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Attorneys for Defendants

STRATEGIC BUILDING SERVICES, INC.

and ANDREW MILLER

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

ESTHER HERNANDEZ and EUGENIA
CATALAN, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

STRATEGIC BUILDING SERVICES, INC., a
California corporation; et al.

Defendant(s).

CASE NO. 21CV377209

Assigned for All Purposes to:
Hon. Theodore C. Zayner
Dept. 19 (Complex Civil Litigation)

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

Action Filed: March 4, 2021
FAC Filed: May 29, 2024

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to section 382 of the California Code of Civil Procedure and Rule 3.769 of the
3 California Rules of Court, that the settlement of the above-captioned action shall be effectuated upon
4 and subject to the following terms and conditions. Capitalized terms used herein shall have the
5 meanings set forth in Section I or as defined elsewhere in this Joint Stipulation of Class Action and
6 PAGA Settlement (the “Settlement” or “Agreement”).

7 This Settlement is made by and between Plaintiffs Esther Hernandez (“Hernandez”) and
8 Eugenia Catalan (“Catalan”) (collectively, “Plaintiffs”) and the Class Members, on the one hand, and
9 Defendants Strategic Building Services, Inc. (“SBS”), and Andrew Miller (“Miller”) (collectively,
10 “Defendants”), on the other hand. Plaintiffs and Defendants are collectively referred to in this
11 Settlement as “the Parties.”

12 The Action shall be, and is, ended, settled, resolved, and concluded pursuant to the terms and
13 conditions of this Settlement and for the consideration set forth herein, including but not limited to,
14 a release of claims by Plaintiffs and the Class Members as set forth herein.

15 **I. DEFINITIONS**

16 Unless otherwise defined herein, the following terms used in this Settlement shall have the
17 meanings ascribed to them as set forth below:

18 A. “Action” means the action filed by Claimant Delmi Menendez in Santa Clara Superior
19 Court on March 4, 2021, captioned *Menendez v. Strategic Building Services, Inc., et al.*, Case No.
20 21CV377209, in which Claimant Menendez relinquished her role as the putative class representative
21 and Plaintiffs have agreed to represent the Class Members in lieu of Claimant Menendez.

22 B. “Class” means all current and former non-exempt employees who worked for
23 Defendant SBS in California at any time during the Class Period.

24 C. “Class Counsel” means the attorneys for the Class and the Class Members, as follows:
25 Justin Daily
26 Reed Aljian
27 Simon Kwak
28 Joanne Kim
DAILY ALJIAN LLP
100 Bayview Circle, Suite 5500
Newport Beach, CA 92660
Telephone: 949.861.2524 / Facsimile: 949.269.6364

1 D. "Class List" means a list, in Excel format, prepared by Defendants based on its
2 business records that identifies each Class Member's full name, last known mailing address, Social
3 Security Number (or other taxpayer identification number), and their dates of employment.

4 E. "Class Member(s)" means all members of the Class.

5 F. "Class Notice" means the Notice of Proposed Class Action Settlement in a form
6 substantially similar to the notice attached hereto as **Exhibit A**, subject to Court approval. An
7 English and Spanish version of the Class Notice will be provided to Class Members.

8 G. "Class Period" means March 4, 2017, through June 30, 2024.

9 H. "Class Released Claims" means the release applicable to Plaintiffs and all
10 Participating Class Members for any and all claims, debts, demands, obligations, penalties, wages,
11 guarantees, costs, expenses, attorney's fees, interest, damages, action or causes of action that are
12 alleged, or that reasonably could have been alleged based on the same facts alleged in the Action or
13 reasonably could have arisen out of the same facts alleged in the Action during the Class Period.
14 The Class Released Claims shall include all claims alleged in Plaintiffs' First Amended Complaint
15 in connection with the Action that arose during the Class Period, including (1) failure to pay wages
16 (including minimum, regular, overtime, and wage premiums), (2) failure to provide compliant meal
17 periods, or compensation and wage premiums in lieu thereof, (3) failure to authorize and permit
18 compliant rest periods, or compensation and wage premiums in lieu thereof, (4) failure to provide
19 accurate itemized wage statements, (5) failure to timely pay all wages during, and upon separation
20 of, employment, (6) failure to reimburse business expenses, and (7) violations of the California
21 Unfair Competition Law.

22 I. "Court" means the Santa Clara County Superior Court, where the Action is pending.

23 J. "Cy Pres Recipient" means the Interdisciplinary Center for Healthy Workplaces, a
24 public nonprofit organization nominated pursuant to California Code of Civil Procedure section 384,
25 Tax ID Number 94-6002123, with the allocation to be given to "UC Regents" and designated to be
26 given to "ICHW".

27 K. "Date of Execution" means the date on which all Parties to this Settlement have
28 signed this Agreement.

1 L. “Defendants” means, collectively, Strategic Building Services, Inc., a California
2 corporation (“SBS”); and Andrew Miller, an individual (“Miller”).

3 M. “Defense Counsel” means counsel for Defendants, who are:

4 Douglas J. Farmer, Esq.

5 Ethan Lai, Esq.

6 **OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.**

7 One Embarcadero Center, Suite 900

8 San Francisco, CA 94111

9 Telephone: (415) 442-4810

10 Facsimile: (415) 442-4870

11 N. “Disposition” means the method by which the Court approves the terms of the
12 Settlement and retains jurisdiction over its enforcement, implementation, construction,
13 administration, and interpretation.

14 O. “Effective Date” means the later of the following: (1) the date the Final Approval
15 Order is signed if no objections are filed to the Settlement; (2) if objections are filed and overruled,
16 and no appeal is taken of the Final Approval Order, sixty-five (65) days after the Final Approval
17 Order is signed; or (3) if an appeal is taken from the Court’s overruling of objections to the
18 Settlement, ten (10) days after the appeal is either withdrawn or after an appellate decision affirming
19 the final approval decision becomes final.

20 P. “Enhancement Awards” means an amount of up to Ten Thousand Dollars and Zero
21 Cents (\$10,000.00) to each Plaintiff (*i.e.*, up to \$20,000.00 total), subject to Court approval.

22 Q. “Final Approval Order” means the final formal court order signed by the Court
23 following the Final Fairness and Approval Hearing in accordance with the terms herein, approving
24 this Settlement.

25 R. “Final Fairness and Approval Hearing” means the hearing before the Court on
26 Plaintiffs’ motion for final approval of the Settlement.

27 S. “Gross Settlement Amount” means Six Hundred Seventy-Five Thousand Dollars and
28 Zero Cents (\$675,000.00) to be paid by Defendant SBS in full satisfaction of all Class Released
Claims arising from the Action, subject to the pro rata increase provisions of Section III(E)(5). All
claims of Participating Class Members and PAGA Group Members, and all administration costs,
attorney’s fees and costs, and Enhancement Awards, pursuant to Section III(E)(8) below, shall be

1 paid from the Gross Settlement Amount. The employer's share of payroll taxes arising from the
2 payments made under this settlement shall be paid by Defendant SBS separate from and in addition
3 to the Gross Settlement Amount. No part of the Gross Settlement Amount shall revert to Defendants.

4 T. "Individual Settlement Payments" means the amounts of money from the Net
5 Settlement Amount and PAGA Group Payment that shall be paid to Participating Class Members
6 and PAGA Group Members. Individual Settlement Payments will include each Participating Class
7 Member's proportional share of the Net Settlement Amount (which shall be determined by the
8 calculations provided in this Settlement) and each PAGA Group Member's proportional share of the
9 PAGA Group Payment.

10 U. "LWDA Payment" means 75% of the Fifty Thousand Dollars and Zero Cents
11 (\$50,000.00) allocated to the settlement of PAGA claims, or Thirty-Seven Thousand Five Hundred
12 Dollars and Zero Cents (\$37,500.00), which will be paid to the Labor and Workforce Development
13 Agency ("LWDA") pursuant to Section III(E)(8)(e) of this Settlement, subject to Court approval.

14 V. "Net Settlement Amount" means the Gross Settlement Amount less Court-approved
15 Settlement Administration Costs, attorney's fees and costs, Enhancement Awards, LWDA Payment,
16 and PAGA Group Payment, pursuant to Section III(E)(8)(a)-(g) below.

17 W. "Non-Participating Class Member(s)" means those Class Members who submit to the
18 Settlement Administrator a valid and timely written request to be excluded from the Class pursuant
19 to Section III(E)(2) below.

20 X. "PAGA Group Members" means all current and former non-exempt employees
21 employed by Defendant SBS in California at any time during the PAGA Period (defined below).

