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8 Attorneys for Plaintiff,
VARDAN KARAPETYAN and the Classes

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12
13 VARDAN KARAPETYAN, an
14 individual appearing individually and
on behalf of others similarly situated,

15 Plaintiff,

16 v.

17 ABM INDUSTRIES
INCORPORATED, a Delaware
18 Corporation, ABM SECURITY
SERVICES, INC., a California
19 Corporation, and DOES 1-50,
inclusive,

20 Defendants.

CASE NO.: CV15-08313 GW (Ex)

Assigned to: Hon. George H. Wu,
Courtroom 9D

DECLARATION OF MICHAEL B.
ADREANI IN SUPPORT OF
AMENDED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

DATE: June 12, 2017
TIME: 8:30 a.m.
CTRM: 9D

Action Filed: October 23, 2015
Trial Date: None

Additional Counsel:

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DECLARATION OF MICHAEL B. ADREANI

MICHAEL B. ADREANI declares:

1. I am an attorney licensed to practice before all the courts of the State of California and the United States District Court for the Central District of California. I am a partner in the law firm of Roxborough, Pomerance, Nye & Adreani LLP, counsel for the Plaintiff Vardan Karapetyan, and one of the attorneys responsible for the handling of this matter. I have personal knowledge of the matters stated herein and if called upon to testify, I would and could competently testify as follows.

2. Attached hereto and incorporated herein as **Exhibit A** is a true and correct copy of the Class Action Settlement and Release agreement in the matter of *Augustus v. ABM Security Services, Inc.*, No. S224853. On April 6, 2017, the Los Angeles Superior Court granted preliminary approval of the *Augustus* settlement and scheduled the final approval/fairness hearing for June 30, 2017.

3. Attached hereto and incorporated herein as **Exhibit B** are true and correct copies of the transcript pages from the deposition of Nedy Warren, Defendants' Rule 30(b)(6) witness, cited in Plaintiff's Amended Motion for Preliminary Approval of Class Action Settlement. Also included in Exhibit B is a true and correct copy of the Errata Sheet signed by Ms. Warren regarding her deposition testimony.

4. Attached hereto and incorporated herein as **Exhibit C** are true and correct copies of the transcript pages from the deposition of Plaintiff Vardan Karapetyan, cited in Plaintiff's Amended Motion for Preliminary Approval of Class Action Settlement.

5. Attached hereto and incorporated herein as **Exhibit D** are true and correct copies of the transcript pages from the deposition of Oscar Bejarano, Plaintiff's supervisor, cited in Plaintiff's Amended Motion for Preliminary Approval of Class Action Settlement.

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1 **Discovery and Investigation**

2 6. The parties engaged in significant discovery. The parties exchanged
3 numerous requests for production and written interrogatories. Plaintiff brought
4 multiple discovery motions regarding ABM's discovery responses and document
5 production. The ABM Defendants initially produced in excess of 3,000 pages of
6 documents including employee handbooks, orientation and training materials, as well
7 as Plaintiff's personnel file, time records, and payroll information. After Plaintiff's
8 motions to compel, ABM had begun production of documents from 40 sample sites as
9 ordered by the Court. The production from the first four sites alone consisted of
10 approximately 59 boxes of documents which included security guard journals, time
11 records, and notes.

12 7. ABM took the deposition of Plaintiff and Class Counsel took the
13 depositions of Plaintiff's supervisor as well as deposing ABM's Rule 30(b)(6) witness
14 over three days, covering 48 categories of topics. Class Counsel served numerous
15 third party subpoenas, including to the business at which Plaintiff worked (Universal
16 City Nissan) while employed by ABM.

17 8. Class Counsel was familiar with ABM's policies and practices as a result
18 of the *Augustus* litigation. As a result, Class Counsel knew what to ask for and look
19 for in discovery and was able to readily ascertain the similarities and differences in
20 those policies and practices for the class period in this action.

21 **Facts Supporting Approval of the Settlement**

22 9. This Settlement will apply to all four of the ABM entities listed as
23 defendants in this case, and inclusion in the class may be determined based upon
24 ABM's records.

25 10. Liability in this matter is highly contested and both sides face significant
26 challenges in litigating the case. In *Augustus*, ABM's person most qualified testified
27 that the security guards were "never relieved of all duties" and, based on such
28 testimony, plaintiff was granted summary judgment for her rest break claims.

1 However, for the class period at issue here, ABM's person most qualified has testified
2 that ABM's *written* policies are compliant, that ABM has undertaken significant
3 efforts to ensure that all of its security guards receive their meal and rest breaks, and
4 violations, if any occur, are not the result of a company-wide policy or practice. ABM
5 has, and would continue to, vigorously dispute each and every one of Plaintiff's
6 claims. In addition, ABM contends that significant portions of the putative class are
7 covered by arbitration agreements which is another risk factor that was not present in
8 the *Augustus* action.

9 11. While there may be a substantial risk that the Class might be unable to
10 obtain certification, Plaintiff has obtained evidence that all class members were
11 subject to the same *unwritten* policies and *practices* making their claims amenable to
12 class treatment. ABM will undoubtedly argue that any violations suffered by Plaintiff
13 were anomalies which were limited to Plaintiff's specific job location and not the
14 company policy or practice at its hundreds of locations throughout the State of
15 California. On the other hand, Plaintiff's Counsel believes that the extensive
16 discovery actually supports class certification and the merits of Plaintiff's claims.

17 12. Furthermore, as evidenced by the history in the *Augustus* action, ABM
18 has evidenced its dedication and willingness to appeal any judgment to the highest
19 court. It is expected that ABM would continue to contest any judgment in favor of
20 Plaintiff until every possible appeal had been exhausted. Thus, in addition to the
21 years it would take to obtain class certification and a judgment on the merits, it would
22 be several more years after that before Plaintiff or the Class were receive any benefit
23 from a successful adjudication on the merits of this action based on the expected
24 appeals.

25 13. On the other hand, the settlement provides an immediate, tangible and
26 significant benefit to the class. The immediacy and certainty of recovery is a factor
27 for the court to balance in determining whether the proposed settlement is fair,
28 adequate and reasonable. *In re Mego Financial Corp. Sec. Litig.*, 213 F.3d 454, 458

1 (9th Cir. 2000). Absent the settlement, the case would proceed through class
2 certification, most likely a motion to dismiss or for summary judgment by the ABM
3 Defendants, and perhaps even to trial. While Class Counsel believe they have a
4 reasonable chance of prevailing on the merits, there is no question that settlement at
5 this time ensures an immediate and substantial recovery for the Participating
6 Settlement Class Members with no further risk whatsoever.

7 14. The Court in its June 6, 2017 Tentative Ruling on Amended Motion for
8 Preliminary Approval of Settlement (Dkt. 73) inquired as to what Plaintiff believed
9 may have been recoverable if this case were litigated to completion. *Augustus*
10 provides a benchmark, as it was litigated to completion under similar facts. *Augustus*
11 was a \$90 million judgment covering 10 years, almost 15,000 employees and certain
12 undisputed evidence which led to a finding of liability, damages, interest and
13 penalties. The case before this Court has about 4 years of exposure, 7,000 employees,
14 the possibility of arbitration agreements impacting or limiting the litigation, less pre-
15 judgment interest, and different testimony and documentation on liability. I believe
16 the recovery in this case, had it proceeded, would reasonably be in the range of \$12
17 million to \$16 million.

18 15. While this settlement may be cancelled depending on what happens in
19 *Augustus*, as of the date of my signature below, none of the factors which would give
20 rise to such a cancellation have occurred. For example, there are neither any opt out
21 requests or objections to the *Augustus* settlement at this time.

22 **Settlement Negotiations and Mediation**

23 16. The proposed settlement is the product of lengthy and highly contested
24 arms-length negotiations, including an all-day mediation before respected mediator
25 Mark S. Rudy on January 19, 2017 which was followed by continued negotiations.
26 The parties negotiated by telephone and through email following the all-day
27 mediation session. With the guidance of Mark Rudy, the parties ultimately reached
28 an agreement and executed a term sheet almost two weeks after the mediation session.

1 Thereafter, the parties continued to have discussions to work out the details of the
2 settlement, including terms of distribution, implementation, claims procedure, and
3 notice to the class. The settlement agreement was finalized in April 2017. There is
4 no side agreement between the parties and/or their counsel at all. The \$5 million
5 settlement, if all other terms and distributions are approved, will result in a net
6 distribution to the class of approximately \$3,145,000. With approximately 7,000
7 class members, the average recovery as a result of this settlement is approximately
8 \$450. All class members who do not opt out will receive a payment from this
9 settlement, regardless if they make a claim.

10 **Recommendations of Experienced Counsel**

11 17. The parties are represented by counsel experienced in complex class
12 action litigation. Class Counsel has extensive experience in class actions, including
13 wage and hour actions such as this one.

14 18. Class Counsel believes, based on the discovery and investigation
15 conducted, as well as an analysis of ABM's defenses, that the proposed settlement is
16 fair and reasonable and in the best interests of the Class Members.

17 **Certification of the Settlement Class is Proper**

18 19. Plaintiff seeks certification of class defined as "all non-exempt hourly
19 security guard employees employed by ABM Security Services, Inc. and/or ABM
20 Onsite Services – West, Inc. in California from October 6, 2010 through December
21 10, 2015." The Class Members are readily identified by ABM's employment and
22 payroll records. Thus, the Settlement Class is ascertainable.

23 20. ABM's discovery responses stated there are over 7,000 class members
24 and obviously joinder would be highly impracticable.

25 21. Here, there are numerous questions of fact and law that would satisfy
26 Rule 23(a)(2). This action would require the court to address the following questions
27 that undoubtedly affect all class members:
28

- Whether Defendants had a policy or practice that failed to timely compensate members of the Classes with all wages pursuant to California Labor Code § 204;
- Whether Defendants had a policy or practice that failed to pay overtime wages as required by the California Labor Code and IWC Wage Order 4-2001;
- Whether Defendants had a policy or practice that failed to provide lawful meal breaks and pay appropriate wages for missed meal breaks;
- Whether Defendants had a policy or practice that failed to provide lawful rest breaks and pay appropriate wages for missed meal breaks;
- Whether Defendants had a policy or practice that violated California Labor Code §§ 201-203 by unlawfully failing to pay all wages due and owing at the time that Plaintiff or any Class Member was discharged or resigned their employment with Defendants; and
- Whether the wage statements provided to Plaintiff and the Class members by Defendants were complete and accurate.

Underlying these basic common questions is a common nucleus of operative facts pertaining to ABM's company-wide policies and procedures constituting a standard course of conduct which is common to all class members.

22. The typicality requirement is satisfied here because Plaintiff and the class members were all employed by the ABM Defendants as security guards, all allege the same claims, and their claims all arise from the same course of conduct by the ABM Defendants. Each class member will rely on the same evidence and make the same legal arguments to provide Defendants' liability.

23. Plaintiff's rest break claims in this action represent a continuation of the rest break claims summarily adjudicated in the *Augustus* Action. In *Augustus*, ABM produced Fred Setayesh as its "person most qualified" who testified that the "guards are never relieved of all duty." Attached hereto and incorporated herein as **Exhibit E**

are true and correct copies of the transcript pages from the deposition of Fred Setayesh, Defendants' "person most knowledgeable" witness in the *Augustus* action, which testimony is cited in Plaintiff's Amended Motion for Preliminary Approval of Class Action Settlement. This testimony formed the basis for summary judgment in favor of the *Augustus* Action.

24. Plaintiff's claims are virtually coextensive with the claims of the class members. Even with respect to the claim for waiting time penalties under Labor Code § 203 because *all* of the class members had their employment with ABM terminated no later than December 10, 2015. Thus, for purposes of distribution, there is no need for any subclasses and every class member's claim is treated the same. Distribution of the Settlement Amount will be based on the class members' length of employment with ABM. For those Class Members who were employed during the period from October 6, 2010 through July 1, 2011, those work weeks will be paid at fifty percent (50%) of the work week value. (Ex. A, Sett. Agmt., ¶ 2.5.6.(b).) The reduction in payment for this period is designed to account for payment of the rest break claims in *Augustus* which extend through July 1, 2011 for which those Class Members will receive other settlement moneys pursuant to the settlement agreement in *Augustus*¹. There is no antagonism between the Plaintiff and the class members.

Adequacy of Proposed Class Counsel

25. Roxborough, Pomerance, Nye & Adreani LLP ("RPNA") has ample class action experience as well as a documented history of successfully serving as class counsel. *See, Augustus v. ABM Industres, Inc.*, 2 Cal. 5th 257 (2016). RPNA has conducted significant discovery in this action, through formal written requests for production, interrogatories, depositions, and third party subpoenas. RPNA has extensive knowledge regarding wage and hour claims in California and has represented numerous plaintiffs as well as defendant employers in class actions.

¹ *Augustus* alleged a sole claim based on failure to provide rest breaks. This action alleges additional claims based on meal periods, overtime, failure to pay wages timely, and wage statement violations.

1 Finally, RPNA's resources and commitment to representing a plaintiff class cannot be
 2 questioned based on RPNA's representation of the plaintiff class in the *Augustus*
 3 matter all the way through arguments at the California Supreme Court.

4 26. The Settlement Agreement satisfies the factors set forth in Federal Rule
 5 of Civil Procedure 23(b)(3)(A), (B), and (C) because (1) any class member who
 6 wishes to pursue a separate individual action can opt out of the settlement (Settlement
 7 Agreement, ¶ 2.8.1); (2) the parties are unaware of any competing litigation regarding
 8 the claims at issue herein; and (3) the parties agree that it would be desirable to
 9 resolve Plaintiff's and the Class Members' claims in this forum.

10 **Adequacy of Class Representative Vardan Karapetyan**

11 27. Plaintiff Vardan Karapetyan has no known antagonistic or conflicting
 12 interests with the Settlement Class Members. Mr. Karapetyan was subject to the
 13 identical policies and practices of ABM and alleges the identical claims on his own
 14 behalf and on behalf of the Class Members and understands the obligations of
 15 services as a class representative. Mr. Karapetyan has been actively engaged in the
 16 prosecution of this action, including responding to discovery and submitting to a
 17 deposition by ABM.

18 28. Mr. Karapetyan has retained qualified counsel, experienced in class
 19 actions and wage and hour actions. For settlement purposes, the parties have agreed
 20 that Plaintiff's counsel, Roxborough, Pomerance, Nye & Adreani LLP (Drew E.
 21 Pomerance, Michael B. Adreani and Marina N. Vitek) and Felahy Employment
 22 Lawyers (Allen B. Felahy), should be appointed as Class Counsel with the
 23 Roxborough firm as Lead Counsel. (Ex. 1, Sett. Agmt., ¶¶ 2.1.5, and 2.1.14.)
 24 Plaintiff's counsel have extensive experience sufficient to be appointed as Class
 25 Counsel in this matter.

26 **Proposed Cy Pres Recipients**

27 28. Counsel for both parties have agreed, in Section 2.5.7(c) of the Settlement
 28 Agreement, to designate three organizations to receive any remaining funds from this

1 Settlement in equal parts. Those organizations are the Legal Aid Foundation of Los
2 Angeles - <https://lafla.org/>, Legal Aid at Work - <https://legalaidatwork.org/>, and the
3 Women's Employment Rights Clinic - [http://law.ggu.edu/clinics-and-](http://law.ggu.edu/clinics-and-centers/clinics/womens-employment/)
4 [centers/clinics/womens-employment/](http://law.ggu.edu/clinics-and-centers/clinics/womens-employment/). Each of these organizations advocates and
5 litigates on behalf of under-represented groups in the area of employment law in
6 California. Each of them routinely pursue wage and hour actions, such as this one, in
7 the state and federal courts in California. Thus, each are involved heavily in the very
8 types of issues involved in this litigation and are therefore deserving of *cy pres*
9 consideration by this Court.

10 I declare under penalty of perjury under the laws of the United States that the
11 foregoing is true and correct. Executed this 7th day of June, 2017 at Woodland Hills,
12 California.

13
14 /s/ Michael B. Adreani

MICHAEL B. ADREANI

EXHIBIT “A”

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JENNIFER AUGUSTUS, Individually and on
Behalf of All Similarly Situated Individuals,

Plaintiff,

v.

AMERICAN COMMERCIAL SECURITY
SERVICES, a wholly owned subsidiary of
ABM INDUSTRIES INC.; and DOES 1
through 100, inclusive,

Defendants.

Consolidated Case:

EMANUEL DAVIS,

Plaintiff,

v.

AMERICAN COMMERCIAL SECURITY
SERVICES, INC. and DOES 1 through 100,
inclusive,

Defendants.

CASE NO. BC336416
(C/W CG5444421; C/W BC345918;
Related to BC388380)

Case Assigned for All Purposes to
Judge John Shepard Wiley, Jr.
Department CCW-311

Complaint Filed: July 12, 2005

CLASS ACTION

**AMENDED CLASS ACTION SETTLEMENT
AND RELEASE**

1 Consolidated Case:

2 DELORES HALL and CARLTON
3 ANTHONY WAITE,

4 Plaintiff,

5 v.

