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14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 SHAQUILLE STEWART ALEXANDER, on
18 behalf of himself and all others similarly
situated,

19 Plaintiff,

20 v.

21 SAKS & COMPANY LLC; SAKS
22 INCORPORATED,

23 Defendants.
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25
26
27
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Case No. 3:21-cv-02384 VC

**JOINT STIPULATION OF CLASS,
COLLECTIVE AND PAGA ACTION,
SETTLEMENT AGREEMENT**

Complaint Filed: April 1, 2021

Amended Complaint Filed: Sept. 17, 2021

1 This Joint Stipulation of Class, Collective and PAGA Action Settlement and Release
2 (“Stipulation” or “Settlement Agreement”) is made and entered by and between Plaintiff
3 SHAQUILLE STEWART ALEXANDER, individually, and on behalf of all others similarly situated,
4 the State of California, and all allegedly aggrieved employees, and Defendant SAKS & COMPANY
5 LLC and Defendant SAKS INCORPORATED (“Defendants” and collectively with Plaintiff as the
6 “Parties”).

7 **Defined Terms.**

8 1. “Action” means the action entitled *Shaquille Stewart Alexander, on behalf of himself*
9 *and all others similarly situated v. Saks & Company, LLC and Saks Incorporated*, pending in United
10 States District Court, Northern District of California, Case No. 3:21-cv-02384.

11 2. “Administration Costs” means the court-approved actual and direct costs reasonably
12 charged by the Settlement Administrator for its services in administering the Settlement currently
13 projected by the Parties to be approximately \$14,000. Administration Costs can be adjusted and shall
14 be paid from the Total Settlement Amount and Qualified Settlement Fund.

15 3. “Class” (“or members of the Class”) means the aggregate group of California Class
16 Members and Collective Members, estimated to be approximately 1,042 individuals.

17 4. “Class Counsel” means Named Plaintiff’s counsel: Eric Lechtzin of Edelson Lechtzin
18 LLP, and Daniel Feder of Law Offices of Daniel Feder.

19 5. “Class Counsel Fee and Expense Award” means such award of fees and expenses, plus
20 reasonable costs, that the Court may authorize to be paid to Class Counsel for the services they have
21 rendered to Plaintiff and the Class in the Action.

22 6. “California Class Members” means all current or former non-exempt employees who
23 worked for Saks & Company LLC (the “Company”), at a Saks Fifth Avenue retail store in California,
24 during the Class Period and excludes all individuals identified by and included in the settlement
25 class(es), unless they opt-out, as approved by the court(s) in *Alfreda Lewis v. Saks South Coast*
26 *Leasehold, LLC; Saks & Company, LLC*, Case No. 30-2020-01143164-CU-OE-CXC, currently
27 pending in California Superior Court, County of Orange and *Maxwell Esposito v. Saks & Company,*
28 *LLC*, currently pending in California Superior Court, County of Los Angeles – Santa Monica, Case

No. 20SMCV01252 (“Lewis/ Esposito Settlement”). However, individuals who are members of the Lewis/Esposito Settlement but who also worked for the Company at a Saks Fifth Avenue retail store in California during the Class Period in a role other than Sales Associate (SAL 102 or 104) and Brand Ambassador (SST100), may participate in both settlements.

7. “Class Notice” (or “Notice”) means the Court-approved form of notice to Class Members, substantially in the form as **Exhibit A** (attached hereto) which will notify Class Members of the conditional certification of the Settlement Class, Preliminary Approval of the Settlement, and scheduling of the Final Approval Hearing.

8. “Class/PAGA Representative Service Award” means the amount to be paid to Plaintiff in the Action in recognition of his effort and work in prosecuting the Action and PAGA Action on behalf of Class Members. Subject to the Court granting final approval of this Settlement Agreement and subject to the exhaustion of any and all appeals, Plaintiff will request Court approval of a Class/PAGA Representative Service Award of up to Five Thousand Dollars (\$5,000) to Plaintiff. The Class/PAGA Representative Enhancement Payment will be paid in the amount approved by the Court from the Total Settlement Amount.

9. “Class Period” means the period from April 1, 2017 through preliminary court approval of this Class, Collective and PAGA Action Settlement Agreement.

10. “Complaint” means the operative Class Action Complaint filed in the Action, which shall be the Second Amended Complaint that Plaintiff will file in the Action, a copy of which is attached hereto as **Exhibit B**.

11. “Collective Members” means all current or former non-exempt employees who worked for Saks & Company LLC (the “Company”), at a Saks Fifth Avenue retail store in California, during the Collective Period and excludes all individuals identified by and included in the Lewis/ Esposito Settlement. However, individuals who are members of the Lewis/Esposito Settlement but who also worked for the Company at a Saks Fifth Avenue retail store in California during the Collective Period in a role other than Sales Associate (SAL 102 or 104) and Brand Ambassador (SST100), may participate in both settlements.

12. “Collective Period” means the period from September 17, 2018 through preliminary court approval of this Class, Collective and PAGA Action Settlement Agreement.

13. “Court” means the United States District Court, Northern District of California.

14. “Defendants” means Saks & Company LLC and Saks Incorporated and their predecessors, successors, subsidiaries, and affiliated and/or related entities.

15. “Defendants’ Counsel” means the law firm of Littler Mendelson, P.C.

16. “Effective Date” of the Settlement means the last date of: (a) 31 days after Final Approval by the Court and issuance of a Final Order and Judgment by the Court if no appeal, review or writ petition has been filed; or (b) if there are Objections to the Settlement which are not withdrawn, and if an appeal, review or writ is not sought from the judgment, the day after the time for appeal of the entry of Judgment has expired; or (c) if an appeal, review or writ is sought from the judgment, the day after the Judgment is affirmed or the appeal, review or writ is dismissed or denied, and the Judgment is no longer subject to further judicial review. Should any appeal not result in approval of the Parties’ Settlement as described herein, the Settlement shall be void *ab initio* and of no further force or effect, and the Parties shall be returned in all respects to their respective positions as of February 22, 2022, the day before all parties agreed in principle to the Settlement.

17. “Employer Payroll Taxes” means the employer-side portion of payroll taxes owed for the 20% of the Net Settlement Amount that is allocated to wages, including the employer FICA, FUTA, and SDI contributions, for each Settlement Class Member.

18. “Exclusion Deadline” means the date sixty (60) calendar days following the date on which the Settlement Administrator first mails the Class Notices to Class Members.

19. “Final Approval” means that the Court’s Order granting final approval to the Settlement and entering judgment, including any order awarding attorneys’ fees and expenses.

20. “Final Approval Hearing” means a hearing held before the Court to consider Final Approval of the Settlement, the amount of attorneys’ fees and expenses that should be awarded to Class Counsel and Class/PAGA Representative Service Award to Plaintiff, the merits of any objections to the Settlement Agreement and the Settlement set forth therein or any of its terms.

21. “Individual Settlement Award” means the amount that each Settlement Class Member

1 is entitled to receive from the Net Settlement Amount.

2 22. "Individual Workweeks" refers to the total number of Workweeks worked by each
3 individual Settlement Class Member during the Class Period and/or, the total number of Workweeks
4 worked by each individual PAGA Cohort Member during the PAGA Period, respectively.

5 23. "Labor and Workforce Development Agency Payment" means the amount that the
6 Parties have agreed to pay, subject to court approval, to the California Labor and Workforce
7 Development Agency ("LWDA") in connection with the claim for civil penalties under the California
8 Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA"). The
9 Parties have agreed that Twenty Thousand Dollars and Zero Cents (\$20,000.00) of the Total
10 Settlement Amount will be allocated to the resolution of the PAGA Cohort's claims arising under
11 PAGA ("PAGA Settlement Amount"). Pursuant to PAGA, Seventy-Five Percent (75%), or Fifteen
12 Thousand Dollars and Zero Cents (\$15,000.00), will be paid to the LWDA, and Twenty-Five Percent
13 (25%), or Five Thousand Dollars and Zero Cents (\$5,000.00) ("PAGA Fund"), will be paid to PAGA
14 Cohort Members.

15 24. "Net Settlement Amount" means the amount used to pay the Individual Settlement
16 Awards remaining after the payment of the Class Counsel Fee and Expense Award, Class/PAGA
17 Representative Service Award, Administrative Costs, and PAGA Settlement Amount, as approved by
18 the Court. Eighty percent (80%) of the Net Settlement Amount will be allocated as penalties and
19 interest, and twenty percent (20%) of the Net Settlement Amount will be allocated as wages.

20 25. "Objection Deadline" means the date sixty (60) calendar days following the date on
21 which the Settlement Administrator first mails the Class Notices to Class Members.

22 26. "PAGA Cohort" means all non-exempt employees who worked for Saks & Company
23 LLC (the "Company"), at a Saks Fifth Avenue retail store in California, during the PAGA Period and
24 excludes all individuals identified by and included in the Lewis/Esposito Settlement. However,
25 individuals who are members of the Lewis/Esposito Settlement but who also worked for the Company
26 at a Saks Fifth Avenue retail store in California during the PAGA Period in a role other than Sales
27 Associate (SAL 102 or 104) and Brand Ambassador (SST100), may participate in both settlements.

28 27. "PAGA Cohort Member" means each person included in the PAGA Cohort.

1 28. “PAGA Individual Payment” means each PAGA Cohort Member’s respective share of
2 the PAGA Fund.

3 29. “PAGA Notice” means the written notice Plaintiff submitted to the LWDA on or about
4 April 12, 2022, based on the allegations set forth in Plaintiff’s Second Amended Complaint and
5 providing the required statutory notice to assert alleged violations of the California Labor Code as a
6 prerequisite to seeking penalties under the PAGA. A copy of the PAGA Notice is attached hereto as
7 **Exhibit C.**

8 30. “PAGA Period” means the period from April 1, 2020 through preliminary approval of
9 the Settlement Agreement.

10 31. “PAGA Release” means a release by Plaintiff, on behalf of himself, the State of
11 California and all PAGA Cohort Members, of any and all claims and/or causes of action under PAGA
12 (Cal. Labor Code §§ 2698 *et seq.*) arising during the PAGA Period, whether known or unknown, that
13 were alleged or could have been alleged based upon the factual allegations in the Action, including
14 but not limited to all claims asserted in the initial complaint, the First Amended Complaint, the Second
15 Amended Complaint, and the PAGA Notice: claims for failure to pay for all time worked, including
16 minimum wage and overtime, failure to timely pay employee’s wages upon separation from
17 employment; failure to provide accurate itemized wage statements, recordkeeping violations, and
18 violation of the California Unfair Competition Law. This includes, but is not limited to, claims under
19 California Labor Code sections 201-204, 210, 218, 226, 510, 558, 1174, 1194, 1194.2, 1197, 1198,
20 2698 *et seq.*, the applicable California wage orders, and any associated claim for interest, attorney’s
21 fees or costs. No PAGA Cohort Member may opt out of this release.

22 32. “Parties” means Plaintiff Shaquille Stewart Alexander and Defendants Saks &
23 Company LLC and Saks Incorporated; and “Party” means any one of the Parties.

24 33. “Plaintiff” or “Named Plaintiff” means Plaintiff Shaquille Stewart Alexander.

25 34. “Preliminary Approval” means that the Court has entered an order preliminarily
26 approving the terms and conditions of this Settlement Agreement, including the manner of providing
27 notice to Class Members of this settlement, in substantially the form of the proposed Order Granting
28 Preliminary Approval attached as **Exhibit D.**

1 35. “QSF” means the Qualified Settlement Fund established, designated and maintained
2 by the Settlement Administrator to fund Class Member Individual Settlement Awards, any
3 Class/PAGA Representative Service Award, Administration Costs, the Class Counsel Fee and
4 Expense Award, the LWDA Payment, PAGA Individual Payments and Employer Payroll Taxes, and
5 from which the payments shall be paid.

6 36. “Released Claims” means any and all claims arising during the Class Period for wages,
7 statutory and civil penalties, damages and liquidated damages, interest, fees and costs, and all other
8 forms of legal or equitable relief based on federal, state or local law, whether known or unknown, that
9 were alleged or could have been alleged based upon the factual allegations in the Action, including
10 but not limited to all claims asserted in the initial complaint, the First Amended Complaint, the Second
11 Amended Complaint, and the PAGA Notice: claims for failure to pay for all time worked, including
12 minimum wage and overtime, failure to timely pay employee’s wages upon separation from
13 employment; failure to provide accurate itemized wage statements, recordkeeping violations, and
14 violation of the California Unfair Competition Law. This includes, but is not limited to, claims under
15 California Labor Code sections 201-204, 210, 218, 226, 510, 558, 1174, 1194, 1194.2, 1197, 1198,
16 2698 *et seq.*, the applicable California wage orders, California Bus. & Prof. Code sections 17200 *et*
17 *seq.*, and the federal Fair Labor Standards Act, 29 U.S.C sections 201 *et seq.*, and any associated claim
18 for interest, attorney’s fees or costs. With respect to Plaintiff individually, this Release excludes all
19 claims pled in the separate action entitled *Alexander v. Saks & Company, LLC*, Superior Court of
20 California, County of San Francisco, Action No. CGC-20-587873, because Plaintiff has settled and
21 will release all such claims in a separate settlement agreement.

22 37. “Released Parties” means Defendants, as well as their respective former and present
23 parents, including but not limited to HBC L.P., subsidiaries, divisions, and affiliated corporations and
24 entities and each of their respective former and present officers, directors, employees, partners,
25 shareholders and agents, and any other predecessors in interest, successors, assigns or legal
26 representatives, attorneys, insurers, and reinsurers.

27 38. “Request for Exclusion” means the request that a Class Member must submit to the
28 Settlement Administrator by the Exclusion Deadline if that Class Member wishes to request exclusion

1 from the Class as provided in this Settlement. However, a Request for Exclusion will not exclude a
2 Class Member who is also a PAGA Cohort Member from the release of claims under Labor Code
3 sections 2698, *et seq.* or from receiving their PAGA Individual Payment.

4 39. “Settlement” means the terms and conditions set forth in this Joint Stipulation for Class
5 Action Settlement Agreement.

6 40. “Settlement Administrator” means Simpluris, Inc. provided it is approved by the Court
7 for the purposes of administering this Settlement. The Parties each represent that they do not have
8 any financial interest in the Settlement Administrator or otherwise have a relationship with the
9 Settlement Administrator that could create a conflict of interest. If the Court were to not approve
10 Simpluris, Inc. as the Settlement Administrator, the Parties will negotiate in good faith to select an
11 alternative Administrator. Defendants will not approve any Administrator that has not been vetted
12 and approved by counsel for Defendants, including, but not limited to, regarding the administrator’s
13 information and data security practices. The Settlement Administrator establishes, designates and
14 maintains, as a QSF under Internal Revenue Code section 468B and Treasury Regulation section
15 1.468B-1, into which the amount of the Total Settlement Amount is deposited for the purpose of
16 resolving the claims of Class Members and the PAGA claim. The Settlement Administrator shall
17 maintain the funds until distribution in an account(s) segregated from the assets of Defendants and any
18 person related to Defendants.

19 41. “Settlement Class Members” (or “Settlement Class”) means all Class Members who
20 have not excluded themselves from the Settlement Class by submitting a timely request for exclusion
21 in accordance with the requirements set forth in the Class Notice and the Preliminary Approval Order.

22 42. “Settlement Final Approval Order and Judgment” means an order and judgment issued
23 by the Court granting final approval to the Settlement Agreement, which Settlement Order and
24 Judgment shall constitute a judgment respecting the Parties, within the meaning and for purposes of
25 Federal Rule of Civil Procedure, Rule 60(b).

26 43. “Stipulation” or “Settlement Agreement” means this Joint Stipulation for Class Action
27 Settlement Agreement.

28 44. “Total Settlement Amount” means the maximum amount of Three Hundred and

1 Seventy-Five Thousand Dollars and Zero Cents (\$375,000.00) that Defendants shall be required to
2 pay as described in Paragraph 59 below in connection with this Settlement, on a non-reversionary
3 basis. In no event shall Defendants be obligated to pay more into the QSF than those funds defined in
4 Paragraph 59.

5 45. "Total Workweeks" means the aggregate number of Individual Workweeks each
6 individual Settlement Class Member worked during the Class Period and/or each individual PAGA
7 Cohort Member received during the PAGA Period.

8 46. "Unknown Claims" means any and all actions, suits, claims, demands, rights,
9 liabilities, and causes of action other than those specified in Paragraph 36 above which relate to the
10 Released Claims that the Named Plaintiff does not know of or suspect to exist in his favor, which, if
11 known by him, might have affected his agreement to the Settlement. This includes any and all claims,
12 rights, demands, liabilities, and causes of action, whether known or unknown, arising from, or related
13 to the Plaintiff's employment with and separation from Defendants, including but not limited to all
14 claims arising from, or related to the same set of operative facts as those set forth in the Complaint.
15 Plaintiff's release includes all known and unknown claims and includes a waiver pursuant to California
16 Civil Code Section 1542 without exclusion, with the sole exception being those claims asserted in the
17 separate action entitled *Alexander v. Saks & Company, LLC*, Superior Court of California, County of
18 San Francisco, Action No. CGC-20-587873. With respect to Released Claims, as of Final Approval,
19 Class Members hereby expressly waive and relinquish, to the fullest extent permitted by law, insofar
20 as the claims arise from, or are related to, the same facts alleged in the original and Amended
21 Complaints and PAGA Notice, the benefits of California Civil Code section 1542 (as well as any and
22 all provisions, rights, and benefits of any similar state or federal law), which states:

23 A general release does not extend to claims that the creditor or releasing
24 party does not know or suspect to exist in his or her favor at the time of
25 executing the release and that, if known by him or her, would have
26 materially affected his or her settlement with the debtor or released
27 party.
28

1 As explained in Paragraph 36, Plaintiff's release includes all Unknown Claims and as of Final
2 Approval. Plaintiff hereby expressly waives and relinquish, to the fullest extent permitted by law,
3 insofar as the claims arise from, or are related to, the same facts alleged in Plaintiff's original and
4 amended Complaints and PAGA Notice, the benefits of California Civil Code section 1542 (as well
5 as any and all provisions, rights, and benefits of any similar state or federal law). Thus, if the facts
6 relating to this Settlement are found hereafter to be different from the facts now believed to be true,
7 the Release set forth in this Agreement will remain fully effective. If the Court declines to enforce this
8 provision regarding unknown claims as to Class Members, it will not be grounds to void the
9 Agreement.

10 **Procedural History.**

11 47. On April 1, 2021, Plaintiff filed the first Complaint in the United States District Court
12 for the Northern District of California. Defendants filed a motion to dismiss under Rule 12(b), which
13 was granted by the Court with leave to amend. On September 17, 2021, Plaintiff filed the First
14 Amended Complaint in this Action, seeking recovery on behalf of himself and all other similarly
15 situated persons employed by Defendants for alleged failure to pay all regular and overtime wages,
16 failure to provide all wages upon separation of employment, failure to provide compliant wage
17 statements and accurate pay records. Plaintiff also asserted claims for unfair business practices in
18 violation of California Business and Professions Code section 17200, *et seq.* In addition, Plaintiff
19 sought to recover overtime under the Federal Labor Standards Act, 29 U.S.C. § 201 *et seq.*

20 48. After Plaintiff filed his Complaint, the Parties engaged in informal discovery for the
21 purposes of preparing for formal mediation with Mediator Paul Grossman, which included
22 Defendants' production of dates of employment and a summary of pay data for Class Members and
23 the PAGA Cohort during the Class Period and PAGA Period. The Parties thereafter engaged in formal
24 mediation on February 23, 2022 with Mr. Grossman in an attempt to resolve this matter. The Parties
25 were successful in reaching a settlement in principle on February 23, 2022, the terms of which were
26 set forth in a Mediator's Proposal. The Parties have since worked on finalizing the terms of this
27 Settlement Agreement and corresponding documentation.