22 Y. "PAGA Group Payment" means 25% of the Fifty Thousand Dollars and Zero Cents
23 (\$50,000.00) allocated to the settlement of PAGA claims, or Twelve Thousand Five Hundred Fifty
24 Dollars and Zero Cents (\$12,500.00), which will be paid to the PAGA Group Members, subject to
25 Court approval.

26 Z. "PAGA Period" means March 4, 2020, through June 30, 2024.

27 AA. "PAGA Released Claims" means any and all claims for civil penalties pursuant to the
28 Private Attorneys General Act of 2004 ("PAGA"), based on the claims alleged in the operative

1 Complaint, and written notices to the LWDA, or that reasonably could have been alleged based on
2 the facts alleged in written notices to the LWDA and in the operative Complaint, which arose during
3 the PAGA Period.

4 BB. “Plaintiffs” means Esther Hernandez and Eugenia Catalan, collectively.

5 CC. “Participating Class Member(s)” means a Class Member who does not timely exclude
6 himself or herself from the Settlement and will therefore automatically be issued his or her share of
7 the Net Settlement Amount without having to submit a claim form.

8 DD. “Preliminary Approval Date” means the date the Court preliminarily approves the
9 Settlement.

10 EE. “Qualifying Workweeks” means the number of weeks that Class Members worked
11 for SBS in hourly, non-exempt positions during the relevant period. With respect to the Class
12 Released Claims and the Individual Settlement Payments to Participating Class Members, the
13 relevant time period is the Class Period. With respect to the PAGA Released Claims and the
14 Individual Settlement Payments to PAGA Group Members, the relevant time period is the PAGA
15 Period.

16 FF. “Request for Exclusion” means a written letter from a Class Member to the Settlement
17 Administrator requesting that the Class Member be excluded from the Settlement. In order to be
18 considered valid, any Request for Exclusion must: (1) contain the name, mailing address, telephone
19 number, and last four digits of Social Security Number of the Class Member requesting to “opt out”
20 or be excluded from the Class; (2) include a statement that the Class Member requests to be excluded
21 from the Class and does not wish to participate in the Settlement; (3) be signed by the Class Member
22 or his/her representative; (4) be returned by mail to the Settlement Administrator at its specified
23 address; and (5) be postmarked within times set forth in Section III(E)(2) below. A PAGA Group
24 Member who submits a timely and valid Request for Exclusion will nonetheless be subject to the
25 release of the PAGA Released Claims, and will nonetheless be entitled to a share of the PAGA Group
26 Payment.

27 GG. “Settlement” or “Agreement” means this Joint Stipulation of Class Action and PAGA
28 Settlement, including the attached Exhibit(s).

1 HH. “Settlement Administrator” means Phoenix Class Action Administration Solutions,
2 the third-party administrator that will be responsible for the administration of the Class Notice,
3 Individual Settlement Payments, and other matters set forth in this Settlement.

4 II. “Settlement Administration Costs” means an amount of up to Fourteen Thousand
5 Five Hundred Dollars and Zero Cents (\$14,500.00), subject to Court approval, for all costs incurred
6 by the Settlement Administrator in the administration of the Settlement, including, but not limited
7 to, mailing of the Class Notice to the Class, translation of the Class Notice, calculation of Individual
8 Settlement Payments, generation of Individual Settlement Payment checks and related tax reporting
9 forms, administration of unclaimed checks, and distribution of checks to Class Counsel for attorneys’
10 fees and costs, to Plaintiffs for their Enhancement Awards, and to the LWDA for the LWDA
11 Payment. The Settlement Administration Costs shall be paid from the Gross Settlement Amount.

12 **II. CONTINGENT NATURE OF THE AGREEMENT**

13 Because the Parties have stipulated to the certification of the Class with respect to all causes
14 of action alleged in the Action for settlement purposes only, this Settlement requires preliminary and
15 final approval by the Court. Accordingly, the Parties enter into this Settlement on a conditional basis.
16 This Settlement is contingent upon the approval and certification by the Court. If the Effective Date
17 does not occur, the fact that the Parties were willing to stipulate for the purposes of this Settlement
18 shall have no bearing on, nor be admissible in connection with, the issue of certification of the Class
19 with respect to all causes of action alleged in the Action. Defendants do not consent to certification
20 of the Class for any purpose other than to effectuate settlement of the Action. If the Effective Date
21 does not occur, or if disposition of this Action is not effectuated, any certification of the Class as to
22 Defendants will be vacated and Plaintiffs, Defendants, and the Class will be returned to their
23 respective positions in the Action as if the Settlement had not been entered into. In the event that the
24 Effective Date does not occur: (a) any Court orders preliminarily or finally approving certification
25 of any class contemplated by this Settlement shall be null, void, and vacated, and shall not be used
26 or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in this
27 Settlement, the fact that Defendants did not oppose the certification of a Class under this Settlement,
28 or that the Court preliminarily approved the certification of the Class, shall not be used or cited

1 thereafter by any person or entity, including in any manner whatsoever, including without limitation
2 any contested proceeding relating to the certification of any class. If the Effective Date does not
3 occur, this Settlement shall be deemed null and void, shall be of no force or effect whatsoever, and
4 shall not be referred to or used for any purpose whatsoever. Defendants expressly reserve the right
5 to challenge the propriety of class certification in the Action for any purpose, if the Effective Date
6 does not occur.

7 The Parties and their respective counsel shall take all steps that may be requested by the Court
8 relating to the approval and implementation of this Settlement and shall otherwise use their respective
9 best efforts to obtain Court approval and implement this Settlement. If the Court does not grant the
10 Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree to meet
11 and confer in good faith to address the Court's concerns. If the Parties are unable to agree upon a
12 resolution, the Parties agree to seek guidance from the Court to resolve the dispute.

13 **III. PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

14 The procedure for obtaining Court approval of and implementing this Settlement shall be as
15 follows:

16 **A. First Amended Complaint and Dismissal Without Prejudice**

17 The Parties agree to jointly request leave of Court, by stipulation, to allow Plaintiffs to file a
18 First Amended Complaint in the Action to amend the original complaint to substitute-in Plaintiffs as
19 the putative class representatives in lieu of Claimant Delmi Menendez, to include a cause of action
20 under PAGA, and to incorporate other amendments to reflect the terms of settlement reached with
21 the assistance of a mediator. The Parties agree that Plaintiffs will supplement the original
22 March 4, 2021 PAGA notice submitted by Claimant Delmi Menendez to identify themselves as
23 additional claimants.

24 Upon entry of an Order granting the filing of the First Amended Complaint and the filing of
25 the same, Defendants will not be required to file an answer or other responsive pleading and no
26 default will be entered against Defendants where no such answer or responsive pleading is filed
27 pending the approval proceedings in relation to this Settlement. Plaintiffs will also request dismissal
28 of Defendant Miller from the Action, without prejudice, and subject to approval by the Court. The

1 Parties agree that the dismissal of Defendant Miller will not prejudice the Class because any release
2 to be provided under this Settlement is conditioned upon Defendant SBS fully funding all amounts
3 due herein.

4 **B. Motion for Conditional Class Certification and Preliminary Approval**

5 Plaintiffs will bring a motion before the Court for an order conditionally certifying the Class
6 to include all claims pled in the Action based on the preliminary approval of this Settlement.

7 **C. The Settlement Administrator**

8 The Parties select Phoenix Class Action Administration Solutions to administer the
9 Settlement and to act as the Settlement Administrator, including but not limited to preparing the
10 English and Spanish versions of the Class Notice, distributing and responding to inquiries about the
11 Class Notice, determining the validity of exclusions/opt-outs, calculating the Net Settlement Amount
12 and the Individual Settlement Payments, issuing the Individual Settlement Payment checks and
13 distributing them to Participating Class Members and PAGA Group Members, issuing the payment
14 to Class Counsel for attorneys' fees and costs, the Enhancement Awards checks to Plaintiffs, the
15 LWDA Payment to the LWDA, and the employer side payroll taxes to the appropriate taxing
16 authorities, preparing any tax returns and any other filings required by any governmental taxing
17 authority or agency, and preparing any other checks, notices, reports, or filings to be prepared in the
18 course of administering disbursements from the Net Settlement Amount.

19 All costs of administering the Settlement (*i.e.*, Settlement Administration Costs) shall be paid
20 to the Settlement Administrator from the Gross Settlement Amount.