6 AMERICAN COMMERCIAL SECURITY
7 SERVICES, INC. and DOES 1 through 100,
8 inclusive,

9 Defendants,

AMENDED CLASS ACTION SETTLEMENT AND RELEASE

This Amended Class Action Settlement and Release ("Settlement Agreement" and/or "Settlement") is made by and between the Settlement Class Members, on behalf of themselves, their agents, representatives, assigns, heirs, executors, beneficiaries, trustees; and Defendant ABM Security Services, Inc., formerly d/b/a American Commercial Security Services, Inc. on behalf of itself, its parents, subsidiaries, agents, affiliates, directors, officers, employees, and attorneys (collectively, "ABM" or "Defendant"). The Settlement Class Members and ABM are referred to herein as the "Parties."

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 Agreement. This Settlement Agreement provides for the settlement of claims on behalf of the Settlement Class Members, as described further herein. Upon the Effective Date of this Settlement Agreement as defined in Section 2.1.12, the Settlement Class Members and Class Counsel will promptly file with the Court an acknowledgment of satisfaction of the Judgment pursuant to California Code of Civil Procedure section 724.010 et seq. indicating that the Judgment has been satisfied.

I. THE INSTANT ACTION

Section 1.1 Background and Procedural History

1.1.1 Proceedings in the Superior Court.

Named Plaintiff Jennifer Augustus filed her class action complaint against ABM in *Jennifer Augustus v. American Commercial Security Services, Inc., et al*, Case No. BC33641, in the Superior Court of California, the County of Los Angeles, on July 12, 2005, alleging various meal period and rest break claims on behalf of herself and other current and former employees of ABM. The following actions were eventually consolidated with *Augustus* (collectively, with *Augustus*, the "Action"):

- *Emanuel Davis v. American Commercial Security Services Inc., et. al*, Case No. CGC5444421, filed August 26, 2005 (San Francisco County Superior Court); and
- *Delores Hall & Carlton Anthony Waite v. American Commercial Security Services, Inc., et. al*, Case No. BC345918, filed January 17, 2006 (Los Angeles County Superior Court).

1 The Named Plaintiffs filed a Master Complaint on April 18, 2008 alleging, *inter alia*, that
2 ABM “failed to provide net ten minute rest periods for work shifts exceeding four hours . . . and/or
3 uninterrupted, unrestricted meal periods of not less than thirty minutes for work shifts exceeding five
4 hours.” ABM denied these allegations and any and all charges of wrong doing or liability arising out
5 of the acts, omissions, facts, matters, transactions, or occurrences alleged, or that could have been
6 alleged.

7 The Named Plaintiffs moved for class certification as to their meal period and rest break
8 claims in September 2008 which ABM strenuously opposed. On February 27, 2009, the Court
9 certified two classes of all ABM employees who worked: (1) “in any security guard position in
10 California at any time during the period from July 12, 2001 through entry of judgment . . . [and] who
11 worked a shift exceeding four (4) hours or major fraction thereof without being authorized and
12 permitted to take an uninterrupted rest period of net ten (10) minutes per each four (4) hours or major
13 fraction thereof worked and [had] not been paid one additional hour of pay at the employee’s regular
14 rate of compensation for each work day that the rest period was not provided” (the “rest break
15 class”); and (2) in any security guard position who “worked a shift of more than five (5) hours
16 without being afforded an uninterrupted, unrestricted meal period of not less than 30 minutes” (the
17 “meal period class”).

18 As well, the trial court appointed Roxborough, Pomerance, Nye and Adreani, LLP, as Lead
19 Class Counsel.

20 On July 16, 2010, Plaintiffs and ABM filed cross-motions for summary adjudication and
21 ABM filed a motion for decertification. On December 23, 2010, the Court granted Plaintiffs’ motion
22 for summary adjudication of the rest break claim and denied ABM’s motion for summary
23 adjudication, as well as ABM’s motion for decertification as to the rest break claims. The Court,
24 however, decertified the meal period class. The order decertifying the meal period class was not
25 appealed and Plaintiffs have decided to abandon their individual claims for meal period violations.

26 On August 11, 2011, the Court amended the definition of the rest break class such that the
27 class period was defined as July 12, 2001 through July 1, 2011.

28 On February 8, 2012, Plaintiffs moved for summary judgment seeking damages on the rest

1 break claims and ABM concurrently moved to decertify the rest break class. On July 6, 2012, the
 2 Court granted Plaintiffs' motion and denied ABM's decertification motion. On July 31, 2012, the
 3 Court entered a judgment awarding to Plaintiff Jennifer Augustus and the rest break class
 4 \$55,887,565.00 under California Labor Code section 226.7 and California Business & Professions
 5 Code section 17200, \$31,204,465.00 in pre-judgment interest, and \$2,650,096.00 under California
 6 Labor Code section 203, for a total amount of \$89,742,126. On February 22, 2013, the Court entered
 7 an amended judgment awarding to Plaintiff Jennifer Augustus and the rest break class
 8 \$55,887,565.00 under California Labor Code section 226.7 and California Business & Professions
 9 Code section 17200, \$31,204,465.00 in pre-judgment interest, and \$2,650,096.00 under California
 10 Labor Code section 203, and awarding Plaintiffs' counsel 30% of the common fund as attorneys' fees
 11 for work performed up through entry of judgment and \$184,020.33 in costs from the common fund,
 12 plus an additional award of attorneys' fees and costs to be paid by ABM in the amount of
 13 \$4,455,336.88 under California Code of Civil Procedure section 1021.5, for a total amount of
 14 \$94,197,462.88.

15 ABM timely filed notices of appeal from both judgments, but did not challenge on appeal the
 16 award of 30% of the common fund as attorneys' fees and reimbursable costs from the common fund,
 17 which was not opposed by ABM and has never been the subject of any appeal by any party, and is
 18 therefore final.

19 1.1.2 Proceedings in the Court of Appeal.

20 On December 31, 2014, the Court of Appeal issued a unanimous decision in which it
 21 concluded that "[b]ecause on-call rest breaks are permissible, the trial court erroneously granted
 22 summary adjudication in 2010 and summary judgment in 2012," and thus "[t]hose orders and the
 23 consequent order granting plaintiffs' attorney fees under Code of Civil Procedure section 1021.5
 24 must therefore be reversed." (*Augustus v. ABM Security Services, Inc.* (2014) 182 Cal.Rptr.3d 676,
 25 689.) The Court of Appeal, however, affirmed the order certifying the rest break class. (*Id.* at
 26 pp. 689–691.)

27 1.1.3 Proceedings in the California Supreme Court.

28 Plaintiffs filed a petition for review with the California Supreme Court on March 5, 2015,

1 which ABM opposed. ABM did not file a cross-petition for review. The California Supreme Court
2 granted Plaintiffs' petition for review on April 29, 2015. On December 22, 2016, the California
3 Supreme Court reversed the Court of Appeal's judgment.

4 On January 5, 2017, ABM filed a petition for rehearing with the California Supreme Court in
5 which it asked the Supreme Court to grant rehearing and (a) hold that triable issues of material fact
6 precluded entry of a summary judgment order awarding damages to all class members and depriving
7 ABM of a trial on that issue, and/or (b) hold that the new rule of law adopted in this case does not
8 apply retroactively, and affirm the Court of Appeal's judgment, or, in the alternative, to modify its
9 opinion to add a sentence making clear that it is remanding the case to the Court of Appeal for it to
10 address ABM's unresolved arguments that (a) triable issues of material fact precluded the trial court's
11 classwide summary judgment ruling awarding nearly \$90 million in damages to all class members,
12 and (b) the trial court improperly awarded Plaintiffs' counsel nearly \$4.5 million in additional
13 attorneys' fees under California Code of Civil Procedure section 1021.5. Plaintiffs filed an answer
14 opposing ABM's petition for rehearing on January 17, 2017. The California Supreme Court has
15 extended the time for considering modification or rehearing to March 22, 2017.

16 ABM also filed a conditional motion to stay issuance of the remittitur on January 5, 2017, in
17 which it sought a stay of the issuance of the remittitur until the U.S. Supreme Court resolves ABM's
18 petition for a writ of certiorari and, in the event that petition is granted, until the U.S. Supreme Court
19 issues its decision on the merits. This stay motion was conditioned on the California Supreme
20 Court's denial of ABM's petition for rehearing and refusal to modify its opinion as ABM had
21 requested. Plaintiffs have not opposed ABM's conditional stay motion, which remains pending
22 before the California Supreme Court.

23 **Section 1.2 Parties' Statements and Recognition of the Benefits of the Settlement**

24 This litigation has spanned the course of eleven years and has entailed extensive discovery
25 regarding and litigation over the asserted claims. Class Counsel vigorously prosecuted the Action
26 since the outset, having conducted an investigation into the facts of the Action and the Settlement
27 Class Members' claims, including through formal discovery, informal disclosures between the
28 Parties, and other investigations undertaken by counsel for Plaintiffs. Furthermore, the Parties have

1 engaged in extensive motion practice, including multiple motions for summary judgment and motions
 2 relating to class certification. The Parties have also vigorously litigated the rulings in the Action,
 3 including in extensive appellate proceedings in both the Court of Appeal and the California Supreme
 4 Court. The Parties have also engaged in extensive negotiations with mediator Mark Rudy.

5 As a result, Class Counsel have concluded that this Settlement Agreement is fair, reasonable,
 6 and adequate and is in the best interest of the Settlement Class in light of all known facts and
 7 circumstances, including the likely damages, risk of significant delay, and appellate risk. In
 8 particular, Class Counsel acknowledges the risks that the California Supreme Court could grant
 9 ABM's petition for rehearing and/or modify its opinion to remand the case to the Court of Appeal for
 10 further appellate review, and that either action could lead to vacatur or reversal of the Judgment. In
 11 addition, even if the California Supreme Court denies ABM's petition for rehearing and does not
 12 modify its opinion, there is a risk that the U.S. Supreme Court would grant certiorari and reverse the
 13 California Supreme Court's judgment. Class Counsel acknowledges solely for the purposes of
 14 settlement that there is a risk of the entire Judgment being vacated or reversed.

15 ABM denies each and all of the claims in the Action, but acknowledges the risk that, absent
 16 further appellate review, the Judgment will become executable and that Plaintiffs will seek to collect
 17 post-judgment interest in addition to the amount owed in the Judgment. Nevertheless, while ABM
 18 has further options for additional appellate review of the Judgment, ABM has concluded that further
 19 litigation of the Action would be protracted and expensive. ABM, therefore, has determined that it is
 20 desirable and beneficial that the Action be settled in a manner and upon the terms and conditions set
 21 forth in this Settlement Agreement. Neither this Settlement Agreement, nor any action taken to carry
 22 out this Settlement Agreement is, may be construed as, or may be used as, an admission, concession,
 23 or indication by or against ABM of any fault, wrongdoing or liability whatsoever.

24 **II. TERMS OF THE SETTLEMENT AGREEMENT**

25 **Section 2.1 Definitions**

26 As used in this Settlement Agreement, the following terms have the meanings specified
 27 below:
 28

1 2.1.1 "Administrative Costs" means the costs of administering the Settlement, including,
2 without limitation, providing Notice of Settlement, establishing a toll-free number, various efforts to
3 locate class members, receiving and forwarding objections from Class Members, administering any
4 disputes regarding payments to Class Members, Settlement Fund Tax Expenses as defined in Section
5 2.10.4, administering payment of claims on behalf of the Settlement Class Members, and
6 administering payments to any Named Plaintiffs receiving a Service Award, the Settlement Class
7 Members, and Class Counsel by the Claims Administrator.

8 2.1.2 "Attorneys' Fees and Costs" refers to the fees and costs amount to be paid to Class
9 Counsel under Section 2.4.2 of this Settlement Agreement.

10 2.1.3 "Claims Administrator" means CPT Group, Inc., which is the entity that has been
11 selected to provide Notice of Settlement to the Settlement Class and to perform other related
12 functions to administer the Settlement contemplated by this Settlement Agreement as described
13 herein.

14 2.1.4 "Class Counsel" means the following attorneys representing the Settlement Class
15 Members in the Action: Roxborough, Pomerance, Nye & Adreani LLP (Drew E. Pomerance,
16 Michael B. Adreani, Marina N. Vitek), 5820 Canoga Avenue, Suite 250, Woodland Hills, California
17 91367, and Scott Cole & Associates, APC (Scott Edward Cole), 1970 Broadway, Suite 950, Oakland,
18 CA 94612. Additional Counsel who filed actions which were related to the Action include: Knapp,
19 Petersen & Clarke (Andre E. Jardini), 550 North Brand Boulevard, Suite 1500, Glendale, California
20 91203 and Initiative Legal Group LLP (Monica Balderrama, G. Arthur Meneses) 1800 Century Park
21 East, Suite 250, Los Angeles, California 90067.

22 2.1.5 "Lead Class Counsel" means the law firm of Roxborough, Pomerance, Nye & Adreani
23 LLP.

24 2.1.6 "Class Period" means the period from July 12, 2001 to July 1, 2011.

25 2.1.7 "Court" means the California Superior Court for the County of Los Angeles, and any
26 Court-appointed referee or agent of the Court or other judicial entity with jurisdiction over this
27 matter.
28

2.1.8 "Defendant" and/or "ABM" means ABM Security Services, Inc., formerly d/b/a American Commercial Security Services, Inc.

2.1.9 "Escrow Account" means the money market interest bearing bank account insured by the Federal Deposit Insurance Corporation ("FDIC") pass-through insurance program and maintained by the Escrow Agent into which the Settlement Fund shall be deposited, pursuant to the Escrow Agreement, which shall be agreed to by the Parties.

2.1.10 "Escrow Agent" means MUFG Union Bank, N.A., the entity mutually agreed upon by ABM and Class Counsel to maintain the Escrow Account into which the Settlement Fund shall be deposited in accordance with the terms of this Settlement Agreement.

2.1.11 "Escrow Agreement" means the agreement, to be agreed upon by the Parties, setting forth the Escrow Agent's responsibilities and duties.

2.1.12 "Effective Date" means seven days after all of the following conditions have been satisfied:

- (a) Execution of this Settlement Agreement by Named Plaintiff Jennifer Augustus, Named Plaintiff Emanuel Davis, ABM, Class Counsel, and counsel for ABM;
- (b) Expiration of the Notice Period as defined in the Notice;
- (c) Entry of an Order of Final Approval by the Court approving this Settlement Agreement and entering final disposition with respect to the Action;
- (d) Payment of the full Settlement Amount pursuant to Section 2.10; and
- (e) The later of the following events has occurred: the period for filing any appeal, writ or other appellate proceeding challenging the Order of Final Approval has elapsed without any appeal, writ or other appellate proceeding having been filed; or any appeal, writ or other appellate proceeding challenging the Order of Final Approval has been dismissed finally and conclusively and there is no possibility of further appellate review or relief; or any appeal, writ or other appellate proceeding challenging the Order of Final Approval has resulted in affirmance of the Order of Final Approval and there is no possibility of further appellate review or relief.

1 2.1.13 "Employee Payroll Taxes" means the employee portion of all applicable tax
2 withholdings including, but not limited to, FICA, FUTA, and other employment related taxes and
3 withholding of federal, state, and local income taxes.

4 2.1.14 "Final Approval Hearing" means the hearing to be conducted by the Court, or any
5 other court taking jurisdiction of this matter, to determine whether to finally approve the Settlement.

6 2.1.15 "Judgment" means the amended judgment the Court entered on February 22, 2013 in
7 the Action.

8 2.1.16 "Action" means *Jennifer Augustus v. American Commercial Security Services*, Case
9 No. BC336416 in the Superior Court of the County of Los Angeles and the following consolidated
10 actions:

11 (a) *Emanuel Davis v. American Commercial Security Services, Inc.*, Case No.
12 CGC5444421;

13 (b) *Delores Hall and Carlton Anthony Waite v. American Commercial Security*
14 *Services*, Case No. BC345918.

15 2.1.17 "Motion for Preliminary Approval" refers to the motion for preliminary approval of
16 this Settlement and its supporting papers.

17 2.1.18 "Named Plaintiffs" means Jennifer Augustus, Emanuel Davis, Delores Hall, and
18 Carlton Anthony Waite.

19 2.1.19 "Notice of Settlement" refers to the official notice of settlement of class action,
20 materially in the form attached hereto as **Exhibit A**.

21 2.1.20 "Notice Period" refers to the time period of forty-five days from the first mailing date
22 postmarked on the first Notice of Settlement mailed by the Claims Administrator.

23 2.1.21 "Order Granting Preliminary Approval" refers to the Court order or statement of
24 decision granting preliminary approval to this Settlement Agreement.

25 2.1.22 "Order of Final Approval" and "Final Approval" means an order that finally and
26 unconditionally grants final approval of this Settlement Agreement, and authorizes payments to the
27 Claims Administrator, the Settlement Class Members, and Class Counsel as provided in this
28 Settlement Agreement.

1 2.1.23 "Plaintiffs" means the Settlement Class Members.

2 2.1.24 "Released Claims" means the claims released pursuant to Section 2.6.1 of this
3 Settlement Agreement.

4 2.1.25 "Released Parties" means ABM, including all of ABM's past and present successors,
5 subsidiaries, investors, parents, holding companies, sister and affiliated companies, divisions and
6 other related entities, as well as the successors, predecessors, shareholders, subsidiaries, investors,
7 parent, sister and affiliated companies, officers, directors, partners, assigns, agents, employees,
8 principals, heirs, administrators, attorneys, vendors, accountants, auditors, consultants, fiduciaries,
9 insurers, reinsurers, employee benefit plans, and representatives of each of them, both individually
10 and in their official capacities, past or present, as well as all persons acting by, through, under or in
11 concert with any of these persons or entities.

