

David Mara, Esq. (230498)
Jill Vecchi, Esq. (299333)
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 302
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048
Email: dmara@maralawfirm.com
jvecchi@maralawfirm.com

Peter Horton, Esq. (227678)
LAWYERS FOR EMPLOYEE AND CONSUMER RIGHTS, APC
4100 West Alameda Avenue, Third Floor
Burbank, California 91505
Telephone: (323) 486-5101
Facsimile: (323) 306-5571
Email: phorton@lfecr.com

Jonathan Melmed, Esq. (SBN 290218)
Laura Supanich, Esq. (SBN 314805)
Michiko Vartanian, Esq. (SBN 323979)
Maria Burciaga, Esq. (SBN 334545)
MELMED LAW GROUP P.C.
1801 Century Park East, Suite 850
Los Angeles, California 90067
Telephone: (310) 824-3828
Facsimile: (310) 862-6851
Email: jm@melmedlaw.com
lms@melmedlaw.com
mv@melmedlaw.com
mb@melmedlaw.com

Attorneys for MANUEL BALUX OCH and PEDRO GARCIA ALFEREZ, on behalf of
themselves, all others similarly situated, and on behalf of the general public

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

MANUEL BALUX OCH and PEDRO
GARCIA ALFEREZ on behalf of
themselves, all others similarly situated, and
on behalf of the general public,

Plaintiffs,

v.

SAC PROFLOORS; and DOES 1-100,
Defendants.

Case No. 23CV031860
(Consolidated with Case No. 23CV039543)

*[Assigned for All Purposes to the
Hon. Tara Desautels; Dept. 23]*

**DECLARATION OF DAVID MARA, ESQ.,
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, SETTING OF FINAL
APPROVAL HEARING DATE**

Date: April 17, 2024
Time: 2:30 p.m.
Reservation ID: 457084238219

Action File: April 25, 2023
Trial Date: None Set

1 I, DAVID MARA, declare as follows:

- 2 1. I am President of Mara Law Firm, PC, and counsel of record for Plaintiffs and the Class in
3 this matter. I am duly admitted to practice before all the courts of the state of California.
4 The following facts are within my personal knowledge and, if called to testify, I could and
5 would competently testify thereto.
- 6 2. I graduated from California Western School of Law and was admitted to practice law in
7 California in May 2004.
- 8 3. I extensively handle employment cases which involve violations of the California Labor Code
9 and Industrial Welfare Commission Wage Orders, such as wage and hour class actions and
10 cases alleging violations of the Private Attorneys General Act of 2004 (“PAGA”). I have
11 litigated over three hundred and fifty (350) class action and PAGA lawsuits over the course
12 of approximately 20 years.
- 13 4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.* (San Diego County
14 Superior Court, Case No. GIC834348) which was the underlying case in the California
15 Supreme Court’s landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012)
16 53 Cal.4th 1004, in which the California Supreme Court delineated the scope of employer
17 obligations to provide, and employee rights to receive, meal and rest periods under
18 California law.
- 19 5. I am frequently called upon to author Amicus Curiae briefs on behalf of Consumer
20 Attorneys of California (“CAOC”). For example, I authored the Amicus Curiae briefs on
21 behalf of CAOC in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, (The
22 California Supreme Court ruling that, like meal periods, employers must relieve employees
23 of all duty and relinquish all control to satisfactorily discharge its obligation to authorize
24 and permit rest periods.); *Frlekin v. Apple, Inc.* (2020) 8 Cal.5th 1038 (The California
25 Supreme Court ruling that the time spent on the employer’s premises waiting for, and
26 undergoing, required exit searches of packages, bags, or personal technology devices
27 voluntarily brought to work is compensable hours worked within the meaning of the Wage
28 Orders.); *Oliver v. Superior Court* (2021) California Court of Appeal Case No. H049185

(A brief asking the California Court of Appeal for the Sixth Appellate District to determine whether mandatory drive time of personal vehicles should be considered hours worked within the meaning of the Wage Orders' suffered or permitted test.). *Davidson v. O'Reilly Auto Enterprises, LLC* (9th Cir., 2020; Docket No. 18-56188)(a brief seeking Review *En Banc* of an order denying class certification in a wage and hour matter).

6. I am also a member of CAOC's Amicus Committee that determines the cases in which the organization will agree to provide amicus support.

7. I have also lectured as a panelist for California Employment Lawyers Association regarding a host of wage and hour issues.

8. I have been named as class counsel in the following certified cases as a result of the court granting a motion for class certification: *Mario Norona v. B&G Delivery System, Inc.* (Sacramento County Superior Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald Schroeder v. YRC, Inc.; et al.* (Central District of California, Case No. 12-cv-01374-TJH); *John Martin v. Sysco Corporation, et al.* (Eastern District of California, Case No. 1:16-cv-00990-DAD-SAB); *William Smith v. Werner Enterprises, Inc. d/b/a C.L. Werner, Inc.* (District of Nebraska, Case No. 8:15-cv-287); *Thomas Perez v. City of San Diego* (San Diego County Superior Court, Case No. 37-2014-00016621-CU-OE-CTL); *Denson Sales, et al. v. United Road Services, Inc. et al* (Northern District of California, Case No. 19-cv-08404-JST), *Eric Mendez v. M&N Consulting, Inc. dba A-Line Messenger Service* (San Bernardino County Superior Court, Case No. CIVDS1923624); *Denson Sales v. Professional Auto Transport, Inc. et al.* (San Bernardino County Superior Court, Case No. CIVDS2010153); *Bobby Williams v. Mohsen Transport, Inc.* (San Diego County Superior Court, Case No. 37-2019-00063361-CU-OE-CTL); and *Ashton Harden v. Mushiana Transport Inc.* (Sacramento County Superior Court, Case No. 34-2021-00301950-CU-OE-GDS).

9. I have also been named as class counsel in numerous cases during the settlement process. Here is a non-exhaustive list of cases where I have been named as class counsel in cases during the settlement process: *Kenneth Cox v. 3PL Worx, et al.* (Yolo County Superior

1 Court, Case No. CV-18-100); *Brian Davidson v. A&B Trucking Services, Inc.* (Kern
2 County Superior Court Case No. BCV-16-102985); *Alex Vega, et al. v. Advance Beverage*
3 *Co., Inc.* (Kern County Superior Court, Case No. BCV-16-100848); *Jaime Ruiz v. Altura*
4 *Centers for Health* (Kern County Superior Court, Case No. BCV-19-101577); *George*
5 *Zamudio v. AmeriPride Service, Inc.* (Alameda County Superior Court, Case No.
6 RG1809666); *Richard Hendricks v. Antonini Freight Express, Inc.* (San Joaquin County
7 Superior Court, Case No. STK-CV-UOE-2016-6999); *Alton Davis v. Apria Healthcare*
8 *Group, Inc.* (San Diego County Superior Court, Case No. 37-2014-00004724-CU-OE-
9 CTL); *Alan Atchison v. Ashley Furniture Industries, Inc., et al.* (Central District of
10 California, Case No. 17-cv-00528-JAK-SP); *Bernard Payton v. Atech Logistics, Inc.*
11 (Sonoma County Superior Court, Case No. SCV 258595); *Ramon Jenkins v. Compass*
12 *Group USA, Inc., et al.* (Yolo County Superior Court, Case No. CVCV-18-747); *Timothy*
13 *Spikes, et al. v. Bear Trucking, Inc., et al.* (San Bernardino County Superior Court, Case
14 No. CIVDS1715151); *Joshua Turpen v. Benjamin's Transfer Inc.* (Solano County Superior
15 Court, Case No. FCS048845); *Cesar Mendoza v. Bi-Rite Food Service, Inc.* (San Mateo
16 County Superior Court, Case No. 17CIV02044); *Terrance Bailey v. Blue Apron, LLC; et*
17 *al.* (Northern District of California, Case No. 18-cv-07000-VC); *Jeffrey Weast v.*
18 *California Aseptic Beverages, LLC* (San Bernardino County Superior Court, Case No.
19 CIVDS1825256); *Michael Valentich v. Hub Construction Specialties, Inc.* (San Bernardino
20 County Superior Court, Case No. JCCPDS4893); *Jose De Jesus Ortega Velazquez v.*
21 *Hunter Landscape, Inc.; et al.* (San Bernardino County Superior Court, Case No.
22 CIVDS1928062); *Adrian Diaz v. Keystone Automotive Operations, Inc.* (Riverside County
23 Superior Court, Case No. RIC1817450); *Arturo Gonzalez v. NCI Group, Inc. dba NCI*
24 *Building Systems* (Eastern District of California, Case No. 18-cv-00948-AWI-SKO); *Larry*
25 *Perez v. The Nielsen Company (US), LLC* (Orange County Superior Court, Case No. 30-
26 2021-01194324-CU-OE-CXC); *Erik Martinez v. Patrick Industries, Inc.* (San Bernardino
27 County Superior Court, Case No. CIVDS2009663); *Randolph Fitch v. Shaw Industries,*
28 *Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVSB2024674); *Joshua*

1 *Rael v. Intercontinental Hotels Group Resources, Inc.* (Los Angeles County Superior
2 Court, Case No. 19STCV16010); and *Aaron Romero v. Vitro Flat Glass, LLC* (Kern
3 County Superior Court, Case No. BCV-21-101357).

4 10. A class action complaint was filed by Plaintiff Och on April 25, 2023, in Alameda County
5 Superior Court (Case No. 23CV031860). The complaint alleges the following causes of
6 action against Defendant: (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay
7 Overtime; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest
8 Periods; (5) Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy; (6) Knowing
9 and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions;
10 (7) Failure to Pay all Wages Due at the Time of Termination; and (8) Violation of Unfair
11 Competition Law.

