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22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

23 **COUNTY OF SAN BERNARDINO**

24 CARMEN J. SANTIZO, individually, and on
25 behalf of all other aggrieved employees,

26 Plaintiff,

27 v.

28 BPS TACTICAL, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: CIVDS 2018001

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**

1 This Class Action Settlement and Release ("Settlement Agreement" or "Agreement") is
2 entered into by and between Plaintiff Carmen J. Santizo ("Plaintiff") on behalf of herself and the
3 Class and Defendant BPS Tactical, Inc. ("Defendant"), collectively referred to as "the Parties."

4 In consideration of the mutual covenants, promises, and agreements set forth herein, the
5 Parties agree, subject to the approval by the Court, that the Action and the Released Claims shall be
6 settled and compromised as between Plaintiff and the Class on the one hand, and Defendant on the
7 other hand, subject to the terms and conditions set forth herein.

8 DEFINITIONS

9 1. "Action" means *Santizo v. BPS Tactical, Inc.*, San Bernardino County Superior Court
10 Case No. CIVDS 2018001.

11 2. "Class" means all non-exempt employees of Defendant who performed work for
12 Defendant in California during the Class Period.

13 3. "Class Counsel" means the Law Office of Scott E. Wheeler and the Wand Law Firm,
14 P.C.

15 4. "Class Counsel Award" means (a) attorneys' fees for Class Counsel's litigation and
16 resolution of the Action, and (b) Class Counsel's expenses and costs incurred in connection with the
17 Action.

18 5. "Class Member(s)" means each person who is a member of the Class defined in
19 Paragraph 2 above and who is eligible to participate in this Settlement.

20 6. "Class Notice" means the notice, substantially in the form attached hereto as **Exhibit**
21 **1**, which the Settlement Administrator will mail to each Class Member, and which explains, *inter*
22 *alia*, the terms of this Settlement, each Class Member's estimated Individual Settlement Payment,
23 the settlement process, and the right of Class Members to object to the Settlement, opt-out of the
24 Settlement, or dispute the number of Compensable Workweeks attributed to them. The Class Notice
25 will be provided in English and Spanish.

26 7. "Class Period" means August 27, 2016 through the Preliminary Approval Date.

27 8. "Class Representative Service Award" means the amount that the Court authorizes
28 to be paid to Plaintiff, in addition to Plaintiff's Individual Settlement Payment and Individual PAGA

1 Payment, in recognition of, *inter alia*, their efforts and risks in assisting with the prosecution of the
2 Action and in return for executing a general release with Defendant.

3 9. "Compensable Workweek(s)" means the number of weeks worked by each Class
4 Member individually and collectively by all Class Members during the Class Period and used as a
5 value to calculate Individual Settlement Payments. The number of Compensable Workweeks for
6 each Class Member, and collectively for the Class, will be calculated by the Settlement
7 Administrator, based on the Employee Information provided by Defendant. The number of
8 Compensable Workweeks for each Class Member will be determined by adding all the calendar
9 days within the inclusive dates of employment for the Class Member and dividing that number by
10 seven. Any partial workweek will be expressed as a percentage of a full workweek.

11 10. "Court" means the Superior Court for the County of San Bernardino, State of
12 California.

13 11. "Cy Pres Recipient" means the charitable organization that will receive any
14 settlement funds that are not negotiated by Settlement Class Members. The Parties have selected
15 Legal Aid at Work, a 501(c)(3) organization that is dedicated to protecting the rights of low-income
16 people throughout California, as the Cy Pres Recipient. Among other things, Legal Aid at Work
17 operates a Wage Protection Program whereby it represents low-wage workers who are the victims
18 of wage violations. The Parties represent that they do not have an interest in the governance or work
19 of Legal Aid at Work. Should a conflict of interest or other issue lead to the disapproval of Legal
20 Aid at Work as a Cy Pres Recipient, the Parties will meet and confer as to a suitable replacement.

21 12. "Defendant" means BPS Tactical, Inc.

22 13. "Defendant's Counsel" means Jonathan M. Werner and Jacob M. Clark of
23 AlvaradoSmith, A.P.C.

24 14. "Effective Date" means the latter of: (a) if there is no Objection to the Settlement, or
25 if there is an Objection but it is withdrawn, then, the date that the Final Approval Order and
26 Judgment is entered by the Court; (b) if there is an Objection to the Settlement that is not withdrawn,
27 but no appeal is commenced thereafter, then, sixty-five (65) calendar days following the date that
28 the Final Approval Order and Judgment is entered by the Court; or (c) if there is an Objection to the

1 Settlement, that is not withdrawn, and any appeal, writ, or other appellate proceeding opposing the
2 Settlement has been filed within sixty-five (65) calendar days following the date that the Final
3 Approval Order and Judgment is entered by the Court, then, when any such appeal, writ, or other
4 appellate proceeding opposing the validity of the Settlement has been resolved finally and
5 conclusively with no right to pursue further remedies or relief.

6 15. "Employee Information" means the compilation of the following information for
7 each Class Member and PAGA Employee: last known full name; social security number; last known
8 address; last known telephone number; number of Compensable Workweeks and/or PAGA
9 Workweeks for each Class Member during the Class Period and each PAGA Employee during the
10 PAGA Period; and other such mutually agreed upon information by the Parties as may be necessary
11 to independently review the Compensable Workweeks and/or PAGA Workweeks attributed to each
12 Class Member and PAGA Employee.

13 16. "Employer's Share of Payroll Taxes" means the dollar amount of Defendant's
14 employer payroll tax obligation on the employee wage portion of the Individual Settlement
15 Payments, including but not limited to, customary withholdings for federal, state and local taxes,
16 and any similar tax or charge. Defendant shall be responsible for paying the Employer's Share of
17 Payroll Taxes separately from, and in addition to, the Gross Settlement Amount.

18 17. "Final Approval Hearing" means the hearing that the Court will hold after the Court
19 has granted preliminary approval of the Settlement and notice has been provided to the Class the
20 response of the Class to the Settlement has been determined, regarding, *inter alia*, whether final
21 approval of the Settlement is appropriate and the amounts properly payable for: (a) Individual
22 Settlement Payments; (b) Individual PAGA Payments; (c) the Class Counsel Award; (d) the Class
23 Representative Service Award; (e) payment to the LWDA; and (f) the Settlement Administration
24 Costs.

25 18. "Final Approval Order and Judgment" means an order and judgment that the Court
26 will enter which finally approves this Settlement and enters a judgment.

27 19. "Gross Settlement Amount" means the amount that Defendant is obligated to pay
28 under this Settlement Agreement, which is One Hundred Ten Thousand Dollars and Zero Cents

1 (\$110,000.00). This is a non-reversionary Settlement in which Defendant is required to pay the
2 entire Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to
3 Defendant under any circumstances. Other than the Employer's Share of Payroll Taxes, the Gross
4 Settlement Amount constitutes the total maximum amount that Defendant shall pay to settle this
5 Action.

6 20. "Individual Settlement Payment" means the amount payable from the Net Settlement
7 Amount to each Settlement Class Member, less employee portions of state and federal withholding
8 taxes, including FICA, FUTA and SDI contributions and any other applicable payroll deductions
9 required by law, only to the extent applicable, as a result of the payment of the amount allocated to
10 such Class Members.

11 21. "Individual PAGA Payment" means the amount payable to each PAGA Employee
12 from the \$2,500 allocated to them (i.e., 25% of \$10,000 allocated to penalties under the PAGA
13 included in this Settlement).

14 22. "LWDA" means the California Labor and Workforce Development Agency.

15 23. "Net Settlement Amount" means the Gross Settlement Amount, less the Class
16 Counsel Award, Class Representative Service Award, the entire payment to the LWDA and PAGA
17 Employees, and Settlement Administration Costs. If the Court approves less than the amounts
18 requested for the Class Counsel Award, Class Representative Service Award, payment to the LWDA
19 and PAGA Employees for PAGA penalties, or Settlement Administration Costs, such amounts will
20 return to the Net Settlement Amount.

21 24. "Objection" means a written communication submitted by a Class Member to the
22 Settlement Administrator that contains a clear statement by the Class Member that he or she is
23 objecting to any of the terms of the Settlement. Class Members may also object to the Settlement
24 orally at the Final Approval Hearing without the need to submit a written Objection.

25 25. "Operative Complaint" means the class action complaint that Plaintiff will file within
26 seven (7) days of the full execution of this Agreement, substantially in the form attached as **Exhibit**

27 2. Both Parties agree to work diligently and cooperatively to have this matter converted to a class
28

1 action for settlement purposes only. Defendant agrees that it will not move to compel arbitration
2 based on the filing of the Operative Complaint.

3 26. "PAGA Employees" means all non-exempt employees of Defendant who performed
4 work in California during the PAGA Period.

5 27. "PAGA Period" means any time between June 24, 2019 through the Preliminary
6 Approval Date.

7 28. "PAGA Workweek(s)" means the number of weeks worked by each PAGA
8 Employee individually and collectively by all PAGA Employee during the PAGA Period and used
9 as a value to calculate Individual PAGA Payments. The number of PAGA Workweeks for each
10 PAGA Employee, and collectively for all PAGA Employees, will be calculated by the Settlement
11 Administrator, based on the Employee Information provided by Defendant. The number of PAGA
12 Workweeks for each PAGA Employee will be determined by adding all the calendar days within
13 the inclusive dates of employment for the PAGA Employee and dividing that number by seven. Any
14 partial workweek will be expressed as a percentage of a full workweek.

15 29. "Parties" means Plaintiff and Defendant collectively, and "Party" means either
16 Plaintiff or Defendant individually.

17 30. "Payment Ratio" means the respective Compensable Workweeks for each Settlement
18 Class Member divided by the Total Compensable Workweeks for all Settlement Class Members and
19 the respective PAGA Workweeks for each PAGA Employee divided by the Total PAGA
20 Workweeks for all PAGA Employees.

21 31. "Plaintiff" means Carmen J. Santizo.

22 32. "Preliminary Approval Date" means the date upon which the Court enters the
23 Preliminary Approval Order.

24 33. "Preliminary Approval Order" means the order, substantially in the form attached
25 hereto as **Exhibit 3**, which grants preliminary approval of the Settlement.

26 34. "Request for Exclusion" means a letter or other written communication submitted by
27 a Class Member to the Settlement Administrator that contains a clear statement by the Class Member
28 that he or she is electing to be excluded from the Settlement.

1 35. “Released Parties” means Defendant and its predecessors, successors, subsidiaries,
2 parent companies, other corporate affiliates, owners and assigns, and all of their officers, directors,
3 employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns,
4 and any other persons acting by, through, under or in concert with any of them.

