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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

IVAN GRANILLO, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

PROFORM INTERIOR CONSTRUCTION,
INC., a California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 37-2022-00003449-CU-OE-CTL

CLASS ACTION

[Hon. Kenneth J. Medel, Dept C-66, for all
purposes]

**CLASS ACTION AND PAGA SETTLEMENT
AGREEMENT AND CLASS NOTICE**

Complaint filed: January 27, 2022
Trial date: Not set

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Ivan Granillo (“Plaintiff”) and defendant PROFORM INTERIOR CONSTRUCTION, INC. (“Defendant” or “PROFORM”). The Agreement refers to Plaintiff and PROFORM collectively as “Parties,” or individually as “Party.”

1. **DEFINITIONS.**

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against PROFORM, captioned *Granillo v. Proform Interior Construction, Inc.*, Case No. 37-2022-00003449-CU-OE-CTL, initiated on January 27, 2022, and pending in Superior Court of the State of California, County of San Diego.
- 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means a person employed by and who worked for PROFORM as a non-exempt employee in California at any time during the PAGA Period.
- 1.5. “Class” means all persons employed by and who worked for PROFORM as a non-exempt employee in California at any time during the Class Period.
- 1.6. “Class Counsel” means Moon & Yang, APC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in PROFORM’s possession including the Class Member’s name, last-known mailing address, Social Security Number, dates of employment, and number of Class Period Workweeks and/or PAGA Pay Periods.

- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address (“NCOA”) database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English, with a Spanish translation, in the form, without material variation, attached as **Exhibit A** and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from January 27, 2018 to April 18, 2023 or the date that Preliminary Approval is granted, whichever is sooner.
- 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of San Diego.
- 1.16. “PROFORM” means named Defendant PROFORM INTERIOR CONSTRUCTION, INC.
- 1.17. “Defense Counsel” means Jackson Lewis P.C.
- 1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, sixty-five (65) days after the day the Court enters Judgment; (b) if one or more Participating Class Members submit any objections to the Settlement that are not later withdrawn or denied, the later of the following events: (1) five (5) business days after the period for filing any appeal, writ, or

1 other appellate proceeding in connection with the Final Approval Order and Judgment has
2 elapsed without any appeal, writ, or other appellate proceeding having been filed; or (2) if
3 any appeal, writ, or other appellate proceeding in connection with the Final Approval
4 Order and Judgment has been filed, five (5) business days after any appeal, writ, or other
5 appellate proceedings in connection with the Final Approval Order and Judgment has been
6 finally and conclusively dismissed with no right to pursue further remedies or relief.

7 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

8 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of
9 the Settlement.

10 1.21. “Final Funding Amount” means the total monetary amount PROFORM shall be required
11 to pay pursuant to this Settlement, which shall be equal to the Gross Settlement Amount
12 plus PROFORM’s share of payroll taxes attributable to Individual Class Payments made
13 pursuant to this Settlement.

14 1.22. “Gross Settlement Amount” means THREE HUNDRED THOUSAND DOLLARS AND
15 ZERO CENTS (\$300,000), which is the total amount PROFORM agrees to pay under the
16 Settlement except as provided in Paragraphs 3.1 and 8 below. The Gross Settlement
17 Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the
18 LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses
19 Payment, Class Representative Service Payment, and the Administration Expenses
20 Payment.

21 1.23. “Individual Class Payment” means the Participating Class Member’s *pro rata* share of the
22 Net Settlement Amount calculated according to the number of Workweeks worked by each
23 Class Member during the Class Period. The Administrator will calculate each Class
24 Member’s *pro rata* share of the Net Settlement Amount by dividing the total number of
25 Workweeks worked by all Class Members during the Class Period into the Net Settlement
26 Amount (*i.e.*, the “Workweek Value”), and then multiplying the Workweek Value by the
27 number of Workweeks actually worked by each Class Member during the Class Period.

28 1.24. “Individual PAGA Payment” means each Aggrieved Employee’s *pro rata* share of twenty-

five percent (25%) of the PAGA Penalties (equal to a total of SEVEN THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$7,500.00)), calculated according to the number of PAGA Pay Periods worked by each Aggrieved Employee during the PAGA Period.

1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.

1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled under Labor Code section 2699(i).

1.27. “LWDA PAGA Payment” means the seventy-five percent (75%) of the PAGA Penalties (equal to TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$22,500.00)) paid to the LWDA under Labor Code section 2699(i).

1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments; the LWDA PAGA Payment; Class Representative Service Payment; Class Counsel Fees Payment; Class Counsel Litigation Expenses Payment; and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.29. “Non-Participating Class Member” means any Class Member who opts out of the Class portion of the Settlement by sending the Administrator a valid and timely Request for Exclusion. Class Members who are Aggrieved Employees cannot opt out of the settlement of the PAGA Claim.

1.30. “Operative Complaint” Means the operative First Amended Complaint filed by Plaintiff in this Action against PROFORM on April 21, 2022 alleging, on behalf of himself and Class Members, the following causes of action: failure to provide meal periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198 and Wage Order); (2) failure to provide rest periods (Lab. Code §§ 204, 223, 226.7 and 1198 and Wage Order); (3) failure to pay minimum and overtime time wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198 and Wage Order as to minimum wage); (4) failure to provide accurate itemized wage statements (Lab. Code §§ 226(a)); (5) failure to timely pay all final wages (Lab. Code §§ 201, 202 and 203); (6) failure to indemnify for job-related expenses (Lab. Code § 2802);

(7) Unfair Competition (Bus. & Prof. Code §§ 17200 et seq.); and the PAGA Claim.

1.31. “PAGA” means the Private Attorneys General Act (Labor Code section 2698, *et seq.*).

1.32. “PAGA Claim” means the claim brought by Plaintiff against PROFORM on behalf of himself and Aggrieved Employees pursuant to PAGA.

1.33. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for PROFORM for at least one day during the PAGA Period.

1.34. “PAGA Period” means the period from January 21, 2021 to April 18, 2023 or the Preliminary Approval is granted, whichever is sooner.

1.35. “PAGA Notice” means Plaintiff’s January 21, 2022 letter to PROFORM and the LWDA providing notice pursuant to Labor Code § 2699.3(a).