21 **D. Notice to Class Members**

22 It is the intent of the Parties to provide Class Members with the best practicable means of
23 providing notice of the Settlement to the Class. The Class Notice shall inform Class Members with
24 a summary of the (i) Action, (ii) monetary terms of settlement, (iii) estimated payout and how their
25 shares were calculated; (iv) releases to be given, (v) instructions and deadlines to exercise their rights
26 to participate, opt out, or object, (vi) date, time, and location of the Final Fairness and Approval
27 Hearing, (vii) available resources to obtain additional information, and (viii) any other information
28 the Court may require.

1 No later than fifteen (15) business days after the Preliminary Approval Date, Defendant SBS
2 will provide the Settlement Administrator with the Class List.

3 Within ten (10) business days of receiving the Class List, the Settlement Administrator will
4 prepare and send Class Members, by first-class mail, at their last known mailing address, the Court
5 approved Class Notice along with a Spanish version of the same. Prior to the initial mailing, the
6 Settlement Administrator will check all Class Member addresses against the National Change of
7 Address database and shall update any addresses before mailing. Following the initial mailing, the
8 Settlement Administrator shall provide Class Counsel and Defense Counsel with a weekly report
9 regarding the status of the notice process, including the number of mailed/re-mailed/undeliverable
10 Class Notices and the number of disputes/objections/Requests for Exclusions received.

11 The Settlement Administrator will attempt to re-mail all returned, undelivered mail within
12 five (5) days of receiving notice that any Class Notice could not be delivered. If the Class Notice is
13 returned with a forwarding address, the Settlement Administrator shall re-mail the Class Notice to
14 the forwarding address. With respect to those Class Members whose Class Notices are returned
15 without a forwarding address, the Settlement Administrator shall promptly attempt to obtain a valid
16 mailing address by performing a skip trace or search of other databases according to standard industry
17 practices and, if another address is identified, shall mail the Class Notice to the newly identified
18 address. It is the intent of the Parties that reasonable means be used to locate Class Members and
19 that the Settlement Administrator be given discretion to take steps in order to facilitate notice of this
20 Settlement and delivery of the Individual Settlement Payments to the Class and Participating Class
21 Members.

22 If the Class Notice is re-mailed, the Settlement Administrator will note for its own records
23 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly
24 status report provided to the Parties.

25 In the event a Class Member's Class Notice remains undeliverable sixty (60) days after the
26 Class Notice was initially mailed, the Settlement Administrator will not mail the Class Member's
27 Individual Settlement Payment. The Settlement Administrator will hold the Class Member's
28 Individual Settlement Payment during the check cashing period on behalf of the Class Member. If

1 at the conclusion of the check cashing period the Class Member's Class Notice and Individual
2 Settlement Payment remain undeliverable and/or uncashed, the Settlement Administrator will
3 distribute the funds from unclaimed/uncashed checks in accordance with the procedures set forth in
4 Section III(E)(8)(i) below.

5 No later than twenty-one (21) court days prior to the Final Fairness and Approval Hearing,
6 the Settlement Administrator shall provide Class Counsel with a declaration attesting to completion
7 of the notice process, including any attempts to obtain valid mailing addresses for and re-sending of
8 any returned Class Notices, as well as the number of valid Requests for Exclusion and written
9 objections that the Settlement Administrator received.

10 **E. Responses to Notice**

11 **1. Class Member Disputes**

12 If any Class Member disagrees with the number of Qualifying Workweeks during the Class
13 Period as reflected in his or her the Class Notice, the Class Member may submit a written dispute to
14 the Settlement Administrator.

15 All written disputes must clearly (i) identify the case name and number of the Action; (ii)
16 contain the name, address, last four digits of the Social Security Number of the Class Member, and
17 telephone number; (iii) state the number of Qualifying Workweeks he/she claims to have worked
18 during the Class Period along with any supporting documentation; (iv) be signed and dated by the
19 Class Member or his/her representative; and (v) be postmarked by no later than the date set forth in
20 the Class Notice.

21 The written dispute must be postmarked no later than forty-five (45) days after the Settlement
22 Administrator initially mailed the Class Notice to the Class Member (or fifteen (15) days after the
23 Settlement Administrator re-mails the Class Notice to the Class Member, whichever is later).

24 The Settlement Administrator shall contact the Parties regarding the dispute and the Parties
25 will work in good faith to resolve it. If the Parties are unable to resolve the dispute, the Settlement
26 Administrator will be the final arbiter of the Qualifying Workweeks for each Class Member during
27 the Class Period based on the information provided to it.

28 ///

2. Requests for Exclusion from the Class

If a Class Member wishes to opt out of the Settlement and be excluded from the Class, the Class Member must submit a timely, written Request for Exclusion to the Settlement Administrator that contains all information set forth in Section I(FF), above.

To be valid, the Request for Exclusion must be postmarked by no later than forty-five (45) days after the date the Settlement Administrator initially mailed the Class Notice to the Class Member, or fifteen (15) days after the Settlement Administrator re-mails the Class Notice to the Class Member, whichever is later. The date of the initial mailing of the Class Notice and the date the signed Request for Exclusion, if any, was postmarked shall be conclusively determined according to the records of the Settlement Administrator.

Any Class Member who timely and validly submits a Request for Exclusion (*i.e.*, a Non-Participating Class Member) will not be entitled to any Individual Settlement Payment, will not be bound by the terms and conditions of this Settlement, and will not have any right to object to, appeal, or comment on the Settlement.

Any Class Member who does not timely submit a valid Request for Exclusion shall be deemed a Participating Class Member whose rights and claims with respect to the issues raised in the Action are determined by the Court's Final Approval Order, and by the other rulings in the Action.

If the Settlement Administrator receives a written objection or dispute and a Request for Exclusion received from the same Class Member, the Settlement Administrator shall attempt to resolve the matter by contacting the Class Member by any reasonable means to determine the Class Member's choice. If the Settlement Administrator fails to determine what the Class Member intends, the Request for Exclusion shall be null and void, and the Class Member will be counted as part of the Class.

3. Objections to Settlement

If a Class Member wishes to object to the Settlement (or any term herein), the Class Member may submit objections to the Settlement in writing, or by appearing at the Final Fairness and Approval Hearing. In order for any Class Member to object to this Settlement, or any term of it, the Class Member making the objection must not submit a Request for Exclusion (*i.e.*, must not opt out).

1 The Court shall retain final authority with respect to the consideration and admissibility of any Class
2 Member objections.

3 All written objections must (i) clearly identify the case name and number of this Action; (ii)
4 specify the ground(s) for the objection, signed and dated by the objecting Class Member or his or her
5 authorized representative, along with any supporting papers; (iii) be submitted to the Court either by
6 mailing the objection to: Clerk of the Court, Superior Court of California, County of Santa Clara,
7 191 N. 1st Street, San Jose California 95113, or by filing in person at the same location; (iv) also be
8 mailed to Class Counsel and Defense Counsel; (v) and be filed or postmarked no later than the
9 deadline set forth in the Class Notice. The deadline to submit written objections shall be forty-five
10 (45) days after the Class Notice was initially mailed to the Class Member, or fifteen (15) days after
11 the Settlement Administrator re-mails the Class Notice to the Class Member, whichever is later.

12 Class Members may also object by appearing at the Final Fairness and Approval Hearing at
13 the objecting Class Member's own expense, either in person, telephonically, or through an attorney,
14 provided the objecting Class Member notifies the Court of his/her intention to do so.

15 **4. Encouragement of Class Members**

16 The Parties to this Settlement and the counsel representing such Parties shall not, directly or
17 indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from
18 this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from
19 Class Members. Class Counsel shall not represent any Class Members who wish to object or for the
20 purpose of submitting objections to the Settlement to avoid potential conflicts of interest.

21 **5. Pro Rata Increase of Gross Settlement Amount**

22 This Settlement is based on Defendants' estimate that the total number of Qualifying
23 Workweeks during the Class Period is 79,000. If the actual number of Qualifying Workweeks
24 worked by the Class during the Class Period exceeds 79,000 by more than 10%, the Gross Settlement
25 Amount will increase by \$8.55 for each additional Qualifying Workweek over and above 79,000.
26 Alternatively, Defendants may elect to have the Class Period end at an earlier date on which the
27 number of Qualifying Workweeks does not exceed the 10% threshold.

28 ///

1 **6. Final Fairness and Approval Hearing**

2 A Final Fairness and Approval Hearing shall be held on the date set forth in the Order granting
3 preliminary approval and the Class Notice, or on any other date otherwise ordered by the Court. The
4 purpose of the Final Fairness and Approval Hearing is for the Court to (i) review this Settlement and
5 determine whether the Court should grant final approval, and (ii) consider any objections made and
6 all responses by the Parties to such objections.

7 **7. Notice to Class of Final Judgment**

8 Notice of final judgment will be given to the Class by posting the Final Approval Order on
9 the Settlement Administrator's website.