5 36. “Released Claims by Plaintiff” means: In exchange for the consideration provided
6 under this Settlement, Plaintiff, for herself and for her heirs, representatives, attorneys, executors,
7 administrators, successors, and assigns release, acquit, remise, and forever discharge the Released
8 Parties, from any and all actions, causes of action, obligations, costs, expenses, damages, losses,
9 claims, liabilities, suits, debts, demands, and benefits (including attorneys’ fees and costs), of
10 whatever character, in law or in equity, known or unknown, suspected or unsuspected, matured or
11 unmatured, of any kind or nature whatsoever, based on any act, omission, event, occurrence, or
12 nonoccurrence from the beginning of time to the date of execution hereof, including but not limited
13 to any claims or causes of action arising out of or in any way relating to Plaintiff’s relationship with
14 and/or services performed for Defendant or which have been or could have been made in the Action.
15 This release of claims includes, but is not limited to, claims for breach of any implied or express
16 contract or covenant; claims for promissory estoppel; claims of entitlement to any pay, including,
17 but not limited to, overtime wages, meal and rest break premiums, bonuses, and commissions;
18 claims of wrongful denial of insurance and employee benefits; claims for wrongful termination,
19 retaliatory discharge or public policy violations of whatever kind or nature, defamation, invasion of
20 privacy, fraud, misrepresentation, emotional distress or other common law or tort matters; claims of
21 harassment, retaliation or discrimination based on any basis, including but not limited to age, race,
22 color, religion, sex, sexual orientation, national origin, ancestry, physical or mental disability,
23 medical condition, marital status; claims under the California Labor Code, California Government
24 Code, California Business and Professions Code, and California Health and Safety Code; claims
25 based upon the California Constitution; claims based on any federal, state or other governmental
26 statute, regulation or ordinance, including, without limitation, the California Confidentiality of
27 Medical Information Act, the California Fair Employment & Housing Act, the California Unfair
28 Business Practice Act, the California Private Attorneys General Act, I.W.C. Wage Orders, the

1 California Labor Code, the California Family Rights Act, Title VII of the Civil Rights Act, the Fair
2 Labor Standards Act, the Americans with Disabilities Act, the Labor Management Relations Act,
3 the Family Medical Leave Act, the Age Discrimination in Employment Act (29 U.S.C. § 621, et
4 seq.), and the Older Workers Benefit Protection Act, all as amended. As to Plaintiff Released
5 Claims only, Plaintiff expressly waive all rights and benefits under the terms of section 1542 of the
6 California Civil Code. Section 1542 reads as follows:

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

11 Notwithstanding the provisions of section 1542, and for the purpose of implementing a full
12 and complete release and discharge of all of their Released Claims, Plaintiff expressly acknowledges
13 that this Settlement is intended to include in its effect, without limitation, all Released Claims which
14 Plaintiff does not know or suspect to exist in her favor at the time of execution hereof, and that the
15 Settlement contemplates the extinguishment of all such Released Claims.

16 Notwithstanding this general release of claims, nothing in this Agreement is intended to
17 operate as, nor shall be construed as, a release or waiver of any rights and/or claims that cannot be
18 released or waived as a matter of law.

19 This general release applies to Plaintiff only. It does not apply to the Released Claims by
20 Settlement Class Members or PAGA Employees, as set forth in Paragraphs 37 and 38 below.

21 37. “Released Class Claims by Settlement Class Members” means: in exchange for the
22 consideration provided under this Settlement, Settlement Class Members shall fully and finally
23 release and discharge Released Parties, from any and all claims, debts, liabilities, demands,
24 obligations, guarantees, costs, expenses, attorneys’ fees, damages, action or causes of action,
25 pleaded or that could have been pleaded based on facts and claims asserted in the Operative
26 Complaint, including any and all claims for: (a) failure to prove meal periods; (b) failure to provide
27 rest breaks; (c) failure to overtime wages; (d) failure to pay timely wages; (e) failure to pay all wages
28 owed and due upon termination; (f) failure to maintain required records; (g) failure to furnish

1 accurate itemized wage statements; and (h) violation of California Business & Professions Code §
2 17200, *et seq.* This release shall apply to all claims arising at any point during the Class Period.

3 38. "Released PAGA Claims by PAGA Employees" means in exchange for the
4 consideration provided under this Settlement, PAGA Employees shall fully and finally release and
5 discharge Released Parties, from any and all claims for civil penalties under the Private Attorneys'
6 General Act, California Labor Code § 2699, *et seq.* ("PAGA"), predicated on any of the violations
7 of the California Labor Code and applicable IWC Wage Order pleaded or that could have been
8 pleaded based on facts and claims asserted in the Operative Complaint, including claims for: (a)
9 failure to prove meal periods; (b) failure to provide rest breaks; (c) failure to pay overtime wages;
10 (d) failure to pay timely wages; (e) failure to pay all wages owed and due upon termination; (f)
11 failure to maintain required records; (g) failure to furnish accurate itemized wage statements; and
12 (h) failure to provide notice of employer-related information required under California Labor Code
13 § 2810.5. This release shall apply to all claims arising at any point during the PAGA Period.

14 39. "Response Deadline" means sixty (60) calendar days after the postmark date of the
15 Class Notice that the Settlement Administrator shall mail to Class Members, and the last date on
16 which Class Members may: (a) submit a Request for Exclusion; (b) submit a written Objection to
17 the Settlement; or (c) dispute the number of Compensable Workweeks attributed to them.

18 40. "Settlement" means the disposition of the Action pursuant to this Agreement.

19 41. "Settlement Administration Costs" means the amount to be paid to the Settlement
20 Administrator from the Gross Settlement Amount for notice and administration of this Settlement.

21 42. "Settlement Administrator" means Phoenix Settlement Administrators, which shall
22 be responsible for, *inter alia*: (a) printing and mailing the Class Notice to the Class; (b) calculating
23 the Individual Settlement Payments and Individual PAGA Payments based on the Employee
24 Information; (c) calculating the Employer's Share of Payroll Taxes which Defendant shall pay in
25 addition to the Gross Settlement Amount; (d) receiving and reporting the Requests for Exclusion
26 and Objections submitted by Class Members to the Parties; (e) providing declaration(s) as necessary
27 in support of preliminary and/or final approval of this Settlement; (f) processing and mailing
28 payments to Plaintiff, Class Counsel, the LWDA, and Settlement Class Members and PAGA

1 Employees; (g) creating and maintaining a static settlement website where relevant documents and
2 information pertaining to the Settlement will be posted, including *inter alia*, the judgment and
3 amended judgment if applicable; and (h) any other tasks as the Parties mutually agree or the Court
4 orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties
5 timely apprised of the performance of all Settlement Administrator responsibilities. The Parties
6 agree that they have no financial interest or other relationship with Phoenix that could create a
7 conflict of interest. Should a conflict of interest or other issue lead to the disqualification of the
8 selected Settlement Administrator, the Parties will meet and confer as to a suitable replacement.

9 43. "Settlement Class" or "Settlement Class Members" means all Class Members who
10 have not opted out of the Class by submitting a valid and timely Request for Exclusion.

11 **RECITALS**

12 44. The Action. On August 27, 2020, Plaintiff commenced this Action by filing a
13 representative action complaint pursuant to the PAGA.

14 45. Investigation and Discovery. The Parties conducted significant investigation of the
15 facts and law during the prosecution of the Action and before this Settlement was reached. Such
16 discovery and investigation included, *inter alia*, the exchange of information and documents
17 pertaining to Plaintiff and the Class, and meetings and informal conferences wherein the Parties
18 exchanged information, class data, and theories of the case. Plaintiff has also investigated the law
19 as applied to the facts of Plaintiff's claims and Defendant's potential defenses thereto.

20 46. Settlement Negotiations. The Parties engaged in extensive arm's-length settlement
21 negotiations through their counsel, at the conclusion of which, the Parties were able to reach
22 agreement regarding the material terms for a proposed class action settlement that would fully
23 resolve this matter, as memorialized in this Agreement.

24 47. Benefits of Settlement to Class Members. Plaintiff and Class Counsel recognize the
25 expense and length of continued proceedings necessary to litigate Plaintiff's claims through trial
26 and any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the
27 outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and
28 Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims

1 asserted in the Action, both generally and in response to Defendant's defenses thereto, and the
2 difficulties in establishing damages for the Class. Plaintiff and Class Counsel have also taken into
3 account Defendant's agreement to enter into a settlement that confers substantial relief upon the
4 members of the Class and PAGA Employees. Based on the foregoing, Plaintiff and Class Counsel
5 have determined that the Settlement set forth in this Settlement Agreement is fair, adequate, and
6 reasonable, and is in the best interests of the Class and PAGA Employees.

7 48. Defendant's Reasons for Settlement. Defendant has concluded that any further
8 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of
9 Defendant's time, energy, and resources have been and, unless this Settlement is completed, will
10 continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant has also taken
11 into account the risks of further litigation in reaching their decision to enter into this Settlement.
12 Defendant specifically and generally denies all of the claims asserted in the Action and all other
13 Released Claims; denies all allegations and claims as to liability, damages, penalties, interest, fees
14 and all other forms of relief; denies any and all wrongdoing of any kind whatsoever associated with
15 any of the facts or claims alleged in the Action; and makes no concessions or admissions of
16 wrongdoing or liability of any kind whatsoever. Defendant maintains that for any purpose other than
17 settlement, the Action is not suitable or appropriate for class action or representative action
18 treatment. Defendant has agreed, nonetheless, to settle in the manner and upon the terms set forth
19 in this Settlement Agreement to put to rest the claims in the Action. As to the Released Claims,
20 Defendant denied and continues to deny each of those claims.

21 **STIPULATION AND AGREEMENT**

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

24 50. It is agreed by and among Plaintiff and Defendant that this Settlement shall bind the
25 Plaintiff, Settlement Class Members, PAGA Employees, and Defendant, subject to the terms and
26 conditions hereof.

27 ///

1 51. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
2 the “acknowledging party” and each Party to this Agreement other than the acknowledging party,
3 an “other party”) acknowledges and agrees that (1) no provision of this Agreement, and no written
4 communication or disclosure between or among the Parties or their attorneys and other advisers, is
5 or was intended to be, nor shall any such communication or disclosure constitute or be construed or
6 be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230
7 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her,
8 or its own, independent legal and tax counsel for advice (including tax advice) in connection with
9 this Agreement, (b) has not entered into this Agreement based upon the recommendation of any
10 other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
11 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty
12 that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party
13 has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax
14 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
15 acknowledging party of the tax treatment or tax structure of any transaction, including any
16 transaction contemplated by this Agreement.

