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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO**

RYAN BATORICK, an individual, on behalf of  
himself, the State of California, as a private  
attorney general, and on behalf of all others  
similarly situated,

Plaintiff,

v.

SUPERIOR FLOOD RESTORATION, INC., a  
California corporation; and DOES 1 TO 50,

Defendants.

Case No.: 37-2023-00053892-CU-OE-CTL

**Settlement Agreement and Release of Class  
Action**

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Attorneys for Defendant Superior Flood Restoration, Inc.

## **SETTLEMENT AGREEMENT AND RELEASE OF CLASS ACTION**

This Settlement Agreement and Release of Class Action (“Settlement Agreement”) is made and entered into by: (1) Plaintiff Ryan Batorick (“Plaintiff”), individually and in his representative capacity on behalf of the Settlement Class, as defined below, and as a private attorney general on behalf of the State of California; and (2) Defendant Superior Flood Restoration, Inc. (“Defendant”). Plaintiff and Defendant are collectively referred to herein as the “Parties.” This Settlement Agreement is subject to the approval of the Court, pursuant to California Rules of Court, rule 3.769, subdivisions (c), (d), and (e), and is made for the sole purpose of attempting to consummate settlement of the action on a class-wide basis subject to the following terms and conditions. As detailed below, if the Court does not enter an order granting final approval of this Settlement Agreement or the conditions precedent are not met for any reason, this Settlement Agreement is void and of no force or effect whatsoever.

### **1. DEFINITIONS**

As used in this Settlement Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Settlement Agreement are not specifically defined below, but are defined elsewhere in this Settlement Agreement, they are incorporated by reference into this definition section.

#### **1.1. ACTION**

“Action” shall mean the following civil action: *Ryan Batorick v. Superior Flood Restoration, Inc.*, case number 37-2023-00053892-CU-OE-CTL, currently pending before the Superior Court of the State of California for the County of San Diego.

#### **1.2. ADMINISTRATIVE EXPENSES**

“Administrative Expenses” shall include all costs and expenses associated with and paid to the third-party settlement administrator, which are estimated not to exceed \$10,000.00.

#### **1.3. APPLICABLE WAGE ORDER**

“Applicable Wage Order” shall mean the California Industrial Welfare Commission (“IWC”) Wage Order applicable to the facts of this case, including IWC Wage Order 16-2001 and others that may be applicable. (Cal. Code of Regs., tit. 8, § 11160.)

**1.4. CLAIMS**

“Claims” shall mean the claims asserted in the Action.

**1.5. CLASS ATTORNEY FEES AND EXPENSES**

“Class Attorney Fees and Expenses” shall mean the portion of the Gross Settlement Amount attributable to attorney fees and litigation expenses. The Parties agree that the fee-portion of the Class Attorney Fees and Expenses shall be up to one-third of the Gross Settlement Amount (i.e., \$50,000.00), as approved by the Court, and the award of costs and expenses shall be up to an additional \$10,000.00. If the Escalator Provision described below is triggered so as to increase the Gross Settlement Amount, the Parties agree that the fee portion of the Class Attorney Fees and Expenses will increase proportionally such that the total amount of attorneys’ fees remains one-third of the Gross Settlement Amount *after* the upward adjustment required by the Escalator Provision is implemented.

**1.6. CLASS COUNSEL**

“Class Counsel” shall mean Jonathan Melmed, Laura Supanich, and Rebecca Harteker of Melmed Law Group P.C.

**1.7. CLASS MEMBER**

“Class Member” shall mean any person who is a prospective member of the Settlement Class, or, if such person is incompetent or deceased, the person’s legal guardian, executor, heir, or successor-in-interest.

**1.8. CLASS NOTICE**

“Class Notice” shall mean the *Notice of Proposed Class Action Settlement*, as set forth in the form of **Exhibit 1** attached hereto, or as otherwise approved by the Court, which is to be mailed to Class Members along with the Share Form.

**1.9. CLASS PARTICIPANTS**

“Class Participants” shall mean all Class Members who do not timely request exclusion from the Class Settlement.

**1.10. CLASS PERIOD**

“Class Period” shall mean the period from December 12, 2019, through the date of preliminary approval of the settlement.

**1.11. CLASS REPRESENTATIVE**

“Class Representative” shall mean Plaintiff Ryan Batorick.

**1.12. CLASS SETTLEMENT**

“Class Settlement” shall mean the settlement embodied in this Settlement Agreement, which is subject to Court approval.

**1.13. COMPLAINT**

“Complaint” shall mean the currently-operative complaint in the Action.

**1.14. COURT**

“Court” shall mean the Superior Court of the State of California for the County of San Diego.

**1.15. DEFENDANT**

“Defendant” shall mean Defendant Superior Flood Restoration, Inc..

**1.16. DEFENSE COUNSEL**

“Defense Counsel” shall mean the attorneys representing Defendant.

**1.17. EFFECTIVE DATE**

“Effective Date” shall be the date when all of the following events have occurred: **(a)** this Settlement Agreement has been executed by all Parties and by Class Counsel and Defense Counsel; **(b)** the Court has given preliminary approval to the Class Settlement; **(c)** notice has been given to the Settlement Class providing them with an opportunity to request exclusion from the Class Settlement; **(d)** the Court has held a Final Approval and Fairness Hearing and entered a final order and judgment certifying the Settlement Class and approving this Settlement Agreement; and **(e)** the later of the following events: **(i)** the expiration of the period for filing any appeal, writ, or other appellate proceeding opposing the Class Settlement has elapsed without any appeal, writ, or other appellate proceeding having been filed; **(ii)** the dismissal of any appeal, writ, or other appellate proceeding opposing the Class Settlement with no right to pursue further remedies or relief; or **(iii)** any appeal, writ, or the issuance of such other final appellate order upholding the Court’s final order with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Class Settlement shall not become effective until the Court’s order approving the Class Settlement is completely final and there is no further recourse by an appellant or objector who seeks to contest the

1 Class Settlement. If no objections are filed, the Effective Date shall be after steps (a) through (d) are  
2 completed (i.e., the date that the court has entered a final order and judgment certifying the Settlement  
3 Class and approving this Settlement Agreement).

4 **1.18. EMPLOYEE'S TAXES AND REQUIRED WITHHOLDING**

5 "Employee's Taxes and Required Withholding" shall mean the employee's share of any and all  
6 applicable federal, state, or local payroll taxes, including those collected under authority of the Federal  
7 Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and/or the State  
8 Unemployment Tax Act (SUTA) on the portion of any Class Participant's Individual Settlement  
9 Amount that constitutes wages. The Employee's Taxes and Required Withholdings will be withheld  
10 from and paid out of the Individual Settlement Amounts paid from the Net Settlement Amount.

11 **1.19. EMPLOYER'S TAXES**

12 "Employer's Taxes" shall mean and refer to Defendant's share of payroll taxes (e.g.,  
13 Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is  
14 owed on the portion of any Class Participant's Individual Settlement Amount that constitutes wages.  
15 The Employer's Taxes shall be separately paid by Defendant and shall not be paid from the Gross  
16 Settlement Amount or Net Settlement Amount.

17 **1.20. FINAL APPROVAL AND FAIRNESS HEARING**

18 "Final Approval and Fairness Hearing" shall mean the final hearing held to ascertain the  
19 fairness, reasonableness, and adequacy of the Class Settlement.

20 **1.21. GROSS SETTLEMENT AMOUNT**

21 "Gross Settlement Amount" or "GSA" is the agreed upon non-reversionary settlement amount  
22 totaling \$150,000.00 to be paid by Defendant in full settlement of the Released Claims asserted in this  
23 case, inclusive of the Administrative Expenses, the Employee's Taxes and Required Withholdings, the  
24 Class Attorney Fees and Expenses, the Incentive Award, and PAGA Payment. Defendant shall  
25 separately pay its share of the Employer's Taxes in addition to the Gross Settlement Amount on the  
26 portion of each Individual Settlement Amount allocated as wages.  
27  
28

**1.22. HEARING ON PRELIMINARY APPROVAL**

“Hearing on Preliminary Approval” shall mean the hearing held on the motion for preliminary approval of the Class Settlement.

**1.23. INCENTIVE AWARD**

“Incentive Award” shall mean any additional monetary payment provided to the Class Representative for his efforts and risks on behalf of the Settlement Class in this Action.

**1.24. INDIVIDUAL SETTLEMENT AMOUNT**

“Individual Settlement Amount” shall mean the amount which is ultimately distributed to each Class Participant, less any Employee’s Taxes and Required Withholdings. The Individual Settlement Amount does not include any portion of the PAGA Payment.

**1.25. NET SETTLEMENT AMOUNT**

“Net Settlement Amount” shall mean the Gross Settlement Amount minus: Administrative Expenses; Class Attorney Fees and Expenses; 75% of the share of the Gross Settlement Amount allocated toward penalties pursuant to the Labor Code Private Attorney General Act of 2004 (“PAGA”), codified at Labor Code sections 2698 through 2699.6, which are payable to the California Labor and Workforce Development Agency (“LWDA”); and Plaintiff’s Incentive Award.

**1.26. OPT OUT**

“Opt Out” shall refer to the process of submitting a timely and valid request for exclusion from the Class Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline.

**1.27. OPT-OUTS**

“Opt-Outs” shall mean all persons who timely and validly request exclusion from the Class Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline.

**1.28. PAGA PAYMENT**

“PAGA Payment” means the penalties pursuant to PAGA that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and

twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class. Class Counsel shall give timely notice of this Settlement Agreement to the LWDA pursuant to Labor Code section 2699, subdivision (l)(2).

#### **1.29. PAGA PERIOD**

“PAGA Period” shall mean the period from December 12, 2022, through the date of preliminary approval of the settlement.

#### **1.30. PAGA SETTLEMENT CLASS**

“PAGA Settlement Class” shall mean all individuals who are or were employed by Defendants as non-exempt employees in California during the PAGA Period. Defendant represents that the PAGA Settlement Class consists of approximately 36 employees that worked a total of approximately 146 pay periods during the PAGA Period.

#### **1.31. PARTIES**

“Parties” shall mean Plaintiff and Defendant.

