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10 Attorneys for Plaintiff

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF SAN DIEGO**

13 EDUARDO PENA, individually, and on behalf  
14 of all others similarly situated,

15 *Plaintiff,*

16 v.

17 STRATEGIC OPERATIONS, INC., a California  
18 corporation, and DOES 1 through 10, inclusive,

19 *Defendants.*

Case No.: 37-2022-00014701

**CLASS ACTION**

[Assigned for all purposes to: Hon. Carolyn  
M. Caietti, Dept. C-70]

**DECLARATION OF NICOL E. HAJJAR  
IN SUPPORT OF PLAINTIFF'S  
MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT**

Date: March 15, 2024

Time: 10:30 a.m.

Dept: C-70

Complaint filed: April 20, 2022

Trial date: None set

I, Nicol E. Hajjar, declare as follows:

## CASE BACKGROUND

3. Plaintiff alleges that Defendant's payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours worked by not recording the actual start and end times of shifts for each workday, by automatically deducting meal periods, and by implementing a rounding policy that systematically underpaid Plaintiff and putative class members' wages. Plaintiff further alleges that Defendant failed to include all remuneration in the employees' overtime rate and meal and rest period premiums. Plaintiff further alleges that Defendant failed to provide employees with legally compliant meal and rest periods. Based on these allegations, Plaintiff asserts claims against Defendant for failure to pay minimum and straight time wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay all final wages at termination, failure to provide accurate itemized wage statements, unfair business practices, and civil penalties under PAGA.

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1           4.       On April 20, 2022, Plaintiff filed a putative wage-and-hour class action complaint  
2 against Defendant for: (1) failure to pay minimum and straight time wages (Cal. Lab. Code §§ 204,  
3 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Cal. Lab. Code §§ 1194 and 1198);  
4 (3) failure to provide meal periods (Cal. Lab. Code §§ 226.7 and 512); (4) failure to authorize and  
5 permit rest periods (Cal. Lab. Code §§ 226.7); (5) failure to timely pay final wages at termination  
6 (Cal. Lab. Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Cal. Lab.  
7 Code § 226); and (7) unfair business practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*). On  
8 December 21, 2022, Plaintiff filed a First Amended Class Action Complaint adding a claim for  
9 civil penalties under PAGA.

#### 10                               DISCOVERY AND INVESTIGATION

11           5.       Following the filing of the Complaint, the parties exchanged documents and  
12 information before mediating this action. Defendant produced a sample of time and pay records  
13 for class members. Defendant also provided documents of its wage and hour policies and practices  
14 during the class period, and information regarding the total number of current and former  
15 employees in its informal discovery responses.

16           6.       After reviewing documents regarding Defendant's wage and hour policies and  
17 practices, analyzing Defendant's timekeeping and payroll records, and interviewing Class  
18 Members, Class Counsel was able to evaluate the probability of class certification, success on the  
19 merits, and Defendant's maximum monetary exposure for all claims. Class Counsel also  
20 investigated the applicable law regarding the claims and defenses asserted in the litigation. Class  
21 Counsel reviewed these records and utilized an expert to prepare a damages analysis prior to  
22 mediation.

#### 23                               SETTLEMENT NEGOTIATIONS

24           7.       On July 27, 2022, the parties participated in private mediation with experienced  
25 class action mediator, Steve G. Pearl, Esq. The mediation was conducted via Zoom. The settlement  
26 negotiations were at arm's length and, although conducted in a professional manner, were  
27 adversarial. The Parties went into the mediation willing to explore the potential for a settlement  
28 of the dispute, but each side was also prepared to litigate their position through trial and appeal if

1 a settlement had not been reached.

2 8. After extensive negotiations and discussions regarding the strengths and  
3 weaknesses of Plaintiff's claims and Defendant's defenses, the Parties were able to reach a  
4 resolution, the material terms of which are encompassed within the Joint Stipulation for Class  
5 Action Settlement ("Settlement"). Attached as **Exhibit 1** is a true and correct copy of the  
6 Settlement.

7 9. This Court granted preliminary approval of a \$350,000.00 class action settlement  
8 on October 13, 2023.

9 10. Since then, the total number of Workweeks has increased from 11,528 to 13,123,  
10 the Settlement Amount increased by 3.49%. Pursuant to Sections I (T) and XI (C) of the  
11 Settlement Agreement, the gross settlement amount should increase to \$362,205.07 (\$350,000 +  
12 \$12,205.07).

13 11. If the Court applies Section XI(C) of the Stipulation of Settlement and increases  
14 the gross settlement amount by 3.49% to \$362,205.07, there will be no prejudice to class  
15 members even though the class notice disclosed a lower amount. Such an increase will result in  
16 each class member receiving a larger settlement share. Since there are no objections and only  
17 three opt-outs to the settlement, participating class members are presumably pleased with the  
18 lower estimated amount that was disclosed in the notice, and so one can assume that they will be  
19 even more pleased to receive additional money.

20 12. \$10,000 shall be allocated as a settlement of Plaintiff's claims under PAGA, with  
21 75% of which (\$7,500) will be paid to the LWDA and 25% (\$2,500) will be paid to the Aggrieved  
22 Employees. (Settlement, ¶ XVI.)

23 13. Class Counsel submitted the proposed settlement and accompanying papers to the  
24 LWDA before filing this Motion for Final Approval.

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1           14.     The Settlement provides that Defendant will not oppose a fee application of up to  
2     33 1/3% (\$116,665.50) of the Settlement Amount, plus out-of-pocket costs not to exceed  
3     \$13,955.40. (Settlement, ¶ XIII.) However, the Potential Increase in Funding clause of the  
4     Settlement Agreement was triggered. Since the total number of Workweeks was 13,123, the  
5     Settlement Amount increased by 3.49% (actual Workweeks of 13,123 *less* max Workweek count  
6     of 12,681 *equals* 442 Workweek overage. 442 Workweeks *divided by* 12,681 Workweeks *equals*  
7     3.49%). Since the Settlement Amount was increased by 3.49%, the increased Settlement Amount  
8     is \$362,205.07 (\$350,000 + \$12,205.07).

9           15.     At this time, Class Counsel's costs are approximately \$12,933.92. A true and  
10    correct copy of Plaintiff's costs to the date is attached to this declaration as **Exhibit 2**.

11          16.     Class Counsel submitted the proposed settlement and accompanying papers to the  
12    LWDA before filing this Motion for Final Approval.

13          17.     There are no other related actions that might be encompassed in the scope of the  
14    released claims alleged in this action.

15                   THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE

16          18.     Class Counsel has conducted a thorough investigation into the facts of this case.  
17    Based on the foregoing discovery and their own independent investigation and evaluation, Class  
18    Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best  
19    interests of the Settlement Class Members in light of all known facts and circumstances, the risk  
20    of significant delay, the defenses that could be asserted by Defendant both to certification and on  
21    the merits, trial risk, and appellate risk.

22          19.     Based on an analysis of the facts and legal contentions in this case, documents and  
23    information from Defendant, I evaluated Defendant's maximum exposure. I took into account the  
24    risk of not having the claims certified and the risk of not prevailing at trial, even if the claims are  
25    certified. After using the data Defendant provided, including a random sample of timekeeping and  
26    payroll records, as well as class member demographics (i.e., the number of class members,  
27    workweeks, and average total compensation of the class), with the assistance of a statistics expert,  
28    I created a damages model to evaluate the realistic range of potential recovery for the class. The

1 damages model is based on the following benchmarks:

2 Total Class Members: 225

3 Total Workweeks: 12,902

4 PAGA Pay Periods: 5,850

5 Avg. Hourly Rate: \$19.55

6 Class period: April 20, 2018 through July 27, 2022

7 20. Plaintiff alleges that Defendant failed to pay for all hours worked, including  
8 minimum wages, straight time wages, and overtime wages, due to Defendant implementing a  
9 rounding policy that systematically underpaid Plaintiff and putative class members, and  
10 automatically deducting 30-minute meal periods. My expert analyzed Defendant's timekeeping  
11 and payroll records and found that Defendant's rounding practices resulted in, 11.2% of employee  
12 shifts favoring the employer, and only 8.1% of shifts favoring employees, resulting in an average  
13 of 4 minutes that were underpaid per shift to class members. In analyzing the records, my expert  
14 estimated that Defendant's rounding practice resulted in a net underpayment of approximately 81.6  
15 hours to the class members, which is equivalent to a maximum liability of \$3,516 including  
16 interest. I discounted this figure by 30% to account for the difficulty of prevailing on a motion for  
17 class certification and a trial on the merits, yielding a realistic damage estimate of **\$2,461.20**.<sup>1</sup>

18 21. With respect to the meal period claim, Plaintiff alleges that Defendant required him  
19 and similarly situated class members to work in lieu of taking meal periods, and Defendant lacked  
20 legally compliant policies and practices providing meal periods for the entirety of the class period.  
21 My expert analyzed Defendant's timekeeping records and found that approximately 8.5% of all  
22 meal breaks had alleged violations of short, missed, or no meal periods. Potential liability for the  
23 meal period claim, factoring in the premiums issued to off-set the remaining premiums owed,  
24 which includes shifts 5-6 hours long, shifts over six hours long, shifts over ten hours long, and  
25

26 <sup>1</sup> Discounts for risk at certification and trial is reasonable because the Judicial Council of  
27 California found that only 21.4% of all class actions were certified either as part of a settlement *or*  
28 as part of a contested certification motion. See Findings of the Study of California Class Action  
Litigation, 2000-2006, available at [http:// www.courts.ca.gov/documents/class-action-lit-study.pdf](http://www.courts.ca.gov/documents/class-action-lit-study.pdf).

1 shifts over 12 hours long is 81,581.00, including interest; however, I discounted this figure by 80%  
2 to account for the difficulty of certifying and proving meal period claims, especially in light of the  
3 federal enclave exemption, and to account for the possibility of class members voluntarily choosing  
4 to forego a meal period, yielding a realistic damage estimate of **\$16,316.20**.

5 22. With respect to the rest period claim, Plaintiff alleges that Defendant required him  
6 and similarly situated class members to work in lieu of taking rest periods, and Defendant lacked  
7 legally compliant policies and practices authorizing and permitting employees to take  
8 uninterrupted, off-duty rest periods for the entirety of the class period. Assuming a 50% violation  
9 rate for the entirety of the class period based on Plaintiff's and other class members' experience  
10 working for Defendant, Defendant's potential liability for the rest period claim is \$478,192.00;  
11 however, I discounted this figure by 80% to account for the difficulty of certifying and proving  
12 rest period claims, particularly because rest periods do not have to be recorded, and to account for  
13 the possibility of class members voluntarily choosing to forego a rest period, yielding a realistic  
14 damage estimate of **\$ 95,638.40**.

15 23. In sum, Plaintiff and the class member's maximum recovery for the unpaid wages  
16 and expenses based on the alleged failure to pay for all hours worked (minimum, straight time, and  
17 overtime wages), failure to provide premiums for all meal and rest period violations is **\$572,289**,  
18 but, **after factoring in the risk and uncertainty of prevailing at certification and trial,**  
19 **Plaintiff's realistic estimated recovery for the non-penalty claims is \$114,415.80.**

20 24. With respect to Plaintiff's derivative claims for statutory and civil penalties,  
21 Plaintiff estimated that Defendant's realistic potential liability is **\$1,892,237**. While Defendant's  
22 maximum potential liability for waiting time penalties is \$818,937.00 based on approximately 173  
23 terminated class members during the 3-year statute, \$488,300.00 for inaccurate wage statements  
24 based on approximately 167 class members who worked 5,850 pay periods within the 1-year  
25 statute, and \$585,000.00 for PAGA violations based on the Court assessing a \$100 penalty for  
26 initial violations for all 5,850 pay periods within the 1-year statute, I believe that it would be  
27 unrealistic to expect the Court to award the full \$1,892,237.00 in penalties given Defendant's  
28 defenses, the contested nature of Plaintiff's claims, and the discretionary nature of penalties.

1 Considering that the underlying claims are realistically estimated to be **\$572,289.00**, such a  
2 disproportionate award would also raise due process concerns. Weighing these factors and  
3 applying a discount to account for the risk and uncertainty of prevailing at trial, I arrived at  
4 **\$378,447.40** for statutory and civil penalties.

5       25.     **Using these estimated figures, Plaintiff predicted that the realistic maximum**  
6 **recovery for all claims, including penalties, would be \$492,863.20. This means that the**  
7 **\$362,205.07 settlement figure represents approximately 71% of the realistic maximum**  
8 **recovery ( $\$362,205.07 / \$492,863.20 = 73.48\%$ ).** However, since the total number of Workweeks  
9 was 13,123, the Settlement Amount increased by 3.49% (actual Workweeks of 13,123 *less* max  
10 Workweek count of 12,681 *equals* 442 Workweek overage. 442 Workweeks *divided by* 12,681  
11 Workweeks *equals* 3.49%). Since the Settlement Amount was increased by 3.49%, the increased  
12 Settlement Amount is \$362,205.07 (\$350,000 + \$12,205.07). (Settlement, ¶ XI (C).) Considering  
13 the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for  
14 the Class. Indeed, because of the proposed Settlement, class members will receive timely,  
15 guaranteed relief and will avoid the risk of an unfavorable judgment.