1.36. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount equal to THIRTY THOUSAND DOLLARS AND ZERO CENTS (\$30,000.000), allocated twenty-five percent (25%) to the Aggrieved Employees (equal to SEVEN THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$7,500.00)) and the seventy-five percent (75%) to the LWDA (equal to TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$22,500.00)) in settlement of the PAGA Claim.

1.37. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement.

1.38. “Plaintiff” means IVAN GRANILLO, the named plaintiff in the Action.

1.39. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Class portion of the Settlement.

1.40. “Preliminary Approval Order” means the Order Granting Preliminary Approval of the Class portion of the Settlement.

1.41. “Released Class Claims” means the claims being released as described in Paragraph 5.3 below.

1.42. “Released PAGA Claims” means the claims being released as described in Paragraph 5.5 below.

- 1.43. “Released Parties” means: PROFORM and each of its former and present directors, officers, shareholders, owners, former and present managing employees, attorneys, agents, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.
- 1.44. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.45. “Response Deadline” means the date that is sixty (60) days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Class portion of the Settlement; or (b) fax, email, or mail his or her Objection to the Class portion of the Settlement. The Response Deadline for Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall be extended by fourteen (14) calendar days beyond the original Response Deadline.
- 1.46. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.47. “Wage Portion” means the ten percent (10%) portion of Individual Class Member Payments the Parties have agreed will be allocated as wages as set forth in Paragraph 3.2.4.1.
- 1.48. “Workweek” means any week during which a Class Member worked for PROFORM for at least one day during the Class Period. Workweeks shall be calculated by the Administrator by dividing the total days Class Members were employed by PROFORM during the Class Period, based upon PROFORM’s employee history data, by seven (7). Partial Workweeks shall be rounded up to the nearest whole number.

2. **RECITALS.**

- 2.1. On January 27, 2022, Plaintiff commenced this Action by filing a class action Complaint on behalf of himself and Class Members alleging that PROFORM: (1) failed to provide meal periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198 and Wage Order); (2) failed to provide rest periods (Lab. Code §§ 204, 223, 226.7 and 1198 and Wage Order); (3) failed

to pay minimum and overtime time wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198 and Wage Order as to minimum wage); (4) failed to provide accurate itemized wage statements (Lab. Code §§ 226(a)); (5) failed to timely pay all final wages (Lab. Code §§ 201, 202 and 203); (6) failed to indemnify for job-related expenses (Lab. Code § 2802); and (7) engaged in Unfair Competition (Bus. & Prof. Code §§ 17200 et seq.).

2.2. Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to PROFORM and the LWDA by sending the PAGA Notice.

2.3. On April 26, 2022, Plaintiff filed the Operative Complaint alleging the same causes of action against PROFORM alleged on behalf of himself and Class Members as alleged in the initial complaint and adding the PAGA Claim.

2.4. PROFORM denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint, and denies any and all wrongdoing or liability for the causes of action alleged.

2.5. On December 20, 2022, the Parties participated in an all-day mediation presided over by Steve Serratore, Esq., which led to this Agreement to settle the Action.

2.6. Prior to mediation, Plaintiff obtained, through informal discovery, time records, wage payment records, and policy documents relevant to the claims in the Operative Complaint. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129-130 (2008) ("*Dunk/Kullar*").

2.7. The Court has not granted class certification.

2.8. The Parties, Class Counsel, and Defense Counsel represent that they are not currently aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. **MONETARY TERMS.**

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, PROFORM promises to pay THREE HUNDRED THOUSAND DOLLARS AND ZERO

CENTS (\$300,000.00) and no more as the Gross Settlement Amount, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. PROFORM has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to PROFORM.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiff: As consideration for Plaintiff's individual release and waiver of Section 1542 of the California Civil Code as set forth in Paragraphs 5.1 and 5.2, the Parties agree to a Class Representative Service Payment to the Class Representative of not more than FIVE THOUSAND DOLLARS AND ZERO CENTS (\$5,000.00) (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive under the Settlement). PROFORM will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than thirty-three and one-third percent (33 and 1/3%) of the Gross Settlement Amount, which is

1 currently estimated to be ONE HUNDRED THOUSAND DOLLARS AND
2 ZERO CENTS (\$100,000.00) and a Class Counsel Litigation Expenses Payment of
3 not more than SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS AND
4 ZERO CENTS (\$17,500.00). PROFORM will not oppose requests for these
5 payments provided that they do not exceed these amounts. Plaintiff and/or Class
6 Counsel will file a motion for Class Counsel Fees Payment and Class Litigation
7 Expenses Payment no later than sixteen (16) court days prior to the Final Approval
8 Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class
9 Counsel Litigation Expenses Payment less than the amounts requested, the
10 Administrator will allocate the remainder to the Net Settlement Amount. Released
11 Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel
12 arising from any claim to any portion any Class Counsel Fee Payment and/or Class
13 Counsel Litigation Expenses Payment. The Administrator will pay the Class
14 Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one
15 or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability
16 for taxes owed on the Class Counsel Fees Payment and the Class Counsel
17 Litigation Expenses Payment and holds PROFORM harmless, and indemnifies
18 PROFORM, from any dispute or controversy regarding any division or sharing of
19 any of these Payments.

20 3.2.3. To the Administrator: An Administration Expenses Payment not to exceed
21 TWELVE THOUSAND DOLLAR AND ZERO CENTS (\$12,000.00) except for
22 a showing of good cause and as approved by the Court. To the extent the
23 Administration expenses are less or the Court approves payment less than
24 TWELVE THOUSAND DOLLAR AND ZERO CENTS (\$12,000.00), the
25 Administrator will retain the remainder in the Net Settlement Amount.

26 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by:
27 (a) dividing the Net Settlement Amount by the total number of Workweeks worked
28 by all Participating Class Members during the Class Period; and (b) multiplying the

1 result by each Participating Class Member's Workweeks.

2 3.2.4.1. Tax Allocation of Individual Class Payments. Ten percent (10%) of each
3 Participating Class Member's Individual Class Payment will be allocated to
4 settlement of wage claims (the "Wage Portion"). The Wage Portions are
5 subject to tax withholding and will be reported on an IRS W-2 Form. The
6 remaining ninety percent (90%) of each Participating Class Member's
7 Individual Class Payment will be allocated to settlement of claims for
8 interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions
9 are not subject to wage withholdings and will be reported on IRS 1099
10 Forms. Participating Class Members assume full responsibility and
11 liability for any employee taxes owed on their Individual Class Payment.