12 2.1.26 "Service Award" means a Court-approved sum to be paid to certain Named Plaintiffs
13 in accordance with Section 2.4.3.

14 2.1.27 "Settlement Class" means the rest break class certified by the Court in the Action,
15 which in the Judgment is defined as "All persons who are or were employed by Defendant ABM
16 Security Services, Inc. dba American Commercial Security Services in any security guard position in
17 California at any time during the period from July 12, 2001 through July 1, 2011 ("Class Period")
18 (excluding those persons assigned to the locations for which Defendant was granted a permit for
19 exemption from the rest period requirements of the Industrial Welfare Commission Wage Order No.
20 4-2001 and for such time period as the exemption was or is granted which currently includes the time
21 period of December 27, 2006 through December 26, 2007, which time period may be extended in the
22 event the rest period exemption is renewed by the IWC for any time period within the Class Period)
23 who worked a shift exceeding four (4) hours or major fraction thereof without being authorized and
24 permitted to take an uninterrupted rest period of net ten (10) minutes per each four (4) hours or major
25 fraction thereof worked and has not been paid one additional hour of pay at the employee's regular
26 rate of compensation for each work day that the rest period was not provided," other than those
27 persons who have previously submitted a timely and valid request for exclusion from the rest break
28 class certified in the Action.

1 2.1.28 "Settlement Class Members" means the persons in the Settlement Class.

2 2.1.29 "Settlement Fund" or "Settlement Amount" refers to \$110,000,000.00, which is the
3 total and maximum amount ABM will be required to pay under this Settlement. The Settlement Fund
4 will be distributed in accordance with Section 2.4.

5 2.1.30 "Settlement Payments" means the amounts to be paid to individual Settlement Class
6 Members pursuant to the terms and conditions of this Settlement Agreement.

7 **Section 2.2 Settlement of the Action**

8 2.2.1 It is agreed by and among the Settlement Class Members and ABM that any and all
9 claims, damages, remedies sought or causes of action arising out of or related to ABM's provision of
10 rest breaks or alleged failure to provide rest breaks during the Class Period shall be settled and
11 compromised as between the Settlement Class Members and ABM, subject to the terms and
12 conditions set forth in this Settlement Agreement and the approval of the Court, including through
13 any Court-appointed referee or agent of the Court or other judicial entity with jurisdiction over this
14 matter.

15 2.2.2 It is agreed by and among the Settlement Class Members, Class Counsel, and ABM
16 that upon the Effective Date of this Settlement Agreement as defined in Section 2.1.12, the
17 Settlement Class Members and Class Counsel will promptly file with the Court an acknowledgment
18 of satisfaction of the Judgment pursuant to California Code of Civil Procedure section 724.010 et seq.
19 indicating that the Judgment has been satisfied.

20 2.2.3 The Parties agree that the Settlement Class Members and Class Counsel shall have no
21 right to pursue enforcement of the Judgment, except upon Cancellation of this Settlement Agreement
22 as described in Section 2.3.1.

23 2.2.4 The occurrence of the Effective Date is a prerequisite to any distributions from the
24 Settlement Fund, other than distributions to pay for Administrative Costs or Settlement Fund Taxes.

25 **Section 2.3 Cancellation of Settlement Agreement**

26 2.3.1 In the event that the Court does not enter an Order of Final Approval, an Order of
27 Final Approval is modified in any material respect on appeal (other than a reduction or elimination of
28 any Service Awards or a reduction or elimination of any Attorneys' Fees and Costs to Class Counsel

1 awarded in connection with the application described in Section 2.4.2(b)), or the Effective Date does
 2 not occur, then (a) this Settlement Agreement shall be deemed cancelled, null and void, and shall be
 3 of no force or effect whatsoever, and shall not be referred to or utilized for any purpose whatsoever,
 4 and (b) ABM shall be entitled to the return of all funds in the Escrow Account, but ABM agrees that
 5 the undertakings in the amount of \$94,197,352.88 that are currently in place in the Action will remain
 6 in place unless the Judgment is reversed or vacated or ABM satisfies the Judgment, and that ABM
 7 will pay any outstanding Administrative Costs owed to the Claims Administrator.

8 2.3.2 This Settlement Agreement may not be revoked, cancelled, terminated, or voided
 9 except as set forth in Section 2.3.1. The Parties expressly agree to be bound by this Settlement
 10 Agreement, regardless of whether the California Supreme Court grants or denies ABM's petition for
 11 rehearing or modifies its opinion or of any action taken by the U.S. Supreme Court.

12 **Section 2.4 Settlement Fund Distribution**

13 2.4.1 Settlement Fund. In consideration for settlement of the Action, ABM agrees to pay
 14 the sum of one hundred and ten million dollars (\$110,000,000.00) ("Settlement Fund" or "Settlement
 15 Amount") for Administrative Costs, Service Awards, Settlement Payments, Attorneys' Fees and
 16 Costs, and Employee Payroll Taxes. The Settlement Fund is to be allocated to the Claims
 17 Administrator, Class Counsel, any Named Plaintiffs receiving a Service Award, and the Settlement
 18 Class Members, as described herein. The Settlement Fund is the total and maximum amount ABM is
 19 required to pay for any and all purposes under this Settlement Agreement, and in connection with the
 20 termination of the Action.

21 2.4.2 Attorneys' Fees and Costs.

22 (a) The Court has already awarded Class Counsel 30% of the common fund as
 23 attorneys' fees for work performed up through entry of judgment along with reimbursable costs
 24 totaling \$184,020.33 from the common fund, and that order was not challenged on appeal and is now
 25 final.

26 (b) Class Counsel will request from the Court an additional award of 5% of the
 27 common fund, plus additional reimbursable costs incurred since entry of judgment in an amount not
 28 to exceed \$100,000, which will compensate Class Counsel for fees and costs incurred for work

1 performed on appeal, including work at the California Supreme Court, as well as the work remaining
2 to be performed in complying with terms of the Settlement, including, but not limited to,
3 documenting the Settlement, securing Court approval of the Settlement, administering the Settlement,
4 and defending against any appeals, as well as all associated expenses. ABM will not oppose the
5 request for attorneys' fees and costs as described in this Section 2.4.2(b).

6 (c) Any and all awards of Attorneys' Fees and Costs to Class Counsel will be paid
7 from the Settlement Fund, which constitutes the common fund in the Action. Neither Class Counsel
8 nor any of the Settlement Class Members will seek any payment of attorneys' fees and costs that are
9 in addition to the foregoing or that exceed the Settlement Fund. Class Counsel agree to work
10 together in in good faith to divide and distribute all Court-approved Attorneys' Fees and Costs
11 awarded in the Action to Class Counsel, and that Class Counsel agree to release ABM and the
12 Released Parties from any responsibility for or liability arising out of or related to the division and
13 distribution of any Court-approved Attorneys' Fees and Costs to Class Counsel.

14 (d) The Parties agree that, aside from the Court-approved Attorneys' Fees and
15 Costs awarded in the Action, each of the Parties, including all Settlement Class Members, shall bear
16 their own fees and costs, including, but not limited to, those related to the investigation, filing,
17 prosecution, or settlement of the Action; the negotiation, execution, or implementation of this
18 Settlement Agreement; and/or the process of obtaining, administering, or challenging Final Approval.

19 (e) In the event that the Court denies, modifies, or reduces Class Counsel's request
20 for an additional award of 5% of the common fund and additional costs in an amount not to exceed
21 \$100,000, Class Counsel and the Settlement Class Members may not seek to modify, revoke, cancel,
22 terminate, or void this Settlement Agreement, or seek, request, or demand an increase in the
23 Settlement Amount.

24 (f) If Class Counsel appeal the Court's ruling on their request for Attorneys' Fees
25 and Costs, any ruling of any appellate court in such an appeal (regardless of its substance) shall not
26 constitute a material alteration of this Settlement Agreement, and shall not give Class Counsel or
27 Settlement Class Members the right to modify, revoke, cancel, terminate, or void this Settlement
28 Agreement.

(g) All claims for attorneys' fees or costs or expenses that Class Counsel and the Settlement Class Members may possess against ABM have been compromised and resolved in this Settlement Agreement.

2.4.3 Named Plaintiffs Service Awards.

(a) In addition to the amounts determined to be due to them as Settlement Class Members under this Settlement Agreement, certain Named Plaintiffs who contributed time and effort to the case may apply to the Court through Class Counsel for Service Awards. 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 shall reduce the amount payable to the Settlement Class Members. The requested Service Awards for these Named Plaintiffs will not exceed the following amounts:

- Jennifer Augustus: \$50,000.00
- Emanuel Davis: \$25,000.00.

ABM will not oppose the requests for Service Awards as described in this Section 2.4.3(a).

(b) Service Awards shall be distributed by the Claims Administrator in accordance with Section 2.10 of this Settlement Agreement and shall be reported by the Claims Administrator to state and federal taxing authorities as non-wage income on IRS Form 1099. Those Named Plaintiffs receiving a Service Award will be solely responsible for correctly characterizing the Service Award for tax purposes and are solely responsible for paying any taxes owing on the Service Award and they agree to assume responsibility of remitting to the Internal Revenue Service and any other relevant taxing authority the amounts which may be required by law, if any, to be withheld by the Claims Administrator from their Service Awards. In addition, those Named Plaintiffs receiving a Service Award shall hold ABM harmless and indemnify and defend ABM and the Released Parties for all taxes, interest, penalties, and costs incurred by ABM or the Released Parties by any reason of any claims relating to their non-withholding of taxes from the Service Award.

(c) In the event that the Court denies, modifies, or reduces any request for a Service Award, Class Counsel and the Settlement Class Members may not seek to modify, revoke,

1 cancel, terminate, or void this Settlement Agreement, or seek, request, or demand an increase in the
2 Settlement Amount.

3 (d) If any of the Named Plaintiffs appeal the Court's ruling on any request for a
4 Service Award, any ruling of any appellate court in such an appeal (regardless of its substance) shall
5 not constitute a material alteration of this Settlement Agreement, and shall not give Class Counsel or
6 the Settlement Class Members the right to modify, revoke, cancel, terminate, or void the Settlement
7 Agreement.

8 2.4.4 Claims Administration Expenses. The Claims Administrator shall be paid for the
9 Administrative Costs, which are estimated to be \$100,000.00, from the Settlement Fund. No fewer
10 than ten court days prior to the Final Approval Hearing, the Claims Administrator shall provide the
11 Court and all counsel for the Parties with a statement detailing the Administrative Costs. The Parties
12 agree to cooperate in the settlement administration process and to make all efforts to control and
13 minimize the costs and expenses incurred in the administration of this Settlement.

14 2.4.5 Distributions to Settlement Class Members.

15 (a) The Claims Administrator will determine the amount payable to individual
16 Settlement Class Members by the method set forth below.

17 (b) "Work Week Settlement Amount" is the amount calculated by taking the
18 Settlement Amount (1) less Administrative Costs, Attorneys' Fees and Costs, and Service Awards;
19 (2) plus any income earned on the Settlement Amount less any Settlement Fund Taxes; and dividing
20 the resulting amount by the total number of weeks worked by all Settlement Class Members.

21 (c) "Settlement Class Member Work Weeks" means the number of weeks in
22 which a person who is a Settlement Class Members was employed by ABM during the Class Period.
23 ABM's records shall be conclusive as to calculating the Settlement Class Member Work Weeks.

24 (d) The "Gross Individual Settlement Payment" for each person who is a
25 Settlement Class Members is the amount calculated by multiplying the Work Week Settlement
26 Amount by the Settlement Class Member Work Weeks for that person.

27 (e) The "Net Individual Settlement Payment" for each person who is a Settlement
28 Class Members is the amount calculated by taking the Gross Individual Settlement Payment and

1 subtracting all Employee Payroll Taxes and any other withholdings required by law for that person.

2 The Net Individual Settlement Payment is the amount that will be paid from the Settlement Fund to
3 each Settlement Class Members by the Claims Administrator.

4 (f) The Claims Administrator will calculate the Gross Individual Settlement
5 Payment and Net Individual Settlement Payment for all Settlement Class Members within thirty days
6 of the close of the Notice Period. The Claims Administrator will provide a copy of its calculations,
7 without any personal identifying data, for the Parties to review. The Parties may dispute the
8 calculations only with respect to mathematical errors or an incorrect application of the above method
9 of allocation. Such a dispute must be raised in writing within seven days after the Claims
10 Administrator provides the calculations for review.

11 (g) In the event a Class Member disputes the Settlement Class Member Work
12 Weeks identified for a Class Member, the Class Member shall notify the Claims Administrator of
13 such dispute and provide any materials or evidence in support of the dates of employment and/or
14 work weeks for which the Class Member contends he or she is entitled to compensation no later than
15 the last day of the Notice Period. The Claims Administrator shall promptly notify counsel for the
16 Parties of any such disputes and forward any materials or evidence received in support thereof to
17 counsel for the Parties. Lead Class Counsel shall make a determination regarding the dispute and
18 advise the Class Member within seven days of receipt of the dispute. If the Class Member and Lead
19 Class Counsel do not reach a resolution of the dispute, Lead Class Counsel will notify the Court of
20 the dispute at the time of filing the Motion for Final Approval and the dispute will be resolved by the
21 Court pursuant to Section 2.15.1.

22 2.4.6 Allocation and Taxability of Settlement Distributions.

23 (a) For tax purposes, 50% of each Gross Individual Settlement Payment will be
24 treated by the Parties as wages reported on IRS Form W-2, and the Claims Administrator shall pay
25 over all such withheld funds to the appropriate state and federal taxing authorities. The Employee
26 Payroll Taxes withheld shall be paid from the Settlement Fund. The remaining 50% of the Gross
27 Individual Settlement Payment will be treated by the Parties as additional, non-wage interest, not
28 subject to payroll withholdings, and shall be reported on an IRS Form 1099. These allocations

1 approximate the allocation between wages and non-wage interest (including post-judgment interest)
2 arising from the Judgment entered in the Action. Neither the terms of this Settlement Agreement nor
3 any Settlement Payments paid to the Settlement Class Members shall have any effect on the
4 eligibility or calculation of employee benefits for any Settlement Class Members. Neither this
5 Settlement Agreement, nor any of its attachments, should be interpreted to contain or constitute
6 representations or advice regarding any U.S. federal or state tax issue. The Settlement Class
7 Members will be specifically informed that neither ABM nor Class Counsel make any representations
8 regarding the tax implications of any amounts paid under this Settlement Agreement and that if the
9 Settlement Class Members have any questions regarding those implications, they can and should
10 consult a tax expert.

11 (b) The Claims Administrator shall provide all Settlement Class Members who are
12 entitled to a Net Individual Settlement Payment with a IRS Form W-2 reflecting the wages and the
13 taxes withheld from those wages and with a IRS Form 1099 reflecting the non-wage interest paid.
14 The Claims Administrator shall provide all Settlement Class Members who are entitled to a Net
15 Individual Settlement Payment with appropriate documentation setting forth the amount of any tax or
16 other payment withheld and employer contribution made, in accordance with state and federal tax
17 requirements. The Settlement Class Members shall be solely and exclusively responsible for
18 remitting to state and/or federal taxing authorities any applicable other taxes due and shall hold ABM
19 and the Released Parties harmless for any taxes, penalties, interest, liabilities, costs, attorneys' fees,
20 and expenses caused by any such taxing authority relating in any way to the Settlement Class
21 Members' tax treatment of payments made to them pursuant to this Settlement Agreement or failure
22 to timely or properly pay any taxes owed on their respective Settlement Payments.

23 (c) Any checks issued to Settlement Class Members shall remain valid and
24 negotiable for one hundred and eighty days from the date of their mailing. If any Settlement Class
25 Members do not cash the settlement check within one hundred and eighty days after issuance, then
26 ten business days after the check-cashing deadline the Claims Administrator shall void any such
27 uncashed checks, and shall distribute all amounts from such uncashed checks to the Legal Aid
28

1 Foundation of Los Angeles, Legal Aid at Work, and the Women's Employment Rights Clinic, in
2 equal amounts.

3 **Section 2.5 Appointment and Duties of Claims Administrator**

4 2.5.1 Subject to the approval of the Court, the Parties have agreed to the appointment of a
5 professional class action claims administration firm, CPT Group, Inc., as the Claims Administrator
6 for the purpose of administering the settlement process, including preparing and mailing the Notice of
7 Settlement to the Settlement Class Members, providing live call agents during business hours,
8 distributing Settlement Funds, and responding to inquiries from Settlement Class Members.

9 2.5.2 The duties of the Claims Administrator shall include without limitation:

- 10 (a) handling all mailings to the Settlement Class Members;
- 11 (b) tracing undeliverable mailings;
- 12 (c) recording and tracking responses to the mailing to the Settlement Class
13 Members (including recording the identity of any Settlement Class Members who request exclusion);
- 14 (d) duties relating to the filing of tax returns and payment of any taxes related to
15 interest earned on the Settlement Fund while deposited in the Escrow Account, as outlined in Section
16 2.10;
- 17 (e) responding to inquiries made by the Settlement Class Members;
- 18 (f) calculating the Settlement Payments;
- 19 (g) mailing Settlement Payments;
- 20 (h) issuing copies of IRS Form 1099 and IRS Form W-2 (where applicable) for
21 any Named Plaintiffs receiving a Service Award and for all Settlement Class Members who receive a
22 payment of any kind from the Settlement Fund;
- 23 (i) reporting payment of Settlement Payments to all required taxing and other
24 authorities, taking appropriate withholding from the Settlement Payments and remitting all Employee
25 Payroll Taxes and other required payments to the proper authorities; and
- 26 (j) other related tasks as mutually agreed to by the Parties.

