

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com
mgavron@diversitylaw.com

William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
Polaris Law Group
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile

Attorneys for Plaintiff Steven Yetter and
on behalf of all other similarly aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SHASTA**

Steven Yetter, on behalf of himself and all
other similarly aggrieved employees,

Plaintiff,

vs.

Select Comfort Retail Corp., a Minnesota
corporation; and Does 1-25, inclusive,

Defendants.

Case No.: SCRDCVCV21-0197881-000

(Assigned to the Hon. Stephen H. Baker, Dept. 3)

**DECLARATION OF MAX W. GAVRON IN
SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE SETTLEMENT AGREEMENT
PURSUANT TO THE PRIVATE ATTORNEYS
GENERAL ACT**

Date: April 11, 2022

Time: 8:30 a.m.

Dept.: 3

Complaint Filed: July 29, 2021

Trial Date: June 28, 2022

FILED

MAR - 1 2022

**CLERK OF THE SUPERIOR COURT
BY: S. MURILLO, DEPUTY CLERK**

BY FAX

DECLARATION OF MAX W. GAVRON

I, Max W. Gavron, declare as follows:

1. I am an attorney at law duly admitted to practice before all courts in the State of California and am a member of the law firm of the Diversity Law Group, P.C., one of the attorneys of record for Plaintiff Steven Yetter (“Plaintiff”) in the above-entitled action. I have personal knowledge of the matters set forth herein, and if called upon as a witness to testify thereto, I could and would competently do so.

PROCEDURAL HISTORY

2. On or about May 25, 2021, Plaintiff submitted written notice under Labor Code § 2699.3 (the “PAGA Notice”) to the California Labor and Workforce Development Agency (“LWDA”) and Defendant Select Comfort Retail Corp. (“Defendant”). As set forth in the PAGA Notice, Plaintiff alleged that Defendant failed to pay meal and rest period premium compensation at the regular rate of pay and pay all wages owed upon separation of employment, in violation of California Labor Code §§ 201-203, 226.7, and 512.

3. On July 29, 2021, Plaintiff filed a representative action complaint against Defendant in the Superior Court of California, County of Shasta, alleging a cause of action for violation of Labor Code § 2698, *et seq.* (the “Action”). The Complaint asserted claims for penalties under PAGA for Defendant’s failure to pay meal and rest period premium compensation at the regular rate of pay and pay all wages owed upon separation of employment.

4. After Defendant appeared, the Parties met and conferred regarding the possibility of conducting an early mediation that would include the exchange of information to allow the Parties to evaluate Plaintiff's theory of liability and Defendant's potential exposure.

5. After further discussion regarding mediator selection, the Parties agreed to engage the services of experienced wage and hour neutral Michael J. Loeb, Esq., for a private mediation on November 5, 2021.

6. In connection with the Parties' mediation efforts, Defendant provided Plaintiff with employee time records, wage statements (in excess of 1,500 exemplars) issued during the applicable period, and payroll data, including the number of Aggrieved Employees and the

number of pay periods worked by the Aggrieved Employees. The data allowed Plaintiff's counsel to perform a comprehensive damage analysis in preparation for the mediation.

7. During the mediation, the Parties spoke at length about the strengths and weaknesses of each side's claims and defenses, and the scope of Defendant's potential liability. After a full day of arm's-length negotiations, the Parties agreed to a settlement of the Action and executed a memorandum of understanding. The Parties thereafter worked to memorialize the terms of the settlement in a long-form settlement agreement.

SUMMARY OF THE PROPOSED SETTLEMENT

8. As set forth in the Settlement Agreement, attached hereto as **Exhibit A**, the aggrieved employees affected by this Settlement (or "PAGA Representative Group") are defined as "all individuals who are or were employed as non-exempt employees by Select Comfort within the State of California who were paid a meal or rest period premium at any time from July 19, 2020 through the date the Court approves the Settlement. (Settlement Agreement ¶ 1.1.)

9. The PAGA Period in this matter runs from July 19, 2020, through the date the Court approves the Settlement, unless Select Comfort exercises its option to limit the PAGA Period so that the total Pay Periods does not exceed 4,000. (*Id.*)

10. Based upon Defendant's records, there were approximately 330 individuals in the PAGA Representative Group and 4,000 pay periods during the PAGA Period, at the time of the mediation. (*Id.* ¶ 6.1.)

11. The Settlement Agreement requires Defendant to pay the gross amount of One Hundred Twelve Thousand Five Hundred Dollars (\$112,500.00) (the "Gross Settlement Fund"). (*Id.* ¶ 6.1.) This is an allocation of the civil penalties for the release of PAGA claims by the PAGA Representative Group. (*Id.*) The balance of the Gross Settlement Fund remaining after deduction of the approved Service Award to the Plaintiff, attorneys' fees and costs, and settlement administration fees (the "PAGA Payment"), will be available for distribution to the LWDA and PAGA Representative Group. (*Id.* ¶¶ 1.7, 1.8, 6.3.) Seventy-five percent of the PAGA Payment, or approximately \$38,231.29 will be paid to the LWDA for PAGA penalties. (*Id.* ¶ 6.3.) The remaining twenty-five percent, or approximately \$12,743.76, will be distributed

1 to the PAGA Representative Group (“Net Settlement Proceeds”). (*Id.* ¶ 1.7.)

2 12. The Net Settlement Proceeds distributed to the PAGA Representative Group will
3 be distributed on a pro rata basis, based on the number of pay periods each individual worked
4 during the PAGA Period. (*Id.* ¶ 6.3.)

5 13. Based on the number of pay periods encompassed by the Settlement (4,000) and
6 the gross settlement amount (\$112,500.00), the average value per pay period is approximately
7 \$28.13 (\$112,500 / 4,000 pay periods). After deduction of the amounts described above, the
8 \$12,743.76, will be distributed to the PAGA Representative Group. The amount any particular
9 PAGA Representative Group member will be entitled to recover will vary depending on the
10 number of pay periods he or she worked. This is fair, as it directly allocates greater penalties to
11 the individuals who have allegedly suffered greater harm.

12 14. As part of the Settlement Agreement, Defendant does not object to Plaintiff’s
13 Counsel’s request for attorneys’ fees of approximately thirty-three and one-third percent of the
14 Gross Settlement Fund, *i.e.*, Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00), plus
15 reimbursement of documented litigation costs, subject to the Court approving this Settlement.
16 (*Id.* ¶ 6.6.)