16       26.     While Plaintiff is confident in the merits of his claims, a legitimate controversy  
17 exists as to each cause of action. Plaintiff also recognizes that proving the amount of wages due  
18 to each Class Member would be an expensive, time-consuming, and uncertain proposition.

19       27.     The settlement avoids the risks and the accompanying expense of further litigation.  
20 Although the Parties had engaged in a significant amount of investigation, informal discovery and  
21 class-wide data analysis, the Parties had not yet completed formal written discovery. Plaintiff  
22 intended to depose corporate officers and managers of Defendant. Moreover, preparation for class  
23 certification and a trial remained for the Parties as well as the prospect of appeals in the wake of a  
24 disputed class certification ruling for Plaintiff and/or adverse summary judgment ruling. Had the  
25 Court certified any claims, Defendant could move to decertify the claims. As a result, the Parties  
26 would incur considerably more attorneys' fees and costs through trial.

27       28.     The Net Settlement Amount available for Class Member settlement payments is  
28

1 estimated to be \$205,787.73, for a class of 225 persons.<sup>2</sup> **As a result, each Settlement Class**  
2 **Member is eligible to receive an average net benefit of approximately \$926.97.**

3 29. The proposed settlement of \$350,000.00 therefore represents a substantial recovery  
4 when compared to Plaintiff's reasonably forecasted recovery. When considering the risks of  
5 litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary  
6 to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement  
7 amount of \$350,000.00 is within the "ballpark" of reasonableness, and preliminary settlement  
8 approval is appropriate.

9 ENHANCEMENT AWARD FOR PLAINTIFF IS REASONABLE

10 30. Class Counsel represent that Plaintiff devoted a great deal of time and work assisting  
11 counsel in the case, communicated with counsel very frequently for litigation and to prepare for  
12 mediation, and was frequently in contact with Class Counsel during the mediation. Plaintiff's  
13 requested enhancement award is reasonable particularly in light of the substantial benefits Plaintiff  
14 generated for all class members.

15 31. Throughout this litigation, Plaintiff, who is a former employee of Defendant, has  
16 cooperated immensely with my office and has taken many actions to protect the interests of the  
17 class. Plaintiff provided valuable information regarding unpaid overtime, meal period, and rest  
18 period claims. Plaintiff also informed my office of developments and information relevant to this  
19 action, participated in decisions concerning this action, made himself available to answer questions  
20 during the mediation. Before we filed this case, Plaintiff provided my office with several  
21 documents. The information and documentation provided by Plaintiff was instrumental in  
22 establishing the wage and hour violations alleged in this action, and the recovery provided for in  
23 the Settlement Agreement would have been impossible to obtain without Plaintiff's participation.

24 32. At the same time, Plaintiff faced many risks in adding himself as the class  
25 representative in this matter. Plaintiff faced actual risks with his future employment, as putting  
26

27 <sup>2</sup> The Net Settlement Amount is: \$362,205.07 minus \$5,000.00 for class representative  
28 service award, minus \$7,750.00 in administration costs, minus \$7,500.00 for PAGA portion sent  
to the LWDA, minus \$2,500.00 the PAGA amount, minus \$120,733.42 for Class Counsel's  
attorneys' fees, and minus \$12,933.92 for Class Counsel's litigation expenses.

1 himself on public record in an employment lawsuit could also very well affect his likelihood for  
2 future employment. Furthermore, as part of this settlement, Plaintiff is executing a general release  
3 of all claims against Defendant.

4 33. In turn, class members will now have the opportunity to participate in a settlement,  
5 reimbursing them for alleged wage violations they may have never known about on their own or  
6 been willing to pursue on their own. If these class members would have each tried to pursue their  
7 legal remedies on their own, that would have resulted in each having to expend a significant amount  
8 of their own monetary resources and time, which were obviated by Plaintiff putting himself on the  
9 line on behalf of these other class members.

10 34. In the final analysis, this class action would not have been possible without the aid  
11 of Plaintiff, who put his own time and effort into this litigation, sacrificed the value of his own  
12 individual claims, and placed himself at risk for the sake of the class members. The requested  
13 enhancement award for Plaintiff for his service as the class representative and for his general  
14 release of all individual claims is a relatively small amount of money when the time and effort put  
15 into the litigation are considered and in comparison to enhancements granted in other class actions.  
16 The requested incentive award is therefore reasonable to compensate Plaintiff for his active  
17 participation in this lawsuit.

18 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

19 35. The Settlement provides for attorney's fees payable to Class Counsel in an amount  
20 up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award of \$116,665.50,  
21 plus actual costs and expenses not to exceed \$13,995.40. However, the escalator was triggered  
22 adding \$4,067.95, for a total fee of \$120,733.45. (Settlement, ¶ XI (C).) The proposed award of  
23 attorneys' fees to Class Counsel in this case can be justified under either method – lodestar or  
24 percentage recovery. Class Counsel, however, intend to base the proposed award of fees, costs  
25 and expenses on the percentage method as many of the entries in the time records will have to be  
26 redacted to preserve attorney-client and attorney work product privileges.

27 36. Attached as **Exhibit 3** is a true and correct copy of Wilshire Law Firm's timesheets  
28 in this matter.

1           37.     There are additional hours devoted by me (and by my colleagues) to this litigation  
2 that are not reflected in Class Counsel's request for attorney's fees.

3           38.     Additional time will be required by Class Counsel to obtain final approval of the  
4 settlement and requested awards, monitor the settlement and respond to class member inquiries,  
5 and oversee administration of the settlement and distribution of the fund. I estimate that my office  
6 will commit no less than 10 hours to those tasks and have included those hours above. Given my  
7 firm's time spent on this case and the positive reaction by the class, the requested fee award is  
8 reasonable and fair.

9           39.     I am informed and believe that the fee and costs provision is reasonable. The fee  
10 percentage requested is less than that charged by my office for most employment cases. My office  
11 invested significant time and resources into the case, with payment deferred to the end of the case,  
12 and then, of course, contingent on the outcome.

13           40.     The risk to my office has been very significant, particularly if we would not be  
14 successful in pursuing this class action. In that case, we would have been left with no compensation  
15 for all the time taken in litigating this case. Indeed, I have taken on a number of class action cases  
16 that have resulted in thousands of attorney hours being expended and ultimately having  
17 certification denied or the defendant company going bankrupt. The contingent risk in these types  
18 of cases is very real and they do occur regularly. Furthermore, we were precluded from focusing  
19 on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

20           41.     As of the drafting of this motion, my office has incurred around \$12,433.92 in  
21 expenses litigating this action, and we anticipate accruing additional costs up to Final Approval of  
22 the Settlement. A true and correct copy of Plaintiff's costs to the date is attached to this declaration  
23 as **Exhibit 2**. These expenses were reasonably necessary to the litigation and were actually  
24 incurred by my office. They should be reimbursed in full, up to the maximum amount allowed in  
25 the Settlement Agreement. I also anticipate that my office will at least \$500.00 in additional costs  
26 up to the time the Court enters a judgment in this action and schedules a hearing on distribution;  
27 this figure is based primarily on charges for additional filing, attorney service fees, and court  
28 reporting fees of approximately \$500.00. Because of these additional costs, I respectfully request

1 that the Court allow Plaintiff's counsel to recover \$12,933.92 in costs.

2 42. Wilshire Law Firm, PLC has no fee-splitting agreement with any other counsel in  
3 this case.

4 MY EXPERIENCE AND QUALIFICATIONS

5 43. Wilshire Law Firm, PLC was selected by Best Lawyers and U.S. News & World  
6 Report as one of the nation's Best Law Firms in 2022 and is comprised of over 50 attorneys and  
7 over 250 employees. Wilshire Law Firm, PLC is actively and continuously practicing in  
8 employment litigation, representing employees in both individual and class actions in both state  
9 and federal courts throughout California.

10 44. Wilshire Law Firm, PLC is qualified to handle this litigation because its attorneys  
11 are experienced in litigating Labor Code violations in both individual, class action, and  
12 representative action cases. Wilshire Law Firm, PLC has handled, and is currently handling,  
13 numerous wage and hour class action lawsuits, as well as class actions involving consumer rights  
14 and data privacy litigation.

15 45. My practice is focused on advocating for the rights of employees in class action  
16 litigation and individual state and federal litigation. I am currently the primary attorney in charge  
17 of litigating several class action cases.

18 46. I was selected to serve on CAOC's Board of Directors in 2020, 2021 and 2022 and  
19 I am an active member of CAALA, CELA. I sit on CELA's women's committee as co-chair and  
20 wage and hour committee and I was selected to speak at CELA's 2020 Advanced Wage & Hour  
21 Seminar. Further, I have extensively litigated employment cases for the past eight years, including  
22 a successful wage and hour trial wherein the jury awarded Plaintiff wage and hour damages and  
23 Plaintiff was awarded PAGA penalties.

24 47. I have received numerous awards for my legal work. The National Trial Attorneys  
25 selected me as a "Top 10 Wage and Hour Trial Lawyer," and a "Top 40 Under 40" attorney. Super  
26 Lawyers selected me as one of their "Rising Stars" every year since 2018.

27 48. My current contingent billing rate of \$850 per hour is consistent with my practice  
28 area, numerous awards received, legal market and accepted hourly rates.

## WILSHIRE LAW FIRM'S EXPERIENCE AND QUALIFICATIONS

49. Elizabeth M. Votra is a sixth-year Associate Attorney at Wilshire Law Firm, PLC. She was admitted to practice law in the State of California and the Central, Southern, Eastern, and Northern Districts of California. She graduated from Florida State University, with a Bachelor of Arts in English Literature, and received her Juris Doctor from California Western School of Law. During law school, she completed externships with two trial court judges in Nevada and Florida, and she was a student mediator at the San Diego Superior Court, North County Division. Since graduating law school, she has focused her legal work exclusively on Plaintiff's employment litigation including both FEHA individual and wage and hour class action litigation. Before joining Wilshire Law Firm, she practiced in a respected wage-and-hour law firm where she worked on dozens of class actions. She has almost three years of experience in wage-and-hour class action cases. Her current contingent billing rate for this case is \$450 per hour, which is consistent with her level of experience in the wage and hour arena.

50. Anthony G. Balbuena is a paralegal at Wilshire Law Firm with five years of experience working at law firms, including over two years of experience working on class action cases. He is a graduate of California State University Long Beach with a Bachelor of Arts in Psychology.

## NO INTEREST IN THE CY PRES RECIPIENT, LEGAL AID AT WORK

51. Plaintiff Eduardo Pena does not have any interest, financial or otherwise, in the proposed *cy pres* recipient, Legal Aid at Work.

52. No one at Wilshire Law Firm, PLC (meaning the law firm itself and anyone employed at the law firm) has any interest, financial or otherwise, in the proposed *cy pres* recipient, Legal Aid at Work.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Executed on February 22, 2024, at Los Angeles, California.

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Nicol E. Hajjar, Esq.

# **EXHIBIT 1**

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Counsel for Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

EDUARDO PENA, an individual,  
  
Plaintiff,

vs.

STRATEGIC OPERATIONS, INC., a  
corporation; and DOES 1 through 10,  
inclusive,

Defendants.

CASE NO.: 37-2022-00014701-CU-OE-CTL

**CLASS ACTION**

Assigned to Hon. Carolyn Caietti, Dept. #C70

**STIPULATION OF SETTLEMENT OF  
CLASS ACTION AND PAGA CLAIMS  
AND RELEASE OF CLAIMS**

Complaint Filed: 4/20/2022  
Trial Date: Not set

Hearing Date: 3/30/2023  
Time: 10:30 a.m.  
Department: C-70

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1 This Stipulation of Settlement of Class Action and PAGA Claims and Release of Claims  
2 (“Stipulation of Settlement”) is made by and between the Named Plaintiff, EDUARDO PENA  
3 (“Plaintiff”), on his own behalf, on the behalf of all members of the Settlement Class, as defined  
4 below, and on behalf of the Aggrieved Employees, as defined below, on the one hand, and  
5 Defendant STRATEGIC OPERATIONS, INC. (“Defendant”), on the other hand (collectively,  
6 the “Parties”), in the lawsuit entitled *Eduardo Pena v. Strategic Operations, Inc., et al.*, filed in  
7 the San Diego County Superior Court, bearing the Case No. 37-2022-00014701-CU-OE-CTL.  
8 This Stipulation of Settlement resolves all claims that were asserted or could have been asserted  
9 against Defendant pertaining to the claims in the Litigation.

10 **I. DEFINITIONS**

11 **A. Administrative Costs.** All administrative costs of settlement, including cost of  
12 notice to the Settlement Class, claims administration, and any fees and costs incurred or charged  
13 by the Settlement Administrator in connection with the execution of its duties under this  
14 Stipulation of Settlement.

15 **B. Aggrieved Employees.** The term “Aggrieved Employees” is defined as: All  
16 persons who worked one or more Workweeks for Defendant in California as an hourly-paid or  
17 non-exempt employee during the PAGA Period (together, collectively referred to as “Aggrieved  
18 Employees”).