27 2.5.3 The Claims Administrator shall keep ABM's counsel and Class Counsel timely
28 apprised of the performance of all Claims Administrator responsibilities through weekly emails.

1 2.5.4 All disputes relating to the Claims Administrator's performance of its duties will be
2 referred to the Court, if necessary, which will have continuing jurisdiction over this Settlement until
3 all payments and obligations contemplated by this Settlement Agreement have been fully carried out.
4 Neither the Parties nor their counsel shall have any responsibility or liability for the acts or omissions
5 of the Claims Administrator.

6 2.5.5 At least twenty-one days before the Final Approval Hearing, the Claims Administrator
7 shall prepare a declaration of due diligence and proof of mailing with regard to the mailing of the
8 Notice of Settlement, and any attempts by the Claims Administrator to locate Settlement Class
9 Members, and its inability to deliver the Notice of Settlement to the Settlement Class Members due to
10 invalid addresses ("Due Diligence Declaration"), to Class Counsel and ABM's counsel for
11 presentation to the Court. Class Counsel shall be responsible for filing the Due Diligence Declaration
12 with the Court.

13 **Section 2.6 Release of Claims by the Settlement Class Members**

14 2.6.1 Upon the Effective Date, the Settlement Class Members, including their heirs, assigns,
15 and estates, shall be deemed to fully forever, irrevocably and unconditionally release, and discharge
16 ABM and the Released Parties from any and all claims, debts, liabilities, demands, obligations,
17 guarantees, penalties, costs, expenses, attorneys' fees, damages, liquidated damages, action or causes
18 of action whatever kind or nature, whether known or unknown, contingent or accrued, against ABM
19 or the Released Parties or any of them, under any state or municipal statute, ordinance, regulation,
20 order or common law, arising out of or related to ABM's provision of rest breaks or alleged failure to
21 provide rest breaks during the Class Period, including but not limited to claims under California
22 Labor Code section 226.7, California Business & Professions Code section 17200, California Labor
23 Code section 203, and any related claims for interest (whether pre- or post-judgment) and/or
24 attorneys' fees and costs.

25 2.6.2 This Settlement Agreement shall be binding on all Settlement Class Members,
26 whether or not they actually receive a payment pursuant to this Settlement Agreement. This
27 Settlement Agreement shall constitute, and may be pleaded as, a complete and total defense to any
28 Released Claims raised in the future.

1 2.6.3 The Settlement Class Members promise not to file a lawsuit in any court alleging any
 2 Released Claims, or participate as a party or a class member in any administrative or other legal
 3 proceedings, in any forum, against ABM or the Released Parties, for any claims released under this
 4 Settlement Agreement. In consideration for the promises made by ABM in this Settlement
 5 Agreement, the Settlement Class Members agree never to institute any suit, complaint, proceeding,
 6 grievance, or action of any kind at law, in equity, or otherwise in any court of the United States, state,
 7 or municipality, or administrative agency, or any arbitration or other legal forum, against ABM or the
 8 Released Parties for any claim included in the Released Claims. The Settlement Class Members also
 9 agree that they will not join, participate in, or consent to opt in to any actions alleging that he or she is
 10 similarly situated to any other employee with respect to any such Released Claims, and that each will
 11 elect to opt out of any such actions against ABM or the Released Parties of which he or she is
 12 involuntarily made a member or party. If any of the Settlement Class Members are joined in any
 13 class or collective lawsuits for any Released Claims, he or she will receive no further compensation
 14 of any kind for such released claim or claims.

15 2.6.4 The Settlement Class Members and Class Counsel shall, and hereby do, fully and
 16 finally release and forever discharge ABM and the Released Parties of and from any and all claims,
 17 demands, damages, actions and/or causes of action whatever kind or nature, including claims for
 18 attorneys' fees or costs, whether known or unknown, existing or claimed to exist, in any way set forth
 19 in or arising out of any: (i) dispute or claim between or among any Settlement Class Members, and/or
 20 Class Counsel, including over any claim to any monetary part of the Settlement and/or to Class
 21 Counsel's fees, costs or expenses; and/or (ii) any dispute between the Settlement Class Members,
 22 Class Counsel and/or any governmental authority with respect to this Settlement Agreement. This
 23 Settlement Agreement shall constitute, and may be pleaded by ABM and the Released Parties as, a
 24 complete and total defense to any such dispute or claim.

25 **Section 2.7 Procedures for Objecting to the Settlement**

26 2.7.1 The Notice of Settlement shall provide that Settlement Class Members and persons
 27 purporting to act on behalf of any Settlement Class Members who wish to object to this Settlement
 28 Agreement must submit to the Claims Administrator a written statement objecting to this Settlement

1 Agreement. Such objection and any supporting briefs or other materials must be received by the
 2 Claims Administrator no later than the last day of the Notice Period. An objection must state the
 3 objector's name, current address and telephone number, and the basis for the objection.

4 2.7.2 Promptly upon receipt of any objections, the Claims Administrator shall forward the
 5 objections and any supporting briefs or other materials to counsel for the Parties.

6 2.7.3 Counsel for the Parties shall file any responses to any objections at the time the
 7 Motion for Final Approval is filed.

8 2.7.4 ABM shall not be responsible for the fees, costs, or expenses incurred by Class
 9 Counsel or the Settlement Class Members arising from or related to any Settlement Class Members
 10 who submit objections or otherwise purport to object to this Settlement Agreement or related to any
 11 appeals thereof.

12 **Section 2.8 Preparation and Mailing of Notice to the Class**

13 2.8.1 Within five business days of entry of the Order Granting Preliminary Approval of
 14 Settlement, but subject to the Claims Administrator providing adequate and contractual assurances
 15 with respect to confidentiality and data security, ABM shall provide the Claims Administrator with
 16 the following information for the Settlement Class Members in the form of an Excel spreadsheet or
 17 similar sortable electronic format: names, last-known mailing addresses from ABM's records, Social
 18 Security numbers, and, for each Settlement Class Member, the number of weeks that person was
 19 employed by ABM during the Class Period. Class Counsel will not be provided the Social Security
 20 numbers for any Settlement Class Members in connection with this Settlement or Settlement
 21 Agreement. The data provided to the Claims Administrator will remain confidential and will not be
 22 disclosed to any outside party, except as required to applicable tax authorities, or with the express
 23 written consent of ABM, or by order of the Court. The data provided under this Section 2.8.1 shall
 24 be used only for the purpose of administering this Settlement.

25 2.8.2 The Notice of Settlement, in materially the form attached hereto as **Exhibit B** and as
 26 approved by the Court, shall be sent by the Claims Administrator to the Settlement Class Members,
 27 by First Class Mail (in English and Spanish) to those addresses provided, as soon as practicable but in
 28 any event within ten days after receipt of their contact information from ABM. The Notice of

1 Settlement shall set forth a brief description of the Action, provide the definition of the Settlement
 2 Class, inform the Settlement Class Members of the nature and scope of the settlement of claims, set
 3 forth the requested Attorneys' Fees and Costs, disclose the Service Awards that will be requested by
 4 certain Named Plaintiffs, inform the Settlement Class Members of their opportunity to be heard at the
 5 Final Approval Hearing, and inform the Settlement Class Members of their right to submit an
 6 objection to any term of the Settlement. The Notice of Settlement will set forth contact numbers for
 7 Class Counsel, counsel for ABM, and direct class members to call the toll free number established by
 8 the Claims Administrator to answer any questions that the Settlement Class Members may have.

9 2.8.3 The Claims Administrator will attempt to locate any Settlement Class Members whose
 10 Notice of Settlement is returned by the Post Office by performing a National Change of Address
 11 search on the entire list of Settlement Class Members and if needed, conducting one skip trace search
 12 regarding any returned Notice of Settlement.

13 2.8.4 If an envelope has not been returned within twenty-one days of the mailing, it shall be
 14 conclusively presumed that the person to whom the envelope was addressed received the Notice of
 15 Settlement.

16 **Section 2.9 Final Approval Hearing**

17 2.9.1 The Parties will request the Court to conduct a Final Approval Hearing on or about the
 18 date set forth in the Order Granting Preliminary Approval and to determine if the Settlement is fair,
 19 reasonable, and adequate, and if so, enter a final order and judgment granting Final Approval of
 20 Settlement, which will (a) approve the Settlement, adjudging the terms thereof to be fair, reasonable
 21 and adequate, and directing consummation of its terms and provisions; (b) approve in whole or in part
 22 Class Counsel's application for an award of Attorneys' Fees and Costs; (c) approve in whole or in
 23 part any requests for Service Awards; and (d) permanently bar and enjoin all members of the
 24 Settlement Class Members from prosecuting any Released Claims against ABM or any Released
 25 Parties.

26 **Section 2.10 Additional Undertaking, Funding the Settlement Amount and Distribution**

27 2.10.1 Following execution of this Settlement Agreement, ABM will use commercially
 28 reasonable efforts to obtain and file with the Court an additional undertaking on appeal pursuant to

1 California Code of Civil Procedure section 917.1 for the difference between the Settlement Amount
2 and the undertakings in the amount of \$94,197,352.88 currently in place in the Action.

3 2.10.2 The Settlement Fund shall be deposited at the times specified in this Section 2.10 into
4 the Escrow Account, which shall be maintained by the Escrow Agent. Within seven days after the
5 Effective Date, the Claims Administrator shall cause the Escrow Agent to convert the Escrow
6 Account into a checking account from which the Claims Administrator shall distribute all Court-
7 approved payments.

8 2.10.3 The Parties agree to treat the Settlement Fund as a "qualified settlement fund" within
9 the meaning of Treasury Regulation § 1.468B-1, and the Claims Administrator, as administrator of
10 the Escrow Account within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be
11 responsible for filing tax returns for the Escrow Account and paying from the Escrow Account any
12 and all taxes, including any interest or penalties thereon (the "Settlement Fund Taxes"), owed with
13 respect to the Escrow Account, to the extent necessary. In addition, the Claims Administrator shall
14 timely make such elections as necessary or advisable to carry out the provisions of this Section 2.10,
15 including if necessary the "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the
16 earliest permitted date. Such elections shall be made in compliance with the procedures and
17 requirements contained in such regulations. It shall be the responsibility of the Claims Administrator
18 to timely and properly prepare and deliver the necessary documentation for signature by all necessary
19 parties, and thereafter to cause the appropriate filing to occur. All Settlement Fund Taxes arising
20 with respect to the income, if any, earned by the Settlement Fund (including any Settlement Fund
21 Taxes that may be imposed upon ABM with respect to any income earned by the Settlement Fund for
22 any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for
23 federal or state income tax purposes) shall be paid out from the interest earned on the Settlement
24 Fund.

25 2.10.4 Any expenses and costs incurred in connection with the payment of Settlement Fund
26 Taxes pursuant to this Section 2.10, including, without limitation, expenses of tax attorneys and/or
27 accountants and mailing, administration, and distribution costs and expenses relating to the filing or
28 the failure to file all necessary or advisable tax returns (the "Settlement Fund Tax Expenses"), shall

1 be paid to the Claims Administrator as part of the Administrative Costs. The Escrow Agent will
2 either be paid from the interest earned on the Settlement Fund, or will agree to waive any fees
3 incurred by it related to the Escrow Account, and thus any such fees will not be paid from or
4 otherwise diminish the Settlement Fund. ABM shall not have any liability or responsibility for the
5 Settlement Fund Taxes or the Settlement Fund Tax Expenses.

6 2.10.5 The Claims Administrator shall timely and properly file all informational and other tax
7 returns necessary or advisable with respect to the Settlement Fund and the distributions and payments
8 therefrom, including, without limitation, the tax returns described in Treas. Reg. § 1.468B-2(k), and
9 to the extent applicable, Treas. Reg. § 1.468B-2(1). Such tax returns shall be consistent with the
10 terms herein, and in all events shall reflect that all Settlement Fund Taxes on the income earned by
11 the Settlement Fund shall be paid out of the interest earned on the Settlement Fund. The Claims
12 Administrator shall also timely pay Settlement Fund Taxes out of the interest earned on the
13 Settlement Fund. The Claims Administrator is authorized to withdraw from the interest earned on the
14 Settlement Fund in the Escrow Account amounts necessary to pay any Settlement Fund Taxes. The
15 Parties hereto agree to cooperate with the Escrow Agent, the Claims Administrator, each other, and
16 their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of
17 this Settlement Agreement. Neither the Parties nor their counsel shall have any responsibility or
18 liability for the acts or omissions of the Escrow Agent or Claims Administrator.

19 2.10.6 ABM will pay \$55,000,000.00 of the Settlement Amount by either April 1, 2017 or
20 within fourteen days after Final Approval, whichever date is later. ABM will pay the remainder of
21 the Settlement Amount by either September 1, 2017 or within fourteen days after Final Approval,
22 whichever date is later. All funds shall be paid into the Escrow Account.

23 2.10.7 No funds from the Escrow Account, except for any necessary Administrative Costs or
24 Settlement Fund Taxes, shall be disbursed until after the Effective Date.

25 2.10.8 Within fourteen days after the Effective Date, all Court-approved payments will be
26 made by the Claims Administrator to the Settlement Class Members, the Named Plaintiffs receiving a
27 Service Award, and Class Counsel (provided that Class Counsel has provided a completed W-9 to the
28 Claims Administrator). The approval or denial of a Settlement Payment to any Settlement Class

Members under the terms of this Settlement Agreement will be conclusive and binding, subject to the dispute resolution provisions of this Settlement Agreement as set forth in Sections 2.4.5(g) and 2.15.

All payments called for under this Section 2.10 shall be made solely from the Settlement Fund.

Section 2.11 Obligations of the Parties Prior to Court Approval

2.11.1 Once finalized, the Parties shall promptly submit this Settlement Agreement to the Court for an Order of Preliminary Approval and determination by the Court as to its fairness, adequacy, and reasonableness pursuant to California Rules of Court, rule 3.769. Promptly upon execution of this Settlement Agreement, Plaintiffs will file a Motion for Preliminary Approval seeking the following:

- (a) Approval of the proposed Settlement as fair, reasonable, and adequate as to the Settlement Class Members;
- (b) Approval as to form and content of the proposed Notice of Settlement;
- (c) Approval of the plan of allocation of the Settlement Fund.
- (d) Directing the mailing of the Notice of Settlement by First Class Mail to the Settlement Class Members by the Claims Administrator;
- (e) Appointing CPT Group, Inc. as Claims Administrator;
- (f) Preliminarily approving this Settlement Agreement; and
- (g) Scheduling a Final Approval Hearing on the question of whether the proposed Settlement should be finally approved.

2.11.2 The Parties will use their best efforts to ensure that the Motion for Preliminary Approval is filed by Wednesday, February 8, 2017, or as soon thereafter as possible. The Parties agree to coordinate and cooperate on determining the filing date of the Motion for Preliminary Approval, and Plaintiffs agree that they shall not file the Motion for Preliminary Approval unless they have obtained ABM's consent to the filing.

2.11.3 Prior to the Final Approval Hearing, Plaintiffs will submit a proposed Order of Final Approval that (a) approves the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and (b) directs consummation of the Settlement Agreement's terms and provisions.

1 2.11.4 Plaintiffs and Class Counsel agree not to seek to execute upon and/or take any steps to
2 collect upon the Judgment while the Settlement is pending approval by the Court, including during
3 the pendency of any appeal, writ or other appellate proceeding challenging an Order of Final
4 Approval.

5 **Section 2.12 Communications**

6 2.12.1 The terms of this Settlement shall remain confidential until they are presented to the
7 Court in connection with the Motion for Preliminary Approval, except for (a) any disclosure
8 necessary to comply with any state or federal law (including the federal securities laws) or rules and
9 regulations of any securities exchange upon which ABM's stock is listed, (b) the communication by
10 ABM to the California Supreme Court contemplated in Section 2.13.1, (c) the issuance of a press
11 release by ABM regarding the Settlement, and (d) with the consent of ABM, communications with
12 the Court for the limited purpose of obtaining a hearing date for the Motion for Preliminary
13 Approval.

14 2.12.2 Following the Order Granting Preliminary Approval, the Parties and their counsel will
15 direct inquiries from Settlement Class Members to the Claims Administrator to ensure consistent and
16 accurate communication with Settlement Class Members.

17 2.12.3 Plaintiffs and Class Counsel agree not to disparage or comment negatively about
18 ABM, its officers, management, and/or current or former employees.

19 2.12.4 Nothing in this Settlement Agreement shall limit ABM from communicating with its
20 counsel regarding this Settlement Agreement, or Settlement Class Members from communicating
21 with Class Counsel regarding this Settlement Agreement.

22 **Section 2.13 Resolution of the Pending Appeal of the Judgment**

23 2.13.1 Following execution of this Settlement Agreement, ABM will inform the California
24 Supreme Court that (a) the Parties have reached this Settlement, which is contingent on trial court
25 approval, (b) ABM has reserved the right to pursue further appellate review until the Settlement is
26 finally approved, and (c) ABM is not withdrawing either its petition for rehearing or conditional
27 motion to stay issuance of the remittitur. The Parties agree to coordinate and cooperate on the
28

1 content of this communication and the date on which it will be delivered to the California Supreme
2 Court.