17 15. Defendant also does not object to Plaintiff’s request for a Service Award of
18 \$10,000.00, in recognition of Plaintiff’s efforts in obtaining the benefits of the Settlement on
19 behalf of other purported aggrieved employees and for Plaintiff’s general release of his claims
20 against Defendant. (*Id.* ¶ 5.2.)

21 16. Finally, the Settlement Agreement provides for the payment of the fees and
22 expenses reasonably incurred by the Settlement Administrator. (*Id.* ¶ 1.14.) The Parties have
23 agreed to allocate the amount of \$4,000.00 for the settlement administration costs. Further, the
24 Parties have agreed to utilize Phoenix Settlement Administrators to administer the Settlement.
25 (*Id.* ¶ 1.15.)

26 17. The scope of the Released Claims by the PAGA Representative Group members
27 is appropriately tailored as it only releases claims arising out of the facts alleged or could have
28 been alleged in this lawsuit and PAGA Notice and does not release any other claims. Further,

1 none of the PAGA Representative Group members are bound by any general release under Code
2 of Civil Procedure § 1542 as part of this Settlement.

3 **POTENTIAL CIVIL PENALTIES**

4 18. Defendant has represented that there are approximately 405 individuals who
5 comprise the PAGA Representative Group and 4,000 pay periods at issue during the PAGA
6 Period. Therefore, pursuant to the PAGA, Plaintiff has calculated total approximate exposure at
7 \$400,000.00 (\$100 x 4,000 pay periods), pursuant to Labor Code § 2699(f)(2). While the PAGA
8 does provide the potential for a heightened penalty for subsequent violations, courts are often
9 hesitant to award a heightened penalty where there is no prior citation by the Labor
10 Commissioner. *See Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding no
11 heightened penalty where defendant was not notified by Labor Commissioner or any court that it
12 was subject to the California Labor Code).

13 19. The maximum penalty calculation assumes that Plaintiff will prevail on the
14 merits. Plaintiff asserts that his representative PAGA claim is based on the allegation that
15 Defendant failed to pay meal and rest period premium compensation at the regular rate of pay
16 and pay all wages owed upon separation of employment. While Plaintiff maintains that there
17 does not exist any reason for reducing PAGA penalties, Plaintiff is aware that Defendant could
18 make a compelling argument to the contrary. Firstly, Defendant has denied violation of any
19 applicable laws and liability for any claims asserted in the Action. Defendant also argued that
20 even assuming *arguendo* that the Court found its employment practices violative of the Labor
21 Code, the Court has discretion under PAGA to reduce the maximum allowable PAGA penalties
22 at its discretion. Here, because the California Supreme Court's ruling in *Ferra v. Loews*
23 *Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021) came down very recently, Defendant would have
24 argued that the amount of PAGA penalties to be imposed should be extremely limited.

25 20. Assuming that Plaintiff prevailed on liability under the facts of this case, I
26 appreciate the substantial risk that Defendant could present a persuasive argument that even if
27 the Court ultimately found Defendant's employment practices violative of the Labor Code, the
28 Court has discretion under PAGA to reduce the maximum allowable PAGA penalties at its

1 discretion. Defendant may have sought summary judgment on this issue or proceeded to trial.
2 Should Defendant have prevailed, the State of California and Aggrieved Employees would have
3 been left with zero recovery.

4 21. I am also aware that Courts routinely award far less than the statutory maximum
5 amount of civil penalties, even where an underlying violation of the Labor Code is found. For
6 example, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while the
7 plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA
8 penalty amount by 90%, citing the employer's good faith attempt at complying with the law. 30
9 Cal.App.5th 504, 517 (2018). Similarly, in the matter of *Magadia v. Wal-Mart Assocs. et al.*,
10 2019 U.S. Dist. Lexis 91792, while the trial court imposed substantial PAGA penalties upon the
11 defendant, such amount still represented reductions of 67% and 80% of the potential PAGA
12 penalties at issue. *Id.* at *87-*100. Moreover, this was only after the plaintiff in *Magadia* had
13 prevailed after trial. Thereafter, the Ninth Circuit reversed the district court and vacated its
14 award, which resulted in no PAGA recovery at all. *Magadia v. Wal-Mart Associates, Inc.*, 999
15 F.3d 668, 678 (9th Cir. 2021). My firm handled the *Magadia* matter and thus we are well aware
16 of the risks attendant with prosecuting actions like these.

17 22. Here, Plaintiff maintains that there does not exist any reason for reducing PAGA
18 penalties. However, Plaintiff is aware that Defendant could make a compelling argument to the
19 contrary, especially considering how recently the California Supreme Court's ruling in *Ferra*
20 was issued. Even if there were a finding of liability, Defendant has argued that these violations
21 were not intentional violations of the law and that the court should reduce any penalties awarded.
22 As such, the Court may be disinclined to award full PAGA penalties. On this basis, the Court
23 again may find there is reason to significantly reduce the PAGA penalties awarded. The
24 proposed settlement significantly exceeds PAGA settlements that courts have approved in other
25 cases, when considered as a percentage of the overall settlement value of the case. The proposed
26 settlement amounts to 28% (\$112,500 / \$400,000) of the total possible liability in this matter,
27 which far exceeds other PAGA settlements approved by courts – including those that provide for
28 less than the one percent allocation to PAGA penalties. *See, e.g., Hopson v. Hanesbrands Inc.*,

2009 WL 928133, *9 (N.D. Cal. Apr. 3, 2009) (approving total PAGA allocation that was 0.49% of \$408,420.32 gross settlement; *Moore v. PetSmart, Inc.*, 2015 WL 5439000, *8 (N.D. Cal. Aug. 4, 2015) (approving total PAGA allocation that was 0.5% of \$10,000,000 gross settlement); *Lusby v. Gamestop Inc.*, 97 F.R.D. 400, 407 (N.D. Cal. 2013) (approving total PAGA allocation that was 0.67% of \$750,000 gross settlement). For example, in *Cotter v. Lyft, Inc.*, the plaintiff alleged that drivers who use Lyft were misclassified as independent contractors. 2016 WL 3561742, (N.D. Cal. June 23, 2016).

