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**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. Michael Markman; Dept. 23]*

**REVISED [PROPOSED] ORDER
GRANTING PLAINTIFFS’ MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION,
APPROVAL OF CLASS NOTICE,
SETTING OF FINAL APPROVAL
HEARING DATE**

Date: May 14, 2024
Time: 2:30 p.m.
Reservation ID: 457084238219

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

1 **I. RECITALS**

2 This action is currently pending before this Court as a putative class action and
3 representative action (the “Action”). Plaintiffs Manuel Balux Och and Pedro Garcia Alferez have
4 applied to this Court for an order preliminarily approving the settlement of the Action in
5 accordance with Joint Stipulation and Settlement Agreement (the “Agreement”), which together
6 with the exhibit annexed thereto, sets forth the terms and conditions for a proposed settlement and
7 entry of judgment upon the terms and conditions set forth therein. The Court has read and
8 considered the Memorandum of Points and Authorities in support of Plaintiffs’ Motion for
9 Preliminary Approval of Class and PAGA Action Settlement, Conditional Certification, Approval
10 of Class Notice, Setting of Final Approval Hearing Date and the declarations submitted therewith.
11 For purposes of this Order, the Court adopts all defined terms as set forth in the Agreement.

12 **II. FINDINGS**

13 After review and consideration of the Agreement and Plaintiffs’ motion for preliminary
14 approval and the papers in support thereof, the Court hereby finds and orders as follows:

15 1. The Agreement falls within the range of reasonableness meriting possible final
16 approval.

17 2. The certification of the Class solely for purposes of settlement is appropriate in that:
18 (1) the Class Members are ascertainable and so numerous that joinder of all Class Members is
19 impracticable; (2) there are questions of law and fact common to the Class which predominate
20 over any individual questions; (3) Plaintiffs’ claims are typical of the claims of the Class; (4)
21 Plaintiffs and their Counsel have fairly and adequately represented and protected the interests of
22 the Class; and (5) a class action, and class-wide resolution of the action via class settlement
23 procedures is superior to other available methods for the fair and efficient adjudication of the
24 controversy.

25 3. The Agreement, and the obligations of the Parties as set forth therein, is fair,
26 reasonable, and is an adequate settlement of this case and is in the best interests of the Class in
27 light of the factual, legal, practical, and procedural considerations raised by this case.

28 4. Plaintiffs do not have any conflicts that would preclude them from serving as Class

Representative, and their appointment comports with the requirements of due process.

5. Class Counsel does not have any conflicts that would preclude them from acting as Class Counsel, and they meet the requirements for appointment as Class Counsel and the requirements of due process.

6. The notice of proposed class action settlement attached as Exhibit A to the Agreement complies with due process because the notice of proposed class action settlement is reasonably calculated to adequately apprise Class Members of: (i) the pending lawsuit; (ii) the terms of the proposed Agreement; and (iii) their rights, including the right to either participate in the settlement, exclude themselves from the settlement, or object to the settlement. Plaintiffs' proposed plan for class notice and settlement administration is the best notice practicable under the circumstances.

III. ORDER

The Court having considered the papers submitted in support of the motion for preliminary approval, HEREBY ORDERS THE FOLLOWING:

1. The Court finds on a preliminary basis that the provisions of the Agreement are fair, just, reasonable, and adequate and, therefore, meet the requirements for preliminary approval.

2. The following Class is conditionally certified for purposes of settlement only: "All non-exempt, hourly employees of Defendant in the State of California from April 25, 2019 through December 15, 2023."

3. The Agreement provides for the following release as to Participating Class Members,¹ which is hereby approved conditionally: "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

¹ A Participating Class Members is a Class Member who did not submit a valid and timely request to exclude themselves from the settlement.

1 Adopt A Compliant Sick Pay/Paid Time Off Policy; (7) Waiting Time Penalties; (8) Failure to
2 Reimburse Business Expenses; (9) Failure to Timely Pay Wages During Employment; and (10)
3 Violation of Unfair Competition Law based upon violations of the California Labor Code sections
4 set forth herein.” The Class Period is April 25, 2019, through December 15, 2023.

5 4. This settlement also releases claims under the Private Attorneys General Act of
6 2004 (“PAGA”). These claims are asserted on behalf of Aggrieved Employees defined as: “All
7 non-exempt, hourly employees of Defendant in the State of California from April 13, 2022 through
8 December 15, 2023.” Aggrieved Employees may not request to be excluded from the PAGA
9 portion of the settlement, including the Released PAGA Claims. All Aggrieved Employees will
10 receive a portion of the PAGA Payment.