3 2.13.2 Plaintiffs and Class Counsel agree not to oppose any application by ABM to extend
4 the deadline to file a petition for a writ of certiorari in the U.S. Supreme Court by up to sixty days.

5 2.13.3 Plaintiffs and Class Counsel expressly agree that ABM will not waive its right to seek
6 any further appellate review of the Judgment until the Effective Date.

7 **Section 2.14 Continuing Jurisdiction of the Court**

8 2.14.1 The Parties agree that the Court shall retain jurisdiction over the Parties, and over this
9 Settlement Agreement, in order to: (i) monitor and enforce compliance with this Settlement
10 Agreement, Final Approval and/or any related order of this Court; and/or (ii) resolve any disputes
11 over this Settlement Agreement or the administration of the benefits of this Settlement Agreement,
12 including, disputes over entitlement to payments sought by Class Counsel.

13 **Section 2.15 Dispute Resolution**

14 2.15.1 Except as otherwise authorized herein and in Section 2.4.5(g) with regard to Class
15 Member disputes regarding Settlement Payments, all disputes concerning the interpretation,
16 implementation, calculation, or payment of the Settlement Amount or other disputes regarding
17 compliance with this Settlement Agreement will be resolved by the Court.

18 **Section 2.16 Parties' Authority**

19 2.16.1 The signatories hereto hereby represent that they are fully authorized to enter into this
20 Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

21 **Section 2.17 Mutual Full Cooperation**

22 2.17.1 The Parties agree to fully cooperate with each other to accomplish the terms of this
23 Settlement Agreement as expeditiously as possible, including but not limited to, execution of such
24 documents and to take such other action as may reasonably be necessary to implement the terms of
25 this Settlement Agreement and obtain Final Approval. The Parties to this Settlement Agreement shall
26 use their best efforts, including all efforts contemplated by this Settlement Agreement and any other
27 efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement
28 Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement

1 Agreement, Class Counsel shall, with the assistance and cooperation of ABM and its counsel, take all
 2 necessary steps to secure the Court's Final Approval of this Settlement Agreement. Class Counsel
 3 will also notify counsel for ABM if they are subpoenaed or receive any other request for documents
 4 or information regarding any other action filed or potential action against ABM or the Released
 5 Parties that covers or includes any Settlement Class Members.

6 **Section 2.18 No Prior Assignments**

7 2.18.1 The Parties hereto represent, covenant, and warrant that they have not directly or
 8 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
 9 person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
 10 released and discharged except as set forth herein.

11 **Section 2.19 No Admission**

12 2.19.1 Nothing contained herein, nor the consummation of this Settlement Agreement, is to
 13 be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
 14 of ABM or any of the Released Parties, and they expressly deny liability or wrongdoing. ABM
 15 further denies, for any purpose other than settling this lawsuit, that this lawsuit is appropriate for class
 16 or representative treatment. This Settlement Agreement is not, shall not be deemed to be, and may
 17 not be used as, an admission or evidence of the appropriateness of this or similar claims for class
 18 action certification or administration other than for the purposes of administering this Settlement
 19 Agreement. Each of the parties hereto has entered into this Settlement Agreement with the sole
 20 purpose and intention to avoid further disputes and litigation with the attendant inconvenience and
 21 expenses. In the event this Settlement Agreement is not approved by the Court or otherwise does not
 22 become final, ABM does not waive any defenses or rights. This Settlement Agreement is a
 23 settlement document and shall, pursuant to Federal Rule of Evidence 408, California Evidence Code
 24 section 1152, and any and all analogous state laws, be inadmissible in evidence in any proceeding,
 25 except an action or proceeding to approve, interpret, or enforce this Settlement Agreement.

26 2.19.2 Whether or not the Settlement is finally approved, neither the Settlement, nor any of
 27 its terms, nor any document, statement, proceeding or conduct related to this Settlement Agreement
 28 including without limitation any motions for preliminary and final approval of the Settlement and any

documents submitted in support of such motions, nor any reports or accounts thereof, shall in any event be disclosed, referred to or offered or received in evidence against any of the Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of settling the Action or enforcing the Released Claims contained herein pursuant to the terms of this Settlement Agreement.

Section 2.20 Enforcement Actions

2.20.1 In the event that one or more of the Parties to this Settlement Agreement institutes any legal action, arbitration, or other proceeding against any other party to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful party shall be entitled to recover from the unsuccessful party reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

Section 2.21 Notices

2.21.1 Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiffs and the Settlement Class:

Drew E. Pomerance
Michael B. Adreani
ROXBOROUGH, POMERANCE, NYE & ADREANI LLP
5820 Canoga Avenue, Suite 250
Woodland Hills, California 91367

To ABM:

Keith Jacoby
LITTLER MENDELSON, P.C.
2049 Century Park East, 5th Floor
Los Angeles, California 90067

Theane Evangelis
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, California 90071

Section 2.22 Construction

2.22.1 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her or its counsel participated in the drafting of this Settlement Agreement.

Section 2.23 Captions and Interpretations

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

Section 2.24 Modification

2.24.1 This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by ABM, Class Counsel, Named Plaintiff Jennifer Augustus, and Named Plaintiff Emanuel Davis. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

Section 2.25 Integration Clause

2.25.1 This Settlement Agreement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements relating to this Settlement and the transaction contemplated hereby, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

Section 2.26 Binding on Assigns

2.26.1 The provisions of this Settlement Agreement shall run in perpetuity. This Settlement Agreement shall be binding upon the Parties hereto and their spouses, heirs, administrators, representatives, executors, successors and assigns, and shall inure to the benefit of ABM and the Released Parties, and their predecessors, successors, affiliates, subsidiaries, parent companies, partners, current and past employees, insurers, agents, legal representatives, each of which is entitled to enforce this Settlement Agreement.

1 **Section 2.27 Signatories**

2 2.27.1 It is agreed that because the members of the Settlement Class are so numerous, it is
3 impossible or impractical to have each member of the Settlement Class execute this Settlement
4 Agreement. It is agreed that this Settlement Agreement may be executed on behalf of the Settlement
5 Class by Class Counsel, Named Plaintiff Jennifer Augustus, and Named Plaintiff Emanuel Davis; and
6 shall have the same force and effect as if executed by each member of the Settlement Class.

7 **Section 2.28 Incorporation of Exhibits**

8 2.28.1 All exhibits, excluding the Escrow Agreement, attached hereto are incorporated by
9 reference and are a material part of this Settlement Agreement. The Escrow Agreement once reached
10 by the Parties shall also be incorporated by reference. Any notice, order, judgment, or other exhibit
11 that requires approval of the Court must be approved without material alteration from its current form
12 in order for this Settlement Agreement to become effective.

13 **Section 2.29 Reasonableness of Settlement Agreement**

14 2.29.1 The Parties jointly warrant that this is a fair, reasonable, and adequate settlement and
15 have arrived at this Settlement through arms-length negotiations, taking into account all relevant
16 factors, present and potential.

17 **Section 2.30 California Law and Interpretation**

18 2.30.1 All terms of this Settlement Agreement and its exhibits will be governed and
19 interpreted by and according to the laws of the State of California, without giving effect to any
20 conflict of law principles or choice of principles. If the Court determines that the release of claims in
21 Section 2.6.1 above is unenforceable, for whatever reason, this entire Settlement Agreement will
22 become null and void *ab initio*.

23 **Section 2.31 Counterparts**

24 2.31.1 This Settlement Agreement may be executed in counterparts and/or by facsimile
25 signature ("counterpart"), and when each party has signed and delivered at least one such counterpart,
26 each counterpart shall be deemed an original, and, when taken together with other signed
27 counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as
28 to all Parties.

Section 2.32 Entire Agreement

2.32.1 After this Settlement Agreement is fully executed by the Parties, it will constitute the entire agreement of the Parties. No oral representations, warranties, inducements, or writings have been made by any Party concerning this Settlement Agreement, other than those expressly stated herein.

IN WITNESS WHEREOF, Named Plaintiff Jennifer Augustus, Named Plaintiff Emanuel Davis, ABM, Class Counsel, and ABM's counsel have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: March 14, 2017

NAMED PLAINTIFF JENNIFER AUGUSTUS

By: 
Jennifer Augustus

Dated: March __, 2017

NAMED PLAINTIFF EMANUEL DAVIS

By: _____
Emanuel Davis

Dated: March __, 2017

DEFENDANT ABM SECURITY SERVICES, INC.

By: _____
Miranda Tolar
Vice President & Deputy General Counsel

1 **Section 2.32 Entire Agreement**

2 2.32.1 After this Settlement Agreement is fully executed by the Parties, it will constitute the
3 entire agreement of the Parties. No oral representations, warranties, inducements, or writings have
4 been made by any Party concerning this Settlement Agreement, other than those expressly stated
5 herein.

6 IN WITNESS WHEREOF, Named Plaintiff Jennifer Augustus, Named Plaintiff Emanuel
7 Davis, ABM, Class Counsel, and ABM's counsel have executed this Settlement Agreement as of the
8 date(s) indicated on the lines below.


9 Dated: March __, 2017

NAMED PLAINTIFF JENNIFER AUGUSTUS

11 By: _____
12 Jennifer Augustus

13
14 Dated: March 5, 2017

NAMED PLAINTIFF EMANUEL DAVIS

15
16 By: 
17 Emanuel Davis

18 Dated: March __, 2017

DEFENDANT ABM SECURITY SERVICES,
INC.

19
20 By: _____
21 Miranda Tolar
22 Vice President & Deputy General Counsel
23
24
25
26
27
28

Section 2.32 Entire Agreement

2.32.1 After this Settlement Agreement is fully executed by the Parties, it will constitute the entire agreement of the Parties. No oral representations, warranties, inducements, or writings have been made by any Party concerning this Settlement Agreement, other than those expressly stated herein.

IN WITNESS WHEREOF, Named Plaintiff Jennifer Augustus, Named Plaintiff Emanuel Davis, ABM, Class Counsel, and ABM's counsel have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: March __, 2017

NAMED PLAINTIFF JENNIFER AUGUSTUS

By: _____
Jennifer Augustus

Dated: March __, 2017

NAMED PLAINTIFF EMANUEL DAVIS

By: _____
Emanuel Davis

Dated: March 15, 2017

DEFENDANT ABM SECURITY SERVICES, INC.

By: 
Miranda Tolar
Vice President & Deputy General Counsel

1 APPROVED AS TO FORM AND CONTENT:

2 Dated: March 15, 2017

ROXBOROUGH, POMERANCE, NYE &
ADREANI LLP

3
4
5 By: 

Michael B. Adreani
Attorneys for Named Plaintiff Jennifer Augustus
and Lead Counsel for the Rest Break Class

6
7
8 Dated: March 16, 2017

SCOTT COLE & ASSOCIATES, APC

9 By: 

Scott Edward Cole
Attorneys for Named Plaintiff Emanuel Davis
and Counsel for the Rest Break Class

10
11
12
13 APPROVED AS TO FORM AND CONTENT:

14 Dated: March __, 2017

LITTLER MENDELSON, P.C.

15
16
17 By: _____

Keith Jacoby
Attorneys for Defendant
ABM Security Services, Inc.

18
19
20 Dated: March __, 2017

GIBSON, DUNN & CRUTCHER LLP

21
22 By: _____

Theane Evangelis
Attorneys for Defendant
ABM Security Services, Inc.

1 APPROVED AS TO FORM AND CONTENT:

2 Dated: March __, 2017

ROXBOROUGH, POMERANCE, NYE &
ADREANI LLP

3
4 By: _____
5 Michael B. Adreani
6 Attorneys for Named Plaintiff Jennifer Augustus
7 and Lead Counsel for the Rest Break Class

8 Dated: March __, 2017

SCOTT COLE & ASSOCIATES, APC

9 By: _____
10 Scott Edward Cole
11 Attorneys for Named Plaintiff Emanuel Davis
12 and Counsel for the Rest Break Class

13
14 APPROVED AS TO FORM AND CONTENT:

15 Dated: March 14, 2017

LITTLER MENDELSON, P.C.

16
17 By:  _____
18 Keith Jacoby
19 Attorneys for Defendant
20 ABM Security Services, Inc.

21 Dated: March __, 2017

GIBSON, DUNN & CRUTCHER LLP

22 By: _____
23 Theane Evangelis
24 Attorneys for Defendant
25 ABM Security Services, Inc.

1 APPROVED AS TO FORM AND CONTENT:

2 Dated: March __, 2017

ROXBOROUGH, POMERANCE, NYE &
ADREANI LLP

3
4 By: _____
5 Michael B. Adreani
6 Attorneys for Named Plaintiff Jennifer Augustus
7 and Lead Counsel for the Rest Break Class

8 Dated: March __, 2017

SCOTT COLE & ASSOCIATES, APC

9 By: _____
10 Scott Edward Cole
11 Attorneys for Named Plaintiff Emanuel Davis
12 and Counsel for the Rest Break Class

13
14 APPROVED AS TO FORM AND CONTENT:

15 Dated: March __, 2017

LITTLER MENDELSON, P.C.

16
17 By: _____
18 Keith Jacoby
19 Attorneys for Defendant
ABM Security Services, Inc.

20 Dated: March 14, 2017

GIBSON, DUNN & CRUTCHER LLP

21
22 By: _____
23 Theane Evangelis
24 Attorneys for Defendant
25 ABM Security Services, Inc.
26
27
28

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JENNIFER AUGUSTUS, Individually and on
Behalf of All Similarly Situated Individuals,

Plaintiff,

v.

AMERICAN COMMERCIAL SECURITY
SERVICES, a wholly owned subsidiary of
ABM INDUSTRIES INC.; and DOES 1
through 100, inclusive,

Defendants.

Consolidated Case:

EMANUEL DAVIS,

Plaintiff,

v.

AMERICAN COMMERCIAL SECURITY
SERVICES, INC. and DOES 1 through 100,
inclusive,

Defendants.

Consolidated Case:

DELORES HALL and CARLTON
ANTHONY WAITE,

Plaintiff,

v.

AMERICAN COMMERCIAL SECURITY
SERVICES, INC. and DOES 1 through 100,
inclusive,

Defendants.

CASE NO. BC336416
(C/W CG5444421; C/W BC345918;
Related to BC388380)

Case Assigned for All Purposes to
Judge John Shepard Wiley, Jr.
Department CCW-311

**NOTICE OF PROPOSED CLASS ACTION
SETTLEMENT AND FINAL SETTLEMENT
APPROVAL HEARING REGARDING
LAWUIT AGAINST DEFENDANT ABM
SECURITY SERVICES, INC.**

**THIS LEGAL NOTICE MAY AFFECT YOUR RIGHTS.
PLEASE READ IT CAREFULLY.**

TO: All persons who are or were employed by Defendant ABM Security Services, Inc. d/b/a American Commercial Security Services, Inc. ("ABM") in any security guard position in California at any time during the period from July 12, 2001 through July 1, 2011 who:

(a) worked a shift exceeding four (4) hours or major fraction thereof without being authorized and permitted to take an uninterrupted rest period of ten (10) minutes per each four (4) hours or major fraction thereof worked and who was not paid one additional hour of pay at the employee's regular rate of compensation for each work day that the rest period was not provided;

(b) did not work at a location for which ABM was granted a permit for exemption from the rest period requirements of the Industrial Welfare Commission Wage Order No. 4-2001; and

(c) previously did not opt out from participating in this Action.

The people who fall in the above definition are "Settlement Class Members."

A. BACKGROUND INFORMATION

1. Summary of the Lawsuit

Plaintiff Jennifer Augustus filed her class action complaint against ABM in the Superior Court of California, the County of Los Angeles, on July 12, 2005, alleging that ABM failed to provide its California security guards meal periods and rest breaks in accordance with California law. Plaintiff brought her claims on behalf of herself and other current and former security guard employees of ABM in California. The following actions were eventually consolidated with *Augustus* (collectively, with *Augustus*, the "Action"):

- *Emanuel Davis v. American Commercial Security Services Inc., et. al*, Case No. CGC5444421, filed August 26, 2005 (San Francisco County Superior Court); and
- *Delores Hall & Carlton Anthony Waite v. American Commercial Security Services, Inc., et. al*, Case No. BC345918, filed January 17, 2006 (Los Angeles County Superior Court).

On February 27, 2009, the Court certified two classes, one for the meal period claims and the other for the rest period claims. The Court appointed the firm of Roxborough, Pomerance, Nye & Adreani LLP as Lead Counsel for the classes. Additional counsel who filed actions which were consolidated or related include: Scott Cole & Associates, APC, Knapp, Petersen & Clarke, and Initiative Legal Group (hereinafter referred to, along with Lead Counsel, as "class counsel" or "Class Counsel").

On December 23, 2010, the Court decertified the meal period class. On that same day, the Court granted Plaintiffs' motion for summary adjudication of the rest break claim.

On August 11, 2011, the Court amended the definition of the rest break class such that the class period was defined as July 12, 2001 through July 1, 2011 (the "Class Period").

On July 6, 2012, the Court granted Plaintiffs' motion for summary judgment of the rest break claim.