28 49. In conjunction with this Stipulation for Class Action Settlement, on April 12, 2022,

1 Plaintiff submitted the PAGA Notice to provide notice of his claim under the PAGA and set forth the
2 same alleged violations of the California Labor Code alleged in his First Amended Complaint.

3 50. Furthermore, immediately upon exhausting the 65-day waiting period under the PAGA,
4 and no later than five (5) calendar days after Preliminary Approval of this Settlement has been granted,
5 whichever is later, Plaintiff will file a Second Amended Complaint in the Action to add a claim under
6 the PAGA for civil penalties for the same underlying alleged violations of the California Labor Code
7 as set forth in Plaintiff's First Amended Complaint. Defendants will not oppose the Second Amended
8 Complaint or be required to respond as part of the settlement approval process. Plaintiff will provide
9 notice of this Settlement to the LWDA at the same time this Settlement Agreement is filed with the
10 Court. Plaintiff will provide copies of the Preliminary Approval Order, Final Approval Order, and
11 Judgment to the LWDA within seven (7) calendar days after entry of each order and judgment.

12 **Stipulation for Class Certification.**

13 51. The Parties stipulate and agree to the conditional certification of the Class for purposes
14 of Settlement only. Should, for whatever reason, the Settlement not become final, the Parties'
15 stipulation to class certification as part of the Settlement shall become null and *void ab initio* and shall
16 have no bearing on, and shall not be admissible in connection with, the issue of whether or not
17 certification would be appropriate in a non-settlement context. Defendants expressly reserve their
18 rights and declares that it intends to oppose class certification should this Settlement not become final.

19 **Inadmissibility of Settlement Agreement.**

20 52. Whether or not the Settlement is finally approved, neither the Settlement, nor any of its
21 terms, nor any document, statement, proceeding or conduct related to this Settlement Agreement, nor
22 any reports or accounts thereof, shall in any event be:

- 23 a. Construed as, offered or admitted in evidence as, received as, or deemed to be
24 evidence for any purpose adverse to the Released Parties, including, but not limited
25 to, evidence of a presumption, concession, indication or admission by any of the
26 Released Parties of any liability, fault, wrongdoing, omission, concession or damage
27 except for purposes of settling this Action or enforcing the Released Claims, or the
28 PAGA Release contained herein pursuant to the terms of this Settlement Agreement;

- b. Disclosed, referred to or offered or received in evidence against any of the Released Parties in any further proceeding in the Action or any other civil, criminal or administrative action or proceeding except for purposes of settling this Action or enforcing the Released Claims or the PAGA Release contained herein pursuant to the terms of this Settlement Agreement; or
- c. Used in any other way or for any other purpose except for purposes of settling this Action, effectuating this Settlement Agreement, or enforcing the Released Claims or the PAGA Release contained herein pursuant to the terms of this Settlement Agreement.

Investigation of the Claims.

53. Each Party conducted significant investigation of the facts and law both before and after the Action was filed. Such discovery and investigations have included the exchange of information pursuant to informal discovery, meetings and conferences, and interviews of potential witnesses. Counsel for the Parties have further investigated the applicable law as applied to the facts discovered regarding the Plaintiff's claims, the defenses thereto and the damages claimed by Plaintiff.

Benefits of Settlement to Class Members.

54. Plaintiff has considered the expense and length of continued proceedings necessary to continue the Action against Defendants through trial and any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation and the difficulties and delays inherent in such litigation, including those involved in class certification. Plaintiff is also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, Defendants' defenses thereto, and the difficulties in establishing Plaintiff's damages. Plaintiff has also considered the settlement negotiations conducted by the Parties. Based on the foregoing, Plaintiff has determined that the Settlement set forth in this Settlement Agreement is fair, adequate, and reasonable, and is in the best interest of the Settlement Class.

Plaintiff's Claims.

55. Plaintiff contends and continue to claim that the Released Claims have merit and give rise to Defendants' liability. Should this Settlement not be finally approved by the Court, neither this

1 Settlement Agreement nor any documents referred to herein, nor any action taken to carry out this
2 Settlement is, or may be construed as or may be used as, an admission by or against the Plaintiff as to
3 the merits or lack thereof of the claims asserted by Plaintiff.

4 **Defendants' Denial of Wrongdoing.**

5 56. Defendants contend that all nonexempt employees have been compensated for all time
6 worked in compliance with the law and issued compliant wage statements, and that its conduct was
7 lawful and not willful with respect to any of the claims alleged by Plaintiff. Defendants have denied
8 and continue to deny each of the claims and contentions alleged by Plaintiff in the Action and PAGA
9 Notice. Defendants deny any wrongdoing or legal liability arising out of any of the facts or conduct
10 alleged in the Action and PAGA Notice and believe that they have valid defenses to Plaintiff's claims.
11 Neither this Settlement Agreement, nor any document referred to or contemplated herein, nor any
12 action taken to carry out this Settlement Agreement may be construed as, or may be used as an
13 admission, concession or indication by or against Defendants of any fault, wrongdoing or liability
14 whatsoever, including any concession that certification of a class other than for purposes of this
15 Settlement would be appropriate in this or any other case.

16 **Release of Released Parties By Settlement Class Members and PAGA Cohort Members.**

17 57. Plaintiff and all Settlement Class Members stipulate and agree that, upon the Effective
18 Date, they shall be deemed to have, and by operation of the Settlement Order and Judgment shall have,
19 expressly released the Released Parties from the Released Claims for the entirety of the Class Period.
20 Even if Plaintiff may hereafter discover facts in addition to or different from those which he now
21 knows or believes to be true with respect to the subject matter of the Released Claims, Plaintiff, upon
22 the Effective Date, shall be deemed to have and by operation of the Final Judgment shall have, fully,
23 finally, and forever settled and released any and all of the Released Claims.

24 58. After the Effective Date, Plaintiff, on behalf of himself, the State of California, and all
25 PAGA Cohort Members, will have released the Released Parties from all claims for civil penalties
26 under Labor Code sections 2698, *et seq.* with respect to the Released Claims, as set forth in the PAGA
27 Release, for the entirety of PAGA Period.

1 **The Settlement Components.**

2 59. The Settlement in this Action shall have six components: (1) the Individual Settlement
3 Awards; (2) the Labor and Workforce Development Agency Payment; (3) the PAGA Individual
4 Payments; (4) the Class Counsel Fee and Expense Award; (5) the Class/PAGA Representative Service
5 Award; and (6) the Administration Costs. The Total Settlement Amount Defendants will pay under
6 this Settlement is Three Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$375,000.00),
7 including all components described in this paragraph. The sole exception is the payment of the
8 Employer Payroll Taxes, which will be paid in addition. The Settlement is non-reversionary and will
9 not revert back to Defendants.

10 **Notice/Approval of Settlement and Settlement Implementation.**

11 60. As part of this Settlement, the Parties agree to the following procedures for obtaining
12 Preliminary Approval of the Settlement, certifying the Class, and notifying Class Members:

- 13 a. CAFA Notice. No later than ten (10) calendar days after the filing of the motion for
14 preliminary approval of this Settlement, Defendants shall mail the notices required
15 under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715(a), to the federal
16 and all applicable state agencies in each state in which a Class Member resides at
17 the time of notice. The Parties intend and believe that the CAFA Notice prepared in
18 conjunction with this Settlement pursuant to the procedures described in this section
19 complies with the requirements of CAFA and will require the Court to adjudicate
20 the validity of the CAFA notice in the motion for final approval of the Settlement to
21 bar any claim to void or avoid the Settlement under CAFA.
- 22 b. Preliminary Settlement Hearing. Class Counsel will reserve a hearing before the
23 Court to seek Preliminary Approval of the Settlement for such date as the Court may
24 provide. Class Counsel will be responsible for drafting all documents necessary to
25 obtain preliminary approval to the extent they are not attached to this agreement, but
26 Defendants’ counsel will have the right to review the draft of the Unopposed Motion
27 for Preliminary Approval of the Settlement no later than three (3) days before the
28 filing deadline. Defendants agree not to oppose Plaintiff’s Motion for Preliminary

Approval unless the motion is inconsistent with the terms set forth in this Settlement.

c. Certification of Class. Simultaneous with the filing of the Settlement Agreement and solely for purposes of this Settlement, Class Counsel shall request the Court to enter a Preliminary Approval Order preliminarily approving the proposed Settlement, certifying the Settlement Class and approving the Class Period for settlement purposes only, and setting a date for the Final Approval Hearing. The Preliminary Approval Order shall provide for notice of the Settlement and related matters to be sent to the Class Members as specified herein.

d. Information Regarding Class. Within fourteen (14) business days after Preliminary Approval, Defendants shall provide the Settlement Administrator with the following information with respect to each Class Member and PAGA Cohort Member: name, most current mailing address indicated in Defendants' records, social security number, and the number of Individual Workweeks each Class Member worked for Defendants during the Class Period and during the PAGA Period. Defendants will also provide any additional information requested by the Settlement Administrator to effectuate the mailing of the Class Notice, and shall provide all such information in the form requested by the Settlement Administrator. Prior to mailing, the Settlement Administrator shall perform a search based on the National Change of Address database and an Accurint (or substantially similar) in-depth skip trace to update and correct any known or identifiable address changes for Class Members.

e. Right to Cancel. If more than 5% of the Class Members submit a request for exclusion, then Defendants shall have the right to cancel this Settlement Agreement. To exercise this option, Defendants must jointly send, through counsel, written notification to Class Counsel within fourteen (14) days of receiving a report from the Settlement Administrator informing Defendants' Counsel that the total number of timely and valid Requests for Exclusion / Opt-Out Requests is more than five percent (5%). If Defendants choose to exercise this option, the effect will be precisely the same as if Final Judgment did not occur, as discussed herein, and all

Settlement Administrator Costs incurred by the Settlement Administrator through that date will be paid by Defendants.

f. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3) business days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have fifteen (15) calendar days from the mailing of the deficiency notice to postmark or fax a revised Request for Exclusion that cures the deficiency. If the revised Request for Exclusion that cures the deficiency is not postmarked or received by fax within that period, it will be deemed untimely.

g. Disputed Information on Notice. Class Members will have an opportunity to dispute the information provided in their Notice. To the extent Class Members dispute the number of Individual Workweeks on record, Class Members may produce evidence to the Settlement Administrator showing that such information is inaccurate. The Settlement Administrator will decide the dispute. Defendants' records will be presumed correct, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and will make the decision as to the merits of the dispute in coordination with all counsel. All disputes will be decided within fifteen (15) calendar days of the Exclusion Deadline. Any disagreement between the Settlement Administrator and counsel will be presented to and decided by the Court at the Final Approval hearing.

h. Settlement Administrator. The Settlement Administrator shall be responsible for (i) printing, mailing the Class Notices attached hereto as **Exhibit A** as directed by the Court; (ii) receiving and reviewing any disputes submitted by Class Members to determine eligibility for an Individual Settlement Award of Settlement Class Members; (iii) consulting with Class Counsel Plaintiff and Defendants concerning

the Individual Workweeks received by Class Members and PAGA Cohort Members and amounts of any Individual Settlement Awards to be paid to Settlement Class Members and PAGA Individual Payment to be paid to PAGA Cohort Members; (iv) keeping track of opt outs; (v) distributing such Individual Settlement Awards, PAGA Individual Payments, Labor and Workforce Development Agency Payment, Administrative Costs, Class/PAGA Representative Service Award, the Class Counsel Fee and Expense Award, as may be ordered by the Court; (vi) reporting all Individual Settlement Awards, PAGA Individual Payments, Labor and Workforce Development Agency Payment, Class/PAGA Representative Service Award and attorneys' fees awards paid to Class Counsel on IRS forms W-2 and 1099, or other appropriate tax reporting forms and providing such forms to the respective Settlement Class Members, PAGA Cohort Members, Named Plaintiff, Class Counsel, and applicable government authorities; (vii) paying any tax imposed on the QSF pursuant to Treasury Regulation § 1.468B-2(a) and other applicable provisions of federal, state or local law imposing tax on the Fund; and (viii) furnishing to Defendants all copies of all Forms W-2, 1099, or other tax reporting forms provided to any Settlement Class Members, PAGA Cohort Member, Named Plaintiff, and Class Counsel within thirty (30) calendar days after each such form has been furnished to the payee shown thereon, together with such other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Parties all represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator.

Class Notice.

61. The Parties agree to the following procedures for giving notice of this Settlement to the Class:
- a. Within ten (10) calendar days after Defendants provide the Class Member information to the Settlement Administrator, the Settlement Administrator shall mail a copy of the Class Notice in the form approved by the Court in its Preliminary

1 Approval Order to all persons shown by Defendants' records to be Class Members,
2 via First Class regular U.S. Mail, using the most current mailing address from
3 Defendants' records or any more current address discovered from an address search
4 using a National Change of Address and an Accurint (or substantially similar) in-
5 depth skip trace in order to obtain the best possible address for Class Members prior
6 to the mailing of the Class Notice to Class Members. Each Notice will list:
7 (1) information regarding the nature of the Action, (2) a summary of the substance
8 of the Settlement, (3) the Class definition, (4) the formula for calculating Individual
9 Settlement Awards, (5) the estimated pre-tax amount of the Class Member's
10 Individual Settlement Awards, (6) the deadlines by which the Class Member must
11 postmark a Request for Exclusion, file an objection to the Settlement with the
12 Settlement Administrator or postmark disputes regarding the amounts in the Notice,
13 and (7) background on and a description of the claims to be released by all Class
14 Members who do not submit timely and valid Requests for Exclusion.

- 15 b. Any mailed Notices returned to the Settlement Administrator with a forwarding
16 address shall be re-mailed promptly by the Settlement Administrator but no later
17 than five (5) calendar days following receipt of the returned mail. For any Notices
18 returned to the Settlement Administrator without a forwarding address, the
19 Settlement Administrator shall conduct one address search using appropriate skip-
20 tracing methods and shall promptly re-mail the Notice to the newly-found addresses.
21 If an additional address is not found, no further action is required. In the event that
22 an intended recipient of a Class Notice does not receive the Class Notice, the
23 intended recipient shall nevertheless remain a Settlement Class Member, unless he
24 or she timely files a Request for Exclusion as provided in this Settlement Agreement.
25 The Notice to be sent to Class Members at a forwarding address provided by the
26 post office or obtained by the Settlement Administrator using appropriate skip-
27 tracing methods as discussed in this paragraph shall be identical to the original
28 Notice, except that it shall notify the Class Members that a Request for Exclusion or

objection must be submitted within fifteen (15) calendar days of the date of re-mailing or by the Exclusion Deadline/Objection Deadline, whichever is later.

- c. The date of the postmark on the return envelope or the fax transmission date/timestamp shall be the exclusive means used to determine whether a Class Member has timely returned his or her Request for Exclusion on or before the Exclusion Deadline. In the event the postmark or fax date/timestamp is illegible, the Request for Exclusion shall be deemed untimely unless it is received within seven (7) calendar days after the Exclusion Deadline. Unless otherwise agreed by the Parties, Requests for Exclusion that are not timely mailed or received shall be disregarded.

Procedure for Objecting to or Requesting Exclusion From the Settlement

62. Class Members who wish to object to the class action portion of the Settlement or to be excluded from the Settlement Class shall submit objections and/or request for exclusion from the Settlement Class, using the following procedures:

- a. Procedure for Objecting. The Class Notice shall provide that only Settlement Class Members may object to the Settlement and that Settlement Class Members who wish to object to the Settlement must file with the Court a written statement objecting to the Settlement and setting forth the grounds for the objection. Such written statement and all supporting briefs or other materials must be sent no later than the Objection Deadline. Settlement Class Members who wish to object to the request for the Class Counsel Fee and Expense Award or the Class/PAGA Representative Service Award must file with the Court not later than twenty-one (21) calendar days before the Final Approval Hearing a written objection setting forth the grounds for the objection. The objection also must indicate whether the Settlement Class Member intends to appear at the Final Approval Hearing. Settlement Class Members who fail to send timely written objections substantially complying with the manner specified above or fail to object at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or

otherwise) to the Settlement. Class Counsel and Defendants' Counsel will file their responses to any objection within seven (7) calendar days before the Final Approval Hearing.

b. Procedure for Requesting Exclusion. The Class Notice shall provide that Class Members who wish to exclude themselves from the Class must mail or fax to the Settlement Administrator a Request for Exclusion requesting exclusion from the Class (also referred to herein as "opt out") no later than the Exclusion Deadline. Such written Request for Exclusion must contain the name, address, telephone number, and last 4 digits of the social security number of the person requesting exclusion, must be returned to the Settlement Administrator at a specified address or fax number and must be postmarked or faxed on or before the Exclusion Deadline. Such written Request for Exclusion also must contain a clear statement communicating that they elect to be excluded from the Settlement Class, do not wish to be a Settlement Class Member, and elect to be excluded from any judgment entered pursuant to the Settlement; and specify the case name and case number. No opt-out request may be made on behalf of a group. Any Class Member who properly opts out of the Class using this procedure will not be entitled to any payment from the Settlement and will not be bound by the Settlement or have any right to object, appeal or comment thereon. Any Class Member who properly opts out of the Class using this procedure will not receive an Individual Settlement Award and their election not to participate will not reduce neither the QSF nor the Net Settlement Amount. Their respective Individual Settlement Awards will be retained in the Net Settlement Amount and be distributed to Settlement Class Members on a pro rata basis. However, the Class Member's request for exclusion, to the extent he/she is also a PAGA Cohort Member, will not exclude them from their release of claims under Labor Code sections 2698, *et seq.* and they will still receive their PAGA Individual Payment. Class Members who fail to submit a valid and timely Request for Exclusion on or before the Exclusion Deadline date shall be bound by all terms

1 of the Settlement and any Judgment entered in this Action if the Settlement is
2 approved by the Court, regardless of whether they ineffectively or untimely request
3 exclusion from the Settlement.

4 c. No later than fourteen (14) calendar days after the Exclusion Deadline, the
5 Settlement Administrator will have a complete list of all Class Members who have
6 timely requested exclusion from the Class. The Settlement Administrator shall
7 provide that list to Class Counsel and Defendants' counsel.

8 **No Solicitation of Settlement Objections or Exclusions.**

9 63. The Parties agree to use their best efforts to carry out the terms of this Settlement. At
10 no time shall any of the Parties or their counsel or agents (or the Settlement Administrator) discourage
11 Class Members to make a claim under this Settlement. Nor shall the Parties or their counsel seek to
12 solicit or otherwise encourage Class Members to submit written objections to the Settlement or
13 requests from exclusion from the Class, or encourage Class Members to appeal from the Court's Final
14 Judgment.

15 **Reasonable Allocation of the Individual Settlement Awards.**

16 64. The Settlement Administrator shall calculate the amounts of the Individual Settlement
17 Awards and PAGA Individual Payments in accordance with the methodology set forth in this
18 Settlement Agreement and orders of the Court. The Parties recognize and agree that the claims for
19 compensation and penalties in this litigation may be difficult to determine with any certainty for any
20 given year, and are subject to a myriad of differing calculations and formulas. The Parties agree that
21 the formula for allocating the Individual Settlement Awards to Settlement Class Members and PAGA
22 Individual Payments to PAGA Cohort Members provided herein are reasonable and fair to all Class
23 Members and PAGA Cohort Members and that the payments provided herein are designed to provide
24 a fair settlement to such persons, in light of the uncertainties of the compensation alleged to be owed
25 to the Settlement Class and PAGA Cohort and the calculation of such amounts. Each Class Member
26 and PAGA Cohort Member will be paid pro rata based upon the number of their Individual Workweeks
27 during the Class Period and the PAGA Period, respectively, as detailed below.