12 11. Plaintiff Manuel Balux Och submitted a Notice of Labor Code Violations to the Labor and
13 Workforce Development Agency (“LWDA”) on April 13, 2023. Thereafter, a PAGA
14 representative action complaint against was filed by Plaintiff Och in the Alameda County
15 Superior Court on July 27, 2023 (Case No. 23CV039543). The complaint sought civil
16 penalties under the PAGA. Plaintiff Och’s PAGA complaint alleged the same underlying
17 violations as his class complaint. On August 12, 2023, the Court granted the Parties’
18 stipulation to consolidate both the class and PAGA matters filed by Plaintiff Och, with
19 Case No. 23CV031860 serving as the lead case.

20 12. Plaintiff Pedro Garcia Alferez filed a class action complaint on May 12, 2023, in Yolo
21 County Superior Court. The complaint alleged substantially the same class action
22 allegations as Plaintiff Och’s class action complaint. On March 14, 2024, the Parties filed
23 a stipulation to allow Plaintiff Och to file a First Amended Complaint adding Plaintiff
24 Pedro Garcia Alferez as a plaintiff and class representative as well as his counsel. On March
25 18, 2024, the Court granted the Parties’ stipulation and Plaintiff Och filed his First
26 Amended Complaint on March 20, 2024.

27 13. After filing, the Parties engaged in informal discovery. These discovery efforts led to
28 Defendant producing policy documents that covered employees’ employment with

1 Defendant, such as employee handbooks, and time and wage records. Included within these
2 documents were Defendant's wage and hour policies, including its meal and rest period
3 policies. Defendant also produced time and wage records to a mutually agreed upon
4 mediation expert for the expert to pull a random 20% sampling of Class Members. The
5 records for these Class Members were then analyzed by the expert. Defendant further
6 produced a Class List that contained the hire and termination dates of all Class Members
7 which allowed Plaintiffs to determine the number of workweeks worked by Class Members
8 during the relevant time period. From this discovery, Plaintiffs and their Counsel were able
9 to analyze Defendant's liability in this action and prepare a realistic damage model.

10 14. The Parties attended an all-day mediation presided over by wage and hour mediator
11 Brandon McKelvey on December 15, 2023. This mediation was successful. The Parties
12 then met and conferred over all the terms of the settlement and finalized their settlement in
13 the Parties' Agreement. The Parties' Agreement is attached hereto as **Exhibit 1**.

14 15. Plaintiffs contend that Defendant does not provide employees with meal periods that
15 conform with California law. Employers have an obligation under California law to provide
16 employees with thirty (30) minute meal periods. Under California Labor Code § 512(a),
17 "[a]n employer may not employ an employee for a work period of more than five hours
18 per day without providing the employee with a meal period of not less than 30 minutes . .
19 . ." Cal. Lab. Code § 512(a). An employer "satisfies this obligation [to provide meal
20 periods] if it relieves its employees of all duty, relinquishes control over their activities and
21 permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does
22 not impede or discourage them from doing so." *Brinker Restaurant Corp. v. Superior Court*
23 (2012) 53 Cal.4th 1004, 1040. Here, Plaintiffs contend that Defendant's time records show
24 non-compliant meal periods.

25 16. In *Donohue v. AMN Services, LLC*, the California Supreme Court issued a decision,
26 wherein it ruled that time records showing late, short, or missed meal periods raises a
27 rebuttable presumption that the meal periods were not provided: "If time records show
28 missed, short, or delayed meal periods with no indication of proper compensation, then a

1 rebuttable presumption arises” that the meal periods were not provided in accordance with
2 California law. *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 74. Plaintiffs contend
3 that, here, the time records show non-compliant meal periods. In these shifts, under
4 *Donohue*, Plaintiffs contend that it is presumed that meal period violations occurred.

5 17. Defendant asserts that its meal period policy is lawful and that it provides employees with
6 meal periods in compliance with California law. Further, Defendant alleges that if litigation
7 continues it would be able to show that it advised employees of the right to take a meal
8 period in compliance with California law. Defendant contends that employees either took
9 a lawful meal period or knowingly and voluntarily decided to skip the meal period or take
10 a late or short meal period. Defendant contends that this evidence would rebut the
11 presumption under *Donohue v. AMN Services, LLC*. Defendant also asserts that the
12 evidence in this case shows that it paid meal period premiums in shifts in which employees
13 were not provided with compliant meal periods. Thus, Defendant contends that to the
14 extent an employee was not provided the opportunity to take a legally compliant meal
15 period, they were provided a meal premium.

16 18. In summary, Plaintiffs contend that because Defendant’s time records show non-compliant
17 meal periods, it is presumed that meal period violations occurred in these shifts. Defendant
18 counters that it would be able to rebut this presumption because its meal period policy is
19 lawful. Defendant also asserts that in rebutting the presumption, the Court or fact finder
20 would have to ask each employee why their time records show a non-compliant meal
21 period. This could be due to employees knowingly and voluntarily deciding to skip the
22 meal period or taking a late or short meal period. To make this determination, Defendant
23 contends the Court or fact finder would have to ask each employee about each instance
24 which would defeat certification as individual issues would predominate. Plaintiffs contend
25 that this is not the case and that certification under *Donohue* is proper. As such, disputes
26 exist as to whether certification is proper and as to whether Defendant can rebut the
27 presumption under *Donohue*.

28 19. Plaintiffs contend that the sampling of time records produced shows that there are meal

1 period violations in approximately 15% of shifts. If Plaintiffs were to prevail on this claim
2 for the entire class period, Plaintiffs and the Class Members would be entitled to the
3 following *maximum* potential damages: \$187,103 (12,229 shifts with meal period
4 violations x \$15.30 per hour = \$187,103.70).

5 20. Plaintiff alleges that employees are not provided with lawful rest periods. Employers have
6 an obligation to provide employees with ten (10) minute rest periods. An employer's
7 obligation to provide its employees with rest periods arises under the Industrial Welfare
8 Commission Wage Orders. Wage Order 7-2001, Section 12(A) states, "[e]very employer
9 shall authorize and permit all employees to take rest periods, which insofar as practicable
10 shall be in the middle of each work period. The authorized rest period time shall be based
11 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
12 hours or major fraction thereof." Here, the sampling of records analyzed by an expert
13 revealed that Defendant recorded rest periods until approximately July 16, 2021. Plaintiffs
14 believe that this same violation rate continued after rest periods stopped being recorded.
15 Plaintiffs contend that the same presumption under *Donohue* would apply to Defendant's
16 records showing unlawful rest periods.

17 21. Defendant asserts that its rest period policy is lawful and that it provides employees with
18 rest periods in compliance with California law. Defendant alleges that if litigation
19 continues it would be able to show that it advised employees of their rest period rights in
20 compliance with California law. Defendant further asserts that employees were provided
21 the opportunity to take legally compliant rest periods, and employees were relieved of all
22 work duties during such rest periods. Defendant also contends that if litigation were to
23 continue, it would provide declarations from employees stating that they knew they were
24 entitled to rest periods in accordance with California law and that they were able to leave
25 the work premises during rest periods. Defendant contends that the presumption under
26 *Donohue* does not apply to rest periods. Even if it did, Defendant contends that it would be
27 able to rebut the presumption.

28 22. In summary, Plaintiffs contend that Defendant does not provide lawful rest periods because

1 its time records show rest period violations. Plaintiffs contend that it is presumed that rest
2 period violations occurred in these shifts. Defendant disagrees that the *Donohue*
3 presumption applies to rest periods. Defendant also counters that it, if it does apply,
4 Defendant would be able to rebut this presumption because its rest period policy is lawful.
5 Defendant also asserts that in rebutting the presumption, the Court or fact finder would
6 have to ask each employee why their time records show a non-compliant rest period. This
7 could be due to employees knowingly and voluntarily deciding to skip the rest period. To
8 make this determination, Defendant contends the Court or fact finder would have to ask
9 each employee about each instance which would defeat certification as individual issues
10 would predominate. Plaintiffs contend that this is not the case and that certification under
11 *Donohue* is proper. As such, disputes exist as to whether certification is proper and as to
12 whether Defendant can rebut the presumption under *Donohue*.

13 23. Plaintiffs contend that the sampling of Defendant's time records show unlawful rest periods
14 in 40% of shifts. If Plaintiff were to prevail on this claim for the entire class period,
15 Plaintiffs and the Class Members would be entitled to the following **maximum** potential
16 damages: \$498,963 (32,612 shifts x \$15.30 average hourly rate = \$498,963.60).

17 24. Plaintiffs allege that employees are not provided with accurate itemized wage statements.
18 Section 226(a) provides that employers must furnish an accurate itemized statement in
19 writing showing: (1) gross wages earned; (2) total hours worked by the employee; (3) the
20 number of piece rate units earned and applicable piece rate if the employee is paid on a
21 piece rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the
22 period for which the employee is paid; (7) the name of the employee and only the last four
23 digits of his or her social security number or employee identification number other than a
24 social security number; (8) the name and address of the legal entity that is the employer;
25 and (9) all applicable hourly rates in effect during the pay period and corresponding number
26 of hours worked at each hourly rate by the employee. Plaintiffs allege that Defendant fails
27 to provide employees with accurate itemized wage statements because Defendant's wage
28 statements do not meet California Labor Code § 226(a)'s requirements. Plaintiffs contend

that Defendant's wage statements failed to accurately list the number of hours being paid for the category of pay entitled "Break Time."

25. Defendant disputes this claim. Defendant argues that employees can ascertain the required information, such as hours worked, using simple math. Defendant relies on cases which hold that “[w]age statements comply with § 226(a) when a plaintiff employee can ascertain the required information by performing simple math, using figures on the face of the wage statement.” *Hernandez v. BCI Coca-Cola Bottling Co.* (9th Cir. 2014) 554 Fed. Appx. 661, 662 (citing *Morgan v. United Retail Inc.* (2010) 186 Cal.App.4th 1136).