#### **1.32. PAYMENT PLAN**

“Payment Plan” shall mean the Defendant will pay the GSA into the Qualified Settlement Fund (“QSF”) established by the Settlement Administrator pursuant to the following payment plan:

1. \$25,000 by January 29, 2025;
2. \$25,000 by April 30, 2025;
3. \$25,000 by July 30, 2025;
4. \$25,000 by October 29, 2025;
5. \$25,000 by January 28, 2026;
6. \$25,000 by April 29, 2026.

#### **1.33. PLAINTIFF**

“Plaintiff” shall mean Plaintiff Ryan Batorick.

#### **1.34. PRELIMINARY APPROVAL DATE**

“Preliminary Approval Date” shall mean the date upon which the Court enters an order preliminarily approving this Settlement Agreement.



### 1.35. RELEASED CLAIMS

“Released Claims” shall mean those claims arising out of or related to the allegations set forth in the operative complaint and/or PAGA notice to the California Labor and Workforce Development Agency that arose during the Class Period and/or PAGA Period, including claims for: (1) failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the applicable IWC Wage Order(s); (2) failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the applicable IWC Wage Order(s); (3) failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the applicable IWC Wage Order(s); (4) failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage Order(s); (5) failure to maintain accurate employment records in violation of Labor Code section 1174; (6) failure to pay timely wages during employment in violation of Labor Code sections 204, 210; (7) failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; (8) failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; (9) failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; (10) failure to pay sick leave in violation of Labor Code section 246; (11) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); (12) statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6); and (13) all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing.

No other claims are released other than those claims specifically plead in the Complaint or otherwise specifically identified herein. This Settlement Agreement will not release any person, party, or entity from claims, if any, by Class Members for workers compensation, unemployment, or disability benefits of any nature. Nor does it release any claims, actions, or causes of action which may be possessed by Class Members under state or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code, § 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.); the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the

Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and interpretive guidelines.

**1.36. RELEASED PARTIES**

“Released Parties” shall mean Defendant and all of Defendant’s subsidiaries, affiliates, shareholders, members, agents, predecessors, successors, and assigns.

**1.37. RELEASING PARTIES**

“Releasing Parties” shall mean every Class Participant and all persons purporting to act on their behalf or purporting to assert a claim under or through them, including, but not limited to, their dependents, heirs, assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity.

**1.38. RESPONSE DEADLINE**

“Response Deadline” shall mean the date forty-five (45) days following the date on which the Settlement Administrator first mails Class Notice to the Class Members and the last day on which Class Members may submit a request for exclusion and/or objection to Class Settlement.

**1.39. SETTLEMENT ADMINISTRATOR**

“Settlement Administrator” shall mean Apex Class Action Administration which the Parties have agreed will be responsible for administration of the Class Settlement and related matters.

**1.40. SETTLEMENT CLASS**

“Settlement Class” shall mean all individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period. Defendant represents that the Settlement Class consists of approximately 58 Class Members that worked a total of approximately 445 workweeks during the Class Period.

**1.41. SHARE FORM**

“Share Form” shall mean the *Class Action Settlement Share Form*, as set forth in the form of **Exhibit 2** attached hereto, or as otherwise approved by the Court, which is to be mailed to Class Members along with the Class Notice.

## 2. **FACTUAL AND PROCEDURAL BACKGROUND**

### 2.1. **PLAINTIFF'S CLAIMS**

Plaintiff, individually and in his representative capacity on behalf of the Settlement Class, and as a private attorney general on behalf of the State of California, has alleged the following violations: ((1) failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the applicable IWC Wage Order(s); (2) failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the applicable IWC Wage Order(s); (3) failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the applicable IWC Wage Order(s); (4) failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage Order(s); (5) failure to maintain accurate employment records in violation of Labor Code section 1174; (6) failure to pay timely wages during employment in violation of Labor Code sections 204, 210; (7) failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; (8) failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; (9) failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; (10) failure to pay sick leave in violation of Labor Code section 246; (11) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); (12) statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6).

### 2.2. **DISCOVERY, INVESTIGATION, AND RESEARCH**

Class Counsel has conducted significant informal discovery during the prosecution of the Action. This discovery, investigation, and prosecution has included, among other things, (a) over a dozen telephonic conferences with Plaintiff; (b) inspection and analysis of hundreds of pages of documents and other information produced by Plaintiff and Defendant; (c) analysis of employment data from a sample of Class Members; (d) an analysis of the legal positions taken by Defendant; (d) investigation into the viability of class treatment of the claims asserted in the Action; (e) analysis of potential class-wide damages, including information sufficient to understand Defendant's potential defenses to Plaintiff's claims; (f) research of the applicable law with respect to the claims asserted in

1 the Complaint and the potential defenses thereto; and (g) assembling and analyzing of data for  
2 calculating damages.

3 Class Counsel and the Class Representative have vigorously prosecuted this case, and  
4 Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and  
5 discovery to assess the relative merits of the claims of the Class Representative and of the defenses to  
6 them. After such discovery, investigation, and prosecution, the Parties engaged in direct settlement  
7 negotiations, which culminated in a settlement in principle, the terms of which are elaborated in this  
8 Settlement Agreement.

9 **2.3. ALLEGATIONS OF THE CLASS REPRESENTATIVE AND BENEFITS OF**  
10 **CLASS SETTLEMENT**

11 The document and data exchange in this matter, as well as discussions between counsel, have  
12 been adequate to give the Class Representative and Class Counsel a sound understanding of the merits  
13 of their positions and to evaluate the value of the claims of the Settlement Class. The informal discovery  
14 conducted in this Action and the information exchanged by the Parties through settlement discussions  
15 are sufficient to reliably assess the merits of the Parties' respective positions and to compromise the  
16 issues on a fair and equitable basis.

17 The Class Representative and Class Counsel believe that the claims, causes of action,  
18 allegations, and contentions asserted in the Action have merit. However, the Class Representative and  
19 Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings  
20 necessary to prosecute the Action against Defendant through trial and through appeals. Class Counsel  
21 has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex  
22 actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential  
23 difficulty of obtaining certification of the Settlement Class as well as trying the claims of the class.  
24 Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims  
25 alleged in the Action.

26 The Class Representative and Class Counsel believe that the settlement set forth in this  
27 Settlement Agreement confers substantial benefits upon Plaintiff and the Settlement Class and that an  
28 independent review of this Settlement Agreement by the Court in the approval process will confirm

1 this conclusion. Based on their own independent investigation and evaluation, Class Counsel has  
2 determined that the settlement set forth in this Settlement Agreement is in the best interests of Plaintiff  
3 and the Class Members.

#### 4 **2.4. DEFENDANT'S DENIALS OF WRONGDOING AND LIABILITY**

5 Defendant has denied and continues to deny all allegations, claims, and contentions alleged by  
6 Plaintiff in the Action. Defendant has expressly denied and continues to deny all charges of wrongdoing  
7 or liability against it arising out of any of the conduct, statements, acts, or omissions alleged in the  
8 Action. Defendant contends that it complied with California and federal wage and hour laws and has  
9 dealt legally and fairly with Plaintiff and the Class Members.

10 Defendant further denies that, for any purpose other than settling this Action, these claims are  
11 appropriate for class or representative treatment. Nonetheless, Defendant has concluded that further  
12 proceedings in the Action would be protracted and expensive and that it is desirable that the Action be  
13 fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement  
14 Agreement to dispose of burdensome and protracted litigation, to permit the operation of Defendant's  
15 respective businesses without further expensive litigation and the distraction and diversion of their  
16 personnel with respect to matters at issue in the Action. Defendant has also taken into account the  
17 uncertainty and risks inherent in any litigation, especially in complex cases such as the Action.  
18 Defendant has, therefore, determined that it is desirable and beneficial to it that the Action be settled  
19 in the manner and upon the terms and conditions set forth in this Settlement Agreement.

#### 20 **2.5. INTENT OF THE CLASS SETTLEMENT**

21 The Class Settlement set forth herein intends to achieve the following: (1) entry of an order  
22 approving the Class Settlement; (2) entry of judgment of the Action; (3) discharge of the Released  
23 Parties from liability for any and all of the Released Claims; and (4) discharge of Defendant from  
24 liability for any and all claims arising out of the Action.

### 25 **3. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

26 For the purposes of this Settlement Agreement and the Class Settlement of this Action only, the  
27 Parties agree to conditional class certification of the Settlement Class. Defense Counsel believes this  
28 conditional certification is appropriate because the Released Claims are being compromised without

1 need to establish the elements of those claims on which liability turns. The certification of the  
2 Settlement Class shall not constitute, in this or any other proceeding, an admission of any kind by  
3 Defendant, including without limitation, that certification of a class for trial purposes is or would be  
4 warranted, appropriate or proper; or that Plaintiff could establish any of the requisite elements for class  
5 treatment of any of the claims in the Action.

6 If the Settlement Agreement is not finally approved by the Court, the Effective Date is not  
7 achieved, or the Class Settlement is rejected, terminated, or otherwise rendered null and void as set  
8 forth herein, then certification of the Settlement Class shall be automatically vacated, shall be void *ab*  
9 *initio*, of no force or effect, and shall not constitute evidence or a binding determination that the  
10 requirements for certification of a class for trial purposes in this Action or in any other action which  
11 have been, are or can be, satisfied. Further, if the Agreement does not reach the Effective Date, Plaintiff  
12 agrees that Plaintiff will not argue, claim, reference, or otherwise raise any preliminary approval of the  
13 Settlement Class in connection with any later proceeding before the Court.

14 **4. APPOINTMENT OF CLASS COUNSEL**

15 For purposes of this Settlement Agreement and subject to the Court's approval, the Parties agree  
16 to the appointment of Class Counsel as counsel for the Settlement Class and the effectuation of the  
17 Class Settlement pursuant to this Settlement Agreement.

18 **5. CONSIDERATION**

19 **5.1. SETTLEMENT AMOUNT**

20 The Parties agree to settle this Action for the Gross Settlement Amount of \$150,000.00. There  
21 shall be no reversion to Defendant. Defendant shall pay the Gross Settlement Amount pursuant to the  
22 Payment Plan. The Gross Settlement Amount and other actions and forbearances taken by Defendant  
23 shall constitute adequate consideration for the Class Settlement and will be made in full and final  
24 settlement of: the Released Claims, the Class Attorney Fees and Expenses, Administrative Expenses,  
25 the Incentive Award, the PAGA Payment (and any payments to individual PAGA Class Members  
26 resulting from the PAGA Payment), and any other obligation of Defendant under this Settlement  
27 Agreement (other than the Employer's Taxes on the portion of the Net Settlement Amount allocated to  
28 the payment of wages).