1 **Calculations of Individual Settlement Awards.**

2 65. Individual Settlement Awards to Settlement Class Members.

- 3 a. In order to determine the amount of the Individual Settlement Award to which each
- 4 Settlement Class Member is entitled, the Settlement Administrator shall use the
- 5 information provided by Defendants to determine the Individual Workweeks for
- 6 each Settlement Class Member during the Class Period. The Total Workweeks
- 7 worked by all Settlement Class Members during the Class Period shall be divided
- 8 into the Net Settlement Sum to calculate a Workweek Value.
- 9 b. Each Settlement Class Member's Individual Settlement Award will be calculated by
- 10 multiplying each individual Settlement Class Member's total number of Workweeks
- 11 by the Workweek Value. The Individual Settlement Award will be reduced by any
- 12 required deductions for each Settlement Class Member as specifically set forth
- 13 herein, including employee-side tax withholdings or deductions.
- 14 c. The Parties agree that Settlement Class Members will not have to submit a claim
- 15 form in order to receive an Individual Settlement Award. Each Settlement Class
- 16 Member who does not submit a Request for Exclusion will automatically be mailed
- 17 a check for their Individual Settlement Award.
- 18 d. In order to cash their Individual Settlement Award checks, Settlement Class
- 19 Members shall be required to affirmatively opt into the Settlement for purposes of
- 20 the FLSA and waive all Released Claims falling under the FLSA by endorsing their
- 21 Individual Settlement Award checks, which shall contain thereon the following or
- 22 substantially similar language: "By endorsing and cashing this check, I agree to the
- 23 waiver of the Fair Labor Standards Act ("FLSA") claims set forth in the class notice
- 24 in *Alexander v. Saks & Company, LLC*, and hereby affirmatively opt into the FLSA
- 25 claim and FLSA waiver for the purposes of 29 U.S.C. section 216(b)."

26 66. PAGA Individual Payments to PAGA Cohort Members.

- 27 a. In order to determine the amount of the PAGA Individual Payment to which each
- 28 PAGA Cohort Member is entitled, the Settlement Administrator shall use the

information provided by Defendants to determine the Individual Workweeks for each PAGA Cohort Member during the PAGA Period.

- b. The Total Workweeks worked by all PAGA Cohort Members during the PAGA Period shall be divided into the amount allocated from the PAGA Fund (\$5,000) to calculate a PAGA Workweek Value. Each PAGA Cohort Member's PAGA Award will be calculated by multiplying each individual PAGA Cohort Member's total number of Workweeks by this PAGA Workweek Value.

67. A Request for Exclusion does not exclude a PAGA Cohort Member from the release of claims under California Labor Code §§ 2698, *et seq.* and the PAGA Cohort Member will receive their portion of the PAGA Fund even if he or she submits a valid Request for Exclusion.

Taxes.

68. The Parties agree that, for purposes of this Settlement, no PAGA Cohort Member's PAGA Individual Payment shall be deemed wages and instead, the payments will all be allocated as penalties. Thus, there will be no payroll deductions from such PAGA Cohort Member's PAGA Individual Payment for state and federal withholding taxes or any other applicable payroll deductions. The Settlement Class Member's Individual Settlement Award shall be allocated as 80% penalties and interest and 20% wages. The Employer Payroll Taxes related to the 20% wage payment shall be paid separately in addition to the \$375,000 Total Settlement Amount.

69. 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 disclosure between or among the parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this agreement, (b) has not entered into this agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication

1 or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed
2 on the acknowledging party; and (3) no attorney or adviser to any other party has imposed any
3 limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless
4 of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax
5 treatment or tax structure of any transaction, including any transaction contemplated by this
6 agreement.

7 70. All reasonable and directed expenses and costs incurred by, or at the direction of, the
8 Settlement Administrator in connection with the operation and implementation of this Settlement
9 Agreement (including, without limitation, expenses of tax attorneys and/or accountants and mailing
10 and distribution costs and expenses relating to filing or failing to file the information and other tax
11 returns described above) shall be treated as, and considered to be, a cost of administration of the
12 Settlement and part of the Administration Costs.

13 71. The Settlement Administrator shall be responsible for reporting on W-2s and IRS Form
14 1099 or other appropriate tax reporting forms to the extent applicable: (1) all Individual Settlement
15 Awards paid to Settlement Class Members and Named Plaintiff; (2) all PAGA Individual Payments
16 paid to PAGA Cohort Members and Named Plaintiff; and (3) the attorneys' fees award described in
17 Paragraph 72 below paid to Class Counsel. The Settlement Administrator shall issue such forms to
18 the respective Settlement Class Members, PAGA Cohort Members, Named Plaintiff, Class Counsel,
19 and applicable government authorities. The Parties agree to cooperate in the Settlement administration
20 process and to make all reasonable efforts to control and minimize the costs and expenses incurred in
21 administration of the Settlement.

22 **Class Counsel Fee and Expense Award.**

23 72. Class Counsel intend to request that the Court award attorneys' fees in an amount not
24 to exceed one third of the Total Settlement Amount, or One Hundred and Twenty-Four Thousand Nine
25 Hundred and Eighty-Seven Dollars and Fifty Cents (\$124,987.50) (33.33% of the Total Settlement
26 Amount), plus Class Counsel's actual reasonable litigation costs and expenses not to exceed \$30,000.
27 The amounts approved to be paid in fees and costs shall be for all claims for attorneys' fees and
28 expenses past, present and future incurred in the Action. Any reduction in the amount of fees or costs

1 approved by the Court will revert to the participating Settlement Class Members and will not result in
2 a nullification of the Settlement. This is not intended to be, and should not be construed as, a clear
3 sailing provision. Whatever amounts are approved by the Court, if any, shall be paid from and is
4 included in the Total Settlement Amount and shall not in any way increase the Total Settlement
5 Amount.

6 73. The Class Counsel Fee and Expense Award will be paid within ten (10) calendar days
7 from receipt of the Total Settlement Amount but in no event prior to the Effective Date. Payment of
8 the Fee and Expense Award to Class Counsel shall constitute full satisfaction of any obligation to pay
9 any amounts to any person, attorney or law firm for attorneys' fees, expenses or costs in the Action
10 incurred by any attorney on behalf of Plaintiff, the Settlement Class, or PAGA Cohort Member, and
11 shall relieve Defendants and Defendants' Counsel of any other claims or liability to any other attorney
12 or law firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be
13 entitled on behalf of Plaintiff, the Settlement Class, and/or the PAGA Cohort.

14 **Questions and Disputes.**

15 74. If a Class Member asks one of the Defendants any questions relating to the Settlement,
16 or if a Class Member inquires of Defendants for advice in opting out, Defendants shall instruct the
17 Class Member to contact Class Counsel or the Settlement Administrator for assistance.

18 75. In the event that questions or disputes arise regarding the Individual Workweeks
19 received by Plaintiff or any Class Member or PAGA Cohort Member under this Settlement
20 Agreement, Defendants shall provide to Class Counsel and the Settlement Administrator all available
21 information reasonably necessary in order to resolve that issue. Such information shall be provided in
22 either electronic form or hard copy, as the Settlement Administrator may reasonably request. The
23 Settlement Administrator, in conjunction with Defendants, shall be responsible for resolving any such
24 disputes regarding Individual Workweeks. The Settlement Administrator's determination of eligibility
25 for any Individual Settlement Awards and/or PAGA Individual Payments under the terms of this
26 Settlement Agreement shall be conclusive, final and binding on all Parties, all Settlement Class
27 Members, and all PAGA Cohort Members.

1 **Defendants' Legal Fees.**

2 76. All of Defendants' own legal fees, costs and expenses incurred in the Action shall be
3 borne by Defendants.

4 **Final Settlement Approval Hearing and Entry of Settlement Order and Judgment.**

5 77. Following the Exclusion Deadline, the Parties will ask the Court to conduct a Final
6 Approval Hearing to determine Final Approval of the Settlement. The Settlement Administrator shall
7 provide the Parties for submission to the Court, no later than forty (40) calendar days before the Final
8 Approval Hearing, a declaration confirming that the Settlement Notice and related forms were mailed
9 to all Class Members as required by this Settlement Agreement, the number of Requests for Exclusion
10 timely submitted, the number of and nature of any Objections received, as well as any additional
11 information Class Counsel deems appropriate to provide to the Court. Upon Final Approval of the
12 Settlement by the Court at or after such hearing, the Parties shall present the Settlement Order and
13 Judgment to the Court for its approval and entry. Within fourteen (14) business days of the Effective
14 Date, Defendants will deliver to the Settlement Administrator the Total Settlement Amount. The Final
15 Approval Hearing will be held no sooner than 90 days from the date of service of the CAFA Notice
16 addressed in Paragraph 60(a).

17 **Procedure for Payment of Individual Settlement Awards.**

18 78. After the Effective Date, and solely for purposes of this Settlement Agreement, the
19 Individual Settlement Awards shall be paid out of the QSF and distributed in accordance with the
20 following eligibility requirements:

- 21 a. Class Members who submit a valid and timely Request for Exclusion pursuant to
22 the Class Notice are not entitled to any Settlement Award and will not be bound by
23 this Settlement or any order or judgment entered by the Court approving this
24 Settlement except such Class Members who are PAGA Cohort Members will be
25 bound by the order approving settlement of the PAGA Claims.
- 26 b. Class Members who do not exclude themselves from the Class shall be deemed to
27 be Settlement Class Members, and shall receive a Settlement Award, and will be
28 bound by the terms of this Settlement.

1 79. Within ten (10) calendar days of receipt of the Total Settlement Amount, the Settlement
2 Administrator will issue payments as approved by the Court to: (i) Settlement Class Members as
3 detailed in Paragraphs 65-66 and 78 above; (iii) the California Labor and Workforce Development
4 Agency; (iv) PAGA Cohort Members; (iv) Plaintiff Class Representative; and (v) Class Counsel. The
5 Settlement Administrator will also issue a payment to itself for Court-approved administrative services
6 performed in connection with the Settlement.

7 80. As noted above, after the Effective Date, and solely for purposes of this Settlement
8 Agreement, each PAGA Cohort Member shall receive their PAGA Individual Payment to be paid out
9 of the QSF and each PAGA Cohort Member will have waived and relinquished all claims for civil
10 penalties under Labor Code sections 2698, *et seq.* with respect to the Released Claims. The provisions
11 of this paragraph also apply to the PAGA claims that are released by Class Members who opt-out of
12 the non-PAGA portions of the Settlement.

13 81. Any checks paid to Settlement Class Members and PAGA Cohort Member shall remain
14 valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance. Any
15 checks that remain uncashed after one hundred eighty (180) calendar days from the mailing will be
16 deemed null and void. Any uncashed/undistributed settlement funds after one hundred eighty (180)
17 calendar days from the mailing or remailing after the check shall be paid in equal parts to one or more
18 agreed upon *Cy Pres* recipients approved by the Court. The Parties propose University of California
19 Berkeley's Institute for Research on Labor and Employment and The Trevor Project, a nonprofit
20 focused on suicide prevention for LGBTQ youth.

21 82. Upon completion of administration of the Settlement, the Settlement Administrator
22 shall provide a written declaration under oath to certify such completion to the Court and counsel for
23 all Parties as ordered by the Court. Any failure by the Settlement Administrator to comply with this
24 requirement will not affect the settlement's validity.

25 83. No person shall have any claim against Defendants, Defendants' Counsel, Named
26 Plaintiff, the Settlement Class, Class Counsel, or the Settlement Administrator based on mailings,
27 distributions, and payments made in accordance with this Settlement Agreement.

1 **Nullification of Settlement Agreement.**

2 84. In the event of any of the following: (i) the Court does not enter any order specified
3 herein; (ii) the Court does not finally approve the Settlement as provided herein; (iii) the Court does
4 not enter the Settlement Order and Judgment as provided herein which becomes final as a result of the
5 occurrence of the Effective Date; or (iv) the Settlement does not become final for any other reason,
6 the Parties agree to engage in follow up negotiations with the intent of resolving the Court's concerns
7 that precluded approval, and if feasible, to resubmit the settlement for approval within thirty (30) days.
8 If the Settlement is not approved or resubmitted or if the Parties are not able to reach another
9 agreement, then either Party may demand that the Settlement Agreement be null and void *ab initio*
10 and that any order or judgment entered by the Court in furtherance of this Settlement shall be treated
11 as withdrawn or vacated by stipulation of the Parties. In such case, (i) the Parties shall be returned to
12 their respective statuses as of February 22, 2022, the day before all parties agreed in principle to the
13 Settlement, (ii) the Parties shall proceed in all respects as if this Settlement Agreement had not been
14 executed, and (iii) Defendants shall be responsible for any Administration Costs incurred to that point.
15 Changes to the procedures regarding the administration of this Settlement and changes to other non-
16 material, non-economic terms of the Agreement by the Court shall not be grounds to nullify the
17 Agreement. In the event an appeal is filed from the Final Approval Order and Judgment, or any other
18 writ or appellate review is sought prior to the Effective Date, administration of the Settlement shall be
19 stayed pending final resolution of the appeal, writ or other appellate review.

20 **Notification and Certification by Settlement Administrator.**

21 85. The Settlement Administrator shall keep the Parties' Counsel apprised of the status of
22 the claims administration process and its distributions of Individual Settlement Awards. The
23 Settlement Administrator shall provide the Parties' Counsel with a weekly report showing: (1) the
24 number of Class Notices mailed to Class Members; (2) the number of Class Notices returned as
25 undeliverable; (3) the number of re-mailed Class Notices; (4) the number of Class Members who have
26 submitted Requests for Exclusion; (5) the number of Class Members who have submitted objections;
27 and (6) the number of Class Members who have disputed the number of Individual Workweeks being
28 credited to that Class Member. Additionally, the Settlement Administrator shall provide to the Parties'

1 Counsel any updated reports regarding the administration of the Settlement as needed or requested.

2 **No Effect on Employee Benefits.**

3 86. Neither the Individual Settlement Awards or the PAGA Individual Payments paid to
4 Settlement Class Members and the Named Plaintiff shall be deemed not to be “pensionable” earnings
5 and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*,
6 vacation, sabbatical, holiday pay, retirement plans, etc.) of Settlement Class Members or Named
7 Plaintiff. The Parties agree that any Individual Settlement Awards and PAGA Individual Payments
8 paid to Settlement Class Members under the terms of this Settlement Agreement do not represent any
9 modification of Settlement Class Members’ previously credited hours of service or other eligibility
10 criteria under any employee pension benefit plan, employee welfare benefit plan, or any other plan or
11 program, sponsored by Defendants. Further, any Individual Settlement Awards or PAGA Individual
12 Payments paid hereunder shall not be considered “compensation” in any year for purposes of
13 determining eligibility for, or benefit accrual within, an employee pension benefit plan, employee
14 welfare benefit plan, or any other plan or program sponsored by Defendants.

15 **Lewis And Esposito Settlements**

16 87. As part of the consideration for this Agreement, Plaintiff agrees not to challenge the
17 class action settlements currently pending in *Alfreda Lewis v. Saks South Coast Leasehold, LLC; Saks*
18 *& Company, LLC*, Case No. 30-2020-01143164-CU-OE-CXC (Cal. Superior Ct., County of Orange)
19 and *Maxwell Esposito v. Saks & Company, LLC*, Case No. 20 SM-CV 01252 (Cal. Superior Ct.,
20 County of Los Angeles – Santa Monica).

21 **Privacy of Documents and Information.**

22 88. Plaintiff and Class Counsel agree that none of the documents, data and other
23 information provided to them by Defendants shall be used for any purpose other than prosecution of
24 this Action.

25 **Publicity.**

26 89. From and after the execution of this Settlement Agreement, Plaintiff and Class Counsel
27 agree not to publicize this Settlement in any way that identifies the Defendants and the Released Parties
28 and, except as required by law, agree to limit statements regarding the Action and the Settlement to

1 responding to questions and describing and explaining the terms of this Settlement Agreement to Class
2 Members. Class Counsel may respond to press/media inquiries by stating the matter has been resolved
3 and refer the press/media to court filings. In addition, the Parties and their counsel agree that they will
4 not engage in any advertising or distribute any marketing materials specifying any material terms
5 relating to the Settlement of this case in any way that identifies Defendants, including but not limited
6 to any postings on any websites maintained by Class Counsel. However, Class Counsel may cite to
7 any order or opinion of the court in this matter in any brief or other court pleadings and court papers
8 without violating the terms of this Settlement.

9 **Exhibit and Headings.**

10 90. The terms of this Settlement Agreement include the terms set forth herein and in the
11 attached **Exhibit A**, which are incorporated by reference as though fully set forth herein. Any exhibits
12 to this Settlement Agreement are an integral part of the Settlement. The descriptive headings of any
13 paragraphs or sections of this Settlement Agreement are inserted for convenience of reference only
14 and do not constitute a part of this Settlement.

15 **Interim Stay of Proceedings.**

16 91. The Parties agree to hold in abeyance all proceedings in this Action, except such
17 proceedings necessary to implement and complete the Settlement, pending the Final Approval Hearing
18 to be conducted by the Court.

19 **Amendment or Modification.**

20 92. This Settlement Agreement may be amended or modified only by a written instrument
21 signed by counsel for all Parties or their successors-in-interest.

22 **Entire Agreement.**

23 93. This Settlement Agreement and the attached exhibits constitute the entire agreement
24 among the Parties, and no oral or written representations, warranties or inducements have been made
25 to any Party concerning this Settlement Agreement or its exhibit other than the representations,
26 warranties and covenants contained and memorialized in such documents. All prior or
27 contemporaneous negotiations, agreements, understandings, and representations, whether written or
28 oral, are expressly superseded hereby and are of no further force and effect. Each of the Parties

acknowledges that it has not relied on any promise, representation or warranty, express or implied, not contained in this Settlement Agreement.

Authorization to Enter Into Settlement Agreement.

94. Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to enter into this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel agree to cooperate with each other and to 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 or actions that may become necessary to effectuate the terms of this Settlement, the Parties shall seek the assistance of the mediator to resolve such disagreement.

Binding on Successors and Assigns.

95. This Settlement Agreement shall be binding upon, and inure to the benefit of, the heirs, beneficiaries, successors or assigns of the Parties hereto, as previously defined. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on the Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

California Law Governs.

96. All substantive terms of this Settlement Agreement and the exhibit hereto shall be governed by and interpreted according to the laws of the State of California, regardless of its conflict of laws, except to the extent Federal Law applies.

Counterparts.

97. This Settlement Agreement may be executed in one or more counterparts, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. A fax, electronic signature (e.g., DocuSign), or PDF signature on this Agreement shall be as valid as an original signature.

1 **Cooperation and Drafting.**

2 98. Each of the Parties have cooperated in the drafting and preparation of this Settlement
3 Agreement; hence, the drafting of this Settlement Agreement shall not be construed against any of the
4 Parties.

5 **Jurisdiction of the Court.**

6 99. Any dispute regarding the interpretation or validity of, or otherwise arising out of, this
7 Settlement Agreement, or relating to the Action or the Released Claims, shall be subject to the
8 exclusive jurisdiction of the United States District Court, Northern District of California, and the
9 Named Plaintiff, Settlement Class Members, PAGA Cohort Members, and Defendants agree to submit
10 to the personal and exclusive jurisdiction of the Court. The Court shall retain jurisdiction solely with
11 respect to the interpretation, implementation and enforcement of the terms of this Settlement
12 Agreement and all orders and judgments entered in connection therewith, and the Parties and their
13 counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and
14 enforcing the Settlement embodied in this Settlement Agreement and all orders and judgments entered
15 in connection therewith.