19 **C. Agreement.** The terms “Agreement” or “Settlement Agreement” are used  
20 synonymously herein to mean this Stipulation of Settlement.

21 **D. Class Counsel.** The term “Class Counsel” as used herein means: WILSHIRE  
22 LAW FIRM, PLC and all the lawyers of the firm acting on behalf of Named Plaintiff and the  
23 Settlement Class. The term Class Counsel shall be used synonymously with the term Plaintiff’s  
24 Counsel.

25 **E. Court.** The term “Court” as used herein means the Superior Court of the State of  
26 California for the County of San Diego.

27 **F. Final.** The term “Final” means: (1) the date of final affirmation of the Final  
28 Approval Order from any appeal, the expiration of the time for, or the denial of, a petition to

1 review the Final Approval Order, or if review is granted, the date of final affirmation of the Final  
2 Approval Order following review pursuant to that grant; or (2) the date of final dismissal of any  
3 appeal from the Final Approval Order or the final dismissal of any proceeding to review the  
4 Final Approval Order, provided that the Final Approval Order is affirmed and/or not reversed in  
5 any part; or (3) if no appeal is filed, the expiration date of the time for the filing or noticing of  
6 any appeal from the Court's Final Approval Order, as determined under Rule 8.104(a)(3) of the  
7 California Rules of Court.

8 **G. Date of Final Approval.** The terms "Date of Final Approval" or "Final Approval  
9 Order" as used herein mean the final formal judgment entered by the Court at the Final Fairness  
10 and Approval Hearing in accordance with the terms herein, approving this Agreement.

11 **H. Defendant.** The term "Defendant" as used herein means STRATEGIC  
12 OPERATIONS, INC.

13 **I. Employer Taxes.** Employer-funded taxes and contributions imposed on the wage  
14 portions of the Settlement Payment under the Federal Insurance Contributions Act, the Federal  
15 Unemployment Tax Act, and any similar state taxes and contributions required of employers,  
16 such as for unemployment insurance.

17 **J. Individual PAGA Payment.** "Individual PAGA Payment" shall refer to the  
18 individual payments made to Aggrieved Employees for their *pro rata* share of the PAGA  
19 Payment.

20 **K. Litigation.** The term "Litigation" as used herein means the action entitled  
21 *Eduardo Pena v. Strategic Operations, Inc. et al.*, filed in San Diego County Superior Court,  
22 Case No. 37-2022-00014701-CU-OE-CTL.

23 **L. Named Plaintiff.** The term "Named Plaintiff" as used herein means EDUARDO  
24 PENA.

25 **M. Net Settlement Fund.** The term "Net Settlement Amount" or "Net Settlement  
26 Fund" as used herein means the Settlement Amount minus any award of attorneys' fees and  
27 Litigation costs, Administrative Costs, enhancement to the Named Plaintiff, and penalties  
28 recoverable pursuant to California's Private Attorney General Act ("PAGA") (the "PAGA

Settlement”), and as provided in Sections VIII, XIII, XIV, XV, and XVI, respectively.

**N. Net Settlement Payments.** The term “Net Settlement Payment(s)” shall include payments made to the Settlement Class as part of the Settlement, including wages, penalties and interest.

**O. PAGA Payment.** “PAGA Payment” shall refer to the \$2,500.00 in PAGA penalties to be paid pursuant to this Settlement to Aggrieved Employees.

**P. PAGA Period.** The term “PAGA Period” means the period from January 1, 2021 through March 30, 2023.

**Q. Settlement.** The term “Settlement” as used herein means this Agreement to resolve the Litigation.

**R. Settlement Administrator.** The term "Settlement Administrator" as used herein means Phoenix Settlement Administrators, which will be responsible for the administration of the Settlement Amount, as defined below, and all related matters.

**S. Settlement Agreement.** The terms “Settlement Agreement” or “Agreement” are used synonymously herein to mean this Stipulation of Settlement.

**T. Settlement Amount.** The term “Settlement Amount” as used herein means the sum of Three Hundred and Fifty Thousand Dollars and Zero Cents (\$350,000.00), which shall be paid by Defendant, and from which all Net Settlement Payments, Court-approved attorneys’ fees and Litigation costs pursuant to Section XIII, Administrative Costs pursuant to Section VIII, enhancement to Named Plaintiff pursuant to Section XIV, statutory penalties, interest, and PAGA Settlement pursuant to Section XVI shall be paid, except as provided herein. Subject to Section XI.C. below, the Settlement Amount will be increased in the event the final number of Workweeks in the Settlement Period is more than 10% higher than the initially agreed upon estimate of 11,528 Workweeks.

**U. Settlement Class.** For settlement purposes only, the Parties agree to the certification of a class pursuant to California *Code of Civil Procedure* § 382 defined as:

All persons who worked one or more Workweeks for Defendant in  
California as an hourly-paid or non-exempt employee during the

1 Settlement Period (together, collectively referred to as the “Class  
2 Members”).

3 **V. Settlement Period.** The term “Settlement Period” as used herein means the  
4 period from April 20, 2018 to July 27, 2022.

5 **W. Workweek.** The term “Workweek” shall be defined as working two (2) or more  
6 workdays in a calendar week.

7 **II. BACKGROUND**

8 **A.** In the Litigation, the Named Plaintiff alleges, *inter alia*, on behalf of himself and  
9 all others similarly situated, that Defendant violated California state wage and hour laws, the  
10 California *Business and Professions Code* Section 17200 *et seq.*, and PAGA, as a result of  
11 Defendant’s California wage and hour policies and practices. Specifically, Plaintiff alleges that  
12 Defendant’s payroll, timekeeping, and wage and hour practices resulted in Labor Code  
13 violations. Plaintiff alleges that Defendant failed to pay for all hours by implementing a  
14 rounding policy that systematically underpaid Plaintiff and putative class members’ wages.  
15 Plaintiff further alleges that Defendant failed to include all remuneration in the employees’  
16 overtime rate and meal and rest period premiums. Plaintiff further alleges that Defendant  
17 failed to provide employees with legally compliant meal and rest periods. Based on these  
18 allegations, Plaintiff asserts claims against Defendant for failure to pay minimum and  
19 straight time wages, failure to pay overtime wages, failure to provide meal periods, failure  
20 to authorize and permit rest periods, failure to timely pay all final wages at termination,  
21 failure to provide accurate itemized wage statements, unfair business practices, and civil  
22 penalties under PAGA.

23 Class Counsel conducted informal discovery concerning the claims set forth in the  
24 Litigation, such as a sample of class member timekeeping and payroll records, Defendant’s  
25 policies and procedures concerning the payment of wages, the provision of meal and rest breaks,  
26 issuance of wage statements, and providing all wages at separation, as well as information  
27 regarding the number of putative class members and the mix of current versus former employees,  
28

1 the wage rates in effect, and the amount of meal and rest period premium wages paid to class  
2 members.

3       **B.**       Named Plaintiff and Class Counsel have engaged in good faith, arms-length  
4 negotiations with Defendant concerning possible settlement of the claims asserted in the  
5 Litigation. The Parties participated in mediation before Steven G. Pearl, Esq., a well-respected  
6 wage and hour class action mediator, that resulted in a tentative settlement of the Litigation,  
7 subject to the approval of the Court, and finalization of a formal Stipulation of Settlement. The  
8 Parties have engaged in extensive negotiations about the terms and conditions of the Settlement  
9 at the mediation and subsequent thereto. The Parties have now formalized the Settlement  
10 Agreement for submission to the Court for preliminary and Final Approval.

11       **C.**       Class Counsel has conducted an investigation of the law and facts relating to the  
12 claims asserted in the Litigation and has concluded, taking into account the sharply contested  
13 issues involved, the defenses asserted by Defendant, the expense and time necessary to pursue  
14 the Litigation through trial and any appeals, the risks and costs of further prosecution of the  
15 Litigation, the risk of an adverse outcome, the uncertainties of complex litigation, and the  
16 substantial benefits to be received by the Named Plaintiff, the members of the Settlement Class,  
17 and the Aggrieved Employees pursuant to this Agreement, that a settlement with Defendant on  
18 the terms and conditions set forth herein is fair, reasonable, adequate, and in the best interests of  
19 the Settlement Class and the Aggrieved Employees. Named Plaintiff, on his own behalf and on  
20 behalf of the Settlement Class and the Aggrieved Employees, has agreed to settle the Litigation  
21 with Defendant on the terms set forth herein.

22       **D.**       Defendant has concluded that, because of the substantial expense of defending  
23 against the Litigation, the length of time necessary to resolve the issues presented herein, the  
24 inconvenience involved, and the concomitant disruption to its business operations, it is in  
25 Defendant's best interests to accept the terms of this Agreement. Defendant denies each of the  
26 allegations and claims asserted against them in the Litigation. However, Defendant nevertheless  
27 desires to settle the Litigation for the purpose of avoiding the burden, expense and uncertainty  
28 of continuing litigation and for the purpose of putting to rest the controversies engendered by

1 the Litigation.

2           **E.**     This Agreement is intended to and does effectuate the full, final and complete  
3 settlement of all allegations and claims that were asserted, or could have been asserted, in the  
4 Litigation by Named Plaintiff, members of the Settlement Class, and the Aggrieved Employees  
5 as set forth in Section II.A.

6 **III.     JURISDICTION**

7           The Court has jurisdiction over the Parties and the subject matter of this Litigation. The  
8 Litigation includes claims that, while Defendant denies them in their entirety, would, if proven,  
9 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted  
10 Final Approval of the Settlement and after the Court has ordered the entry of Judgment, pursuant  
11 to California *Code of Civil Procedure* Section 664.6 the Court shall retain jurisdiction of this  
12 action solely for the purpose of interpreting, implementing, and enforcing this Settlement  
13 consistent with the terms set forth herein.

14 **IV.     STIPULATION OF CLASS CERTIFICATION**

15           The Parties stipulate to the certification of this Settlement Class for purposes of  
16 Settlement only. This Stipulation is contingent upon the Preliminary and Final approval and  
17 certification of the Settlement Class only for purposes of Settlement. Should the Settlement not  
18 become final, for whatever reason, the fact that the Parties were willing to stipulate provisionally  
19 to class certification as part of the Settlement shall have no bearing on, and shall not be  
20 admissible in connection with, the issue of whether a class should be certified in a non-settlement  
21 context in the Litigation. Defendant expressly reserves the right to oppose class certification  
22 and/or proactively move to deny certification should this Settlement be modified or reversed on  
23 appeal or otherwise not become final.

24 **V.     MOTION FOR PRELIMINARY APPROVAL**

25           Named Plaintiff will bring a motion before the Court for an order preliminarily approving  
26 the Settlement including the Notice of Proposed Class Action Settlement, and Workweek  
27 Dispute Form, which are attached hereto as **Exhibits “A”** and **“B,”** respectively, and including  
28 certification of the Settlement Class for settlement purposes only.

1 The date that the Court grants Preliminary Approval of this Agreement will be the  
2 “Preliminary Approval Date.” Class Counsel will prepare the Motion for Preliminary Approval  
3 and will provide Defendant’s counsel the opportunity to review it and provide input before it is  
4 filed. On the same date on which it is filed with the Court, Class Counsel shall concurrently  
5 submit the Motion for Preliminary Approval to the Labor & Workforce Development Agency in  
6 compliance with Labor Code § 2698 *et seq.*, the Private Attorneys General Act.

7 **VI. STATEMENT OF NO ADMISSION**

8 **A.** Defendant denies liability to Named Plaintiff, the Settlement Class, and the  
9 Aggrieved Employees, upon any claim or cause of action. This Agreement does not constitute,  
10 and is not intended to constitute, an admission by Defendant as to the merits, validity, or accuracy  
11 of any of the allegations or claims made against them in the Litigation.

12 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor  
13 any statements, discussions or communications, nor any materials prepared, exchanged, issued  
14 or used during the course of the negotiations leading to this Agreement or the Settlement, is  
15 intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be  
16 used or be admissible in any way in this case or any other judicial, arbitral, administrative,  
17 investigative or other forum or proceeding as evidence of any violation of any federal, state, or  
18 local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law  
19 or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement, directly  
20 or indirectly, in this case or any other judicial, arbitral, administrative, investigative, or other  
21 forum or proceeding, as purported evidence of any violation of any federal, state, or local law,  
22 statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in  
23 equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used  
24 and filed in any proceeding before the Court that has as its purpose the interpretation,  
25 implementation, or enforcement of this Agreement or any orders or judgments of the Court  
26 entered in connection with implementation of the Settlement.

27 **C.** None of the documents produced or created by Named Plaintiff, the Settlement  
28 Class, or the Aggrieved Employees in connection with the claims procedures or claims

1 settlement procedures constitute, and they are not intended to constitute, an admission by  
2 Defendant of any violation of any federal, state, or local law, statute, ordinance, regulation, rule,  
3 or executive order, or any obligation or duty at law or in equity.