23. My office accepted this case on a contingency basis, and recovery was uncertain. Had Plaintiff not prevailed, then we would not have been compensated for our efforts and would be left with significant costs expended in furtherance of the prosecution of this case.

24. I strongly believe that Plaintiff can prevail at trial. However, after taking into account sharply disputed factual and legal issues involved in this litigation, the risks attending further prosecution, including the still-developing law under PAGA, and the substantial benefits to be received pursuant to the compromise and settlement of the litigation, I have concluded that settlement on the terms set forth in the Settlement Agreement is appropriate and in the best interests of Plaintiff and the aggrieved employees.

ATTORNEY EXPERIENCE

25. From the inception of the case, Plaintiff's Counsel have zealously represented the interests of Plaintiff and the aggrieved employees. The Settlement was obtained for the benefit of the aggrieved employees.

26. My qualifications are as follows: I received a full-tuition scholarship, and graduated from Southwestern Law School in 2013, magna cum laude. I was in the top 5% of my class. During my time at Southwestern, I was a Notes and Comments Editor on the Southwestern Law Review. I also received awards for achieving the highest grade in my class in several courses. In 2012, I was a full-time extern, at the United States District Court for the Central District. Immediately after law school, I taught several courses at Southwestern, including Principles of Legal Analysis and Legal Methods. I taught those courses for approximately four years.

1 27. I practiced civil litigation at Haight Brown & Bonesteel LLP from approximately
2 September 2013, through January 2016. I was third-chair in a federal court jury trial that resulted
3 in a defense verdict in our client's favor on a \$21 million commercial breach of contract dispute.

4 I also regularly litigated cases across the civil litigation spectrum, including employment matters.

5 28. From February 2016, through Fall 2017, I practiced at the international law firm
6 of Arnold & Porter, which had recently merged with Kaye Scholer, LLP. I defended Fortune 50
7 companies in Multi-District Litigation primarily in the product liability sphere. I also
8 successfully drafted an appellate brief in the Ninth Circuit resulting in the reversal of a summary
9 judgment decision regarding trade secret issues, in addition to working in several other practice
10 groups. *See Experian Info. Solutions v. Nationwide Marketing Servs. Inc.*, 893 F.3d 1176 (9th
11 Cir. 2018).

12 29. From September 2017, through September 2018, I served as a law clerk to a
13 Judge sitting on the United States District Court, Central District of California. I regularly
14 prepared bench memoranda, on cases involving all types of civil litigation, including regularly
15 working on wage and hour class actions.

16 30. I am currently an attorney at the law firm Diversity Law Group, P.C., an
17 employment law firm that has handled numerous wage and hour class and individual actions, on
18 both plaintiff and defense sides. My current practice focuses on employment matters involving
19 both class actions, and single plaintiffs. The firm currently has cases in the Los Angeles Superior
20 Courts, the Orange County Superior Courts, the San Diego County Superior Courts, and the
21 United States District Courts for the Central, Northern, and Eastern Districts of California. I am
22 currently handling, or have handled, numerous wage and hour class action lawsuits with the firm,
23 including, but not limited to: *Agar v. Sensient Natural Ingredients, LLC* (Case No. CV-19-
24 001906, Stanislaus County Superior Court); *Heredia v. Eddie Bauer LLC* (Case No.
25 16CV300475, United States District Court, Northern District of California); *Parsons v. Estenson*
26 *Logistics, LLC* (Case No. 34-2019-00252929, Sacramento County Superior Court); *Wood v.*
27 *Reeve Trucking Co., Inc.* (Case No. STK-CV-UOE-2018-0004414, San Joaquin County Superior
28 Court); *Coronel v. Pinnacle Agriculture* (Case No. 18CV004287, Monterey County Superior

1 Court), and *Tice v. Trader Joe's Company* (Case No. 20CV00892, Santa Barbara County
2 Superior Court), among others.

3 31. I have been certified as class counsel in a number of cases, including *Smith v.*
4 *Gold Country Health Center, Inc.* (Case No. PC20180491, El Dorado County Superior Court)
5 and *Pantoja v. RAMCO Enterprises, L.P.* (Case No. M126835, Monterey County Superior
6 Court). I have also assisted in numerous wage and hour class action mediations.

7 32. On June 14, 2019, I argued two related cases in front of the Ninth Circuit Court of
8 Appeals. One of them was *Rodriguez v Nike Retail Service Inc.*, Case No. 17-16866. On June 28,
9 2019, the Ninth Circuit issued a published decision, reversing and remanding in favor of our
10 clients. *Rodriguez v. Nike Retail Servs., Inc.*, 928 F.3d 810 (9th Cir. 2019). The related case
11 decision was *Chavez v. Converse, Inc.*, 772 Fed. Appx. 571 (June 28, 2019).

12 33. To date, my office has incurred \$10,024.95 in costs. The costs are all litigation-
13 related costs, including filing fees, service costs, mediation fees, postage, and copying fees.
14 Attached hereto as **Exhibit B** is a copy of costs my firm has incurred in connection with the
15 prosecution of this lawsuit. The difference between the maximum of \$15,000.00 allocated to
16 costs in the Settlement Agreement and the amount of the costs actually incurred will be
17 distributed to the LWDA and the PAGA Representative Group as set forth in the Settlement
18 Agreement.

19 34. Concurrent with the filing of the Motion to Approve PAGA Settlement, my office
20 uploaded the Motion, Settlement Agreement, and proposed order to the LWDA's website.

21 35. My office will also upload the Court's judgement and order approving the
22 Settlement Agreement within ten days after entry of such.

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

25 Executed on this 28th day of February 2022, at Los Angeles, California.

26 

27 _____
28 Max W. Gavron

EXHIBIT A

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT

This Private Attorneys General Act Settlement Agreement and Release (the "Agreement") is made by and between Steven Yetter ("Plaintiff"), on behalf of himself and each of the other alleged aggrieved employees, as defined herein, on the one hand, and Select Comfort Retail Corporation, its parent corporation, its subsidiaries, and successors and assigns ("Select Comfort"). Plaintiff and Select Comfort are referred to hereafter collectively as the "Parties" and each a "Party." Through this Agreement, and subject to Court approval, the Parties hereby resolve the claims associated with the lawsuit entitled Steven Yetter v. Select Comfort Retail Corp., Shasta County Superior Court Case No. 197881 (the "Action").