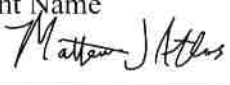
16 **Invalidity of Any Provision.**

17 100. The Parties request that before declaring any provision of this Settlement Agreement
18 invalid, the Court shall first attempt to construe all provisions valid to the fullest extent possible
19 consistent with applicable precedents.

20 **Plaintiff's Waiver of Right to be Excluded and Object.**

21 101. By signing this Settlement Agreement, Named Plaintiff agrees to be bound by the terms
22 herein and further agrees not to request to be excluded from the Settlement Class and agrees not to
23 object to any of the terms of this Settlement Agreement. Any such request for exclusion or objection
24 shall therefore be void and of no force or effect. Named Plaintiff will be issued his Individual
25 Settlement Award and any PAGA Individual Payment at the same time the Settlement Administrator
26 issues payments to all Settlement Class Members and PAGA Cohort Members.

Counsel For Plaintiff Shaquille Stewart Alexander And The Settlement Class/ PAGA Cohort	Counsel For Defendants Saks & Company LLC and Saks Incorporated
Eric Lechtzin EDELSON LECHTZIN LLP	Daniel Feder LAW OFFICES OF DANIEL FEDER
_____ Print Name	_____ Print Name
_____ Signature	_____ Signature
Dated: June ____, 2022	Dated: June ____, 2022
Plaintiff Shaquille Stewart Alexander	Laura E. Hayward LITTLER MENDELSON, P.C.
_____ Print Name	Laura E. Hayward _____ Print Name
_____ Signature	 _____ Signature
Dated: June ____, 2022	Dated: June __1, 2022
Defendant Saks & Company. LLC	Defendant Saks Incorporated
Matthew J. Atlas _____ Print Name	Matthew J. Atlas _____ Print Name
 _____ Signature	 _____ Signature
Dated: June __1, 2022	Dated: June __1, 2022

Counsel For Plaintiff Shaquille Stewart Alexander And The Settlement Class/ PAGA Cohort	Counsel For Defendants Saks & Company LLC and Saks Incorporated
Eric Lechtzin EDELSON LECHTZIN LLP	Daniel Feder LAW OFFICES OF DANIEL FEDER
Print Name	Print Name
	
Signature	Signature
Dated: June <u>1</u> , 2022	Dated: June __, 2022
Plaintiff Shaquille Stewart Alexander	Laura E. Hayward LITTLER MENDELSON, P.C.
Print Name	Laura E. Hayward Print Name
	
Signature	Signature
Dated: June __, 2022	Dated: June <u>1</u> , 2022
Defendant Saks & Company. LLC	Defendant Saks Incorporated
Matthew J. Atlas	Matthew J. Atlas
Print Name	Print Name
	
Signature	Signature
Dated: June <u>1</u> , 2022	Dated: June <u>1</u> , 2022

Counsel For Plaintiff Shaquille Stewart Alexander And The Settlement Class/ PAGA Cohort	Counsel For Defendants Saks & Company LLC and Saks Incorporated
Eric Lechtzin EDELSON LECHTZIN LLP	Daniel Feder LAW OFFICES OF DANIEL FEDER
Print Name	<u>DANIEL FEDER</u> Print Name
Signature	<u>Daniel J. Feder</u> Signature
Dated: June ____, 2022	Dated: <u>May 31</u> June ____, 2022
Plaintiff Shaquille Stewart Alexander	Laura E. Hayward LITTLER MENDELSON, P.C.
Print Name	Print Name
Signature	Signature
Dated: June ____, 2022	Dated: June ____, 2022
Defendant Saks & Company. LLC	Defendant Saks Incorporated
Print Name	Print Name
Signature	Signature
Dated: June ____, 2022	Dated: June ____, 2022

Counsel For Plaintiff Shaquille Stewart Alexander And The Settlement Class/ PAGA Cohort	Counsel For Defendants Saks & Company LLC and Saks Incorporated
Eric Lechtzin EDELSON LECHTZIN LLP	Daniel Feder LAW OFFICES OF DANIEL FEDER
Print Name	Print Name
Signature	Signature
Dated: June ____, 2022	Dated: June ____, 2022
Plaintiff Shaquille Stewart Alexander	Laura E. Hayward LITTLER MENDELSON, P.C.
Shaquille Stewart-Alexander	Laura E. Hayward
Print Name	Print Name
 Shaquille Stewart (Jun 1, 2022 17:18 PDT)	
Signature	Signature
Dated: June __1__, 2022	Dated: June __1__, 2022
Defendant Saks & Company. LLC	Defendant Saks Incorporated
Print Name	Print Name
Signature	Signature
Dated: June ____, 2022	Dated: June ____, 2022

Alexander v. Saks_Settlement Agreement Final 4866-6491-6515 1

Final Audit Report

2022-06-02

Created:	2022-06-02
By:	claire bascara (claire@dfederlaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAaBeYgzVb58RiGHeFPYAPcaceLUjRlyPT

"Alexander v. Saks_Settlement Agreement Final 4866-6491-6515 1" History

-  Document created by claire bascara (claire@dfederlaw.com)
2022-06-02 - 0:00:09 AM GMT- IP address: 108.85.109.15
-  Document emailed to Shaquille Stewart (kalikockainebookings@gmail.com) for signature
2022-06-02 - 0:00:52 AM GMT
-  Email viewed by Shaquille Stewart (kalikockainebookings@gmail.com)
2022-06-02 - 0:17:41 AM GMT- IP address: 66.249.84.93
-  Document e-signed by Shaquille Stewart (kalikockainebookings@gmail.com)
Signature Date: 2022-06-02 - 0:18:11 AM GMT - Time Source: server- IP address: 104.28.111.171
-  Agreement completed.
2022-06-02 - 0:18:11 AM GMT

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Shaquille Stewart Alexander v. Saks & Company, LLC and Saks Incorporated
United States District Court for the Northern District of California
Case No. 3:21-cv-02384VC

PLEASE READ THIS ENTIRE NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHTS TO A MONETARY SETTLEMENT RELATED TO YOUR EMPLOYMENT WITH SAKS & COMPANY, LLC DURING THE PERIOD FROM APRIL 1, 2017 TO [DATE OF PRELIMINARY APPROVAL] (THE "CLASS PERIOD"). THIS IS A COURT-ORDERED NOTICE AND NOT A SOLICITATION FROM A LAWYER. YOU ARE NOT BEING SUED. YOUR RIGHTS AND OPTIONS AND THE DEADLINES TO EXERCISE THEM ARE EXPLAINED IN THIS NOTICE.

IF YOU WORKED FOR SAKS & COMPANY, LLC AS A NON-EXEMPT EMPLOYEE IN A SAKS FIFTH AVENUE RETAIL STORE IN CALIFORNIA, THEN YOU ARE RECEIVING THIS NOTICE BECAUSE YOU ARE ELIGIBLE FOR A PAYMENT FROM A CLASS ACTION SETTLEMENT.

DEFENDANTS' RECORDS SHOW THAT YOU WERE EMPLOYED FOR A TOTAL OF [TOTAL WEEKS] WEEKS DURING THE CLASS PERIOD.

BASED UPON THIS, YOUR PAYMENT UNDER THIS SETTLEMENT IS ESTIMATED TO BE \$[DOLLAR AMOUNT], PRIOR TO ANY APPLICABLE TAXES OR DEDUCTIONS. THIS AMOUNT IS ONLY AN ESTIMATE AND THE FINAL AMOUNT MAY CHANGE BASED ON THE COURT'S FINAL APPROVAL OF THE SETTLEMENT.

IN ADDITION YOU [ARE/ ARE NOT] ELIGIBLE FOR A PAGA INDIVIDUAL PAYMENT. YOUR ESTIMATED PAGA INDIVIDUAL PAYMENT IS \$[DOLLAR AMOUNT].

YOUR LEGAL RIGHTS AND OPTIONS IN THIS PROPOSED SETTLEMENT	
CLASS MEMBERS WHO DO NOTHING	You will receive a payment from the Settlement. No action is required for you to receive a share of the Settlement.
EXCLUDE YOURSELF	You may submit a timely and valid Request for Exclusion and receive no benefits from the Settlement. This is the only option that allows you to start or continue your own lawsuit against Defendants for any of the claims at issue in the Settlement. You must submit your Request for Exclusion by fax or mail to exclude yourself. Your Request for Exclusion must be faxed or postmarked by Month XX, 2022.

QUESTIONS? CALL 1-8**-***-**** OR VISIT WWW._____.COM

OBJECT	As a member of the Class, you may write to the Court about why you do not like the Settlement. You must submit or file your objection by Month XX, 2022 . You may not, however, exclude yourself from the settlement and also object.
GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement at a hearing scheduled for Month XX, 2022 .

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QUESTIONS? CALL 1-8**_***_**** OR VISIT WWW._____.COM

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BASIC INFORMATION

1. WHY IS THERE A NOTICE?

A Court authorized this notice because you have a right to know about the proposed Settlement of a putative class and representative action lawsuit known as *Alexander v. Saks & Company, LLC and Saks Incorporated*, Case No. 3:21-cv-02384 VC, and about all of your options before the Court decides whether to approve the Settlement.

This notice explains the lawsuit, the Settlement, your legal rights, what benefits are provided by the Settlement, who is eligible for them, and how to get them. If the Court approves the Settlement and after any objections and appeals are resolved, then the payments agreed to in the Settlement will be made.

Judge Vince Chhabria of the United States District Court for the Northern District of California is overseeing this case. The person who sued is called the “Plaintiff.” Saks & Company, LLC and Saks Incorporated are the “Defendants.”

2. WHAT IS THIS LAWSUIT ABOUT?

The lawsuit alleges that Defendants Saks & Company, LLC and Saks Incorporated. (“Defendants”): (1) failed to pay minimum wages for any compensable time expended before clocking in and after clocking out, including to undergo security checks and COVID screening and to attend certain meetings; (2) failed to fully pay overtime wages for the same allegedly compensable work; (3) failed to timely pay employee’s wages upon separation from employment; (4) failed to provide accurate itemized wage statements; (5) violated the California Unfair Competition Law; and (6) violated the California Private Attorneys General Act (“PAGA”).

Defendants vigorously deny and continue to dispute all of the claims and contentions alleged in the lawsuit, and deny any and all allegations of wrongdoing, fault, liability, or damage of any kind. Defendants further deny that they acted improperly or wrongfully in any way and believe that the lawsuit has no merit. Defendants also contend that, absent a settlement, class certification should be denied.

A copy of the lawsuit (the Plaintiff’s First Amended Complaint and Second Amended Class And Representative Action Complaint), the Settlement Agreement, and other case-related documents are posted on the Settlement Website, www.■■■■■■.com. The Settlement, if approved, resolves

QUESTIONS? CALL 1-8■■■■■■■■■■ OR VISIT WWW.■■■■■■.COM

the lawsuit. The Court has not decided whether Plaintiff's allegations or Defendants' defenses have any merit.

3. WHY IS THIS A CLASS ACTION?

In a class and representative action, a person called a "Class Representative" (in this case, Plaintiff Shaquille Stewart Alexander) sues on behalf of him or herself and other people with similar claims. Together, all the people with similar claims (except those who exclude themselves) are members of a "Class." One court resolves the issues for everyone in the Class—except for those people who choose to exclude themselves from the Class. Please see response to Question 5 (below) to determine whether you are part of the Class.

4. WHY IS THERE A SETTLEMENT?

The Court has not decided in favor of the Plaintiff and those similarly situated (the current or former non-exempt Saks Fifth Avenue retail store employees who worked in California during the from April 1, 2017 through [date of preliminary court approval of this Class and PAGA Settlement Agreement], 2022) or in favor of Defendants (Saks). Instead, both sides have agreed to the Settlement based on their belief that the Settlement is a fair, reasonable, and adequate compromise. The parties reached this agreement following a year of litigation before the trial court. The Settlement was reached only after lengthy negotiations and independent consideration of the risks of litigation and benefits of settlement through formal mediation with an experienced mediator. By agreeing to the Settlement, the parties avoid the costs and uncertainty of a trial, and if the Settlement is approved by the Court, Settlement Class Members will receive the benefits described in this notice. The proposed Settlement does not mean that any law was broken or that the Defendants did anything wrong. Defendants deny all legal claims in this case. Plaintiff and his lawyers think the proposed Settlement is best for everyone who is affected.

WHO IS PART OF THE SETTLEMENT?

If you are a Settlement Class Member you will be eligible to receive a payment under the Settlement.

5. WHO IS INCLUDED IN THE SETTLEMENT?

You are part of the Settlement Class if: you are a current or former non-exempt employee who worked for Saks & Company, LLC (the "Company"), at a Saks Fifth Avenue retail store in California anytime from April 1, 2017 through [date of preliminary court approval of this Class and PAGA Settlement Agreement], 2022. If you are a member of, and did not opt out of, the settlement classes -- as approved by the court(s) in *Alfreda Lewis v. Saks South Coast Leasehold, LLC*; *Saks & Company, LLC*, Case No. 30-2020-01143164-CU-OE-CXC (Cal. Superior Court, County of Orange), and *Maxwell Esposito v. Saks & Company, LLC*, Case No. 20SMCV01252 (Cal. Superior Court, County of Los Angeles – Santa Monica), you are NOT a member of this

QUESTIONS? CALL 1-8**_***_**** OR VISIT WWW._____.COM

Settlement Class unless you also worked for the Company at a Saks Fifth Avenue retail store in California during the Class Period in a role other than Sales Associate (SAL 102 or 104) and Brand Ambassador (SST100), in which case you may participate in both settlements.

6. WHAT IF I AM NOT SURE WHETHER I AM INCLUDED IN THE SETTLEMENT?

If you are not sure whether you are in the Settlement Class or if you have any other questions about the Settlement, visit the Settlement Website at www.████████.com or call the toll-free number, 1-8**-***-****. You also may send questions to the Settlement Administrator at Alexander Class Action Settlement, **PO Box ██████, City, State Zip**. Please do not address any questions about the Settlement to Defendants, the Clerk of the Court, or the Judge.

THE SETTLEMENT BENEFITS

7. WHAT DOES THE SETTLEMENT PROVIDE?

The Defendants have agreed to pay a Total Settlement Amount of \$375,000 which will cover: (1) payments to Settlement Class Members (called “Individual Settlement Awards”), (2) any Class/PAGA Representative Enhancement Payment to Plaintiff that is approved by the Court; (3) any Attorneys’ Fees and Costs to Class Counsel that are approved by the Court; (4) PAGA Individual Payments to PAGA Cohort Members for their share of civil penalties, (see Question 9, below); (5) payment of PAGA penalties to the California Labor and Workforce Development Agency; and (6) any Settlement Administration Costs for the settlement administration. The portion of the Total Settlement Amount available to pay Individual Settlement Awards after subtracting items (2)-(6) listed above is referred to as the Net Settlement Amount.

HOW YOU WILL RECEIVE PAYMENT

8. HOW WILL I RECEIVE PAYMENT?

If the Settlement is approved by the Court and you are a Settlement Class Member who does not exclude yourself from the Settlement, (see Question 12, below), you will receive your Individual Settlement Award by check in the mail (see Question 9, below, for information on how your Individual Settlement Award is calculated).

9. HOW MUCH WILL MY PAYMENT BE AND WHEN WILL I RECEIVE IT?

If you are a Settlement Class Member who does nothing, you will receive a monetary payment after this Settlement receives final court approval and the settlement becomes effective. The amount that you will receive as payment under the Settlement is called your “Individual Settlement Award.” The Net Settlement Amount will be divided pro rata based on the total number of workweeks each Settlement Class Member was on payroll during the relevant time period. The

QUESTIONS? CALL 1-8**-***-**** OR VISIT WWW.████████.COM

number of workweeks and your estimated amount of your payment is stated above. If you dispute the number of workweeks you may dispute the data (see Question 10, below).

In addition, if you are a PAGA Cohort Member (a current or former non-exempt employee who worked for Saks & Company, LLC at a Saks Fifth Avenue retail store in California anytime from April 1, 2020 through [date of preliminary court approval of this Class and PAGA Settlement Agreement], 2022) you will also receive a PAGA Individual Payment. The PAGA Individual Payment will be based on the number of workweeks on the payroll during the relevant PAGA time period. You do not need to take any action to receive this payment and cannot exclude yourself from receiving the PAGA Individual Payment.

Settlement Class Members who do not request to exclude themselves from the Settlement will receive their Individual Settlement Award and any PAGA Individual Payment only after the Court grants final approval to the Settlement and after any appeals are resolved (see “The Court’s Final Approval/Settlement Fairness Hearing,” below). If there are appeals, resolving them can take time. It is estimated that these payments will be made within six months if there are no appeals. You will have 180 days from issuance to cash any checks you receive.

10. WHAT IF I DISAGREE WITH THE WORKWEEK DATA ON MY NOTICE?

You have the opportunity to dispute the data set forth on the first page of this Notice, including the number of workweeks used to calculate your settlement payment, if you believe the data is incorrect. To dispute the data on this Notice, you must send a letter, signed under penalty of perjury, to the Settlement Administrator at Alexander Class Action Settlement, **PO Box _____, City, State Zip**, disputing the data on this Notice and providing any supporting documentation you have. To be valid, the dispute must be submitted (postmarked) by no later than **[INSERT DISPUTE DATE]**. The Settlement Administrator will use Defendant’s records and the information you provide to resolve any disputes about the data appearing on this Notice. The Settlement Administrator’s determination will be final and binding.

11. WHAT AM I GIVING UP TO GET A PAYMENT AND STAY IN THE CLASS?

If the Court approves the proposed Settlement, the Settlement Agreement will bind all Class Members who have not excluded themselves from the Settlement and will bar them from bringing the Released Claims against the Released Parties from April 1, 2017 through [date of preliminary court approval of this Class and PAGA Settlement Agreement], 2022 (the “Class Period”).

any and all claims arising during the Class Period for wages, statutory and civil penalties, damages and liquidated damages, interest, fees and costs, and all other forms of legal or equitable relief based on federal, state or local law, whether known or unknown, that were alleged or could have been alleged based upon the factual allegations in the Action, including but not limited to all claims asserted in the initial complaint, the First Amended Complaint, the

QUESTIONS? CALL 1-8**_***_**** OR VISIT WWW._____.COM

Second Amended Complaint, and the PAGA Notice: claims for failure to pay for all time worked, including minimum wage and overtime, failure to timely pay employee's wages upon separation from employment; failure to provide accurate itemized wage statements, recordkeeping violations, and violation of the California Unfair Competition Law. This includes, but is not limited to, claims under California Labor Code sections 201-204, 210, 218, 226, 510, 558, 1174, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, the applicable California wage orders, California Bus. & Prof. Code sections 17200 *et seq.*, and the federal Fair Labor Standards Act, 29 U.S.C. sections 201 *et seq.*, and any associated claim for interest, attorney's fees or costs.

"Released Parties" means Defendants, as well as their respective former and present parents, including but not limited to HBC, LP, subsidiaries, divisions, and affiliated corporations and entities and each of their respective former and present officers, directors, employees, partners, shareholders and agents, and any other predecessors in interest, successors, assigns or legal representatives, attorneys, insurers, and reinsurers.

FLSA Opt-In: Specifically, as to the release of claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, by cashing any settlement check, Class Members thereby opt into the Settlement and expressly release their claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*

Additionally, after the Effective Date, Plaintiff, on behalf of himself, the State of California, and all PAGA Cohort Members, will have released the Released Parties from all claims for civil penalties under Labor Code sections 2698, *et seq.* from April 1, 2020 through [date of preliminary court approval of this Class and PAGA Settlement Agreement], 2022 (the "PAGA Period") with respect to the Released Claims. No PAGA Cohort Member may opt out of this release.