4 **D.** The Parties agree that class certification pursuant to California *Code of Civil*  
5 *Procedure* Section 382 under the terms of this Agreement is for settlement purposes only.  
6 Nothing in this Agreement will be construed as an admission or acknowledgement of any kind  
7 that any class should be certified or given collective treatment in the Litigation or in any other  
8 action or proceeding. Further, neither this Agreement nor the Court's actions with regard to this  
9 Agreement will be admissible in any court or other tribunal regarding the propriety of class  
10 certification or collective treatment. In the event that this Agreement is not approved by the  
11 Court or any appellate court, is terminated, or otherwise fails to be enforceable, Named Plaintiff  
12 will not be deemed to have waived, limited, or affected in any way any claims, rights, or remedies  
13 in the Litigation, and Defendant will not be deemed to have waived, limited, or affected in any  
14 way any of their objections or defenses in the Litigation.

## 15 **VII. WAIVER, RELEASE AND CONFIDENTIALITY**

### 16 **A. Release as to all Settlement Class Members.**

17 Upon the date the Court's Final Approval Order becomes "Final" (as that term is defined  
18 in Section I.E. above) and all payments are made by Defendant pursuant to this Agreement,  
19 Named Plaintiff and all members of the Settlement Class, except those that make a valid and  
20 timely request to be excluded from the Settlement Class and Settlement, waive, release,  
21 discharge, and promise never to assert in any forum any and all wage-related claims that were  
22 alleged in the Litigation or which could have been alleged in the Litigation based on the facts  
23 asserted in the Litigation arising during the Settlement Period against Defendant, and its  
24 divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees,  
25 agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors,  
26 partners, parents, subsidiaries, joint employers, insurers, and related corporations, including the  
27 following claims: 1) all claims, under any legal theory of liability, for the failure to pay overtime  
28 or double time wages owed pursuant to California Labor Code §§ 204, 510, 1194, and 1198, the

1 IWC Wage Orders or any comparable federal statute under any theory of liability; 2) all claims,  
 2 under any legal theory of liability, for the failure to pay all wages of any kind, including any  
 3 minimum wage or straight time wages, owed pursuant to California Labor Code §§ 204, 510,  
 4 1194, 1194.2, and 1198, the IWC Wage Orders, or any comparable federal statute under any  
 5 theory of liability; 3) all claims, under any legal theory of liability, for failure to provide meal  
 6 periods pursuant to California Labor Code §§ 226.7 and 512, and the IWC Wage Orders; 4) all  
 7 claims, under any legal theory of liability, for the failure to provide rest periods pursuant to  
 8 California Labor Code § 226.7 and the IWC Wage Orders; 5) all claims, under any legal theory  
 9 of liability, for the failure to properly calculate any premiums owed and/or paid pursuant to  
 10 California Labor Code § 226.7(b); 6) all claims, under any legal theory of liability, for violation  
 11 of Business & Professions Code §§ 17200, *et seq.*; 7) all claims, under any legal theory of  
 12 liability, for penalties pursuant to PAGA (Labor Code §§ 2698 *et seq.*); 8) all claims, under any  
 13 legal theory of liability, for any penalties of any kind arising from an alleged failure to pay final  
 14 wages or other amounts allegedly owed to Class Members pursuant to California Labor Code §§  
 15 201-203; 9) all claims, under any legal theory of liability, for any penalties of any kind arising  
 16 from an alleged wage statement violations pursuant to California Labor Code §§ 226 and 1174.5;  
 17 and 10) all claims, under any legal theory of liability, for any penalties or any another amounts  
 18 that could be potentially owed to Class Members arising out of and/or related to the allegations  
 19 in the Lawsuit arising during the Settlement Period, including penalties owed pursuant to  
 20 California Labor Code §§ 210, 226.3, 558, and 1197.1.

21 **B. Release as to all Aggrieved Employees.**

22 Upon the date the Court's Final Approval Order becomes "Final" (as that term is defined  
 23 in Section I.E. above) and all payments are made by Defendant pursuant to this Agreement,  
 24 Named Plaintiff and all Aggrieved Employees waive, release, discharge, and promise never to  
 25 assert in any forum any and all claims for civil penalties under PAGA that were alleged in the  
 26 Litigation or which could have been alleged in the Litigation based on the facts asserted in the  
 27 Litigation arising during the PAGA Period against Defendant, and its divisions, affiliates,  
 28 predecessors, successors, shareholders, officers, directors, employees, agents, trustees,

representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, insurers, and related corporations, including all claims for civil penalties, under any legal theory of liability: 1) for the failure to pay overtime or double time wages owed pursuant to California Labor Code §§ 204, 510, 1194, and 1198, the IWC Wage Orders or any comparable federal statute; 2) for the failure to pay all wages of any kind, including any minimum wage or straight time wages, owed pursuant to California Labor Code §§ 204, 510, 1194, 1194.2, and 1198, the IWC Wage Orders, or any comparable federal statute; 3) for the failure to provide meal periods pursuant to California Labor Code §§ 226.7 and 512, and the IWC Wage Orders; 4) for the failure to provide rest periods pursuant to California Labor Code § 226.7 and the IWC Wage Orders; 5) for penalties pursuant to PAGA (Labor Code §§ 2698 et seq.); 6) for penalties of any kind arising from an alleged failure to pay final wages or other amounts allegedly owed to Aggrieved Employees pursuant to California Labor Code §§ 201-203; 7) for penalties of any kind arising from an alleged wage statement violations pursuant to California Labor Code §§ 226 and 1174.5; and 8) for any penalties or any another amounts that could be potentially owed to Aggrieved Employees arising out of and/or related to the allegations in the Litigation arising during the PAGA Period, including penalties owed pursuant to California Labor Code §§ 210, 226.3, 558, and 1197.1.

**C. General Release by Named Plaintiff Only.**

In addition to the release made in Section VII.A., Named Plaintiff makes the additional following general release of all claims, known or unknown. Named Plaintiff releases Defendant, and each of its respective subsidiaries, affiliates, predecessors or successors in interest, officers, directors, shareholders, employees, attorneys, agents, assigns, insurers, and re-insurers of any of them, from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection with Named Plaintiff's employment with Defendant as well as any and all acts or omissions by or on the part of Defendant. (The release set forth in this Paragraph B shall be referred to hereinafter as the "General Release.")

1 With respect to the General Release, Named Plaintiff stipulates and agrees that, upon the  
2 Date of Final Approval, Named Plaintiff shall be deemed to have expressly waived and  
3 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section  
4 1542 of the California Civil Code, or any other similar provision under federal or state law,  
5 which provides:

6 **"SECTION 1542. [CERTAIN CLAIMS NOT AFFECTED BY**  
7 **GENERAL RELEASE.] A GENERAL RELEASE DOES NOT**  
8 **EXTEND TO CLAIMS THAT THE CREDITOR OR**  
9 **RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**  
10 **EXIST IN HIS OR HER FAVOR AT THE TIME OF**  
11 **EXECUTING THE RELEASE AND THAT, IF KNOWN BY**  
12 **HIM OR HER WOULD HAVE MATERIALLY AFFECTED**  
13 **HIS OR HER SETTLEMENT WITH THE DEBTOR OR**  
14 **RELEASED PARTY."**

11 Accordingly, if the facts relating in any manner to this Settlement are found hereafter to  
12 be other than or different from the facts now believed to be true, the release of claims contained  
13 herein shall be effective as to all unknown claims.

#### 14 **VIII. SETTLEMENT ADMINISTRATOR**

15 Named Plaintiff and Defendant, through their respective counsel, have selected Phoenix  
16 Settlement Administrators as the Settlement Administrator to administer the Settlement, which  
17 includes but is not limited to distributing and responding to inquiries about the Notice of  
18 Proposed Class Action Settlement and Workweek Dispute Form, determining the validity of any  
19 disputes and opt-outs, and calculating all amounts to be paid from the Net Settlement Amount.  
20 Charges and expenses of the Settlement Administrator, estimated to be no more than \$7,750.00,  
21 will be paid from the Settlement Amount. Any charges and expenses of the Settlement  
22 Administrator greater than the allocated \$7,750.00 will come from the Settlement Amount. If  
23 the actual Settlement Administrator fees are less than the Parties' estimation, the difference  
24 between the actual and estimated Settlement Administrator fees will revert to the participating  
25 Settlement Class members. The Parties agree that this Agreement may be provided to the  
26 Settlement Administrator to effectuate its implementation of the settlement procedures herein.

#### 27 **IX. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

##### 28 **A. Notice.**

1 Named Plaintiff and Defendant, through their respective attorneys, have jointly prepared  
2 a Notice of Class Action and Proposed Settlement (the “Notice”) and a Workweek Dispute Form,  
3 which in substance will be provided to the members of the Settlement Class as follows:

4 As soon as practicable following Preliminary Approval of the Settlement, but no later  
5 than fourteen (14) days after the Court’s Preliminary Approval order, Defendant will provide to  
6 the Settlement Administrator the following information about each Settlement Class member  
7 (“Class List”): (1) name; (2) last known home address; (3) number of Workweeks as a class  
8 member during the Settlement Period or the dates of employment for each Settlement Class  
9 member; and (4) Social Security number. Defendant will further provide to the Settlement  
10 Administrator the following information about each Aggrieved Employee: (1) name; (2) last  
11 known home address; (3) number of Workweeks as an Aggrieved Employee in the PAGA Period  
12 or the dates of employment for each Aggrieved Employee; and (4) Social Security number.  
13 Defendant further agrees to consult with the Settlement Administrator prior to the production  
14 date to ensure that the format will be acceptable to the Settlement Administrator. Plaintiff’s  
15 Counsel shall also receive a redacted Class List that shall only disclose an identification number  
16 attributed to each class member and/or Aggrieved Employee and the number of Workweeks each  
17 class member and/or Aggrieved Employee worked during the Settlement Period and/or the  
18 PAGA Period.

19 The Settlement Administrator shall run all the addresses provided through the United  
20 States Postal Service NCOA database (which provides updated addresses for any individual who  
21 has moved in the previous four years who has notified the U.S. Postal Service of a forwarding  
22 address) to obtain current address information, and shall mail the Notice and Workweek Dispute  
23 Form to the members of the Settlement Class via first-class regular U.S. Mail using the most  
24 current mailing address information available, within ten (10) calendar days of the receipt of the  
25 Class List from Defendant. The Notice shall provide the members of the Settlement Class and/or  
26 Aggrieved Employees forty-five (45) days’ notice of all applicable dates and deadlines.

27 The Notice will also include information regarding the nature of the Litigation; a  
28 summary of the terms of the Settlement; the definition of the Settlement Class; the definition of

the Aggrieved Employees; a statement that the Court has preliminarily approved the Settlement; the nature and scope of the claims being released; the procedure and time period for objecting to the Settlement; the date and location of the Final Approval hearing; information regarding the opt-out procedure; Defendant's calculation of the number of Eligible Workweeks that each Settlement Class member has worked as an employee in California at any time during the Settlement Period; Defendant's calculation of the number of Eligible Workweeks that each Aggrieved Employee has worked as an employee in California at any time during the PAGA Period; and the estimated potential recovery for the proposed Settlement Class Member and/or Aggrieved Employee. The Notice shall enclose the Workweek Dispute Form for Settlement Class members and Aggrieved Employees.

For each Settlement Class member, the Workweek Dispute Form will identify the number of Eligible Workweeks that s/he was employed and inform the employee of his or her right to dispute this number by completing and returning the form within forty-five (45) days of the postmark date of the Workweek Dispute Form. A Workweek shall be defined as working two (2) or more days in a calendar week. A Settlement Class member's receipt of his or her share of the Net Settlement Payments is not conditional on the submission of the Workweek Dispute Form. An Aggrieved Employee's receipt of his or her share of the PAGA Payment is not conditional on the submission of the Worksheet Dispute Form. Absent the receipt of a Workweek Dispute Form the number of Workweeks identified in the Workweek Dispute Form shall be deemed accurate. The settlement of any disputes concerning the number of Eligible Workweeks is discussed in Section X, below.

If a Notice is returned from the initial notice mailing, the Settlement Administrator will perform a skip trace in an attempt to locate a more current address. If the Settlement Administrator is successful in locating a new address, it will re-mail the Notice to the Settlement Class member and/or Aggrieved Employee. Further, any Notices returned with a forwarding address to the Settlement Administrator, as non-deliverable before the deadline date, shall be sent to the forwarding address affixed thereto.

Should any member of the Settlement Class and/or Aggrieved Employee timely submit a Workweek Dispute Form with a deficiency, the Settlement Administrator shall, within five (5) calendar days of receipt by the Settlement Administrator of each timely submitted Workweek Dispute Form, send a deficiency notice. The deficiency notice will provide the member of the Settlement Class and/or Aggrieved Employee no more than fourteen (14) days from the mailing of the deficiency notice to postmark a written response to cure all deficiencies. The failure of a member of Settlement Class to timely submit a Workweek Dispute or timely respond to a notice of deficiency shall invalidate the dispute unless all Parties' counsel agree to allow the dispute.