17 52. Class Certification. Defendant stipulates to class certification pursuant to California
18 Code of Civil Procedure § 382 for purposes of settlement only. If the Court does not grant either
19 preliminary or final approval of this Settlement, the Parties agree that this stipulation regarding class
20 certification will be revoked, and the Parties will return to a point in litigation immediately prior to
21 the execution of this Agreement and Defendant may assert all potentially applicable defenses in
22 connection with the Action (e.g., contest whether the Action should be maintained as a class action,
23 contest the merits of the claims being asserted in the Action, etc.).

24 53. Approval of Settlement. Plaintiff will move the Court to grant preliminary and final
25 approval of this class action Settlement. The Parties agree to work diligently and cooperatively to
26 have this matter presented to the Court for preliminary and final approval.

27 54. LWDA Notice. Plaintiff acknowledges and agrees that she will provide notice to the
28 LWDA of this Settlement in accordance with California Labor Code § 2699(1)(2).

1 55. Release of Claims by Plaintiff. Plaintiff shall release the “Released Claims by
2 Plaintiff” as of the date that the Gross Settlement Amount is fully-funded by Defendant.

3 56. Release of Class Claims by Settlement Class Members. Settlement Class Members
4 shall release the “Released Claims by Settlement Class Members” as of the date that the Gross
5 Settlement Amount is fully-funded by Defendant.

6 57. Release of PAGA Claims by PAGA Employees. PAGA Employees shall release the
7 “Released PAGA Claims” as of the date that the Gross Settlement Amount is fully-funded by
8 Defendant.

9 58. Settlement Administration. Within fourteen (14) calendar days after the Preliminary
10 Approval Date, Defendant shall provide the Settlement Administrator with the Employee
11 Information.

12 59. Notice to the Class. Upon receipt of the Employee Information, the Settlement
13 Administrator will perform a search based on the National Change of Address Database to update
14 and correct any known or identifiable address changes. Within fourteen (14) calendar days after
15 receiving the Employee Information, the Settlement Administrator shall mail copies of the Class
16 Notice to all Class Members via regular First-Class U.S. Mail. The Settlement Administrator shall
17 exercise its best judgment to determine the current mailing address for each Class Member. The
18 address identified by the Settlement Administrator as the current mailing address shall be presumed
19 to be the best mailing address for each Class Member.

20 a. The Class Notice and Procedure Comports with Due Process. The Parties
21 agree that the notice procedures outlined in this Agreement provide the best and most practical
22 method of giving notice to the Class and fully comply with due process and all applicable laws and
23 rules.

24 b. Undeliverable Notices. Any Class Notice returned to the Settlement
25 Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the
26 forwarding address affixed thereto within seven (7) calendar days. If no forwarding address is
27 provided, the Settlement Administrator shall promptly attempt to determine a correct address by use
28 of skip-tracing, or other search using the name, address and/or Social Security number of the Class

1 Member involved, and shall then perform a re-mailing, if another mailing address is identified by
2 the Settlement Administrator. If the undeliverable notice is for a currently employed Class Member,
3 the Settlement Administrator shall contact Defendant, which will then make all reasonable efforts
4 to obtain the Class Member's current mailing address within seven (7) calendar days, and provide
5 it to the Settlement Administrator. Class Members who receive a re-mailed Notice of Class
6 Settlement shall have sixty (60) days after the postmark date of the re-mailed Notice of Class
7 Settlement to: (a) submit a Request for Exclusion; (b) submit an Objection to the Settlement; or (c)
8 dispute the number of Compensable Workweeks attributed to them.

9 c. Disputes Regarding Individual Settlement Payments. Class Members will
10 have the opportunity, should they disagree with Defendant's records regarding the dates of
11 employment stated in the Class Notice and/or the number of Compensable Workweeks attributed to
12 them, to provide documentation and/or an explanation to show contrary information by the
13 Response Deadline. The dispute form must: (a) contain the full name, address, and telephone
14 number of the Class Member, and the last four digits of the Class Member's social security number
15 or full employee ID number; (b) contain the case name and case number; (c) a clear statement by
16 the Class Member that he or she is disputing the number of Compensable Workweeks and the basis
17 for the dispute; (d) be signed by the Class Member; and (e) be postmarked or e-mailed by the
18 Response Deadline. The date of the postmark on the return mailing envelope on the dispute form,
19 or the date the e-mail is sent, shall be the exclusive means used to determine whether it has been
20 timely submitted. If there is a dispute, the Settlement Administrator will consult with the Parties to
21 determine whether an adjustment is warranted. The Settlement Administrator shall then determine
22 the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this
23 Agreement. In the absence of circumstances indicating fraud, manipulation or destruction,
24 Defendant's records shall be given a rebuttable presumption of accuracy.

25 d. Requests for Exclusion. Class Members who wish to exclude themselves
26 from the Settlement must mail to the Settlement Administrator a Request for Exclusion by the
27 Response Deadline. The Request for Exclusion must: (a) contain the full name, address, and
28 telephone number of the Class Member, and the last four digits of the Class Member's social security

1 number; (b) contain the case name and case number; (c) a clear statement by the Class Member that
2 he or she is electing to be excluded from the Settlement; (d) be signed by the Class Member; and
3 (e) be postmarked or e-mailed by the Response Deadline. The date of the postmark on the return
4 mailing envelope on the Request for Exclusion, or the date the e-mail is sent, shall be the exclusive
5 means used to determine whether it has been timely submitted. Any Class Member who requests to
6 be excluded from the Settlement Class shall not be entitled to any Individual Settlement Payment,
7 shall not release any of the Released Claims by Settlement Class Members, and shall not have any
8 right to object, appeal or comment thereon. Class Members who fail to submit a valid and timely
9 Request for Exclusion on or before the Response Deadline shall be bound by all terms of the
10 Settlement and any Final Approval Order and Judgment entered in this Action.

11 e. Objections. Class Members who wish to object to the Settlement may do so
12 orally at the Final Approval Hearing without the need to submit a written Objection, or by mailing
13 to the Settlement Administrator a written Objection by the Response Deadline. The Class Notice
14 will inform Class Members that they appear at the final approval hearing by audio or video per the
15 instructions listed on the Court's website. The written Objection must: (a) contain the full name,
16 address, and telephone number of the Class Member, and the last four digits of the Class Member's
17 social security number; (b) contain the case name and case number; (c) the dates of employment of
18 the Class Member; (d) state whether the Class Member intends to appear at the final approval
19 hearing; (e) be signed by the Class Member; (f) state the basis for the Objection, including any legal
20 briefs, papers or memoranda in support of the Objection; and (g) be postmarked or e-mailed by the
21 Response Deadline. The date of the postmark on the return mailing envelope on the written
22 Objection, or the date the e-mail is sent, shall be the exclusive means used to determine whether the
23 written Objection has been timely submitted. Class Members who fail to make Objections in the
24 manner specified above shall be deemed to have waived any objections and shall be foreclosed from
25 making any objections (whether by appeal or otherwise) to the Settlement. Class Counsel shall not
26 represent any Class Members with respect to any Objections. The Settlement Administrator will
27 provide the Parties with any written Objection within seven (7) calendar days of its receipt of any
28

1 Objection. Plaintiff will file any and all written Objections with the Court in advance of the Final
2 Approval Hearing.

3 60. Funding Gross Settlement Amount. Within fourteen (14) calendar days of the
4 Effective Date, Defendant shall wire transfer the full Gross Settlement Amount, plus the Employer's
5 Share of Payroll Taxes, to the Settlement Administrator. The Settlement Administrator shall notify
6 the Parties in writing upon receipt of these funds.

7 61. Allocation of Settlement.

8 a. Individual Settlement Payments to Class Members will be paid from the Net
9 Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. The
10 Settlement Administrator shall calculate the Total Compensable Workweeks for all Settlement Class
11 Members based on the Employee Information. The respective Compensable Workweeks for each
12 Settlement Class Member will be divided by the Total Compensable Workweeks for all Settlement
13 Class Members, resulting in the Payment Ratio for each Settlement Class Member. Each Settlement
14 Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to determine
15 his or her Individual Settlement Payment.

16 b. The Settlement Administrator shall calculate the total PAGA Workweeks for
17 all PAGA Employees based on the Employee Information. The respective PAGA Workweeks for
18 each PAGA Employee will be divided by the total PAGA Workweeks for all PAGA Employees,
19 resulting in the PAGA Payment Ratio for each PAGA Employee. Each PAGA Employee's PAGA
20 Payment Ratio will then be multiplied by \$2,500 to determine his or her Individual PAGA Payment.

21 c. Individual Settlement Payments to Settlement Class Members and Individual
22 PAGA Payments to PAGA Employees shall be designated as follows:

- 23 1. Eighty percent (80%) of the Individual Settlement Payment shall
24 represent payment of all penalties and interest. This payment will
25 not be subject to withholding of local, state, and federal taxes. If
26 required, the Settlement Administrator will issue an IRS Form 1099
27 to each Settlement Class Member in relation to this payment
28

- 1 2. Twenty percent (20%) of the Individual Settlement Payment shall
2 represent payment for wages. This payment shall be subject to the
3 withholding of all applicable local, state, and federal taxes.
4 Applicable payroll taxes and/or contributions will be deducted from
5 the amount paid to Settlement Class Members. The Settlement
6 Administrator will issue a W-2 Form to each Settlement Class
7 Member in relation to this payment.
- 8 3. One hundred percent (100%) of the Individual PAGA Payment shall
9 represent payment for penalties. If required, the Settlement
10 Administrator shall issue an IRS Form 1099 to each PAGA
11 Employee in relation to these payments.
- 12 d. Un-Negotiated Checks. Individual Settlement Payment and Individual
13 PAGA Payment checks shall remain negotiable for one hundred and twenty (120) calendar days
14 from the postmark date of issuance. If the Individual Settlement Payment and/or Individual PAGA
15 Payment check is not cashed, deposited, or otherwise negotiated within the 120-day deadline, the
16 check will be voided, and the funds associated with any such voided checks shall be distributed to
17 the Cy Pres Recipient. In compliance with California Code of Civil Procedure § 384, after all
18 amounts paid to Class Members and PAGA Employees have been made (i.e., the time for Class
19 Members and PAGA Employees to negotiate the checks has expired), the Settlement Administrator
20 shall provide a report, and if there are any remaining unclaimed funds (i.e., funds from checks not
21 negotiated by Class Members and PAGA Employees), the Final Approval Order and Judgment shall
22 be amended to direct said funds to be paid to the Cy Pres Recipient, or other charity approved by
23 the Court as recipient for the funds.
- 24 e. Certification by Settlement Administrator. The Parties have the right to
25 monitor and review administration of the Settlement. Any disputes not resolved by the Settlement
26 Administrator concerning the administration of the Settlement will be resolved by the Court, under
27 the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties
28 will confer in good faith to resolve the disputes without the necessity of involving the Court. Upon

1 completion of administration of the Settlement, the Settlement Administrator shall provide written
2 certification of such completion to counsel for the Parties, and which shall be filed with the Court
3 as necessary.