The Settlement Agreement is available at www.██████████.com. The Settlement Agreement provides more detail regarding the release and describes the Released Claims and Released Parties with specific descriptions in necessary, accurate legal terminology, so read it carefully. You can talk to the law firms representing the Settlement Class listed in Question 15, below, for free, or you can, at your own expense, talk to your own lawyer if you have any questions about the released claims or what they mean.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to receive any benefits from the Settlement, and you want to keep any right you might have to sue the Defendants for the claims that are being released in this Settlement, then you must take steps to get out of the Settlement. This is called excluding yourself – or is sometimes

referred to as “opting out” of the Class. Note However, if you are a PAGA Cohort Member you cannot be excluded from the PAGA Settlement. Even if you submit a valid Request for Exclusion, you will still release all PAGA claims within the Released Claims.

12. HOW DO I OPT OUT OF THE SETTLEMENT?

To exclude yourself from (or “opt out” of) the Settlement, you send a signed letter by email, fax, or U.S. mail to the Settlement Administrator including:

- a) your full name;
- b) address;
- c) telephone number;
- d) last four digits of your Social Security number;
- e) a clear statement communicating that you want to be excluded from the Settlement Class, do not want to be a Settlement Class Member, and want to be excluded from any judgment entered pursuant to the Settlement; and
- f) the case name and case number (*Alexander v. Saks & Company, LLC et al.*, Case No. 3:21-cv-02384VC).

You must email or fax your Request for Exclusion by **Month XX, 2022 at 11:59 p.m. PST** or mail your exclusion request postmarked no later than **Month XX, 2022** to:

Alexander Class Action Settlement

P.O. Box ****

City, State Zip

Fax: XXX-XXX-XXXX

Email: @.com

If you send an opt-out by U.S. Mail, the date of the postmark on the return-mailing envelope will be the exclusive means used to determine whether a request for exclusion has been timely submitted.

You cannot ask to be excluded on the phone. You must use one of the methods identified above.

If you exclude yourself from or “opt-out” of the Settlement, you will not receive payment of your Individual Settlement Award, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Defendants in the future. Members of the Settlement Class who fail to submit a valid and timely request for exclusion on or before **Month XX, 2022** will be bound by all terms of this Settlement Agreement and the Final Approval Order and Judgment, regardless of whether they have requested exclusion from the Settlement.

If you are a member of the Settlement Class, you can submit a Request for Exclusion from the Settlement. However, if you are a PAGA Cohort Member you cannot be excluded from the PAGA Settlement. Even if you submit a valid Request for Exclusion, you will still release all PAGA claims within the Released Claims.

QUESTIONS? CALL 1-8**-***-**** OR VISIT WWW. .COM

13. IF I DON'T EXCLUDE MYSELF, CAN I SUE THE DEFENDANTS FOR CLAIMS ALLEGED IN THE Lawsuit?

No. Unless you exclude yourself, you give up the right to sue Defendants for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from the Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is **Month XX, 2022**.

14. IF I EXCLUDE MYSELF, CAN I STILL GET A PAYMENT?

No. If you exclude yourself, you will not receive payment of your Individual Settlement Award. You may sue, continue to sue, or be part of a different lawsuit against Defendants for the claims that this Settlement resolves. However, if you are a PAGA Cohort Member, as you cannot be excluded from the PAGA Settlement, even if you exclude yourself you will still receive your PAGA Settlement Payment and release all PAGA claims within the Released Claims.

THE LAWYERS REPRESENTING YOU IN THE CASE

15. DO I HAVE A LAWYER IN THE CASE?

The Court has appointed the following lawyers as “Class Counsel” to represent all members of the Settlement Class in the case:

Daniel Feder, Bar No. 130867
daniel@dfederlaw.com
Law Offices of Daniel Feder
235 Montgomery Street Suite 1019
San Francisco, CA 94104
Telephone: (415) 391-9476

Eric Lechtzin, Bar No. 248958
elechtzin@edelson-law.com
EDELSON LECHTZIN LLP
411 S. State Street, Suite N-300
Newtown, PA 18940
Telephone: (215) 867-2399

You will not separately be charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

16. HOW WILL THE LAWYERS BE PAID?

Class Counsel have actively litigated this case since 2021 without being paid anything to date. Pursuant to applicable law, the Court may award reasonable attorneys’ fees to Class Counsel as well as reimbursement for costs and expenses Class Counsel have expended in their work. Class

QUESTIONS? CALL 1-8_***_**** OR VISIT WWW.***.COM**

Counsel intends to request up to 33.33% percent of the Total Settlement Amount (or \$124,987.50) for reasonable attorneys' fees, plus reimbursement of reasonable, actual out-of-pocket expenses up to \$30,000 incurred in the litigation. The fees and expenses awarded by the Court will be paid out of the Total Settlement Amount. The Court will decide the actual amount of fees and expenses that will be awarded.

Plaintiff has also assumed risk and expended time and effort prosecuting this case. Class Counsel will request that a Class/PAGA Representative Enhancement Payment of up to \$5,000 to Plaintiff be paid from the Total Settlement Amount as compensation for the work he has done and risks he has assumed on behalf of the Class. The Court will decide the actual amount of any Class/PAGA Representative Enhancement Payment that will be awarded.

OBJECTING TO THE SETTLEMENT

17. HOW DO I TELL THE COURT IF I DO NOT LIKE THE SETTLEMENT?

If you are a Settlement Class Member, you can object to the Settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. If the Court denies approval, no settlement payments will be sent out, and the lawsuit will continue.

You may object to the proposed Settlement in writing by filing with the Court a written statement objecting to the Settlement and setting forth the grounds for the objection. If you submit a written objection, you may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney.

All written objections and supporting papers must be filed with the Court (United States District Court, Northern District of California) in this case (*Alexander v. Saks & Company, LLC and Saks Incorporated*, Case No. 3:21-cv-02384 VC); and served on all counsel of record on or before **Month XX, 2022**. **Your objections must** (i) contain your full name, signature, address, and telephone number; (ii) state all grounds for the objection accompanied by any legal support for such objection; and (iii) contain copies of any papers, briefs, or other documents upon which the objection is based, if any documents are a basis of the objection.

If your objections do not meet all of the requirements set forth in this section, they will be deemed invalid.

18. WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND ASKING TO BE EXCLUDED?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object to the Settlement because it no longer affects you.

THE COURT’S FINAL APPROVAL/SETTLEMENT FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement and any requests for fees and expenses (“Final Approval Hearing”).

19. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court has scheduled a Final Approval Hearing for **Month XX, 2022 at _ : _ .m.**, at the United States District Court for the Northern District of California at the United States Courthouse, 450 Golden Gate Avenue, Courtroom 4 (17th Floor), San Francisco, CA 94102. The hearing may be moved to a different date or time without additional notice, or conditions related to the COVID-19 pandemic might require that the hearing be held remotely, so it is a good idea to check **www. .com** and /or the Court’s PACER system at <https://ecf.cand.uscourts.gov> for updates.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider the requests by Class Counsel for reasonable attorneys’ fees and expenses and for Class/PAGA Representative Enhancement Payment. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the Settlement. It is unknown how long these decisions will take.

20. DO I HAVE TO ATTEND THE HEARING?

No. Class Counsel will answer any questions the Court may have. But you are welcome to attend the hearing at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you file your written objection on time with the Court, and it complies with the other requirements set forth above, the Court will consider it. You also may pay your own lawyer to attend the hearing, but it is not necessary.

IF YOU DO NOTHING

21. WHAT HAPPENS IF I DO NOTHING AT ALL?

If you are a Settlement Class Member, you will automatically receive your Individual Settlement Award and you will be bound by the judgment entered by the Court. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit or proceeding against the Defendants regarding the claims for violation of the wage and hour laws this Settlement resolves.

GETTING MORE INFORMATION

22. HOW DO I GET MORE INFORMATION?

QUESTIONS? CALL 1-8**-***-**** OR VISIT WWW. .COM

This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at [www. \[REDACTED\].com](http://www. [REDACTED].com). You may also contact Class Counsel (see Question 15) or access the Court docket in this case through the Court's PACER system at <https://ecf.cand.uscourts.gov>. You may also write with questions to the Settlement Administrator at Alexander Class Action Settlement, **PO Box ****, City, State Zip**, or call the toll-free number, **1-8**-***-*****, or e-mail [\[REDACTED\]@ \[REDACTED\].settlement.com](mailto:[REDACTED]@ [REDACTED].settlement.com).

Please do not contact Defendants, the Court, or the Court Clerk's Office to inquire about this Settlement.

EXHIBIT B

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Attorneys for Plaintiff,
SHAQUILLE STEWART ALEXANDER
and all others similarly situated

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHAQUILLE STEWART ALEXANDER,
on behalf of himself and all others similarly
situated

Plaintiffs,

v.

SAKS & COMPANY LLC; SAKS
INCORPORATED

Defendants.

Case No. 4:21-cv-02384 VC

**SECOND AMENDED COLLECTIVE AND
CLASS ACTION COMPLAINT**

1. Failure to Pay All Wages;
2. Failure to Provide Wages Upon Separation of Employment;
3. Willful Failure to Provide Accurate Wage Statements and Maintain Accurate Pay Records;
4. Unfair Business Practices in Violation of Cal. Business and Professions Code, 17200, *et seq.*;
5. Failure to Pay Overtime (Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*)
6. Penalties Pursuant to § 2699(a) of the Private Attorneys General Act
7. Penalties Pursuant to § 2699(f) of the Private Attorneys General Act

DEMAND FOR JURY TRIAL

1 Plaintiff SHAQUILLE STEWART ALEXANDER (“Plaintiff”), on behalf of himself and
2 all other similarly situated persons, by and through his undersigned counsel, allege upon personal
3 knowledge as to himself and upon information and belief as to other matters, as follows:

4 **INTRODUCTION**

5 1. Plaintiff brings this class and collective action on behalf of himself and other
6 similarly situated individuals who have worked for Saks & Company LLC and Saks Incorporated,
7 (collectively, “Saks” or “Defendants”) as non-exempt hourly employees, including but not limited
8 to Sales Associates, to challenge Defendants’ violations of the Fair Labor Standards Act of 1938,
9 29 U.S.C. §§ 201, *et seq.* (“FLSA”); applicable California Labor Code provisions; applicable
10 Industrial Welfare Commission (“IWC”) Wage Orders; the Unfair Business Practices Act,
11 California Business and Professions Code §§ 17200, *et seq.* (“UCL”); and §§ 2699(a) and (f) of the
12 Private Attorneys General Act (“PAGA”).

13 2. This is a collective and class action complaint against Saks to challenge their
14 policies and practices of denying proper payment of all wages (including regular, and overtime
15 wages). Plaintiff challenges Defendants’ policies and practices of: (1) failing to compensate
16 Plaintiff and putative Class and Collective members for all hours worked; (2) failing to pay
17 Plaintiff and putative Class and Collective members overtime wages; (3) failing to provide
18 Plaintiff and putative Class members accurate itemized wage statements; and (4) failing to timely
19 pay Plaintiff and putative Class members wages upon termination of employment.

20 3. Saks has implemented an illegal policy requiring its non-exempt workers to work
21 without proper compensation. Specifically, Plaintiff and putative Class and Collective Members
22 are not compensated for off-the-clock work, including time spent working before they are allowed
23 to clock in at the beginning of their workday and/or time spent working after they are allowed to
24 clock out at the end of their workday.

25 4. Plaintiff and other employees experience a number of derivative issues from Sak’s
26 wage and hour practices, including but not limited to receiving incorrect wage statements, and not
27 receiving all pay owing to them at the end of their employment. Wage statements do not accurately
28 reflect the actual hours worked, rate of compensation, or gross wages. Compensation for off-the-

1 clock work, and overtime, remains outstanding after termination.

2 5. By failing to pay for time worked, Defendants have violated California law because
3 Defendants failed to pay for all hours worked by their employees, failed to pay overtime wages,
4 and failed to provide itemized wage statements as required by the California Labor Code and IWC.

5 6. Plaintiff brings this lawsuit as a Rule 23 Class Action to recover unpaid wages,
6 overtime compensation, penalties, interest, injunctive relief, damages and reasonable attorneys'
7 fees and costs under, among other statutes, Cal. Lab. Code §§ 203, 226(e), 1194, and 1194.2, UCL,
8 Cal Bus. & Prof Code §§ 17200 *et seq.*

9 7. Defendants' conduct also violates the FLSA, which requires non-exempt employees
10 to be compensated for all hours worked in excess of forty (40) in a workweek at one and one-half
11 (1.5) times their regular rate of pay. 29 U.S.C. § 207(a). On behalf of himself and all others
12 similarly situated employees, Plaintiff brings this action as a collective action under the FLSA, 29
13 U.S.C. § 216(b).

14 8. Plaintiff also seeks penalties under the Labor Code Private Attorneys General Act
15 of 2004 ("PAGA").

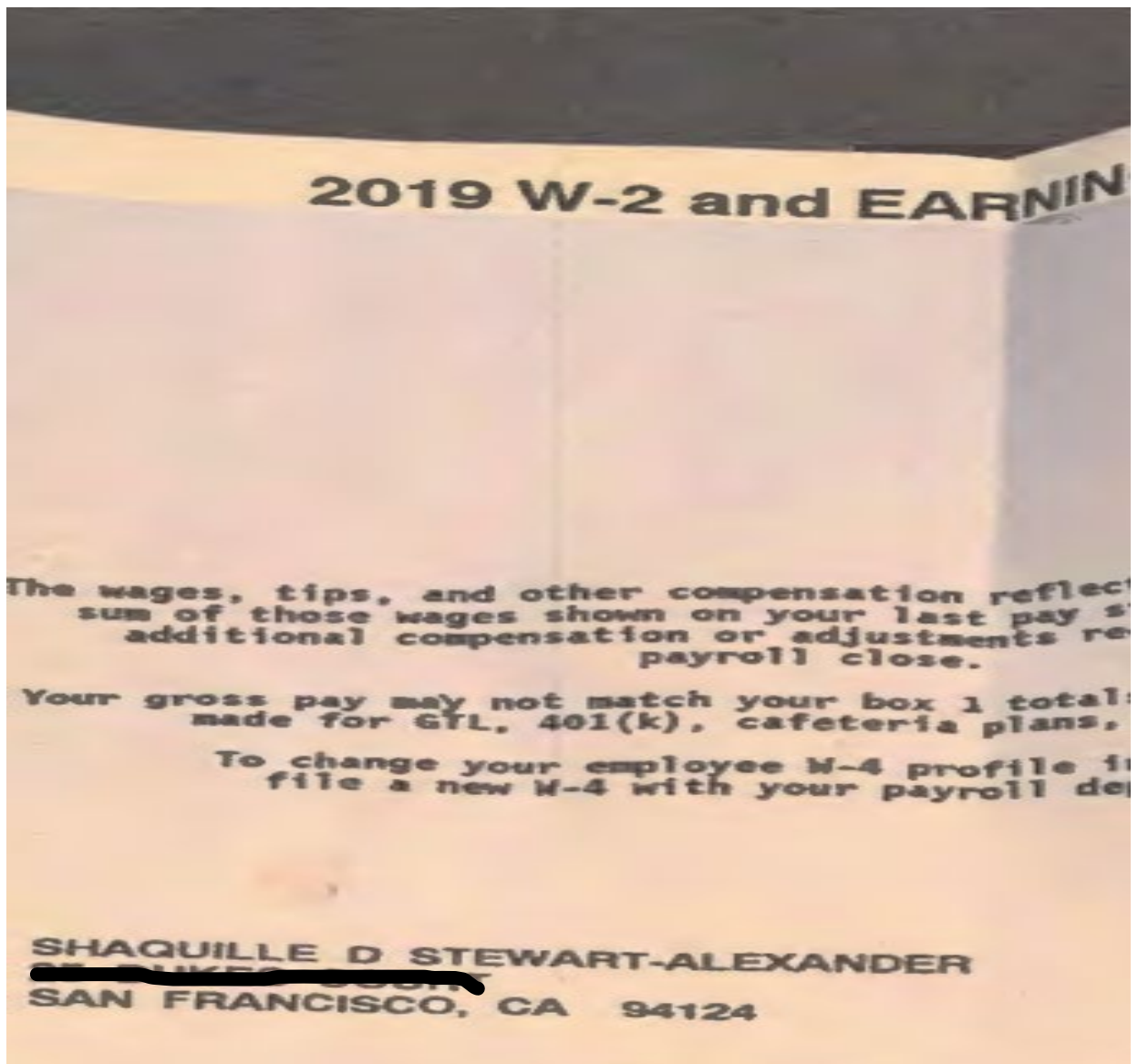
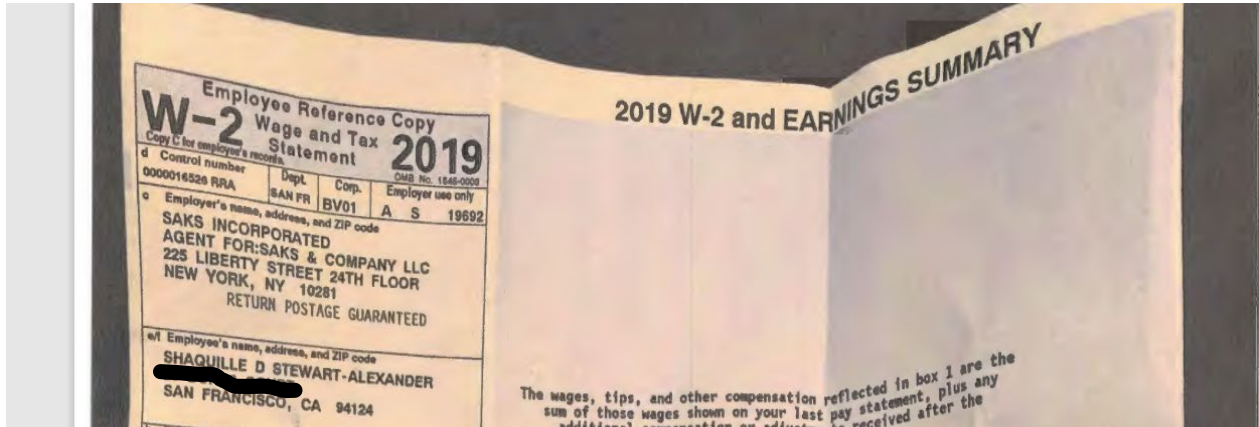
16 **JURISDICTION AND VENUE**

17 9. This Court has jurisdiction over the subject matter of this action pursuant to 28
18 U.S.C. § 1331 because the action involves a federal statute, the FLSA, 29 U.S.C §§ 201, *et seq.*
19 The Court has supplemental jurisdiction over the California state law wage and hour claims under
20 28 U.S.C. § 1367 because those claims derive from a common nucleus of operative fact.

21 10. Personal jurisdiction is proper before this Court because Defendants have
22 purposefully availed themselves of the privileges of conducting activities in the State of California
23 and established minimum contacts sufficient to confer jurisdiction. Upon information and belief,
24 Defendant Saks Inc.'s website is used to generate revenue and profits from California residents, and
25 to solicit potential employees to apply for jobs in its California stores. By undertaking these
26 intentional acts of soliciting employees in California, Saks Inc. has purposefully directed actions
27 toward this State, leading to the wage and hour violations which are the subject of this lawsuit.