No later than twenty-one (21) days before the Final Approval Hearing, the Settlement Administrator shall provide counsel for Defendant and Class Counsel with a declaration attesting to the completion of the Notice process, including the number of attempts to obtain valid mailing addresses for and re-sending of any returned Notices, as well as the number of valid Workweek Dispute Forms, opt-outs and deficiencies that the Settlement Administrator received.

#### **B. Objections.**

In order for any Settlement Class member to object to this Settlement, or any term of it, the person making the objection must not submit a request for exclusion (i.e., must not opt out). To object to the Settlement in writing, a Class Member may send the objection to the Settlement Administrator by forty-five (45) days after Notice of the Proposed Class Action Settlement was initially mailed to the Settlement Class members. A Settlement Class member making an objection may appear at the Final Approval Hearing with or without submitting any written objection. The Settlement Class member may appear personally or through an attorney, at his or her own expense, at the Final Approval hearing to present his or her objection directly to the Court. If a Settlement Class member objects to the Settlement, the Settlement Class member will remain a member of the Settlement Class and if the Court approves this Agreement, the Settlement Class member will be bound by the terms of the Settlement and Final Approval Order in the same way and to the same extent as a Settlement Class member who does not object. The date of mailing of the Notice to the objecting Settlement Class member shall be conclusively determined according to the records of the Settlement Administrator. The Court retains final

1 authority with respect to the consideration and admissibility of any Settlement Class member  
2 objections. Any Settlement Class member who submits an objection may also participate in the  
3 settlement.

4 Named Plaintiff hereby endorses the Settlement as fair, reasonable and adequate and in  
5 the best interests of the Settlement Class.

6 **C. Opportunity to be Excluded and Defendant's Opt-Out Threshold.**

7 In order for any Settlement Class member to validly exclude himself or herself from the  
8 Settlement Class and the Settlement (i.e., to validly opt out), a written request for exclusion  
9 ("Request to be Excluded") must be signed by the Settlement Class member or his or her  
10 authorized representative and must be sent to the Settlement Administrator, postmarked by no  
11 later than forty five (45) days after the date the Settlement Administrator initially mails the  
12 Notice to the Settlement Class members. The Notice shall contain instructions on how to opt  
13 out.

14 The date of the initial mailing of the Notice, and the date the signed Request to be  
15 Excluded was postmarked, shall be conclusively determined according to the records of the  
16 Settlement Administrator. Any Settlement Class member who timely and validly submits a  
17 Request to be Excluded from the Settlement Class and the Settlement will not be entitled to any  
18 portion of the Net Settlement Payments, will not be bound by the terms and conditions of the  
19 Settlement, and will not have any right to object, appeal, or comment thereon.

20 Any Settlement Class member who is also an Aggrieved Employee, who timely and  
21 validly submits a Request to be Excluded from the Settlement Class, will still be bound to the  
22 release of the PAGA claims in Section VII.B., and will still receive their Individual PAGA  
23 Payment.

24 Any member of the Settlement Class who does not timely file and mail a Request to be  
25 Excluded from the Settlement Class will be deemed included in the Settlement Class in  
26 accordance with this Settlement.

27 In the event that 10% or more of the Class Members exercise their right to exclude  
28 themselves and opt out of the Settlement and Settlement Agreement, Defendant retains the

exclusive right, but not the obligation, to withdraw from and terminate the Settlement and the Settlement Agreement and return all parties back to their same position before the Settlement was reached and the Settlement Agreement was entered into. In the event that Defendant exercises such rights under this paragraph, the Plaintiff and Defendant shall resume the Litigation through and until there is a final settlement of the Litigation. Defendant must notify Class Counsel and the Court of such a decision to withdraw and terminate the Settlement no later than five (5) days prior to the date of the Final Approval Hearing. In the event of Defendant's withdrawal, no party may use the fact that the Parties agreed to the Settlement for any reason, and Defendant shall pay all administration expenses incurred through the date of its termination of the Settlement.

**D. Cooperation.**

The Parties and their respective counsel agree not to encourage members of the Settlement Class to refrain from participating in the Settlement, to opt out of the Settlement, or to object to the Settlement, directly or indirectly, through any means. However, if a Settlement Class member contacts Class Counsel, Class Counsel may discuss the terms of the Settlement and the Settlement Class member's options.

**X. DISPUTES PROCEDURE**

**A. Settlement Class.**

Named Plaintiff and Defendant have agreed upon the following payment formula to resolve all disputes submitted by Settlement Class members during the Settlement Period.

The Settlement Administrator will calculate the total number of Workweeks for all Class Members who were employed by Defendant during the Settlement Class Period ("Total Workweeks"). The value of each Workweek shall be determined by the Settlement Administrator by dividing the Net Settlement Fund by the total number of Workweeks available to the Class Members who do not opt out in accordance with Section IX.C. above during the Settlement Class Period ("Workweek Point Value").

An "Individual Settlement Payment" for each Class Member will then be determined by multiplying a Class Member's Workweeks worked during the Class Period ("Eligible

Workweeks”) by the Workweek Point Value. The Individual Settlement Payment will be reduced by any required legal deductions, for each participating Class Member.

If a member of the Settlement Class does not dispute the number of Eligible Workweeks set forth in the Workweek Dispute Form, such person need not take further action to participate in the Settlement. If the member of the Settlement Class disputes the number of Eligible Workweeks set forth in the Workweek Dispute Form, such person must follow the directions in the Workweek Dispute Form and in the Notice, including preparing a statement setting forth the number of Eligible Workweeks that such person believes in good faith is correct, and stating that the member of the Settlement Class authorizes the Settlement Administrator to review the Settlement Class member’s personnel file and leave management records to determine such information, and attaching any relevant documentation in support thereof. The member of the Settlement Class must mail the signed and completed statement no later than forty-five (45) days after the date of the mailing of the Workweek Dispute Form, or the number of Eligible Workweeks set forth in the Notice and Workweek Dispute Form will govern the Net Settlement Payment to the member of the Settlement Class.

Upon timely receipt of any such challenge, the Settlement Administrator, in consultation with Class Counsel and counsel for Defendant, will review the pertinent payroll records showing the dates the Settlement Class member was employed and the pertinent leave(s) taken, which records Defendant agrees to make available to the Settlement Administrator and Class Counsel.

After consulting with Class Counsel and counsel for Defendant, the Settlement Administrator shall compute the number of Eligible Workweeks to be used in computing the Settlement Class member’s pro rata share of the Net Settlement Amount. In the event there is a disparity between the dates a Settlement Class member claims he or she worked during the Settlement Period and the dates indicated by Defendant’s records, Defendant’s records will control unless inconsistent with paycheck stub(s) (or bona fide copies thereof) provided by the Settlement Class member, in which case the paycheck stub(s) will control. The Settlement Administrator’s decision as to the total number of Eligible Workweeks shall be final and non-appealable. The Settlement Administrator shall send written notice of the decision on any such

claim to the Settlement Class member, to Class Counsel, and counsel for Defendant within ten (10) calendar days of receipt of the dispute.

**B. Aggrieved Employees.**

Named Plaintiff and Defendant have agreed upon the following payment formula to resolve all disputes submitted by Aggrieved Employees during the PAGA Period.

The Settlement Administrator will calculate the total number of Workweeks for all Aggrieved Employees who were employed by Defendant during the PAGA Period ("Total Workweeks"). The value of each Workweek shall be determined by the Settlement Administrator by dividing the PAGA Payment by the total number of Workweeks available to the Aggrieved Employees who do not opt out in accordance with Section IX.C. above during the PAGA Period ("Workweek Point Value").

An "Individual PAGA Payment" for each Aggrieved Employee will then be determined by multiplying an Aggrieved Employee's Workweeks worked during the PAGA Period ("Eligible Workweeks") by the Workweek Point Value. The Individual PAGA Payment will not be reduced by withholding or deduction.

If an Aggrieved Employee does not dispute the number of Eligible Workweeks set forth in the Workweek Dispute Form, such person need not take further action to participate in the PAGA Payment. If the Aggrieved Employee disputes the number of Eligible Workweeks set forth in the Workweek Dispute Form, such person must follow the directions in the Workweek Dispute Form and in the Notice, including preparing a statement setting forth the number of Eligible Workweeks that such person believes in good faith is correct, and stating that the Aggrieved Employee authorizes the Settlement Administrator to review the Aggrieved Employee's personnel file and leave management records to determine such information, and attaching any relevant documentation in support thereof. The Aggrieved Employee must mail the signed and completed statement no later than forty-five (45) days after the date of the mailing of the Workweek Dispute Form, or the number of Eligible Workweeks set forth in the Notice and Workweek Dispute Form will govern the Individual PAGA Payment to the Aggrieved Employee.

1           Upon timely receipt of any such challenge, the Settlement Administrator, in consultation  
2 with Class Counsel and counsel for Defendant, will review the pertinent payroll records showing  
3 the dates the Aggrieved Employee was employed and the pertinent leave(s) taken, which records  
4 Defendant agrees to make available to the Settlement Administrator and Class Counsel.

5           After consulting with Class Counsel and counsel for Defendant, the Settlement  
6 Administrator shall compute the number of Eligible Workweeks to be used in computing the  
7 Settlement Class member's pro rata share of the PAGA Payment. In the event there is a disparity  
8 between the dates an Aggrieved Employee claims he or she worked during the PAGA Period  
9 and the dates indicated by Defendant's records, Defendant's records will control unless  
10 inconsistent with paycheck stub(s) (or bona fide copies thereof) provided by the Aggrieved  
11 Employee, in which case the paycheck stub(s) will control. The Settlement Administrator's  
12 decision as to the total number of Eligible Workweeks shall be final and non-appealable. The  
13 Settlement Administrator shall send written notice of the decision on any such claim to the  
14 Aggrieved Employee, to Class Counsel, and counsel for Defendant within ten (10) calendar days  
15 of receipt of the dispute.

## 16 **XI. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

### 17 **A. Distribution Formula.**

18           Members of the Settlement Class not opting out will receive a lump sum payment as  
19 good and valuable consideration for the waiver and release of claims set forth in Section VII.A.,  
20 above, in an amount determined by the Settlement Administrator in accordance with the  
21 provisions of this Agreement.

22           The lump sum payment to each member of the Settlement Class not excluding him/  
23 herself will be determined in accordance with the procedure set forth in Section X.A.

24           Aggrieved Employees will receive a lump sum payment as good and valuable  
25 consideration for the waiver and release of PAGA claims set forth in Section VII.B., above, in  
26 an amount determined by the Settlement Administrator in accordance with the provisions of this  
27 Agreement.  
28

1 The lump sum payment to each Aggrieved Employee will be determined in accordance  
2 with the procedure set forth in Section X.B.

3 **B. Funding of Settlement.**

4 Within thirty (30) calendar days following the date on which the Court grants Final  
5 Approval of the Settlement and a determination of the pro-rata share of the Settlement Amount  
6 to which each member of the Settlement Class and/or Aggrieved Employees is entitled,  
7 Defendant will deposit the first half of the Settlement Amount and the half of the Employer  
8 Taxes into an interest-bearing trust account for the benefit of the participating Settlement Class  
9 members, Aggrieved Employees, and Class Counsel, through the Settlement Administrator.

10 Within six (6) months after the first payment described above, Defendant will deposit the  
11 second half of the Settlement Amount and the second half of the Employer Taxes into the same  
12 trust account. In the event the Settlement Amount is increased pursuant to Section XI.C. below,  
13 Defendant will deposit the additional funds within 6 months after the first payment described  
14 above. At no time prior to Final Approval of the Settlement shall Defendant be required to  
15 escrow any portion of the Settlement Amount.

16 **C. Potential Increase in Funding.**

17 Defendant represents that there are approximately 266 Class Members during the Class  
18 Period. In the event the number of Class Members increases by more than 10%, or 292 or more  
19 Class Members, then the Settlement Amount shall be increased proportionally. The Settlement  
20 Amount will not be reduced due to Defendant's estimate.

21 **D. Time for Distribution.**

22 The Settlement Administrator shall cause the Settlement Amount (inclusive of the Net  
23 Settlement Amount, the Court approved attorney's fees and Litigation costs, Court approved  
24 enhancement to Named Plaintiff, and PAGA Settlement) and the Employer Taxes to be mailed  
25 within twenty-one (21) calendar days following the date of funding the second installment of the  
26 Settlement Amount and accompanying Employer Taxes.

27 If a check is returned to the Settlement Administrator as undeliverable, the Settlement  
28 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip

1 trace search and, if another address is identified, shall mail the check to the newly identified  
2 address. Any settlement checks remaining uncashed after one hundred and eighty (180) days  
3 shall be deemed unpaid residue pursuant Code of Civil Procedure Section 384(a). In accordance  
4 with Code of Civil Procedure Section 384, the parties shall follow the procedure set for in (1) –  
5 (5) below in regard to unpaid residue:

6 (1) Unpaid residue (uncashed or returned checks) will be paid, *with interest*, to Legal  
7 Aid at Work, 180 Montgomery Street # 600, San Francisco, CA 94104;

8 (2) The attorneys for the parties shall file, with the Motion for Final Approval, a  
9 stand-alone Stipulation to Amend Judgment and Proposed Stipulated Amended  
10 Judgment (Section 384) memorializing the parties' agreement to amend the judgment to  
11 adopt the administrator's determination of amount of unpaid residue, plus interest at the  
12 legal rate of 10% from the date of entry of the initial judgment, to be paid to the *cy pres*;

13 (3) The parties shall attach to the Stipulation a [Proposed] Stipulated Amended  
14 Judgment form with a signature line for the court and blanks for the amount of residue  
15 plus interest to be added to the judgment and the total amount of the amended judgment;

16 (4) Along with the Final Report, the administrator shall file, with the court, a  
17 photocopy of the attorneys' Stipulation to Amend Judgment along with a [Proposed]  
18 Stipulated Amended Judgment form with the amount of residue plus interest to be added  
19 to the judgment and the total amount of the judgment, plus interest, filled in;

20 (5) The court signs and enters the Stipulated Amended Judgment.