4 f. Settlement Awards Do Not Trigger Additional Benefits. All monies received
5 by Settlement Class Members shall be deemed to be income to such Settlement Class Members
6 solely in the year in which such awards actually are received by the Settlement Class Members. It
7 is expressly understood and agreed that the receipt of such Individual Settlement Payments will not
8 entitle any Settlement Class Member to additional compensation or benefits under any company
9 compensation or benefit plan or agreement in place during the period covered by the Settlement,
10 nor will it entitle any Settlement Class Member to any increased pension and/or retirement, or other
11 deferred compensation benefits. It is the intent of this Settlement that any Individual Settlement
12 Payments provided for in this Agreement are the sole payments to be made by Defendant to the
13 Settlement Class Members in connection with this Settlement, and that the Settlement Class
14 Members are not entitled to any new or additional compensation or benefits as a result of having
15 received the Individual Settlement Payments (notwithstanding any contrary language or agreement
16 in any benefit or compensation plan document that might have been in effect during the period
17 covered by this Settlement).

18 g. Class Representative Service Award. Defendant agrees not to oppose or
19 object to a Class Representative Service Award in the total amount of up to Five Thousand Dollars
20 and Zero Cents (\$5,000.00) to Plaintiff, subject to Court approval. The Settlement Administrator
21 shall issue an IRS Form 1099 – MISC to Plaintiff in connection with the Class Representative
22 Service Award payment. Plaintiff shall be solely and legally responsible to pay any and all
23 applicable taxes on their Class Representative Service Award and shall hold harmless Defendant
24 and Class Counsel from any claim or liability for taxes, penalties, or interest arising as a result of
25 the Class Representative Service Award payment. The Class Representative Service Award shall be
26 in addition to Plaintiff's Individual Settlement Payment and Individual PAGA Payment. This
27 Settlement is not contingent upon the Court awarding Plaintiff a Class Representative Service
28 Award in any amount. Any amount requested by Plaintiff for the Class Representative Service

1 Award that is not granted by the Court shall return to the Net Settlement Amount and be distributed
2 to Settlement Class Members as provided in this Agreement.

3 h. Class Counsel Award. Defendant agrees not to oppose or object to any
4 application or motion by Class Counsel for attorneys' fees not to exceed one-third from the Gross
5 Settlement Amount, or Thirty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents
6 (\$36,666.67). Defendant further agrees not to oppose any application or motion by Class Counsel
7 for the reimbursement of any costs or expenses associated with Class Counsel's prosecution of this
8 matter from the Gross Settlement Amount not to exceed Ten Thousand Dollars and Zero Cents
9 (\$10,000.00). Class Counsel shall be solely and legally responsible to pay all applicable taxes on
10 the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form
11 1099 – MISC to Class Counsel for the payments made pursuant to this paragraph. This Settlement
12 is not contingent upon the Court awarding Class Counsel any particular amount in attorneys' fees
13 and costs. Any amount requested by Class Counsel for the Class Counsel Award that is not granted
14 by the Court shall return to the Net Settlement Amount and be distributed to Settlement Class
15 Members as provided in this Agreement.

16 i. Settlement Administration Costs. The Settlement Administrator shall be paid
17 for the costs of administration of the Settlement from the Gross Settlement Amount. The costs of
18 notice and administration for the disbursement of the Gross Settlement Amount shall not exceed
19 \$4,000. Any amount requested by Class Counsel for the Settlement Administration Costs that is not
20 granted by the Court shall return to the Net Settlement Amount and be distributed to Settlement
21 Class Members as provided in this Agreement.

22 j. Payment to the LWDA. Ten Thousand Dollars and Zero Cents (\$10,000.00)
23 from the Gross Settlement Amount will be allocated to penalties under the PAGA. Seventy-five
24 percent (75%) of that amount, or Seven Thousand Five Hundred Dollars and Zero Cents
25 (\$7,500.00), will be paid to the LWDA and twenty-five percent (25%) of that amount, or Two
26 Thousand Five Hundred Dollars and Zero Cents (\$2,500.00), will be paid to the PAGA Employees.
27 This payment is made pursuant to California Labor Code § 2699(i).

28

1 62. Distribution of Settlement Payments. Individual Settlement Payments to Settlement
2 Class Members, Individual PAGA Payments to Employees, the Class Representative Service
3 Award, the Class Counsel Award, Settlement Administration Costs, and payment to the LWDA,
4 shall all be distributed by the Settlement Administrator within seven (7) calendar days of receipt by
5 the Settlement Administrator of the Gross Settlement Amount from Defendant. Individual
6 Settlement Payment and Individual PAGA Payment checks shall be mailed by regular First-Class
7 U.S. Mail to the person's last known mailing address No person shall have any claim against
8 Defendant, Defendant's Counsel, Plaintiff, Settlement Class Members, PAGA Employees, Class
9 Counsel, or the Settlement Administrator based on distributions and payments made in accordance
10 with this Agreement.

11 63. Number of Workweeks. Defendant represents that there are 38 Class Members who
12 worked approximately 5,166 Workweeks during the Class Period. This is a material representation,
13 and if at the time Defendant provides the Class Information to the Settlement Administrator it is
14 discovered that Class Members have worked 5,683 Workweeks or more during the Class Period (a
15 10% increase), then the Parties stipulate that the Class Period shall end on the date one calendar day
16 immediately prior to the date that the 5,683th Workweek threshold is met, notwithstanding the
17 definition of the Class Period.

18 64. Final Settlement Approval. Upon expiration of the Response Deadline, a Final
19 Approval Hearing shall be conducted by the Court, and if the Settlement is finally approved, whether
20 to enter the Final Approval Order and Judgment.

21 65. Nullification of Settlement Agreement. In the event: (a) the Court does not enter the
22 Order for preliminary approval of the Settlement; (b) the Court does not finally approve the
23 Settlement; (c) the Court does not enter a Final Approval Order and Judgment as provided herein;
24 or (d) the Settlement does not become final for any other reason, this Settlement Agreement shall
25 be null and void and any order or judgment entered by the Court in furtherance of this Settlement
26 shall be treated as void from the beginning. In such cases, the Parties and any funds to be awarded
27 under this Settlement shall be returned to their respective statuses as of the date and time
28 immediately prior to the execution of this Agreement and the Parties shall proceed in all respects as

1 if this Agreement had not been executed, except that any fees already incurred by the Settlement
2 Administrator shall be paid by Defendant. In the event an appeal is filed from the Court's Final
3 Approval Order and Judgment, or any other appellate review is sought, administration of the
4 Settlement shall be stayed pending final resolution of the appeal or other appellate review, and any
5 fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal
6 from the Court's Final Approval Order and Judgment, or any other appellate review, shall be paid
7 to the Settlement Administrator by the party or person that filed the appeal, within thirty (30)
8 calendar days of said notification.

9 66. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Settlement Class
10 Members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not
11 have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations,
12 holiday pay, retirement plans, etc.) of Plaintiff or Settlement Class Members.

13 67. No Admission by Defendant. Defendant denies any and all claims alleged in this
14 Action and denies all wrongdoing whatsoever. This Settlement Agreement is not a concession or
15 admission, and shall not be used against Defendant as an admission or indication with respect to any
16 claim of any fault, concession, or omission by any Defendant.

17 68. Exhibits and Headings. The terms of this Settlement Agreement include the terms
18 set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
19 herein. Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive
20 headings of any paragraphs or sections of this Agreement are inserted for convenience of reference
21 only and do not constitute a part of this Agreement.

22 69. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
23 except such proceedings necessary to implement and complete the Settlement, holding the Action
24 in abeyance pending the final approval hearing to be conducted by the Court.

25 70. Amendment or Modification. This Agreement may be amended or modified only by
26 a written instrument signed by counsel of record for all Parties, subject to the approval of the Court.

27 71. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
28 the entire Agreement among these Parties, and no oral or written representations, warranties, or

1 inducements have been made to any Party concerning this Agreement or its Exhibits other than the
2 representations, warranties, and covenants contained and memorialized in the Agreement and its
3 Exhibits.

4 72. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant
5 and represent they are expressly authorized by the Parties whom they represent to negotiate this
6 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
7 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
8 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other
9 and use their best efforts to obtain approval of the Settlement. In the event the Parties are unable to
10 reach agreement on the form or content of any document needed to implement the Settlement, or on
11 any supplemental provisions that may become necessary to effectuate the terms of this Settlement,
12 the Parties may seek the assistance of the Court or the mediator to resolve such disagreement. The
13 persons signing this Agreement on behalf of Defendant represent and warrant that they are
14 authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that she
15 is authorized to sign this Agreement and that she has not assigned any claim, or part of a claim,
16 covered by this Settlement to a third-party.

17 73. Binding on Successors and Assigns. This Agreement shall be binding upon, and
18 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

19 74. California Law Governs. All terms of this Settlement Agreement and the Exhibits
20 hereto shall be governed by and interpreted according to the laws of the State of California.

21 75. Counterparts and Signatures. This Settlement Agreement may be executed in one or
22 more counterparts. All executed counterparts and each of them shall be deemed to be one and the
23 same instrument. The Parties agrees that a facsimile, PDF, or electronic signatures shall be deemed
24 to be as valid and enforceable as original ink signatures. The Parties further agree that they may use
25 DocuSign, an electronic signature technology, to expedite the execution of this Agreement, pursuant
26 to California Civil Code § 1633.7.

27 76. This Settlement is Fair, Adequate and Reasonable. The Parties believe this
28 Settlement is a fair, adequate, and reasonable settlement of this Action and have arrived at this

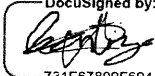
Settlement after extensive arms-length negotiations, taking into account all relevant factors, present and potential.

77. Jurisdiction of the Court. Pursuant to California Code of Civil Procedure § 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments entered in connection therewith. All terms of this Settlement Agreement are subject to approval by the Court.

78. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

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

3/10/2023
Dated: _____

DocuSigned by:

731F67899F6944A...
By: _____
Plaintiff Carmen J. Santizo

Dated: _____

By: _____
Defendant BPS Tactical, Inc.