After the Court issues an order preliminarily approving this Class Settlement, the Settlement Administrator will distribute the Class Notice to the Class Members, which shall describe the terms of the Class Settlement and procedures to Opt Out, object, or participate in the Class Settlement as well as the Share Form, which shall identify the Class Member, the number of workweeks worked by each Class Member ("Workweeks"), as well as the estimated amount of the Individual Settlement Amount the Class Member can expect to receive once the Class Settlement becomes effective on the Effective Date. Class Members shall be given the opportunity to challenge their Workweeks information.

#### **5.2. INCENTIVE AWARD FOR PLAINTIFF**

Plaintiff may petition the Court to approve an Incentive Award in an amount up to \$7,500.00 for Ryan Batorick to acknowledge his efforts on behalf of the Settlement Class in this Action, including assisting in the investigation and consulting with Class Counsel and providing crucial documents to Class Counsel. Defendant shall not oppose any request by Plaintiff for an Incentive Award in such an amount. Any Incentive Award approved by the Court shall be paid to Plaintiff from the Gross Settlement Amount and shall be in addition to any distribution to which he may otherwise be entitled as a Class Participant. Any Incentive Award approved by the Court shall not be considered wages, and the Settlement Administrator shall issue to Plaintiff an IRS Form 1099 reflecting such payment. Plaintiff shall be responsible for the payment of all taxes with respect to any Incentive Award approved by the Court and shall hold Defendant harmless from all liability with regard thereto.

#### **5.3. PAYMENT TO CLASS PARTICIPANTS**

Each Class Participant shall be eligible to receive payment of the Individual Settlement Amount, which is a share of the Net Settlement Amount based on the pro rata number of weeks worked by the Class Members during the Class Period as a proportion of all weeks worked by all Class Members. Each Class Participant, including Plaintiff, shall be responsible for the payment of the Employee's Taxes and Required Withholding with respect to his or her Individual Settlement Amount and shall hold Defendant harmless from any and all liability with regard thereto.

#### **5.4. PAYMENT TO PAGA SETTLEMENT CLASS**

Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have

1 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which  
2 is \$20,000.00. The PAGA Payment must be approved by the Court pursuant to Labor Code section  
3 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA  
4 and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class. The portion of the  
5 PAGA Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement  
6 Class based on the pro rata number of pay periods worked by each particular PAGA Settlement Class  
7 member during the PAGA Period as a proportion of all pay periods worked by all members of the  
8 PAGA Settlement Class.

#### 9 **5.5. TAX TREATMENT AND PAYMENT**

10 For the purpose of calculating Employee's Taxes and Required Withholding for the Individual  
11 Settlement Amounts for Class Participants (including any payments to the Class Representative but  
12 exclusive of his Incentive Award), the Parties agree that 20% of each Individual Settlement Amount  
13 shall constitute payment in the form of wages (and each Class Participant will be issued an IRS Form  
14 W-2 for such payment to him or her), and 80% of each Individual Settlement Amount shall constitute  
15 penalties and interest (and each Class Participant will be issued an IRS Form 1099 for such payment  
16 to him or her). Prior to final distribution, the Settlement Administrator shall calculate the total  
17 Employee's Taxes and Required Withholding due as a result of the wage portion of Class Participants'  
18 anticipated Individual Settlement Amounts and such actual amount will be deducted from the Net  
19 Settlement Amount. Additionally, prior to the funding of the Gross Settlement Amount and final  
20 distribution, the Settlement Administrator shall calculate the total Employer's Taxes due on the wage  
21 portion of the Class Participants' Individual Settlement Amounts and issue instructions to Defendant  
22 to separately fund these tax obligations/withholdings. The Parties understand that Plaintiff and the  
23 Class Participants who receive any payment pursuant to this Settlement Agreement shall be solely  
24 responsible for all other individual tax obligations.

25 With respect to the PAGA Payment and any payments made to individual members of the  
26 PAGA Settlement Class, all such payments shall be treated as payments owing for penalties and interest  
27 thereon and shall not be considered wages. The Settlement Administrator shall issue to members of the  
28 PAGA Settlement Class an IRS Form 1099 reflecting such payment. Members of the PAGA Settlement



1 Class shall be solely responsible for the payment of all taxes with respect to any PAGA payments made  
2 to them.

3 **5.6. NO EFFECT ON EMPLOYEE BENEFIT PLANS**

4 Neither the Class Settlement nor any amounts paid under the Class Settlement will modify any  
5 previously credited hours, days, or weeks of service under any employee benefit plan, policy or bonus  
6 program sponsored by Defendant. Such amounts will not form the basis for additional contributions to,  
7 benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies,  
8 or bonus programs. The payments made under the terms of this Settlement Agreement shall not be  
9 applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other  
10 form of compensation for the purposes of any of Defendant's benefit plan, policy, or bonus program.  
11 Defendant retains the right to modify the language of its benefits plans, policies, and bonus programs  
12 to reflect this intent and to make clear that any amounts paid pursuant to this Settlement Agreement are  
13 not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring term as defined  
14 by applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit accrual, or  
15 any other purpose, and that additional contributions or benefits are not required by this Settlement  
16 Agreement. Defendant does not consider the Class Settlement payments "compensation" for purposes  
17 of determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs,  
18 or any other plan sponsored by Defendant.

19 **5.7. CLASS ATTORNEY FEES AND EXPENSES**

20 As part of the motion for final approval of the Class Settlement, Class Counsel may apply for  
21 an award of Class Attorney Fees and Expenses with the fee portion not to exceed one-third of the Gross  
22 Settlement Amount (i.e., \$50,000.00) and the award of costs and expenses up to an additional  
23 \$10,000.00. Defendant agrees to not object to any such fee, cost, or expense application in those  
24 amounts.

25 As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the  
26 manner reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the Court shall  
27 be paid from the Gross Settlement Amount prior to arriving at the Net Settlement Amount and shall  
28 not constitute payment to any Class Members. If Class Counsel voluntarily reduces the request for

Class Attorney Fees and Expenses or the Court's award of Class Attorney Fees and Expenses is less than set forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class Attorney Fees and Expenses awarded.

The Class Attorney Fees and Expenses approved by the Court shall reflect: (a) all work performed and costs and expenses incurred by, or at the direction of, any attorney purporting to represent the Settlement Class through the date of this Settlement Agreement; (b) all work to be performed and costs to be incurred in connection with approval by the Court of the Class Settlement; (c) all work to be performed and costs and expenses, if any, incurred in connection with administering the Class Settlement through the Effective Date and dismissal of the Action with prejudice; and (d) may be based on the "catalyst theory" and/or the "common fund doctrine."

## **6. SETTLEMENT ADMINISTRATION**

### **6.1. COSTS AND EXPENSES**

All costs and expenses due to the Settlement Administrator in connection with its administration of the Class Settlement, including, but not limited to, providing the Class Notice, locating Class Members, processing Opt Out requests and objections, distributing the portion of the PAGA Payment payable to the LWDA, distributing the portion of the PAGA Payment payable to the members of the PAGA Settlement Class, and calculating, administering and distributing Individual Settlement Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement Amount, and is not expected to exceed \$10,000.00.

### **6.2. PAYMENT BY DEFENDANT**

Defendant shall deposit the Gross Settlement Amount pursuant to the Payment Plan. In no event shall Defendant be obligated to pay or deposit with the Settlement Administrator more than \$150,000.00 plus the Employer's Taxes, except where the Escalator Provision is triggered.

## **7. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

### **7.1. THE SETTLEMENT ADMINISTRATOR**

The Settlement Administrator will be responsible for: mailing the Class Notice and Share Form (Exhibit 1 and Exhibit 2, respectively) to Class Members; posting notice of entry of final order and judgment certifying the Class Settlement and approving this Settlement Agreement; handling inquiries

1 from Class Members concerning the Class Notice; determining Individual Settlement Amounts;  
2 determining individual payments to members of the PAGA Settlement Class; maintaining the  
3 settlement funds in an appropriate interest-bearing account; preparing, administering, and distributing  
4 Individual Settlement Amounts to Class Participants; preparing, administering, and distributing  
5 individual payments to members of the PAGA Settlement Class; distributing the portion of the PAGA  
6 Payment payable to the LWDA; issuing a final report and performing such other duties as the Parties  
7 may direct. Additionally, the Settlement Administrator will handle all tax document preparation and  
8 reporting, including state and federal tax forms, if any.

9 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and  
10 Defense Counsel with summary information updating them as to the number of validated and timely  
11 objections and Opt Out requests. The Settlement Administrator will serve on Class Counsel and  
12 Defense Counsel via e-mail date-stamped copies of the original Opt Out requests and objections no  
13 later than seven (7) days after their receipt. The Settlement Administrator will provide Class Counsel  
14 with proof of mailing of the Class Notice, without listing individual Class Member names which the  
15 Settlement Administrator will file with the Court at the time Class Counsel files its motion in support  
16 of the Court's Final Approval and Fairness Hearing.

17 No later than thirty (30) days prior to the Final Approval and Fairness Hearing, the Settlement  
18 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary  
19 information regarding: **(a)** the total amount of final Individual Settlement Amounts of each Class  
20 Participant, without any identifying personal information; **(b)** the number of Class Participants to  
21 receive such payments, and **(c)** the final number of Opt-Outs and objections.

22 Administrative Expenses are not anticipated to exceed \$10,000.00. Prior to the calculation and  
23 distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the  
24 total Administrative Expenses through the conclusion of their services and such actual amount will be  
25 deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement  
26 Amounts.

## 7.2. NOTICE TO CLASS MEMBERS

Notice shall be provided to Class Members in the following manner: Within fourteen (14) days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with an updated list of Class Members and members of the PAGA Settlement Class containing names, social security numbers, dates of employment, last-known addresses, and phone numbers (the "Database"). The Database shall be marked "Confidential – Settlement Administrator's Eyes Only." Class Counsel shall not receive a copy of this list.