26. Further, Defendant also asserts that any violation of California Labor Code § 226 was not “knowing and intentional.” See Cal. Lab. Code § 226(e) (“An employee suffering injury as a result of a **knowing and intentional** failure by an employer” may recover damages”) (emphasis added); *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1195 (“Some statutory penalties are imposed only if an employers’ violation was ‘willful’ or ‘knowing.’ . . . [S]ection 226, subdivision (e) penalizes an employer’s ‘knowing and intentional’ failure to provide itemized wage statements under section 226, subdivision (a)[.]”). Defendant further contends that employees cannot show that they have suffered an injury because of any potential violation of California Labor Code § 226. Defendant contends that employees knew to talk to their supervisor if they had any questions or concerns with their wage statements. As such, disputes exist as to whether Defendant’s wage statements violated California Labor Code § 226(a), whether any such violation was knowing and intentional, and whether employees suffered an injury.

27. Under California Labor Code § 226(e)(1), the damages for breach of this section are fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000). If Plaintiffs were to prevail on this claim, Plaintiffs and the Class Members would be entitled to the following **maximum** damages: \$230,750 (155 pay periods x \$50 initial violation = \$7,750 plus 2,230 pay periods x \$100 subsequent violation = \$223,000).

1 28. Plaintiffs contend that Defendant does not pay employees for all time worked. Employees
2 must be paid for all “hours worked,” as that phrase is defined in the Wage Order and
3 interpreted by California courts. Hours worked is defined in the Wage Order as “the time
4 during which an employee is subject to the control of an employer and includes all the time
5 the employee is suffered or permitted to work, whether or not required to do so.” Wage
6 Order 7-2001, Subd. 2(G); *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60
7 Cal.4th 833. Under the control standard, “it is only necessary that the worker be subject to
8 the control of the employer in order to be entitled to compensation.” *Morillion v. Royal*
9 *Packing Co.* (2000) 22 Cal. 4th 575, 584. The *Morillion* Court reasoned that an employee
10 is under the employer’s control and entitled to compensation when the employer “directs,
11 commands or restrains’ an employee.” *Morillion*, 22 Cal. 4th at 583 (*quoting Bono*
12 *Enterprises, Inc. v. Bradshaw* (1995) 32 Cal. App. 4th 968, 975). Here, Plaintiffs contend
13 that Defendant does not pay employees for time employees must commute to and from
14 their job site.

15 29. Plaintiffs contend that Defendant owes wages to employees for the time spent driving to
16 and from job sites. Plaintiffs assert that employees work in teams. Plaintiffs allege that at
17 the beginning of a shift, employees are picked up by their supervisor and driven to the job
18 site. Plaintiffs assert that employees are required to ride with their team to the job location,
19 so employees cannot drive themselves or use another method of transportation. Thus,
20 Plaintiffs contend that this time must be paid.

21 30. Defendant contends that employees are paid for this time. Defendant asserts that employees
22 are told to begin recording their time when their supervisor picks them up. Because of this
23 Defendant asserts that no additional wages are owed to employees. Defendant contends
24 that if litigation were to continue, it would provide declarations from employees attesting
25 to the fact that they were paid for this time. Defendant asserts the Court or fact finder would
26 have to ask each employee about whether or not they were paid for this time in each shift
27 which would defeat certification as individual issues would predominate. As such, a
28 dispute exists regarding whether employees were paid for the time they spend going to and

1 from the job site at the beginning and end of their shifts.

2 31. Plaintiffs estimate that Defendant owes Plaintiffs and the Class Members thirty minutes
3 per shift. If Plaintiffs were to prevail on this claim for the entire class period, Plaintiffs and
4 the Class Members would be entitled to the following **maximum** potential damages:
5 \$623,704 (81,530 shifts x \$15.30 x 0.5 hours = \$623,704.50).

6 32. Plaintiffs assert that Defendant does use the proper regular rate of pay when calculating
7 overtime owed to employees. As a result, Plaintiffs argue that Defendant paid employees
8 less overtime wages than they were owed. California Labor Code § 510 and Wage Order
9 7 require employers to pay non-exempt employees overtime wages of no less than one and
10 one-half times their respective regular rates of pay. The regular rate of pay under California
11 law includes all remuneration for employment paid to the employee. The California
12 Supreme Court discussed how bonuses effect an employee's regular rate of pay in the case
13 *Alvarado v. Dart Container Corporation of California* ("Alvarado") (2018) 4 Cal. 5th 542.
14 There, the California Supreme Court observed, the "[r]egular rate of pay, which can change
15 from pay period to pay period, includes adjustments to the straight time rate, reflecting,
16 among other things, shift differentials and the per hour value of any nonhourly
17 compensation the employee has earned." *Id.* at 554.

18 33. Plaintiffs contend that Defendant pays employees performance pay in addition to hourly
19 pay. Plaintiffs assert that Defendant does not adjust the regular rate of pay when
20 determining the overtime rate owed. Defendant argues that performance pay is entirely
21 discretionary and, therefore, does not need to be included in the regular rate of pay. Thus,
22 the Parties have a dispute about whether Defendant was required to adjust the regular rate
23 of pay due to performance pay paid to employees.

24 34. Based upon the sampling of records, if Plaintiffs were to prevail on this claim for the entire
25 class period, Plaintiffs and the Class Members would be entitled to **maximum** potential
26 damages in the amount of \$497,201.

27 35. Plaintiffs also contend that Defendant failed to pay employees their final wages within the
28 timeframes outlined by California law. This claim is derivative of Plaintiff's unpaid wages,

meal period, and rest period claims. Should Plaintiffs' unpaid wage, meal period, and rest period claims fail, these claims would also fail.

36. In addition, Defendant contends that even if Plaintiff were successful in their unpaid wage, meal period, and rest period claims, they would have to prove Defendant "willfully" failed to pay employees the appropriate wages due upon separation of employment. "A willful failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages are due. However, a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203." Cal. Code Regs. Tit. 8 § 13520. "A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based in law or fact, which would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist." *Id.* Defendant contends that any failure to pay wages due at the separation of employment was not willful. Defendant argues that it would not be liable for waiting time penalties because a "good faith dispute" exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. Defendant also argues that Plaintiffs' unpaid wage claims cannot form the basis of their wage statement claim. Defendant relies on the case *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, for the position that employees do not suffer injury under California Labor Code § 226(a) so long as the wage statements correctly reflected the hours worked and the pay received even if the pay is later determined to be inaccurate.

37. Plaintiffs calculate the potential *maximum* exposure under their waiting time penalties cause of action as \$940,032 (256 former employees x 30 days x 8 hours x \$15.30 = \$940,032).

38. Plaintiffs also seek PAGA penalties. PAGA allows the private enforcement of certain California Labor Code sections relating to wage and hour violations. The maximum potential damages under Plaintiffs' PAGA claim is: \$1,003,100 (\$100 x 4 PAGA violations (meal periods, rest periods, unpaid wages, and wage statements) x 2,469 pay periods =

1 \$987,600 plus \$100 x 1 PAGA violation (waiting time penalties) x 155 pay periods =
2 \$15,500).

3 39. As Plaintiffs' PAGA claims are based on the same alleged unlawful conduct as their class
4 claims, Plaintiffs' PAGA claims are subject to the same risks on the merits as Plaintiffs'
5 class claims. In addition, the Court may reduce any PAGA penalties awarded under Section
6 2699, subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded
7 to Plaintiffs and the Aggrieved Employees – assuming liability is proven as to each of
8 Plaintiffs' claims – is higher in this case where these same individuals may also be
9 receiving money for the same unlawful conduct under the class claims. *See Avila v. Cold*
10 *Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018
11 U.S. Dist. LEXIS 6142 *17 ("Because the PAGA penalties sought are at least partially
12 duplicative of penalties granted by the underlying Labor Code violations, *see, e.g.,* Cal.
13 Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and
14 in what amount to award PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiffs
15 recognize that the potential PAGA penalties are highly uncertain."). As such, the Court
16 may reduce any PAGA penalty amount awarded to Plaintiffs and the Aggrieved
17 Employees.

18 40. Thus, not taking into account any of its defenses or arguments, Plaintiffs estimate that if
19 they were successful in their core claims, Defendant's total exposure would be
20 approximately \$2,037,721 [\$498,963 (rest period exposure) + \$187,103 (meal period
21 exposure) + \$623,704 (unpaid wage exposure) + \$230,750 (wage statements) + \$497,201
22 (unpaid overtime wages) = \$2,037,721]. If Plaintiffs are successful in their unpaid wage,
23 meal period, and rest period claims, they may also be entitled to damages for waiting time
24 penalties in the amount of \$940,032. If Plaintiffs' claims are successful, they may also be
25 entitled to PAGA penalties in the amount of \$1,003,100.

26 41. In light of the risks Plaintiffs' claims faced, Plaintiffs and their Counsel believe that the
27 settlement amount of \$942,500 – with an average settlement share amount estimated at
28 \$1,621.17 – is a reasonable and fair settlement amount.

1 42. The preliminary approval motion and supporting documents were uploaded to the Labor
2 Workforce Development Agency. Attached hereto as **Exhibit 2** is a confirmation received
3 as a result of this upload.

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

6
7 Dated: March 25, 2024

MARA LAW FIRM PC

8 
9 _____
10 David Mara, Esq.
11 Attorneys for the Plaintiffs

Exhibit 1

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this settlement agreement is made between Plaintiffs Manuel Balux Och and Pedro Garcia Alferez (hereinafter “Plaintiffs”) on behalf of themselves and the Class and Defendant Sac ProFloors (hereinafter “Defendant”) (collectively Plaintiffs and Defendant are referred to in this Agreement as the “Parties”). This agreement is intended to settle the cases entitled *Manuel Balux Och v. Sac ProFloors* (Alameda County Superior Court, Case No. 23CV031860), *Manuel Balux Och v. Sac ProFloors* (Alameda County Superior Court, Case No. 23CV039543), and *Pedro Garcia Alferez v. Sac ProFloors* (Yolo County Superior Court, Case No. CV2023-0968) (collectively, “the Complaints” or “Lawsuits”).