Name: _____

Title: _____

1 Settlement after extensive arms-length negotiations, taking into account all relevant factors, present
2 and potential.

3 77. Jurisdiction of the Court. Pursuant to California Code of Civil Procedure § 664.6,
4 the Court shall retain jurisdiction with respect to the interpretation, implementation, and
5 enforcement of the terms of this Settlement Agreement and all orders and judgments entered in
6 connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court
7 for purposes of interpreting, implementing, and enforcing the Settlement embodied in this
8 Agreement and all orders and judgments entered in connection therewith. All terms of this
9 Settlement Agreement are subject to approval by the Court.

10 78. Invalidity of Any Provision. Before declaring any provision of this Settlement
11 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent
12 possible consistent with applicable precedents so as to define all provisions of this Agreement valid
13 and enforceable.

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

20
21 Dated: _____

By: _____
Plaintiff Carmen J. Santizo

22
23
24 Dated: 4/12/2023

By: William Blankenship
Defendant BPS Tactical, Inc.

26
27 Name: William Blankenship

28 Title: PRESIDENT

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APPROVED AS TO FORM ONLY:

THE LAW OFFICE OF SCOTT E. WHEELER



By: _____
Scott E. Wheeler

Dated: April 14, 2023

THE WAND LAW FIRM, P.C.

By: _____
Aubry Wand

Dated: _____

Attorneys for Plaintiff and the Putative Class

ALVARADOSMITH, A.P.C.

By: _____
Jonathan M. Werner
Jacob M. Clark

Dated: _____

Attorneys for Defendant BPS Tactical, Inc.

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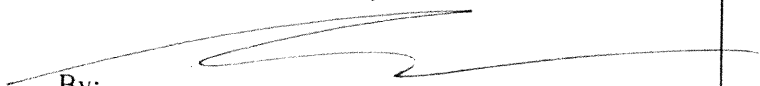
THE LAW OFFICE OF SCOTT E. WHEELER

Dated: _____

By: _____
Scott E. Wheeler

THE WAND LAW FIRM, P.C.

Dated: 3/15/2023

By: 
Aubry Wand

Attorneys for Plaintiff and the Putative Class

ALVARADOSMITH, A.P.C.

Dated: _____

By: _____
Jonathan M. Werner
Jacob M. Clark

Attorneys for Defendant BPS Tactical, Inc.

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APPROVED AS TO FORM ONLY:

THE LAW OFFICE OF SCOTT E. WHEELER

Dated: _____

By: _____
Scott E. Wheeler

THE WAND LAW FIRM, P.C.

Dated: _____

By: _____
Aubry Wand

Attorneys for Plaintiff and the Putative Class

ALVARADOSMITH, A.P.C.

Dated: April 13, 2023

By: 
Jonathan M. Werner
Jacob M. Clark

Attorneys for Defendant BPS Tactical, Inc.

Exhibit 1

CLASS NOTICE

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

Why should you read this Notice?

A proposed settlement (the "Settlement") has been reached in the class action lawsuit entitled *Santizo v. BPS Tactical, Inc.*, California Superior Court, County of San Bernardino, Case No. CIVDS 2018001 (the "Action").

According to Defendant's records, you have been identified as a member of the Class, and therefore are receiving this Notice.

Your options are further explained in this Notice. To exclude yourself from, or object to the Settlement, you must take action by certain deadlines. If you want to participate in the Settlement as proposed, you don't need to do anything to obtain your share of the settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	If you do nothing, you will be considered part of the Settlement Class and will receive settlement benefits. You will also give up your rights to pursue a separate legal action against BPS Tactical, Inc. ("Defendant"), for the claims released under the Settlement.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS	If you do not wish to participate in the Settlement, you may exclude yourself by submitting a written request to be excluded. However, if you do so, you will not receive any payment under the Settlement.
OBJECT	To object to the Settlement, you may object orally at the Final Approval Hearing, or you may write to the Settlement Administrator about why you don't like the Settlement. This option is available only if you do not exclude yourself from the Settlement.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following Class:

All non-exempt employees of Defendant who performed work in California from August 27, 2016 to _____.

According to Defendant's records, you are a member of the Class (a "Class Member").

[Insert if applicable] Also, according to Defendant's records, you performed work in California from June 25, 2019 to _____, and are therefore a PAGA Employee as well.

What is this case about?

In the Action, Plaintiff alleges on behalf of herself and the Class the following claims against Defendant: (a) failure to prove meal periods; (b) failure to provide rest breaks; (c) failure to overtime wages; (d) failure to pay timely wages; (e) failure to pay all wages owed and due upon termination; (f) failure to maintain required records; (g) failure to furnish accurate itemized wage statements; (h) failure to provide notice of employer-related information required under California Labor Code § 2810.5; (i) violation of the California Unfair Competition Law; and (j) and violation of the California Private Attorneys' General Act ("PAGA").

Defendant denies any and all wrongdoing, and maintains that it has complied with all laws alleged to have been violated in the Operative Complaint. Defendant notes that this Settlement was established

specifically to avoid the cost of proceeding with litigation and does not constitute an admission of liability by Defendant. The Court has not ruled on the merits of Plaintiff's claims or Defendant's defenses, however, the Court has granted preliminary approval of this Settlement.

This Settlement is a compromise reached after good faith, arm's length negotiations between Plaintiff and Defendant (the "Parties"), through their attorneys and a mediator. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair, adequate and reasonable. Plaintiff and Class Counsel believe this Settlement is in the best interests of the Class.

Who are the attorneys representing the Class in this Lawsuit?

THE LAW OFFICE OF SCOTT E. WHEELER

Scott E. Wheeler
250 West First Street, Ste. 216
Claremont, CA 91711
Telephone: (909) 621-4988

THE WAND LAW FIRM, P.C.

Aubry Wand
100 Oceangate, Ste. 1200
Long Beach, CA 90802
Telephone: (310) 590-4503

What will I receive under the Settlement?

Subject to final Court approval, Defendant will pay \$110,000 (the "Gross Settlement Amount"). It is estimated that, subject to Court approval, after deducting the attorney's fees and costs, a service award to Plaintiff, payment to the California Labor and Workforce Development Agency ("LWDA") and PAGA Employees for PAGA penalties, and settlement administration costs from Gross Settlement Amount, there will be a Net Settlement Amount of at least \$44,333.33.

From this Net Settlement Amount, Individual Settlement Payments will be paid to each Class Member who does not opt out of the Settlement Class ("Settlement Class Member"). The Net Settlement Amount shall be divided among all Settlement Class Members based on the ratio of the number of Compensable Workweeks worked by each Settlement Class Member to the total number of Workweeks worked by all Settlement Class Members, calculated based on Defendant's records.

According to Defendant's records, during the period of August 27, 2016 to _____, you worked _____ Compensable Workweeks in California as a non-exempt employee, and therefore, your settlement payment as a Class Member is estimated to be \$ _____. Your settlement payment is only an estimate. Your actual settlement payment may be higher or lower than estimated.

If you wish to dispute the number of Compensable Workweeks credited to you, you must submit a written dispute to the Settlement Administrator at _____ by mail, postmarked no later than [Response Deadline], or by e-mail to _____. The dispute must: (a) contain your full name, current address, telephone number, the last four digits of your Social Security number or full employee ID number; (b) contain the case name and case number; (c) contain a clear statement explaining that you wish to dispute the number of Compensable Workweeks and the basis for your dispute; and (d) and be signed by you. You may also wish to attach any documentation in support of your dispute.

[Insert if applicable]: According to Defendant's records, during the period of June 25, 2019 to _____, you worked _____ PAGA Workweeks in California as a non-exempt employee, and therefore, your settlement payment as a PAGA Employee is estimated to be \$ _____. Your settlement payment is only an estimate. Your actual settlement payment may be higher or lower than estimated.

When and how will I receive payment?

If the Court grants final approval of the Settlement, and only after the Effective Date of the Settlement defined below, the Settlement Administrator will send you a settlement check(s). The settlement approval process takes time so please be patient.

Any settlement payment check(s) mailed to you under the Settlement shall remain negotiable for 120 days. If you do not negotiate (e.g., cash or deposit) a settlement check within this time period, you will be unable to receive those funds, but you will remain bound by the terms of the Settlement. Any funds that are not timely negotiated by Settlement Class Members will be paid to Legal Aid at Work, a 501(c)(3) organization that is dedicated to protecting the rights of low-income people and workers throughout California.

Checks to Settlement Class Members for Individual Settlement Payments are allocated as follows: (a) 80% shall represent payment of all penalties and interest, and will not be subject to withholding of local, state, and federal taxes, and if required, the Settlement Administrator will issue an IRS Form 1099 in relation to this payment; and (b) 20% shall represent payment for wages, which shall be subject to the withholding of all applicable local, state, and federal taxes, and which will be deducted from the amount paid to Settlement Class Members, as reflected in a W-2 Form the Settlement Administrator will issue in relation to this payment.

Checks to PAGA Employees for Individual PAGA Payments are allocated as 100% penalties, and will not be subject to withholding of local, state, and federal taxes, and if required, the Settlement Administrator will issue an IRS Form 1099 in relation to this payment.

None of the Parties or attorneys make any representations concerning the tax implications of these payments. Settlement Class Members and/or PAGA Employees may wish to consult with their own tax advisors.

How will the lawyers be paid and how will other funds under the Settlement be distributed?

Class Counsel will ask the Court to award attorneys' fees up to \$36,666.67 (1/3 of the Gross Settlement Amount) and reimbursement of reasonable litigation costs of up to \$10,000. In addition, Class Counsel will ask the Court to authorize Class Representative Service Award payment of up to \$5,000 to Plaintiff for her efforts in representing the Class. The cost of administering the Settlement will not exceed \$4,000. A payment in the amount of \$7,500 will also be made to the LWDA for its share of PAGA penalties, while \$2,500 will be paid to PAGA Employees. Any of these amounts not awarded by the Court will be included in the Net Settlement Amount and will be distributed to Settlement Class Members.

What claims are being released by the proposed Settlement?

As of the date that the Gross Settlement Amount is fully-funded by Defendant, and in exchange for the consideration provided under this Settlement, Settlement Class Members shall fully and finally release and discharge Released Parties, from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action, pleaded or that could have been pleaded based on facts and claims asserted in the Operative Complaint, including any and all claims for: (a) failure to prove meal periods; (b) failure to provide rest breaks; (c) failure to overtime wages; (d) failure to pay timely wages; (e) failure to pay all wages owed and due upon termination; (f) failure to maintain required records; (g) failure to furnish accurate itemized wage statements; and (h) violation of California Business & Professions Code § 17200, *et seq.* This release shall apply to all claims arising at any point during the Class Period.