## 21 **XII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

22 The amounts paid under this Agreement do not represent a modification of any  
23 previously credited hours of service under any employee benefit plan, policy, or bonus program  
24 sponsored by Defendant. Such amounts will not form the basis for additional contributions to,  
25 benefits under, or any other monetary entitlement under, benefit plans (self-insured or not)  
26 sponsored by Defendant, policies or bonus programs. Any payments made under the terms of  
27 this Settlement shall not be applied retroactively, currently or on a going forward basis as salary,  
28 earnings, wages, or any other form of compensation for the purposes of Defendant's benefit plan,

1 policy or bonus program. Defendant retains the right to modify the language of their benefit  
2 plans, policies and bonus programs to effect this intent and to make clear that any amounts paid  
3 pursuant to this Settlement are not for “hours worked,” “hours paid,” “hours of service,” or any  
4 similar measuring term as defined by applicable plans, policies and bonus programs for purpose  
5 of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or  
6 benefits are not required by this Settlement.

### 7 **XIII. CLASS COUNSEL ATTORNEYS’ FEES AND LITIGATION COSTS**

8 Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall  
9 not seek or receive an amount in excess of \$116,665.50, which represents 33 1/3% of the  
10 Settlement Amount for all past and future attorneys’ fees necessary to prosecute, settle and  
11 administer the Litigation and this Settlement. Additionally, Defendant shall not oppose an  
12 application by Class Counsel for, and Class Counsel shall not seek or receive an amount in excess  
13 of \$13,955.40, which represents all past and future Litigation costs and expenses necessary to  
14 prosecute, settle and administer the Litigation and this Settlement. Any attorneys’ fees or  
15 Litigation costs awarded to Class Counsel by the Court as part of the Settlement Amount shall  
16 be deducted from the Settlement Amount for the purpose of determining the Net Settlement  
17 Amount. The “future” aspect of these amounts include, without limitation, all time and expenses  
18 expended by Class Counsel in defending the Settlement and securing preliminary and Final  
19 Approval (including any appeals therein). There will be no additional charge of any kind to  
20 either the members of the Settlement Class or request for additional consideration from  
21 Defendant for such work. This amount shall include all attorneys’ fees, Litigation costs, and  
22 expenses for which Named Plaintiff and Class Counsel could claim under any legal theory  
23 whatsoever. Within twenty-one (21) calendar days following the date the settlement is funded  
24 pursuant to Section XI.B., the Settlement Administrator shall disburse payment from the  
25 Settlement Amount for the amount of attorneys’ fees and Litigation costs approved by the Court  
26 to Class Counsel. Should the Court approve a lesser percentage or amount of fees and/or  
27 Litigation costs than the amount that Class Counsel ultimately seeks, then any such unapproved  
28

portion or portions shall revert into the Net Settlement Amount to be distributed between the participating Settlement Class Members on a pro-rata basis.

#### **XIV. ENHANCEMENT TO NAMED PLAINTIFF**

Defendant shall not oppose an application by Named Plaintiff, and Named Plaintiff shall not seek or receive an amount in excess of \$5,000.00 for his participation in and assistance with the Litigation (*i.e.*, Named Plaintiff's class representative enhancement / service award). Any enhancement awarded to Named Plaintiff by the Court as part of the Settlement Amount shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount, and shall be reported on IRS Form 1099. If the Court approves an enhancement of less than \$5,000.00 to Named Plaintiff, then the unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the participating Settlement Class Members on a pro-rata basis.

#### **XV. TAXATION AND ALLOCATION**

The Parties agree that all employment taxes and other legally required withholdings will be withheld from payments to the members of the Settlement Class and Named Plaintiff based on the Parties stipulated allocation of the Net Settlement Amount as provided for in this Section. In Defendant's sole discretion, and to which Named Plaintiff and Class Counsel do not object, the amount of federal income tax withholding will be based upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to applicable state and/or local withholding codes or regulations.

For withholding tax characterization purposes and payment of taxes, the Net Settlement Amount shall be deemed and is allocated by the Parties as follows ("Net Settlement Allocation"):

- (1) 50 % as wages; and
- (2) 50 % as penalties and interest.

Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement, by the Settlement Administrator. If the Code, the regulations promulgated thereunder, or other

1 applicable tax law, is changed after the date of this Agreement, the processes set forth in this  
2 Section may be modified in a manner to bring Defendant into compliance with any such changes.

3 Finally, any and all Employer Taxes which Defendant normally would be responsible for  
4 paying based on the Net Settlement Payments made to the individual Class Members will be  
5 paid by Defendant in addition to and not as a deduction from the Settlement Amount based on  
6 the stipulated Net Settlement Allocation.

#### 7 **XVI. PRIVATE ATTORNEY GENERAL ACT ALLOCATION**

8 In order to implement the terms of this Settlement and to settle claims alleged under the  
9 Private Attorneys' General Act, California *Labor Code* section 2698 *et seq.*, the Parties agree to  
10 allocate \$10,000.00 from the Settlement Amount as penalties authorized by the California Labor  
11 Code Private Attorneys General Act of 2004 (PAGA). Seventy-five percent (75%) of this  
12 amount will be paid to the Labor and Workforce Development Agency and 25% of this amount  
13 will be distributed to the participating Class Members, through the Settlement Administrator and  
14 at no additional cost to Defendant. Within twenty one (21) calendar days following the date the  
15 settlement is funded pursuant to Section XI.B., the Settlement Administrator shall disburse the  
16 PAGA Settlement to the California Labor and Workforce Development Agency ("LWDA") and  
17 will provide notice to the LWDA of the fact that the settlement has been approved by the court  
18 along with a copy of the settlement agreement and the court order confirming the approval of  
19 the settlement through the appropriate LWDA/DIR website.

#### 20 **XVII. COURT APPROVAL**

21 This Agreement and the Settlement is contingent upon Final Approval by the Court and  
22 the entry of judgment. Named Plaintiff and Defendant agree to take all steps as may be  
23 reasonably necessary to secure both Preliminary Approval and Final Approval of the Settlement,  
24 to the extent not inconsistent with the terms of this Agreement, and will not take any action  
25 adverse to each other in obtaining court approval, and, if necessary, appellate approval, of the  
26 Settlement in all respects. Named Plaintiff and Defendant expressly agree that they will not file  
27 any objection to the terms of the Settlement or assist or encourage any person or entity to file  
28 any such objection.

1 In the event it becomes impossible to secure approval of the Settlement, the Parties shall  
2 be restored to their respective positions in the Litigation, as of the date of the hearing on the  
3 Motion for Preliminary Approval, except as otherwise provided in Section XVIII, below.

4 **XVIII. MISCELLANEOUS PROVISIONS**

5 **A. Stay of Litigation.**

6 Named Plaintiff and Defendant agree to the stay of all discovery in the Litigation,  
7 pending Final Approval of the Settlement by the Court.

8 **B. Interpretation of the Agreement.**

9 This Agreement constitutes the entire agreement between Named Plaintiff and  
10 Defendant. Except as expressly provided herein, this Agreement has not been executed in  
11 reliance upon any other written or oral representations or terms, and no such extrinsic oral or  
12 written representations or terms shall modify, vary or contradict its terms. In entering into this  
13 Agreement, the Parties agree that this Agreement is to be construed according to its terms and  
14 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and  
15 enforced under the laws of the State of California, both in its procedural and substantive aspects,  
16 without regard to its conflict of laws provisions. Any claim arising out of or relating to the  
17 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior  
18 Court of the State of California for the County of Los Angeles, and Named Plaintiff and  
19 Defendant hereby consent to the personal jurisdiction of the Court over them solely in connection  
20 therewith. Named Plaintiff, on his own behalf and on behalf of the Settlement Class and  
21 Aggrieved Employees, and Defendant participated in the negotiation and drafting of this  
22 Agreement and had available to them the advice and assistance of independent counsel. As such,  
23 neither Named Plaintiff nor Defendant may claim that any ambiguity in this Agreement should  
24 be construed against the other.

25 The terms and conditions of this Agreement constitute the exclusive and final  
26 understanding and expression of all agreements between Named Plaintiff and Defendant with  
27 respect to the Settlement of the Litigation. The Agreement may be modified only by a writing  
28 signed by the original signatories and approved by the Court.

**C. Further Cooperation.**

Named Plaintiff and Defendant and their respective attorneys shall proceed diligently to prepare and execute all documents, to seek the necessary approvals from the Court, and to do all things reasonably necessary or convenient to consummate the Agreement as expeditiously as possible.

**D. Confidentiality of Documents.**

After the expiration of any appeals period, Named Plaintiff, the Settlement Administrator, and Class Counsel shall maintain the confidentiality of all documents, deposition transcripts, declarations and other information obtained in the lawsuit, unless necessary for appeal or such documents are ordered to be disclosed by the Court or by a subpoena.

**E. Counterparts.**

The Agreement may be executed in one or more actual or non-original counterparts, all of which will be considered one and the same instrument and all of which will be considered duplicate originals.

**F. Authority.**

Each individual signing below warrants that he or she has the authority to execute this Agreement on behalf of the party for whom or which that individual signs.

**G. No Third-Party Beneficiaries.**

Named Plaintiff, members of the Settlement Class, Aggrieved Employees, and Defendant are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

**H. Modification.**

This Agreement may not be changed, altered, or modified, except in a writing signed by the Parties, and approved by the Court. Notwithstanding the foregoing, the Parties agree that any dates contained in this Agreement may be modified by agreement of the Parties in writing without Court approval if the Parties agree and cause exists for such modification. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

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**I. Deadlines Falling on Weekends or Holidays.**

To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

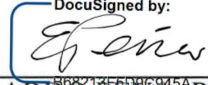
**J. Severability.**

In the event that any one of more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendant's Counsel and Class Counsel, on behalf of the Parties, the Settlement Class, and Aggrieved Employees, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

APPROVED AS TO FORM AND CONTENT:

Dated: 9/8/2023

ON BEHALF OF PLAINTIFF:

By:   
EDUARDO PENA, Plaintiff

Dated: 9/6/23

ON BEHALF OF DEFENDANT:

By:   
Name: Steve Segal  
Position: President  
For STRATEGIC OPERATIONS, INC.

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WILSHIRE LAW FIRM, PLC  
3055 Wilshire Blvd, 12<sup>th</sup> Floor  
Los Angeles, CA 90010-1137

1 APPROVED AS TO FORM:

2 Dated: March 4, 2023

**WILSHIRE LAW FIRM**

4 By:



Elizabeth M. Votra, Esq.  
Attorney for Plaintiff

7 Dated: Sept. 8, 2023

**BERGER & WILLIAMS, LLP**

9 By:

*/s/ Harvey Berger, by permission*

Harvey C. Berger, Esq.  
Shelby M. Harris, Esq.  
Attorneys for Defendants

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND PAGA CLAIMS**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO

*Eduardo Pena v. Strategic Operations, Inc., et al.*

Case No. 37-2022-00014701-CU-OE-CTL

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

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**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT.  
DEFENDANT WILL NOT RETALIATE AGAINST YOU FOR PARTICIPATING IN THIS  
SETTLEMENT.**

**THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.**

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

YOU ARE HEREBY NOTIFIED that a proposed settlement (“the Settlement”) of the above-captioned class action (“the Action”) filed in the San Diego County Superior Court has been reached by STRATEGIC OPERATIONS, INC., (“Strategic Operations”) and EDUARDO PENA (“Plaintiff”), an individual, on behalf of himself and all others similarly situated and has been granted Preliminary Approval by the Court supervising the Action. The San Diego County Superior Court has ordered that this Class Notice be sent to you because you may be a Settlement Class member and/or an Aggrieved Employee under California’s Private Attorney General Act (“PAGA”) arising out of the alleged wage and hour policies and practices of Strategic Operations. The purpose of this Class Notice is to inform you of the Settlement of this class action and PAGA claims, and your legal rights under the Settlement as follows:

- Strategic Operations has agreed to settle a lawsuit brought on behalf of all persons who worked one or more Workweeks for Strategic Operations in California as an hourly-paid or non-exempt employee during the period from April 20, 2018, through July 27, 2022, (the “Settlement Period”) (hereafter, “Settlement Class”). From the proposed settlement, Strategic Operations has agreed to pay a PAGA Payment of \$2,500.00, to be distributed *pro rata* among the employees who worked one or more Workweeks during the period from January 1, 2021 through March 30, 2023.
- The proposed Settlement resolves all alleged claims regarding the following wage and hour policies and/or practices of Strategic Operations: overtime and/or double time wage, minimum wage, straight time wage, failure to pay for all hours worked, meal and rest breaks and any premiums thereon, wage statement violations, waiting time penalties, or other penalties of any kind arising from an alleged failure to pay wages. Finally, the settlement resolves claims for unfair competition and penalties under California’s Private Attorney General Act (“PAGA”) arising out of the alleged wage and hour policies and practices of Strategic Operations. The settlement avoids costs and risks to you from continuing the lawsuit, pays money to employees, and releases Strategic Operations from liability for these claims.
- The parties in the lawsuit disagree on whether Strategic Operations is liable for the allegations raised in this case and how much money could have been won if the employees won at trial.
- **Your legal rights may be affected. Read this notice carefully.**

| <b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Get a Payment</b>                                     | If you are a member of the Settlement Class, you will automatically receive a payment if you do not exclude yourself. If you accept a payment and do not exclude yourself you will give up certain rights as set forth on page 4 below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. |
| <b>Exclude Yourself</b>                                  | Get no payment. Send a letter to the Settlement Administrator as provided below. This is the only option that allows you to bring your own claim against Strategic Operations about the legal claims in this case. The Settlement will bind all Settlement Class Members who do not request exclusion.                                                                                                                                       |
| <b>Object</b>                                            | Write to the Court about why you do not like the settlement. Directions are provided below.                                                                                                                                                                                                                                                                                                                                                  |

### **WHY DID YOU RECEIVE THIS NOTICE?**

This notice explains a proposed settlement of a lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of a class on whose behalf this lawsuit has been brought.

