

MEMORANDUM OF UNDERSTANDING ("MOU")

1. This MOU is entered into by and between the parties to the action entitled *Eduardo Pena v. Strategic Operations, Inc.*, San Diego County Superior Court Case no. 37-2022-00014701-CU-OE-CTL. It memorializes the settlement reached at the mediation on July 27, 2022, by the parties. It confirms the essential terms of the settlement and assists in preparation of a full, comprehensive Settlement Agreement. This MOU is enforceable by, binding on, admissible, and subject to disclosure by all parties.
2. As a condition of settlement, Plaintiff will amend his complaint to include a claim for California's Private Attorneys General Act of 2004 ("PAGA"). Defendant will stipulate to this amendment. The settlement memorialized in this MOU will resolve both the class claims and the PAGA claim in the proposed amended complaint. The Answer previously filed by Defendant on June 6, 2022 will be deemed an answer to the proposed amended complaint.
3. The parties intend to enter into a more formal "long form" agreement whose terms are not inconsistent with the terms of this MOU, but if they fail to execute a more formal agreement, this agreement will be final, binding and enforceable pursuant to California Code of Civil Procedure section 664.6, subject to court approval. The parties shall have 45 days from the date of this agreement to prepare a "long form" settlement agreement. In the event that the parties do not complete that "long form" agreement within 45 days, either party may move for preliminary approval of this class action settlement on the basis of the terms set forth in this MOU. In that event, the party moving for preliminary approval will propose customary terms and procedures for the notice process and settlement administration, and is also entitled to attorney's fees and costs associated with enforcing the MOU, subject to the court determining if the non-moving party unreasonably delayed the process.
4. The parties stipulate to class certification for purposes of settlement only. If the Court does not grant either preliminary or final approval of this settlement, the parties stipulate that class certification will be revoked, but without prejudice to other class certification proceedings.
5. Defendants shall pay a maximum amount ("Maximum Settlement Amount") of Three Hundred Fifty Thousand Dollars (\$350,000) in full and complete settlement of this matter, which sum includes all attorneys' fees and costs, administration costs, employer's share of payroll taxes, enhancement award to the class representative, and payment to the California Labor and Workforce Developmental Agency. No money will revert to Defendants. The balance after deduction of attorneys' fees and costs, administration costs, an enhancement award, and payment to the California Labor and Workforce Developmental Agency, will be the Net Settlement Amount.
6. Defendant is required to fully fund the Maximum Settlement Amount in four (4) installments with the first Eighty-Seven Thousand Five Hundred Dollars (\$87,500) due within twelve (12) months after the stipulation for settlement is signed, and the remaining

Two Hundred Sixty Two Thousand Five Hundred Dollars (\$262,500) in three (3) equal installments due within 30 days, 60 days, and 90 days, respectively, after the first payment.

7. All class members who do not opt-out will release Defendants from any and all claims asserted in the proposed amended complaint, and any future amendments to the proposed amended complaint, including but not limited to state wage and hour claims for any and all violations of California's Labor Code and Unfair Competition Law based on Defendants' failure to pay for all hours worked (including minimum wages, straight time wages, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay all wages due at the time of termination, failure to furnish accurate, itemized wage statements, civil penalties under California's Private Attorneys General Act of 2004 based on the alleged Labor Code violations, and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including but not limited to the California Labor Code and the applicable Wage Orders, including a waiver of Civil Code 1542 for those claims only.
8. The Settlement Class Members are all persons who worked for any Defendant in California as an hourly paid or non-exempt employee during the Class Period, as defined below.
9. The Class Period starts on April 20, 2018 and shall end on July 27, 2022, or the date when the Court grants preliminary approval of the settlement, whichever is earlier.
10. Defendants will not oppose a request by Plaintiff Eduardo Pena to be appointed the Class Representative and for an enhancement payment of up to \$5,000.00, in exchange for his service as the Class Representative. This amount is paid from the Maximum Settlement Amount and is in addition to the payment to which Plaintiff is entitled as a Class Member. Even in the event that the Court reduces or does not approve the requested Class Representative's enhancement payment, Plaintiff shall not have the right to revoke this MOU or this settlement, and it will remain binding. In exchange for the enhancement payment, Plaintiff Eduardo Pena agrees to a full and complete release of any claims that he may have arising out of his employment with Defendants, including a Civil Code section 1542 release except for the individual case with number 37-2021-00053067-CU-WT-CTL. The court will be informed of the individual case settlement.
11. \$10,000.00 of the Maximum Settlement Amount is allocated for violations of PAGA, 75% of which \$7,500) will be paid to the Labor and Workforce Development Agency and 25% (\$2,500) will be paid to the Class.
12. Defendants will not oppose an application for an award of attorneys' fees to counsel for Plaintiff, from the Maximum Settlement Amount, of up to 33 1/3% of the Maximum Settlement Amount, that is One Hundred Sixteen Thousand Six Hundred Sixty-Five Dollars and Fifty Cents (\$116,665.50), plus actual costs and expenses up to \$13,955.40 as supported by declaration. Even in the event that the Court reduces or does not approve the requested award to Plaintiff's counsel for attorney's fees and costs, Plaintiff's counsel shall not have the right to revoke this MOU or this settlement, and it will remain binding.