I. DEFINITIONS

In addition to the other terms defined in this agreement, the terms below have the following meaning:

1. **Administration Costs:** The costs incurred by the Settlement Administrator, APEX Class Action Administration, to administer this Settlement, which shall not exceed \$10,000. All Administration Costs shall be paid from the Gross Settlement Amount. If the actual administration costs are less than the amount allocated in this agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
2. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement:** The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
3. **Aggrieved Employees:** All non-exempt, hourly employees of Defendant in the State of California from April 13, 2022 through December 15, 2023.
4. **Attorneys Fee Award:** The amount of attorneys’ fees approved of by the Court and awarded to Class Counsel. This amount shall not exceed 33 1/3% of the Gross Settlement Amount. The Attorneys Fee Award shall be paid from the Gross Settlement Amount. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
5. **Class:** All non-exempt, hourly employees of Defendant in the State of California from April 25, 2019 through December 15, 2023.
6. **Class Counsel:** David Mara and Jill Vecchi of Mara Law Firm, PC, Peter Horton of Lawyers for Employee and Consumer Rights, and Jonathan Melmed and Laura Supanich of Melmed Law Group P.C.

7. **Class Data:** The electronic database Defendant shall deliver to the Settlement Administrator which will list the following information for each Class Member: (1) first and last name; (2) last known mailing address; (3) social security number; (4) telephone number; and (5) the total number of weeks during which the Class Member performed work during the Class Period. The Class Data shall be based on Defendant's payroll, personnel, and other business records.
8. **Class Member:** Each person eligible to participate in this Settlement who is a member of the Class as defined above.
9. **Class Notice:** The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
10. **Class Period:** April 25, 2019 through December 15, 2023.
11. **Class Representatives or Plaintiffs:** Manuel Balux Och and Pedro Garcia Alferez.
12. **Class Representative Enhancement Payments:** The amounts the Court awards to Plaintiffs, which will not exceed \$7,500 each. These payments shall be paid from the Gross Settlement Amount. These payments are being offered in consideration for Plaintiffs executing a general release of claims against Defendant, a release that is broader than any Participating Class Member will provide in consideration for a settlement share. This payment is also offered in consideration for the Plaintiffs' actions in conferring a benefit upon the State of California and the Class, and the time and effort Plaintiffs put into pursuing the litigation. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
13. **Cost Award:** The amount that the Court orders Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed \$20,000. The Cost Award will be paid from the Gross Settlement Amount. The Cost Award is subject to Court approval. If the actual costs incurred are less than the amount allocated in this Agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this Agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
14. **Counsel for Defendant:** Kerry L. Krueger of Kroloff, Belcher, Smart, Perry & Christopherson APLC.
15. **Court:** Superior Court of California for the County of Alameda.
16. **Defendant:** Sac ProFloors.

17. **Disbursement of the Settlement:** Within ten (10) business days after the Settlement Administrator's receipt of the Gross Settlement Amount, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to Aggrieved Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (4) the Class Representative Enhancement Payments paid to the Class Representatives, as approved by the Court; (5) the Administration Costs, as approved by the Court; and (6) the LWDA Payment to the LWDA.
18. **Effective Final Settlement Date:** The effective date of this Settlement will be when the final approval of the settlement can no longer be appealed, or, if there are no objectors and no plaintiffs in intervention at the time the court grants final approval of the settlement, the date the court enters judgment granting final approval of the settlement.
19. **Employer Taxes:** Defendant's portion of payroll taxes as the Class Members' current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) owed to the appropriate local, state, and federal taxing authorities. Defendant will pay its portion of payroll taxes separate and apart from the Gross Settlement Amount.
20. **Final Judgment or Final Approval:** The final order entered by the Court approving this Agreement.
21. **Funding of Settlement:** Defendants shall wire or otherwise provide to the Settlement Administrator the Gross Settlement Amount no later than six (6) months after the Court grants final approval or June 15, 2024, whichever is later.
22. **Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary \$942,500. This is the gross amount Defendant can be required to pay under this Settlement Agreement, with the exception of its obligation to pay Employer Taxes, or if the Escalator Provision is triggered. The Gross Settlement Amount includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payments paid to the Class Representatives, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Aggrieved Employees, as approved by the Court. Defendant's portion of payroll taxes as the Class Members' current or former employer will be paid outside of and in addition to the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

23. **Individual Class Settlement Share(s)**: The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Class Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Class Settlement Share automatically, without the return of a claim form.
24. **Individual PAGA Settlement Share(s)**: The amount payable to each Aggrieved Employee under the terms of this Settlement Agreement. Aggrieved Employees are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Also, even if an Aggrieved Employee requests exclusion from the Class Settlement as described in this Agreement, the Aggrieved Employee will receive an Individual PAGA Settlement Share. Therefore, Aggrieved Employees will receive an Individual PAGA Settlement Share automatically, without the return of a claim form and regardless of whether they request to be excluded from the Class Settlement.
25. **LWDA**: California Labor and Workforce Development Agency (“LWDA”). The LWDA is empowered to enforce the Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.*, and has delegated such authority to Plaintiff with regard to the claim in this Action through the procedural mechanisms provided for by statute.
26. **LWDA Payment**: Refers to the Seventy-five percent (75%) of the PAGA Payment of \$50,000 that is to be paid to the LWDA as described in this Settlement.
27. **Net PAGA Settlement Amount or NPSA**: The total amount of money for payout to Aggrieved Employees, which is the PAGA Payment less the LWDA Payment.
28. **Net Settlement Amount or NSA**: The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorneys Fee Award, Cost Award, Class Representative Enhancement Payments, the PAGA Payment, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Participating Class Members. The payment of employee-side taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the Individual Settlement Shares that are paid out of the Net Settlement Amount shall be reduced by the employee’s tax liability for the share for the portion of the settlement shares allocated as wages.
29. **PAGA**: The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).

30. **PAGA Data**: The electronic database Defendant shall deliver to the Settlement Administrator which will list the following information for each Aggrieved Employee: (1) first and last name; (2) last known mailing address; (3) social security number; (4) telephone number; and (5) the total number of weeks the total number of weeks during which the Aggrieved Employee performed work during the PAGA Period as an Aggrieved Employee. The PAGA Data shall be based on Defendant's payroll, personnel, and other business records.
31. **PAGA Payment**: Refers to the \$50,000 the Parties have agreed to settle the PAGA claims. 75% of this amount, or \$37,500, shall be paid to the LWDA. The remaining 25% of the \$50,000, or \$12,500, shall become part of the Net PAGA Settlement Amount payable to Aggrieved Employees.
32. **PAGA Period**: April 13, 2022 through December 15, 2023.
33. **PAGA Settlement**: Refers to the settlement of claims included in the Released PAGA Claims, for which Aggrieved Employees will receive an Individual PAGA Settlement Share payment.
34. **Participating Class Members**: All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
35. **Parties**: Plaintiffs Manuel Balux Och and Pedro Garcia Alferez, as individuals and as Class Representatives, and Defendant Sac ProFloors.
36. **Preliminary Approval or Preliminary Approval Order**: The Court's order preliminarily approving the Class Settlement.
37. **Released Class Claims**: The Released Class Claims include, for the entire Class Period, all claims that were pled or that could have been pled in the operative class complaint based upon the facts alleged in the Lawsuits including: (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Authorize and Permit Rest Periods and pay for missed rest periods; (4) Failure to Provide Meal Periods and pay for missed meal periods; (5) Failure to Provide Accurate and Complete Wage Statements; (6) Failure to Adopt A Compliant Sick Pay/Paid Time Off Policy; (7) Waiting Time Penalties; (8) Failure to Reimburse Business Expenses; (9) Failure to Timely Pay Wages During Employment; and (10) Violation of Unfair Competition Law based upon violations of the California Labor Code sections set forth herein.
38. **Released PAGA Claims**: The Released PAGA Claims include, for the entire PAGA Period, any and all claims belonging to the State of California, the LWDA, and Plaintiff (as representative of the State of California, the LWDA, and the general public) under the California Private Attorney General Act ("PAGA"), Cal. Lab. Code § 2698, *et seq.* to the extent such claims are

predicated on claims that were or reasonably could have been alleged based on the claims, facts and/or allegations that were contained in Plaintiff's PAGA Letters.

39. **Released Parties:** Defendant Sac ProFloors, its subsidiaries, d/b/as, and affiliated entities, and each of its past or present officers, directors, employees and agents which could be jointly liable with Defendant for the claims alleged.
40. **Response Deadline:** Sixty (60) calendar days from the initial mailing of the Class Notices.
41. **Settlement Administration:** The Settlement Administrator will use the National Change of Address Database to obtain updated addresses for Class Members. The Settlement Administrator will mail the Class Notices by first class U.S. mail to all Class Members at the address resulting from the search of the National Change of Address Database. The Class Notices will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out of the Settlement. Any Class Member who does not receive notice after the steps outlined above have been taken will still be bound by the Settlement and/or judgment.
42. **Settlement Administrator:** The third party administrator agreed upon by Parties to administer this Settlement is APEX Class Action Administration.

II. **RECITALS**

43. A class action complaint was filed by Plaintiff Manuel Balux Och on April 25, 2023 in Alameda County Superior Court (Case No. 23CV031860). The complaint alleges the following causes of action against Defendant: 1) Failure to Pay All Straight Time Wages; 2) Failure to Pay Overtime; 3) Failure to Provide Meal Periods; 4) Failure to Authorize and Permit Rest Periods; 5) Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy; 6) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; 7) Failure to Pay all Wages Due at the Time of Termination; and 8) Violation of Unfair Competition Law.
44. Plaintiff Manuel Balux Och submitted his Notice of Labor Code Violations to the LWDA on April 13, 2023. Thereafter, a PAGA representative action complaint against was filed by Plaintiff (as an agent of the LWDA) in the Alameda County Superior Court on July 27, 2023 (Case No. 23CV039543). The complaint sought civil penalties under the PAGA in relation to the following alleged violations suffered by allegedly similar aggrieved employees: 1) Failure to Pay All Straight Time Wages; 2) Failure to Pay Overtime; 3) Failure to Provide Meal Periods; 4) Failure to Authorize and Permit Rest Periods; 5) Failure to Pay all Wages Due at the Time of Termination; 6)

Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; and 7) Failure to Adopt a Compliant Sick Pay Policy.