1. DEFINED TERMS

In addition to the defined terms referenced above, as used herein, the following terms are defined as:

1.1 The term "PAGA Representative Group" means all individuals who are or were employed as non-exempt employees by Select Comfort within the State of California who were paid a meal or rest period premium at any time from July 19, 2020 through the date the Court approves the Settlement (the "PAGA Period").

1.2 The term "Attorneys' Fees and Cost Award" means the amount authorized by the Court to be paid to Plaintiff's Counsel for the services they have rendered and expenses they have incurred in prosecuting the Action.

1.3 The term "Court" as used herein means the Superior Court of Shasta County.

1.4 The term "Effective Date" will be the date that the Court signs the order approving the PAGA Settlement and no timely appeal thereto has been filed within 60 days ("Court Approval Order"). In the event that a timely appeal is filed within 60 days of the Court Approval Order, the Effective Date shall occur when the appeal is adjudicated and no longer subject to further judicial review. At no time will Select Comfort have any obligation to fund the settlement, in whole or in part, prior to the Effective Date.

1.5 The term "Gross Settlement Fund" means an amount not to exceed One Hundred Twelve Thousand Five Hundred Dollars And No Cents (\$112,500.00) that will be used to fund the Qualified Settlement Fund. The Gross Settlement Fund includes all Individual Settlement Payments, the Attorneys' Fees and Cost Award, the Settlement Administration Costs, Service Award, and payment to Labor and Workforce Development Agency ("LWDA").

1.6 The term "Individual Settlement Payment" means the amount to be paid to a PAGA Representative Group member pursuant to Section 6 of this Agreement.

1.7 The term "Net Settlement Proceeds" means the funds from the Qualified Settlement Fund available to be distributed to the PAGA Representative Group under this Agreement after payment of the Attorneys' Fees and Cost Award, the Settlement Administration Costs, the Service Award, and the portion of the PAGA Payment made to the LWDA.

1.8 The term "PAGA Payment" means the net amount to be paid by the Settlement Administrator to the LWDA and the PAGA Representative Group after deduction of Settlement Administration Costs, Service Award, and the Attorneys' Fees and Cost Award from the Gross Settlement Fund, in full satisfaction of the Released Claims as defined below. This PAGA Payment is made pursuant to Labor Code §2699(i).

1.9 The term "Pay Periods" means the number of pay periods worked by the PAGA Representative Group during the PAGA Period as determined by the Settlement Administrator, which shall not exceed 4,000 unless Select Comfort chooses to increase the Gross Settlement Fund on a pro rata basis as explained in Paragraph 6.1 below. In the event that the total pay period number exceeds 4,000, Select Comfort retains the right to close the PAGA Period on the date on which the total pay period number equals 4,000, or may choose to increase the MSA on a pro rata basis.

1.10 The term "Plaintiff's Counsel" means Polaris Law Group, LLP and Diversity Law Group, A.P.C.

1.11 "Qualified Settlement Fund" shall be the fund established and administered by the Settlement Administrator pursuant to Internal Revenue Code Section 1.468B-1 in connection with the Settlement.

1.12 The term "Service Award" means the amounts the Court authorizes to be paid to Plaintiff over and above his Individual Settlement Payment.

1.13 The term "Settlement" means the settlement described in this Agreement.

1.14 The term "Settlement Administration Costs" means all Settlement Administrator fees and costs incurred in administering the Settlement.

1.15 The term "Settlement Administrator" means Phoenix Settlement Administrators, the firm that the Parties mutually agree shall be responsible for the administration of the Settlement, pursuant to the terms of this Agreement.

1.16 The term "PAGA Period" means the following time period: July 19, 2020 through the date the Court approves the Settlement, unless Select Comfort exercises its option to limit the PAGA Period so that the total Pay Periods does not exceed 4,000 as explained in Paragraph 6.1 below.

2. SCOPE, PURPOSE, AND BENEFITS OF THE SETTLEMENT

2.1 As detailed below, this Agreement establishes a procedure to resolve the PAGA Representative Group's claims for penalties, attorneys' fees, costs, and interest under PAGA that were alleged or could have been alleged based on the factual allegations in the operative Complaint and/or PAGA letter. The Parties believe that continued litigation would be protracted,

expensive, uncertain, and contrary to their best interests. In light of these realities, the Parties believe that this Settlement is the best way to resolve the disputes between them.

2.2 The Parties believe this Agreement constitutes a fair, adequate, and reasonable settlement of the Action and have arrived at this Agreement in arms-length negotiations, following a mediation with an agreed-upon mediator, taking into account all relevant factors, present and potential, and will so represent to the Court. This Settlement was reached after extensive informal discovery and negotiations. In addition, the Parties have conducted significant investigation of the facts and law during the prosecution of this Action. The Parties have also investigated the applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and the civil penalties claimed by Plaintiff.

3. JURISDICTION

The Court has jurisdiction over the Parties and the subject matter of this dispute. The Action includes claims that, while Select Comfort denies them in their entirety, would, if proven, authorize the Court to grant relief pursuant to the California laws cited therein. If the Settlement is approved, the Court will retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all entered orders and judgments, and the Parties submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all entered orders and judgments.

4. STATEMENT OF NO ADMISSION

4.1 The Parties agree that this Agreement reflects their good faith compromise of the claims raised in the Action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel. This Agreement does not constitute, is not intended to constitute, and will not be deemed to constitute, an admission of liability by Select Comfort as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Action.

4.2 Neither this Agreement, nor any action taken or made in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to the Agreement, is intended by the Parties (nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding) as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, the Agreement may be used in any proceeding that has as its purpose the interpretation, implementation, or enforcement of the Agreement or any orders or judgments of the Court entered into in connection therewith.

4.3 Evidence produced or created by the Parties in connection with the Settlement procedure do not constitute, are not intended to constitute, and will not be deemed to constitute, an admission by Select Comfort of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

4.4 In the event that this Settlement is not approved by the Court, is terminated, or otherwise fails to be enforceable, Select Comfort will not be deemed to have waived, limited, or affected in any way any of its objections or defenses in the Action.