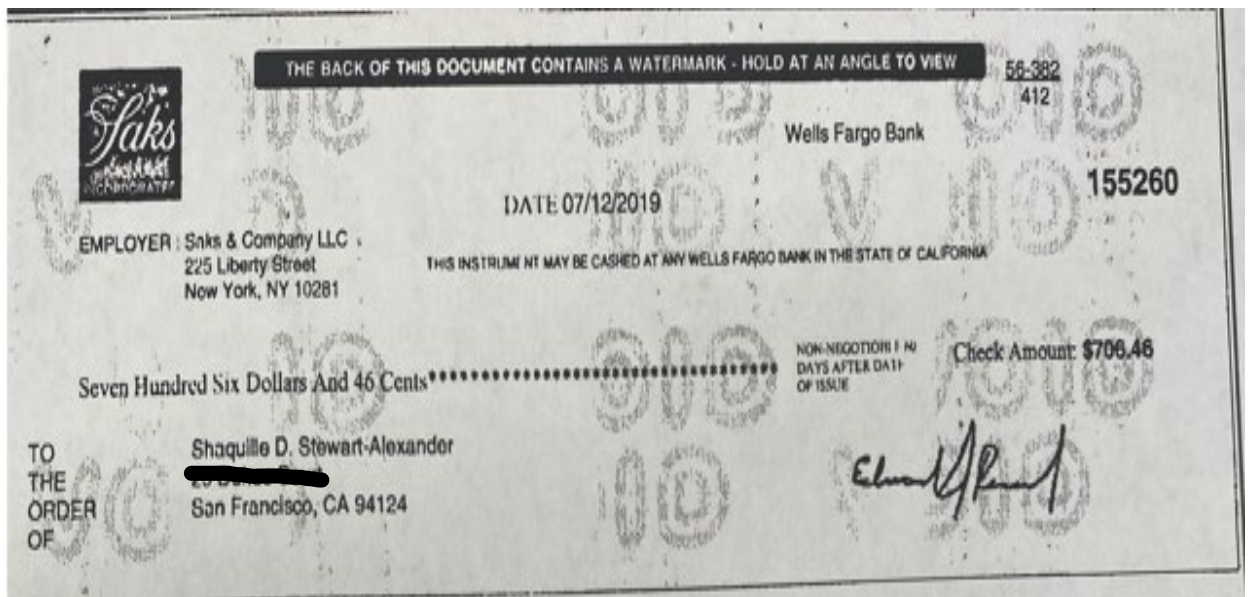
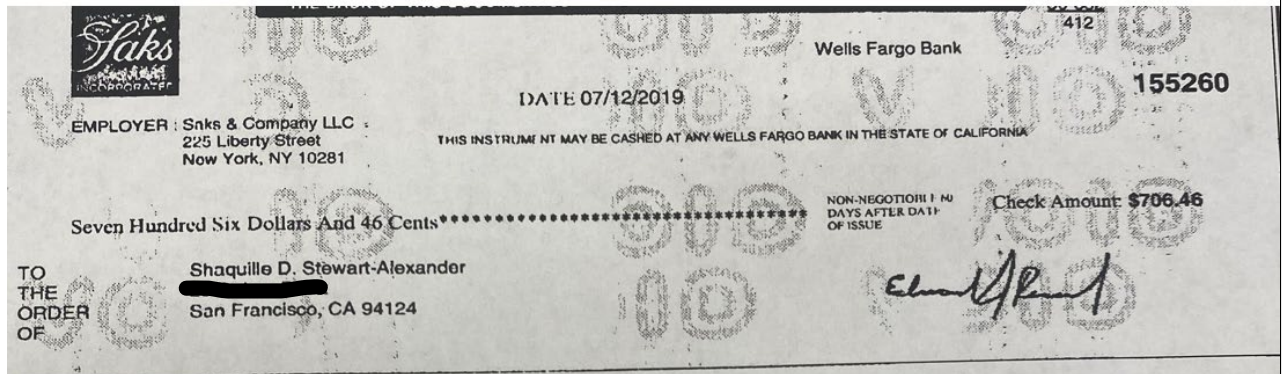
28 11. This Court also has jurisdiction over Defendant Saks Inc. as it purposefully directs

12. into California wage statements to Plaintiff and other California workers.



13. Saks Inc. also purposefully directs into California payment of wages to Plaintiff and

1 to other California workers as evidenced by the following check, which includes the name of Saks
2 Inc., in the upper left-hand corner.



14. Plaintiff also received a welcome email upon the commencement of his
employment, which indicated that Saks Inc. was his employer and/or directly responsible for both
benefits and payroll, as evidenced by the following email addresses where Plaintiff could sign up
for or obtain various employment benefits or wages: Email: Benefits@saksinc.com; payroll
website: <http://associates.saksinc.com> and commission website:
<https://commission.saksincorporated.com>.

15. Venue is proper in the Northern District of California under 28 U.S.C. § 1391(b)(2)

1 in that this is the judicial district in which a substantial part of the events or omissions giving rise
2 to the claim occurred.

3 **PARTIES**

4 16. Plaintiff, Shaquille Stewart Alexander, is an individual over the age of 18 who
5 resides in the State of California.

6 17. Plaintiff worked for Saks from June 2019 through early August 2019, when he was
7 terminated by Defendants, in the Saks store in Union Square, San Francisco. Plaintiff worked in
8 the non-exempt hourly position as a Retail Sales Associate.

9 18. Defendant SAKS & COMPANY LLC is a corporation doing business in the State
10 of California.

11 19. Defendant SAKS INCORPORATED is a corporation doing business in the State of
12 California.

13 20. Plaintiff is informed and believes, and thereon allege, that each Defendant
14 herein was, at all times relevant to this action, the agent, employee, representative partner, and/or
15 joint venturer of the remaining Defendant and was acting within the course and scope of the
16 relationship. Plaintiff is further informed, believes, and thereon alleges that each Defendant herein
17 gave consent to, ratified and authorized the acts alleged herein to the remaining Defendant. Each of
18 the Defendants was the “employer” of the members of the collective and the class as that term is
19 used in the relevant statutes and is responsible for the violation of law described below and for
20 damages and equitable relief to the collective and the class.

21 21. Saks & Company LLC is a “person” as defined in California Labor Code § 18 and
22 California Business and Professions Code § 17201. Saks & Company LLC is also an “employer”
23 as that term is used in the California Labor Code, the IWC, and the FLSA.

24 22. Saks Incorporated is a “person” as defined in California Labor Code § 18 and
25 California Business and Professions Code § 17201. Saks Incorporated is also an “employer” as that
26 term is used in the California Labor Code, the IWC Wage Orders, and the FLSA.

27 23. The “FLSA Class Members” are all current and former hourly paid employees of
28 Defendants who were not paid all hours worked in the three-year period before the filing of this

1 action to the present.

2 24. The “California Class Members” are all current and former hourly paid employees
3 of Defendants who were not paid all hours worked in the four-year period before the filing of this
4 action to the present.

5 25. The FLSA Class Members and California Class Members shall be collectively
6 referred to as “Class Members.”

7 **FACTUAL ALLEGATIONS**

8 26. Plaintiff worked as a retail sales associate for Saks in California during 2019.

9 27. Plaintiff and the other employees often worked more than forty (40) hours in a
10 workweek. Specifically, while employed by Defendants, Plaintiff worked over forty (40) hours
11 while he was clocked in. For example, during the week of July 28, 2019 through August 3, 2019,
12 Plaintiff worked over 40 hours on-the-clock. As described below, Plaintiff worked additional
13 hours off-the-clock for which he was not compensated.

14 28. Plaintiff and Class Members were non-exempt employees and were paid on an
15 hourly rate basis.

16 29. Plaintiff and other Class Members have not been paid for all of the time that they
17 spent performing work for Defendants, including work performed both before and after their
18 regularly scheduled shifts.

19 30. Defendants have required Plaintiff and other Class Members to arrive at their store
20 an hour or more before the store opened. However, Plaintiff and other Class Members could not
21 clock in until the store opened.

22 31. Prior to clocking in, Defendants required Plaintiff and other Class Members to wait
23 in line and undergo off-the-clock security bag searches and clearance checks before beginning
24 their scheduled shifts. Plaintiff is informed and believes that Plaintiff and other Class Members are
25 not compensated for this pre-shift activity.

26 32. This waiting time and security searches take a substantial amount of time. The
27 amount of time it takes to undergo the security checks is approximately 20 minutes on average.
28 This amount of time could be longer depending upon the number of other employees in line for the

1 security checks.

2 33. Defendants never paid Plaintiff and other Class Members for this time spent waiting
3 prior to the beginning of their shifts and would only begin paying Plaintiff and other Class
4 Members for work at the scheduled beginning of their shifts (*i.e.*, when they clocked in).

5 34. These security bag searches are done for the sole benefit of Defendants. This
6 waiting time constitutes compensable time that was worked by the Plaintiff and Class Members.

7 35. In addition, at the end of each shift, Plaintiff and Class Members were required to
8 clock-out before undergoing security checks each workday.

9 36. Defendants never paid Plaintiff and other Class Members for this time spent waiting
10 after the end of their shifts and would only pay Plaintiff and other Class Members for work until
11 they clocked out.

12 37. This security clearance time should have been paid by Defendants because it
13 constitutes compensable time worked. During this time, Plaintiff and the Class Members were at
14 the premises of Defendants and subject to the control of Defendants.

15 38. Under California law, the time spent undergoing the security clearance is
16 compensable time that should have been paid by Defendants. *See Frlekin v. Apple, Inc.*, 8 Cal. 5th
17 1038 (2020). The security checks were required by Defendants and Plaintiff and the Class
18 Members were told in advance the time they were required to be at the Defendants' premises,
19 controlled and required by Defendants, and undertaken primarily for the benefit of Defendants'
20 business.

21 39. Additionally, Plaintiff and other Associates were required to attend mandatory daily
22 meetings. During this time, Class Members are given statistical and analytical breakdowns
23 regarding products and sales and are shown new products and top sales of the previous day.

24 40. Defendants' policy has been not to pay Plaintiff and other Class Members for the
25 time spent attending the meetings and prohibit Plaintiff and the Associates from clocking in until
26 the meetings conclude, and the store is open.

27 41. Managers employed at Saks' department stores in California had knowledge of and
28 required Plaintiff and other Class members to undergo these uncompensated security screenings

1 and daily meetings in accordance with Defendants' corporate policy. For example, Plaintiff's
2 supervisor, Department Manager Jessica, was aware of these uncompensated security screenings
3 and daily meetings. Her and other managers permitted, required and enforced the corporately
4 derived and mandated security screenings and daily meetings and requested that Plaintiff and
5 others similarly situated perform these duties without proper wages or overtime compensation.

6 42. Plaintiff is informed, believes, and alleges that at all times mentioned in this
7 Complaint, each Defendant was the agent and employee of the other Defendant and in doing the
8 things alleged in this Complaint were acting within the course and scope of such agency and
9 employment. Plaintiff is further informed, believes, and alleges that each of the Defendants gave
10 consent to, ratified, and authorized the acts alleged herein. Defendants are sued both in their own
11 right and on the basis of respondent superior.

12 43. At all material times, Defendants were and are legally responsible for the unlawful
13 conduct, policies, practices, acts, and omissions as described and set forth in this Complaint, as the
14 employer of Plaintiff and the Class Members.

15 **FAIR LABOR STANDARDS ACT COLLECTIVE ACTION ALLEGATIONS**

16 44. Plaintiff brings the FLSA collective claim described below on behalf of himself and
17 all other persons similarly situated as an "opt-in" collective action pursuant to 29 U.S.C. §§ 207
18 and 216(b), specifically, on behalf of:

19 All current and former non-exempt hourly employees of Defendants working in
20 Defendants' department stores in California, who are or were employed within the
21 three years preceding the filing of this action by Defendants, and who were: (1) not
22 compensated for off-the-clock time spent waiting in security screening lines before
23 being allowed to leave the premises; and/or (2) were not compensated for off-the-
24 clock time spent attending sales meetings; and (3) were not fully compensated for
25 this time worked over forty (40) hours per week at overtime rates (the "FLSA
26 Collective").

25 45. Plaintiff, individually and on behalf of other similarly situated persons defined
26 above, seeks relief on a collective basis challenging Defendants' policy and practice of failing to
27 accurately record all hours worked, and failing to properly pay Plaintiff for all hours worked,
28 including overtime compensation. The number and identity of other similarly situated persons yet

1 to opt-in and consent to be party-plaintiffs may be determined from the records of Saks, and
2 potential opt-ins may be easily and quickly notified of the pendency of this action.

3 46. Defendants improperly benefited from Plaintiff's and the FLSA Collective
4 members' uncompensated work while waiting in lengthy security check lines and undergoing
5 personal package and bag searches. Defendants also improperly benefited from Plaintiff's and the
6 FLSA Collective members' uncompensated work while attending meetings. Defendants failed to
7 pay Plaintiff and members of the FLSA Collective Class time-and-one-half their regular rate of
8 pay for hours worked beyond forty hours in a workweek.

9 47. Plaintiff's claims for violations of the FLSA may be brought and maintained as an
10 "opt-in" collective action pursuant to Section 216(b) of the FLSA, because Plaintiff's FLSA claims
11 are similar to the claims of the members of the Collective.

12 48. The members of the Collective are similarly situated, as they are subject to a
13 common policy, practice, or plan that requires them to perform work "off-the-clock" and without
14 compensation in violation of the FLSA. Defendants' unlawful conduct has been widespread,
15 repeated and consistent. Moreover, Defendants' conduct was willful and in bad faith and has
16 caused significant damages to Plaintiff and the FLSA Collective Class.

17 49. Defendants are liable under the FLSA for failing to properly compensate Plaintiff
18 and the FLSA Collective Class, and, as such, notice should be sent out to the FLSA Collective
19 Class. There are numerous similarly situated, current and former employees of the Defendants who
20 have been denied wages in violation of the FLSA who would benefit from the issuance of a Court
21 supervised notice of the present lawsuit and the opportunity to join in the action pursuant to 29
22 U.S.C. § 216(b) for the purpose of collectively adjudicating their claims for unpaid wages, unpaid
23 overtime compensation, liquidated damages, and attorneys' fees and costs under the FLSA. Those
24 similarly situated employees are known to Defendants and are readily identifiable through
25 Defendants' records.

26 **CALIFORNIA STATE CLASS ACTION ALLEGATIONS**

27 50. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules
28 of Civil Procedure on behalf of the California Class, which is comprised of:

1 All current and former non-exempt hourly paid employees of Defendants working
2 in Defendants' department stores in California who (1) were not compensated for
3 off-the-clock time spent waiting in security screening lines before the start of their
4 scheduled shifts and/or (2) were required to clock out before waiting in security
5 screening lines before being allowed to leave the premises; and/or (3) were not
6 compensated for off-the-clock time spent attending sales meetings; and/or (4) were
7 not fully compensated for this time worked over forty hours per week at overtime
8 rates during at least one week in California in the four-year period before the filing
9 of this Complaint to the present.

10 51. *Numerosity.* The number of members in the California Class is believed to exceed
11 forty and in fact, is likely to be in the hundreds. This volume makes bringing the claims of each
12 individual member of the class before this Court impracticable. Likewise, joining each individual
13 member of the California Class as a plaintiff in this action is impracticable. Furthermore, the
14 identity of the members of the California Class will be determined from Defendants' records, as
15 will the compensation paid to each of them. As such, a class action is a reasonable and practical
16 means of resolving these claims. To require individual actions would prejudice the California
17 Class and Defendants.

18 52. *Typicality.* Plaintiff's claims are typical of the California Class. Defendants'
19 uniform policies and practices in violation of the law as alleged herein have caused Plaintiff to
20 sustain the same or similar injuries and damages. Defendants failed to pay the California Class
21 Members for all hours they worked. Additionally, members of the California Class worked
22 substantially more than eight (8) hours in a day and forty (40) hours in a week as non-exempt
23 employees. Further, the California Class Members were not paid the correct overtime wages as a
24 result of Defendants incorrectly calculating the regular rates of pay. Moreover, the California Class
25 Members each received wage statements that failed to comply with California law. Thus, Plaintiff
26 and the California Class have been uncompensated and/or under-compensated as a result of
27 Defendants' common policies and practices that failed to comply with California law. As such,
28 Plaintiff's claims are typical of the claims of the California Class.

53. *Adequacy.* Plaintiff is a representative party who will fairly and adequately protect
the interests of the California Class because it is in his interest to effectively prosecute the claims
herein alleged in order to obtain the unpaid wages and penalties required under California law.

1 Plaintiff has retained attorneys who are competent and experienced in both class actions and wage
2 and hour litigation. Plaintiff does not have any interest that may be contrary to or in conflict with
3 the claims of the California Class he seeks to represent.

4 54. *Existence and Predominance of Common Questions.* Common issues of fact and
5 law predominate over any individual questions in this matter. The common issues of fact and law
6 include, but are not limited to:

- 7 a. Whether Plaintiff and the California Class are entitled to compensation for the time
8 spent in the security clearance and time spent in the meetings before clock in;
- 9 b. The amount of time spent in the security clearance and meetings;
- 10 c. Whether Plaintiff and the California Class are entitled to compensation for the time
11 spent in the security clearance and in meetings before clock in;
- 12 d. Whether Defendants failed to compensate Plaintiff and the California Class for all
13 hours worked, including overtime compensation, in violation of the California
14 Labor Code and Wage Orders;
- 15 e. Whether Defendants failed to pay Plaintiff and the California Class wages for all
16 hours worked in violation of California Business and Professions Code § 17200, et
17 seq;
- 18 f. Whether Defendants failed to include all payments to Plaintiff and California Class
19 in the calculation of the regular rate of pay;
- 20 g. Whether Defendants failed to keep accurate records of employees' hours of work,
21 hourly wages, and hourly rates, and failed to timely furnish each Class Member
22 with a statement accurately showing the total number of hours worked, hourly rates,
23 and wages earned each pay period;
- 24 h. Whether Defendants failed to timely pay employees unpaid wages and overtime due
25 upon their separation from employment with Defendant;
- 26 i. Whether Plaintiff and the California Class are entitled to compensatory damages;
- 27 j. The proper measure of damages sustained by Plaintiff and the California Class; and
- 28 k. Whether Defendants' conduct was "willful."

1 55. *Superiority.* A class action is superior to other available means for the fair and
2 efficient adjudication of this lawsuit. Even in the event any member of the California Class could
3 afford to pursue individual litigation against a company the size of Defendants, doing so would
4 unduly burden the court system. Individual litigation would magnify the delay and expense to all
5 parties and flood the court system with duplicative lawsuits. Prosecution of separate actions by
6 individual members of the California Class would create the risk of inconsistent or varying judicial
7 results and establish incompatible standards of conduct for Defendants.

8 56. Without a class action, Defendants will retain the benefit of its wrongdoing and will
9 continue a course of action that will result in further damages to Plaintiff and the California Class.
10 Plaintiff envisions no difficulty in the management of this action as a class action.

11 **FIRST CLAIM FOR RELIEF**

12 **Failure to Pay all Wages**

13 **Violation Cal. Labor Code §§ 204, 1194, 1194.2, 1197, 1198**

14 **On Behalf of Plaintiff and the California Class**

15 57. Plaintiff incorporates by reference the allegations set forth above as though fully
16 restated herein.

17 58. Under California law, Defendants were required to pay wages for each hour
18 worked, and overtime wages when non-exempt employees work over eight (8) hours a day or forty
19 (40) hours in a week by calculating the hourly rate and then computing the overtime premium
20 amount owed. Specifically, California law requires employers to pay their employees a minimum
21 wage for all hours worked, which is defined as the “time during which an employee is subject to
22 the control of an employer, and includes all the time the employee is suffered or permitted to work,
23 whether or not required to do so.” *Frlekin v. Apple, Inc.*, 8 Cal. 5th 1038 (2020). Section 4 of the
24 applicable Industrial Welfare Commission Order requires Defendants to pay non-exempt
25 employees at least at the minimum wage set forth therein for all hours worked, which consist of all
26 hours that an employer has actual or constructive knowledge that employees are working.

