

Nicol E. Hajjar, Esq., SBN 250377
nicol@wilshirelawfirm.com
Elizabeth M. Votra, Esq., SBN 310717
evotra@wilshirelawfirm.com
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Tel.: (213) 381-9988
Fax: (213) 381-9989

Counsel for Plaintiffs

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

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

///

///

///

///

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."**

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

18 **VIII. SETTLEMENT ADMINISTRATOR**

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

IX. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS

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

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

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

22 If a Notice is returned from the initial notice mailing, the Settlement Administrator will
23 perform a skip trace in an attempt to locate a more current address. If the Settlement
24 Administrator is successful in locating a new address, it will re-mail the Notice to the Settlement
25 Class member and/or Aggrieved Employee. Further, any Notices returned with a forwarding
26 address to the Settlement Administrator, as non-deliverable before the deadline date, shall be
27 sent to the forwarding address affixed thereto.
28

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.

//

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.

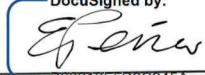
J. Severability.

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: Eduardo Pena
Position: President
For STRATEGIC OPERATIONS, INC.

//

//

//

//

//

//

//

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