12 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual
13 Class Payments. Non-Participating Class Members will not receive any
14 Individual Class Payments. The Workweeks for Non-Participating Class
15 Members will not be used to calculate Individual Class Payments to
16 Participating Class Members.

17 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
18 THIRTY THOUSAND DOLLARS AND ZERO CENTS (\$30,000.00) shall be
19 paid from the Gross Settlement Amount, with seventy-five percent (75%) (equal to
20 TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS AND ZERO
21 CENTS (\$22,500.00)) allocated to the LWDA PAGA Payment and twenty-five
22 percent (25%) (equal to SEVEN THOUSAND FIVE HUNDRED DOLLARS
23 AND ZERO CENTS (\$7,500.00)) allocated to the Individual PAGA Payments.

24 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by: (a)
25 dividing the total allocated amount for the Individual PAGA Payments
26 from Aggrieved Employees' twenty-five percent (25%) share of PAGA
27 Penalties (equal to SEVEN THOUSAND FIVE HUNDRED DOLLARS
28 AND ZERO CENTS (\$7,500)) by the total number of PAGA Pay Periods

worked by all Aggrieved Employees during the PAGA Period; and (b) multiplying the result by each Aggrieved Employee's individual PAGA Pay Periods.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount.

3.2.5.3. Individual PAGA Payments shall be treated as payment of penalties for tax purposes. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.4. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

3.3 Setoff. Any Class Members who have executed a release of claims in favor of PROFORM for any and all claims being settled herein shall not receive an Individual Class Payment in this Action from PROFORM and such Individual Class Payments to which they otherwise would have been entitled shall be added to the Net Settlement Amount, to be redistributed to the remainder of the Class pursuant to Paragraph 4.5.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, PROFORM estimates there are approximately 175 Class Members who collectively worked a total of approximately 14,300 Workweeks, and approximately 120 Aggrieved Employees who worked a total of approximately 4,400 PAGA Pay Periods.

4.2. Class Data. Not later than thirty (30) days after the Court grants Preliminary Approval of the Settlement, PROFORM will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under

1 this Agreement. PROFORM has a continuing duty to immediately notify Class Counsel if
2 it discovers that the Class Data omitted class member identifying information and to
3 provide corrected or updated Class Data as soon as reasonably feasible. Without any
4 extension of the deadline by which PROFORM must send the Class Data to the
5 Administrator, the Parties and their counsel will expeditiously use best efforts, in good
6 faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class
7 Data. If an extension of any timing of Class Notice or Response Deadlines set forth in this
8 Agreement are necessary, the Parties shall meet and confer to informally resolve any issues
9 without Court approval if Final Approval deadlines and requirements are not impacted.
10 The Parties shall seek Court approval for any modifications to this Agreement and any
11 Court orders as necessary.

12 4.3. Notification of Payroll Taxes. The Administrator shall provide Defendant an accounting of
13 the amount of its portion of payroll taxes no later than seven (7) days after the Effective
14 Date.

15 4.4. Funding of the Final Funding Amount. PROFORM shall fully fund the Final Funding
16 Amount by transmitting the funds to the Administrator no later than thirty (30) days after
17 the Effective Date.

18 4.5. Payments from the Final Funding Amount. Within fourteen (14) days after PROFORM
19 funds the Final Funding Amount, the Administrator will mail checks for all Individual
20 Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the
21 Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel
22 Litigation Expenses Payment, and the Class Representative Service Payment.
23 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
24 Payment, and the Class Representative Service Payment shall not precede disbursement of
25 Individual Class Payments and Individual PAGA Payments. The Administrator shall pay
26 all applicable taxes from the Final Funding Amount as more fully set forth in Section 7.

27 4.5.1. The Administrator will issue checks for the Individual Class Payments and/or
28 Individual PAGA Payments and send them to the Class Members via First Class

1 U.S. Mail, postage prepaid. The face of each check shall prominently state the
2 date (not less than 180 days after the date of mailing) when the check will be
3 voided. The Administrator will cancel all checks not cashed by the void date. The
4 Administrator will send checks for Individual Settlement Payments to all
5 Participating Class Members (including those for whom Class Notice was returned
6 undelivered). The Administrator will send checks for Individual PAGA Payments
7 to all Aggrieved Employees including Non-Participating Class Members who
8 qualify as Aggrieved Employees (including those for whom Class Notice was
9 returned undelivered). The Administrator may send Participating Class Members a
10 single check combining the Individual Class Payment and the Individual PAGA
11 Payment. Before mailing any checks, the Settlement Administrator must update
12 the recipients' mailing addresses using the NCOA database.

13 4.5.2. The Administrator must conduct a Class Member Address Search for all other
14 Class Members whose checks are returned undelivered without a United States
15 Postal Service ("USPS") forwarding address. Within seven (7) days of receiving a
16 returned check the Administrator must re-mail checks to the USPS forwarding
17 address provided or to an address ascertained through the Class Member Address
18 Search. The Administrator need not take further steps to deliver checks to Class
19 Members whose re-mailed checks are returned as undelivered. The Administrator
20 shall promptly send a replacement check to any Class Member whose original
21 check was lost or misplaced, requested by the Class Member prior to the void date.

22 4.5.3. For any Class Member whose Individual Class Payment check or Individual
23 PAGA Payment check is uncashed and cancelled after the void date, the
24 Administrator shall transmit the funds represented by such checks to the California
25 Controller's Unclaimed Property Fund in the name of the Class Member thereby
26 leaving no "unpaid residue" subject to the requirements of California Code of Civil
27 Procedure section 384(b).

28 4.5.4. The payment of Individual Class Payments and Individual PAGA Payments shall

not obligate PROFORM to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS.

Upon Final Approval and entry of Judgment, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1. Plaintiff's Release. In addition to the release of the Released Class Claims against the Released Parties made by all Participating Class Members and the release of the PAGA Claim made by all Aggrieved Employees, as set forth below, Plaintiff, in his individual capacity, further agrees that, in exchange for Defendant's payment to Plaintiff of the Court-approved Class Representative Service Payment, to release the Released Parties from any and all claims, known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, arising as of the date of execution of this Agreement, including, but not limited to, claims arising from or related to his employment with Defendant and their compensation while an employee of Defendant ("Plaintiff's Released Claims"). Plaintiff's Released Claims include, but are not limited to, all of the Released Claims and any other claims arising under the California Labor Code; any claim arising out of the California common law of contract; the Fair Labor Standards Act, 29 U.S.C. section 201 et seq., and federal common law; all claims for lost wages and benefits, emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under federal, state, or local laws for discrimination, harassment, and wrongful termination, including, but not limited to, 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the California Fair Employment and Housing Act, the California Labor Code, and the law of contract and tort. This release excludes the release of claims not permitted by law including, without limitation, any claims for workers' compensation benefits.