Within twenty-eight (28) days following the Preliminary Approval Date, the Settlement Administrator shall determine the number of workweeks worked by each Class Member, populate the data for each Class Member accordingly, and send each Class Member the Class Notice via first-class, United States mail. The Class Notice shall also contain an easily-understood statement alerting the Class Members that, unless they elect to Opt Out of the Class Settlement, the Class Member is releasing and waiving all Released Claims against the Released Parties.

The Class Notice will inform Class Members of their estimated share of the settlement and the number of workweeks they worked during the Class Period. Class Members may dispute their workweeks if they believe they worked more weeks in the Class Period than Defendant's records show by submitting information to the Settlement Administrator no later than forty-five (45) days after being mailed the Class Notice and Share Form by the Settlement Administrator, which is the defined Response Deadline. The Settlement Administrator will jointly work with Plaintiff and Defendant to resolve the dispute in good faith. If Plaintiff and Defendant cannot agree over the workweeks to be credited, the Settlement Administrator shall make the final decision based on the information presented by the Class Member and Defendant.

## 7.3. OPT OUT PROCEDURE

Class Members who do not timely Opt Out of the Class Settlement will be deemed to participate in the Class Settlement and shall become Class Participants without having to submit a claim form or take any other action. To Opt Out of the Class Settlement, the Class Member must submit a letter or postcard to the Settlement Administrator by the Response Deadline. The Opt Out request must state

1 the Class Member's name, address, telephone number, and signature. The Opt Out request should state  
2 something to the effect of:

3 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *RYAN*  
4 *BATORICK V. SUPERIOR FLOOD RESTORATION, INC.* LAWSUIT. I  
5 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT  
6 CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT  
7 OF THIS LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT  
8 HAVE."  
9

10 Any Opt Out request that is not postmarked by the Response Deadline will be invalid. If prior  
11 to the Response Deadline any Class Notice mailed to a Class Member is returned as having been  
12 undelivered by the United States Postal Service, the Settlement Administrator shall perform a skip trace  
13 search and seek an address correction for such Class Members, and a second Class Notice will be sent  
14 to any new or different address obtained.

15 It will be presumed that, if an envelope containing the Class Notice has not been returned within  
16 thirty (30) days of the mailing, the Class Member received the Class Notice. At least twenty-one (21)  
17 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class  
18 Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard  
19 to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall  
20 specify the number of Class Members to whom the Class Notice was sent and the number of Class  
21 Members to whom the Class Notice was not delivered, as well as information relating to the number  
22 of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.

23 If the Settlement Administrator determines that an Opt Out request returned by a Class Member  
24 before the Response Deadline is deficient, then the Settlement Administrator shall mail a deficiency  
25 letter to that Class Member identifying the problem. If a Class Member submits both a dispute and an  
26 Opt Out request, the Settlement Administrator shall make reasonable attempts to clarify as if the Opt  
27 Out request were deficient. If the Class Member fails to cure the deficiency, the Opt Out request shall  
28 be disregarded and the claim will be paid, and the Class Member will become bound by the judgment.

1 Class Participants will be bound by the Release of Released Claims set forth in the definition  
2 of "Released Claims" provided in this Settlement Agreement.

3 A request to Opt Out of the Class Settlement shall **not** serve to exclude the Class Member from  
4 participation in the PAGA Settlement Class. Opt-Outs shall still be entitled to their share of the PAGA  
5 Payment. Class Members who are also members of the PAGA Settlement Class shall have no right or  
6 ability to opt out of the portion of this Settlement Agreement releasing PAGA claims.

#### 7 **7.4. OBJECTION PROCEDURE**

8 The Class Notice shall inform the Class Members of their right to object to the Class Settlement  
9 if they do not Opt Out. Any Class Participants who wish to object to the Class Settlement may submit  
10 a written objection to the Settlement Administrator no later than the Response Deadline. Only Class  
11 Participants may object to the Settlement. The objection should include the case name and number and  
12 must set forth, in clear and concise terms, a statement of the reasons why the objector believes that the  
13 Court should find that the proposed Class Settlement is not in the best interest of the Settlement Class  
14 and the reasons why the Class Settlement should not be approved, including the legal and factual  
15 arguments supporting the objection. If an objector also wishes to appear at the Final Approval and  
16 Fairness Hearing, in person or through an attorney, they may do so. The Settlement Administrator will  
17 promptly serve copies of any objection or notice of intention to appear on Class Counsel and Defense  
18 Counsel. Class Members wishing to make an objection may appear at the Final Approval and Fairness  
19 Hearing, either in person or through a lawyer retained at their own expense.

#### 20 **7.5. NOTICE OF FINAL JUDGMENT**

21 Within seven (7) days after the Court has held a Final and Fairness Approval Hearing and  
22 entered a final order certifying the Class for settlement purposes only and approving the Class  
23 Settlement, the Settlement Administrator will give notice of judgment to Class Members pursuant to  
24 rule 3.771(b) of the California Rules of Court, by posting a copy of said order and final judgment on  
25 its website at a web address to be included in the Class Notice.  
26  
27  
28

1     **8.     CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

2     **8.1.    ALLOCATION OF THE GROSS SETTLEMENT AMOUNT**

3     The claims of all Class Members are settled for the Gross Settlement Amount of \$150,000.00,  
4     which will be allocated as follows:

- 5         1.     The Administrative Expenses, estimated not to exceed \$10,000.00;
- 6         2.     Class Counsel's attorney fees not to exceed \$50,000.00;
- 7         3.     Class Counsel's litigation costs and expenses not to exceed \$10,000.00;
- 8         4.     The Incentive Award, not to exceed \$7,500.00; and
- 9         5.     PAGA Payment to LWDA of \$15,000.00.

10     For purposes of calculating the estimated Individual Settlement Amounts, the Settlement  
11     Administrator shall calculate the estimated Net Settlement Amount based on the estimated values  
12     provided above prior to sending Notice to the Class Members. Prior to final distribution, the Settlement  
13     Administrator shall recalculate the final Net Settlement Amount based on the actual values of the  
14     amounts in each category.

15     **8.2.    CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR**  
16     **CLASS PARTICIPANTS**

17     Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net  
18     Settlement Amount. The portion of the Net Settlement Amount shall be distributed pro rata on a  
19     "checks cashed" basis based on the proportional number of weeks worked by each Class Member  
20     during the Class Period.

21     Defendant will provide the Settlement Administrator with any information reasonably  
22     necessary to perform the calculation of number of workweeks for each Class Member, and any other  
23     reasonably required information the Settlement Administrator requests to perform the calculations  
24     required under this Settlement Agreement. Defendant shall have no responsibility for deciding the  
25     validity of the Individual Settlement Amounts or any other payments made pursuant to this Settlement  
26     Agreement, shall have no involvement in or responsibility for the determination or payment of  
27     Employee's Taxes and Required Withholding, and shall have no liability for any errors made with  
28     respect to such Employee's Taxes and Required Withholding. Although the Settlement Administrator

1 will calculate and pay the standard Employee's Taxes and Required Withholding on the portion of the  
2 Individual Settlement Amounts constituting wages on their behalf, Plaintiff and Class Participants  
3 represent and understand that they shall be solely responsible for any and all tax obligation associated  
4 with their respective Individual Settlement Amounts and Incentive Awards.

5 **8.3. CALCULATION OF THE PAYMENTS FOR INDIVIDUAL MEMBERS OF**  
6 **THE PAGA SETTLEMENT CLASS**

7 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA  
8 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have  
9 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which  
10 is \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section  
11 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA  
12 and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class.

13 The portion of the PAGA Payment allocated to the PAGA Settlement Class shall be distributed  
14 to the PAGA Settlement Class based on the pro rata number of pay periods worked by each particular  
15 PAGA Settlement Class member during the PAGA Period as a proportion of all pay periods worked  
16 by all PAGA Settlement Class members during the PAGA Period. Each member of the PAGA  
17 Settlement Class, including Plaintiff, shall be responsible for the payment of the Employee's Taxes and  
18 Required Withholding with respect to their share of the PAGA Payment and shall hold Defendant  
19 harmless from any and all liability with regard thereto.

20 Defendant will provide the Settlement Administrator with any information reasonably  
21 necessary to perform the calculation of number of pay periods worked for each PAGA Settlement Class  
22 member, and any other reasonably required information the Settlement Administrator requests to  
23 perform the calculations required under this Settlement Agreement. Defendant shall have no  
24 responsibility for deciding the validity of the individual payment amounts allocated to each member of  
25 the PAGA Settlement Class or any other payments made pursuant to this Settlement Agreement, shall  
26 have no involvement in or responsibility for the determination or payment of Employee's Taxes and  
27 Required Withholding, and shall have no liability for any errors made with respect to such Employee's  
28 Taxes and Required Withholding.



1 The members of the PAGA Settlement Class shall be solely responsible for any and all tax  
2 obligation associated with their respective shares of the PAGA Payment.

3 **8.4. TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

4 The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses  
5 approved by the Court no later than fourteen (14) days after the Effective Date.

6 **8.5. TIME FOR PAYMENT OF INCENTIVE AWARD**

7 The Settlement Administrator shall distribute to Plaintiff the Incentive Award approved by the  
8 Court no later than fourteen (14) days after the Effective Date.

9 **8.6. TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

10 The Settlement Administrator shall distribute to the LWDA the portion of the PAGA Payment  
11 due to it and approved by the Court no later than fourteen (14) days after the Effective Date.

12 **8.7. TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND**  
13 **INDIVIDUAL SETTLEMENT AMOUNTS**

14 The Settlement Administrator shall make every effort to pay the Employee's Taxes and  
15 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail  
16 the Individual Settlement Amount to each Class Participant, by first-class United States mail, to the  
17 last-known address no later than fourteen (14) days after the Effective Date. If the Settlement  
18 Administrator is not able to do so within the time period set forth above, it shall so inform Class Counsel  
19 and Defense Counsel and provide an approximate date by which the Employee's Taxes and Required  
20 Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under no  
21 circumstances shall the Settlement Administrator distribute checks to Class Participants until all  
22 Individual Settlement Amounts have been considered, calculated, and accounted for, and all of the  
23 remaining monetary obligations have been calculated and accounted for.