### **WHAT IS THIS LAWSUIT ABOUT?**

Plaintiff filed this lawsuit in San Diego County Superior Court on behalf of the Settlement Class and the Aggrieved Employees. The lawsuit alleges that members of the Settlement Class and Aggrieved Employees were not paid for or properly provided meal and rest breaks, were not issued accurate wage statements, were not paid all minimum, straight time, and overtime wages, were not paid all wages due at termination and/or resignation and were subjected to unfair competition. The lawsuit seeks recovery of wages, restitution, statutory and civil penalties, interest, and attorneys' fees and costs.

Strategic Operations denies any liability or wrongdoing of any kind associated with the claims alleged in the lawsuit. Strategic Operations contends, among other things, that they complied at all times with the California Labor Code, the California Business and Professions Code, and all other applicable law. Strategic Operations further denies that the lawsuit is appropriate for class treatment for any purpose other than settling this lawsuit.

The Court has made no ruling and will make no ruling on the merits of the Litigation and its allegations and claims.

### **SUMMARY OF THE SETTLEMENT**

#### **A. Why is there a Settlement?**

The Court did **not** decide in favor of the Plaintiff or Strategic Operations. Plaintiff thinks he would have prevailed on his claims at a trial. Strategic Operations does not think that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the costs, risks, and uncertainty of a trial, and the class members will get compensation. Plaintiff and Plaintiff's attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all class members.

**B. Who is in the Class?**

The Settlement Class consists of all persons who worked one or more Workweeks for Strategic Operations in California as an hourly-paid or non-exempt employee during the Settlement Period from April 20, 2018 to July 27, 2022 and all persons who worked one or more Workweeks for Strategic Operations in California as an hourly-paid or non-exempt employee from January 1, 2021 through March 30, 2023 (the "PAGA Period").

**C. What does the Settlement provide?**

**1. Settlement Amount**

Strategic Operations will pay a total of Three Hundred and Fifty Thousand Dollars and Zero Cents (\$350,000.00) (the "Settlement Amount") to settle the lawsuit.

The following sums will be paid from the Settlement Amount: all Net Settlement Payments (inclusive of all employment taxes and all other legally required withholdings that would otherwise be due from the individual class members) to the Settlement Class, Attorneys' Fees (not to exceed 33 ⅓ % of the Settlement Amount, or \$116,665.50), Litigation Expenses not to exceed \$13,955.40, Settlement Administrative Costs estimated in an amount not to exceed \$7,750.00, the PAGA Settlement Payment in the amount of \$10,000.00, and an enhancement payment to the Named Plaintiff not to exceed \$5,000.00. Any and all Employer Taxes which Strategic Operations normally would be responsible for paying on the Net Settlement Payments made to individual Class Members will be paid by Strategic Operations inclusive of the Settlement Amount.

The funds used for the Settlement Amount shall be paid to the Settlement Administrator. The Settlement Administrator shall disburse the Court-approved enhancement to the Named Plaintiff, Court-approved Attorneys' Fees and Litigation Expenses, Settlement Administration Costs, and the PAGA Settlement Payment at the same time and manner as the Net Settlement Payments to the Settlement Class members.

**2. Net Settlement Amount**

"Net Settlement Amount" means the Settlement Amount minus the Attorneys' Fees, Litigation Expenses, Settlement Administrative Costs, the portion of the PAGA Settlement payment payable to the Labor and Workforce Development Agency, and the enhancement payment to the Named Plaintiff.

**3. Your Individual Payment Amount.**

The Settlement Administrator will calculate the total number of workweeks for all Class Members who were employed by Strategic Operations during the Settlement Period ("Total Workweeks"). A workweek is defined as working two or more days in a week. The value of each Workweek shall be determined by the Claims Administrator by dividing the Net Settlement Amount by the total number of Workweeks available to the Class Members who do not "opt out" (as defined on page 5 below) during the Settlement Period ("Workweek Point Value").

An "Individual Settlement Payment" for each Class Member will then be determined by multiplying a Class Member's workweeks ("Eligible Workweeks") by the Workweek Point Value. The Individual Settlement Payment will be reduced by any required legal deductions, for each participating Class Member.

#### 4. Tax Matters

The Settlement Administrator will distribute IRS Forms W-2 and 1099 (and the equivalent California forms) to Settlement Class members reflecting the payments each Settlement Class member receives under the Settlement. For tax purposes, Net Settlement Payments will be allocated as follows: 50 % as wages and 50 % as penalties and interest. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code and the California Franchise Tax Board.

Interest and penalties paid under this Settlement shall not be subject to federal, state and local payroll withholding taxes. The Settlement Administrator shall issue an IRS form 1099 for payments of interest and penalties. The usual and customary deductions will be taken out of the amounts attributable to unpaid wages. Settlement Class members should consult with their tax advisors concerning the tax consequences of the payment they receive under the Settlement.

#### **D. What are you giving up to get a payment and stay in the Class?**

Upon the date the Court's Final Approval Order becomes "Final" (as that term is defined in Section I(E) in the Settlement Agreement) and all payments are made by Strategic Operations pursuant to the Settlement Agreement, Named Plaintiff and all members of the Settlement Class, except those that make a valid and timely request to be excluded from the Settlement Class and Settlement, waive, release, discharge, and promise never to assert in any forum any and all wage-related claims that were alleged in the Litigation or which could have been alleged in the Litigation based on the facts asserted in the Litigation arising during the Settlement Period against Strategic Operations, and its respective divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, insurers, related corporations, and privies, both individually and collectively, including but not limited to: 1) all claims, under any legal theory of liability, for the failure to pay overtime or double time wages owed pursuant to California Labor Code §§ 204, 510, 1194, and 1198, the IWC Wage Orders or any comparable federal statute under any theory of liability; 2) all claims, under any legal theory of liability, for the failure to pay all wages of any kind, including any minimum wage or straight time wages, owed pursuant to California Labor Code §§ 204, 510, 1194, 1194.2, and 1198, the IWC Wage Orders, or any comparable federal statute under any theory of liability; 3) all claims, under any legal theory of liability, for failure to provide meal breaks pursuant to California Labor Code §§ 226.7 and 512, and the IWC Wage Orders; 4) all claims, under any legal theory of liability, for the failure to provide rest periods pursuant to California Labor Code § 226.7 and the IWC Wage Orders; 5) all claims, under any legal theory of liability, for the failure to properly calculate any premiums owed and/or paid pursuant to California Labor Code § 226.7(b); 6) all claims, under any legal theory of liability, for violation of Business & Professions Code §§ 17200, *et seq.*; 7) all claims, under any legal theory of liability, for penalties pursuant to PAGA (Labor Code §§ 2698 *et seq.*); 8) all claims, under any legal theory of liability, for any penalties of any kind arising from an alleged failure to pay final wages or other amounts allegedly owed to Class Members pursuant to California Labor Code §§ 201-203; 9) all claims, under any legal theory of liability, for any penalties of any kind arising from an alleged wage statement violations pursuant to California Labor Code §§ 226 and 1174.5; and 10) all claims, under any legal theory of liability, for any penalties or any another amounts that could be potentially owed to Class Members arising out of and/or related to the allegations in the Lawsuit arising during the Settlement Period, including penalties owed pursuant to California Labor Code §§ 210, 226.3, 558, and 1197.1.

#### **THE FINAL APPROVAL HEARING**

The Court will conduct a Final Approval Hearing regarding the proposed settlement (the “Final Approval Hearing”) on **XXXXXX**, at Hall of Justice, 330 W. Broadway, Fifth Floor, San Diego, California 92101, in Department C-70 of the San Diego County Superior Court. The Court will determine: (i) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class members; (ii) whether the Settlement Class members should be bound by the terms of the settlement; (iii) the amount of the attorneys’ fees and costs to Plaintiff’s counsel; (iv) the amount that should be provided to the Settlement Administrator for the costs of administering the Settlement; and (v) the amount that should be awarded to the Plaintiff as an enhancement payment. At the Final Approval Hearing, the Court will hear all objections, as well as arguments for and against the proposed Settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

The Final Approval Hearing may be continued without further notice to the Class. You may contact Plaintiff’s counsel, listed in this Notice, to inquire into the date and time of the Final Approval Hearing.

Condition of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class.

### **WHAT ARE YOUR OPTIONS?**

- **OPTION 1 – GET A PAYMENT**

**IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS AND WISH TO RECEIVE YOUR SHARE OF THE SETTLEMENT, THEN YOU DO NOT HAVE TO DO ANYTHING AND YOU WILL AUTOMATICALLY RECEIVE A SETTLEMENT PAYMENT. YOU ARE NOT REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE.**

The estimated amount of your Settlement Payment is set forth on the Workweek Dispute Form which accompanies this Notice.

The amount of the Settlement Payment paid to each Settlement Class member is based upon the number of workweeks you worked between April 20, 2018 through July 27, 2022. The number of workweeks applicable to your claim is also set forth on the accompanying Workweek Dispute Form. If you believe that the number of workweeks stated is incorrect, you may dispute the number of workweeks by following the instructions on the Workweek Dispute Form. If you believe that the number of workweeks stated is correct, you do not have to do anything.

The Settlement Payment you will receive will be a full and final settlement of your released claims described in Section D above.

- **OPTION 2 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will **not** be bound by a judgment in this case and you will have the right to file your own lawsuit against Strategic Operations, subject to time limits called statute of limitations and other potential defenses that Strategic Operations may assert, and to pursue your own claims in a separate suit.

You can opt out of the Settlement Class by completing the form on **Page 8** of this Notice and mailing it by First Class U.S. Mail or equivalent to the Settlement Administrator at the following address: Phoenix Class Action Administration Solutions, P.O. Box 7208, Orange, CA, 92863. To be valid, your request for exclusion must be postmarked no later than [45 days after mailing].

• **OPTION 3 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Approval Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense.

Any written objection may be mailed to the Settlement Administrator at P.O. Box 7208, Orange, CA, 92863 by [45 days after mailing].

**PLAINTIFF’S/CLASS COUNSEL**

Nicol E. Hajjar, Esq.  
nicol@wilshirelawfirm.com  
Elizabeth M. Votra, Esq.  
evotra@wilshirelawfirm.com  
**WILSHIRE LAW FIRM, PLC**  
3055 Wilshire Blvd., 12th Floor  
Los Angeles, California 90010  
Telephone: (213) 381-9988  
Facsimile: (213) 381-9989

**STRATEGIC OPERATIONS’ COUNSEL**

Harvey C. Berger, Esq., SBN 102973  
berger@bergerwilliams.com  
Shelby M. Harris, Esq. SBN 323356  
harris@bergerwilliams.com  
**BERGER & WILLIAMS, LLP**  
401 B St., Ste. 2000  
San Diego, California 92101  
Tel.: (619) 234-1222  
Fax: (619) 236-9677

**CHANGE OF ADDRESS**

If you move after receiving this Notice, if it was misaddressed, or if for any reason you want your Settlement Award or future correspondence concerning this Action to be sent to a different address, you must supply your preferred address to the Settlement Administrator at:

Phoenix Class Action Administration Solutions  
P.O. Box 7208  
Orange, CA, 92863

**ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?**

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you may review the detailed “Stipulation of Settlement” which is available for viewing online on the following website:

URL: [Insert website provided by Settlement Administrator]

The pleadings and other records in the lawsuit are also available on the website.