1 5.2. Plaintiff's Waiver of Section 1542. Plaintiff's Released Claims include all claims, whether
2 known or unknown. Even if Plaintiff discovers facts in addition to or different from those
3 that he now knows or believes to be true with respect to the subject matter of Plaintiff's
4 Released Claims, those claims will remain released and forever barred. To effect a full and
5 complete general release as described above, Plaintiff expressly waives and relinquishes all
6 rights and benefits of Section 1542 of the Civil Code of the State of California, and does so
7 understanding and acknowledging the significance and consequence of specifically
8 waiving Section 1542. Section 1542 of the Civil Code of the State of California states as
9 follows:

10 **A general release does not extend to claims that the creditor or releasing party**
11 **does not know or suspect to exist in his or her favor at the time of executing**
12 **the release and that, if known by him or her, would have materially affected**
13 **his or her settlement with the debtor or released party.**

14 Thus, notwithstanding the provisions of Section 1542, and to implement a full and
15 complete release and discharge of Released Parties, Plaintiff expressly acknowledges this
16 Agreement is intended to include in its effect, without limitation, all claims Plaintiff does
17 not know or suspect to exist in Plaintiff's favor at the time of signing this Agreement, and
18 that this Settlement contemplates the extinguishment of any such claims. Plaintiff warrants
19 that Plaintiff has read this Agreement, including this waiver of California Civil Code
20 section 1542, and that Plaintiff has consulted with or had the opportunity to consult with
21 counsel of Plaintiff's choosing regarding this Agreement and specifically about the waiver
22 of Section 1542, and that Plaintiff understands this Agreement and the Section 1542
23 waiver, and so Plaintiff freely and knowingly enter into this Agreement. Plaintiff further
24 acknowledges that Plaintiff later may discover facts different from or in addition to those
25 Plaintiff now knows or believes to be true regarding the matters released or described in
26 this Settlement, and even so Plaintiff agrees that the releases and agreements contained in
27 this Agreement shall remain effective in all respects notwithstanding any later discovery of
28 any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake

1 in connection with the true facts involved in the matters, disputes, or controversies released
2 or described in this Agreement or with regard to any facts now unknown to Plaintiff
3 relating thereto.

4 5.3. Release by Participating Class Members (“Class Release”): All Participating
5 Class Members, on behalf of themselves and their respective former and present
6 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release
7 Released Parties from any and all claims that were alleged, or reasonably could have
8 been alleged, arising, accruing, or existing during the Class Period based on the facts
9 stated in the Operative Complaint, regardless of legal theory asserted, including any and
10 all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses,
11 attorneys’ fees, damages, liquidated damages, penalties, actions, or causes of action of
12 any nature under state, federal, or local law, whether statutory, common law or
13 administrative law arising from any and all allegations that PROFORM: (1) failed to
14 provide meal periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198 and Wage Order);
15 (2) failed to provide rest periods (Lab. Code §§ 204, 223, 226.7 and 1198 and Wage
16 Order); (3) failed to pay minimum and overtime time wages (Lab. Code §§ 223, 510,
17 1194, 1194.2, 1197, 1997.1 and 1198 and Wage Order as to minimum wage); (4) failed
18 to provide accurate itemized wage statements (Lab. Code §§ 226(a)); (5) failed to
19 timely pay all final wages (Lab. Code §§ 201, 202 and 203); (6) failed to indemnify for
20 job-related expenses (Lab. Code § 2802); and (7) engaged in Unfair Competition (Bus.
21 & Prof. Code §§ 17200 et seq.) (“Released Claims”). This Release also covers all
22 claims for interest, attorneys’ fees and costs related to the Action. In addition, any Class
23 Member who has not timely and appropriately opted out of this Settlement in
24 accordance with the Request for Exclusion process set forth in Section 7.9 shall be a
25 Participating Class Member and forever agrees that he or she shall not institute a claim,
26 nor accept back pay, unpaid wages, liquidated damages, penalties of any nature,
27 attorneys’ fees and costs, or any other relief from any other suit, class, collective action,
28 or representative or administrative claim, or other claim of any sort or nature
whatsoever against the Released Parties containing Released Claims. Notwithstanding,

no Class Member is permitted to submit a Request for Exclusion from or object to the settlement of the PAGA Claim and all Aggrieved Employees shall be bound by the release of the PAGA Claim regardless of whether the Aggrieved Employee timely submits a valid Request for Exclusion. Except as set forth in Section 5.5 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.4. Effective Dates of Class Release. The Class Release set forth in Paragraph 5.3 shall cover all claims held by Class Released Claims held by Participating Class Members during the Class Period.

5.5. Release by Class Members Who Are Aggrieved Employees: All Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, arising, accruing, or existing during the PAGA Period based on the facts stated in the Operative Complaint and the PAGA Notice attached hereto as **Exhibit B**.

5.6. Nullification of Release for Failure to Fund. In the event that PROFORM fails to fully fund the Final Funding Amount within forty-four (44) calendar days of the Effective Date, all releases conferred by Plaintiff, Class Members, and Class Counsel shall be void until such time as PROFORM satisfies its funding obligations under this Settlement. In the event such nullification under this Paragraph occurs, upon receipt of the Final Funding Amount, the Administrator shall provide a declaration to Defense Counsel to file with the Court indicating that the Settlement is fully funded and the date on which the funding occurred.

6. MOTION FOR PRELIMINARY APPROVAL.

The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary

Approval”) that complies with the Court’s current checklist for preliminary approvals.

6.1. Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code section 2699(f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel, or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code § 2699.3(a)), Operative Complaint (Labor Code § 2699(l)(1)), this Agreement (Labor Code § 2699(l)(2)); and, all facts relevant to any actual or potential conflict of interest with Class Members or the Administrator. In their declarations, Plaintiff and Class Counsel Declarations shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement. Alternatively, if such other actions are filed between the execution of this Agreement and the filing of the Motion for Preliminary Approval and become known to Plaintiff and Plaintiff Counsel, Plaintiff Counsel will advise Defense Counsel. Plaintiff’s Counsel will provide Defense Counsel for review and consideration the drafts set forth in this Paragraph at least seven (7) calendar days prior to the filing of the Motion for Preliminary Approval.