11 5. The Agreement provides for the following release as to Aggrieved Employees,
12 which is hereby approved conditionally: “The Released PAGA Claims include, for the entire
13 PAGA Period, any and all claims belonging to the State of California, the LWDA, and Plaintiff
14 (as representative of the State of California, the LWDA, and the general public) under the
15 California Private Attorney General Act (“PAGA”), Cal. Lab. Code § 2698, *et seq.* to the extent
16 such claims are predicated on claims that were or reasonably could have been alleged based on the
17 claims, facts and/or allegations that were contained in Plaintiff’s PAGA Letters.” The PAGA
18 Period is April 13, 2022 through December 15, 2023.

19 6. The settlement appears to be fair, adequate and reasonable to the Class. The
20 settlement falls within the range of reasonableness and appears to be presumptively valid, subject
21 only to any objections that may be raised at the final approval hearing and final approval by this
22 Court.

23 7. Plaintiffs Manuel Balux Och and Pedro Garcia Alferez are conditionally approved
24 as the Class Representatives for the Class.

25 8. The Court acknowledges the request for an incentive payment of \$7,500 each to
26 Plaintiffs Manuel Balux Och and Pedro Garcia Alferez for their service as class representatives
27 which will be decided at the time of Final Approval.

28 9. Mara Law Firm, PC; Lawyers for Employee and Consumer Rights; and Melmed

1 Law Group P.C. are conditionally approved as Class Counsel for the Class.

2 10. The Court acknowledges the request for awards of up to \$314,135 in attorneys' fees
3 and up to \$20,000 in actual costs payable to Class Counsel which will be decided at the time of
4 Final Approval.

5 11. A final approval hearing on the question of whether the settlement, attorneys' fees
6 and costs to Class Counsel, and the Class Representative Service Payment should be finally
7 approved as fair, reasonable and adequate as to Class Members is scheduled in Department 23 on
8 the date and time set forth in the Implementation Schedule below.

9 12. The Court confirms APEX Class Action Administration as the Settlement
10 Administrator.

11 13. The proposed payment of up to \$10,000 in costs to APEX Class Action
12 Administration for its services as the Settlement Administrator is conditionally approved.

13 14. The Agreement provides from the Gross Settlement Fund a PAGA Payment of
14 \$50,000 (75% of which shall be paid to the Labor and Workforce Development Agency, and 25%
15 of which shall be distributable to PAGA Aggrieved Employees).

16 15. The Court approves, as to form and content, the Notice of Class Action Settlement
17 in substantially the form attached as Exhibit 4 to the Declaration of Jill Vecchi, Esq., in Support
18 of Plaintiffs' Motion for Preliminary Approval. The Court approves the procedure for Class
19 Members to participate in, to opt out of, and to object to, the settlement as set forth in the notice.

20 16. The Court directs the mailing of the notice of class action settlement by first class
21 mail to Class Members in English and Spanish languages in accordance with the Implementation
22 Schedule below. The Court finds the dates selected for the mailing and distribution of the notice,
23 as set forth in the Implementation Schedule, meet the requirements of due process and provide the
24 best notice practicable under the circumstances and shall constitute due and sufficient notice to all
25 persons entitled thereto.

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IV. IMPLEMENTATION SCHEDULE

The Court orders the following Implementation Schedule for further proceedings:

Deadline for Defendant to submit Class Data to Settlement Administrator	May 29, 2024 [10 business days from the preliminary approval order]
Deadline for Settlement Administrator to Mail Class Notices to Class Members	June 12, 2024 [10 business days from receipt of the Class and PAGA Data]
Deadline for Settlement Administrator to Set Up Settlement Website	June 12, 2024
Deadline for Class Members to Postmark Requests for Exclusion, Objections, or Disputes (“Response Deadline”)	August 12, 2024 [60 days from mailing]
Deadline for Class Counsel to file a Motion for Final Approval	August 20, 2024 [16 court days prior to the final approval hearing]
Deadline to Provide the Court with the Settlement Administrator’s Declaration Outlining Requests for Exclusion, Objections, and Disputes	August 20, 2024 [16 court days prior to the final approval hearing]
Final Approval Hearing and Final Approval	September 12, 2024, at 10:00 a.m.

IT IS SO ORDERED.

Dated: _____, 2024

By _____
Honorable Michael Markman
Alameda County Superior Court Judge