10 **8. Settlement Payment Procedures**

11 a. Settlement Amount

12 In exchange for the releases set forth in this Settlement, Defendant SBS agrees to pay the
13 Gross Settlement Amount in the amount of Six Hundred Seventy-Five Thousand Dollars and Zero
14 Cents (\$675,000.00). The Gross Settlement Amount includes all claims of the Participating Class
15 Members and PAGA Group Members, and all Settlement Administration Costs, Class Counsel's
16 attorney's fees and costs, LWDA Payment and Enhancement Awards. Defendant SBS shall pay the
17 employer's share of payroll taxes in addition to and separately from the Gross Settlement Amount.

18 The Gross Settlement Amount shall be funded according to the following: (i) if no objection
19 to the Settlement is filed, within twenty-one (21) calendar days of entry of the Final Approval Order;
20 (ii) if an objection is filed but no appeal is filed, on the sixty-fifth (65th) day following entry of
21 Judgment; or (if an objection is filed and an appeal to Judgment is filed, within five (5) business days
22 after the Judgment is affirmed. The employer's share of payroll taxes on the amount allocated to
23 wages will be paid in addition to and concurrently with the Gross Settlement Amount.

24 Within ten (10) business days after the date of the Final Approval Order, the Settlement
25 Administrator shall calculate and provide Defendants' Counsel the amount of the employer's share
26 of the payroll taxes applicable to the Net Settlement Amount allocated to wages.

27 All payments to fund the Settlement shall be made to an account established by the Settlement
28 Administrator and in accordance with its electronic transfer instructions.

1 b. Payment of Attorneys' Fees and Costs

2 Class Counsel shall submit an application for an award of attorneys' fees of up to one-third
3 of the Gross Settlement Amount, which is Two Hundred Twenty-Five Thousand Dollars and Zero
4 Cents (\$225,000.00). Class Counsel shall submit an application for an award of costs not to exceed
5 Eighteen Thousand Dollars and Zero Cents (\$18,000.00). Such application for attorneys' fees and
6 costs shall be heard by the Court at the Final Fairness and Approval Hearing. Defendants shall not
7 object to nor oppose any such application in these amounts.

8 Any fees and costs awarded by the Court shall be paid from the Gross Settlement Amount
9 and shall not constitute payment to any Class Member(s). The attorneys' fees and costs for Class
10 Counsel approved by the Court shall encompass all work performed, costs, and expenses related to
11 the investigation, prosecution, and settlement of the Action incurred through the Effective Date. To
12 the extent that the Court approves less than the amount of attorney's fees and/or costs that Class
13 Counsel requests, the difference between the requested and awarded amounts will be reallocated to
14 the Net Settlement Amount. The Court's ruling on the request for Class Counsel's attorneys' fees
15 and costs shall not affect the enforceability of this Agreement or the terms contained herein.

16 c. Payment of Settlement Administration Costs

17 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
18 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed
19 Fourteen Thousand Five Hundred Dollars and Zero Cents (\$14,500.00). The Court's ruling on
20 Settlement Administration Costs shall not affect the enforceability of this Agreement or the terms
21 contained herein.

22 d. Payment of Enhancement Awards to Named Plaintiffs

23 Subject to Court approval, Plaintiff Hernandez shall receive an Enhancement Award of up to
24 Ten Thousand Dollars and Zero Cents (\$10,000.00), and Plaintiff Catalan shall receive an
25 Enhancement Award of up to Ten Thousand Dollars and Zero Cents (\$10,000.00), the requests for
26 which Defendants will not object to nor oppose. The Enhancement Awards shall be paid out of the
27 Gross Settlement Amount and shall not constitute payment to any Participating Class Member(s). To
28 the extent that the Court approves less than the requested amounts for the Enhancement Awards, the

1 difference between the requested and awarded amounts will be reallocated to the Net Settlement
2 Amount. The Court's ruling on the Enhancement Awards shall not affect the enforceability of this
3 Agreement or the terms contained herein.

4 Because it is the intent of the Parties that the Enhancement Awards represent payment to
5 Plaintiffs for their services to the Class Members, and not wages, the Settlement Administrator will
6 not withhold any taxes from the Enhancement Awards. The Enhancement Awards will be reported
7 on a Form 1099, which the Settlement Administrator will provide to Plaintiffs and to the pertinent
8 taxing authorities as required by law.

9 e. Payment to the Labor and Workforce Development Agency

10 In consideration of claims made under the California Private Attorneys General Act
11 ("PAGA"), Cal. Labor Code §§ 2698 et seq., Class Counsel will request that the Court approve an
12 allocation of Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the Gross Settlement Amount
13 to these claims. Seventy-five percent (75%) of this allocation (currently \$37,500.00) will be paid to
14 the California Labor and Workforce Development Agency ("LWDA Payment") and twenty-five
15 percent (25%) (currently \$12,500.00) will be paid to the PAGA Group Members as described below.
16 Defendants will not oppose this request. The LWDA Payment will be paid out of the Gross
17 Settlement Amount. The Court's ruling on the LWDA Payment shall not affect the enforceability of
18 this Agreement or the terms contained herein. The Court's adjustment, if any, of the amount allocated
19 to Plaintiffs' PAGA claim will not invalidate this Settlement.

20 f. Payment of Individual Settlement Payments to Participating Class Members

21 The Parties agree that the entire Net Settlement Amount shall be used to fund Individual
22 Settlement Payments that will be paid to all Participating Class Members, *i.e.*, to Class Members who
23 have not requested to be excluded from the Settlement.

24 The Parties agree that the Net Settlement Amount shall be divided between all Participating
25 Class Members based on their respective number of individual Qualifying Workweeks in proportion
26 to the total number of Qualifying Workweeks for all Participating Class Members during the Class
27 Period. For purposes of the Class Notice, the estimated minimum amount each Class Member will
28 receive based on their individual Qualifying Workweeks will be calculated by dividing the Net

1 Settlement Amount by the total number of Qualifying Workweeks for all Class Members during the
2 Class Period, and then allocated on a pro rata basis. Each Class Member's estimated share of the
3 amounts calculated based on the formula in the preceding sentence will be included in his or her
4 Class Notice.

5 After entry of the Final Approval Order, the Settlement Administrator will recalculate the
6 amounts payable to Participating Class Members by removing the number of Qualifying Workweeks
7 worked by all Non-Participating Class Members, *i.e.*, Class Members who requested to be excluded
8 from the Settlement.

9 g. Payment of Individual Settlement Payments to PAGA Group Members

10 The Parties agree that the PAGA Group Payment (25% of the \$50,000.00 allocated to the
11 settlement of PAGA claims) shall be used to fund the portion of Individual Settlement Payments
12 payable to all PAGA Group Members. Unlike the Net Settlement Amount, PAGA Group Members
13 shall not have the ability to request exclusion or opt-out from the release of the PAGA Released
14 Claims.

15 The PAGA Group Payment shall be divided between all PAGA Group Members based on
16 their respective number of individual Qualifying Workweeks in proportion to the total number of
17 Qualifying Workweeks for all PAGA Group Members during the PAGA Period. For purposes of the
18 Class Notice, the estimated minimum amount each PAGA Group Member will receive based on their
19 individual Qualifying Workweeks will be calculated by dividing the PAGA Group Payment
20 (currently \$12,500.00) by the total number of Qualifying Workweeks for all PAGA Group Members
21 during the PAGA Period, and then allocated on a pro rata basis. Each PAGA Group Member's
22 estimated share of the PAGA Group Payment calculated based on the formula in the preceding
23 sentence will be included in his or her Class Notice as part of his or her total estimated Individual
24 Settlement Payment.

25 For individuals who are both Participating Class Members and PAGA Group Members, each
26 PAGA Group Member's respective share of the PAGA Group Payment shall be added to their
27 respective share of the Net Settlement Amount.

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1 h. Tax Allocation and Handling of Individual Settlement Payments

2 Each Individual Settlement Payment, exclusive of any portion allocated from the PAGA
3 Group Payment, will represent wages and penalties allocated using the following formula: 20%
4 allocated to wages, and 80% allocated to penalties, interest, and reimbursements. The amounts paid
5 as wages shall be subject to all tax withholdings customarily made from an employee's wages and
6 all other authorized and required withholdings and shall be reported by W-2 forms. The portion of
7 each Individual Settlement Payment available to a PAGA Group Member as his or her share of the
8 PAGA Group Payment will be allocated 100% to penalties.