13. Defendants will not oppose an application of up to \$25,000.00 of the Maximum Settlement Amount to the Settlement Administrator for claims administration costs and fees. Fees of the Settlement Administrator shall be paid out of the Maximum Settlement Amount. The parties agree to select a mutually agreeable Settlement Administrator. The Settlement Administrator shall be responsible for payment of all payments to the Settlement Class, and shall be responsible for all appropriate withholding disbursement of taxes, and compliance with all reporting obligations.
14. Settlement Class Members will not be required to submit a claim form to participate in the settlement. The Class will receive a Notice containing instructions on how to opt-out or object to the settlement.
 - a. Individual settlement payments will be proportionally based on compensable workweeks. A workweek is defined as working two or more workdays in a workweek.
 - b. The Class Notice will contain the estimated individual settlement payment and dates of employment.
 - c. Class Members who submit timely requests to opt out of the settlement within 60 days of the Settlement Administrator mailing the Class Notice will not participate in the settlement and will not be bound by the terms of the proposed settlement or the final judgment.
15. Settlement checks will be valid for 180 days, and all funds remaining from uncashed checks after 180 days shall be handled pursuant to California Code of Civil Procedure section 384. The parties select Legal Aid at Work as the *cy pres* recipient. If the Court does not approve the *cy pres* designee, the parties shall select a new *cy pres* designee, with approval by the Court. Any Class Member who does not opt-out will be nevertheless bound by the terms of the agreement regardless of whether he or she cashes the check.
16. The settlement payment for each individual claimant shall be allocated 50% as wages and 50% as penalties and interest. The Settlement Administrator will be responsible for issuing all tax documents to Class Members.
17. Defendants maintain the right, in their sole discretion, to revoke the settlement and their stipulation to class certification before the final fairness hearing in the event that ten percent (10%) or more of Settlement Class Members opt out of the settlement.
18. Defendants' best estimate of the number of workweeks for the Class Members before July 27, 2022 is 11,528 workweeks. If the amount of workweeks within the Class Period is determined to be more than 10% higher than this estimate (i.e., if it is 1,153 or more workweeks over 11,528), the Maximum Settlement amount shall be increased by the average gross payout of the Class Members based on the 1,153 workweeks. For example, if there are 10% more workweeks than the initial figure of 11,528 workweeks during the

time period stated above (in this paragraph), then the Defendant will increase the Maximum Settlement Amount by 10%. The Maximum Settlement Amount will not be reduced due to Defendant's estimate.

19. All Class Members who have not validly opted out by the stated time period will be subject to the Release and all other terms of the settlement.
20. The parties and their counsel agree not to take any action to encourage any Class Members to opt out of and/or object to the Settlement. Counsel for Plaintiff reserves the right to encourage Class Members to participate in the settlement.
21. Defendants expressly deny any liability. Neither this MOU nor the "long form" Settlement Agreement shall constitute an admission of liability or the accuracy of any allegation made by Plaintiff or her counsel.
22. Any settlement shall remain confidential until a motion for preliminary approval is filed with the court.
23. This agreement is executed by the parties and their duly authorized attorneys as of the day and year set forth below:

IT IS SO AGREED.

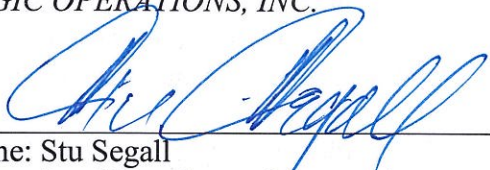
On Behalf of Plaintiff EDUARDO PENA:

Dated: _____, 2022

EDUARDO PENA, Plaintiff

On Behalf of the Defendant, STRATEGIC OPERATIONS, INC.

Dated: Aug 19 / 2022, 2022



Name: Stu Segall
Title: President, Strategic Operations, Inc.