlement on May 18, 2022, identifying two issues of
12 concerns regarding: (1) the size of the Settlement Class; and (2) the formula used to calculate
13 individual settlement payments for the Settlement Class.
- 14 4. WHEREAS, the Court held a hearing on Plaintiff’s motion for Preliminary Approval
15 of Class Action Settlement on May 19, 2022, wherein the Settlement Class size issue was sorted out
16 and wherein the Court directed the Parties to adjust the formula used to calculate individual
17 settlement payments for the Settlement Class.
- 18 5. NOW THEREFORE, the Parties stipulate and agree to the following Amendment to
19 the Agreement:

20 **AMENDMENT TO AGREEMENT**

21 **1. Paragraph 11(c) of the Agreement shall now read as follows:**

22 Total Settlement Amount: To implement the terms of this Settlement, Defendant agrees to
23 pay Six Hundred and Five Thousand Dollars (\$605,000), the “Total Settlement Amount.”
24 Defendants represent that 412 persons worked as hourly, non-exempt, non-collectively bargained
25 employees of Defendants in the State of California from January 24, 2016 through November 12,
26 2021; if further information reveals that the number of Class Members employed by Defendants in
27 California between from January 24, 2016 through November 12, 2021, is greater than 10% more
28 than 412, the Parties agree that the Total Settlement Amount will be increased accordingly by the

1 percentage that is greater than 10 percent. If Class Members with Estimated Individual Settlement
2 Payments accounting for more than 10% of the Net Settlement Amount submit valid requests to be
3 excluded from the Settlement by the Class Members' Response Deadline, to be determined by the
4 date the Court grants preliminary approval of the Settlement, then Defendants shall have the
5 unilateral right to void this Agreement (but for any fees for services rendered by the Settlement
6 Administrator). Defendants may do so by giving notice to Class Counsel and the Settlement
7 Administrator within 7 days of the Response Deadline.

8 **2. Paragraph 11(f)(1) of the Agreement shall now read as follows:**

9 “Settlement Awards to Class Members: Settlement Awards to Class Members will be
10 disbursed by the Settlement Administrator based on the number of weeks worked by the individual
11 Class Member for Defendants in a covered position during the Class Period. The settlement amount
12 shall be paid from the “Net Settlement Amount” according to the following formula: (1) Eighty
13 Percent (80%) of the Net Settlement Amount shall be distributed to Settlement Class Members who
14 were employed by Defendants in a Covered Position from January 24, 2016, through June 30, 2019.
15 Individual payments will be calculated on a pro rata basis based on the total number of work weeks
16 actually worked by Settlement Class Members during the period of January 24, 2016, through June
17 30, 2019. Individual work weeks will be divided by the total number of weeks. In other words, each
18 Class Member’s pro rata share of the Net Settlement Amount is a fraction, with the individual Class
19 Member’s actual weeks worked as the numerator and the total number of weeks actually worked by
20 all Class Members as the denominator. (2) Twenty Percent (20%) of the Net Settlement Amount
21 shall be distributed to Settlement Class Members who were employed by Defendants in a Covered
22 Position from July 1, 2019, through November 12, 2021. Individual payments will be calculated on
23 a pro rata basis based on the total number of work weeks actually worked by Settlement Class
24 Members during the period of July 1, 2019, through November 12, 2021. Individual work weeks
25 will be divided by the total number of weeks in the same manner described directly above.

26 The number of weeks actually worked by individual Class Members during the Class Period
27 will be calculated by reference to Defendants’ records, which will be presumed to be correct unless
28 the Class Member timely disputes those records telephonically or in writing to the Settlement

1 Administrator. The amount of time worked will be rounded to the nearest workweek. Class
2 Members who worked at least one day will be treated as working one workweek for purposes of
3 their settlement share calculation. The Settlement Administrator will determine both the number of
4 weeks actually worked by the individual Class Members and the estimated individual settlement
5 awards to be paid to each Class Member. The Settlement Administrator will provide these initial
6 estimates to the Class in the Class Member Information Form (“Information Form”), which will be
7 included as a part of the proposed Notice Proposed Settlement, and Final Fairness Hearing Date for
8 Court Approval (“Class Notice” or “Notice”).

9 Following receipt of the Class Notices and Information Forms, Class Members may review
10 the initial workweeks and Settlement Check amount estimates and send any proposed corrections
11 back to the Settlement Administrator. Class Members may either postmark their corrected
12 Information Forms and/or place a telephone call to the Settlement Administrator with their proposed
13 correction within sixty (60) calendar days after the mailing of the Class Notices and Information
14 Forms. Class Members may—but are not required to—submit evidence to the Settlement
15 Administrator demonstrating that the Class Members’ corrections are accurate. All disputes
16 regarding weeks worked will be resolved and decided by the Settlement Administrator, and the
17 Settlement Administrator’s decision on all such disputes will be final, binding, and non-appealable.”

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19 **IT IS SO STIPULATED.**

20 IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed,
21 by their duly authorized attorneys as of May 26, 2022.

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Dated: June 3, 2022

LIBERATION LAW GROUP PC



Arlo Uriarte

Attorneys for Plaintiff and the Settlement Class

Dated: June 3, 2022

McPHARLIN SPRINKLES & THOMAS LLP



JEANINE DeBACKER

Attorneys for Defendants