5. WAIVER, RELEASE, AND DISMISSAL

5.1 Release and Waiver of Claims by the PAGA Representative Group. Upon the Effective Date and funding of the Gross Settlement Fund, the PAGA Representative Group, and their successors, assigns, and/or agents, shall be deemed to have fully and finally released and discharged Select Comfort and each of its past, present and future agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, limited liability companies, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, and affiliated organizations, and all of its respective past, present and future employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, affiliates, and assigns, and each of them, (collectively, the "Released Parties"), from the "Released Claims." For purposes of this Agreement, the "Released Claims" are defined as the PAGA Representative Group's claims debts, liabilities, demands, actions, or causes of action for civil penalties that were alleged or which could have been alleged based on the factual allegations in the operative complaint and/or PAGA letter in the Action, including all claims for civil penalties based upon or arising out of Select Comfort's alleged failure to pay meal and rest period premium pay at the regular rate of pay; failure to pay all wages owed upon separation of employment; waiting time penalties; and claims arising under or based upon the alleged violations of California Labor Code Sections 201-203, 226.7, 512 and 2698 *et seq.* and applicable California Industrial Welfare Commission ("IWC") Wage Orders, including but not limited to IWC Wage Order No. 7 during the PAGA Period.

5.2. General Release and Waiver of Claims by Plaintiff. In addition to the releases above, Plaintiff makes the following general release of all claims, known or unknown (the "General Release"). Plaintiff releases the Released Parties from all claims, known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, including but not limited to claims arising from or related to his employment with Select Comfort and his compensation while an employee of Select Comfort through the date of signing this MOU ("Plaintiff's Released Claims"). Plaintiff's Released Claims include, but are not limited to, all claims arising from or reasonably related to the Action, whether pleaded or not pleaded. Plaintiff's Released Claims also include all claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; late, short and/or missed meal periods and/or rest periods; reimbursement for all necessary business expenses; payment for all hours worked; off-the-clock work; inaccurate wage statements; improper or unauthorized deductions; failure to keep accurate records; unfair business practices; penalties, including, but not limited to, civil penalties, recordkeeping penalties, wage statement penalties, meal/rest period penalties; minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs. Plaintiff's Released Claims include all claims arising under the

California Labor Code (including, but not limited to, sections 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5, 206, 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 256, 450, 510, 511, 512, 516, 550, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 2802, 2698 *et seq.*, and 2699 *et seq.*); all claims arising under: the Wage Orders of the California Industrial Welfare Commission; the California Private Attorneys General Act of 2004 ("PAGA"); California Business and Professions Code section 17200, *et seq.*; the California Civil Code, to include but not limited to, sections 3287, 3336 and 3294; 12 CCR § 11040; 8 CCR § 11060; California Code of Civil Procedure § 1021.5; the California common law of contract; the FLSA, 29 U.S.C. § 201, *et seq.*; federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* ("ERISA"). Plaintiff's Released Claims also include all claims for lost wages and benefits, emotional distress, retaliation, discrimination, harassment, punitive damages, and attorneys' fees and costs arising under federal, state, or local laws for discrimination, harassment, retaliation, and wrongful termination, such as, by way of example only, (as amended) 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination in Employment Act, and the California Fair Employment and Housing Act; and the law of contract and tort. This release excludes the release of claims not permitted by law. This General Release excludes any and all past, present and/or future claims arising under the Workers' Compensation laws.

The General Release includes any unknown claims Plaintiff does not know or suspects to exist in Plaintiff's favor at the time of the General Release, which, if known by Plaintiff, might have affected Plaintiff's settlement with, and release of, Released Parties by Plaintiff or might have affected Plaintiff's decision not to object to this Settlement or the General Release. With respect to the General Release, Plaintiff stipulates and agrees that, upon the Effective Date and funding of the Gross Settlement Fund, Plaintiff shall be deemed to have, and by operation of the Court's approval of the Settlement, shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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

Plaintiff may hereafter discover facts in addition to or different from those Plaintiff now knows or believes to be true with respect to the subject matter of the General Release, but Plaintiff, upon the Effective Date, shall be deemed to have, and by operation of the Court's approval of the Settlement, shall have, fully, finally, and forever settled and released any and all of the claims released pursuant to the General Release whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

6. COMPUTATION AND DISTRIBUTION OF PAYMENTS

6.1 Gross Settlement Fund. The Gross Settlement Fund amount of One Hundred Twelve Thousand Five Hundred Dollars And No Cents (\$112,500.00) is on an all-in, non-reversionary basis to settle the Action and to resolve all released claims, penalties, attorneys' fees, costs, administrative fees, and interest. In no event shall Select Comfort be liable for more than One Hundred Twelve Thousand Five Hundred Dollars And No Cents (\$112,500.00) as a result of this Settlement, and any of the attorneys' fees, costs, administrative fees, penalties, and sums specified in this Agreement shall be paid from this amount, except as otherwise noted in this Agreement. This Gross Settlement Fund amount of One Hundred Twelve Thousand Five Hundred Dollars And No Cents (\$112,500.00) has been agreed to by Plaintiff and Select Comfort. It is expressly understood that if the Court awards less than the total amounts requested by Plaintiff's Counsel to be awarded for attorneys' fees and costs and/or service award requested by Plaintiff, the difference in any such amounts will be included in the PAGA Payment. The Gross Settlement Fund will cover up to 4,000 pay periods during the PAGA Period for the PAGA Representative Group during which a meal/rest period premium was paid and over which incentive pay was earned. Defendant represents that this number does not exceed 4,000. In the event that the number exceeds 4,000, Select Comfort retains the right to close the PAGA Period on the date on which the total pay period number equals 4,000, or may choose to increase the Gross Settlement Fund on a pro rata basis.

6.2 Deposit of the Gross Settlement Fund Amount into the Qualified Settlement Fund. Not later than fifteen (15) days following the Effective Date, Select Comfort shall deposit the Gross Settlement Fund into the Qualified Settlement Fund. At no time will Select Comfort have any obligation to make that deposit or otherwise fund the Settlement, in whole or in part, until after the Effective Date. All payments that are required to be made pursuant to the Agreement shall be made from the Qualified Settlement Fund.

6.3 Distribution Formula. The Settlement Administrator shall distribute the PAGA Payment to the LWDA and the PAGA Representative Group as described in this Section 6.4.