On July 31, 2012, the Court entered a judgment awarding to Plaintiff Jennifer Augustus and the rest break class \$55,887,565.00 under California Labor Code section 226.7 and California Business & Professions Code section 17200, \$31,204,465.00 in pre-judgment interest, and \$2,650,096.00 under California Labor Code section 203.

On February 22, 2013, the Court entered an amended judgment that awarded class counsel 30% of the common fund as attorneys' fees and \$184,020.33 in reimbursable costs from the common fund, plus an additional award of attorneys' fees and costs in the amount of \$4,455,336.88 under California Code of Civil Procedure section 1021.5.

ABM appealed the judgments, but did not challenge on appeal the award of costs and 30% of the common fund as attorneys' fees, which was not opposed by ABM and has never been the subject of any appeal by any party, and is therefore final. Following ABM's appeal of the judgments, Class Counsel hired Jeffrey I. Ehrlich as special appellate counsel.

On December 31, 2014, the California Court of Appeal issued a unanimous decision in which it reversed the orders granting summary adjudication and summary judgment, and the award of attorneys' fees under California Code of Civil Procedure section 1021.5. The Court of Appeal, however, upheld the order certifying the rest break class.

Plaintiffs' sought review from the California Supreme Court, which was granted on April 29, 2015. On December 22, 2016, the California Supreme Court reversed the Court of Appeal's judgment.

On January 5, 2015, ABM asked the California Supreme Court to either grant rehearing or modify its opinion. ABM argued that disputed issues of facts meant that it was not proper to award all class members damages via a motion for summary judgment and thus without holding a trial. ABM also argued that the Supreme Court should make its decision apply only to future cases. ABM further requested that, at a minimum, the Court should remand the case to the Court of Appeal for it to address arguments that neither the Court of Appeal nor the Supreme Court had resolved. On March 15, 2017, the California Supreme Court denied ABM's petition for rehearing, but modified its opinion by remanding the matter to the Court of Appeal for further proceedings consistent with the opinion.

ABM contends that it has complied with all applicable state and federal laws, and ABM continues to deny each and all of the claims in the Action.

Plaintiffs and ABM have entered into a class action settlement (the "Settlement Agreement") that was preliminarily approved by Judge John Sheppard Wiley on [INSERT DATE], 2017.

Plaintiffs and ABM are represented by the following counsel:

Plaintiffs and the Settlement Class:

Drew Pomerance
Michael B. Adreani
ROXBOROUGH, POMERANCE, NYE & ADREANI
LLP
5820 Canoga Avenue, Suite 250
Woodland Hills, California 91367

Defendant:

Keith Jacoby
LITTLER MENDELSON, P.C.
2049 Century Park East, 5th Floor
Los Angeles, California 90067

Theane Evangelis
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue

Los Angeles, CA 90071

2. Why Did I Receive This Notice?

ABM's records indicate you were employed by ABM during the Class Period and thus might be a Settlement Class Member entitled to receive an settlement payment under the distribution formula described in section C.2.

3. Benefits to the Settlement Class Members

This litigation has been ongoing for eleven years and has involved extensive discovery and litigation. Class counsel vigorously prosecuted the Action since the outset, having conducted an investigation into the facts of the Action and Plaintiffs' and Settlement Class Members' claims, including through formal discovery, informal disclosures between the parties, and other investigations undertaken by counsel for Plaintiffs. Furthermore, the parties have engaged in extensive motion practice, including multiple motions for summary judgment and motions relating to class certification. The case went all the way through the trial court to final judgment, but the case did not end there. Thereafter, the case went to the appellate courts, where the parties also vigorously litigated the various rulings in the Action, both at the Court of Appeal and the California Supreme Court. The parties have also engaged in extensive negotiations with mediator Mark Rudy.

As a result, class counsel has concluded that the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class Members in light of all known facts and circumstances, including the likely damages, risk of significant delay, and appellate risk. In particular, class counsel acknowledges the risks that the California Supreme Court could either grant rehearing or modify its opinion, which in turn could mean that the amounts awarded to the class would be reduced or eliminated. In addition, there is a risk that the U.S. Supreme Court could grant review in this case and reverse the California Supreme Court's judgment and the class may lose on appeal. ABM has raised many defenses to Plaintiffs' claims and those defenses could significantly reduce or even eliminate any liability or damages owed to the Settlement Class Members.

Plaintiffs and ABM disagree as to whether there is any liability, including but not limited to, whether the Settlement Class Members are owed any unpaid wages, compensation, or penalties, and the amount of wages or penalties owed, if any. ABM denies each and all of the claims in the Action, but acknowledges the risk that, if the California Supreme Court or U.S. Supreme Court do not act, it would have to satisfy the judgment entered in the Action and that Plaintiffs will seek to collect post-judgment interest in addition to the amounts awarded in the judgment. Nevertheless, while ABM has further options for potentially overturning or reducing the judgment, ABM has concluded that further litigation of the Action would be lengthy and expensive.

The settlement ends the continued expense of further litigation, the risk and uncertainty of possible negative future outcomes and attendant delay. The terms of the settlement were reviewed by the Court and preliminarily approved as being fair and reasonable to the Settlement Class Members.

B. YOUR RIGHTS AND OPTIONS**1. How Do I Get a Settlement Payment?**

To claim your share of the settlement, you do not need to do anything.

2. Right to Object

Any Settlement Class Member may object to the final approval of the proposed settlement by submitting a written statement objecting to the settlement to the Claims Administrator. The objection and any supporting documents or other materials must be received by the Claims Administrator no later than [INSERT DATE].

Your objection must include (1) the case name and case number shown on page 1, (2) state your name, current address and telephone number, and (3) state the basis for the objection. If you wish to speak to the Court about your objection at the final settlement approval hearing, you must state clearly in your written objection that it is your intention to appear at the final settlement approval hearing. You may enter an appearance through your own attorney if you so desire.

C. TERMS OF THE SETTLEMENT

1. The Proposed Settlement Fund and Distributions of the Settlement Fund

Without admitting any fault, ABM has agreed to pay one hundred and ten million (\$110,000,000.00) (the "Settlement Fund") to fully resolve the claims in the Action. The Settlement Fund is the total and maximum amount ABM is required to pay for any and all purposes under the Settlement Agreement, and in connection with the termination of the Action.

Subject to Court approval, the Settlement Fund will be divided as follows:

First, service award payments to named plaintiffs Jennifer Augustus and Emanuel Davis. The service award for Jennifer Augustus will not exceed \$50,000.00 and will not exceed \$25,000 for Emanuel Davis.

Second, payments of attorneys' fees and costs to class counsel. The Court has already awarded class counsel 30% of the common fund as attorneys' fees for work performed up through entry of judgment and \$184,020.33 in reimbursable costs from the common fund. Class counsel will request from the Court an additional award of 5% of the common fund, plus additional reimbursable costs in an amount not to exceed \$100,000, to compensate for fees and costs incurred for work performed on appeal, including work at the California Supreme Court, as well as the work remaining to be performed in complying with terms of the Settlement.

Third, payment to the claims administrator for the costs of administration (which are estimated to be \$100,000.00).

Fourth, the remaining amount will be distributed to Settlement Class Members as described in section C.2.

2. Calculation of Your Settlement Share

If you are a Settlement Class Member, you will be entitled to a settlement payment based on the formula described in the Settlement Agreement, which is described below.

Your settlement payment will be calculated by taking the amount remaining after payment of any service awards, attorneys' fees and costs, and costs of administration, and dividing that amount by the total number of weeks worked by all Settlement Class Members. The result will be the "Work Week Settlement Amount."

The "Work Week Settlement Amount" will be multiplied by the number of weeks that you were employed by

ABM during the Class Period. ABM's records will be used to calculate the number of work weeks you were employed by ABM. The claims administrator then will subtract the employee portion of all applicable tax withholdings including, but not limited to, FICA, FUTA, and other employment related taxes and withholding of federal, state, and local income taxes. The remaining amount will be paid to you.

Based on information provided by ABM to the Claims Administrator, the number of work weeks that you were employed by ABM has been calculated to be: [INSERT WORK WEEKS]

3. Right to Dispute Your Work Weeks / Settlement Share

In the event you dispute the number of work weeks identified above, you must notify the Claims Administrator of such dispute and provide any materials or evidence in support of the dates of employment and/or work weeks for which you contend you are entitled to compensation no later than [INSERT DATE]. The Claims Administrator will promptly notify counsel for the parties of any dispute and forward the materials and evidence you provided. Lead Class Counsel will make a determination regarding the dispute and advise you of a decision within seven (7) days of receipt of the dispute. If you and Lead Class Counsel do not reach a resolution of the dispute, Lead Class Counsel will notify the Court of the dispute at the time of filing the Motion for Final Approval and the dispute will be resolved by the Court.

4. Tax Withholdings

Fifty percent of your settlement payment share will be treated as wages that are subject to payroll taxes, withholdings, and IRS Form W-2 reporting. The remaining fifty percent will be treated as non-wage interest not subject to payroll taxes and will be reported on IRS Form 1099.

You are solely and exclusively responsible for paying to state and/or federal taxing authorities any applicable other taxes due and shall hold ABM and the Released Parties harmless for any taxes, penalties, interest, liabilities, costs and expenses caused by any such taxing authority relating in any way to your tax treatment of payments made to them or failure to timely or properly pay any taxes owed on your Settlement Payment.

ABM and Class Counsel do not make any representations about the tax implications of any amount paid under this Settlement. If you have any questions about the tax implications, you can and should consult a tax expert.

5. Attorneys' Fees and Costs

Despite litigating this case on behalf of the class for almost 12 years, class counsel has not been paid for their services or out-of-pocket expenses. The Court has already awarded class counsel 30% of the common fund as attorneys' fees for work performed up through entry of judgment and \$184,020.33 in reimbursable costs from the common fund, and that order was not challenged on appeal and is now final.

Class counsel will request from the Court an additional award of 5% of the common fund plus additional reimbursable costs incurred since entry of judgment in an amount not to exceed \$100,000, to compensate class counsel for work done on appeal, including work at the California Supreme Court, and all remaining work to be performed in connection with the Settlement. Class counsel will file a motion with the Court to approve payment of attorneys' fees to class counsel, all of which would be paid to class counsel from the Settlement Fund. The attorneys' fees and costs must be approved by the Court. These fees will compensate class counsel for their efforts achieving the settlement for the benefit of the Settlement Class Members and for the risk in undertaking this representation on a contingency basis. Class counsel has already spent many hours litigating

this case, conducting discovery, investigating Settlement Class Members' claims, engaging in extensive motion practice, litigating appeals, engaging in mediation, and negotiating the Settlement Agreement.

D. RELEASE OF CLAIMS

The Participating Settlement Class Members, including their heirs, assigns, and estates, shall be deemed to fully forever, irrevocably and unconditionally release, and discharge ABM and the Released Parties, as defined below and in the Settlement Agreement, 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 or nature, whether known or unknown, contingent or accrued, against ABM or the Released Parties or any of them, under any state, or municipal statute, ordinance, regulation, order or common law, arising out of or related to ABM's provision of rest breaks or alleged failure to provide rest breaks during the Class Period, including but not limited to claims under California Labor Code section 226.7, California Business & Professions Code section 17200, California Labor Code section 203, and any related claims for interest (whether pre- or post-judgment) and/or attorneys' fees and costs.

Further, upon the effective date of the settlement, Plaintiffs will promptly file with the Court an acknowledgment of satisfaction of judgment pursuant to California Code of Civil Procedure section 724.010 et seq. indicating that the amended judgment entered on February 22, 2013 in the Action has been satisfied with respect to Plaintiffs, the Settlement Class Members, and class counsel.

"Released Parties" means ABM, including all of ABM's past and present successors, subsidiaries, investors, parents, holding companies, sister and affiliated companies, divisions and other related entities, as well as the successors, predecessors, shareholders, subsidiaries, investors, parent, sister and affiliated companies, officers, directors, partners, assigns, agents, employees, principals, heirs, administrators, attorneys, vendors, accountants, auditors, consultants, fiduciaries, insurers, reinsurers, employee benefit plans, and representatives of each of them, both individually and in their official capacities, past or present, as well as all persons acting by, through, under or in concert with any of these persons or entities.

E. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a final settlement approval hearing in the California Superior Court for the County of Los Angeles, Central Civil West Courthouse, 600 South Commonwealth, Los Angeles, California, 90005, on [INSERT DATE], 2017 at [INSERT TIME] to decide whether to finally approve the settlement as fair, reasonable, and adequate. At that time, the Court also will be asked to approve class counsel's request for attorneys' fees and costs, and the service awards to the named Plaintiffs. You may appear and speak to the Court at the hearing regarding any objection to the settlement. . It is possible that the hearing date or time will be changed, so you should check the Court's calendar before attending, if you plan to attend. If you mail written objections, it is not necessary for you to appear at this hearing.

The pleadings and other documents in this lawsuit may be examined during regular business hours at the Office of the Clerk, 600 South Commonwealth, Los Angeles, California, 90005.

This notice has been reviewed and approved by the California Superior Court for the County of Los Angeles. If you have any questions regarding this lawsuit, how it affects your rights, please contact that claims administrator at [INSERT CLAIM ADMINISTRATOR CONTACT INFORMATION].

EXHIBIT “B”

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VARDAN KARAPETYAN, an
individual appearing
individually and on behalf
of others similarly situated,

Plaintiff,

vs.

ABM INDUSTRIES INCORPORATED,
a Delaware Corporation, ABM
SECURITY SERVICES, INC., a
California Corporation, and
DOES 1 - 50, inclusive,

Defendants.

No. CV15-08313 GW (Ex)

VIDEOTAPED DEPOSITION OF NEDY WARREN

Woodland Hills, California

July 13, 2016

Volume 1

Pages 1 - 199

Reported by:
MONA GARCIA
CSR No. 2766

1 Deposition of NEDY WARREN, Volume 1, taken
2 on behalf of Plaintiff at 5820 Canoga Avenue, Suite 250,
3 Woodland Hills, California, commencing at 9:04 a.m. on
4 Wednesday, July 13, 2016, before Mona Garcia, Certified
5 Shorthand Reporter No. 2766.

6
7
8 APPEARANCES:

9 For Plaintiff Vardan Karapetyan and the Classes:

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11 BY: MICHAEL B. ADREANI
Attorney at Law
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17 301 N. Canon Drive, Suite 315
Beverly Hills, California 90210
18 310.550.1555

19 For Defendants ABM Industries Incorporated, a Delaware
20 Corporation, ABM Security Services, Inc., a
California Corporation, ABM Onsite Services - West,
21 Inc., a Delaware Corporation, and ABM Onsite
Services, Inc., a Delaware Corporation:

22 GIBSON, DUNN & CRUTCHER LLP
23 BY: KATHERINE V.A. SMITH
BY: BRADLEY J. HAMBURGER
Attorneys at Law
24 333 South Grand Avenue
Los Angeles, California 90071-3197
25 213.229.7000

1 MS. SMITH: And I didn't want to interrupt
2 the witness but I do want to object that the
3 question -- object to the form of the question on
4 the grounds that it's vague and ambiguous.

10:49AM

5 BY MR. ADREANI:

6 Q What do you mean "generally did not"?

10:49AM

7 A There was a point where this type of form
8 no longer existed in the new hire packet so they
9 were no longer provided to new hire employees but
10 there still may have been some in existence for
11 employees that continued to be employed by ABM
12 Onsite Services, Inc., if that makes sense.

13 Q Yes.

14 A Okay.

10:50AM

15 Q At what point did the on duty meal period
16 waiver stop being part of the new hire handbook?

17 A I believe it was late -- mid to late 2013.
18 It was around the period of time when I started
19 supporting Security before the Onsite transition.

10:50AM

20 Q And why did they -- I will come back to
21 this page 62, but why did the on duty meal break
22 waivers stop being part of the new hire packet?

23 MS. SMITH: Objection to the form.

10:50AM

24 THE WITNESS: Our HR group or department
25 was guided by our in-house counsel to do so and the

1 ABM entity employing security guards in California
2 was called what?

3 A ABM Security Services.

4 Q Going forward how would you like me to
11:05AM 5 refer to that entity? And I am speaking to the
6 witness and counsel. ABM Security? Is that okay?

7 A I am okay with that.

8 MS. SMITH: Yes.

9 BY MR. ADREANI:

11:05AM 10 Q So if I say ABM Security, I am referring to
11 the entity, the ABM entity, who employed security
12 guards in California which was the only ABM entity
13 that employed security guards in California from
14 October 6th, 2010 until December 31st, 2013. Is
11:05AM 15 that fair?

16 A For today's purposes, sure.

17 Q Okay. As of January 1st, 2014, the only
18 entity, the only ABM entity that employed security
19 guards in California was called what?

11:06AM 20 A ABM Onsite Services - West, Inc.

21 Q So if I call that entity Onsite - West, is
22 that fair?

23 A Or just Onsite.

24 Q Onsite.

11:06AM 25 A I will know what you mean.

1 MS. SMITH: Objection to the form.

2 THE WITNESS: I don't think I understand
3 your question.

4 BY MR. ADREANI:

12:41PM 5 Q Well, ABM has a -- ABM Security utilized an
6 on duty meal period waiver for my client, right?

7 A Correct.

8 Q And that's based upon the fact that ABM
9 believes that the nature of the work prevented him
10 from having an off duty meal break, right?