1 6.2. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible
2 for expeditiously finalizing and filing the Motion for Preliminary Approval no later than
3 forty-five (45) days after the full execution of this Agreement; obtaining a prompt hearing
4 date for the Motion for Preliminary Approval; and for appearing in Court to advocate in
5 favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering
6 the Court’s Preliminary Approval Order to the Administrator.

7 6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
8 Preliminary Approval and/or the supporting declarations and documents, Class Counsel
9 and Defense Counsel will expeditiously work together on behalf of the Parties by meeting
10 in person or by telephone, and in good faith, to resolve the disagreement. If the Court does
11 not grant Preliminary Approval or conditions Preliminary Approval on any material
12 change to this Agreement, Class Counsel and Defense Counsel will expeditiously work
13 together on behalf of the Parties by meeting in person or by telephone, and in good faith, to
14 modify the Agreement and otherwise satisfy the Court’s concerns.

15
16 7. **SETTLEMENT ADMINISTRATION.**

17 7.1. Selection of Administrator. The Parties have jointly selected Phoenix Settlement
18 Administrators to serve as the Administrator and verified that, as a condition of
19 appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement
20 and to perform, as a fiduciary, all duties specified in this Agreement in exchange for
21 payment of Administration Expenses. The Parties and their Counsel represent that they
22 have no interest or relationship, financial or otherwise, with the Administrator other than a
23 professional relationship arising out of prior experiences administering settlements.

24 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
25 Identification Number for purposes of calculating payroll tax withholdings and providing
26 reports state and federal tax authorities.

27 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
28 the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation §

1 468B-1.

2 7.4. The Settlement Administrator shall pay, out of the Final Funding Amount, PROFORM's
3 share of payroll taxes and withholdings on that portion of Individual Class Payments to
4 Participating Class Members that is allocated to wages to the relevant state and federal
5 taxing agencies in accordance with applicable law and regulations on behalf of
6 PROFORM. The Administrator will also be responsible for issuing any required state and
7 federal reporting documents (such as IRS Forms W-2s and 1099s) to Participating Class
8 Members, Class Counsel, and Plaintiff on behalf of PROFORM.

9 7.5. The Administrator shall withhold appropriate federal, state, and local income taxes and
10 Class Members' share of FICA and Medicare taxes in accordance with the Settlement.

11 7.6. For all purposes, Individual Class Payments and/or Individual PAGA Payments shall be
12 deemed to be paid to Class Members solely in the year in which payment of such
13 Individual Class Payments and/or Individual PAGA Payments are actually received by the
14 Class Members. It is expressly understood and agreed that the receipt of such Individual
15 Class Payments and Individual PAGA Payments will not entitle any Class Member to
16 additional compensation or benefits under any company bonus, contest, or other
17 compensation, or benefit plan or agreement in place during the Class Period, nor will it
18 entitle any Class Member to any increased retirement, 401K benefits or matching benefits,
19 or deferred compensation benefits. It is the intent of this Settlement that Individual Class
20 Payments and Individual PAGA Payments are the sole payments to be made by Defendant
21 to Class Members, and that Class Members are not entitled to any new or additional
22 compensation or benefits as a result of having received the Individual Class Payments
23 and/or Individual PAGA Payments.

24 7.7. Privacy of Class Data. Any production of information to Class Counsel from the Class
25 Data must be made in redacted form so that only the dates of employment, calculation
26 of Workweeks and/or PAGA Pay Periods, and calculation of Individual Class Payments
27 and/or Individual PAGA Payments will be provided. Other private information,
28 including name, address, phone number, email address, social security number, or other

identifying information shall not be provided to Class Counsel.

7.8. Notice to Class Members.

7.8.1. No later than five (5) days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.

7.8.2. Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class USPS mail, the Class Notice with Spanish translation, substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of each Individual Class Payment and/or Individual PAGA Payment payable to the Class Member and/or Aggrieved Employee, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the NCOA database.

7.8.3. Not later than five (5) days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.8.4. Unless the Administrator receives a Class Notice returned from the United States Postal Service for reasons discussed in this Section, that Class Notice shall be deemed mailed and received by the Class Member on the date it was sent.

7.8.5. The deadlines for Class Members' written objections, challenges to Workweeks

1 and/or PAGA Pay Periods, and Requests for Exclusion will be extended an
2 additional fourteen (14) days beyond the sixty (60) days otherwise provided in the
3 Class Notice for all Class Members whose notice is re-mailed. The Administrator
4 will inform the Class Member of the extended deadline with the re-mailed Class
5 Notice.

6 7.8.6. If the Administrator, PROFORM, Defense Counsel, or Class Counsel is contacted
7 by or otherwise discovers any persons who believe they should have been included
8 in the Class Data and should have received Class Notice, the Parties will
9 expeditiously meet and confer in person or by telephone, and in good faith in an
10 effort to agree on whether to include them as Class Members. If the Parties agree,
11 such persons will be Class Members entitled to the same rights as other Class
12 Members, and the Administrator will send, via email or overnight delivery, a Class
13 Notice requiring them to exercise options under this Agreement not later than
14 fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class
15 Notice, which ever are later.

16 7.9. Requests for Exclusion (Opt-Outs).

17 7.9.1. Class Members who wish to exclude themselves (opt-out of) the Class portion of
18 the Settlement must send the Administrator, by fax, email, or mail, a signed written
19 Request for Exclusion not later than sixty (60) days after the Administrator mails
20 the Class Notice (plus an additional fourteen (14) days for Class Members whose
21 Class Notice is re-mailed). A Request for Exclusion is a letter from a Class
22 Member or his/her representative that reasonably communicates the Class
23 Member's election to be excluded from the Class portion of the Settlement and
24 includes the Class Member's name, address, last four digits of their social security
25 number or other employee identification number, and email address or telephone
26 number. To be valid, a Request for Exclusion must be signed, dated, and timely
27 faxed, emailed, or postmarked by the Response Deadline.