To calculate the net amount of the PAGA Representative Group's share of the PAGA Payment, the Settlement Administrator will deduct the following court-approved sums from the Gross Settlement Fund: (1) Attorneys' Fees and Costs; (2) the Service Award; and (3) the Settlement Administrator's Costs. The Settlement Administrator will then deduct 75% of the Net Settlement Proceeds, which shall be sent to the LWDA and 25% will be allocated among the PAGA Representative Group proportionally based on the number of Pay Periods each member of that group worked during the PAGA Period.

No member of the PAGA Representative Group shall be required to make claims but shall simply be delivered a check for their share of the PAGA Payment when settlement payments are delivered after approval of the settlement.

For tax purposes, all Individual Settlement Payments will constitute penalties and will be reported on an IRS Form-1099, which the Settlement Administrator will provide to the PAGA

Representative Group if necessary, as required by law. No person or entity shall have any claim against Select Comfort, Select Comfort's Counsel, Plaintiff, the PAGA Representative Group, Plaintiff's Counsel, or the Settlement Administrator based upon distributions and payments made in accordance with this Agreement.

6.4 Distribution to the PAGA Representative Group. Individual Settlement Payments shall be paid out of the Net Settlement Proceeds pursuant to the Distribution Formula set forth in Section 6.4 of this Agreement.

Not later than fifteen (15) days following the Effective Date, Select Comfort shall send a list of the PAGA Representative Group to the Settlement Administrator containing: (1) name; (2) last known home address and telephone number; (3) number of Pay Periods as a member of the PAGA Representative Group during the PAGA Period; and (4) social security number. This shall be known as the "Group List." Select Comfort shall transmit the Group List in Excel or similar format or other method as agreed to by the Parties in good faith as technology requires to transmit the data.

Not later than three (3) days following receipt of the Group List, the Settlement Administrator shall email the Parties confirming receipt of the Group List and stating the number of members of the PAGA Representative Group and the number of Pay Periods included therein.

Not later than ten (10) days following receipt of the Group List, the Settlement Administrator shall cross-reference all the addresses provided in the Group List with the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information.

Not later than thirty (30) days following receipt of the Gross Settlement Fund from Select Comfort, the Settlement Administrator shall make the following payments from those proceeds: (1) the Individual Settlement Payments; (2) the Service Award (which shall be delivered to Plaintiff's Counsel); (3) the Attorneys' Fees and Cost Award; (4) the portion of the PAGA Payment to the LWDA; and (5) payment to the Settlement Administrator for Settlement Administration Costs.

The Settlement Administrator shall mail via U.S. First Class mail each Individual Settlement Payment to each PAGA Representative Group member's last known address with directions to the Postmaster to deliver the checks to any applicable forwarding address and to return all undeliverable checks to the Settlement Administrator. The date of the initial mailing of the check shall be conclusively determined according to the records of the Settlement Administrator.

A letter substantially in the form of Exhibit "A" hereto will be included in the mailing of each PAGA Representative Group member's last Individual Settlement Payment.

Individual Settlement Payments shall remain valid and negotiable for one hundred eighty (180) days from the date of their issuance. If there are uncashed checks following this period,

the uncashed funds shall escheat to the State of California Unclaimed Property Fund in the name of the PAGA Representative Group member whose check went uncashed.

The Settlement Administrator's determination of eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Agreement, shall be conclusive, final, and binding on all PAGA Representative Group members, including Plaintiff.

6.5 Service Award Payment. Plaintiff will request, and Select Comfort will not oppose, a Service Award not to exceed Ten Thousand Dollars and No Cents (\$10,000.00) for his time and effort in bringing and prosecuting the Action and in exchange for the general release of all claims as set forth in Paragraph 5. Plaintiff must comply with the obligations referenced in Paragraph 5. The Parties agree that a decision by the Court to award Plaintiff an amount less than the amount stated above shall not be a basis for Plaintiff's Counsel to void this Agreement. The Settlement Administrator shall issue a Form 1099, or other appropriate tax form, for the Service Award. Any amounts awarded for a Service Award to Plaintiff less than the amount listed above will result in the non-awarded funds being part of the Net Settlement Proceeds available for distribution to the PAGA Representative Group. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on his payment and shall hold harmless Plaintiff's Released Parties from any claim or liability for taxes, penalties or interest arising as a result of the payment. The Service Award shall be in addition to Plaintiff's share of the Net Settlement Proceeds to the PAGA Representative Group.

Select Comfort makes no representations as to the tax treatment or legal effect of the payments called for herein, and Plaintiff is not relying on any statement or representation by Select Comfort in this regard. Plaintiff understands and agrees that he will be solely responsible for the payment of any taxes and penalties assessed on the payment described herein.

6.6 Attorneys' Fees and Cost Award. Plaintiff's Counsel shall request, and Select Comfort will not oppose, an award of attorneys' fees of up to thirty-three percent (33%) or Thirty Seven Thousand Five Hundred Dollars and No Cents (\$37,500.00), and costs not to exceed Fifteen Thousand Dollars and No Cents (\$15,000.00) of the Gross Settlement Fund, subject to court approval. The Attorneys' Fees and Cost Award shall be binding on the Parties and shall not otherwise affect the validity of the Settlement. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff's Counsel reflecting the awarded attorneys' fees, costs and expenses. Should Plaintiff and/or Plaintiff's Counsel request a lesser amount for attorneys' fees than stated above and/or the Court approve a lesser amount, the difference shall be added to the Net Settlement Proceeds. In consideration of the Attorneys' Fees and Cost Award, Plaintiff's Counsel waives all claims to any further attorneys' fees and expenses in connection with the litigation of the Action. Plaintiff, Plaintiff's Counsel, and the PAGA Representative Group shall assume full responsibility and liability for the payment of taxes due on such awards.

The Attorney's Fees and Cost Award shall constitute full satisfaction of the obligation to pay any amounts to any person, attorney, or law firm for attorneys' fees, costs or expenses in the Action incurred by any attorney on behalf of Plaintiff and the PAGA Representative Group, and shall relieve the Released Parties and the Settlement Administrator of any other claims or liability to any other attorney or law firm for any attorneys' fees, costs and expenses to which

any of them may claim to be entitled on behalf of Plaintiff and/or the PAGA Representative Group.