11 A Correct.

12 MS. SMITH: I am going to object to the
13 form of the question. It lacks foundation.

14 BY MR. ADREANI:

12:41PM 15 Q Did that same nature of the work exist
16 during the times he was taking rest breaks as
17 opposed to meal breaks?

18 MS. SMITH: Objection to the form.

19 THE WITNESS: I would say generally yes.

12:41PM 20 So his job description? Is that what you are
21 talking about?

22 BY MR. ADREANI:

23 Q The nature of his work.

24 A Well, I don't think the nature of his work
12:42PM 25 or his job duties changed drastically throughout an

1 eight-hour shift.

2 Q And that's the same for any security guard,
3 right?

4 MS. SMITH: Objection to the form, and can
12:42PM 5 we limit it to California during the class period?

6 MR. ADREANI: Sure.

7 THE WITNESS: Yeah. I think that's a -- I
8 think that would be a fair statement for any of us.
9 Maybe I am not understanding your question.

12:42PM 10 BY MR. ADREANI:

11 Q I think you did.

12 This Exhibit 7 -- well, strike that.

13 I am going to attach another exhibit. This
14 will be No. 8.

12:43PM 15 (Whereupon Plaintiff Exhibit 8
16 was marked for identification.)

17 BY MR. ADREANI:

18 Q What I have attached as Exhibit 8 is from
19 the caption "Defendant ABM Security Services, Inc.'s
12:43PM 20 Responses to Plaintiff's Interrogatories (Set No.
21 One."

22 Do you see that on the front page?

23 A I do.

24 Q Will you turn to page 87 of that document.
12:44PM 25 I'm sorry. 86.

1 this question that may not have triggered that. The
2 way it's written here is different.

3 BY MR. ADREANI:

01:01PM 4 Q Did something change at ABM Security in the
5 middle of 2013 that prompted the change to the new
6 hire packet which eliminated the meal break waiver?

7 MS. SMITH: I am going to object to the
8 form of the question. I am going to ask the witness
9 not to divulge any information that is attorney/
01:01PM 10 client privilege or would divulge attorney work
11 product.

12 THE WITNESS: No, I don't recall any
13 changes with ABM Security in that time frame that
14 you mentioned.

01:01PM 15 BY MR. ADREANI:

16 Q Was there a change in the security industry
17 itself which prompted the elimination of the meal
18 break waivers from the new hire packet?

19 MS. SMITH: Same objection and same
01:01PM 20 instruction.

21 THE WITNESS: I couldn't say. I don't
22 know.

23 BY MR. ADREANI:

24 Q Did the elimination of the meal break
01:02PM 25 waivers from the new hire packet in the middle to

1 late 2013 have anything to do with litigation
2 against ABM?

3 MS. SMITH: Counsel, you have asked what
4 the reason was many times and the witness has
01:02PM 5 testified that she can't tell you why due to the
6 attorney/client privilege, so these questions that
7 seem to be aimed at trying to get the same
8 information that we have already stated was
9 attorney/client privilege are not well-taken.

01:02PM 10 I will assert the same objection and again
11 instruct the witness not to respond to the extent
12 that it would divulge attorney/client privileged
13 communications or attorney work product.

14 BY MR. ADREANI:

01:02PM 15 Q So is that the case, then, that to the
16 extent some event prompted the elimination of these
17 waivers from the new hire packet that it is
18 completely encompassed within an attorney-client
19 privilege that you can't answer the question?

01:03PM 20 A Correct. The question that you have asked
21 me, correct.

22 Q Back to page 21 of Exhibit 8 and I have for
23 the record replaced now the unsigned versions with
24 signed versions. The reporter now has a signed
01:03PM 25 version of Exhibit 8 and so do counsel and the

1 BY MR. ADREANI:

2 Q If they were employed by ABM Security at
3 the same time, they would have the same meal break
4 waiver, right?

01:19PM 5 A I would say that's fair.

6 Q With the exact same language?

7 A Correct.

8 Q But you just haven't seen that yet to
9 prepare for today, right?

01:20PM 10 A Correct. If there is another one other
11 than this and possibly the other one that I saw
12 which I can't remember what it was attached to, I
13 haven't seen the world of versions of this form as I
14 sit here today.

01:20PM 15 Q And prior to mid to late 2013, every single
16 employee who applied for and got a job at ABM
17 Security received as part of their new hire handbook
18 a meal period waiver, correct?

19 MS. SMITH: Objection. New hire handbook?

01:20PM 20 BY MR. ADREANI:

21 Q Packet I think is the right word.

22 A Correct, packet.

23 MS. SMITH: I am going to object to the
24 form.

01:21PM 25 THE WITNESS: I would say generally, yes.

1 BY MR. ADREANI:

2 Q Why do you say "generally, yes"?

3 A Just in the off chance that a recruiter
4 forgot a form but generally that was the practice.

01:21PM 5 Q And aside from a recruiter possibly missing
6 a form or some outlier like that, every single guard
7 who was hired by ABM was given the meal period
8 waiver as part of their new hire handbook; is that
9 right?

01:21PM 10 A ABM Security in California during -- prior
11 to 2013.

12 Q That's right.

13 MS. SMITH: Prior to what time?

14 THE WITNESS: Mid to late 2013?

01:21PM 15 BY MR. ADREANI:

16 Q Prior to the time that the waiver was
17 eliminated from the packet.

18 A Correct.

01:21PM 19 Q And at any given point in time every single
20 guard who applied for and got a job at ABM Security
21 during that time frame would have received the exact
22 same meal period waiver, right?

23 MS. SMITH: Objection to the form.

01:22PM 24 THE WITNESS: I think I understand your
25 question. On any given day the forms are the same,

1 correct.

2 BY MR. ADREANI:

3 Q Yes.

4 A Yes.

01:22PM 5 Q You got it.

6 And that new hire packet and that meal
7 period waiver encompassed within it was the same no
8 matter if the guard was applying for a multiple
9 guard site or a single guard site, right?

01:23PM 10 MS. SMITH: Objection to the form.

11 THE WITNESS: That's correct.

12 BY MR. ADREANI:

13 Q In fact, it was the same no matter what
14 site they were working on or they were applying to
01:23PM 15 be -- strike that.

16 In fact, it was the same no matter what
17 type of site it was whether it was a petroleum site
18 like you mentioned earlier or temperature of milk
19 site that you mentioned earlier or the monitor site,
01:23PM 20 right?

21 MS. SMITH: Objection to the form.

22 THE WITNESS: Correct.

23 BY MR. ADREANI:

24 Q And virtually every single guard who was
01:23PM 25 presented with that meal period waiver signed it,

1 Q Oh.

2 A It doesn't have to be right now.

3 Q Well, then let me ask then -- no problem,
4 and I'm sorry for talking over you. I just want to
01:30PM 5 close the loop if I can really quickly on ABM
6 Security with regard to the meal breaks.

7 Is it true that between mid 2013 and the
8 end of 2013 that -- you can correct me if I'm
9 wrong -- it sounds like there was a holding pattern
01:31PM 10 or something where no new hires were given meal
11 break waivers. Is that accurate?

12 MS. SMITH: Objection to the form.

13 THE WITNESS: I don't know if I would
14 phrase it that way. There was a -- I wouldn't say
01:31PM 15 there was a holding pattern. There was a hard stop.
16 BY MR. ADREANI:

17 Q Thank you.

18 So there was a hard stop and so it would be
19 very unlike -- is it true that it would be very
01:31PM 20 unlikely to see a new hire between the middle of
21 2013 and the end who was hired by ABM Security who
22 received an on duty meal break waiver?

23 MS. SMITH: Objection to the form.

24 THE WITNESS: Yeah and probably closer to
01:31PM 25 the end, and that's probably where I may have

1 new hire packets, right?

2 A Yes.

3 Q Okay. After the surveys came back, were
4 meal break waivers at any location inserted back
02:13PM 5 into the new hire packets?

6 A No, sir.

7 Q Were meal break waivers used after the
8 surveys came back at any locations thereafter?

9 MS. SMITH: Objection to the form.

02:13PM 10 THE WITNESS: Not that I'm aware.

11 BY MR. ADREANI:

12 Q Okay. So from the time the surveys came
13 back in early 2014 until the business was moved to
14 UPS at the end of 2015, almost two years, were there
02:14PM 15 any new hire security guards who received a meal
16 break waiver?

17 MS. SMITH: Objection to the form.

18 THE WITNESS: No. After the hard stop and
19 after the surveys, there were no newly hired
02:14PM 20 employees who received an on duty meal period
21 waiver, correct.

22 BY MR. ADREANI:

23 Q So really as between ABM Security and ABM
24 Onsite, the hard stop at the end of 2013 was the end
02:14PM 25 of meal period waivers for guards at ABM, right?

1 post January 2014.

2 BY MR. ADREANI:

02:16PM

3 Q So as far as you know, in California all
4 ABM entities that had security guards no longer had
5 meal break waivers for new hires from the end of
6 2013 on?

7 MS. SMITH: Objection to the form.

8 THE WITNESS: That would be correct.

9 BY MR. ADREANI:

02:16PM

10 Q Now, with regard to meal break waivers that
11 were in existence already at the time of the hard
12 stop, were any of those subsequently terminated or
13 revoked as a result of the survey?

02:16PM

14 MS. SMITH: Objection as to form, and could
15 you repeat the question.

16 Can I have it read back.

17 (Record read.)

02:17PM

18 MS. SMITH: Okay. I am going to object to
19 the form and I am not sure I fully understand the
20 question.

21 But if you understand it, all I would say
22 is instruct you not to divulge any attorney/client
23 privilege, any information or attorney work product.

02:17PM

24 THE WITNESS: I am not aware of any
25 agreements that were revoked or terminated as a

1 A I don't think we established that or if you
2 did I missed it.

3 Q Let me start over.

4 A Okay.

02:48PM 5 Q You have an ABM Onsite location post survey
6 in 2014. Okay? Two guards on duty at the same
7 time. One guard, guard A, is a remnant guard who
8 has a meal break waiver in his file. Okay?

9 Guard B is a new hire post survey who does
02:48PM 10 not.

11 A Okay.

12 Q Guard B definitely has to have an off duty
13 30-minute unpaid meal break, right?

14 MS. SMITH: Objection to the form.

02:48PM 15 THE WITNESS: Are we talking about a 336
16 type shift where it's three shifts eight hours each?
17 BY MR. ADREANI:

18 Q Let's say they are both full-time
19 employees. I don't know if they are eight hours or
02:49PM 20 7 1/2 or 8 1/2. I just want to confirm that guard B
21 being a full-time employee needs to have an off duty
22 30-minute unpaid meal break, right?

23 MS. SMITH: Objection to the form.

24 THE WITNESS: Well, I think I am confused
02:49PM 25 because if -- the needs of the site really dictate

02:49PM

1 how that works, so if you have got these two guards
2 and it's a three -- let me get my math right, 336
3 type shift where you have got two guards 24/7
4 coverage, even if they are taking an uninterrupted
5 30-minute meal break, it's generally paid because
6 that is covered in that eight-hour shift.

02:49PM

7 So when you say off duty unpaid meal break,
8 in practice that didn't generally happen even if
9 they may have been entitled to it but that would
10 apply to guard A as well.

11 BY MR. ADREANI:

12 Q So both of those guards in that scenario
13 are being paid through their meal break?

14 A Generally in this hypothetical, yes.

02:50PM

15 Q After the survey, guards that were hired,
16 new hires at ABM Onsite after the survey were hired
17 with the understanding that they would be paid
18 through their meal break?

02:50PM

19 A That generally was the practice, yes,
20 because of the way the accounts are set up, the way
21 the scope of work is laid out, and the shifts are
22 generally that way, either a 168 where it's three
23 guards on a 24-hour shift, eight hours each seven
24 days a week.

02:50PM

25 That's pretty common, and then if you have

1 MS. SMITH: Objection to the form.

2 THE WITNESS: In this hypothetical, yes,
3 they are entitled to the same thing.

4 BY MR. ADREANI:

02:53PM 5 Q And in this hypothetical -- actually not
6 the hypothetical. You said that these new hires
7 were also paid for the 30 minutes. It wasn't off
8 the clock.

9 A Correct.

02:53PM 10 Q Did ABM have any new hire guards after 2014
11 who had off the clock unpaid meal breaks?

12 A It's possible but I am not aware of any.

13 Q You testified earlier that the guards who
14 still had the remnant meal break waivers that those
02:54PM 15 waivers weren't revoked or terminated, right?

16 MS. SMITH: Objection to the form.

17 THE WITNESS: I think what I answered was
18 they weren't revoked or terminated as a result of
19 the surveys and they weren't pulled from the files.

02:54PM 20 BY MR. ADREANI:

21 Q Well, it's an agreement between -- a meal
22 break waiver is an agreement between the employee
23 and the employer, right?

24 A Sure.

02:54PM 25 Q It's like a contract, right?

1 policy is on meal and rest breaks.

2 Q And is that above-and-beyond aspect of this
3 policy in writing anywhere?

4 MS. SMITH: Objection to the form.

03:17PM

5 THE WITNESS: Not that I have seen.

6 BY MR. ADREANI:

7 Q Why do you do that?

8 A Why do I do what?

9 Q Why does ABM Onsite have this above-and-
03:18PM 10 beyond policy that's not in writing?

11 A Practice you mean?

12 Q Sure. Practice.

13 A I think part of it may have been at some
14 point industry-driven. I think a lot of it has to
03:18PM 15 do with the fact that it doesn't -- it's not
16 detrimental to the employees. If anything, the
17 employees appreciate that they're working eight
18 hours and they can take a lunch break and they are
19 paid for that time.

03:18PM

20 Clients are willing to pay for a paid meal
21 period for the guards because they have that 24/7
22 coverage for their property.

23 So I suppose the why is multi-faceted.

03:18PM

24 It's something that all parties are either amenable
25 to or -- yeah. I'd say amenable is probably a good

ERRATA SHEET

Pursuant to the Federal Rules of Civil Procedure, any changes in form or substance which you wish to make to your deposition testimony shall be entered upon the deposition transcript.

To assist you in making such corrections, please use the form below. If additional pages are necessary, please furnish them and attach them to this errata sheet.

I have read the foregoing testimony of the pages of this deposition and hereby certify it to be a true and correct transcript subject to the corrections, if any, listed below.

Page/Line Number	From	To	Reason
6:23	Kathryn Smith	Katherine Smith	Typographical error.
78:17	I believe it was late -- mid to late 2013.	I believe it was January 2014.	Correction to conform with later testimony.
100:7-8	Yeah. I don't know if I'd say that.	Yeah, I don't know if I'd say that.	Typographical error.
189:20-22	Clients are willing to pay for a paid meal period for the guards because they have that 24/7 coverage for their property.	Clients were willing to pay for a paid meal period for the guards because they had that 24/7 coverage for their property.	Misspoke.

 X SUBJECT TO THE ABOVE CHANGES, I CERTIFY THAT THE TRANSCRIPT IS TRUE AND CORRECT.

 NO CHANGE HAS BEEN MADE. I CERTIFY THAT THE TRANSCRIPT IS TRUE AND CORRECT.


Nedy Warren

August 30, 2016
Date

EXHIBIT “C”

 ORIGINAL

Page 1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

VARDAN KARAPETYAN, an)
individual appearing)
individually and on)
behalf of others)
similarly situated,)
) No. CV 15-08313-GW (Ex)
 Plaintiff,)
)
 vs.)
)
ABM INDUSTRIES,)
INCORPORATED, a Delaware)
Corporation, et al.,)
)
 Defendants.)
)

DEPOSITION OF: VARDAN KARAPETYAN
TAKEN ON: SEPTEMBER 7, 2016

REPORTED BY:
PATRICIA L. HUBBARD, CSR #3400

MAGNA 
LEGAL SERVICES

Page 2

1
2 DEPOSITION OF VARDAN KARAPETYAN,
3 taken on behalf of the Defendants,
4 at 333 South Grand Avenue,
5 Los Angeles, California,
6 commencing at 10:04 A.M. on
7 September 7, 2016, before
8 PATRICIA L. HUBBARD, CSR #3400, a
9 Certified Shorthand Reporter in
10 and for the State of California,
11 pursuant to Notice.
12

13 APPEARANCES OF COUNSEL:
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For the Plaintiff:

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19
20
21
22
23
24
25

Page 38

1 A. Yeah.

2 Q. What about the carpet cleaner position?

3 Why did you leave -- why did you leave
4 that position?

5 A. It was hard for me physically, yeah.

6 Q. Are you currently employed?

7 A. Now, yes.

8 Q. Where do you work now?

9 A. I'm a limo service driver.

10 Q. Who is your employer?

11 A. Music Express.

12 Q. Have you held any jobs since you left
13 ABM and before you worked at Music Express?

14 A. No.

15 Q. When did you begin working at Music
16 Express?

17 A. Since November 2015.

18 Q. When did you leave your employment with
19 ABM?

20 A. October 2013.

21 Q. So, you were unemployed from October
22 2013 to November 2015?

23 A. Yes.

24 Q. Were you looking for work during that
25 time?

1 A. Yes.

2 Q. Have you ever been convicted of a crime?

3 A. No.

4 Q. Have you ever been in the military?

5 A. Two years in my country.

6 Q. When did you start working at ABM?

7 A. March 16, 2004.

8 Q. How did you learn about a potential
9 position with ABM in 2004?

10 A. I find some company who's training for
11 security job. They train me. I got security
12 card -- guard card, and they helped me find a job.