24 Within two hundred ten (210) days of mailing the Individual Settlement Amounts to Class  
25 Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel a  
26 declaration of payment. If any Class Participant is deceased, payment shall be made payable to the  
27 estate of that Class Member and delivered to the executor or administrator of that estate, unless the  
28

1 Settlement Administrator has received an affidavit or declaration pursuant to California Probate Code  
2 section 13101, in which case payment shall be made to the affiant(s) or declarant(s).

3 **8.8. NON-CASHED SETTLEMENT CHECKS**

4 Any funds associated with checks that have not been cashed within one hundred eighty (180)  
5 days, will become void and the Individual Settlement Amount associated with the uncashed check will  
6 be remitted pursuant to Code of Civil Procedure section 384 to the California State Controller for  
7 deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. The  
8 Parties agree that this disposition results in no “unpaid residue” within the meaning of California Civil  
9 Procedure Code section 384, as the entire Net Settlement Amount will be paid out to Class Participants,  
10 whether or not they all cash their Individual Settlement Amount checks. Therefore, Defendant shall not  
11 be required to pay any interest on said amount. For the purposes of determining whether Defendant has  
12 met their financial obligation to pay the Individual Settlement Payment, Defendant will be deemed to  
13 have fulfilled its obligation upon the mailing of the check to the Class Member, regardless of whether  
14 such Class Member subsequently negotiates the check.

15 **8.9. DISPUTES REGARDING CLASS MEMBER WORKWEEKS DATA OR**  
16 **PAYMENT OF INDIVIDUAL SETTLEMENT SHARES**

17 Class Member Workweeks and the corresponding Individual Settlement Amount shall be  
18 calculated using the employment and payroll records of Defendant, which presumptively shall be  
19 deemed to be full, complete, and accurate for purposes of this Settlement Agreement. To overcome  
20 that presumption, any Class Member objecting to the accuracy of the number of Workweeks or amount  
21 of the Individual Settlement Amount must submit documentary evidence, such as pay stubs or other  
22 written employment records, to the Settlement Administrator. Each Class Member may dispute the  
23 number of Workweeks or their estimated Individual Settlement Amount contained on their Class  
24 Notice (“Workweeks Dispute”). Any such Workweeks Dispute must be mailed or faxed to the  
25 Settlement Administrator by the Class Member, postmarked or fax-stamped on or before the Response  
26 Deadline. The Settlement Administrator shall immediately provide copies of all disputes to counsel for  
27 Defendant, shall inform Class Counsel of the dispute without disclosing the identity of the Class  
28 Member making the dispute, and shall immediately attempt to resolve all such disputes directly with

relevant Class Members with the assistance of Defendant, Defense Counsel, and Class Counsel. If the dispute cannot be resolved, it shall be submitted to the Settlement Administrator for its final, non-appealable decision. The Settlement Administrator shall use its best efforts to resolve all such disputes prior to the Effective Date. If, however, a dispute arises or is not resolved until after the Settlement Amount has been distributed, the initial calculation shall stand (as Defendant shall be under no obligation to pay any amounts in excess of the Gross Settlement Amount under this Settlement Agreement).

## **9. NULLIFICATION OF THIS SETTLEMENT AGREEMENT**

### **9.1. NON-APPROVAL OF THIS SETTLEMENT AGREEMENT**

The Class Settlement and conditional class certification shall be considered null and void, and neither the Class Settlement, conditional class certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and all Parties to the Class Settlement shall stand in the same position, without prejudice, as if the Class Settlement had been neither entered into nor filed with the Court, if any of the following occur: (a) the Court should for any reason fail to approve this Settlement Agreement in the form agreed to by the Parties; (b) the Court should for any reason fail to enter a judgment with prejudice of the Action, or (c) the approval of the Class Settlement and judgment is reversed, modified, or declared or rendered void. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any perceived defects in this Settlement Agreement to facilitate approval.

### **9.2. PARTIES' RIGHTS TO VOID CLASS SETTLEMENT; ESCALATOR PROVISION**

12. If 10% or more members of the Settlement Class timely submit Opt Out requests, Defendant(s) shall have the right (but not the obligation) to void the settlement described in this MOU. If the number of workweeks worked by the Class Members is greater than 5% above that estimated by Defendant(s), then the GSA shall be increased proportionately for each additional Workweek above the 5% buffer. If this provision is triggered so as to increase the GSA, the Parties agree that the portion of the GSA allocated to attorneys' fees will increase proportionally such that the total amount of attorneys' fees remains one-third of the GSA after the upward adjustment required by this provision is implemented.

1           **9.3.    INVALIDATION**

2           Invalidation of any material portion of this Settlement Agreement shall invalidate the Class  
3 Settlement in its entirety, unless the Parties subsequently agree in writing that the remaining provisions  
4 of the Class Settlement are to remain in full force and effect.

5           **9.4.    STAY ON APPEAL**

6           If a timely appeal from the approval of the Class Settlement and judgment, the judgment shall  
7 be stayed, and Defendant shall not be obligated to fund the Gross Settlement Amount or take any other  
8 actions required by this Settlement Agreement until all appeal rights have been exhausted by operation  
9 of law.

10          **10.    MOTIONS FOR COURT APPROVAL**

11           **10.1.   PRELIMINARY APPROVAL**

12           As soon as practicable after execution of this Settlement Agreement, Class Counsel will submit  
13 this Settlement Agreement to the Court along with a Motion for Preliminary Approval of the Class  
14 Settlement. Each party shall cooperate to present the Class Settlement to the Court for preliminary  
15 approval in a timely fashion.

16           **10.2.   FINAL APPROVAL**

17           The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval  
18 and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order certifying the  
19 Settlement Class for settlement purposes only and approving the Class Settlement as being fair,  
20 reasonable, and adequate to the Class Participants within the meaning of California Rules of Court,  
21 Rule 3.769, subdivisions (c), (d) and (e), and for the entry of a final judgment of the Action consistent  
22 with the terms of the Class Settlement and rule 3.769, subdivision (h), of the California Rules of Court.  
23 Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may  
24 be required for the Court's determination.

25          **11.    RELEASES AND WAIVERS**

26           **11.1.   RELEASE OF CLAIMS BY THE SETTLEMENT CLASS**

27           Upon the Effective Date, the Releasing Parties shall be deemed to each release the Released  
28 Parties, and each of them, of and from any and all Released Claims arising during the Class Period. It

1 is the desire of the Parties and the Releasing Parties to fully, finally, and forever settle, compromise,  
2 and discharge the Released Claims. Each of the Releasing Parties, including each Class Participant,  
3 will be bound by the release of Released Claims as a result of the Class Settlement and to the terms of  
4 the final judgment and the satisfaction of such judgment.

5 Class Participants will be deemed to have acknowledged and agreed that their claims for wages  
6 and/or penalties in the Action are disputed, and that their Individual Settlement Amount constitutes  
7 payment of all sums allegedly due to them. Class Participants will be deemed to have acknowledged  
8 and agreed that California Labor Code section 206.5 is not applicable to the Individual Settlement  
9 Amount. That section provides in pertinent part as follows:

10 “An employer shall not require the execution of a release of a claim or right on account  
11 of wages due, or to become due, or made as an advance on wages to be earned, unless  
12 payment of those wages has been made.”  
13

#### 14 **11.2. RELEASE OF CLAIMS BY PLAINTIFF**

15 Plaintiff, on behalf of himself and his dependents, heirs and assigns, beneficiaries, devisees,  
16 legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives,  
17 and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect,  
18 or any other type or in any other capacity, shall and does hereby forever release, discharge and agree  
19 to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities,  
20 obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights,  
21 demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at  
22 law or in equity, which he may now have or may have after the signing of this Settlement Agreement,  
23 arising out of or in any way connected with his employment with Defendant including, the Released  
24 Claims, claims that were asserted or could have been asserted in the Complaint, and any and all  
25 transactions, occurrences, or matters between the Parties occurring prior to the date this Settlement  
26 Agreement is fully executed. Without limiting the generality of the foregoing, this release shall include,  
27 but not be limited to, any and all claims under: (a) the Americans with Disabilities Act; (b) Title VII  
28 of the Civil Rights Act of 1964; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981; (e) the Age

Discrimination in Employment Act; **(f)** the Fair Labor Standards Act; **(g)** the Equal Pay Act; **(h)** the Employee Retirement Income Security Act, as amended; **(i)** the Consolidated Omnibus Budget Reconciliation Act; **(j)** the Rehabilitation Act of 1973; **(k)** the Family and Medical Leave Act; **(l)** the Civil Rights Act of 1966; **(m)** the California Fair Employment and Housing Act; **(n)** the California Constitution; **(o)** the California Labor Code; **(p)** the California Government Code; **(q)** the California Civil Code; and **(r)** any and all other federal, state, and local statutes, ordinances, regulations, rules, and other laws, and any and all claims based on constitutional, statutory, common law, or regulatory grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of emotional distress, negligent infliction of emotional distress, or damages under any other federal, state, or local statutes, ordinances, regulations, rules, or laws. This release is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorney fees and costs, and Plaintiff hereby forever releases, discharges and agrees to hold harmless Defendant and the Released Parties from any and all claims for attorney fees and costs arising out of the matters released in this Settlement Agreement.

Plaintiff specifically acknowledges that he is aware of and familiar with the provisions 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.”

Plaintiff, being aware of California Civil Code section 1542, hereby expressly waives and relinquishes all rights and benefits he may have under section 1542 as well as any other statutes or common law principles of a similar effect. Plaintiff may hereafter discover facts in addition to or different from those which he now knows or believes to be true with respect to the subject matter of all the claims referenced herein, but agrees that, upon the Effective Date, Plaintiff shall and hereby does

fully, finally, and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have been asserted upon any theory of law or equity without regard to the subsequent discovery of existence of such different or additional facts.

### **11.3. CIRCULAR 230 DISCLAIMER**

Each party to this Settlement Agreement (for purposes of this section, the “Acknowledging Party”; and each party to this Agreement other than the Acknowledging Party, an “Other Party”) acknowledges and agrees that (1) no provision of this Settlement Agreement, and no written communication or disclosure between or among the parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10); (2) the Acknowledging Party (a) has relied exclusively upon her or its own independent legal and tax advisers for advice (including tax advice) in connection with this Settlement Agreement, (b) has not entered into this Settlement Agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the Acknowledging Party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement Agreement.