As of the date that the Gross Settlement Amount is fully-funded by Defendant, PAGA Employees shall fully and finally release and discharge Released Parties, from any and all claims for civil penalties under the Private Attorneys' General Act, California Labor Code § 2699, *et seq.* ("PAGA"), predicated on any of the violations of the California Labor Code and applicable IWC Wage Order pleaded or that could have been pleaded based on facts and claims asserted in the Operative Complaint, including claims for: (a) failure to prove meal periods; (b) failure to provide rest breaks; (c) failure to overtime wages; (d) failure to pay timely wages; (e) failure to pay all wages owed and due upon termination; (f) failure to maintain required records; (g) failure to furnish accurate itemized wage statements; and (h) failure to provide notice of employer-related information required under California Labor Code § 2810.5. This release shall apply to all claims arising at any point during the PAGA Period.

Released Parties are Defendant and its predecessors, successors, subsidiaries, parent companies, other corporate affiliates, owners and assigns, and all of their officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting by, through, under or in concert with any of them.

The Effective Date is the latter of: (a) if there is no Objection to the Settlement, or if there is an Objection but it is withdrawn, then, the date that the Final Approval Order and Judgment is entered by the Court; (b) if there is an Objection to the Settlement that is not withdrawn, but no appeal is commenced thereafter, then, sixty-five (65) calendar days following the date that the Final Approval Order and Judgment is entered by the Court; or (c) if there is an Objection to the Settlement, that is not withdrawn, and any appeal, writ, or other appellate proceeding opposing the Settlement has been filed within sixty-five (65) calendar days following the date that the Final Approval Order and Judgment is entered by the Court, then, when any such appeal, writ, or other appellate proceeding opposing the validity of the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief.

What are my options as a Class Member?

You have several options as a Class Member under this Settlement. You may: (A) remain in the Class and receive payment under the Settlement; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement.

OPTION A. Remain in the Class. If you remain in the Class, you will receive payment and be represented by Class Counsel. If you wish to remain in the Class and be eligible to receive a payment under the Settlement, you do *not* need to take any action. By remaining in the Class and receiving settlement monies, you consent to the release of the Released Claims as described above.

OPTION B. If You Do Not Want To Be Bound By The Settlement. If you do not want to be part of the Settlement, you must mail a Request for Exclusion to the Settlement Administrator at _____ or e-mail a Request for Exclusion to _____. Your Request for Exclusion must: (a) contain your full name, address, and telephone number, the last four digits of your social security number; (b) contain the case name and case number; (d) a clear statement you are electing to be excluded from the Settlement; and (e) be signed by you. In order to be timely, your Request for Exclusion must be postmarked, or e-mailed, on or before _____. If you do not submit a valid and timely Request for Exclusion, your Request for Exclusion will be rejected, you will be deemed a member of the Settlement Class, and you will be bound by the release of Released Claims as described above. If you submit a valid and timely Request for Exclusion, you will *not* be entitled to any payment as a Class Member from the Net Settlement Amount but you will preserve all of the legal claims asserted in this Action against Defendant. If you are a PAGA Employee, you will still receive a PAGA payment and be subject to the PAGA release outlined above.

Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable or adequate in any way, you may object to it. To object, you can appear at the Final Approval Hearing and make an oral objection. If you wish to object in writing, you must mail to the Settlement Administrator at _____, a written statement of objection, or e-mail the written objection to _____. The written objection must: (a) contain your full name, address, and telephone number, the last four digits of your social security number; (b) contain the case name and case number; (c) the dates of your employment with Defendant; (d) state whether you intend to appear at the final approval hearing; (e) state the basis for the Objection, including any legal briefs, papers or memoranda in support of the Objection; and (f) be signed by you. In order to be timely, the written objection must be postmarked, or e-mailed, on or before _____. Class Counsel will provide the Court with your written objection prior to the Final Approval Hearing. You can also hire an attorney at your own expense to represent you in your objection.

You cannot object to the Settlement if you request exclusion from the Settlement.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement and the plan of distribution of the payments described herein, on _____ in Department S-26 of the San Bernardino County Superior Court, located at 247 W 3rd St, San Bernardino, CA 92415. The final approval hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing in order to receive payment under the Settlement.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. For more complete information, the pleadings and other records in this litigation may be examined during regular court hours at the San Bernardino Superior Court, Civil Justice Center, located at 247 W 3rd St, San Bernardino, CA 92415, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. You can also visit the settlement website located at: _____ for more information, including a copy of the Settlement Agreement.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE

Exhibit 2

1 **LAW OFFICE OF SCOTT ERNEST WHEELER**

2 Scott Ernest Wheeler (SBN 187998)
3 250 West First Street, Suite 216
4 Claremont, California 91711
5 Telephone: (909) 621-4988
6 Facsimile: (909) 621-4622
7 Email: sew@scottwheelerlawoffice.com

8 **THE WAND LAW FIRM, P.C.**

9 Aubry Wand (SBN 281207)
10 100 Oceangate, Suite 1200
11 Long Beach, California 90802
12 Telephone: (310) 590-4503
13 Email: awand@wandlawfirm.com

14 *Attorneys for Plaintiff and the Putative Class*

15
16
17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF SAN BERNARDINO**
19

20 CARMEN J. SANTIZO, individually, and on
21 behalf of all others similarly situated,

22 Plaintiff,

23 v.

24 BPS TACTICAL, INC., a California
25 corporation; and DOES 1 through 50,
26 inclusive,

27 Defendants.
28

CASE NO.: CIVDS 2018001

FIRST AMENDED COMPLAINT
CLASS ACTION

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Timely Wages
5. Failure to Pay All Wages Due to Discharged and Quitting Employees
6. Failure to Maintain Required Records
7. Failure to Furnish Accurate Itemized Statements
8. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

9. Penalties Under the Private Attorneys General Act

DEMAND FOR JURY TRIAL

[illegible]

1. At all relevant times herein, Defendant has implemented policies and practices that have resulted in systematic violations of California's wage and hour laws. Defendant engages in these unlawful practices to maximize profits.

3. For example, Defendant has implemented unlawful policies with respect to meal and rest breaks. Defendant requires its non-exempt employees to routinely work through meal and rest breaks while failing to pay them the legally-required premium pay for these missed and non-complaint meal and rest breaks. In addition, Defendant does not maintain accurate records relating to the hours worked by Plaintiff and the other aggrieved employees.

4. Plaintiff seeks declaratory, compensatory and other statutorily available relief for herself and a Class of all current and former non-exempt employees of Defendant during the applicable statute of limitations period to compensate these workers for the wages Defendant has stolen from them and to protect current and future workers from being subjected to similar unlawful working conditions perpetrated by Defendant.

5. The Superior Court of the State of California has jurisdiction in this matter because Plaintiff is a resident and citizen of California, and Defendant is a California corporation that is qualified to do business in California and regularly conducts business in California. All putative

class members and aggrieved employees are also residents of California. No federal question is at issue because Plaintiff's claims are based solely on California law.

6. Venue is proper in this judicial district and the County of San Bernardino because Plaintiff, and other persons similarly situated, performed work for Defendant in the County of San Bernardino, Defendant runs its business through its corporate office and its towing facility is located in the County of San Bernardino, and Defendant's unlawful payroll policies and practices, which are the subject of this action were applied to Plaintiff, and other persons similarly situated, in the County of San Bernardino. Defendant's corporate office is located in Redlands, California which is located in the County of San Bernardino

THE PARTIES

7. Plaintiff is a resident and citizen of the State of California and a former employee of Defendant. Plaintiff was employed by Defendant as a seamstress and assembler, a non-exempt position, during the time period of February 2019 to May 2020.

8. Defendant, which does business as BPS Tactical, manufactures Law Enforcement products with an emphasis on custom manufacturing of Tactical Equipment and Nylon Duty Gear, and at all times relevant herein was, a California corporation authorized to conduct business in the state of California.

9. The true names and capacities of DOES 1 through 50, inclusive, are unknown to Plaintiff at this time, and Plaintiff therefore sues such DOE defendants under fictitious names. Upon information and belief, each Defendant designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and Plaintiff and Class members' injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and capacities of such DOE defendants when ascertained.

10. As a direct and proximate result of the unlawful actions of Defendant, Plaintiff and Class members have suffered, and continue to suffer, from loss of earnings in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

1 **CLASS ACTION ALLEGATIONS**

2 11. Plaintiff brings this action on behalf of herself and the following similarly situated
3 Class of individuals ("Class members"):

4 All non-exempt employees of Defendant who performed work for Defendant in California
5 at any time during the statute of limitations period.

6 12. Plaintiff reserves the right to name additional Class representatives as may be
7 necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of
8 the proposed Class and/or add subclasses before the Court determines whether certification is
9 appropriate

10 13. This action is appropriately suited for a class action because:

11 A. The proposed Class is a significant number rendering joinder of all current and
12 former non-exempt employees individually impractical.

13 B. This action involves common questions of law and fact to the proposed Class
14 because the action focuses on the Defendant's systematic course of illegal payroll practices and
15 policies, which was applied to all non-exempt employees in uniform violation of the California
16 Labor Code, IWC Wage Orders, and the California Business and Professions Code, which
17 prohibits unfair business practices arising from such violations. Here are a few common questions
18 of law and fact that can be answered on a classwide basis:

- 19 • Whether Defendant failed to provide non-exempt employees with legally
20 compliant meal periods and rest breaks;
- 21 • Whether Defendant failed to pay overtime to non-exempt employees in
22 compliance with California law;
- 23 • Whether Defendant failed to timely pay wages to non-exempt employees in
24 compliance with California law;
- 25 • Whether Defendant failed to maintain required records and accurate wage
26 statements for non-exempt employees; and
- 27 • Whether Defendant engaged in unfair and/or unlawful business practices.
- 28

1 C. Plaintiff's claims are typical of the proposed Class because Defendant subjected all
2 of its non-exempt employees to the similar and overlapping violations of the California Labor
3 Code, the applicable IWC wage order, and the California Business and Professions Code.

4 D. Plaintiff is able to fairly and adequately protect the interests of all members of the
5 proposed Class because it is in her best interests to prosecute the claims alleged herein to obtain
6 full compensation due to the proposed Class for all services rendered and hours worked. Plaintiff
7 has also retained counsel that is experienced in wage and hour class action litigation.

8 **FIRST CAUSE OF ACTION**

9 **Failure to Provide Required Meal Periods**

10 **[Cal. Lab. Code §§ 226.7, 510, 512, 1194; IWC Wage Order No. 7-2001, § 11]**

11 **(On Behalf of Plaintiff and the Class Against all Defendants)**

12 14. Plaintiff incorporates herein by specific reference, as though fully set forth, the
13 allegations in paragraphs 1 through 13.