27 59. Defendants failed to compensate the Plaintiff and the California Class Members for
28 all hours that they worked. As noted above, the Plaintiff and California Class Members were not

1 paid for the time they spent for all security clearance and for meetings prior to clock in before their
2 designated schedules. Defendants require Plaintiffs and California Class Members to underreport
3 their hours. As a result, Plaintiff and Class Members are entitled to compensation for all hours
4 worked, but not paid, during the statutory period covered by this lawsuit. The Plaintiff and Class
5 Members are also entitled to reasonable attorneys' fees, interest, and costs of suit.

6 60. The California Class Members, including Plaintiff, have been deprived of their
7 rightfully earned wages as a direct and proximate result of Defendants' company-wide policies and
8 practices. Defendants have knowingly and willfully refused to perform their obligations to
9 compensate Plaintiff and the California Class for all wages earned and all hours worked, in
10 violation of California law.

11 61. As a direct result, Plaintiff and the California Class have suffered, and continue to
12 suffer, substantial losses related to the use and enjoyment of such wages. Defendants regularly,
13 willfully, and repeatedly failed and continues to fail to make, keep, and preserve accurate time
14 records required by the California Labor Code §§ 226 and 1174, with respect to the Plaintiff and
15 Class Members. Through this unlawful course of conduct, Defendants have deprived and continues
16 to deprive Plaintiff and the California Class Members of records necessary to calculate with
17 precision the compensation due to them.

18 **SECOND CLAIM FOR RELIEF**

19 **Willful Failure to Pay all Wages Upon Separation**

20 **Cal. Labor Code §§ 201, 202, 203**

21 **On Behalf of Plaintiff and the California Class**

22 62. Plaintiff incorporates by reference the allegations set forth above as though fully
23 restated herein.

24 63. California Labor Code §§ 201 and 202 require that employers pay all employees all
25 wages immediately upon employer termination or within 72 hours after employee resignation.
26 California Labor Code § 203 provides that in instances that an employer willfully fails to pay all
27 wages owing within the proscribed time limits, the employer must continue to pay the subject
28 employee wages until the wages are paid in full. An employee need not prove malice or

1 intentional conduct in establishing a claim for waiting time penalties, but rather must merely
2 establish that the employer did not pay as it was obligated to do.

3 64. Where an employer willfully fails to pay discharged or resigning employees all
4 wages due as required under the California Labor Code, the employer is liable to such employees
5 under California Labor Code § 203 for waiting time penalties in the amount of one (1) day's
6 compensation at the employees' regular rate of pay for each day the wages are withheld, up to
7 thirty (30) days.

8 65. Plaintiff and some of the California Class Members have left their employment with
9 Saks during the statutory period, at which time Defendants owed them unpaid wages. These
10 earned, but unpaid, wages derive from time spent outside their scheduled and paid shifts
11 performing other work-related activities, and compensation that was not accounted for in the
12 performance of off-the-clock work.

13 66. Defendants willfully refused, and continues to refuse, to provide Plaintiff and the
14 California Class with payment for off-the-clock work performed. In particular, as alleged herein,
15 although Saks knew and continues to know, full well that Plaintiff and the California Class
16 performed required off-the-clock work, Defendants still refuse to pay for the off-the-clock work
17 performed.

18 67. Accordingly, during all relevant times, Defendants knowingly and willfully violated
19 California Labor Code §§ 201 and 202 by failing to pay Plaintiff and California Class members
20 who are no longer employed by Defendants all wages owed as alleged herein. Defendants are
21 therefore liable to Plaintiff and California Class members who are no longer employed by
22 Defendants for waiting time penalties as required by California Labor Code §§ 203 and 218.

23 68. Plaintiff on behalf of himself and on behalf of California Class members who are no
24 longer employed by Defendants, respectfully request that the Court award all waiting time
25 penalties due, and the relief requested below in the Prayer for Relief.

THIRD CLAIM FOR RELIEF

Willful Failure to Provide Accurate Wage Statements and Maintain Accurate Pay Records

Cal. Labor Code § 226(a), (e), (g)

On Behalf of Plaintiff and the California Class

69. Plaintiff incorporates by reference the allegations set forth above as though fully restated herein.

70. California Labor Code § 226(a) sets forth numerous “accurate” items which a company must furnish to its employees with their paychecks (“paystubs”), and which it must maintain for a period of not less than three years. Included in those items are numerous items that Defendants did not accurately provide and retain. These items include, but are not limited to: (1) a statement of accurate gross wages earned by the employee; (2) a statement of total hours worked the employee; (3) a statement of net wages earned; and (4) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

71. Defendants fails to provide accurate information in both paystubs and in its records to Plaintiff and each California Class Member with timely, itemized wage statements that accurately reflect among other things the total number of hours worked, hourly rate and wage earned as mandated by the California Labor Code§ 226(a). This is because, in part, Saks does not count as “hours worked” the off-the-clock time Plaintiff and California Class Members spend performing work activities outside of their scheduled paid shifts.

72. Saks failure to comply with Labor Code § 226(a) was and continues to be knowing and intentional. Although, as alleged herein, Saks was aware that Plaintiffs and the California Class perform off-the-clock work, Saks systematically failed to include this time worked in Plaintiff’s and the California Class’s wage statements.

73. Defendants knowingly and intentionally failed to provide accurate information in both paystubs and in its records to Plaintiff and each California Class Member with timely, itemized wage statements that accurately reflect among other things the total number of hours worked, hourly rate and wage earned as mandated by the California Labor Code§ 226(a).

74. As a direct and proximate result of Defendants knowing and intentional failure to provide timely, accurate itemized wage statements to Plaintiff and the California Class Members in accordance with Labor Code § 226(a), Plaintiffs were injured. In particular, the injury stemming from Defendants' violations is evidenced by this live and active dispute regarding unpaid wages, including overtime pay, between the Parties. As a result of Defendants' violations, Plaintiff and the California Class are required to undertake the difficult and costly task of attempting to reconstruct Defendants' incomplete and inaccurate time and pay records to ensure that they are paid for all hours worked as required by California law.

75. Defendants are liable to Plaintiff and the California Class in an amount to be proven at trial, but not less than \$50 for the initial pay period in which these violations occurred and an additional \$100 per pay period thereafter pursuant to Labor Code § 226(e).

76. Plaintiff and the California Class are also entitled to reasonable attorneys' fees and costs in the prosecution of this action, and Plaintiff therefore seeks attorneys' fees and costs under all applicable provisions of law.

FOURTH CLAIM FOR RELIEF

Unfair Business Acts and Practices

Cal. Business & Professions Code § 17200 *et seq.*

On Behalf of Plaintiff and the California Class

77. Plaintiff incorporates herein by reference each and every allegation contained in this complaint as though fully set forth herein.

78. The Unfair Competition Law prohibits all unfair competition, which is defined as "any unlawful, unfair or fraudulent business act or practice."

79. California Business and Professions Code § 17204 allows a person injured by the unfair business acts or practices to prosecute a civil action for violation of the UCL. Plaintiff, on behalf of himself and the California Class Members have standing to bring this claim because they have suffered injuries in fact and has lost money as a result of Defendant's unfair competition.

80. California Labor Code § 90.5(a) states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work

1 under substandard and unlawful conditions, and to protect employers who comply with the law
2 from those who attempt to gain competitive advantage at the expense of their workers by failing to
3 comply with minimum labor standards.

4 81. Beginning at an exact date unknown to Plaintiff and the California Class, but at
5 least since the date four years prior to the filing of this suit, Defendant has committed acts of unfair
6 competition as defined by the Unfair Business Practices Act by engaging in the unlawful, unfair,
7 and fraudulent business acts and practices described in the Amended Complaint, including but not
8 limited to: 1) failing to pay Plaintiff overtime wages; 2) failing to pay Plaintiff all hours worked; 3)
9 failing to pay wages owed upon separation; 4) failing to maintain accurate pay records and to
10 provide employees with adequate paystubs, and 5) unjustly enriching themselves due to the same.

11 82. The violations of these laws and regulations, as well as of the fundamental
12 California public policies protecting wages and discouraging overtime labor underlying them,
13 serve as unlawful predicate acts and practices for purposes of Business and Professions Code §
14 17200, *et seq.* The acts and practices described above constitute unfair, unlawful, and fraudulent
15 business practices, and unfair competition, within the meaning of Business and Professions Code §
16 17200, *et seq.* Among other things, the acts and practices have taken from Plaintiff and the
17 California Class wages rightfully earned by them, while enabling Defendants to gain an unfair
18 competitive advantage over law-abiding employers and competitors.

19 83. Pursuant to Business and Professions Code §§ 17071 and 17075, the failure of
20 Defendants to pay all wages, including overtime wages, is admissible as evidence of Defendants'
21 intent to violate the California Unfair Practices and Unfair Competition Laws.

22 84. Business and Professions Code § 17203 provides that the Court may make such
23 orders or judgments as may be necessary to prevent the use or employment by any person of any
24 practice which constitutes unfair competition.

25 85. Defendants have inequitably and unlawfully conspired, agreed, arranged, and
26 combined to violate California labor laws, as alleged herein.

27 86. As a direct and proximate result of the unfair, unlawful, and/or fraudulent business
28 practices alleged herein, through the four-year statute of limitations periods, Plaintiff and

1 California Class Members have suffered a loss of money and property, in the form of unpaid
2 wages which are due and payable to them, all to their detriment and all to Defendants' illegal
3 economic advantage.

4 87. Business and Professions Code § 17203 provides that the Court may restore to any
5 person in interest any money or property which may have been acquired by means of such unfair
6 competition, Plaintiff and the California Class Members are entitled to restitution pursuant to
7 Business and Professions Code § 17203 for all wages and payments unlawfully withheld from
8 employees during the four-year period prior to the filing of this Complaint.

9 88. Plaintiff's success in this action will enforce important rights affecting the public
10 interest and, in that regard, Plaintiff sues on behalf of himself and others similarly situated.
11 Plaintiff and California Class members seek and are entitled to unpaid wages, declaratory relief,
12 and all other equitable remedies owing to them. Plaintiff and California Class Members seek
13 restitution and disgorgement of all unpaid wages owing to them, in an amount according to proof
14 that the Defendants have enjoyed as a result of the unfair business practices alleged herein.

15 89. Plaintiff herein takes upon himself enforcement of these laws and unlawful claims.
16 There is a financial burden involved in pursuing this action, the action is seeking to vindicate a
17 public right, and it would be against the interests of justice to penalize Plaintiff by forcing him to
18 pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to
19 Code of Civil Procedure § 1021.5 and otherwise.

20 **FIFTH CLAIM FOR RELIEF**

21 **Failure to Pay Overtime**

22 **Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.***

23 **On Behalf of Plaintiff and the FLSA Collective Class**

24 90. Plaintiff incorporates herein by reference each and every allegation contained in this
25 complaint as though fully set forth herein.

26 91. At all relevant times, Defendants have been, and continue to be, an "employer"
27 engaged in interstate commerce and/or in the production of goods for commerce, within the
28 meaning of the FLSA, 29 U. S.C. § 203. At all relevant times, Defendants have employed and

1 continue to employ, employees, including Plaintiff and the FLSA Class Members, as defined by
2 the FLSA.

3 92. The FLSA requires each covered employer such as the Defendants to compensate
4 all non-exempt employees at a rate of not less than one and one-half times the regular rate of pay
5 for work performed in excess of forty hours per workweek.

6 93. Plaintiff and the FLSA Class Members were entitled to be paid overtime
7 compensation for all overtime hours worked at the rate of one and one-half times their regular rate
8 of pay.

9 94. At all relevant times, Defendants required and/or permitted Plaintiff and the FLSA
10 Class Members to work in excess of forty (40) hours per workweek. Despite the hours worked by
11 them, Defendants willfully, in bad faith, and knowingly violated the FLSA, failed and refused to
12 pay Plaintiff and the FLSA Class Members the appropriate overtime wages for all compensable
13 time worked in excess of forty (40) hours per workweek. Plaintiff and the Class Members were not
14 paid the full amount of overtime wages due under the FLSA as a result of Defendants' failure and
15 refusal to classify the time spent in meetings prior to clock in as compensable time and the time
16 spent in security clearance prior to clock in and after clocking out as compensable time. Plaintiff
17 and the Class Members were also not paid the full amount of overtime wages due under the FLSA
18 as a result of Defendants' failure and refusal to include all remuneration in the calculation of the
19 regular rate of pay for purposes of paying overtime wages.

20 95. By failing to compensate Plaintiff and the FLSA Class Members at a rate of not less
21 than one-and-a-half times the regular rate of pay for work performed in excess of forty (40) hours
22 in a workweek, Defendants have violated the FLSA, 29 U.S.C. § 201 et seq., including 29 U.S.C. §
23 207(a). The foregoing conduct, as alleged, constitutes a willful violation of the FLSA, within the
24 meaning of 29 U.S.C. § 255(a).

25 96. Plaintiff and the FLSA Class Members seek recovery of their damages, unpaid
26 wages, unpaid overtime pay, liquidated damages, attorney's fees, costs and expenses.

SIXTH CLAIM FOR RELIEF

Penalties Pursuant to § 2699(a) of the Private Attorneys General Act

97. Plaintiff incorporates herein by reference each and every allegation contained in this complaint as though fully set forth herein.

98. California Labor Code § 2699(a) provides:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.

99. California Labor Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

100. California Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be

recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least four years at the place of employment or at a central location within the State of California.

101. California Labor Code § 558(a) provides:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.(3) Wages recovered pursuant to this section shall be paid to the affected employee.

102. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendants, as alleged above, to timely pay all wages owed to Plaintiff and each putative Class member in compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203. Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code § 203, as prayed for herein.

103. Labor Code section 218 states in relevant part: “Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article.”

104. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendants, alleged above, to provide Plaintiff and each California Class member an accurate, itemized wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code § 226(e). Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code § 226(e), as prayed for herein.

105. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each violation of Labor Code § 510 and Labor Code § 204 alleged above, as well as any provision

1 regulating hours and days of work in any order of the IWC.

2 106. Plaintiff also seeks civil penalties for violations of Labor Code § 1174, requiring
3 Defendants to make, keep, and preserve accurate time records, as well as for failure to pay
4 overtime wages in violation of Labor Code § 1194 and of Labor Code § 1198 and Labor Code §
5 1194.2, which provides as follows: “In any action under Section 98, 1193.6, 1194, or 1197.1 to
6 recover wages because of the payment of a wage less than the minimum wage fixed by an order of
7 the commission or by statute, an employee shall be entitled to recover liquidated damages in an
8 amount equal to the wages unlawfully unpaid and interest thereon.”

9 107. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
10 Workforce Development Agency (“LWDA”) with notice of his intention to file this claim.

11 108. Plaintiff seeks the aforementioned penalties on behalf of the State, other aggrieved
12 employees, and himself as set forth in Labor Code § 2699(g)(i).

13 109. Defendants are liable to Plaintiff, the putative California Class, and the State of
14 California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also
15 entitled to an award of attorneys’ fees and costs as set forth below.

16 110. Wherefore, Plaintiff and the Class request relief as hereinafter provided

17 **SEVENTH CLAIM FOR RELIEF**

18 **Penalties Pursuant to § 2699(f) of the Private Attorneys General Act**

19 111. Plaintiff incorporates herein by reference each and every allegation contained in this
20 complaint as though fully set forth herein.

21 112. California Labor Code § 2699(f) provides:

22 For all provisions of this code except those for which a civil penalty
23 is specifically provided, there is established a civil penalty for a
24 violation of these provisions, as follows: . . . (2) If, at the time of the
25 alleged violation, the person employs one or more employees, the
26 civil penalty is one hundred dollars (\$100) for each aggrieved
27 employee per pay period for the initial violation and two hundred
28 dollars (\$200) for each aggrieved employee per pay period for each
subsequent violation.

113. To the extent than any violation alleged herein does not carry penalties under Labor

Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and California Class members each pay period in which he or she was aggrieved, in the amounts established by Labor Code § 2699(f).

114. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the LWDA with notice of his intention to file this claim.

115. Plaintiff seeks the aforementioned penalties on behalf of the State, other aggrieved employees, and themselves as set forth in Labor Code § 2699(g)(i).

116. Defendants are liable to Plaintiff, the putative California Class, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

117. Wherefore, Plaintiff and the California Class request relief as hereinafter provided.

PRAYER FOR RELIEF

Plaintiff, on behalf of himself and the FLSA Collective Class, pray that the Court:

- a. Allow Plaintiff to give notice of this collective action, or that the Court issue such notice, to the FLSA Class Members as defined herein so that such persons shall be informed that this civil action has been filed, of the nature of the action, and of their right to join the FLSA collective suit if they believe they were denied unpaid wages;
- b. Certify that this action may proceed as a collective action under 29 U.S.C. § 216(b) and class action under Fed. R. Civ. P. 23;
- c. Appointment of Plaintiff's counsel as Lead Counsel for the FLSA Collective Class;
- d. Order preliminary, permanent, mandatory injunctive relief prohibiting Defendants, their officers, agents, and all those acting in concert with it, from committing in the future those violations of law herein alleged;
- e. Find that Defendants' policies and/or practices described above violate the FLSA;
- f. An award of damages, liquidated damages, restitution, and/or statutory penalties to be paid by Defendants for the claims alleged herein;
- g. An award interest, costs, and expenses, including reasonable attorneys' fees and

expert fees; and

h. All such other relief the Court deems just and proper.

Plaintiff, on behalf of himself and the California Class Members, pray that the Court:

- a. Certification of this action as a class action pursuant to Federal Rule 23 and the appointment of Plaintiff as the representative of the California Class and Plaintiff's counsel as Lead Counsel for the California Class;
- b. An award to Plaintiff and California Class members of damages for the amount of unpaid overtime in addition to interest subject to proof;
- c. An award to Plaintiff and California Class members of any waiting time penalties under § 203 et seq. of the California Labor Code;
- d. An award to Plaintiff and California Class members of any itemized wage statement penalties under § 226 of the California Labor Code;
- e. An award to Plaintiff and California Class members of restitution under the UCL;
- f. An award of pre- and post-judgment interest on all monetary relief prayed for above, as may be permitted by law;
- g. An award of reasonable attorneys' fees pursuant to sections 226(e) and 1194 of the California Labor Code and/or pursuant to Cal. Code of Civ. Procedure section 1021.5 and/or other applicable law;
- h. An award of civil penalties provided for by the PAGA;
- i. An award of costs of suit;
- j. A declaratory judgment that the practices complained of herein are unlawful under the California Labor Code and/or the UCL, and injunctive relief requiring termination or modification of the unlawful practices challenged in this Complaint, including Defendants' improper requirement that Defendants' Hourly Employees wait in lengthy security clearance lines and/or meetings prior to their clock in without compensation for their time;
- k. All such other relief as this Court shall deem just and proper.

1 Dated: June __, 2022

Respectfully submitted,

2 By: /s/ Eric Lechtzin

3 Eric Lechtzin (SBN: 248958)

Edelson Lechtzin LLP

4 411 S State Street, Suite N-300

Newtown, PA 18940

5 Telephone: (215) 867-2399

6 Facsimile: (267) 685-0676

elechtzin@edelson-law.com

7 DANIEL FEDER

LAW OFFICES OF DANIEL FEDER

8 235 Montgomery Street, Suite 1019

9 San Francisco, CA 94104

10 Telephone: (415) 391-9476

11 Facsimile: (415) 391-9432

daniel@dfederlaw.com

12 *Attorneys for Plaintiff and the putative class*

13
14 **PLAINTIFF DEMANDS TRIAL BY JURY.**

15 Dated: June __, 2022

16 Respectfully submitted,

17 By: /s/ Eric Lechtzin

18 Eric Lechtzin (SBN: 248958)

Edelson Lechtzin LLP

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28 *Attorneys for Plaintiff and the putative class*

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EXHIBIT C



THE LAW OFFICES OF DANIEL FEDER

April 12, 2022

Via Online Filing

California Labor & Workforce Development Agency
PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail

SAKS INCORPORATED
225 Liberty St FL 31
New York, NY, 10281-1089

Re: PAGA Notice pursuant to Labor Code § 2699 of employment practices at Saks & Company LLC and request to file private collective action.