**ANY INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO PLAINTIFF’S COUNSEL LISTED ABOVE OR TO THE SETTLEMENT ADMINISTRATOR, Phoenix Class**

Action Administrators, P.O. Box 7208, Orange, CA, 9286, (800) 523-5773. Please refer to the *Eduardo Pena v. Strategic Operations* Class Action Settlement.

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR  
INFORMATION REGARDING THIS SETTLEMENT OR THE SETTLEMENT PROCESS**

**[COMPLETE THIS FORM *ONLY IF YOU CHOOSE TO*  
*NOT* PARTICIPATE IN THIS SETTLEMENT AND  
CHOOSE *NOT* TO RECEIVE A SETTLEMENT SHARE]**

**OPT-OUT FORM**

***Eduardo Pena v. Strategic Operations***

SAN DIEGO COUNTY SUPERIOR COURT CASE NUMBER 37-2022-00014701-CU-OE-CTL

**INSTRUCTIONS:** TO OPT-OUT OF THE SETTLEMENT, YOU MUST COMPLETE, SIGN AND MAIL THIS FORM BY FIRST CLASS U.S. MAIL OR EQUIVALENT, POSTAGE PAID, POSTMARKED ON OR BEFORE **[+45 DAYS FROM MAILING]**, ADDRESSED TO:

***INSERT ADMINISTRATOR INFO***

Please fill in all of the following information (type or print):

NAME (First, Middle, Last): \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP CODE: \_\_\_\_\_

TELEPHONE NUMBERS: Home: \_\_\_\_\_ Work: \_\_\_\_\_

**IT IS STRONGLY RECOMMENDED THAT YOU RETAIN PROOF OF MAILING  
THIS FORM POSTMARKED ON OR BEFORE **[DATE]**.**

I [insert your name] wish to be excluded from the Settlement Class in the case of *Eduardo Pena v. Strategic Operations*, San Diego County Superior Court Case Number 37-2022-00014701-CU-OE-CTL. I understand I will not receive money from the proposed class action settlement.

I further verify that the following is true: My name, address and other contact information are accurately set forth above. I received and had the opportunity to read the Notice of Proposed Class Action Settlement that were sent to me along with this Opt-Out Form. I understand that by signing this side of the form, I voluntarily choose to exclude myself from the proposed settlement of this class action. **I understand that by excluding myself, I may not accept any money allocated for me in the proposed settlement and may not object to the settlement.** On the other hand, I also understand that if I wish to assert any claims related to those set forth in this lawsuit in my individual capacity, I shall have to do so separately. I understand that any such claims are subject to strict time limits, known as statutes of limitations, which restrict the time within which I may file any such action. I understand that I should consult with an attorney at my own expense if I wish to obtain advice regarding my rights with respect to this settlement or my choice to opt out of the settlement. Strategic Operations has not encouraged me to opt out, and I choose to opt out of my own free will.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Last four digits of Social Security Number \_\_\_\_\_

## **CLASS WORKWEEK DISPUTE FORM**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO

*Eduardo Pena v. Strategic Operations, Inc., et al.*  
Case No. 37-2022-00014701-CU-OE-CTL

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX -

### **INSTRUCTIONS**

IF YOU WERE EMPLOYED BY STRATEGIC OPERATIONS, INC., (“Strategic Operations”) IN CALIFORNIA AS AN HOURLY-PAID OR NONEXEMPT EMPLOYEE BETWEEN APRIL 20, 2018, THROUGH JULY 27, 2022, THEN YOU ARE A SETTLEMENT CLASS MEMBER. IF YOU WERE EMPLOYED BY STRATEGIC OPERATIONS IN CALIFORNIA AS AN HOURLY-PAID OR NONEXEMPT EMPLOYEE BETWEEN JANUARY 1, 2022 THROUGH MARCH 30, 2023, THEN YOU ARE AN AGGRIEVED EMPLOYEE.

The amount of your estimated Settlement Payment is based upon the Eligible Workweeks you worked for Strategic Operations, Inc. in California from April 20, 2018, through July 27, 2022. You may be entitled to a *pro rata* share of the PAGA Payment if you worked for Strategic Operations, Inc. in California from January 1, 2022 through March 30, 2023.

“Eligible Workweeks” are defined as any week in which you worked at least two (2) days during the calendar week. The number of Eligible Workweeks applicable to your claim is set forth in Section I below. If you believe that the number of workweeks stated is incorrect, you may dispute the number of workweeks by submitting this completed Workweek Dispute Form with supporting documents on or before [redacted] [45 days after initial mailing]. **If you believe that the number of workweeks stated below is correct, you do not have to do anything.**

If you have moved or may move in the future, you must immediately send your new address to the Settlement Administrator at the address listed above; otherwise, your individual settlement payment may not reach you. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your settlement payment.

### **I. YOUR COMPENSABLE WORKWEEKS**

You worked as an hourly-paid or non-exempt employee for Strategic Operations, Inc. in California, which qualifies you as a Settlement Class Member, and your total number of Eligible Workweeks in this position are:

<<NUMBER OF WORKWEEKS>>

You worked as an hourly-paid or non-exempt employee for Strategic Operations, Inc. in California, which qualifies you as an Aggrieved Employee, and your total number of Eligible Workweeks in this position are: <<NUMBER OF WORKWEEKS>>

## II. YOUR ESTIMATED SETTLEMENT PAYMENT

Based upon the number of workweeks stated above, your estimated pre-tax Settlement Payment is <<INSERT>>.

## III. CHALLENGE TO WORKWEEKS

If you wish to dispute the Eligible Workweeks data listed, you must postmark your dispute and provide all supporting information and/or documentation to the Settlement Administrator by <<NOTICE PERIOD DEADLINE>>.

*Check the box below ONLY if you wish to dispute the data listed in Section I:*

☐ I wish to dispute the number of Eligible Workweeks listed in Section I. I believe the correct amount of my workweeks is \_\_\_\_\_. I have also included information and/or documentary evidence that support my dispute. I understand that, by submitting this dispute, I hereby authorize the Settlement Administrator to review Strategic Operations, Inc.'s records and make a determination as to the validity of my dispute based upon Strategic Operations, Inc.'s records as well as the records and information that I submit to the Settlement Administrator.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the information I provided in this Workweek Dispute Form is true and correct.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Print or Type Name: \_\_\_\_\_

### MAIL TO:

**PENA v. STRATEGIC OPERATIONS, INC. CLASS ACTION SETTLEMENT**

c/o

**[Insert]  
address**

**IF YOU ARE CONTESTING THE AMOUNT OF YOUR ELIGIBLE WORKWEEKS, YOU MUST SIGN, POSTMARK, AND RETURN THIS FORM TO THE SETTLEMENT ADMINISTRATOR ON OR BEFORE «OPT-OUT DEADLINE».**

**PROOF OF SERVICE**

*Pena, et al. v. Strategic Operations, Inc., et al.*  
*Case No.: 37-2022-00014701-CU-OE-CTL*

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, Eva Pedro, state that I am employed in the County of Los Angeles in the State of California. I am over the age of eighteen years and am not a party to the within action. My business address is 3055 Wilshire Blvd., 12<sup>th</sup> Floor, Los Angeles, California 90010.

On September 18, 2023, I served the foregoing **MOTION TO AMEND PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ELIZABETH VOTRA** on the interested parties: (a) as addressed; and (b) by one of the methods of service set forth below:

Harvey C. Berger, Esq.  
**BERGER, WILLIAMS & REYNOLDS, LLP**  
401 B Street, Suite 2000  
San Diego, California 92101  
berger@bwrlp.com  
harris@bwrlp.com  
beshear@bwrlp.com  
waller@bwrlp.com

*Counsel for Defendants, STRATEGIC  
OPERATIONS, INC.*

- ☐ **BY FIRST CLASS U.S. MAIL:** I enclosed the above documents in a sealed envelope with postage thereon fully prepaid and placed for collection and mailing on the above date in accordance with ordinary business practices. I am readily familiar with this firm's practice of collection and processing of correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service the same day in the ordinary course of business pursuant to Cal. Code Civ. Proc. § 1013(a).
- ☐ **BY PERSONAL SERVICE:** I hand-delivered or caused said document(s) to be hand delivered to the office of the addressee using an attorney service and/or messenger, pursuant to Cal. Code Civ. Proc. § 1011.
- ☒ **BY ELECTRONIC MAIL (E-MAIL):** I caused said document(s) to be delivered electronically to the addressee(s) identified above with an e-mail address pursuant to Cal. Code Civ. Proc. § 1013(g).

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on September 18, 2023, at Los Angeles, California.

*Eva Pedro*

Eva Pedro

# **EXHIBIT 2**

# Wilshire Law Firm, PLC

## Client Costs Detailed Report

| Type                               | Date                    | All Transactions<br>Num | Memo                               | Amount           | Balance          |
|------------------------------------|-------------------------|-------------------------|------------------------------------|------------------|------------------|
| <b>COS</b>                         |                         |                         |                                    |                  |                  |
| <b>Court Filing Fees-533804</b>    |                         |                         |                                    |                  |                  |
|                                    | 01/12/2023              |                         | Attorney Services for Court Filing | 12.87            | 12.87            |
|                                    | 01/14/2023              |                         | Attorney Services for Court Filing | 167.29           | 180.16           |
|                                    | 01/24/2023              |                         | Attorney Services for Court Filing | 33.46            | 213.62           |
|                                    | 02/01/2023              |                         | Attorney Services for Court Filing | 33.46            | 247.08           |
|                                    | 02/16/2023              |                         | Attorney Services for Court Filing | 13.33            | 260.41           |
|                                    | 03/08/2023              |                         | Attorney Services for Court Filing | 13.33            | 273.74           |
|                                    | 03/08/2023              |                         | Attorney Services for Court Filing | 75.10            | 348.84           |
|                                    | 09/11/2023              | 21176182                | Attorney Services for Court Filing | 13.33            | 362.17           |
|                                    | 09/13/2023              | 21176183                | Attorney Services for Court Filing | 61.77            | 423.94           |
|                                    | 09/11/2023              | 21181923                | Attorney Services for Court Filing | 75.10            | 499.04           |
|                                    | 09/20/2023              | 21236504                | Attorney Services for Court Filing | 75.10            | 574.14           |
|                                    | 09/19/2023              | 21236553                | Attorney Services for Court Filing | 13.33            | 587.47           |
| Total Court Filing Fees-533804     |                         |                         |                                    | 587.47           | 587.47           |
| <b>Legal Expenses-533821</b>       |                         |                         |                                    |                  |                  |
|                                    | 01/04/2022              |                         | Legal Expenses                     | 75.00            | 75.00            |
|                                    | 05/27/2022 (05/26/2022) |                         | Mediation Fees                     | 7,500.00         | 7,575.00         |
| Total Legal Expenses-533821        |                         |                         |                                    | 7,575.00         | 7,575.00         |
| <b>Process Service Fees-533803</b> |                         |                         |                                    |                  |                  |
|                                    | 02/04/2022              | 44366                   | Process Services Fees              | 96.45            | 96.45            |
|                                    | 02/07/2022              | 44628                   | Process Services Fees              | 45.00            | 141.45           |
| Total Process Service Fees-533803  |                         |                         |                                    | 141.45           | 141.45           |
| <b>Professional Fees-534500-1</b>  |                         |                         |                                    |                  |                  |
|                                    | 12/14/2021              | 5337                    | Attorney Services                  | 900.00           | 900.00           |
|                                    | 07/28/2022              | 6453                    | Attorney Services                  | 2,950.00         | 3,850.00         |
|                                    | 03/10/2023              | 8404                    | Attorney Services                  | 280.00           | 4,130.00         |
| Total Professional Fees-534500-1   |                         |                         |                                    | 4,130.00         | 4,130.00         |
| Total COS                          |                         |                         |                                    | 12,433.92        | 12,433.92        |
| <b>TOTAL</b>                       |                         |                         |                                    | <b>12,433.92</b> | <b>12,433.92</b> |

# **EXHIBIT 3**

CONFIDENTIAL and WORK PRODUCT - NICOL E. HAJJAR TIMESHEETS

[illegible]

CONFIDENTIAL and WORK PRODUCT - ELIZABETH VOTRA TIMESHEETS

[illegible]

CONFIDENTIAL and WORK PRODUCT - TINA PETROSIAN TIMESHEETS

[illegible]

CONFIDENTIAL and WORK PRODUCT - ANTHONY BALBUENA TIMESHEETS

*Eduardo Pena v. Strategic Operations, Inc.et al.*  
37-2022-00014701

I, Christine Ohanyan, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12<sup>th</sup> Floor, Los Angeles, California 90010. My electronic service address is minjee@wilshirelawfirm.com.

Harvey C. Berger  
Berger & Williams, LLP  
401 B Street, Suite 2000  
San Diego, California 92101  
Email: [berger@bergerwilliams.com](mailto:berger@bergerwilliams.com)  
[waller@bergerwilliams.com](mailto:waller@bergerwilliams.com)  
[beshear@bergerwilliams.com](mailto:beshear@bergerwilliams.com)

(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

Executed on **February 22, 2024**, at Los Angeles, California.

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Christine Ohanyan