9 The employer-side taxes (including employer's portion of FICA, FUTA, SUTA, and all other
10 applicable payroll taxes) will be paid by Defendant SBS separate from and in addition to the Gross
11 Settlement Amount. The amounts paid as penalties and interest shall be subject to all authorized and
12 required withholdings other than the tax withholdings customarily made from employees' wages and
13 shall be reported by IRS 1099 forms.

14 i. Timeline for Disbursement of the Gross Settlement Amount

15 Within ten (10) business days after Defendant SBS funds all amounts due under this
16 Settlement (including the employer's share of payroll taxes within ten (10) business days after the
17 date of the Final Approval Order), the Settlement Administrator will distribute the Individual
18 Settlement Payments to Participating Class Members and PAGA Group Members, Class Counsel's
19 attorneys' fees and costs, LWDA Payment, Enhancement Awards, Settlement Administration Costs,
20 and employer and employee tax withholdings applicable to the Net Settlement Amount allocated to
21 wages.

22 Prior to the disbursements, the Settlement Administrator shall calculate: (a) the Net
23 Settlement Amount, (b) the Individual Settlement Payment for each Participating Class Member and
24 PAGA Group Member based on the formulas specified above, (c) the amount of the Individual
25 Settlement Payments to be allocated to wages, interest and penalties, and reimbursements based on
26 the formula specified above, (d) the employer's share of the payroll taxes applicable to the Net
27 Settlement Amount allocated to wages; and (e) the employee tax withholding amount based on the
28 allocation of each Individual Settlement Payment to wages.

1 The Settlement Administrator shall prepare and mail the checks for the Individual Settlement
2 Payments to Participating Class Members and PAGA Group Members. Individual Settlement
3 Payments paid from the Net Settlement Amount allocated to wages will be reduced by applicable
4 employee tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage
5 portion of the Individual Settlement Payments. The Settlement Administrator will issue a Form 1099
6 to the extent required by law for the interest and penalty portions of the Individual Settlement
7 Payments.

8 Participating Class Members and PAGA Group Members shall have 180 days from the date
9 their Individual Settlement Payment checks are dated to cash their settlement checks. Any checks
10 that are not cashed upon the expiration of that 180-day time period will be void, and the Settlement
11 Administrator will transfer the amount represented by the check to the Cy Pres Recipient.

12 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
13 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
14 a search on other databases according to standard industry practices and, if another address is
15 identified, shall mail the check to the newly identified address. If the Settlement Administrator is
16 unable to obtain a valid mailing address through this process, the Settlement Administrator will
17 transfer the amount represented by the check to the Cy Pres Recipient.

18 j. No Credit Toward Benefit Plans

19 The Individual Settlement Payments made to Participating Class Members and PAGA Group
20 Members under this Settlement, as well as any other payments made pursuant to this Settlement, will
21 not be utilized to calculate any additional benefits under any benefit plans to which any Class
22 Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k)
23 plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.
24 Rather, it is the Parties' intention that this Settlement will not affect any rights, contributions, or
25 amounts to which any Class Members may be entitled under any benefit plans.

26 k. Tax Liability

27 The Parties and counsel for the Parties make no representation as to the tax treatment or legal
28 effect of the payments called for hereunder. Plaintiffs, Participating Class Members, and PAGA

1 Group Members are not relying on any statement, representation, or calculation by the Parties,
2 counsel for the Parties, or the Settlement Administrator in this regard. Plaintiffs, Participating Class
3 Members, PAGA Group Members, and Class Counsel understand and agree that they will be solely
4 responsible for the payment of their own portion of any taxes and penalties assessed on the payments
5 that they receive.

6 **IV. LIMITATIONS ON USE OF THIS SETTLEMENT**

7 **A. No Admission**

8 Defendants dispute the allegations in the Action and dispute that, but for this Settlement, a
9 Class should not have been certified in the Action. This Settlement is entered into solely for the
10 purpose of compromising highly disputed claims. Neither the acceptance nor the performance by
11 Defendants of the terms contained in this Agreement nor any of the related negotiations or
12 proceedings is or shall be claimed to be, construed as, or deemed a precedent or an admission by
13 Defendants of the truth of any allegations in the Action, any version of the operative Complaint,
14 and/or any version of any PAGA Notices submitted by Plaintiffs or Claimant Menendez.

15 **B. Non-Evidentiary Use**

16 Whether or not the Effective Date occurs, neither this Settlement nor any of its terms will be:
17 (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any
18 purpose adverse to Defendants or any other of the Released Parties, including but not limited to,
19 evidence of a presumption, concession, indication, or admission by any of the Released Parties of
20 any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or
21 offered in evidence against any of the Released Parties in any further proceeding in the Action, except
22 for the purposes of effectuating the Settlement pursuant to the terms herein or for Defendants to
23 establish that a Class Member has resolved any of his/her claims released through this Settlement.
24 Moreover, this Agreement may be used by Defendants and/or the Released Parties to prove or defend
25 against any claim released herein arising during the release period by any Participating Class Member
26 in any judicial, quasi-judicial, administrative, or governmental proceeding.

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1 **C. Nullification**

2 The Parties have agreed to the certification of the Class encompassing all claims alleged in
3 the Action for the sole purpose of effectuating this Settlement. If (a) the Court should for any reason
4 fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this
5 Settlement, or (c) the Court should for any reason fail to enter the Final Approval Order or Judgment,
6 or (d) the Final Approval Order or Judgment is reversed, or declared or rendered void, or (e) the
7 Court should for any reason fail to dispose of the Action in its entirety, then (i) this Settlement shall
8 be considered null and void; (ii) neither this Settlement nor any of the related negotiations or
9 proceedings shall be of any force or effect; (iii) all Parties to this Settlement shall stand in the same
10 position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court;
11 and (iv) the fact that the Parties were willing to stipulate to class certification of all causes of action
12 pled in the Action as part of the Settlement will have no bearing on, and will not be admissible in
13 connection with, the issue of whether the Class should be certified by the Court in a non-settlement
14 context in this Action or any other action.

15 **V. RELEASES**

16 **A. Releases by Class Members**

17 Upon the Effective Date, Participating Class Members who do not opt out of the Settlement
18 will conditionally agree that once Defendant SBS funds all monetary sums due under this Settlement
19 in accordance with the terms herein, such as the timely payment of the Gross Settlement Amount,
20 Participating Class Members will release Defendant Strategic Building Services, Inc. (*i.e.*, SBS), and
21 each of its former and present directors, officers, principals, trustees, shareholders, owners, managers,
22 managing agents, attorneys, insurers, predecessors, successors, assigns, registered DBAs, parents,
23 subsidiaries, and affiliates (collectively, the “Released Parties”) from the Class Released Claims. The
24 term “Released Parties” does not include Defendant Andrew Miller in his personal capacity on
25 account of his dismissal from the Action without prejudice, subject to Court approval. However,
26 upon satisfaction of the conditions set forth in this paragraph, the Released Parties, including
27 Defendant Andrew Miller in his personal capacity, will be released from the Class Released Claims.
28 The Class Released Claims are limited in time to the period of March 4, 2017, through June 30, 2024,

1 covering Plaintiffs and the Participating Class Members who worked for Defendant SBS in the State
2 of California.

3 **B. Releases by the PAGA Group Members**

4 Upon the Effective Date, Plaintiffs, on behalf of themselves and the State of California, and
5 the PAGA Group Members will conditionally agree that once Defendants pay all monetary sums due
6 under this Settlement in accordance with the terms herein, such as the timely payment of the Gross
7 Settlement Amount, Plaintiffs, on behalf of themselves and the State of California, and PAGA Group
8 Members will release the Released Parties from the PAGA Released Claims. The term “Released
9 Parties” does not include Defendant Andrew Miller in his personal capacity on account of his
10 dismissal from the Action without prejudice, subject to Court approval. However, upon satisfaction
11 of the conditions set forth herein, the Released Parties, including Defendant Andrew Miller in his
12 personal capacity, will be released from the PAGA Released Claims. The PAGA Released Claims
13 are limited in time to the period of March 4, 2020, through June 30, 2024, covering Plaintiffs and the
14 PAGA Group Members who worked for Defendant SBS in the State of California.

15 PAGA Group Members will not have an opportunity to opt-out from the release of the PAGA
16 Released Claims, and will be entitled to share in the PAGA Group Payment, whether or not they
17 submit a timely and valid opt-out of the Settlement with respect to the release of the Class Released
18 Claims and corresponding settlement payment.