28 7.9.2. The Administrator's determination regarding the validity of a Request for

1 Exclusion shall be final and not appealable or otherwise susceptible to challenge.
2 If the Administrator has reason to question the authenticity of a Request for
3 Exclusion, the Administrator may demand additional proof of the Class Member's
4 identity. The Administrator's determination of authenticity shall be final and not
5 appealable or otherwise susceptible to challenge.

6 7.9.3. Every Class Member who does not submit a timely and valid Request for
7 Exclusion is deemed to be a Participating Class Member under this Agreement,
8 entitled to all benefits and bound by all terms and conditions of the Settlement,
9 including the Participating Class Members' Releases under Paragraphs 5.3 and 5.5
10 of this Agreement, regardless whether the Participating Class Member actually
11 receives the Class Notice or objects to the Settlement.

12 7.9.4. Every Class Member who submits a valid and timely Request for Exclusion is a
13 Non-Participating Class Member and shall not receive an Individual Class
14 Payment or have the right to object to the class action components of the
15 Settlement. Because future PAGA claims are subject to claim preclusion upon
16 entry of the Judgment, Non-Participating Class Members who are Aggrieved
17 Employees are deemed to release the claims identified in Paragraph 5.5 of this
18 Agreement and are eligible for an Individual PAGA Payment. Aggrieved
19 Employees may not exclude themselves from the release of the PAGA Claim.

20 7.10. Challenges to Calculation of Workweeks. Each Class Member shall have sixty (60) days
21 after the Administrator mails the Class Notice (plus an additional fourteen (14) days for
22 Class Members whose Class Notice is re-mailed) to challenge the number of Class
23 Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class
24 Notice. The Class Member may challenge the allocation by communicating with the
25 Administrator via fax, email, or mail. PROFORM's employment history data will be
26 presumed correct unless the Class Member otherwise proves to the Administrator by
27 providing written documentation to support the correction. In the absence of any contrary
28 documentation, the Administrator must presume that the Workweeks contained in the

Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods and the Administrator's determination the challenges to Defense Counsel. The Administrator shall notify Class Counsel, *in redacted format* to safeguard the identity and contact information of any Class Members, that a Workweek and/or PAGA Pay Period dispute has been received, the determination of the dispute, and the impact on the total class Workweek and/or PAGA Pay Period calculations and settlement payment calculations.

7.11. Objections to Settlement.

7.11.1. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment. Class Members cannot object to the Settlement if they submit a valid Request for Exclusion.

7.11.2. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than sixty (60) days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice was re-mailed).

7.11.3. A written objection should contain the objecting person's full name, current address, last four digits of his or her social security number, and include all objections and the reasons therefore, and include any and all supporting papers (including, without limitation, all briefs, written evidence, and declarations). The

objection should also be dated and signed by the Class Member.

7.11.4. Non-Participating Class Members have no right to object to the Settlement.

7.11.5. Neither Plaintiff, Class Counsel, Defendant, Defense Counsel, nor the Class shall be responsible for fees, costs, or expenses related to any Class Members who submit objections to the Settlement or any appeal by an objector arising from the Action for attorneys' fees, costs, or expenses of any kind.

7.12. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.12.1. Website, Email Address, and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time, and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payment, the Final Approval, and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes, and emails.

7.12.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Defense Counsel containing: (a) the names and other identifying information of Class Members, and including dates of employment and Workweek and/or PAGA Pay Period calculations, who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members, and including dates of employment and Workweek and/or PAGA Pay Period calculations, who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

1 The Administrator shall contemporaneously provide to Class Counsel a *redacted*
2 version of the Exclusion List with names and contact information of Class
3 Members excluded, but containing the number of Workweeks and/or PAGA Pay
4 Periods at issue in the Request(s) for Exclusion.

5 7.12.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
6 reports to Class Counsel and Defense Counsel that, among other things, tally the
7 number of: Class Notices mailed or re-mailed, Class Notices returned undelivered,
8 Requests for Exclusion (whether valid or invalid) received, objections received,
9 challenges to Workweeks and/or PAGA Pay Periods received and/or resolved, and
10 checks mailed for Individual Class Payments and Individual PAGA Payments
11 (“Weekly Report”). The Weekly Reports must include provide the Administrator’s
12 assessment of the validity of Requests for Exclusion and attach copies of all
13 objections received.

14 7.12.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to
15 address and make final decisions consistent with the terms of this Agreement on all
16 Class Member challenges over the calculation of Workweeks and/or PAGA Pay
17 Periods. The Administrator’s decision shall be final and not appealable or
18 otherwise susceptible to challenge.

19 7.12.5. Administrator’s Declaration. Not later than fourteen (14) days before the date by
20 which Plaintiff is required to file the Motion for Final Approval of the Settlement,
21 the Administrator will provide to Class Counsel and Defense Counsel, a signed
22 declaration suitable for filing in Court attesting to its due diligence and compliance
23 with all of its obligations under this Agreement, including, but not limited to, its
24 mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing
25 of Class Notices, attempts to locate Class Members, the total number of Requests
26 for Exclusion from Settlement it received (both valid or invalid), and the number of
27 written objections. The Administrator will supplement its declaration as needed or
28 requested by the Parties and/or the Court. Class Counsel is responsible for filing

the Administrator's declaration(s) in Court.

7.12.6. Final Report by Settlement Administrator. Within fourteen (14) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number (or other unique identifier assigned by the Administrator) only of all payments made under this Agreement. At least fourteen (14) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE.

Based on its records, PROFORM estimates that, as of the date of this Settlement Agreement: (1) there are 175 Class Members and 14,300 total Workweeks during the Class period; and (2) there were 120 Aggrieved Employees who worked 4,400 PAGA Pay Periods during the PAGA Period. If the number of Workweeks is more than ten percent (10%) higher than the estimated 14,300 Workweeks, then PROFORM shall, in its sole discretion, have the option to either: (1) de-escalate the Settlement so that the Class Period ends on the date that the Workweek count totals an amount ten percent (10%) higher than 14,300 (i.e. for a total of 15,730 Workweeks); or (2) permit the Gross Settlement Amount to be increased proportionally by the Workweeks worked in excess of 15,730, multiplied by the Workweek Value (Net Settlement Amount divided by the total number of Workweeks worked by all Participating Class Members during the Class Period).