45. On August 12, 2023, the Court granted the Parties' stipulation to consolidate both matters filed by Plaintiff Manuel Balux Och, with Case No. 23CV031860 serving as the lead case.
46. Plaintiff Pedro Garcia Alferez filed a class action complaint on May 12, 2023, in Yolo County Superior Court. The complaint alleges the following causes of action against Defendant: 1) Failure to pay all minimum wages; 2) Failure to pay all overtime wages; 3) Failure to provide rest periods and pay missed rest period premiums; 4) Failure to provide meal periods and pay missed meal period premiums; 5) Failure to maintain accurate employment records; 6) Failure to pay wages timely during employment; 7) Failure to pay all wages earned and unpaid at separation; 8) Failure to furnish accurate itemized wage statements; and 9) Violations of the Unfair Competition Law.
47. The parties met and conferred regarding the cases on multiple occasions and then agreed to attend a mediation. Prior to the mediation, Defendants provided class-wide data, documents, and information permitting Plaintiffs and their lawyers to fully evaluate class-wide exposure.
48. On December 15, 2023, the parties participated in a full-day mediation with respected wage and hour mediator, Brandon McKelvey, which resulted in the settlement that is reflected in this Agreement.
49. As part of this settlement, Plaintiff Manuel Balux Och will file a First Amended Complaint in Case No. 23CV031860 adding Plaintiff Pedro Garcia Alferez as a plaintiff and class representative as well as his counsel.
50. **Benefits of Settlement to Class Members.** Plaintiffs and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiffs and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiffs and Class Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiffs and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.
51. **Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant has been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by

Plaintiffs. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.

- 52. Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Action is not appropriate for class or representative treatment. Defendant asserts a number of defenses to the claims, and have denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiffs against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.
- 53. Plaintiffs' Claims.** Plaintiffs assert that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiffs, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Action. However, in the event that this Settlement is finally approved by the Court, the Plaintiffs, Participating Class Members, and Class Counsel will not oppose Defendant's efforts to use this Agreement to prove that Plaintiffs and Participating Class Members have resolved and are forever barred from re-litigating the claims released under this Agreement.

III. SETTLEMENT TERMS AND CONDITIONS

- 54. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, that Defendant is obligated to pay under this Settlement Agreement is \$942,500. The Gross Settlement Amount includes, but is not limited to: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payments paid to the Class Representatives, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment, as approved by the Court. Defendant's portion of payroll taxes as the Class Members' current or former employer will be paid outside of and in addition to the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

A. Escalator Provision: It was estimated for purposes of mediation that there are approximately 19,947 workweeks between the start of the Class Period and the December 15, 2023 mediation. As such, this settlement is estimated to encompass approximately 19,947 workweeks. To the extent that the total number of workweeks increases by more than 5% of 19,947 (or above 20,944), the Gross Settlement Amount shall increase proportionately. Alternatively, in the event that this escalator provision is triggered, Defendant has the option to adjust the end date of the Class Period so as to have an earlier end date in order to limit the number of covered workweeks.

- 55. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement.
- 56. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiffs and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Action or in any other lawsuit. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.
- 57. Appointment of Class Representatives.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiffs Manuel Balux Och and Pedro Garcia Alferez shall be appointed as representative for the Class.
- 58. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
- 59. Individual Class Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Class Settlement Share from the Net Settlement Amount to each Participating Class Member.

A. Calculation.

- i. **Individual Class Settlement Share Calculation.** Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant, based on the Class Data provided by Defendant, divided by (ii) the total number

of weeks worked by all Participating Class Members based on the same Class Data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a work week for purposes of this calculation. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked.

B. Tax Withholdings. Each Class Member's Individual Settlement Share will be apportioned as follows: 40% wages and 60% to interest and penalties/other payments. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. Only the employee share of payroll tax withholdings shall be paid from each Class Member's Individual Settlement Share. The employer share of payroll tax withholdings shall be paid separate from and in addition to the Gross Settlement Amount.

60. Individual PAGA Settlement Share. Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual PAGA Settlement Share from the Net PAGA Settlement Amount to each Aggrieved Employee.

A. Calculation.

i. **Individual PAGA Settlement Share Calculation.** Each Aggrieved Employee will receive a proportionate share of the Net PAGA Settlement Amount that is equal to (i) the number of pay periods he or she worked for Defendant, based on the PAGA Data provided by Defendant, divided by (ii) the total number of pay periods worked by all Aggrieved Employees based on the same PAGA data, which is then multiplied by the Net PAGA Settlement Amount. One day worked in a given pay period will be credited as a pay period for purposes of this calculation. Therefore, the value of each Aggrieved Employee's Individual PAGA Settlement Share ties directly to the amount of pay periods that he or she worked during the PAGA Period.

B. Tax Withholdings. Each Aggrieved Employee's Individual PAGA Settlement Share will be apportioned as 100% penalties. The Individual

PAGA Settlement Shares shall therefore be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.

61. **Constituents of Gross Settlement Amount Disbursement.** Subject to the terms and conditions of this Agreement, the Settlement Administrator shall disburse the Gross Settlement Amount as directed later on herein to the following:

- A. To the Named Plaintiffs:** In addition to his Individual Settlement Share, and subject to the Court's approval, the named Plaintiffs, Manuel Balux Och and Pedro Garcia Alferez, will receive up to \$7,500 each in consideration for providing Defendant a General Release, a release that is broader than the claims released by Participating Class Members. The Settlement Administrator will pay the Class Representative Enhancement Payments out of the Gross Settlement Amount. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payments. An IRS Form 1099 will be issued to Plaintiffs with respect to their Class Representative Enhancement Payments.
- B. To Class Counsel.** At the Final Approval Hearing, Class Counsel will apply to the Court for an Attorneys Fee Award not to exceed 33 1/3 % of the GSA and a Cost Award not to exceed \$20,000. The Settlement Administrator will pay the Court approved amounts for the Attorneys Fee Award and Cost Award out of the Gross Settlement Amount. Payroll tax withholding and deductions will not be taken from the Attorneys Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to the Attorneys Fee Award. In the event the Court does not approve the entirety of the application for the Attorneys Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorneys Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
- C. To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each Class Member's Individual Settlement Share. Defendant's portion of payroll taxes as the current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) will be paid outside of and in addition to the GSA. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant's portion of payroll withholding taxes and will forward the amount of the Participating Class

Members' portion of normal payroll withholding taxes to the appropriate taxing authorities.

D. To the Settlement Administrator. The Settlement Administrator – APEX Class Action Administration – will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$10,000. This will be paid out of the Gross Settlement Amount. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members.

E. To the LWDA and Aggrieved Employees. The Settlement Administrator will pay \$37,500 of the PAGA Payment to the LWDA. This is 75% of the \$50,000 allocated to satisfy the PAGA penalties claim. The remaining 25% of the PAGA Payment (which equates to \$12,500) shall become part of the Net PAGA Settlement Amount payable to Aggrieved Employees

F. To Participating Class Members. The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members and Aggrieved Employees shall be made from the Gross Settlement Amount.

62. Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that APEX Class Action Administration shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Class Notice to Class Members and Aggrieved Employees; performing skip traces and re-mailing notices to Class Members and Aggrieved Employees; calling Class Members and Aggrieved Employees with undeliverable notices to obtain accurate addresses; keeping track of any objections or requests for exclusion from Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class Member's and Aggrieved Employee's Individual Settlement Share; maintaining a website which will include settlement documents; providing weekly status reports to Defendants' Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing and re-mailing Individual Settlement Shares to Participating Class Members and Aggrieved Employees; calculating and mailing the LWDA Payment to the LWDA; distributing the Attorneys Fee Award and Cost Award to Class Counsel; printing and providing Participating Class Members, Aggrieved Employees, and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Court upon the completion of the Settlement; providing any funds remaining in the QSF as a result of uncashed checks to Legal Aid at

Work in the amounts directed per this Settlement; and for such other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in APEX Class Action Administration or otherwise have a relationship with APEX Class Action Administration that could create a conflict of interest.

63. Procedure for Approving Settlement.

A. Cooperation.

- i. All Parties and their counsel shall support the Settlement and take such steps as are reasonably necessary to effectuate the Settlement.

B. First Amended Complaint.

- i. Plaintiff Manuel Balux Och shall prepare and file a stipulated request for leave to amend in the lead case, Case No. 23CV031860, to add Pedro Garcia Alferez as a Plaintiff and Class Representative as well as to add his Counsel. Upon the Court's receipt and acceptance of the amended complaint in Case No. 23CV031860, Plaintiff Pedro Garcia Alferez will file for dismissal of the action entitled *Pedro Garcia Alferez v. Sac ProFloors* (Yolo County Superior Court, Case No. CV2023-0968) without prejudice. Should the Yolo County Superior Court deny dismissal of the action entitled *Pedro Garcia Alferez v. Sac ProFloors*, the Parties will work together to effectuate this dismissal and cure any deficiencies found by the Court. If the Yolo County Superior Court ultimately denies dismissal of the action entitled *Pedro Garcia Alferez v. Sac ProFloors*, the Parties will stipulate to transfer the action to the Alameda County Superior Court and to coordinate it with the case *Och* class action (Case No. 23CV031860). Regardless of whether or not settlement approval is ultimately granted, the FAC will remain the operative complaint.