## **12. DUTIES OF THE PARTIES**

### **12.1. MUTUAL FULL COOPERATION**

The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Settlement Agreement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by court order or

otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel, with the cooperation of Defendant and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of this Settlement Agreement.

## **12.2. DUTY TO SUPPORT AND DEFEND THE CLASS SETTLEMENT**

The Parties agree to abide by all of the terms of this Settlement Agreement in good faith and to support the Class Settlement fully and to use their best efforts to defend this Class Settlement from any legal challenge, whether by appeal or collateral attack.

## **12.3. DUTIES PRIOR TO COURT APPROVAL**

Class Counsel shall promptly submit this Settlement Agreement to the Court for preliminary approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Settlement Agreement, Class Counsel shall apply to the Court for the entry of a preliminary order scheduling a hearing on the question of whether the proposed Class Settlement should be approved as fair, reasonable, and adequate as to the Class Members, approving as to form and content the proposed Class Notice and Share Form attached hereto as **Exhibit 1** and **Exhibit 2**, respectively, and directing the mailing of the Class Notice to Class Members. While Defendant can reserve its right to object to facts or assertions made in the moving papers, Defense Counsel shall file a notice of non-opposition to the granting of the motion for preliminary approval or join in the motion.

## **13. MISCELLANEOUS PROVISIONS**

### **13.1. VOIDING THIS SETTLEMENT AGREEMENT**

Pending Court approval and other than as provided herein, if any of the conditions set forth in this Settlement Agreement are not met and satisfied, this Settlement Agreement may, at the option of either Plaintiff or Defendant, be ineffective, void, and of no further force and effect, and may not be used or be admissible in any subsequent proceeding, either in this Court or in any other court or forum. If either Party decides to void the Settlement Agreement, then the Settlement Agreement and conditional class certification shall be considered void, and neither the Settlement Agreement, conditional class certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and the Parties shall stand in the same position, without prejudice, as if this Settlement



1 Agreement had been neither entered into nor filed with the Court. Should any Party choose to void the  
2 Class Settlement under this subsection, such Party shall be responsible for all Settlement Administrator  
3 fees and costs actually incurred.

#### 4 **13.2. DIFFERENT FACTS**

5 The Parties acknowledge that, except for matters expressly represented herein, the facts in  
6 relation to the dispute and all claims released by the terms of this Settlement Agreement may turn out  
7 to be different from the facts now known by each party and/or its counsel, or believed by such Party or  
8 counsel to be true, and each Party therefore expressly assumes the risk of the existence of different or  
9 presently unknown facts, and agrees that this Settlement Agreement shall be in all respects effective  
10 and binding despite such difference.

#### 11 **13.3. NO PRIOR ASSIGNMENTS**

12 The Parties represent, covenant, and warrant that they have not directly or indirectly assigned,  
13 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any  
14 portion of any liability, claim, demand, action, cause of action, or right herein released and discharged  
15 except as set forth herein.

#### 16 **13.4. NON-ADMISSION**

17 Nothing in this Settlement Agreement shall be construed as or deemed to be an admission by  
18 any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other  
19 person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing  
20 toward each other or any other person. Each of the Parties has entered into this Settlement Agreement  
21 with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses,  
22 and contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or  
23 liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any  
24 admission by Defendant regarding the merits of the Claims in this Action, including but not limited to  
25 claims for unpaid wages or violations under California or federal law. Nothing herein shall constitute  
26 an admission by Defendant that the Action was properly brought as a class or representative action  
27 other than for settlement purposes. To the contrary, Defendant has denied and continues to deny each  
28 and every material factual allegation and all Claims. To this end, the Class Settlement of the Action,

1 the negotiation and execution of this Settlement Agreement, and all acts performed or documents  
2 executed pursuant to or in furtherance of this Settlement Agreement or the Class Settlement are not,  
3 shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or  
4 liability on the part of Defendant or of the truth of any of the factual allegations in the Complaint in the  
5 Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of  
6 any fault or omission on the part of Defendant in any civil, criminal, or administrative proceeding in  
7 any court, administrative agency, or other tribunal.

### 8 **13.5. NON-EVIDENTIARY USE**

9 Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation  
10 or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member (including any  
11 individual who requested to be excluded from the Settlement Class), Defendant, or its, her, his, or their  
12 respective counsel, in the Action, except as is reasonably necessary to effectuate the Settlement  
13 Agreement's purpose and terms. This Settlement Agreement may, however, be used by Defendant and  
14 the Released Parties to prove or defend against any claim released herein by any Class Member in any  
15 judicial, quasi-judicial, administrative, or governmental proceeding.

### 16 **13.6. MEDIA OR PRESS**

17 Plaintiff and Defendant, and their respective counsel, recognize, accept, and agree that the  
18 Parties to this Settlement Agreement desire that the terms of this Settlement Agreement, the fact of the  
19 Class Settlement embodied in this Settlement Agreement, the disposition of the Action, the Action, and  
20 all matters relating to the litigation of the Action, including discovery proceedings therein, and evidence  
21 obtained during the course of the Action, shall not be discussed with or presented to the media or press.

### 22 **13.7. NON-RETALIATION**

23 Defendant understands and acknowledges that it has a legal obligation to not retaliate against  
24 any Class Member who elects to participate in the Class Settlement or elects to Opt Out of the Class  
25 Settlement. Defendant will refer any inquiries regarding this Class Settlement to the Settlement  
26 Administrator or Class Counsel and will not discourage Class Members who are employees, directly  
27 or indirectly, from making claims, opting out, or objecting to the Class Settlement. None of the Parties,  
28

1 or their respective attorneys or agents, shall solicit or encourage any Class Members, directly or  
2 indirectly, to Opt Out of the Class Settlement.

### 3 **13.8. CONSTRUCTION**

4 The Parties agree that the terms and conditions of this Settlement Agreement are the result of  
5 lengthy, intensive, arms-length, non-collusive negotiations between the Parties and that this Settlement  
6 Agreement is not to be construed in favor of or against any party by reason of the extent to which any  
7 party or its counsel participated in the drafting of this Settlement Agreement. If any of the dates in this  
8 Settlement Agreement fall on a weekend, bank or court holiday, the time to act shall be extended to the  
9 next business day.

### 10 **13.9. GOVERNING LAW**

11 This Settlement Agreement is intended to and shall be governed by the laws of the State of  
12 California, without regard to conflict of law principles, in all respects, including execution,  
13 interpretation, performance, and enforcement.

### 14 **13.10. NOTICES**

15 Except for Class Member notices required to be made by the Settlement Administrator, all  
16 notices or other communications required or permitted under this Settlement Agreement shall be in  
17 writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S.  
18 certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the  
19 party appearing in this Settlement Agreement.

### 20 **13.11. CAPTIONS AND INTERPRETATIONS**

21 Section titles or captions contained herein are inserted as a matter of convenience and for  
22 reference only and in no way define, limit, extend, or describe the scope of this Settlement Agreement  
23 or any provision thereof.

### 24 **13.12. MODIFICATION**

25 This Settlement Agreement may not be changed, altered, or modified, except in writing signed  
26 by the Parties or the Parties' counsel on their behalf. If preliminary or final approval of this Settlement  
27 Agreement has been granted by the Court, then any such amendments or modifications to this  
28

Settlement Agreement shall be approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

### **13.13. INTEGRATION CLAUSE**

This Settlement Agreement contains the entire agreement between the Parties relating to the Class Settlement of the Action and the transactions contemplated thereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, and whether by a party or such party's legal counsel, are hereby superseded. No rights under this Settlement Agreement may be waived except in writing as provided above.

### **13.14. SUCCESSORS AND ASSIGNS**

This Settlement Agreement shall be binding on and inure to the benefit of the Parties and Class Members (excluding only persons who timely Opt Out) and their respective present and former heirs, trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, consultants, pension plans, welfare benefit plans, fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors, successors, and assigns.

### **13.15. CORPORATE SIGNATORIES**

Any person executing this Settlement Agreement or any such related document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all Parties hereto, that such person has been duly authorized by such corporation or partnership to execute this Settlement Agreement or any such related document.

### **13.16. EXECUTION IN COUNTERPARTS**

This Settlement Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Settling Parties had signed the same instrument.

### **13.17. ATTORNEY FEES, COSTS, AND EXPENSES**

Except as otherwise specifically provided for herein, each party shall bear her or its own attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other party to this Settlement Agreement.

**13.18. ACTION TO ENFORCE AGREEMENT**

In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover her or its attorney fees and costs.

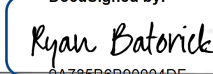
**14. EXECUTION**

The Parties and their counsel have executed this Settlement Agreement on the date below their signatures or the signature of their representatives. The date of this Settlement Agreement shall be the date of the latest signature.

**APPROVAL AND EXECUTION BY PARTIES**

**CLASS REPRESENTATIVE:**


Dated: 10/1/2024

DocuSigned by:  
  
 Ryan Batorick  
 Plaintiff and Class Representative

**DEFENDANT:**

Dated: 9-16-2024

Superior Flood Restoration, Inc.

  
 By: Jody Cisewski  
 Title: President

**APPROVED AS TO FORM BY COUNSEL**

**CLASS COUNSEL:**

Dated: October 1, 2024

**Melmed Law Group P.C.**

  
 Jonathan Melmed  
 Attorneys for Plaintiff

**DEFENDANT'S COUNSEL:**

Dated: 09/30/2024

**Schwartz Semerdjian Cauley Schena & Bush  
LLP**



**Dick A. Semerdjian  
Kristen M. Bush**

Attorneys for Defendant

# EXHIBIT 1

## *Notice of Proposed Class Action Settlement*

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO**

RYAN BATORICK, an individual, on behalf of  
himself, the State of California, as a private  
attorney general, and on behalf of all others  
similarly situated,

Plaintiff,

v.

SUPERIOR FLOOD RESTORATION, INC., a  
California corporation; and DOES 1 TO 50,

Defendants.