9. PROFORM'S RIGHT TO WITHDRAW.

If the number of valid Requests for Exclusions identified in the Exclusion List exceeds ten percent (10%) of the total of all Class Members or consist of Class Members who worked more than ten percent (10%) of total Workweeks, PROFORM may, but is not obligated to, withdraw from the Settlement. The

Parties agree that, if PROFORM withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, PROFORM will remain responsible for paying all Settlement administration expenses incurred to that point. PROFORM must notify Class Counsel and the Court of its election to withdraw not later than seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. MOTION FOR FINAL APPROVAL.

Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699(l), a Proposed Final Approval Order, and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven (7) days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the

1 Court, pursuant to Code of Civil Procedure section 664.6, will retain jurisdiction over the
2 Parties, Action, and the Settlement solely for purposes of: (i) enforcing this Agreement
3 and/or Judgment; (ii) addressing settlement administration matters; and (iii) addressing
4 such post-Judgment matters as are permitted by law.

5 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
6 conditions of this Agreement, specifically including the Class Counsel Fees Payment and
7 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the
8 Parties, their respective counsel, and all Participating Class Members who did not object to
9 the Settlement as provided in this Agreement, waive all rights to appeal from the
10 Judgment, including all rights to post-judgment and appellate proceedings, the right to file
11 motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The
12 waiver of appeal does not include any waiver of the right to oppose such motions, writs, or
13 appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this
14 Agreement will be suspended until such time as the appeal is finally resolved and the
15 Judgment becomes final. Class Counsel specifically waives its right to appeal a reduction
16 by the Court of its Class Counsel Fees Payment to any amount at or above twenty-five
17 percent (25%) of the Gross Settlement Amount and/or Class Counsel Litigation Expense
18 Payment, Plaintiff specifically waives the right to appeal any reduction by the Court of his
19 Class Representative Service Payment, and the Administrator shall have no right to appeal
20 any reduction of or denial of any increase of the Administration Expenses Payment.

21 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
22 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
23 material modification of this Agreement (including, but not limited to, the scope of release
24 to be granted by Class Members), this Agreement shall be null and void. The Parties shall
25 nevertheless expeditiously work together in good faith to address the appellate court's
26 concerns and to obtain Final Approval and entry of Judgment, sharing, on an equal fifty-
27 fifty (50-50) basis, any additional Administration Expenses reasonably incurred after
28 remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the

1 Class Representative Service Payment or any payments to Class Counsel shall not
2 constitute a material modification of the Judgment within the meaning of this paragraph, as
3 long as the Gross Settlement Amount remains unchanged.
4

5 **11. AMENDED JUDGMENT.**

6 If any amended judgment is required under Code of Civil Procedure section 384, the Parties will
7 work together in good faith to jointly submit and a proposed amended judgment.

8 **12. FINALITY; EFFECT OF THE AGREEMENT NOT BEING FINAL.**

9 12.1. Finality. The approval of the Agreement shall be considered final on the Effective Date.

10 Except as expressly stated herein, none of the obligations of Defendants pursuant to the
11 Agreement shall become effective until the Settlement becomes final, but Defendant may
12 waive this condition in writing.

13 12.2. Settlement Not Final. In the event that the Settlement does not become final, or does not
14 become effective for any reason other than the failure of any Party to perform such Party's
15 obligations hereunder (except as to the Settlement not becoming final because of any
16 appeal, which circumstance can be waived by Defendant), then the Agreement shall
17 become null and void and of no further force and effect, and all negotiations, proceedings,
18 and statements relating thereto shall be without prejudice as to the rights of any and all
19 Parties hereto and their respective predecessors and successors, and all Parties and their
20 respective predecessors and successors shall be deemed to have reverted to their respective
21 positions in the Action as of the date and time immediately prior to the execution of this
22 Agreement, and except as otherwise expressly provided, the effect shall be the same as if
23 the Agreement was terminated pursuant to Paragraphs 14.2 and 14.3.

24 **13. TERMINATION OF SETTLEMENT**

25 13.1. Terminating Events. This Agreement shall be void, the class certification order shall be
26 nullified, and the Preliminary Approval Order and the Final Approval Order and Judgment
27 shall be vacated upon application to the Court in the event that: (a) Defendant exercises its
28 rights under Section 9 (subject to the terms and conditions set forth therein); (b) the Court

declines to enter Preliminary Approval of this Settlement or declines to enter the Final Approval Order or Judgment or any part thereof as provided for herein, or the Parties hereto fail to consent to the entry of alternative forms of Judgment, in lieu thereof, or after such consent the Court declines to enter such alternate form of Judgment; or (c) the Court approves this Settlement, including any amendments hereto, but any such Judgment and Final Approval Order is finally reversed on appeal.

13.2. Effect of Termination. Upon any such occurrence set forth above in Paragraph 13.1: (a) this Agreement (with the exception of Paragraphs 12.2, 14.1, 14.2, and 14.16) shall be terminated and become void and of no effect, except for the obligation of the Parties to pay, on an equal basis (except that Defendant will be responsible for the Settlement Administrator's fees if Defendants exercise their right to rescind the Settlement pursuant to Section 9), for any and all expenses incurred in connection with the notice and administration of the Settlement on or before the date on which the Settlement is terminated; (b) any actions taken or to be taken in connection with this Agreement and the Settlement shall become null and void and of no effect; (c) this Settlement and any hearings or proceedings thereunder shall not be referred to or used as evidence for or against any Party or Class Member in this or any other action or proceeding; and (d) all pretrial proceedings, including discovery, shall resume thirty (30) calendar days thereafter as if this Agreement had not been submitted for approval of the Court.

14. **ADDITIONAL PROVISIONS.**

14.1. No Admission of Liability, Class Certification, or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by PROFORM that any of the allegations in the Operative Complaint have merit or that PROFORM has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that PROFORM's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes

of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval, or enter Judgment, PROFORM reserves the right to contest certification of any class for any reasons, and PROFORM reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest PROFORM's defenses. The Settlement, this Agreement, and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

14.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, PROFORM, and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate, and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, PROFORM, and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third-party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

14.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or

1 appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
2 Counsel's ability to communicate with Class Members in accordance with Class Counsel's
3 ethical obligations owed to Class Members.