19 **C. General Release of Claims by Plaintiffs**

20 Upon the Effective Date, and as a condition of receiving their Enhancement Awards, the
21 Plaintiffs and their former and present spouse/domestic partner, representatives, agents, attorneys,
22 heirs, administrators, successors, and assigns generally, will fully release and forever discharge the
23 Released Parties, to the fullest extent permitted by law, of and from any and all “Released Claims,”
24 including Class Released Claims and PAGA Released Claims, and also generally release and
25 discharge the Released Parties from any and all claims, demands, obligations, causes of action, rights,
26 or liabilities of any kind which have been or could have been asserted against the Released Parties
27 arising from the beginning of time until the Date of Execution, including but not limited to claims
28 arising under the California Labor Code; the wage orders of the California Industrial Welfare

Commission; California statutory, constitutional, and common law; the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*; federal statutory, constitutional, and common law; and the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001, *et seq.* Plaintiffs' Released Claims also include all claims for lost wages and benefits, punitive damages, and attorneys' fees and costs arising under federal, state, or local laws for discrimination, harassment, and wrongful termination, including, but not limited to, 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the California Fair Employment and Housing Act. This release excludes the release of claims not permitted by law. Specifically, the Class Representative waives all rights and benefits afforded by California Civil Code section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiffs may hereafter discover claims or facts in addition to, or different from, those which Plaintiffs now knows or believes to exist, but Plaintiffs expressly agree to fully, finally, and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist at the time of execution of this Settlement Agreement, including, but not limited to, any and all claims related to or arising from Plaintiffs' employment with Defendants. The term "Released Parties" does not include Defendant Andrew Miller in his personal capacity on account of his dismissal from the Action without prejudice, subject to Court approval. However, upon satisfaction of the conditions set forth herein, the Released Parties, including Defendant Andrew Miller in his personal capacity, will be released from the Released Claims.

D. Release Effective Date

The release will be deemed effective as to the Participating Class Members and PAGA Group Members upon Defendant SBS's payment of the Gross Settlement Amount and employer's share of payroll taxes in full.

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1 **E. No Additional Attorneys' Fees or Costs**

2 Except for the attorneys' fees and costs set forth in this Settlement, the Parties agree to bear
3 their own attorneys' fees and costs related to this Action.

4 **VI. MISCELLANEOUS PROVISIONS**

5 **A. Amendments or Modification**

6 The terms and provisions of this Settlement may be amended or modified only by an express
7 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel,
8 or by a written stipulation executed by the Parties' counsel.

9 **B. Assignment**

10 None of the rights, commitments, or obligations recognized under this Settlement may be
11 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written
12 consent of each other Party and their respective counsel. The representations, warranties, covenants,
13 and agreements contained in this Settlement are for the sole benefit of the Parties under this
14 Settlement, and shall not be construed to confer any right or to avail any remedy to any other person.

15 **C. Governing Law**

16 This Settlement shall be governed, construed, and interpreted, and the rights of the Parties
17 shall be determined, in accordance with the laws of the State of California, irrespective of the State
18 of California's choice of law principles.

19 **D. Entire Agreement**

20 This Settlement, including the Exhibit referred to herein, which form an integral part hereof,
21 contains the entire understanding of the Parties hereto with respect of the subject matter contained
22 herein. In case of any conflict between text contained in Articles I through VI of this Settlement and
23 text contained in the Exhibit to this Settlement, the former (*i.e.*, Articles I through VI) shall be
24 controlling, unless the Exhibit is changed by or in response to a Court order. There are no restrictions,
25 promises, representations, warranties, covenants, or undertakings governing the subject matter of this
26 Settlement other than those expressly set forth or referred to herein. This Settlement supersedes all
27 prior agreements and understandings among the Parties hereto with respect to the settlement of the
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1 Action, including correspondence between Class Counsel and Defense Counsel and drafts of prior
2 agreements or proposals.

3 **E. Waiver of Compliance**

4 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
5 obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the
6 extent permitted under applicable law, by the Party or Parties and their respective counsel hereto
7 entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to
8 insist upon strict compliance with any representation, warranty, covenant, agreement, or condition
9 shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

10 **F. Counterparts and Fax/PDF Signatures**

11 This Settlement, and any amendments hereto, may be executed in any number of counterparts
12 and any Party and/or their respective counsel hereto may execute any such counterpart, each of which
13 when executed and delivered shall be deemed to be an original and all of which counterparts taken
14 together shall constitute one instrument. A fax or PDF signature on this Settlement shall be as valid
15 as an original signature.

16 **G. Meet and Confer Regarding Disputes**

17 Should any dispute arise among the Parties or their respective counsel regarding the
18 implementation or interpretation of this Settlement, a representative of Class Counsel and a
19 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior
20 to submitting such disputes to the Court.

21 **H. Agreement Binding on Successors**

22 This Agreement will be binding upon, and inure to the benefit of, the successors in interest
23 of each of the Parties.

24 **I. Cooperation in Drafting**

25 The Parties have cooperated in the negotiation and preparation of this Settlement. This
26 Settlement will not be construed against any Party on the basis that the Party, or the Party's counsel,
27 was the drafter or participated in the drafting of this Settlement.

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1 **J. Fair Settlement**

2 Plaintiffs, Defendants, Class Counsel, and Defense Counsel believe that this Settlement
3 reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Settlement
4 through arm's-length negotiations, taking into account all relevant factors, current and potential, and
5 is consistent with public policy, and fully complies with applicable provisions of law.

6 **K. Headings**

7 The descriptive heading of any section or paragraph of this Settlement is inserted for
8 convenience of reference only and does not constitute a part of this Settlement and shall not be
9 considered in interpreting this Settlement.

10 **L. Notice**

11 All notices, demands, or other communications given under this Settlement must be in writing
12 and addressed as follows:

13 *To Plaintiffs and the Class:*
14 DAILY ALJIAN LLP
15 Justin E. D. Daily
16 Simon Kwak
17 Joanne Kim
18 100 Bayview Circle, Suite 5500
19 Newport Beach, CA 92660

20 And

21 *To Defendants:*
22 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
23 Douglas J. Farmer
24 Ethan Lai
25 One Embarcadero Center, Suite 900
26 San Francisco, CA 94111

27 **M. Enforcement of Settlement and Continuing Court Jurisdiction**

28 To the extent consistent with class action procedure, this Settlement shall be enforceable by
the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court
3.769(h). The disposition entered by the Court will not adjudicate the merits of the Action or the
liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the
terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall

1 retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest
2 extent to enforce and effectuate the terms and intent of this Settlement.

3 **N. Mutual Full Cooperation**

4 The Parties agree fully to cooperate with each other to accomplish the terms of this
5 Settlement, including but not limited to execution of such documents, and to take such other action
6 as may reasonably be necessary to implement the terms of this Settlement. The Parties to this
7 Settlement shall use their best efforts, including all efforts contemplated by this Settlement, to
8 effectuate this Settlement and the terms set forth herein. In the event the Parties are unable to reach
9 agreement on the form or content of any document needed to implement the Settlement, or on any
10 supplemental provisions that may become necessary to effectuate the terms of the Settlement, the
11 Parties agree to seek the assistance of the Court.

12 **O. Authorization to Act**

13 Class Counsel warrants and represents that they are authorized by Plaintiffs, and Defense
14 Counsel warrants that they are authorized by Defendants, to take all appropriate action required to
15 effectuate the terms of this Settlement, except for signing the documents, including but not limited
16 to this Settlement, that are required to be signed by the Parties.

17 **P. No Reliance on Representations**

18 The Parties have made such investigation of the facts and the law pertaining to the matters
19 described herein and to this Settlement as they deem necessary, and have not relied, and do not rely,
20 on any statement, promise, or representation of fact or law, made by any of the other parties, or any
21 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
22 rights, or with regard to the advisability of making and executing this Settlement, or with respect to
23 any other matters. No representations, warranties, or inducements have been made to any party
24 concerning this Settlement.

25 **Q. No Prior Assignment**

26 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
27 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
28 entity any portion of any liability, claim, demand, action, cause of action or rights herein released

1 and discharged except as set forth herein. If a Class Member makes a claim for any of the Class
2 Released Claims between the start of the Class Period and the date in which the Court approves the
3 Settlement outlined in this Agreement as final, such a claim will be deemed covered and released by
4 the individual Class Member making the claim unless such Class Member has timely exercised the
5 right to be excluded from this Agreement under the terms set forth herein. If a PAGA Group Member
6 makes a claim for any of the PAGA Released Claims between the start of the PAGA Period and the
7 date in which the Court approves the Settlement outlined in this Agreement as final, such a claim
8 will be deemed covered and released by the individual PAGA Group Member making the claim,
9 regardless of whether or not the PAGA Group Member has excluded themselves from the Class
10 Released Claims. Any Participating Class Member and/or PAGA Group Member covered by this
11 Agreement will be barred from proceeding with any such claim for any of the Released Claims.