14 15. Defendant has implemented several policies and practices that have caused Plaintiff
15 and Class members to systematically miss and otherwise take non-compliant meal periods.
16 Defendant implements a skeletal staffing policy such that Plaintiff and Class members are given
17 so much work to complete that they regularly miss or take non-compliant meal periods. As a direct
18 consequence of these policies and practices, Plaintiff and Class members have so much work to
19 complete within their scheduled shifts that they are forced to skip their meal periods altogether, to
20 take them after working longer than five (5) hours, to perform work during their meal periods, or
21 return to work after taking less than a thirty (30) minute meal period.

22 16. Further, Defendant's policy is to not inform Plaintiff and Class members that they
23 are able to take meal periods before the fifth hour of work. This policy, combined with an
24 unreasonable workload, results in systematic late meal periods taken by Plaintiff and Class
25 members.

26 17. Defendant also has no policy to provide second meal periods when Plaintiff and Class
27 members work shifts longer than ten hours. This is in direct contravention of California law. *See*
28 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041 ("We conclude that,

absent waiver, section 512 requires a first meal period no later than the end of an employee's fifth hour of work, and a second meal period no later than the end of an employee's 10th hour of work."

18. Defendant has also violated California Labor Code §§ 226.7, IWC Wage Order No. 7-2001, § 11, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by failing to compensate Plaintiff and Class members who were not authorized and permitted to take a complete, timely, uninterrupted meal period, in accordance with the applicable wage order, one additional hour of compensation at the proper regular rate of pay for each workday that such a meal period was not authorized or permitted.

19. Defendant further violated California Labor Code sections 226.7, 510, 1194, and IWC Wage Order No. 7-2001 by failing to compensate Plaintiff and Class members for all hours worked during their meal periods.

20. As a proximate result of the aforementioned violations, Plaintiff and Class members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses, and costs of suit.

SECOND CAUSE OF ACTION

Failure to Provide Required Rest Breaks

[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 7-2001, § 12]

(On Behalf of Plaintiff and the Class Against all Defendants)

21. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 20.

22. At all times relevant herein, as part of Defendant's illegal policies and practices to deprive its non-exempt employees of all wages earned and due, Defendant failed to permit Plaintiff and Class members to take rest breaks as required under California Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Wage Order.

23. As with meal periods, Defendant's policies and practices caused Plaintiff and Class members to miss or otherwise take non-compliant rest periods by, among other things, giving them unreasonable amounts of work that had to be completed within their shift, and relatedly, engaging in gross understaffing and setting unrealistic project goals, such that rest periods as a

1 practical matter could not be taken. For example, Plaintiff would be so busy with a project that he
2 could not complete within the deadlines set by Defendant without skipping his rest breaks.

3 24. Defendant further violated California Labor Code § 226.7, IWC Wage Order No. 7-
4 2001, § 12, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*,
5 by failing to pay Plaintiff and Class members who were not provided with a rest break, in
6 accordance with the applicable wage order, one additional hour of compensation at the proper
7 regular rate of pay for each workday that a rest break was not provided.

8 25. As a proximate result of the aforementioned violations, Plaintiff and Class
9 members have been damaged in an amount according to proof at trial, and seek all wages earned
10 and due, interest, penalties, expenses, and costs of suit.

11 **THIRD CAUSE OF ACTION**

12 **Failure to Pay Overtime Wages**

13 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 7-2001, § 3]**

14 **(On Behalf of Plaintiff and the Class against all Defendants)**

15 26. Plaintiff incorporates herein by specific reference, as though fully set forth, the
16 allegations in paragraphs 1 through 25.

17 27. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 7-
18 2001, § 3, Defendant is required to compensate Plaintiff and Class members for all overtime,
19 which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in
20 excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours
21 on the seventh consecutive workday, with double time for all hours worked in excess of twelve
22 (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
23 consecutive day of work in any workweek.

24 28. Plaintiff and Class members are current and former non-exempt employees entitled
25 to the protections of California Labor Code §§ 510, 1194, and IWC Wage Order No. 7-2001.
26 During the Class period, Defendant failed to compensate Plaintiff and Class members for all
27 overtime hours worked as required under the foregoing provisions of the California Labor Code
28 and IWC Wage Order by, among other methods, requiring, permitting or suffering Plaintiff and

1 other Class members to work off-the-clock, and to work through meal periods and rest breaks, but
2 not compensating them for this time, and other methods to be discovered.

3 29. Defendant's conduct described herein violates California Labor Code §§ 510, 1194,
4 1198 and IWC Wage Order No. 7-2001, § 3. Therefore, pursuant to California Labor Code §§
5 200, 203, 226, 558, 1194, and other applicable provisions under the California Labor Code and
6 IWC Wage Orders, Plaintiff and Class members are entitled to recover the unpaid balance of
7 wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of
8 suit.

9 **FOURTH CAUSE OF ACTION**

10 **Failure to Pay Timely Wages**

11 **[Cal. Lab. Code §§ 204, 210]**

12 **(On Behalf of Plaintiff and the Class against All Defendants)**

13 30. Plaintiff incorporates herein by specific reference, as though fully set forth, the
14 allegations in paragraphs 1 through 29.

15 31. California Labor Code § 204 provides that all wages earned by any person in any
16 employment between the 1st and 15th days, inclusive, of any calendar month, other than those
17 wages due upon termination of an employee, are due and payable between the 16th and 26th day
18 of the month during which the labor was performed. California Labor Code § 204 further
19 provides that all wages earned by any person in any employment between the 16th and the last
20 day, inclusive, of any calendar month, other than those wages due upon termination of an
21 employee, are due and payable between the 1st and the 10th day of the following month.
22 California Labor Code § 204 further provides that all wages eared for labor in excess of the
23 normal work period shall be paid no later than the payday for the next regular payroll period.

24 32. During the statute of limitations period, Defendant, among other things, willfully
25 failed to pay Plaintiff and Class members all wages earned and due to them, including but not
26 limited to, meal and rest break premiums, and overtime wages, within any time period permissible
27 under California Labor Code § 204.

33. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and Class members are entitled to all available statutory penalties, including but not limited to, civil penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 2699(a), and other applicable provisions under the California Labor Code and IWC Wage Orders, and an award of costs, expenses, and reasonable attorneys' fees.

FIFTH CAUSE OF ACTION

Failure to Pay All Wages Due to Discharged and Quitting Employees

[Cal. Lab. Code §§ 201, 202, 203]

(On Behalf of Plaintiff and the Class against all Defendants)

34. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 33.

35. Pursuant to California Labor Code §§ 201, 202, and 203, Defendant is required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

36. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay all accrued wages due to an employee no later than seventy-two (72) hours after the employee quits his or her employment, unless the employee provided seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

37. California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to thirty (30) workdays.

38. During the statute of limitations period, Defendant has willfully failed to pay accrued wages and other compensation to Plaintiff and Class members in accordance with California Labor Code §§ 201 and 202. Defendant does not have a sufficient policy to provide Plaintiff and Class members with their final paychecks within the timeframes required under

1 California law. In addition, because Defendant has failed and continues to fail to properly
2 compensate Plaintiff and Class members for all hours worked when due, overtime wages,
3 minimum wages, and compensation for non-compliant meal and rest breaks, Defendant has also
4 willfully failed and continues to fail to pay accrued wages and other compensation to Plaintiff and
5 Class members in accordance with California Labor Code §§ 201 and 202. Moreover, Defendant
6 fails to pay Class members employed on a temporary basis weekly in accordance with Labor Code
7 §201.3.

8 39. As a result, Plaintiff and Class members are entitled to all available statutory
9 penalties, including the waiting time penalties provided in California Labor Code § 203, together
10 with interest thereon, as well as other available remedies.

11 40. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
12 Class members have been deprived of compensation in an amount according to proof at the time
13 of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of such amounts,
14 plus interest thereon, and attorneys' fees and costs, pursuant to California Labor Code § 1194.

15
16 **SIXTH CAUSE OF ACTION**

17 **Failure to Maintain Required Records**

18 **[Cal. Lab. Code §§ 226, 1174; IWC Wage Order No. 7-2001, § 7]**

19 **(On Behalf of Plaintiff and the Class against all Defendants)**

20 41. Plaintiff incorporates herein by specific reference, as though fully set forth, the
21 allegations in paragraphs 1 through 40.

22 42. During the statute of limitations period, as part of Defendant's illegal payroll
23 policies and practices to deprive Plaintiff and Class members of all wages earned and due,
24 Defendant knowingly and intentionally failed to maintain records as required under California
25 Labor Code §§ 226, 1174, and IWC Wage Order No. 7-2001, § 7, including but not limited to, the
26 following records: total daily hours worked by each non-exempt employee; applicable rates of
27 pay; all deductions; meal periods; time records showing when each non-exempt employee begins
28 and ends each workday; and accurate itemized wage statements.

43. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and Class members have been damaged in an amount according to proof at trial, and are entitled to all wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all available statutory penalties, including but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as well as other available remedies.

SEVENTH CAUSE OF ACTION

Failure to Furnish Accurate Itemized Wage Statements

[Cal. Lab. Code §§ 226; IWC Wage Order No. 7-2001, § 7]

(On Behalf of Plaintiff and the Class against all Defendants)

44. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 43.

45. During the statute of limitations period, Defendant has routinely failed to provide Plaintiff and other Class members with timely and accurate itemized wage statements. Defendant's pay stubs violate California Labor Code § 226 on their face by, among other things, by not including the legal name and address of Defendant and not providing Plaintiff and other Class members with proper meal periods and rest breaks but intentionally failing to include in their wage statements one (1) additional hour of compensation at their regular rates of pay for each non-compliant meal period or rest break.

46. In order to conceal its wage theft, Defendant knowingly and intentionally failed to provide Plaintiff and other Class members with timely and accurate itemized wage statements in accordance with Labor Code § 226(a) IWC Wage Order No. 7-2001 § 7 and all other applicable IWC Wage Orders.

47. Plaintiff and other Class members suffered injury as a result of Defendant's failure to provide timely and accurate itemized wage statements because it prevented them from discovering the scope and extent of Defendant's violations of California wage and hour laws, prevented them from being able to determine the gross wages earned, the total hours worked, all

1 deductions made, the net wages earned, all applicable hourly rates in effect during each pay period
2 and the corresponding number of hours worked at each hourly rate, or even the name of the legal
3 entity that employed them.