4 14.4. No Public Comment. Plaintiff and Class Counsel agree they will not issue any press
5 releases, publish any information relating to the Settlement on their website, or have any
6 communications with the media, other than to direct the media to the public records of the
7 Action on file with the Court or to respond with statements that have been previously
8 agreed upon in writing by the Parties. Class Counsel will take reasonable steps to ensure
9 Plaintiff is aware of, and will adhere to, the restriction against any media comment on the
10 Settlement and its terms. Further, Class Counsel will not include, reference, or use this
11 Settlement for any marketing or promotional purposes, or for attempting to influence
12 business relationships of Defendant, either before or after the Motion for Preliminary
13 Approval is filed. However, for the limited purpose of allowing Class Counsel to prove
14 adequacy as class counsel in other actions, Class Counsel may disclose the names of the
15 Parties in this Action, the venue/case number of this Action, the settlement amounts, and a
16 general description of the Action, to a court in a declaration by Class Counsel.

17 14.5. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
18 together with its attached exhibits shall constitute the entire agreement between the Parties
19 relating to the Settlement, superseding any and all oral representations, warranties,
20 covenants, or inducements made to or by any Party.

21 14.6. Severability. In the event that any one or more of the provisions contained in this
22 Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect,
23 such invalidity, illegality, or unenforceability shall in no way affect any other provision if
24 Defense Counsel and Class Counsel, on behalf of the Parties and the Class, mutually elect
25 in writing to proceed as if such invalid, illegal, or unenforceable provision had never been
26 included in this Agreement.

27 14.7. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
28 represent that they are authorized by Plaintiff and PROFORM, respectively, 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 reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

14.8. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

14.9. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

14.10. No Tax Advice. Neither Plaintiff, Class Counsel, PROFORM, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise. Class Members and Class Counsel understand and agree that Class Members shall be responsible for the payment of all of their taxes and penalties assessed on the payments specified herein, and shall hold the Parties, Class Counsel, and Defense Counsel free and harmless from and against any claims resulting from their treatment of such payments as non-taxable, including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes.

14.11. **Circular 230 Disclaimer:**

EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT:
(1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR

1 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER
2 ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR
3 DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE
4 WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230
5 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
6 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL
7 FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS
8 NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY
9 OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
10 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY
11 OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE
12 IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY
13 OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
14 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER
15 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING
16 PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
17 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

18 14.12. Modification of Agreement. This Agreement, and all parts of it, may be amended,
19 modified, changed, or waived only by an express written instrument signed by all Parties
20 or their representatives, and approved by the Court. Without further order of the Court, the
21 Parties hereto may agree in writing to reasonable extensions of time to carry out any of the
22 provisions of this Settlement if such extension does not materially impact prior orders of
23 the Court.

24 14.13. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the
25 benefit of, the successors of each of the Parties.

26 14.14. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
27 governed by and interpreted according to the internal laws of the State of California,
28 without regard to conflict of law principles.

- 1 14.15. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
2 this Agreement. This Agreement will not be construed against any Party on the basis that
3 the Party was the drafter or participated in the drafting.
- 4 14.16. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
5 during Action and in this Agreement relating to the confidentiality of information shall
6 survive the execution of this Agreement.
- 7 14.17. Use and Return of Class Data. Information provided to Class Counsel pursuant to
8 Evidence Code section 1152, and all copies and summaries of the Class Data provided to
9 Class Counsel by PROFORM in connection with the mediation, other settlement
10 negotiations, or in connection with the Settlement, may be used only with respect to this
11 Settlement, and no other purpose, and may not be used in any way that violates any
12 existing contractual agreement, statute, or rule of court. Not later than 90 days after the
13 date when the Court discharges the Administrator's obligation to provide a Declaration
14 confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and
15 electronic versions of Class Data received from PROFORM unless, prior to the Court's
16 discharge of the Administrator's obligation, PROFORM makes a written request to Class
17 Counsel for the return, rather than the destructions, of Class Data.
- 18 14.18. Headings. The descriptive heading of any section or paragraph of this Agreement is
19 inserted for convenience of reference only and does not constitute a part of this
20 Agreement.
- 21 14.19. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be
22 to calendar days. In the event any date or deadline set forth in this Agreement falls on a
23 weekend or federal legal holiday, such date or deadline shall be on the first business day
24 thereafter.
- 25 14.20. Notice. All notices, demands or other communications between the Parties in connection
26 with this Agreement will be in writing and deemed to have been duly given as of the third
27 business day after mailing by United States mail, or the day sent by email or messenger,
28 addressed as follows:

To Plaintiff:

Kane Moon
H. Scott Leviant
scott.leviant@moonyanglaw.com
Mariam Ghazaryan
mariam.ghazaryan@moonyanglaw.com
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Facsimile: (213) 232-3125

To PROFORM:

John P. Nordlund
John.Nordlund@jacksonlewis.com
Lauren R. Presser
Lauren.Presser@jacksonlewis.com
Solin J. Melahaji
Solin.Melahaji@jacksonlewis.com
JACKSON LEWIS P.C.
225 Broadway Suite 1800
San Diego, CA 92101

14.21. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

14.22. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to California Code of Civil Procedure section 583.330 to extend the date to bring a case to trial under California Code of Civil Procedure section 583.310 for the entire period of this settlement process.

Plaintiff & Class Representative:Dated: April 5, 2023

By: _____

IVAN GRANILLO

DocuSigned by:



ID: 18461CC96419...

Plaintiff's Counsel:Dated: April 5, 2023

MOON & YANG, APC

By: _____

Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff IVAN GRANILLO

Defendant:

Dated: April __, 2023

PROFORM INTERIOR CONSTRUCTION, INC.

By: _____

Print Name

Signature

Title

Defendant's Counsel:

Dated: April __, 2023

JACKSON LEWIS P.C.

By: _____

John Nordlund
Lauren Presser
Solin MelahajiAttorneys for Defendant PROFORM INTERIOR
CONSTRUCTION, INC.

Plaintiff & Class Representative:

Dated: April __, 2023

By: _____
IVAN GRANILLO

Plaintiff's Counsel:

Dated: April __, 2023

MOON & YANG, APC

By: _____
Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff IVAN GRANILLO

Defendant:

Dated: April 5, 2023

PROFORM INTERIOR CONSTRUCTION, INC.

By: _____ Jimmy Pettit
Print Name

Signature

President
Title

Defendant's Counsel:

Dated: April 5, 2023

JACKSON LEWIS P.C.

By: _____
John Nordlund
Lauren Presser
Solin Melahaji

Attorneys for Defendant PROFORM INTERIOR
CONSTRUCTION, INC.