12 **R. Review of Noticed Motions and/or Other Pleadings**

13 Class Counsel expressly agrees that prior to any filing concerning the terms herein, including
14 but not limited to the Motion for Preliminary Approval and the Motion for Final Approval, it shall
15 use best efforts to e-mail a draft of said motion and/or pleading to Defense Counsel at least two
16 calendar days prior to its filing.

17 **EXECUTION BY PARTIES**

18 The Parties hereby execute this Settlement.

19 Dated: _____ ESTHER HERNANDEZ

20 By: _____
21 Plaintiff

22
23 Dated: _____ EUGENIA CATALAN

24 By: Eugenia Catalan 5 12-18-2024
25 Plaintiff

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27 *[Signatures Continued on Following Page]*

and discharged except as set forth herein. If a Class Member makes a claim for any of the Class Released Claims between the start of the Class Period and the date in which the Court approves the Settlement outlined in this Agreement as final, such a claim will be deemed covered and released by the individual Class Member making the claim unless such Class Member has timely exercised the right to be excluded from this Agreement under the terms set forth herein. If a PAGA Group Member makes a claim for any of the PAGA Released Claims between the start of the PAGA Period and the date in which the Court approves the Settlement outlined in this Agreement as final, such a claim will be deemed covered and released by the individual PAGA Group Member making the claim, regardless of whether or not the PAGA Group Member has excluded themselves from the Class Released Claims. Any Participating Class Member and/or PAGA Group Member covered by this Agreement will be barred from proceeding with any such claim for any of the Released Claims.

R. Review of Noticed Motions and/or Other Pleadings

Class Counsel expressly agrees that prior to any filing concerning the terms herein, including but not limited to the Motion for Preliminary Approval and the Motion for Final Approval, it shall use best efforts to e-mail a draft of said motion and/or pleading to Defense Counsel at least two calendar days prior to its filing.

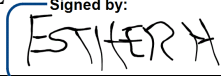
EXECUTION BY PARTIES

The Parties hereby execute this Settlement.

Dated: December 17, 2024

ESTHER HERNANDEZ

By: Plaintiff

Signed by:

82A84B64A874446...

Dated: _____

EUGENIA CATALAN

By: Plaintiff

[Signatures Continued on Following Page]

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Dated: _____

ANDREW MILLER

By: _____
Defendant

Dated: _____

STRATEGIC BUILDING SERVICES, INC.

By: _____
(Signature)

(Printed Name)

(Title)

Approved as to Form:

Dated: December 18, 2024

DAILY ALJIAN LLP

By: /s/ Justin E. D. Daily
Justin E. D. Daily
Reed Aljian
Simon Kwak
Joanne Kim

Attorneys for Plaintiffs Esther Hernandez and
Eugenia Catalan

Dated: _____

OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.

By: _____
Douglas J. Farmer
Ethan Lai

Attorneys for Defendants Strategic Building
Services, Inc., and Andrew Miller

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Dated: 09-Aug-2024

ANDREW MILLER

By: DocuSigned by:
ANDREW MILLER
B630759FC7CF42C...
Defendant

Dated: 09-Aug-2024

STRATEGIC BUILDING SERVICES, INC.

By: DocuSigned by:
ANDREW MILLER
B630759FC7CF42C...
(Signature)
ANDREW MILLER
(Printed Name)
President
(Title)

Approved as to Form:

Dated: _____

DAILY ALJIAN LLP

By: _____
Justin E. D. Daily
Reed Aljian
Simon Kwak
Joanne Kim

Attorneys for Plaintiffs Esther Hernandez and
Eugenia Catalan

Dated: August 13, 2024

OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.

By: 
Douglas J. Farmer
Ethan Lai

Attorneys for Defendants Strategic Building
Services, Inc., and Andrew Miller

EXHIBIT A
TO SETTLEMENT
AGREEMENT

Hernandez, et al. v. Strategic Building Services, Inc., et al.
(Santa Clara County Superior Court Case Nos. 21CV377209)

NOTICE OF PENDENCY AND SETTLEMENT OF CLASS ACTION

IF YOU WORKED FOR STRATEGIC BUILDING SERVICES, INC. (“SBS”) AS A NON-EXEMPT EMPLOYEE IN CALIFORNIA AT ANY TIME BETWEEN MARCH 4, 2017, AND JUNE 30, 2024, YOU COULD GET A PAYMENT FROM A CLASS ACTION SETTLEMENT.

A California court authorized this notice. This is not a solicitation from a lawyer.

TO: All Current and former non-exempt employees who worked for SBS in California at any time between March 4, 2017, and June 30, 2024 (“Class Members” or, the “Class”).

A California court has granted preliminary approval of a proposed settlement of a class action lawsuit alleging wage and hour claims (the “Class Action”) against SBS and Andrew Miller (collectively, “Defendants”). If the Court grants final approval, there will be money available to you. Your legal rights are affected whether you act or don’t act. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION	
DO NOTHING	Stay in this Class Action. Receive a payment. Give up certain rights. By doing nothing, you will become a Participating Class Member and will be entitled to a settlement payment. But, you will give up any rights to sue Defendants separately for the legal claims raised in the Class Action.
OBJECT TO THE SETTLEMENT	Stay in this Class Action. May give up certain rights. If you object to the settlement, you will remain Class Member. If the Court overrules your objection and approves the Settlement, you will be bound by its terms in the same way as Class Members who did not object.
ASK TO BE EXCLUDED	Get out of this Class Action. Get no payment from it. Keep rights. If you ask to be excluded from the Settlement, you will not receive any payment, unless you are a Class Member entitled to a PAGA Payment Share, as explained below. But, you will keep any rights you may have to sue Defendants separately for the legal claims raised or that could have been raised in this Class Action, with the exception of any PAGA Released Claims, as described below.

Nothing in this Notice or the Settlement is intended to constitute tax advice. You should consult your tax advisor for any tax issues pertaining to this Settlement.

A. DESCRIPTION OF THE CLASS ACTION:

Plaintiff Hernandez and Plaintiff Catalan (“Plaintiffs”) formerly worked as non-exempt employees of SBS and agreed to represent the Class Members in lieu of the original named plaintiff in the class action lawsuit filed in the Santa Clara County Superior Court, entitled *Menendez v. Strategic Building Services, Inc., et al.*, Case No. 21CV377209. The First Amended Complaint in the Class Action alleges claims on behalf of a proposed class for

damages and penalties for: (1) failure to pay minimum wages; (2) failure to pay overtime; (3) failure to provide compliant meal periods; (4) failure to provide compliant rest periods; (5) failure to provide accurate itemized wage statements; (6) failure to timely pay all wages during and upon separation of employment; (7) failure to reimburse business expenses; (8) violation of California Unfair Competition Law; and (9) recovery of civil penalties under Labor Code § 2698 *et seq.* (“PAGA”).

Defendants have denied the allegations asserted in the Class Action. The Court has not ruled on the merits of the claims or defenses. Both sides recognize, however, the risks and expenses of continued litigation and therefore, the Parties have agreed to resolve their differences by entering into a settlement, which the Court has now preliminarily approved (the “Settlement”).

At this time, the Court has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable; any final determination of those issues will be made at the Final Fairness and Approval Hearing. The Court has also appointed the attorneys for Plaintiffs as “Class Counsel” to represent Class Members affected by the Settlement. They are:

Justin E. D. Daily
Reed Aljian
Simon Kwak
Joanne Kim
DAILY ALJIAN LLP
100 Bayview Circle, Suite 5500
Newport Beach, CA 92660
Telephone: (949) 861-2524
Facsimile: (949) 269-6364

The Court-appointed Settlement Administrator is:

PHOENIX CLASS ACTION ADMINISTRATION SOLUTIONS
[INSERT ADDRESS]
[INSERT TELEPHONE NO.]

B. SUMMARY OF PROPOSED SETTLEMENT TERMS

A summary of the terms of the Settlement, which are still subject to the Court’s final approval, are as follows:

1. **Class Settlement Amount:** Defendants will pay a Gross Settlement Amount of \$675,000.00, which will be used to pay: (1) Settlement Shares to each Participating Class Member, *i.e.*, Class Members who do not opt-out of the Settlement (*see* Para. 2, below); (2) settlement administration costs in an amount not to exceed \$14,500.00; (3) the costs incurred by Class Counsel in an amount not to exceed \$18,000.00; (4) enhancement awards of \$10,000.00 to each Plaintiff to compensate them for their time, work, and risks undertaken in bringing the claims on behalf of the Class; (5) Class Counsel’s reasonable attorneys’ fees not to exceed \$225,000.00; (6) payment to the California Labor and Workforce Development Agency (“LWDA”) in the amount of \$37,500.00; and (7) PAGA Payment Shares to Class Members who worked during the PAGA Period (*see* Para. 3, below) in the amount of \$12,500.00. Defendants will pay the employer’s share of payroll taxes on wages separate from the Gross Settlement Amount.