C. Motion for Preliminary Approval and Conditional Certification.

- i. Plaintiffs will move for an order: (1) conditionally certifying the Class for settlement purposes only; (2) granting Preliminary Approval of the Settlement; (3) setting a date for the Final Approval hearing; and (4) approving the Class Notice.
- ii. At the same time that Plaintiffs files their Motion for Preliminary Approval, Plaintiffs shall send a copy of the Agreement to the LWDA pursuant to the 2016 amendments to PAGA.

- iii. At the Preliminary Approval hearing, Plaintiffs will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representatives, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing.
- iv. **Effect of Denial of Preliminary Approval.** Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Settlement Agreement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payments shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement Agreement. Any order or proceeding relating to an application for the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payments shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiffs' or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment.

D. Notice to Class Members and Aggrieved Employees. After the Court enters its Preliminary Approval Order, every Class Member and Aggrieved Employee will be provided with the Class Notice in accordance with the following procedure:

- i. **Delivery of Class and PAGA Data.** Within ten (10) business days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database, which will list the Class and PAGA Data. If any or all of this information is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will use the National Change of Address Database to obtain updated addresses for Class Members. The Class Data and PAGA Data shall be based on Defendant's payroll, personnel, and other

business records. The Settlement Administrator shall maintain the Class and PAGA Data and all information contained within the Class and PAGA Data as private and confidential.

- ii. Preparation of Class Notices.** Based on the information in the Class and PAGA Data and the formulae set forth in Paragraph 57(A)(i) and 58(A)(i), above, the Settlement Administrator shall promptly calculate the estimated Individual Settlement Share and Individual PAGA Settlement Share for every Class Member and Aggrieved Employee, to be included in the individualized Class Notices to be sent to that Class Member and/or Aggrieved Employee, and shall prepare and mail a spreadsheet setting forth those calculations to Class Counsel and Defense Counsel no fewer than five (5) days before mailing the Class Notices to Class Members and Aggrieved Employees. The Class Notices will inform each Class Member of his/her right to do nothing, dispute the number of work weeks worked, opt out of the Settlement, or object to the Settlement. It will also inform Class Members that if they first request exclusion from the Settlement and then object, the objections would not be considered valid. In addition, if the Class Members object and then request exclusion from the Class Settlement, the Class Members would be deemed to have waived their objection.
- iii. Mailing of Class Notices.** Within ten (10) business days after receipt of the Class and PAGA Data, the Settlement Administrator will mail via first-class regular U.S. Mail the Class Notice to all identified Class Members and Aggrieved Employees using the mailing address information provided by Defendant and the results of the search of the National Change of Address Database on all Class Members and Aggrieved Employees.
- iv. Returned Notices.** If a Class Notice is returned because of an incorrect address, within five (5) business days from receipt of the returned notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail, performing address searches for all mail returned without a forwarding address, and promptly re-mailing to Class Members for whom new addresses are found.

- v. **Weekly Status Reports.** The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Notices mailed, the number of Notices returned as undeliverable, the number of Notices re-mailed, and the number of requests for exclusion or objections received.
- vi. **Settlement Administrator's Declaration.** No later than fourteen (14) calendar days after the Response Deadline, or on a date mutually agreed upon by the Parties and the Settlement Administrator, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel at the same time as the final approval motion is filed. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

E. Objections to Settlement. The Class Notice will provide that the Class Members who wish to object to the Settlement must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline. The timeframe to submit an objection will not be increased for returned mailings.

- a. **Format.** Any Objections shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.
- b. **Notice of Intent to Appear.** Objecting Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel. Objecting Class Members are permitted to appear regardless of whether they submitted a written objection.

F. Request for Exclusion from the Settlement ("Opt-Out"). The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a written

request for exclusion. The written request for exclusion must: (a) state the Class Member's name, address, telephone number, and the last four digits of the Class Member's social security number or employee identification number; (b) state the Class Member's intention to exclude themselves from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; and (e) be postmarked no later than the Response Deadline.

- i. **Effect of "Opt-Out."** Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share or any benefit of this Settlement. If the Class Member is also an Aggrieved Employee as defined in this Agreement, however, he or she will still receive an Individual PAGA Settlement Share payment as approved by the Court. Aggrieved Employees have no right to opt-out of the PAGA Settlement.
- ii. **Confirmation of Authenticity.** If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member's identity. Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share. A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will receive an Individual Class Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the subsequent judgment, regardless of whether he or she has objected to the Settlement.
- iii. **Report.** No later than five (5) business days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.

G. Class Member and Aggrieved Employee Disputes. If a Class Member or Aggrieved Employee who receives a Class Notice wishes to dispute the

number of work weeks listed on the Class Notice, the Class Member or Aggrieved Employee may notify the Settlement Administrator by mail or telephone no later than the Response Deadline and should produce any available supporting evidence, such as wage statements, offers of employment, termination letters, and/or other employment records, to the Settlement Administrator. The documentation should provide evidence of the dates the Class Member or Aggrieved Employee contends he or she worked for Defendant during the Class or PAGA Period. The Settlement Administrator shall then provide the documentation provided by the Class Member or Aggrieved Employee to Defendant. Defendant shall review its records, the documentation provided by the Class Member or Aggrieved Employee, and shall provide information to the Settlement Administrator in response to any such disputed claim. Defendant's records shall be presumed to be determinative, but the Settlement Administrator shall evaluate the evidence submitted by the Class Member or Aggrieved Employee and make the decision as to which dates should be applied. The determination by the Settlement Administrator shall be final and binding.

H. No Solicitation of Objection or Requests for Exclusion. Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

I. Settlement Website. The Settlement Administrator shall establish a website to host documents relevant to this lawsuit and the proposed settlement. Such documents shall include: the operative complaint; this Joint Stipulation and Settlement Agreement, together with its exhibits; and the Class Notice.

J. Motion for Final Approval.

i. Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorneys Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative Enhancement Payments; and (5) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Class and PAGA Claims of the Participating Class Members and LWDA.

ii. **Denial or Appeal of Final Approval.** If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the

Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement Payments, Attorneys Fee Award, Cost Award, and Administration Costs award will not constitute a material modification to the Settlement within the meaning of this paragraph.

- iii. **Proposed Order and Judgment.** Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-judgment matters as may be appropriate under Court rules and applicable law.

K. Waiver of Right to Appeal. Provided that the judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.

L. Vacating, Reversing, or Modifying Judgment on Appeal. If, after a notice of appeal, the reviewing Court vacates, reverses, or modifies the judgment such that there is a material modification to the Settlement Agreement, and that Court's decision is not completely reversed and the judgment is not fully affirmed on review by a higher Court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount, an alteration in the calculation of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Share.

M. Disbursement of Settlement Shares and Payments. Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's

Final Approval Order and Judgment. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

- i. **Funding the Settlement:** Defendant shall wire or otherwise provide to the Settlement Administrator the Gross Settlement Amount no later than six (6) months after the Court grants final approval or June 15, 2024, whichever is later.
 - ii. **Disbursement:** Within ten (10) business days after the Defendant provides the GSA to the Settlement Administrator, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to be Paid to Aggrieved Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (4) the Class Representative Enhancement Payments paid to the Class Representatives, as approved by the Court; (5) the Administration Costs, as approved by the Court; (6) the LWDA Payment to the LWDA; and (7) Defendant's portion of payroll taxes as the Class Members' current or former employer.
 - iii. **Qualified Settlement Fund or QSF:** The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.468B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.
- N. **Settlement Administrator's Final Report.** Within ten (10) business days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds. The Parties shall file this declaration with the Court. The Settlement Administrator will provide any supplemental declaration required by the Court or the Parties.
- O. **Uncashed Checks.** Participating Class Members and Aggrieved Employees must cash or deposit their Individual Settlement Share checks

within one hundred and eighty (180) calendar days after the checks are mailed to them.

- i. **Reminder Postcard.** If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced.
- ii. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those checks remaining un-cashed shall be tendered to Legal Aid at Work. Legal Aid at Work is a nonprofit legal services organization that has been assisting low-income, working families for more than 100 years. Legal Aid at Work's Wage Protection Program represents low-wage workers who are the victims of wage violations. The wage claims made by Legal Aid at Work's clients are often the same type of claims made in wage-and-hour class actions brought by workers under the federal Fair Labor Standards Act and under California wage-and-hour laws.

P. Defendant's Legal Fees. Defendant is responsible for paying for all of Defendant's own legal fees, costs, and expenses incurred in this Action outside of the Gross Settlement Amount.

64. **Release of Class Claims.** As of the Effective Final Settlement Date, Class Members who do not submit a timely and valid request for exclusion release the Released Parties from the Released Class Claims. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Class Claims.
65. **Release of PAGA Claims.** As of the Effective Final Settlement Date, the Released Parties shall be entitled to a release from the LWDA and Plaintiff (as representative of the State of California, the LWDA, and the general public) as to all Released PAGA Claims. Defendant will be entitled to assert this Settlement of the PAGA Claims in this Action as a defense to future claims against it for penalties by the LWDA or under the PAGA on behalf of the LWDA. The Released Parties will also be entitled to assert this release of PAGA Claims to assert claim or issue preclusion or other effects of this Settlement if any Aggrieved Employees bring a subsequent claim on behalf of

the LWDA concerning the same primary rights that were at issue in this Action. Aggrieved employees may not opt out of the PAGA Settlement.

- 66. Plaintiffs' Release of Claims and General Release.** As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payments to the named Plaintiffs in an amount not to exceed \$7,500 each, Plaintiffs Manuel Balux Och and Pedro Garcia Alferez shall give the following general release of claims for themselves and their respective spouse, heirs, successors and assigns, forever release the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, from the beginning of time through the date of their signatures on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to their employment with Defendant or the remuneration for, or termination of, such employment. Plaintiffs' Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

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

This release excludes any release of any claims not permitted to be released by law.

Also, in consideration for providing Defendant with this complete, general release, Defendant agrees to provide a neutral reference (dates of employment and last position held) in response to any inquiries by prospective employers of Plaintiffs.