Case No.: 37-2023-00053892-CU-OE-CTL

**Notice of Proposed Class Action Settlement**

*A court authorized this notice. This is not a solicitation from a lawyer.*



1                                    **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

2                    *You may be eligible to receive a settlement payment. Please read this notice carefully.*

3                    A proposed class action settlement agreement (the “Settlement”) has been reached between:  
4    **(1)** Plaintiff Ryan Batorick (“Plaintiff”), individually and in his representative capacity on behalf of a  
5    group of prospective class members defined below, and as a private attorney general on behalf of the  
6    State of California; and **(2)** Defendant Superior Flood Restoration, Inc. (“Defendant”). The Settlement  
7    resolves disputed claims against Defendant arising out of its compensation practices during the period  
8    from December 12, 2019, through the date of preliminary approval of the settlement (the “Class  
9    Period”) as applied to all individuals who are or were employed by Defendants as non-exempt  
10   employees in California during the Class Period (“Class Members”).

11                  The Court has granted preliminary approval of the Settlement and ordered this notice to be sent  
12   to you because you may be entitled to money under the Settlement and because the Settlement affects  
13   your legal rights.

14                  **NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE**  
15   **SETTLEMENT:** If you are a Class Member (as defined above) and received this notice, you are  
16   automatically included in the Settlement and do not need to take any further action to receive a  
17   payment. If you accept your settlement amount, you will release the claims described below.

18    **1.        DESCRIPTION OF THE LAWSUIT**

19                  Plaintiff, individually and in his representative capacity on behalf of the Class Members, and  
20   as a private attorney general on behalf of the State of California, is pursuing a lawsuit against Defendant  
21   in the Superior Court of the State of California for the County of San Diego in the matter of ***Ryan***  
22   ***Batorick v. Superior Flood Restoration, Inc.***, case number **37-2023-00053892-CU-OE-CTL** (the  
23   “Action”). The Action sought recovery for Defendant’s alleged: **(1)** failure to pay minimum wage for  
24   all hours worked; **(2)** failure to pay proper overtime wages; **(3)** failure to provide compliant rest periods  
25   and pay missed rest break premiums; **(4)** failure to provide compliant meal periods and pay missed  
26   meal period premiums; **(5)** failure to maintain accurate employment records; **(6)** failure to pay timely  
27   wages during employment; **(7)** failure to pay all wages due and owing at separation; **(8)** failure to  
28   reimburse business expenses; **(9)** failure to provide complete and accurate wage statements; and

1 (10) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation  
2 of California’s Unfair Competition Law.

3 **Defendant denies all liability, denies all allegations in the Action, and has raised various**  
4 **defenses to the claims.** Defendant asserts that it fully complied with all applicable wage and hour laws,  
5 and contends that civil penalties under PAGA are not warranted. Defendant also denies that the Action  
6 is suitable for class certification. Defendant has entered into the Settlement solely for purposes of  
7 resolving this dispute to avoid costly, disruptive, and time-consuming litigation and does not admit to  
8 any wrongdoing or liability.

9 The Court has not ruled on the merits in the Action. By approving the Settlement and issuing  
10 this notice, the Court is *not* suggesting which side would win or lose the case if it went to trial or  
11 whether the claims are suitable for class certification. To avoid the additional expense, inconvenience,  
12 and risk of continued litigation, however, Plaintiff and Defendant (the “Parties”) have concluded that  
13 it is in their respective best interests and the interests of the Class Members to settle the Action on the  
14 terms summarized in this notice. The Settlement was reached after Defendant provided extensive  
15 information and documents to Plaintiff’s counsel, and after lengthy arms-length non-collusive  
16 negotiations between the Parties, including mediation with an experienced and well-respected mediator  
17 in California. In these negotiations, both sides recognized the substantial risk of the Court deciding  
18 against them at trial and determined that the Settlement was a fair, reasonable, and adequate way to  
19 resolve the disputed claims.

20 Plaintiff and Plaintiff’s counsel—Jonathan Melmed, Laura Supanich, and Rebecca Harteker of  
21 Melmed Law Group P.C. (“Class Counsel”)—support the Settlement. Among the reasons for support  
22 are the defenses to liability potentially available to Defendant, the risk of denial of class certification,  
23 the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.  
24 Plaintiff and Class Counsel believe that the settlement described in this notice is fair, adequate,  
25 reasonable, and in the best interests of Plaintiff and the Class Members.

26 Under the Settlement, the following settlement class will be certified under California law: *all*  
27 *individuals who are or were employed by Defendants as non-exempt employees in California during*  
28 *the Class Period.* The “Class Period” is defined as the period from December 12, 2019, through the

1 date of preliminary approval of the settlement. The Settlement provides for a gross settlement amount  
2 of \$150,000.00, a share of which is to be distributed to the Class Members based on the pro rata number  
3 of weeks worked by the Class Members during the Class Period as a proportion of all weeks worked  
4 by all Class Members. In exchange for their share of the settlement amount, all participating Class  
5 Members will be deemed to have released Defendant from liability on the terms described in this notice.

6 On [date of preliminary approval], the Court preliminarily approved the Settlement and  
7 conditionally certified the settlement class. This notice is being sent to you because Defendant's records  
8 indicate that you worked for Defendant during the Class Period and that you meet the definition  
9 required to be treated as a Class Member.

10 **2. IF YOU ARE STILL EMPLOYED BY DEFENDANT, THIS SETTLEMENT WILL**  
11 **NOT AFFECT YOUR EMPLOYMENT.**

12 California law strictly prohibits retaliation. Further, Defendant is prohibited by law from taking  
13 any adverse action against or otherwise target, retaliate, or discriminate against any Class Member  
14 because of the Class Member's participation or decision not to participate in the Settlement.

15 **3. TERMS OF THE SETTLEMENT**

16 Defendant has agreed to pay \$150,000.00 (the "Gross Settlement Amount") to resolve the  
17 claims in the Action. The Parties agreed to the following payments from the Gross Settlement Amount:

- 18 1. **Settlement Administration Costs.** The Court has approved [Settlement Administrator]  
19 to act as the "Settlement Administrator," who is sending this notice to you and will  
20 perform many other duties relating to the Settlement. Under the Settlement, up to  
21 \$10,000.00 will be paid from the Gross Settlement Amount to pay the Settlement  
22 Administration Costs.
- 23 2. **Attorneys' Fees and Expenses.** Class Counsel have been prosecuting the Action on  
24 behalf of the Class Members on a contingency fee basis (that is, without being paid any  
25 money to date) and have been paying all litigation costs and expenses. To date, the  
26 Parties have aggressively litigated many aspects of the case including investigation,  
27 settlement efforts, and a full-day mediation session. The Court will determine the actual  
28 amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross

1 Settlement Amount. Class Members are not personally responsible for any of Class  
2 Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of one-third of  
3 the Gross Settlement Amount (i.e., \$50,000.00) as reasonable compensation for the  
4 work Class Counsel performed and will continue to perform in the Action. Class  
5 Counsel also will ask for reimbursement of up to \$10,000.00 for the costs Class Counsel  
6 incurred in connection with the Action.

7 3. **Service Payment to Class Representative.** Class Counsel will ask the Court to provide  
8 a service payment to Plaintiff in the amount of \$7,500.00 for Ryan Batorick to  
9 compensate him for his efforts on behalf of the Class Members in the Action, including  
10 assisting in the investigation and consulting with Class Counsel and providing crucial  
11 documents to Class Counsel. Plaintiff also may receive a share of the Settlement as a  
12 Class Member.

13 4. **PAGA Payment.** The Parties have agreed on a reasonable sum to be paid in settlement  
14 of the PAGA claims included in the Action, which is \$20,000.00. The PAGA Payment  
15 is to be approved by the Court pursuant to Labor Code section 2699 and is to be  
16 distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and  
17 twenty-five percent (25%) (i.e., \$5,000.00) to the individuals who come within the  
18 definition of an "aggrieved employee" for the purposes of the Settlement (i.e., all  
19 individuals who are or were employed by Defendants as non-exempt employees in  
20 California during the PAGA Period). The "PAGA Period" is defined for these purposes  
21 to mean the period from December 12, 2022, through the date of preliminary approval  
22 of the settlement.

23 After deducting the amounts above, the balance of the settlement amount will form the "Net  
24 Settlement Amount" for distribution to the Class Members.

25 **4. DISTRIBUTION OF THE SETTLEMENT TO THE CLASS MEMBERS**

26 Each eligible Class Member who does not request exclusion from the Settlement will be deemed  
27 a "Class Participant" and will receive a share from the Net Settlement Amount which will be distributed  
28 pro rata based on the proportional number of weeks worked by each Class Member during the Class

1 Period (the “Individual Settlement Amount”). If any Class Member requests exclusion from the  
2 Settlement, his or her share will be distributed to the remaining Class Participants.

3 Twenty percent (20%) of each Individual Settlement Amount will constitute payment in the  
4 form of wages (and each Class Participant will be issued an IRS Form W-2 for such payment to him  
5 or her), and Eighty percent (80%) of each Individual Settlement Amount will constitute penalties and  
6 interest (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her).

7 Defendant, or its proxies, shall take all usual and customary deductions from the Individual  
8 Settlement Amount payments that are distributed as wages, including, but not limited to, state and  
9 federal tax withholding, disability premiums, and unemployment insurance premiums. There will be  
10 no deduction taken from the interest or penalty distribution—it will, however, be reported on IRS Form  
11 1099 as income. Class Participants are responsible for the proper income tax treatment of their  
12 Individual Settlement Amount. The Settlement Administrator, Defendant and its counsel, and Class  
13 Counsel cannot provide tax advice. Accordingly, Class Members should consult with their tax advisors  
14 concerning the tax consequences and treatment of payments they receive under the Settlement.

15 The workweeks you worked for Defendant during the Class Period will be calculated based on  
16 Defendant’s records. If you feel that you were not credited with the correct number of workweeks  
17 worked during the Class Period, you may submit evidence to the Settlement Administrator on or before  
18 [Response Deadline] with documentation to establish the number of workweeks you claim to have  
19 actually worked during the Class Period. **Documentation sent to the Settlement Administrator will**  
20 **not be returned or preserved, so do not send originals.** The Parties and the Settlement Administrator  
21 will promptly evaluate the evidence submitted and discuss in good faith how many workweeks should  
22 be credited. The Settlement Administrator will make the final decision as to how many weeks are  
23 credited and report the outcome to the Class Participant. If you are unsatisfied with the decision, you  
24 may submit an objection, which is explained below.