2. **Settlement Shares:** The total amount available for payment to Participating Class Members (*i.e.*, Class Members who do not opt-out of the Settlement) will be determined by deducting from the Gross Settlement Amount the combined total of Court awarded attorneys’ fees and costs, settlement administration costs, enhancement awards to Plaintiffs, payment to the LWDA, and the amount allocated to the PAGA Payment Shares.

Each Participating Class Member’s share of the Settlement will be calculated on a pro rata basis according to the number of workweeks he or she worked as a non-exempt employee for SBS at any time between March 4, 2017, and June 30, 2024 (the “Class Period”) in comparison to the total number of workweeks worked by all

Participating Class Members during the Class Period. An IRS Form W-2 will be issued for the wage portion of any settlement payment and an IRS Form 1099 will be issued for the penalty, interest, and reimbursement.

3. **PAGA Payment Shares:** If you worked for SBS at any time between March 4, 2020, and June 30, 2024 (the “PAGA Period”), you will be entitled to an additional payment regardless of whether you request to be excluded from the Class and Settlement. The total amount available to this group of Class members is for this payment is \$12,500.00. If you qualify, your payment will be calculated on a pro rata basis according to the number workweeks you worked during the PAGA Period in comparison to the total number of workweeks worked by other Class Members during the PAGA Period. The PAGA Payment Share is allocated as penalties and will be included in IRS Form 1099.

4. **Your Estimated Share of the Settlement:** You do not need to do anything in order to receive your payment. Based on the records of SBS, your estimated payments under the Settlement will be as follows: Settlement Share of approximately \$ [REDACTED] for [REDACTED] workweeks during the Class Period, and PAGA Payment Share of approximately \$ [REDACTED] for [REDACTED] workweeks during the PAGA Period.

If you believe the number of workweeks credited to you are not accurate, you may send a written letter to the Settlement Administrator indicating the numbers you believe to be correct. Your letter should include: (1) the case name and number of the Class Action; (2) your name, mailing address, telephone number, and last four digits of your Social Security Number; (3) the number of workweeks you claim to have worked during the relevant time periods, along with any supporting documentation; and (4) your signature and date of signature, or of your representative.

The Settlement Administrator will work with the Parties to resolve any dispute based upon Defendants’ records and any information you provide. If the parties are unable to resolve the dispute, the Settlement Administrator will make the final decision regarding the number of workweeks. Any such dispute must be mailed to the Settlement Administrator no later than [DATE].

5. **Updated Contact Information:**

If your mailing address or contact information changes after receiving this Notice, you should call or write the Settlement Administrator to update your updated information so that settlement checks can be timely sent to you. If your check is undeliverable and the Settlement Administrator is unable to obtain an updated valid mailing address, you risk that your share of the settlement will be transferred to the Interdisciplinary Center for Healthy Workplaces, which is a public non-profit organization (the “Cy Pres Recipient”). Therefore, it is important that you inform the Settlement Administrator of any changes to you mailing address.

6. **Timing of Payments:**

The Settlement requires Defendants to fully fund the Gross Settlement Amount after the date of the Final Fairness and Approval Hearing set forth below. If the Court grants final approval of the Settlement, and no appeals are taken, it is anticipated that your share of the Settlement will be mailed to approximately one to two months after the date of the Court’s order granting final approval.

If you do not request to be excluded from the Settlement, then your settlement check will automatically be mailed to you at the same address where you received this Notice, or to a different address if you provide updated contact information to the Settlement Administrator. If you do not cash your settlement check within 180 days, you risk that your share of the settlement will be transferred to the Cy Pres Recipient. Therefore, it is important that you timely cash your check.

If you submit a timely and valid request for exclusion from the Settlement but worked as an hourly employee during the PAGA Period, you will not receive a Settlement Share but will receive a PAGA Payment Share.

C. RELEASE OF LIABILITY

If the Settlement is finally approved by the Court and Defendants fund all amounts due under the Settlement, Participating Class Members, will be deemed to release all claims that were alleged, or reasonably could have been alleged, based on facts alleged in the First Amended Complaint (“Class Released Claims”). The Class Released Claims include all claims alleged in Plaintiffs’ First Amended Complaint that arose during the Class Period, including (1) failure to pay wages (including minimum, regular, overtime, and wage premiums), (2) failure to provide compliant meal periods, or compensation and wage premiums in lieu thereof, (3) failure to authorize and permit compliant rest periods, or compensation and wage premiums in lieu thereof, (4) failure to provide accurate itemized wage statements, (5) failure to timely pay all wages during, and upon separation of, employment, (6) failure to reimburse business expenses, and (7) violations of the California Unfair Competition Law.

Additionally, Class Members employed during the PAGA Period will be deemed to release all claims for civil penalties recoverable under the Private Attorneys General Act of 2004 (*i.e.*, PAGA), based on the claims alleged in the First Amended Complaint, and written notices to the LWDA, or that reasonably could have been alleged based on the facts alleged therein, which arose during the PAGA Period.

D. TO REQUEST EXCLUSION FROM THE SETTLEMENT

If you want to be excluded from the Settlement (also referred to as “opting out”), you must send a written request to the Settlement Administrator (“Request for Exclusion”), postmarked no later than [DATE].

To be valid, your Request for Exclusion must include: (1) the case name and number of the Class Action; (2) your name, mailing address, telephone number, and last four digits of your Social Security Number; (3) a statement that you request to be excluded from the Class and do not wish to participate in the Settlement; and (4) be signed by you or your representative.

If you submit a timely and valid Request for Exclusion, you will no longer be a Class Member, and you will not receive a Settlement Share or be able to object to the terms of the Settlement. You will not be bound by the terms of the Settlement and you may pursue any claims you may have against Defendants at your own expense.

Class Members employed during the PAGA Period cannot exclude themselves from the release of the PAGA claim and will be entitled to a PAGA Payment Share, whether or not they submit a valid Request for Exclusion.

E. TO OBJECT TO THE SETTLEMENT

You may also appear at the Final Approval Hearing at your expense, either in person, telephonically, or through an attorney, provided you notify the Court of your intention to do so.

If you would like to object to the Settlement, you must not submit a Request for Exclusion. In order to object, you have two options. You may object to the proposed Settlement in writing, or you may appear at the Final Fairness and Approval Hearing in person.

A written objection must: (1) include the case name and number of the Class Action; (2) specify the ground(s) for the objection; (3) be signed by you or your representative; (4) be submitted to the Court either by mailing the objection to: Clerk of the Court, Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose California 95113, or by filing in person at the same location; (5) also be mailed to Class Counsel [information above] and Defense Counsel [Douglas J. Farmer, and Ethan Lai of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., One Embarcadero Center, Suite 900, San Francisco, CA 94111]; and (6) be filed or postmarked no later than [DATE].

Alternatively, you may also appear at the Final Fairness and Approval Hearing at your expense, in person, telephonically, or through an attorney, provided that you notify the Court of your intention to do so. You may present any oral objections even if you do not submit a timely written objection.

F. FINAL APPROVAL HEARING ON PROPOSED SETTLEMENT

The Final Fairness and Approval Hearing on the fairness and adequacy of the proposed Settlement will be held on [REDACTED] at [REDACTED], in Department 19 of the Superior Court of the State of California, County of Santa Clara, 161 North First Street, San Jose, CA 95113. The Settlement Administrator will notify any Class Member who objected to the Settlement if the hearing is postponed to some other date. It is not necessary for you to appear at this hearing. However, a Class Member who wishes to make an oral objection at the hearing may do so even if the Class Member did not submit a written objection. If you intend to appear at the hearing, please check the Court's website at <https://www.scscourt.org/index.shtml> for current procedures to attend.

G. ADDITIONAL INFORMATION ABOUT THE PROPOSED SETTLEMENT

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Settlement Agreement, which is on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Settlement Agreement, may be examined (a) online on the Superior Court of California, County of Santa Clara's Electronic Filing and Service Website at www.scefiling.org, or (b) in person at Records, Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays and closures, or you may contact Class Counsel or the Settlement Administrator.

PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANTS' COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT OR THE NOTICE PROCESS.