13 Q. And what was the name of that company?

14 A. Oh, I don't know.

15 Q. You don't remember?

16 A. No.

17 Q. And, let's see. Let's do --

18 MS. SMITH: Do you know where the
19 application is?

20 Here we go.

21 BY MS. SMITH:

22 Q. Mr. Karapetyan, the thing I should have
23 told you before, and I apologize for not telling you
24 sooner is if you ever need to take a break --

25 A. Oh, okay.

1 A. No. Sometimes they losing cars,
2 dealership. They came to us, say "Can you check
3 this number car, who took it and when."

4 Then we check, find who, who took the
5 car.

6 Q. What about the officer daily report?
7 Did anybody review the officer daily
8 reports regularly, if you know?

9 A. Again if something happen, only that
10 time.

11 Q. Did Oscar generally review the officer
12 daily reports?

13 A. I don't know.

14 Q. Were the officer daily reports ever
15 submitted to the branch office?

16 MS. VITEK: Calls for speculation.

17 THE WITNESS: I don't know. Usually
18 Oscar keep them. I don't know.

19 BY MS. SMITH:

20 Q. Oscar took them, you don't know
21 where he --

22 A. Yeah.

23 Q. Okay. Let's see.

24 So, you described earlier that at some
25 point 2007 or 2008 the guard shack was built and you

Page 124

1 were relocated to the guard shack?

2 A. Yes, that's correct.

3 Q. And you also described that sometime in
4 2011 or 2012, I believe, the time sheets had extra
5 columns added?

6 A. Yes, correct.

7 Q. Is there anything else that changed
8 about the way you did your job between 2004 and your
9 last day of work?

10 A. Generally no.

11 Q. Anything specific that you can remember?

12 A. No. I don't remember. I don't think so
13 something.

14 Q. Do you remember when ACSS became ABM?

15 A. No.

16 Q. You don't remember that?

17 A. No.

18 Q. Did it make any -- any real change to
19 what you were doing day-to-day?

20 A. Nothing absolutely.

21 Q. Okay. Did you take vacation time when
22 you worked at Universal City Nissan?

23 A. I don't think so, no.

24 Q. You never took any vacation?

25 A. Never took, yeah.

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1 Q. And what did you tell him?

2 A. I said I didn't take. That's why I put
3 the "X."

4 Q. Okay. And when did that happen?

5 A. Nothing.

6 Q. No. When that happen? When did you
7 have that conversation with Oscar?

8 A. Since we start doing this new form.

9 Q. And did you ever tell Oscar -- strike
10 that.

11 So the beginning of four says,
12 "By initialing the time report
13 sheet, you are certifying that this
14 is an accurate account of the hours
15 worked during this pay period. You
16 are also certifying that you had
17 the opportunity to take 30 minutes
18 of paid nonworking time that day
19 and two rest periods."

20 Did you understand -- did you ever
21 indicate that you had not taken rest periods on any
22 of these time sheets?

23 A. No. I said only "X." That's it.

24 Q. Okay.

25 A. That's mean I didn't take. I don't have

1 time.

2 Q. What do the -- so your -- by "X" you
3 meant what?

4 A. Means I didn't take meal break or rest
5 break. Means that.

6 Q. And what you told Oscar was -- when he
7 asked what the "X's" meant was what?

8 A. I explained him I didn't take. That's
9 why I put "X."

10 Q. You didn't take what?

11 A. Meal break or rest break.

12 Q. Okay. What did Oscar say when you told
13 him that?

14 A. "Please can you do that?"

15 I said "No."

16 Q. Please can you do what?

17 A. Put some time, like you took the break,
18 meal break. I said "No."

19 Q. Did you understand him to be saying that
20 you should be taking a break or just that you should
21 be writing down that you took a break?

22 A. You should be writing down.

23 Q. He didn't expect you to actually take a
24 break?

25 A. Well, he knows we not able to take the

Page 134

1 break.

2 Q. Did he ever tell you that, that he knows
3 that you were not able to take a break?

4 A. Yeah.

5 Q. When did he tell you that?

6 A. He knows about -- the same situation
7 with him.

8 Q. Did he ever tell you that, though, is my
9 question?

10 A. Yes. At that field I told.

11 Q. When did he tell you that he knows that
12 you can't take a break?

13 A. Just put the time, because branch office
14 need that.

15 Q. Okay. But I need you to listen to my
16 question.

17 A. Yes.

18 Q. And my question is when did Oscar tell
19 you that he knows you can't take a break?

20 A. I not remember.

21 Q. Okay. Are you sure he told you that, or
22 are you just assuming that he knew that?

23 A. I think one time we had that
24 conversation.

25 Q. You just don't remember when that was?

1 A. When that new form get out, yeah.

2 Q. Okay. Can we -- can you go to the other
3 time sheet that is in this document.

4 A. Yeah.

5 Q. Yeah, you're at the same one that I am.
6 For the record this is a time sheet in
7 Exhibit 4 that at the top the first handwritten
8 language is "Thursday 09/28/2006."

9 A. Yes.

10 Q. So again I just want to ask you about
11 the form, because we already talked about what you
12 wrote in this.

13 A. Yeah.

14 Q. Is this the form that you used from when
15 you started at ACSS until the form changed in 2011
16 or so?

17 A. Yes.

18 Q. And do you see at the top where it says,
19 "I certify that this is an accurate
20 account of the hours worked during
21 this pay period. I also certify
22 that I have taken the rest periods
23 to which I am entitled during this
24 pay period"?

25 A. Yes.

EXHIBIT “D”

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3

4 VARDAN KARAPETYAN, an)
individual appearing)
5 individually and on behalf)
of others similarly situated,)
6) No. CV15-08313 GW (Ex)
Plaintiff,)
7 vs.)
8 ABM INDUSTRIES INCORPORATED,)
a Delaware Corporation, ABM)
9 SECURITY SERVICES, INC., a)
California Corporation, and)
10 DOES 1 - 50, inclusive,)
11 Defendants.)
_____)

12
13
14 DEPOSITION OF OSCAR BEJARANO
15 Woodland Hills, California
16 July 22, 2016
17
18
19
20
21
22

23 REPORTED BY:

24 Lisa DiGiovanni

25 CSR No. 11969, RPR

1 Deposition of OSCAR BEJARANO, taken on
2 behalf of Plaintiff at 5820 Canoga Avenue, Suite
3 250, Woodland Hills, California, commencing at
4 10:02 a.m. on Friday, July 22, 2016, before
5 Lisa DiGiovanni, RPR, Certified Shorthand Reporter
6 No. 11969.

7

8 APPEARANCES:

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15 Woodland Hills, California 91367
16 (818) 992-9999

17

18 For Defendants ABM Industries Incorporated, a
19 Delaware Corporation, ABM Security Services, Inc., a
20 California Corporation, ABM Onsite Services-West,
21 Inc., a Delaware Corporation, and ABM Onsite
22 Services, Inc., a Delaware Corporation:

23 GIBSON, DUNN & CRUTCHER LLP
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29

30

31

32

1 Q. And your position at that time was security
2 guard?

3 A. Yes.

4 Q. Or how did it -- or is it security officer?

5 A. Security officer.

6 Q. Okay. And at what location?

7 A. I used to work in different locations for
8 ABM when I started working for them. To be specific
9 where, I don't recall.

10 Q. When did you start working at the Universal
11 City Nissan location for ABM?

12 A. I don't recall.

13 Q. How many locations had you worked at for
14 ABM before Universal City Nissan?

15 A. I work on different locations.

16 Q. Do you recall how many?

17 A. I believe three, four locations.

18 Q. Did you work at Universal City, do you
19 think, for more than ten years?

20 A. At Universal City Nissan?

21 Q. Yes.

22 A. Probably was, like, four years, I believe,
23 four, five years.

24 Q. So is it possibly from about 2009 until
25 2013?

1 right?

2 A. No.

3 Q. You didn't have to -- you didn't do a
4 different meal break waiver document, did you?

5 A. No.

6 Q. You didn't get a different training
7 session, did you?

8 A. No.

9 Q. You didn't have to re-do your orientation,
10 did you?

11 A. No.

12 Q. But what you are referring to is documents
13 specific to Universal City Nissan; right?

14 A. Yes.

15 Q. Okay. But that didn't change who your
16 employer was, did it?

17 A. No.

18 Q. Is there -- the documents you were
19 presented, are they also referred to as post orders?

20 A. Yes.

21 Q. Okay. So the post orders at Universal City
22 Nissan might be different from the post orders at
23 Glendale City Center; right?

24 A. Yes.

25 Q. Did you review what you would describe as

1 Q. And were they also the same when you
2 started at Universal City Nissan?

3 A. Can you rephrase that?

4 Q. When you started at Universal City Nissan,
5 you were a supervisor from day one; right?

6 A. Yes.

7 Q. And you were in charge of training new
8 employees; right?

9 A. Yes.

10 Q. The policies and practices of ABM that you
11 learned in 2001 when you were hired, were they any
12 different when you were training people at Universal
13 City Nissan in 2009?

14 A. No.

15 Q. Were they any different when you left
16 Universal City Nissan in 2013?

17 A. No.

18 Q. And you had been training people for those
19 four years at Universal City Nissan?

20 A. Yes.

21 Q. Right?

22 A. Yes.

23 Q. When you started at ABM -- at Universal
24 City Nissan in approximately 2009, how many guards
25 worked at that location?

1 ~~let the employees know about their rights.~~

2 Q. And were you -- it was part of your
3 training -- right? That you received to become a
4 supervisor?

5 A. Can you be...

6 Q. Strike that. You can forget that question.

7 So in addition to knowing that they would
8 be on duty during their meal breaks, you would also
9 tell them where to take their meal breaks; right?

10 A. Yes.

11 Q. And that was in the shack?

12 A. Yes.

13 Q. And the same for rest breaks; right?

14 A. Yes.

15 Q. During the time that they were on their
16 meal breaks, was there anything different -- other
17 than the 30 minutes versus the 10 minutes --
18 anything different about the meal breaks and the
19 rest breaks?

20 A. No.

21 Q. And that was the same for all shifts,
22 again; right?

23 A. For all shifts.

24 Q. For all four years you were there; right?

25 A. Yes.

1 Q. Now, what was expected -- other than the
2 ability to have their lunch in the shack at that
3 time -- what else was expected of the guards during
4 their meal breaks?

5 A. Can you be more specific?

6 Q. Well, they were still watching out for
7 customers; right?

8 A. Yes.

9 Q. They were still remaining vigilant to what
10 was going on around them; right?

11 A. Yes.

12 Q. They were still doing all of the other jobs
13 associated with their security guard title; right?

14 A. Yes.

15 Q. Okay. That's the same for meal breaks and
16 rest breaks; right?

17 A. Yes.

18 Q. And that's the same for all three shifts;
19 right?

20 A. Yes.

21 Q. That's the same for all four years that you
22 were there?

23 A. Yes.

24 Q. Are you in contact with Mr. Karapetyan?

25 A. No.

1 while guards were on their meal breaks, they were
2 supposed to remain vigilant; right?

3 A. Yes.

4 Q. They were supposed to still take care of
5 the customers coming and going; right?

6 A. Yes.

7 Q. And that was an expectation of ABM; right?

8 A. Yes.

9 Q. And that's the same for rest breaks, isn't
10 it?

11 A. Yes.

12 Q. So isn't it true that the guards were doing
13 things that security guards do during their meal
14 breaks and rest breaks?

15 A. Yes.

16 MR. KEARNAGHAN: Calls for speculation outside
17 his own personal experience. You didn't lay the
18 foundation as to others.

19 Q. BY MR. ADREANI: Well, let's assume that
20 we're talking about your personal experience.
21 That's the same answer?

22 MR. KEARNAGHAN: Incomplete hypothetical.

23 MR. ADREANI: It's your objection.

24 MR. KEARNAGHAN: Right. But then you're saying
25 "you assume," so you're presenting a hypothetical to

EXHIBIT “E”

CERTIFIED COPY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

JENNIFER AUGUSTUS,

PLAINTIFF,

V.

AMERICAN COMMERCIAL SECURITY SERVICES, A
WHOLLY OWNED SUBSIDIARY OF ABM INDUSTRIES,
INC.; AND DOES 1 THROUGH 100, INCLUSIVE,

DEFENDANTS.

CASE NO. BC 336416

VOLUME ONE

DEPOSITION OF: FRED SETAYESH
TAKEN: WEDNESDAY, MAY 7TH, 2008

Dalene Court Reporters

16161 Ventura Boulevard, #734

Encino, California 91436

Telephone: 661.726.0584

Reported By:

Magdalene S. Puente

CSR 8498



DEPOSITION OF FRED SETAYESH, V. 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JENNIFER AUGUSTUS,

PLAINTIFF,

V.

NO. BC 336416

AMERICAN COMMERCIAL, SECURITY
SERVICES, A WHOLLY OWNED
SUBSIDIARY OF ABM INDUSTRIES,
INC.; AND DOES 1 THROUGH 100,
INCLUSIVE,

DEFENDANTS.

DEPOSITION OF FRED SETAYESH, TAKEN
ON BEHALF OF THE PLAINTIFF, AT
5820 CANOGA AVENUE, SUITE 250,
WOODLAND HILLS, CALIFORNIA, COMMENCING
AT 10:04 A.M., WEDNESDAY, MAY 7, 2008,
BEFORE MAGDALENE S. PUENTE, CSR 8498.

DEPOSITION OF FRED SETAYESH, V. 1

1 APPEARANCES OF COUNSEL:

2
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17 ALSO PRESENT:

18 MATTHEW BAINER, ESQ.
19
20
21
22
23
24
25

DEPOSITION OF FRED SETAYESH, V. 1

1 IN HOSPITAL ENVIRONMENT. THEY'RE IN A PARKING LOT.
2 SO -- SO THAT IS THE FLEXIBILITY THEY HAVE TO TAKE IT
3 AS THEY THINK IT'S -- IT'S PROPER.

4 Q. OKAY.

5 A. OR THEY NEED IT. SOMETIMES THE PERSON, MAYBE
6 THEY HAVE SOMETHING THAT THEY NEED TO USE THE RESTROOM,
7 FOR EXAMPLE, NOW OR THEY WANT TO MAYBE TAKE IT LATER
8 OR --

9 Q. SO IT'S --

10 A. IT COULD VARY.

11 Q. SO IT'S YOUR UNDERSTANDING THAT THE SECURITY
12 GUARDS ARE TAKING REST BREAKS ON AN IRREGULAR BASIS
13 DURING THEIR SHIFT WHILE STILL CONSCIOUS OF THEIR JOB
14 REQUIREMENTS?

15 IN OTHER WORDS, YOU SAID THEY'RE NOT ENTIRELY
16 RELIEVED OF ALL THEIR JOB DUTIES BUT THEY ARE RECEIVING
17 THEIR REST BREAKS; IS THAT ACCURATE?

18 A. I SAID THEY'RE NOT RELIEVED FROM ALL DUTIES,
19 BUT THEY ARE -- THEY CAN TAKE THEIR BREAKS.

20 Q. AND THAT APPLIES FOR REST BREAKS AND MEAL
21 BREAKS?

22 A. CORRECT.

23 MS. VITEK: WE'VE BEEN GOING FOR ABOUT ANOTHER
24 HOUR. DO YOU WANT TO TAKE A SHORT BREAK? DO YOU WANT
25 TO TAKE A LUNCH BREAK?

DEPOSITION OF FRED SETAYESH, V. 1

1 TO A CERTAIN LOCATION?

2 A. NO.

3 Q. OKAY. DO THE OFFICER -- SECURITY OFFICERS
4 CONTINUE TO PERFORM -- STRIKE THAT.

5 PREVIOUSLY YOU SAID THAT SOME OF THE DUTIES OF
6 THE SECURITY OFFICERS ARE PERFORMED CONTINUOUSLY EVEN
7 WHILE TAKING REST BREAKS; CORRECT?

8 A. I SAID THEY WILL NOT BE RELIEVED FROM ALL
9 DUTIES.

10 Q. OKAY. AND WHAT ARE THE DUTIES THAT THEY ARE
11 NOT RELIEVED OF?

12 A. FOR EXAMPLE, IF THEY HAVE A RADIO, THEY WANT
13 TO HAVE THE RADIO ON WHILE THEY'RE HAVING THEIR MEAL;
14 IF THEY HAVE A CELL PHONE, A PAGER, IF THERE IS AN
15 EMERGENCY OR SITUATION JUST HAPPEN TO HAPPEN AT THAT
16 MOMENT, THE PERSON CAN ASSIST THE BUILDING OPERATING
17 STAFF AND THEN GO BACK AND FINISH HIS OR HER BREAK.

18 Q. AND IS THAT TRUE FOR OFFICERS AT THE LOCATIONS
19 WITH MULTIPLE OFFICERS WHICH ARE NOT LISTED IN THE
20 APPLICATION FOR EXEMPTION?

21 A. I WOULD SAY IT VARY BECAUSE IT DEPENDS OF THE
22 NUMBER OF THE MULTI OFFICERS. IF THERE IS --

23 I CAN GIVE YOU AN EXAMPLE IF YOU WANT ME TO.

24 Q. YES, PLEASE.

25 A. YOU REFER TO THE BLUE CROSS HERE, THE PROJECT

77