To Whom It May Concern:

Please be advised that Shaquille Stewart-Alexander (“Plaintiff”) has retained Law Offices of Daniel Feder to represent him and other aggrieved employees for wage and hour claims against their employer Saks Incorporated. Saks Incorporated is a company located in California.

Please be advised that Shaquille Stewart-Alexander (“Plaintiff”) has retained Law Offices of Daniel Feder to represent him and other aggrieved employees for wage and hour claims against their employer Saks & Co LLC. Saks & Co LLC is a company located in California.

Plaintiff brings this class and collective action on behalf of himself and other similarly situated individuals who have worked for Saks & Company LLC and Saks Incorporated, (collectively, “Saks” or “Defendants”) as non-exempt hourly employees, including but not limited to Sales Associates, to challenge Defendants’ violations of the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201, et seq. (“FLSA”); applicable California Labor Code provisions; applicable Industrial Welfare Commission (“IWC”) Wage Orders; and the Unfair Business Practices Act, California Business and Professions Code §§ 17200, et seq. (“UCL”).

This is a collective and class action complaint against Saks to challenge their policies and practices of denying proper payment of all wages (including regular, and overtime wages).

Plaintiff challenges Defendants' policies and practices of: (1) failing to compensate Plaintiff and putative Class and Collective members for all hours worked; (2) failing to pay Plaintiff and putative Class and Collective members overtime wages; (3) failing to provide Plaintiff and putative Class members accurate itemized wage statements; and (4) failing to timely pay Plaintiff and putative Class members wages upon termination of employment.

Saks has implemented an illegal policy requiring its non-exempt workers to work without proper compensation. Specifically, Plaintiff and putative Class and Collective Members are not compensated for off-the-clock work, including time spent working before they are allowed to clock in at the beginning of their workday and/or time spent working after they are allowed to clock out at the end of their workday.

Plaintiff and other employees experience a number of derivative issues from Sak's wage and hour practices, including but not limited to receiving incorrect wage statements, and not receiving all pay owing to them at the end of their employment. Wage statements do not accurately reflect the actual hours worked, rate of compensation, or gross wages. Compensation for off-the-clock work, and overtime, remains outstanding after termination.

By failing to pay for time worked, Defendants have violated California law because Defendants failed to pay for all hours worked by their employees, failed to pay overtime wages, and failed to provide itemized wage statements as required by the California Labor Code and IWC.

Saks & Co LLC has violated several Labor Code provisions, and is therefore liable for civil penalties under California Labor Code § 2698 et seq. This letter serves as notice of these allegations pursuant to the Private Attorney General Act of 2004 ("PAGA").

Saks Incorporated has violated several Labor Code provisions, and is therefore liable for civil penalties under California Labor Code § 2698 et seq. This letter serves as notice of these allegations pursuant to the Private Attorney General Act of 2004 ("PAGA").

Failure to Pay All Wages and Overtime

Plaintiff and other aggrieved employees have to work more than 9 hours a day or 45 hours a week because Defendant automatically subtracts 1 hour of lunch no matter if Plaintiffs take it or not. Defendants regularly failed to provide Plaintiff and other aggrieved employees overtime wages when they work over eight (8) hours a day or forty (40) hours in a week by calculating the hourly rate and then computing the overtime premium amount owed. Plaintiff and other aggrieved employees worked for Defendants without being paid overtime. As a result of violations of Labor Code §§ 204, 510, Defendant is liable for civil penalties pursuant to California Labor Code §§ 210, 558.

Willful Failure to Pay All Wages Upon Separation

Plaintiff and other aggrieved employees were not paid all wages owing them upon their separation of employment. As a result of violations of Labor Code §§ 201 and 202, Defendants are liable for civil penalties pursuant to California Labor Code §203.

Willful Failure to Provide Accurate Wage Statements and Maintain Accurate Pay Records

Defendants knowingly and intentionally failed to provide Plaintiff and other aggrieved employees accurate information in both paystubs and in its records. As a result of violations of Labor Code § 226(a), Defendants are liable for civil penalties pursuant to California Labor Code § 226.3.

Conclusion

Saks Incorporated has violated or has caused to be violated California Labor Code Labor Code §§515, 512, 226, 204, 510, 201, and 202. Plaintiff and other aggrieved employees request the agency investigate the above allegations and provide notice of the allegations pursuant to PAGA. In the alternative, Plaintiff and other aggrieved employees request the agency inform them if it does not intend to investigate these violations.

Sincerely,

/s/ Daniel L. Feder

Daniel L. Feder

Attorney for Shaquille Stewart-Alexander



THE LAW OFFICES OF DANIEL FEDER

April 12, 2022

Via Online Filing

California Labor & Workforce Development Agency
PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail

SAKS & COMPANY LLC
225 Liberty St FL 31
New York, NY, 10281-1089

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To Whom It May Concern:

Please be advised that Shaquille Stewart-Alexander (“Plaintiff”) has retained Law Offices of Daniel Feder to represent him and other aggrieved employees for wage and hour claims against their employer Saks & Co LLC. Saks & Co LLC is a company located in California.

Plaintiff brings this class and collective action on behalf of himself and other similarly situated individuals who have worked for Saks & Company LLC and Saks Incorporated, (collectively, “Saks” or “Defendants”) as non-exempt hourly employees, including but not limited to Sales Associates, to challenge Defendants’ violations of the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201, et seq. (“FLSA”); applicable California Labor Code provisions; applicable Industrial Welfare Commission (“IWC”) Wage Orders; and the Unfair Business Practices Act, California Business and Professions Code §§ 17200, et seq. (“UCL”).

This is a collective and class action complaint against Saks to challenge their policies and practices of denying proper payment of all wages (including regular, and overtime wages). Plaintiff challenges Defendants’ policies and practices of: (1) failing to compensate Plaintiff and putative Class and Collective members for all hours worked; (2) failing to pay Plaintiff and putative Class and Collective members overtime wages; (3) failing to provide Plaintiff and putative Class members accurate itemized wage statements; and (4) failing to timely pay Plaintiff and putative Class members wages upon termination of employment.

Saks has implemented an illegal policy requiring its non-exempt workers to work without proper compensation. Specifically, Plaintiff and putative Class and Collective Members are not compensated for off-the-clock work, including time spent working before they are allowed to clock in at the beginning of their workday and/or time spent working after they are allowed to clock out at the end of their workday.

Plaintiff and other employees experience a number of derivative issues from Sak's wage and hour practices, including but not limited to receiving incorrect wage statements, and not receiving all pay owing to them at the end of their employment. Wage statements do not accurately reflect the actual hours worked, rate of compensation, or gross wages. Compensation for off-the-clock work, and overtime, remains outstanding after termination.

By failing to pay for time worked, Defendants have violated California law because Defendants failed to pay for all hours worked by their employees, failed to pay overtime wages, and failed to provide itemized wage statements as required by the California Labor Code and IWC.

Saks & Co LLC has violated several Labor Code provisions, and is therefore liable for civil penalties under California Labor Code § 2698 et seq. This letter serves as notice of these allegations pursuant to the Private Attorney General Act of 2004 ("PAGA").

Failure to Pay All Wages and Overtime

Plaintiff and other aggrieved employees have to work more than 9 hours a day or 45 hours a week because Defendant automatically subtracts 1 hour of lunch no matter if Plaintiffs take it or not. Defendants regularly failed to provide Plaintiff and other aggrieved employees overtime wages when they work over eight (8) hours a day or forty (40) hours in a week by calculating the hourly rate and then computing the overtime premium amount owed. Plaintiff and other aggrieved employees worked for Defendants without being paid overtime. As a result of violations of Labor Code §§ 204, 510, Defendant is liable for civil penalties pursuant to California Labor Code §§ 210, 558.

Willful Failure to Pay All Wages Upon Separation

Plaintiff and other aggrieved employees were not paid all wages owing them upon their separation of employment. As a result of violations of Labor Code §§ 201 and 202, Defendants are liable for civil penalties pursuant to California Labor Code § 203.

Willful Failure to Provide Accurate Wage Statements and Maintain Accurate Pay Records

Defendants knowingly and intentionally failed to provide Plaintiff and other aggrieved employees accurate information in both paystubs and in its records. As a result of violations of Labor Code § 226(a), Defendants are liable for civil penalties pursuant to California Labor Code § 226.3.

Conclusion

Saks & Co LLC has violated or has caused to be violated California Labor Code Labor Code §§ 515, 512, 226, 204, 510, 201, and 202. Plaintiff and other aggrieved employees request the agency investigate the above allegations and provide notice of the allegations pursuant to PAGA. In the alternative, Plaintiff and other aggrieved employees request the agency inform

them if it does not intend to investigate these violations.

Sincerely,

/s/ Daniel L. Feder

Daniel L. Feder
Attorney for Shaquille Stewart-Alexander

EXHIBIT D

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHAQUILLE STEWART ALEXANDER,
individually and on behalf of himself and
all others similarly situated,

Plaintiff,

v.

SAKS & COMPANY LLC; SAKS
INCORPORATED

Defendants.

Case No. 3:21-cv-02384 VC

**[PROPOSED] ORDER GRANTING JOINT
MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND
COLLECTIVE SETTLEMENT,
CONDITIONAL CERTIFICATION OF
SETTLEMENT CLASS, AND APPROVAL
OF PROPOSED NOTICE OF CLASS
ACTION SETTLEMENT**

Complaint Filed: April 1, 2021

1 BEFORE THE COURT is the Motion for Preliminary Approval of the Class, Collective
2 and PAGA Action Settlement submitted by Plaintiff Shaquille Stewart Alexander (“Plaintiff” or
3 “Class Representative”), individually, and on behalf of all Settlement Class Members and Defendants
4 SAKS & COMPANY, LLC and Defendant SAKS INCORPORATED (“Defendants”) pursuant to
5 Federal Rule of Civil Procedure 23. The Court, having considered the Motion, the arguments of
6 counsel, and good cause appearing therefor,

7 IT IS ORDERED as follows, and the Court makes the findings set forth below:

8 1. Preliminary Approval of the Proposed Settlement. The “Joint Stipulation of
9 Class, Collective and PAGA Action Settlement Agreement” (the “Agreement”) signed by the Parties
10 on June 1, 2022, is preliminarily approved pending a Final Approval Hearing. The Court preliminarily
11 finds that settlement on the terms in the Agreement is fair, reasonable, and adequate and that such
12 settlement is in the best interests of the Class, as that term is defined in the Agreement. The Court
13 further finds that the settlement proposed in the Agreement resulted from arm’s length negotiations.
14 The Court grants Plaintiff’s request to file the Second Amended Complaint, however Defendants are
15 not required to file a response.

16 1. Class Certification for Settlement Purposes. Pursuant to Federal Rule of Civil
17 Procedure 23(b)(3), the Court conditionally certifies, for settlement purposes only, the following
18 “Settlement Class,” which consists of all Class Members who have not excluded themselves from the
19 Settlement Class by submitting a timely request for exclusion in accordance with the requirements set
20 forth in the Class Notice and the Preliminary Approval Order. “Class Members” are defined as:

21 All current or former non-exempt employees who worked for Saks & Company, LLC
22 (the “Company”), at a Saks Fifth Avenue retail store in California, during the Class
23 Period (April 1, 2017 through preliminary court approval) and excludes all individuals
24 identified by and included in the settlement classes, unless they opt-out, as approved
25 by the court(s) in *Alfreda Lewis v. Saks South Coast Leasehold, LLC*; *Saks & Company, LLC*,
26 Case No. 30-2020-01143164-CU-OE-CXC, currently pending in California
27 Superior Court, County of Orange and *Maxwell Esposito v. Saks & Company, LLC*,
28 currently pending in California Superior Court, County of Los Angeles – Santa Monica,
Case No. 20SMCV01252 (“Lewis/ Esposito Settlement”). However, individuals who
are members of the Lewis/Esposito Settlement but who also worked for the Company
at a Saks Fifth Avenue retail store in California during the Class Period in a role other

1 than Sales Associate (SAL 102 or 104) and Brand Ambassador (SST100), may
2 participate in both settlements.

3 2. Prerequisites for Class Action. Solely for the purposes of settlement, the Court
4 finds that the prerequisites for a class action under Federal Rule of Civil Procedure 23(a) are satisfied
5 for the following reasons:

- 6 (a) The Settlement Class appears so numerous that joinder of all members is
7 impracticable. The Settlement Class consists of approximately 1,042 members;
8 (b) There appear to be questions of law or fact common to the Settlement Class for
9 purposes of determining whether the settlement should be approved;
10 (c) The Class Representative's claims for the alleged violations of the Fair Labor
11 Standards Act, California Labor Code and Business & Professions Code section
12 17200 appear to be typical of the claims of the Settlement Class; and
13 (d) The Class Representative and Class Counsel appear to be capable of fairly and
14 adequately protecting the interests of the Settlement Class Members in
15 connection with the proposed settlement.

16 3. Rule 23(b)(3) Class Action. The Court finds, for settlement purposes, that this
17 action is maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3) because:

- 18 (a) Common questions of law and fact appear to predominate over questions
19 affecting only individual persons in the Settlement Class; and
20 (b) Certification of the Settlement Class appears to be superior to other available
21 methods for the fair and efficient resolution of the claims of the Settlement
22 Class members.

23 4. FLSA Claim. The Court finds that the FLSA claims may be released as part of
24 the settlement of the Federal Rule of Civil Procedure 23 Class using an opt-out settlement procedure,
25 and that the settlement of the FLSA claim is a fair and reasonable resolution of a bona fide dispute.

26 5. PAGA Payment. The Court approves the allocation of \$20,000 of the Total
27 Settlement Amount to the PAGA Settlement Amount in connection with the release of the claim for
28 civil penalties under the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code
§§ 2698, *et seq.* Pursuant to PAGA, 75%, or \$15,000.00, will be paid to the LWDA, and 25%, or
\$5,000.00 will be paid to PAGA Cohort Members. PAGA Cohort Members may not exclude
themselves from the PAGA Release.

1 6. Appointment of the Class Representatives and Class Counsel. Pursuant to
2 Federal Rule of Civil Procedure 23(a), the Court conditionally appoints Plaintiff Shaquille Stewart
3 Alexander as Class Representative for the Settlement Class. In accordance with Federal Rule of Civil
4 Procedure 23(g), the Court conditionally appoints Eric Lechtzin of Edelson Lechtzin LLP, and Daniel
5 Feder of Law Offices of Daniel Feder as Class Counsel for the Settlement Class. Class Counsel will
6 file a motion for reasonable attorneys' fees and costs not less than 21 days before the date scheduled
7 for the Final Approval Hearing; this motion will be heard at the Final Approval Hearing.

8
9 7. Settlement Administrator. Simpluris, Inc. is appointed to serve as the settlement
10 administrator ("Settlement Administrator") for the purpose of administering the settlement with
11 reasonable administration costs estimated not to exceed \$14,000 pursuant to the terms set forth in the
12 Agreement.

13 8. Notice of Proposed Class Action Settlement. The Court approves the form and
14 content of the Notice of Class Action Settlement attached as **Exhibit 1** and authorizes dissemination
15 of the Notice to Members of the Settlement Class as required by the Settlement. Subject to the terms
16 of the Settlement, the Notice of Settlement shall be mailed via first-class mail to the most recent known
17 address of each Class Member within the timeframe specified in the Settlement. The Court finds that
18 the proposed method for notifying the Settlement Class meets the requirements of Federal Rule of
19 Civil Procedure 23(c)(2)(B) and all due process requirements, is the best notice practicable under the
20 circumstances, and constitutes due and sufficient notice to all persons entitled to notice. The
21 Settlement Administrator shall follow the additional procedures set forth in Paragraph 61(b) of the
22 Agreement to process Notices that are undelivered and returned.

23 9. Opting Out of the Settlement. Unless a Settlement Class Member timely opts
24 out of the settlement described in the Agreement, he/she shall be bound by the terms and conditions
25 of the Agreement and shall also be bound by the Court's Final Approval Order enjoining all Settlement
26 Class Members from pursuing, or seeking to reopen, any of the Released Claims against the Released
27 Parties. The Court approves the proposed procedure for exclusion from the Settlement, which is to
28 submit a written statement requesting exclusion to the Settlement Administrator no later than the

1 Exclusion Deadline, which is sixty (60) days following the date on which the Settlement Administrator
2 first mails the Notice to the Class Members.

3 10. Objecting to the Settlement. Each member of the Settlement Class shall be
4 given a full opportunity to object to the proposed Settlement and request for attorneys' fees and to
5 participate at the Final Approval Hearing. Any Member of the Class seeking to object to the proposed
6 Settlement may file such objection in writing with the Court and shall serve such objection on Class
7 Counsel and Defendants' Counsel no later than sixty (60) calendar days from the initial mailing of the
8 Notice by the Settlement Administrator. Settlement Class Members who wish to object to the request
9 for the Class Counsel Fee and Expense Award or the Class/Collective Representative Service Award
10 must file with the Court not later than twenty-one (21) calendar days before the Final Approval
11 Hearing a written objection setting forth the grounds for the objection. The objection also must indicate
12 whether the Settlement Class Member intends to appear at the Final Approval Hearing. Settlement
13 Class Members who fail to send timely written objections substantially complying with the manner
14 specified above or fail to object at the Final Approval Hearing shall be deemed to have waived any
15 objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the
16 Settlement. The written objection requirement may be excused by the Court upon a showing of good
17 cause. Class Counsel and Defendants' Counsel will file their responses to any objection within seven
18 (7) calendar days before the Final Approval Hearing. Only objecting Settlement Class Members who
19 make objections in the manner described in Paragraph 62(a) of the Agreement will be considered
20 Objectors and will therefore be permitted to be heard at the Final Approval Hearing; Settlement Class
21 Members who fail to make objections in the manner specified in Paragraph 62(a) of the Agreement
22 are not considered Objectors, shall be deemed to have waived any objections, shall be foreclosed
23 forever from seeking review or making any objection to the settlement or the terms of the Agreement,
24 and shall not be permitted to be heard at the Final Approval Hearing.

25 11. Final Approval Hearing. Class Counsel shall file a motion for final approval of
26 the Settlement with the appropriate declarations and supporting evidence, including a declaration
27 setting forth the identity of any members of the Class who request exclusion from the Settlement and
28 the status of administration. The Final Approval Hearing is set for _____, 2022 at _____.m.

1 which is at least 90 days from the date of service of the CAFA Notice as required by 28 U.S.C. §1715.
2 The Court reserves the right to continue the date of the final approval hearing without further notice
3 to Class Members. In the event that the Effective Date does not occur, the Parties will be returned to
4 their respective positions *nunc pro tunc* as those positions existed prior to the execution of the
5 Settlement Agreement.

6 12. Nonsubstantive amendments. Non-substantive amendments may be made to the
7 Settlement Agreement and/or Notice upon written agreement of the Class Counsel and Defendants'
8 Counsel without court approval.

9 13. All proceedings in this Action, except those contemplated herein, are stayed
10 and all deadlines vacated.

11 14. The Court retains jurisdiction to consider all further applications arising out of,
12 or in connection with, the Settlement.

13
14 **IT IS SO ORDERED.**

15 **DATED:** _____, 2022

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The Honorable Vince Chhabria
UNITED STATES DISTRICT JUDGE

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