25 Settlement checks will be mailed to all Class Participants after the Court grants final approval  
26 of the Settlement and judgment is entered.

1     **5. THE RELEASE OF CLAIMS**

2             If the Court approves the Settlement, the Court will enter judgment and the Settlement will bind  
3 all Class Participants. The Class Participants will then be barred from bringing any “Released Claims”  
4 against the “Released Parties” as those terms are defined below.

5             The “Released Parties” are Defendant Superior Flood Restoration, Inc. and all of Defendant’s  
6 subsidiaries, affiliates, shareholders, members, agents, predecessors, successors, and assigns.

7             The “Released Claims” are **(1)** failure to pay minimum wage for all hours worked in violation  
8 of Labor Code sections 1194 and 1194.2, and the applicable IWC Wage Order(s); **(2)** failure to pay  
9 proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the applicable  
10 IWC Wage Order(s); **(3)** failure to provide compliant rest periods and pay missed rest break premiums  
11 in violation of Labor Code section 226.7 and the applicable IWC Wage Order(s); **(4)** failure to provide  
12 compliant meal periods and pay missed meal period premiums in violation of Labor Code sections  
13 226.7 and 512, and the applicable IWC Wage Order(s); **(5)** failure to maintain accurate employment  
14 records in violation of Labor Code section 1174; **(6)** failure to pay timely wages during employment in  
15 violation of Labor Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in  
16 violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in  
17 violation of Labor Code sections 2802 and 2804; **(9)** failure to provide complete and accurate wage  
18 statements in violation of Labor Code sections 226 and 226.3; **(10)** failure to pay sick leave in violation  
19 of Labor Code section 246; **(11)** deceptive, fraudulent, or otherwise unlawful business practices based  
20 on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–  
21 17210); **(12)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-  
22 2699.6). No other claims are released other than those claims specifically plead in the operative  
23 complaint in the Action.

24             The Settlement does *not* release Defendant or any person, party, or entity from claims, if any,  
25 by Class Members for workers compensation, unemployment, or disability benefits of any nature. Nor  
26 does it release any claims, actions, or causes of action which may be possessed by Class Members  
27 under state or federal discrimination statutes, including, without limitation, the California Fair  
28 Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code,

§ 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.); the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and interpretive guidelines.

Class Members who do not request exclusion from the Settlement will be deemed to have acknowledged and agreed that their claims for wages and penalties in the Action are disputed, and that the Settlement payments constitute payment of all sums allegedly due to them. Class Members will be deemed to have acknowledged and agreed that California Labor Code section 206.5 is not applicable to the Settlement payments. That section provides in pertinent part as follows:

“An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.”

## **6. YOUR OPTIONS**

### **6.1. DO NOTHING AND RECEIVE YOUR PORTION OF THE SETTLEMENT**

If you do nothing, you will be automatically included as a Class Participant in the Settlement and will receive a settlement payment. You do *not* have to take any further action to receive your settlement payment. It is, however, the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a settlement payment. The estimated amount of your settlement payment if you do nothing is included on the attached *Class Action Settlement Share Form*.

### **6.2. REQUEST EXCLUSION FROM THE CLASS AND THE SETTLEMENT**

If you do *not* wish to take part in the class action portion of the Settlement (the “Class Settlement”), you may exclude yourself (i.e., opt out of the Class Settlement) by sending the Settlement Administrator a letter or card postmarked no later than [Response Deadline] that specifically requests exclusion from the Class Settlement in this case. The request for exclusion must include your name, address, telephone number, and signature, and it should state:

1 “I wish to be excluded from the settlement class in the case of *Ryan Batorick v. Superior*  
2 *Flood Restoration, Inc.*. I understand that if I ask to be excluded from the settlement  
3 class, I will not receive any money from the settlement of this lawsuit and will not be  
4 releasing any claims I might have.”

5 Send the request for exclusion directly to the Settlement Administrator at the following address  
6 by no later than **[Response Deadline]**:

7 **[Insert Settlement Administrator Address]**  
8

9 Any person who submits a timely request for exclusion from the Class Settlement shall, upon  
10 receipt, no longer be a Class Member, shall be barred from participating in the Class Settlement, and  
11 shall receive no benefits from the class action portion of the Settlement. If you want confirmation of  
12 receipt of your request for exclusion, please send it by United States certified mail, return receipt  
13 requested, or contact the Settlement Administrator.

14 **Importantly**, Class Members who timely and validly request exclusion from the Class  
15 Settlement will *not* be excluded from their share of the PAGA Payment. Requesting exclusion from  
16 the Class Settlement applies solely to the Class Members’ entitlement to the class action portion of the  
17 Settlement and not their entitlement to the PAGA Payment. If you request exclusion from the Class  
18 Settlement you will still be entitled to your share, if any, of the PAGA Payment.

### 19 **6.3. OBJECT TO THE SETTLEMENT**

20 You have the right to object to the terms of the Settlement if you do not request exclusion. If,  
21 however, the Court rejects your objection, you will still be bound by the terms of the Settlement. If you  
22 wish to object to the Settlement, or any portion of it, you may file with the Settlement Administrator  
23 and the Court a written objection stating your name, address, telephone number, dates of employment  
24 with Defendant, the case name and number, each specific reason in support of your objection, and any  
25 legal support for each objection. Objections in writing must be mailed to the Settlement  
26 Administrator—**[Insert Settlement Administrator Address]**—by no later than **[Response Deadline]** to  
27 be considered. **Objections that do not include all required information, or that are not timely**  
28 **submitted, might not be considered by the court.**



1 If you choose to object to the Settlement, you may also appear to speak at the final approval  
2 and fairness hearing scheduled for [Final Approval Hearing Date], at [Final Approval Hearing Time]  
3 in Department [Court Department] of the Superior Court of the State of California for the County of  
4 San Diego, located at [Court Location]. You have the right to appear either in person or through your  
5 own attorney at this hearing.

6 If you object to the Settlement, you will remain a Class Member, and if the Court approves the  
7 Settlement, you will receive payment and be bound by the terms of the Settlement in the same way as  
8 Class Members who do not object. Any Class Member who does not object in the manner provided  
9 above shall have waived any objection to the Settlement, whether by appeal or otherwise.

10 The Court may, at the time of the final approval and fairness hearing, have certain social  
11 distancing requirements or procedures for attendance at hearings. If you wish to object to the Settlement  
12 by speaking at the final approval and fairness hearing, you may contact Class Counsel, whose  
13 information is provided below, for more information about the Court's current social distancing  
14 procedures. You may also review the Court's website for the most current information.

15 **7. HOW TO UPDATE OR CHANGE YOUR ADDRESS**

16 If you move after receiving this notice or if it was misaddressed, please contact the Settlement  
17 Administrator, [Settlement Administrator], at [Settlement Administrator Phone] or by email at  
18 [Settlement Administrator Email], as soon as possible. **This is important to ensure that future notices  
19 and/or the Settlement payment reach you.**

20 **8. NOTICE OF FINAL JUDGMENT IF THE SETTLEMENT IS APPROVED**

21 Within seven (7) days after the Court has held a final and fairness approval hearing and entered  
22 a final order approving the Settlement, if it chooses to do so, the Settlement Administrator will post a  
23 copy of that order and final judgment on its website at the following website address:

24 [Case-Specific Settlement URL (to be added by Settlement Administrator)]

25 **9. IF THE SETTLEMENT IS NOT APPROVED**

26 If the Settlement is not approved by the Court, or if any of its conditions are not satisfied, the  
27 Settlement may be voided, in which case no money will be paid, and the case will return to litigation.  
28

1 If that happens, there is no assurance: **(1)** that the class will be certified by the Court; **(2)** that any  
2 decision at trial would be in favor of Class Members; **(3)** that a trial decision, if any, would be as  
3 favorable to the Class Members as the Settlement; or **(4)** that any favorable trial decision would be  
4 upheld if an appeal was filed.

5 **10. QUESTIONS OR COMMENTS**

6 **PLEASE DO NOT CALL OR CONTACT THE COURT.** If you have any questions about  
7 the settlement, you may contact the Settlement Administrator at: [Settlement Administrator Phone] or  
8 by e-mail at [Settlement Administrator Email]. You may also contact Class Counsel at the addresses  
9 or phone numbers listed below.

10  
11 **Lawyers Representing Plaintiff and the Class Members**

12 **MELMED LAW GROUP P.C.**

13 Jonathan Melmed

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15 Laura Supanich

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20 Los Angeles, California 90067

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# EXHIBIT 2

## *Class Action Settlement Share Form*

**CLASS ACTION SETTLEMENT SHARE FORM**

*Ryan Batorick v. Superior Flood Restoration, Inc.*

Case Number 37-2023-00053892-CU-OE-CTL

Superior Court of the State of California for the County of San Diego

The proposed class action settlement agreement (the “Settlement”) described in the accompanying *Notice of Proposed Class Action Settlement* resolves disputed claims against Defendant Superior Flood Restoration, Inc. (“Defendant”) arising out of its compensation practices during the period from December 12, 2019, through the date of preliminary approval of the settlement (the “Class Period”) as applied to all individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period (“Class Members”).

You are receiving this form because you are believed to be a Class Member. **According to Defendant’s records, you worked [REDACTED] workweeks for Defendant during the Class Period. Accordingly, your share of the Settlement is currently estimated to be \$[REDACTED],** which is an estimate of your allocated portion the Net Settlement Amount, as that term is defined in the accompanying *Notice of Proposed Class Action Settlement*. Your estimated share of the Settlement may increase depending on factors such as, but not limited to, the number of Class Members who effectively exclude themselves from the Settlement.

***You do not need to do anything to receive money under the Settlement.***

If you believe the information provided above as to the number of your workweeks is incorrect and wish to dispute it, please contact the Settlement Administrator no later than **[Response Deadline]** at:

**[Settlement Administrator Contact Information]**

If you dispute the information stated above, the information Defendant provided to the Settlement Administrator will control unless you are able to provide documentation that establishes otherwise. Any disputes, along with supporting documentation, must be postmarked no later than **[Response Deadline]**.

**Do not send originals; documentation sent to the claims administrator will not be returned or preserved.**