4 48. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
5 Class members have been damaged in an amount according to proof at trial, and seek all wages
6 earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all
7 available penalties, including but not limited to penalties pursuant to California Labor Code §§
8 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees,
9 including but not limited to those provided in California Labor Code § 226(e), as well as other
10 available remedies.

11 **EIGHTH CAUSE OF ACTION**

12 **Unfair and Unlawful Business Practices**

13 **[Cal. Bus. & Prof. Code § 17200, *et. seq.*]**

14 **(On Behalf of Plaintiff and the Class against all Defendants)**

15 49. Plaintiff incorporates herein by specific reference, as though fully set forth, the
16 allegations in paragraphs 1 through 48.

17 50. Each and every one of Defendant's acts and omissions in violation of the California
18 Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to,
19 Defendant's failure to provide required meal and rest breaks, failure to pay proper overtime and
20 minimum wage compensation, unlawful rounding and requiring off-the-clock work, failure to pay
21 all wages due to discharged or quitting employees or to pay timely wages, and failure to furnish
22 accurate itemized wage statements or to maintain required records, constitute an unfair and
23 unlawful business practice under California Business and Professions Code § 17200 *et seq.*

24 51. Defendant's violations of California wage and hour laws constitute a business
25 practice because Defendant's aforementioned acts and omissions were done repeatedly over a
26 significant period of time, and in a systematic manner, to the detriment of Plaintiff and Class
27 members.

52. Among other practices, Defendant has avoided payment of wages, overtime wages, the provision of meal and rest breaks, and other benefits as required by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage Order. Further, Defendant has failed to record, report, and pay the correct sums of assessment to the state authorities under the California Labor Code and other applicable regulations.

53. As a result of these unfair and unlawful business practices, Defendant has reaped unfair and illegal profits during the Class period at the expense of Plaintiff and Class members, and members of the public. Defendant should be made to disgorge its ill-gotten gains and to restore them to Plaintiff and Class members.

54. Defendant's unfair and unlawful business practices entitle Plaintiff and Class members to seek preliminary and permanent injunctive relief, including but not limited to orders that Defendant account for, disgorge, and restore to Plaintiff and Class members the wages and other compensation unlawfully withheld from them. Plaintiff and Class members are entitled to restitution of all monies to be disgorged from Defendant in an amount according to proof at the time of trial.

NINTH CAUSE OF ACTION

Representative Action for Civil Penalties Pursuant to the Private Attorneys

General Act (“PAGA”)

[Cal. Lab. Code §§ 2698- 2699.5]

(On Behalf of Plaintiff and all Other Aggrieved Employees against all Defendants)

55. Plaintiff incorporates herein by specific reference as though fully set forth the allegations in paragraphs 1 through 54, with exception of the allegations in Paragraphs 11 through 13(A) – (D).

56. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code § 2699(c), and is a proper representative to bring a civil action on behalf of herself and other current and former non-exempt employees of Defendant pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff was employed by Defendant and the alleged violations of the California Labor Code were committed against Plaintiff.

1 57. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"),
2 California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not
3 limited to penalties under California Labor Code § 2699, in a representative action for the
4 violations set forth above, including but not limited to violations of California Labor Code §§ 201,
5 202, 203, 226, 226.7, 510, 512, 1174, 1194, and 1198.

6 58. In addition to the foregoing violations of the California Labor Code and IWC Wage
7 Order, Defendant also failed to comply with California Labor Code § 2810.5. California Labor Code
8 § 2810.5 requires employers to provide notice to employees of their rate(s) of pay, designated pay
9 day, the employer's intent to claim allowances (meal or lodging allowances) as part of the minimum
10 wage, and the basis of wage payment (whether paying by hour, shift, day, week, piece, etc.),
11 including any applicable rates for overtime. The law requires that the notice contain the employer's
12 "doing business as" names, and that it be provided at the time of hiring and within 7 days of a change
13 if the change is not listed on the employee's pay stub for the following pay period. The notice must
14 be provided in the language the employer normally uses to communicate employment-related
15 information to the employee, through translated notices provided by the Department of Labor.

16 59. Defendant failed to comply with California Labor Code § 2810.5 by simply not
17 providing the required notice to Plaintiff and other employees at any time during their employment.

18 60. On June 15, 2020, Plaintiff gave written notice by certified mail, pursuant to
19 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency
20 ("LWDA") and Defendant, of the specific provisions of the California Labor Code and IWC Wage
21 Order alleged to have been violated, including the facts and theories to support the alleged
22 violations. As of the date of this filing, Plaintiff has not received any response from the LWDA.
23 As Plaintiff has waited more than sixty-five (65) days from the postmark date of his written notice
24 before filing this action, Plaintiff has complied with all of the requirements set forth in California
25 Labor Code § 2699.3 to commence a representative action under PAGA.

26 ///

27 ///

28 ///

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff, individually and on behalf of all other persons similarly
3 situated, respectfully prays for relief against Defendant and DOES 1 through 50, inclusive, and
4 each of them, as follows:

- 5 1. For compensatory damages in an amount to be ascertained at trial;
 - 6 2. For restitution of all monies due to Plaintiff and Class members, as well as
7 disgorged profits from the unfair and unlawful business practices of Defendant;
 - 8 3. For meal and rest break compensation pursuant to California Labor Code § 226.7
9 and IWC Wage Order No. 7-2001;
 - 10 4. For liquidated damages pursuant to California Labor Code § 1194.2;
 - 11 5. For preliminary and permanent injunctive relief enjoining Defendant from violating
12 the relevant provisions of the California Labor Code and the IWC Wager Orders, and from
13 engaging in the unlawful business practices complained of herein;
 - 14 6. For waiting time penalties pursuant to California Labor Code § 203;
 - 15 7. For civil penalties under the PAGA according to proof;
 - 16 8. For interest on the unpaid wages at 10 percent per annum pursuant to California
17 Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other
18 applicable provision providing for pre-judgment interest;
 - 19 9. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 226,
20 1194, and 2699, and California Civil Code § 1021.5, and/or any other applicable provisions
21 providing for attorneys' fees and costs;
 - 22 10. For declaratory relief;
 - 23 11. For an order requiring and certifying the First through Eighth Causes of Action as a
24 class action;
 - 25 12. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as
26 Class counsel; and
 - 27 13. For such further relief that the Court may deem just and proper.
- 28

Exhibit 3

1 **LAW OFFICE OF SCOTT E. WHEELER**

2 Scott. E. Wheeler (SBN 187998)
3 250 West First Street, Suite 216
4 Claremont, CA 91711
5 Telephone: (909) 621-4988
6 Email: sew@scottwheelerlawoffice.com

7 **THE WAND LAW FIRM, P.C.**

8 Aubry Wand (SBN 281207)
9 100 Oceangate, Suite 1200
10 Long Beach, CA 90802
11 Telephone: (310) 590-4503
12 Email: awand@wandlawfirm.com

13 *Attorneys for Plaintiff and the Putative Class*

14
15
16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF SAN BERNARDINO**
18

19 CARMEN J. SANTIZO, individually, and on
20 behalf of all other aggrieved employees,

21 Plaintiff,

22 v.

23 BPS TACTICAL, INC., a California
24 corporation; and DOES 1 through 50, inclusive,

25 Defendants.

Case No.: CIVDS 2018001

[Hon. David Cohn]

**[PROPOSED] PRELIMINARY APPROVAL
ORDER**

Action Filed: August 27, 2020

Trial Date: None Set

1 **[PROPOSED] PRELIMINARY APPROVAL ORDER**

2 The Court now has before it an unopposed Motion for Preliminary Approval of Class Action
3 Settlement ("Motion"), filed by Plaintiff Carmen J. Santizo ("Plaintiff"). After reviewing the Motion, the
4 Class Action Settlement Agreement and Release ("Settlement Agreement")¹ and exhibits attached
5 thereto, and good cause appearing therefore, the Court hereby finds and orders as follows:

6 1. The Court finds on a preliminary basis that the settlement memorialized in the Settlement
7 Agreement appears to be fair and adequate, and falls within the range of reasonableness, and therefore
8 meets the requirement for preliminary approval.

9 2. The Court conditionally certifies for settlement purposes the following Class:

10 All non-exempt employees of Defendant who performed work for Defendant in California during
11 the Class Period.

12 The Class Period is August 27, 2016 to .

13 3. The Court finds, for settlement purposes, that the Class meets the requirements for
14 certification under California Code of Civil Procedure § 382 in that: (a) the Class is so numerous that
15 joinder is impractical; (b) there are questions of law and fact that are common, or of general interest, to
16 the Class, which predominate over any individual issues; (c) Plaintiff's claims are typical of the claims of
17 the Class; (d) Plaintiff and her counsel will fairly and adequately protect the interests of the Class; and (e)
18 a class action is superior to other available methods for the fair and efficient adjudication of the
19 controversy.

20 4. The Court appoints, for settlement purposes, Plaintiff as Representative for the Class.

21 5. The Court appoints, for settlement purposes, the Law Office of Scott E. Wheeler and the
22 Wand Law Firm, P.C., as Counsel for the Class.

23 6. The Court appoints Phoenix as the Settlement Administrator.

24 7. The Parties are ordered to carry out the Settlement according to the following
25 implementation schedule:

26
27
28 ¹ All capitalized terms have the same meaning as defined in the Settlement Agreement unless otherwise indicated.

Event	Date
Last day for Defendant to provide the Settlement Administrator with the Employee Information	
Last day for Settlement Administrator to mail Class Notice	
Last day for Class Members to submit a dispute re. Workweeks, Request for Exclusion, or written Objection	
Last Day for Plaintiff to file Motion for Final Approval and Motion for Attorneys' Fees and Costs and Class Representative Service Award	
Final Approval Hearing	

8. The Court approves as to form and content the Class Notice (attached as Exhibit 1 to the Settlement Agreement).

9. The Court finds that the method of giving notice to the Class constitutes the best means practicable of providing notice under the circumstances. The Court further finds that the Class Notice and the method of giving notice to the Class meet the requirements of California Code of Civil Procedure § 382, California Rules of Court, Rules 3.766 and 3.769, and due process under the California and United States Constitutions, and other applicable law.

10. At the Final Approval Hearing, the Court will consider, *inter alia*, whether the Settlement should be finally approved as fair, reasonable and adequate, whether a final judgment should be entered in favor of Plaintiffs, and whether the payments provided for under the Settlement, including attorneys' fees and costs and class representative service awards, should be finally approved and granted.

11. Pending the Final Approval Hearing, all proceedings in this Action, other than proceedings necessary to implement the Settlement and this Order, are stayed.

IT IS SO ORDERED.

DATED: _____

Honorable David Cohn
Judge of the Superior Court