6.7 Settlement Administrator. The Settlement Administrator will be paid subject to court approval. Any amount not awarded for costs of administration to the Settlement Administrator will result in the non-awarded amount being made part of the PAGA Payment, available for distribution to the LWDA and the PAGA Representative Group. A Form 1099 – MISC, or other appropriate tax form shall be issued to the Settlement Administrator.

The Settlement Administrator shall calculate the portion of the PAGA Payment to be paid to the LWDA and the Individual Settlement Payments to be paid to the PAGA Representative Group in accordance with the terms and provisions of this Agreement; pay any applicable state and/or federal taxes; make payment to the LWDA and mail the Individual Settlement Payment checks to the PAGA Representative Group along with the letter substantially in the form of Exhibit “A,” attached hereto; resolve any disputes regarding the calculation or application of the formula for determining the Individual Settlement Payments; issue 1099 forms; calculate and disburse any Attorneys’ Fees and Cost Award, Service Award, and/or applicable taxes from the Gross Settlement Fund; and perform such other tasks necessary to effectuate the terms of this Agreement or as the Parties mutually agree or the Court orders the Parties to perform.

Any disputes relating to the Settlement Administrator’s ability and need to perform its duties shall be referred to the Court.

7. INTEREST

The Gross Settlement Fund includes any and all interest accruals and no additional interest shall be due under any circumstances.

8. TAXATION

8.1 Plaintiff and, through Plaintiff's Counsel, the PAGA Representative Group represent and warrant that they understand that it is their sole obligation to pay appropriate federal, state, and local income taxes on any amounts they receive under this Agreement that lawfully qualify as taxable income.

8.2 Neither the Parties nor their respective counsel provide or purport to provide any tax advice to the PAGA Representative Group in connection with this Agreement or otherwise. The Parties agree that they shall not rely upon any terms of this Agreement for the purpose of determining or avoiding federal, state, or local tax obligations.

9. COURT'S APPROVAL

Plaintiff will promptly move the Court for approval of the Settlement pursuant to Labor Code § 2699(l). The Parties agree to use their best efforts to obtain approval as quickly as possible, to the extent not inconsistent with the terms of this Agreement, and will not take any action adverse to each other in obtaining the Court's approval of the Agreement in all respects. The Parties also agree that in the event the Court does not approve the Settlement, the Parties will work in good faith to amend the Settlement to comport with the Court's instructions.

In the event an appeal or petition for writ of mandamus is filed from the Court's order granting approval of the Settlement, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review.

10. PUBLICITY

Except as necessary to obtain Court approval, including prior submission to the LWDA, Plaintiff and Plaintiff's Counsel shall not communicate the terms or the fact of the Settlement to third parties other than (1) employees or law partners of Plaintiff's Counsel and/or Plaintiff's immediate family members; (2) their respective accountants or lawyers as necessary for tax purposes; and (3) any individuals in the PAGA Representative Group that reach out to Plaintiff's Counsel regarding receipt of their Individual Settlement Payment. Plaintiff's Counsel agrees not to refer to the Action, Select Comfort, Select Comfort's counsel, or the Settlement on any website or electronic or other communication, and to limit their statements (including electronic statements on the internet) regarding the Settlement to only say that the Action have been resolved. The Settlement Administrator shall not host or publish any website in association with the Settlement unless required by court order.

The Parties and their counsel agree that, to the extent permitted by law, they shall not disclose or discuss with any member or representative of the press or media the conditions or terms of this settlement agreement. No Party shall disparage any other Party in any fashion. The Parties and their counsel further agree that they will not issue any press releases or comment for publication in any media (including, but not limited to, print media, electronic media, or the internet). The

Parties and their counsel will not cause, encourage, or in any way facilitate any comment for publication in any media relating to the litigation, or on the terms of the Settlement Agreement or the negotiations which culminated in this Settlement Agreement. However, the Parties are not prohibited from disclosing information in the public record.

11. INAPPLICABILITY OF CALIFORNIA CIVIL PROCEDURE CODE SECTION 384

The Parties agree that California Civil Procedure Code ("CCP") section 384 is not applicable to the Gross Settlement Fund. Neither Plaintiff nor Plaintiff's Counsel shall take, or cause any other person to take, a position before the Court that CCP section 384 applies to the Gross Settlement Fund.

12. MISCELLANEOUS PROVISIONS

12.1 Headings. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

12.2 Interpretation of the Agreement. The Agreement will be interpreted and enforced under the laws of the State of California without regard to its conflict of law provisions.

12.3 Final Agreement. This Agreement constitutes the exclusive and final understanding and expression of all agreements between the Parties with respect to the resolution of the Action and supersedes all prior agreements and understandings between the Parties relating to the subject matter hereof. Plaintiff, on Plaintiff's own behalf and as a representative for the PAGA Representative Group, and Select Comfort enter into this Agreement based solely upon its terms and not in reliance upon any representations or promises other than those contained in this Agreement. The Agreement may be modified only by a writing signed by the Parties, or their successors, and approved by the Court.

12.4 Counterparts/Facsimile/Electronic. The Agreement may be executed in one or more actual, telecopied or electronic counterparts, all of which will be considered one and the same instrument and all of which will be considered duplicate originals. A signature on this Agreement delivered by facsimile or electronically shall be as legally binding as an original signature, although the Parties will provide original signatures to each other for their records.

12.5 Authority. Counsel for all Parties represent and warrant they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate Action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effectuate the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties shall seek the assistance of the Court to resolve such disagreement. The

persons signing this Agreement on behalf of Select Comfort represent and warrant that they are authorized to sign this Agreement on behalf of Select Comfort.

12.6 No Effect on Employee Benefits. The Individual Settlement Payments and Service Award shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of Plaintiff or any PAGA Representative Group member. The payment of the Individual Settlement Payments does not represent any modification of the PAGA Representative Group's previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Select Comfort. Further, any Individual Settlement Payment or Service Award shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Select Comfort.

12.7 No Injunctive Relief. Select Comfort shall not be required to enter into any consent decree, nor shall Select Comfort be required to agree to any provision for injunctive relief, or to modify or eliminate any of its personnel, compensation, or payroll practices, or adopt any new personnel, compensation, or payroll practices.