67. Miscellaneous Terms

- A. No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Action, or that but for the Settlement, a Class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is

intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and Plaintiffs' and Defendant's willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).

- B. No Effect on Employee Benefits.** The Class Representative Enhancement Payments and/or Individual Settlement Shares paid to Plaintiffs and Participating Class Members and/or Aggrieved Employees shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacation, holiday pay, retirement plans, etc.) of Plaintiffs or the Participating Class Members or Aggrieved Employees. The Parties agree that any Class Representative Enhancement Payment and/or Individual Settlement Share paid to Plaintiffs or the Participating Class Members and/or Aggrieved Employees under the terms of this Agreement do not represent any modification of Plaintiffs' or Participating Class Members' and/or Aggrieved Employees' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Class Representative Enhancement Payment shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.
- C. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- D. Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect 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 this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents,

supplemental provisions, and assistance of the Court will be consistent with this Agreement.

- E. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- F. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.
- G. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- H. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- I. No Prior Assignment.** Plaintiffs hereby represent, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- J. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
- K. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
- L. No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members and Aggrieved Employees will assume any such

tax obligations or consequences that may arise from this Agreement, and that Class Members and Aggrieved Employees shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member or Aggrieved Employee, such Class Member assumes all responsibility for the payment of such taxes.

M. Jurisdiction of the Court. The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.

N. Invalidity of Any Provision; Severability. Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

O. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

P. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 3/7/2024

MANUEL BALUX OCH

DocuSigned by:

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Dated: _____

PEDRO GARCIA ALFEREZ

Dated: _____

SAC PROFLOORS

Name:

Title:

Dated: 3/6/2024

MARA LAW FIRM, PC

DocuSigned by:

4579A5166C10447 ...

David Mara, Esq.

Jill Vecchi, Esq.

Attorneys for Plaintiffs, on behalf of themselves, and
the Settlement Class

Dated: _____

**LAWYERS FOR EMPLOYEE AND
CONSUMER RIGHTS**

Peter Horton, Esq.

Attorneys for Plaintiffs, on behalf of themselves, and
the Settlement Class

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: _____

MANUEL BALUX OCH

Dated: 3/6/2024

PEDRO GARCIA ALFEREZ

DocuSigned by:
Pedro Garcia
6C6ECD7FE32F427...

Dated: _____

SAC PROFLOORS

Name:

Title:

Dated: _____

MARA LAW FIRM, PC

David Mara, Esq.

Jill Vecchi, Esq.

Attorneys for Plaintiffs, on behalf of themselves, and
the Settlement Class

Dated: _____

**LAWYERS FOR EMPLOYEE AND
CONSUMER RIGHTS**

Peter Horton, Esq.

Attorneys for Plaintiffs, on behalf of themselves, and
the Settlement Class

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: _____

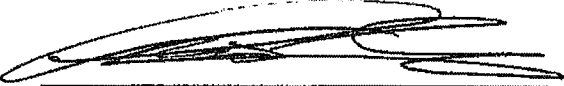
MANUEL BALUX OCH

Dated: _____

PEDRO GARCIA ALFEREZ

Dated: 3-5-24

SAC PROFLOORS


Name: Enrique Curbelo
Title: CEO, President

Dated: _____

MARA LAW FIRM, PC

David Mara, Esq.
Jill Vecchi, Esq.
Attorneys for Plaintiffs, on behalf of themselves, and
the Settlement Class

Dated: _____

**LAWYERS FOR EMPLOYEE AND
CONSUMER RIGHTS**

Peter Horton, Esq.
Attorneys for Plaintiffs, on behalf of themselves, and
the Settlement Class

Dated: March 6, 2024

MELMED LAW GROUP P.C.



Jonathan Melmed, Esq.

Laura Supanich

Attorneys for Plaintiffs, on behalf of themselves, and
the Settlement Class

Dated: _____

**KROLOFF, BELCHER, SMART, PERRY &
CHRISTOPHERSON APLC**

Kerry L. Krueger, Esq.

Attorneys for Defendant

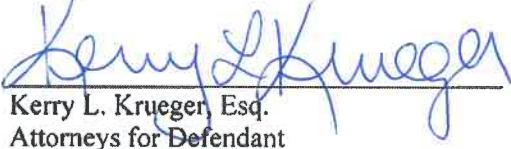
Dated: _____

MELMED LAW GROUP P.C.

Jonathan Melmed, Esq.
Laura Supanich
Attorneys for Plaintiffs, on behalf of themselves, and
the Settlement Class

Dated: 3/7/2024

**KROLOFF, BELCHER, SMART, PERRY &
CHRISTOPHERSON APLC**



Kerry L. Krueger, Esq.
Attorneys for Defendant

Exhibit *A*

CALIFORNIA SUPERIOR COURT, COUNTY OF ALAMEDA
Manuel Balux Och and Pedro Garcia Alferez, on behalf of themselves, all others similarly situated, and on
behalf of the general public, Plaintiffs, v. Sac ProFloors, Defendant
Case No. 23CV031860 and Case No. 23CV039543 (“Complaints” or “Action”)

NOTICE OF CLASS ACTION SETTLEMENT

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don’t act.*

TO: All non-exempt, hourly employees of Sac ProFloors in the State of California from April 25, 2019 through December 15, 2023.

The California Superior Court, County of Alameda has granted preliminary approval to a proposed settlement (“Settlement”) of the above-captioned actions (“Action”). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement (“Notice”) carefully.

The Court has certified the following class for settlement purposes (“Class” or “Class Members”):

All non-exempt, hourly employees of Sac ProFloors in the State of California from April 25, 2019 through December 15, 2023.

The purpose of this Notice is to provide a brief description of the claims alleged in the Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

**YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT.
PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.**

WHAT INFORMATION IS IN THIS NOTICE

1. Why Have I Received This Notice?	Page 1
2. What Is This Case About?	Page 2
3. Am I A Class Member? Am I An Aggrieved Employee?	Page 2
4. How Does This Class Action Settlement Work?	Page 3
5. Who Are the Attorneys Representing the Parties?	Page 3
6. What Are My Options?	Page 4
7. How Do I Opt Out or Exclude Myself From This Settlement?	Page 4
8. How Do I Object to the Settlement?	Page 4
9. How Does This Settlement Affect My Rights?	Page 5
10. How Much Can I Expect to Receive From This Settlement?	Page 5
11. How Will the Attorneys for the Class and the Class Representatives Be Paid?	Page 7

1. Why Have I Received This Notice?

Sac ProFloors’ (hereinafter referred to as “Defendant”) records indicate that you may be a Class Member. The settlement will resolve all Class Members’ Released Claims, as described in Section No. 9 below, from April 25, 2019 through December 15, 2023 (the “Class Period”).

A Preliminary Approval Hearing was held on [the date of Preliminary Approval], in the California Superior Court, County of Alameda. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

The Court will hold a Final Fairness Hearing concerning the proposed settlement on [the date of final approval hearing], 2024 at [time a.m./p.m.], before Judge Brad Seligman, located at 1221 Oak Street, Oakland, CA 94612, Department 23.

2. What Is This Case About?

A class action complaint against Defendant was filed in the Alameda County Superior Court on April 25, 2023 (Case No. 23CV031860). The complaint alleged the following causes of action against Defendant: (1) failure to pay all straight time wages; (2) failure to pay all overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to adopt a compliant sick pay/paid time off policy; (6) knowing and intentional failure to comply with itemized employee wage statement provisions; (7) failure to pay all wages at the time of termination of employment; and (8) violation of Unfair Competition Law, on behalf of non-exempt, hourly employees.

A PAGA representative action complaint was filed against Defendant in the Alameda County Superior Court on July 27, 2023 (Case No. 23CV039543). The complaint sought civil penalties under the PAGA in relation to the following alleged violations suffered by allegedly similar aggrieved employees: (1) failure to pay all straight time wages; (2) failure to pay all overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to pay all wages at the time of termination of employment; (6) knowing and intentional failure to comply with itemized employee wage statement provisions; and (7) failure to adopt a compliant sick pay/paid time off policy.

The two cases (Case No. 23CV031860 and 23CV039543) have been consolidated, with Case No. 23CV031860 serving as the lead case.

The Court has not made any determination as to whether the claims advanced by the Plaintiffs have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiffs or Defendant's; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial.

Defendant expressly denies that it did anything wrong or that it violated the law and further deny any liability whatsoever to Plaintiffs or to the Class.

3. Am I A Class Member? Am I An Aggrieved Employee?

You are a Class Member if you worked for Defendant in California as a non-exempt, hourly employee at any time from April 25, 2019 through December 15, 2023.

If you worked for Defendant in California as a non-exempt, hourly employee at any time from April 13, 2022 through December 15, 2023, you are also an "Aggrieved Employee" under the settlement.

4. How Does This Class Action Settlement Work?

Plaintiffs Manuel Balux Och and Pedro Garcia Alferez bring this action behalf of themselves and all other similarly situated individuals who worked for Defendant as a non-exempt, hourly employee in California at any time during the Class Period. Plaintiffs and these other individuals comprise a “Class” and are “Class Members.” The settlement of this Action resolves the Released Claims of all Class Members, as defined in the Settlement Agreement and Final Judgment, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiffs and Class Counsel believe the settlement is fair and reasonable. The Court must also review the terms of the settlement and determine if it is fair and reasonable to the Class. The Court file has the settlement documents, which explain the settlement in greater detail. The pleadings and other records in this litigation may be examined online on the Alameda County Superior Court’s website, known as “eCourt Public Portal,” at <https://eportal.alameda.courts.ca.gov>

After arriving at the website, click the “Search” tab at the top of the page, then select the Document Downloads link, enter the case number and click “Submit.” Images of every document filed in the case may be viewed at a minimal charge. You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings.

5. Who Are the Attorneys Representing the Parties?

Attorneys for Plaintiffs and the Class	Attorneys for Defendant
MARA LAW FIRM, PC David Mara dmara@maralawfirm.com Jill Vecchi jvecchi@maralawfirm.com 2650 Camino Del Rio North, Suite 302 San Diego, California 92108 Telephone: (619) 234-2833 LAWYERS FOR EMPLOYEE AND CONSUMER RIGHTS Peter Horton phorton@lfecr.com 3500 West Olive Avenue, Floor 3 Burbank, California 91505 Telephone: (323) 375-5101 MELMED LAW GROUP P.C. Jonathan Melmed jm@melmedlaw.com Laura Supanich lms@melmedlaw.com 1801 Century Park East, Suite 850 Los Angeles, California 90067 Telephone: (310) 824-3828	KROLOFF, BELCHER, SMART, PERRY & CHRISTOPHERSON, APLC Kerry L. Krueger 7540 Shoreline Drive Stockton, California 95219 Telephone: (209) 478-2000

The Court has decided that Mara Law Firm, PC, Lawyers for Employee and Consumer Rights, and Melmed Law Group P.C. are qualified to represent you and all other Class Members simultaneously.

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

6. What Are My Options?

The purpose of this Notice is to inform you of the proposed settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: *Defendants will not retaliate against you in any way for either participating or not participating in this Settlement.*

- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this Class Action and may receive a payment from the Settlement. You will be bound to the release of the Released Class Claims as defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Class Claims as defined in Section No. 9 below.
- **OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this Class Action. If the Court grants final approval of the Settlement, you will not receive a Settlement payment and you will not give up the right to sue Defendant and the Released Parties for the Released Class Claims. If you are an Aggrieved Employee, you will receive a portion of the PAGA, even if you opt-out of the settlement.
- **OBJECT:** You may assert a legal objection to the proposed settlement. If you would like to object, you may not opt out of this case.

7. How Do I Opt Out Or Exclude Myself From This Settlement?

If you do not want to take part in the Settlement, you must mail a written Request for Exclusion to the Settlement Administrator. The written request for exclusion must: (a) state your name, address, telephone number, and social security number or employee identification number; (b) state your intention to exclude yourself from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator at [address]; (d) be signed by you or your lawful representative; and (e) be postmarked no later than [the Response Deadline].

If the Court approves the Settlement at the Final Approval Hearing, the Court will enter a Judgment. If you do not request exclusion from the Settlement, the Judgment will bind you to the terms of the Settlement. If you are an Aggrieved Employee, you will receive a portion of the PAGA Payment, even if you opt-out of the settlement.

8. How Do I Object To The Settlement?

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by submitting your objection in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than [the Response Deadline]. The objection must state: (a) the case name; (b) your full name, address, and telephone number; (c) the words “Notice of Objection” or “Formal Objection;” (d)

describe, in clear and concise terms, the legal and factual arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing. The objection will not be valid if it objects only to the appropriateness of the action or its merits.

Class Members may appear at the Final Approval Hearing, either in person or through the objector's own counsel. If the Court rejects the objection, he/she will receive an Individual Settlement Share payment and will be bound by the terms of the Settlement.

9. *How Does This Settlement Affect My Rights? What are the Released Claims?*

If the proposed settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court's Final Judgment and will release Defendant and the Released Parties¹ from the Released Class Claims:

The Released Class Claims include, for the entire Class Period, all claims that were pled or that could have been pled in the operative class complaint based upon the facts alleged in the Lawsuits including: (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Authorize and Permit Rest Periods; (4) Failure to Provide Meal Periods; (5) Failure to Provide Accurate and Complete Wage Statements; (6) Failure to Adopt A Compliant Sick Pay/Paid Time Off Policy; (7) Waiting Time Penalties; (8) Failure to Reimburse Business Expenses; (9) Failure to Timely Pay Wages During Employment; and (10) Violation of Unfair Competition Law based upon violations of the California Labor Code sections set forth herein.

Additionally, the LWDA will be bound by the Final Judgment and will release the Released Parties from the Released PAGA Claims. The Released PAGA Claims include all claims under the California Private Attorney General Act ("PAGA"), Cal. Lab. Code § 2698, *et seq.* to the extent such claims are predicated on claims that were or reasonably could have been alleged based on the claims, facts and/or allegations that were contained in Plaintiff's PAGA Letters.

10. *How Much Can I Expect to Receive From This Settlement?*

The total maximum amount that Defendant could be required to pay under this Agreement shall be up to but no more than \$942,500 ("Gross Settlement Amount" or "GSA").

A. Deductions from the Settlement

The "Net Settlement Amount" or "NSA" means the portion of the Gross Settlement Amount, available for distribution to Class Members after the deduction of (1) the Class Representative Enhance Payments to the named Plaintiffs in an amount up to \$7,500 each, for prosecution of the Action, risks undertaken for the payment of attorneys' fees and costs, and a general release of all claims; (2) the Settlement Administration Costs to the Settlement Administrator in an amount estimated not to exceed \$INSERT; (3) a payment of \$50,000 allocated to the PAGA claims; and (4) payment to Class Counsel in an amount not to exceed \$313,852 (33 1/3% of the Gross Settlement Amount) for attorneys' fees and an amount not to exceed \$20,000 for litigation costs. All of these payments are subject to court approval.

¹ "Released Parties" means Defendant Sac ProFloors, its subsidiaries, d/b/as, and affiliated entities, and each of its past or present officers, directors, employees and agents which could be jointly liable with Defendant for the claims alleged.

B. How Class Member Settlement Payments are Calculated

After deducting the above-referenced items, the remaining Net Settlement Amount, will be proportionately distributed amongst all Class Members who have not opted out. Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant, based on the Class Data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class Data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a work week for purposes of this calculation. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked during the Class Period (April 25, 2019 through December 15, 2023).

C. How Aggrieved Employee Settlement Payments are Calculated

If you are an Aggrieved Employee under the settlement, you will also receive a portion of the PAGA Payment. Pursuant to PAGA, the LWDA will receive a payment of \$37,500 (75% of the \$50,000 total PAGA Payment). The remaining \$12,500 is the "Net PAGA Settlement Amount" or "NPSA" and will be proportionately distributed amongst all Aggrieved Employees. Each Aggrieved Employee will receive a proportionate share of the Net PAGA Settlement Amount that is equal to (i) the number of pay periods he or she worked for Defendant, based on the PAGA Data provided by Defendant, divided by (ii) the total number of pay periods worked by all Aggrieved Employees based on the same PAGA data, which is then multiplied by the Net PAGA Settlement Amount. One day worked in a given pay period will be credited as a pay period for purposes of this calculation. Therefore, the value of each Aggrieved Employee's Individual PAGA Settlement Share ties directly to the amount of pay periods that he or she worked during the PAGA Period (April 13, 2022 through December 15, 2023).

D. Your Estimated Settlement Payment

Although your exact share of the Net Settlement Amount as a Class Member cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount, is as follows: \$ [REDACTED], less taxes. This is based on the Class Data which shows you worked [REDACTED] workweeks during the Class Period.

If you are also an Aggrieved Employee, you will receive a share of the Net PAGA Settlement Amount. Based upon the calculation above, your approximate share of the Net PAGA Settlement Amount, is as follows: \$ [REDACTED]. This is based on the PAGA Data which shows you worked [REDACTED] pay periods during the PAGA Period.

E. Tax Treatment of Your Settlement Payments

Forty percent (40%) of each Individual Class Settlement Share is intended to settle each Class Member's claims for unpaid wages (the "Wage Portion"). The Wage Portion will be reduced by applicable payroll tax withholdings and deductions. Defendant's share of legally required payroll taxes for the Wage Portion will be calculated by the Settlement Administrator and paid by Defendants separately from the GSA. The Settlement Administrator will issue an IRS Form W-2 to each Participating Class Member with respect to the Wage Portion of his/her Individual Class Settlement Share.

Sixty percent (60%) of the Individual Class Settlement Share is intended to settle each Class Member's claims for interest and penalties/other payments. The Non-Wage Portion will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Participating Class Member an IRS Form 1099 with respect to the Non-Wage Portion of his/her Individual Class Settlement Share.

If you are an Aggrieved Employee, your Individual PAGA Settlement Share will be apportioned as 100% penalties. This will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Aggrieved Employee an IRS Form 1099 with respect to his/her Individual PAGA Settlement Share.

F. What Happens If You Don't Cash Your Check?

It is strongly recommended that upon receipt of your settlement check, you immediately cash it or cash it before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day period, the Settlement Administrator will pay over the amount represented by the check to Legal Aid at Work.

11. *How Will the Attorneys for the Class and the Class Representatives Be Paid?*

The attorneys for Plaintiffs and the Class will be paid from the Gross Settlement Amount. Subject to Court approval, the attorneys for Plaintiffs and the Class shall be paid an amount not to exceed 33 1/3% of the Gross Settlement Amount (\$313,852) for attorney fees and \$20,000 for litigation costs.

Defendant has paid all of their own attorneys' fees and costs.

Plaintiffs will also be paid, subject to Court approval, an amount not to exceed \$7,500 each, as an enhancement for the initiation of and prosecution of this case, the risks undertaken for the payment of costs in the event this case had been lost, and a general release of all claims.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free. You can also obtain documents related to this case and this settlement by visiting [administrator website], a website maintained by the Settlement Administrator. Please refer to the Sac ProFloors Class Action Settlement.

This Notice does not contain all of the terms of the proposed settlement or all of the details of these proceedings. For more detailed information, the pleadings and other records in this litigation may be examined online on the Alameda County Superior Court's website, known as "eCourt Public Portal," at <https://eportal.alameda.courts.ca.gov>

After arriving at the website, click the "Search" tab at the top of the page, then select the Document Downloads link, enter the case number and click "Submit." Images of every document filed in the case may be viewed at a minimal charge. You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings. You may also contact Plaintiff's counsel, whose contact information is above, and they will provide you with a copy of the settlement documents or case documents free of charge.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

Exhibit 2