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

12.9 Cooperation and Drafting. Each of the Parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall not be construed against any of the Parties.

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

12.11 Defense. To the extent permitted by law, this Settlement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceedings that may be instituted, prosecuted, or attempted with respect to the Released Claims in breach of or contrary to this Settlement.

12.12 Enforceability. The Parties intend this Agreement to be admissible and binding under Code of Civil Procedure Section 664.6. To the extent either Party is required to enforce the Agreement in a court of law, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs.

WHEREFORE, Plaintiff, as representative of himself and the PAGA Representative Group, and SELECT COMFORT, have executed this Agreement as of the dates set forth below.

Dated: 1/14/, 2022

By

DocuSigned by:

Steven Yetter

C66A1B96CD324F1...

STEVEN YETTER

Dated: _____, 2022

By

SELECT COMFORT RETAIL CORPORATION

by its _____

APPROVED AS TO FORM:

Dated: January 14, 2022

DIVERSITY LAW GROUP, APC

By



LARRY LEE
MAX GAVRON

Attorneys for STEVEN YETTER

Dated: _____, 2022

POLARIS LAW GROUP LLP

By



WILLIAM MARDER

Attorneys for STEVEN YETTER

WHEREFORE, Plaintiff, as representative of himself and the PAGA Representative Group, and SELECT COMFORT, have executed this Agreement as of the dates set forth below.

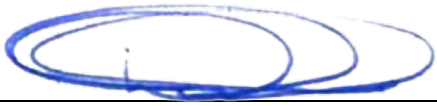
Dated: _____, 2022

By

STEVEN YETTER

Dated: January 22, 2022

By



SELECT COMFORT RETAIL CORPORATION

by its Vice President, Associate General Counsel

APPROVED AS TO FORM:

Dated: _____, 2022

DIVERSITY LAW GROUP, APC

By

LARRY LEE
MAX GAVRON

Attorneys for STEVEN YETTER

Dated: _____, 2022

POLARIS LAW GROUP LLP

By

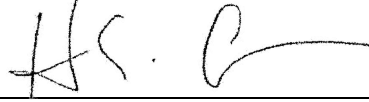
WILLIAM MARDER

Attorneys for STEVEN YETTER

Dated: January 12, 2022

SHEPPARD MULLIN RICHTER & HAMPTON LLP

By

A handwritten signature in black ink, appearing to read "HS. P", written over a horizontal line.

MATTHEW SONNE
HAYLEY GRUNVALD
BRYANNE LEWIS

Attorneys for SELECT COMFORT RETAIL
CORPORATION

EXHIBIT A

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: Payment From *Steven Yetter. v. Select Comfort Retail Corp.*

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Steven Yetter v. Select Comfort Retail Corp.*, Shasta County Superior Court Case No. 197881 (the “Action”).

The Action was filed against Select Comfort Retail Corp. (“Select Comfort”) pursuant to the California Labor Code Private Attorneys General Act of 2004, Cal. Labor Code § 2698 *et seq.* (“PAGA”). The claim was brought by a former non-exempt employee on behalf of the State of California and other non-exempt employees of Select Comfort. You have been identified as one of the employees on whose behalf the case was brought.

Plaintiff in the Action claimed that Select Comfort owed penalties under PAGA for alleged violations of the California Labor Code relating to paying meal and rest period premiums at the regular rate of pay and paying all wages owed upon separation of employment to non-exempt employees in California who were paid a meal or rest period premium at any time from July 19, 2020 through <<DATE>>. The lawsuit sought civil penalties consisting of statutorily authorized amounts awarded on a per employee per pay period basis. Select Comfort denies that it did anything wrong or that it owes any penalties.

The Court has not ruled on the merits of the lawsuit but it has approved the civil penalties settlement amount to be paid by Select Comfort. A portion of that settlement amount goes to the State of California’s Labor and Workforce Development Agency. Another portion of the settlement amount goes to the current and former non-exempt employees within the state of California who were paid a meal or rest period premium at any time from July 19, 2020 through <<DATE>>. In agreeing to this settlement, Select Comfort does not admit that it is liable in any way to its current or former employees for the alleged violations.

Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties. You have 180 days from the date of this notice to cash the attached settlement check. If you do not cash your check in this time, the money will be transferred to the State of California Unclaimed Property Fund, from which you may recover the money.

You are not a party to this lawsuit, but you and the government will be bound by the judgment in this matter as to civil penalties. If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter).

Very truly yours,
[Administrator]

EXHIBIT B

2/7/2022
12:36 PM

DIVERSITY LAW GROUP
Slip Listing

Page 1

Selection Criteria

Slip.Classification Open
Client (hand select) Include: Yetter, Steven v. Select
Slip.Transaction Ty 2 - 2

Rate Info - identifies rate source and level

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
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5/25/2021		Court fees			
WIP		Yetter, Steven v. Select			
LWDA					
67719	EXP	Olympia	1	6.96	6.96
5/31/2021		Postage			
WIP		Yetter, Steven v. Select			
Postage					
68385	EXP	Olympia	1	1753.25	1753.25
7/29/2021		Atty Service			
WIP		Yetter, Steven v. Select			
Attorney Service - Complaint					
68876	EXP	Olympia	1	67.99	67.99
8/13/2021		Atty Service			
WIP		Yetter, Steven v. Select			
Attorney Service - Complaint Service					
69127	EXP	Erika Mejia	1	171.75	171.75
8/27/2021		Atty Service			
WIP		Yetter, Steven v. Select			
Attorney Service - POS of Summons					
69425	EXP	Olympia	1	7450.00	7450.00
10/15/2021		Arbitrators			
WIP		Yetter, Steven v. Select			
JAMS Mediation					
70540	EXP	Olympia	1	500.00	500.00
2/7/2022		Court fees			
WIP		Yetter, Steven v. Select			
Filing Fees					
Grand Total					
			0.00		10024.95

2/7/2022
12:36 PM

DIVERSITY LAW GROUP
Slip Listing

Page 2

Slip ID	Timekeeper	Units	Rate	Slip Value
Dates and Time	Activity	DNB Time	Rate Info	
Posting Status	Client	Est. Time	Bill Status	
Description	Reference	Variance		
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	Total	0.00		10024.95