

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Office of the Attorney General**



In the Matter of 734 NW LLC d/b/a SAX

**SETTLEMENT AGREEMENT**

The Attorney General for the District of Columbia, on behalf of the District of Columbia (“District”), and Respondent 734 NW LLC d/b/a SAX (“SAX” or “Company”) (together, the “Parties”), hereby enter into this Settlement Agreement, and agree as follows:

**I. THE PARTIES**

1. The Attorney General for the District of Columbia is the chief legal officer for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest.

2. SAX is a District limited liability company that operates at 734 11th Street NW, Washington, D.C. 20001.

**II. COVERED CONDUCT**

3. The District alleges that from 2020 through the present, the Company failed to comply with the District’s Minimum Wage Revision Act (“MWRA”), D.C. Code § 32-1001, *et seq.*, and Wage Payment and Collection Law (“WPCL”), D.C. Code § 32-1301, *et seq.*, with regards to employees including servers, bartenders, and barbacks. Specifically, SAX allegedly failed to properly maintain payroll records, including records of each employee’s base rate of pay.

Rather than providing each employee with a standard base rate of pay, SAX allegedly paid employees in variable amounts depending on the amount of service fees SAX generated. SAX also allegedly failed to furnish each employee each pay period with a paystub reporting the employee's base rate of pay, hours worked, and earnings disaggregated by wages and tips, and a tip declaration form delineating credit card tips and cash tips. Additionally, SAX allegedly failed to pay employees the correct minimum wage per hour worked, and in some instances, SAX allegedly failed to pay employees correct overtime rates when they worked over forty hours in a work week.

4. The District further alleges that from 2020 through the present, SAX allegedly failed to provide its employees with paid accrued sick leave pursuant to the Sick and Safe Leave Act ("SSLA"), D.C. Code § 32-531.01, *et seq.*

5. The District further alleges that SAX provided its employees with an employee handbook ("Handbook") containing a number of provisions inconsistent with District law. The Handbook contained a general "anti-moonlighting" provision for all employees but, under District law, employers may not subject employees to any "policy that prohibits an employee from performing work for another for pay" unless the employee earns over \$150,000 annually. *See* D.C. Code § 32-581.01, *et seq.* Additionally, the District alleges that the Handbook stated that employees may be terminated for unannounced absences and that employees may be required to provide doctor's notes for any absence due to illness. But the SSLA, which was not mentioned in the Handbook, protects certain unannounced absences and only permits employers to demand a doctor's note for a three or more consecutive day absence. *See* D.C. Code § 32531.04(a)(1).

6. Lastly, the District alleges that SAX conditioned employees' receipt of wages earned on employees' written agreement to all provisions in the Handbook, which included a

mandatory arbitration provision. Employees' assent to such mandatory arbitration provisions are null and void for lack of consideration.

7. The District's allegations in Paragraphs 3-6 are hereinafter referred to as the "Covered Conduct."

8. The Company denies the District's allegations. Nothing contained in this Settlement Agreement is or may be construed to be an admission by Company of any violation of law or regulation, any other matter of fact or law, or any liability or wrongdoing.

### **III. DEFINITIONS**

9. "**Effective Date**" shall be the last date upon which any party executes the Settlement Agreement.

10. "**Eligible Employee**" is an employee eligible to receive a payment pursuant to this Settlement Agreement.

### **IV. INJUNCTIVE TERMS**

11. **Compliance with District Law.** Within sixty (60) days of the Effective Date, the Company shall come into compliance with the MWRA, WPCL, and SSLA, including by maintaining compliant payroll records, including records of each employee's base rate of pay; by furnishing each employee each pay period with a paystub reporting the employee's base rate of pay, hours worked, and earnings disaggregated by wages and tips, and a tip declaration form delineating credit card tips and cash tips; and by proving accrued paid sick leave consistent with the SSLA.

12. **Reporting.** The Company shall submit an Annual Report to the District for the one-year period following the Effective Date that identifies all employees who performed work for the Company in the District of Columbia during that year and includes a signed certification from a

corporate representative attesting to compliance with the MWRA, WPCL, and SSLA. The Company shall submit this report to the District pursuant to Paragraph 21 of this Agreement no later than thirteen (13) calendar months after the Effective Date.

13. **Corrective Action.** If the Company becomes aware, through an audit or other source, that it is in violation of the MWRA, WPCL, or SSLA, the Company shall take action within thirty (30) days to ensure the location comes into compliance and pays any applicable restitution to any affected worker to remedy the violation.

14. **Employee Handbook.** Within sixty (60) days of Effective Date, the Company shall revise its Handbook (“Revised Handbook”) to eliminate any anti-moonlighting provisions and to eliminate any terms inconsistent with the SSLA, and shall submit that Revised Handbook to the District for review and approval. Within 10 days of receiving District approval, the Company shall disseminate the Revised Handbook to all employees.

15. **Mandatory Arbitration.** All mandatory arbitration contracts executed between SAX and any employee prior to the Effective Date are null and void. Within 30 days of the Effective Date, the Company shall draft a notice (“Arbitration Notice”) informing employees that any previously executed mandatory arbitration provisions are null and void, and the Company shall submit that Arbitration Notice to the District for review and approval. Within 10 days of receiving District approval, the Company shall disseminate the Arbitration Notice to all employees. The Company shall not present any employee with a mandatory arbitration provision for a period of five (5) years from the Effective Date.

V. **PAYMENT TERMS**

16. **Payments to Eligible Employees.** The Company shall make payments totaling **\$66,000** to Eligible Employees. The Company shall be responsible for distribution of these

payments and will manage the distribution as follows:

- a. *Creation of Claims Ledger.* Within ninety (90) days after the Effective Date, SAX will prepare and submit to the District a ledger (the “Claims Ledger”) in Excel spreadsheet format that identifies each Eligible Employee’s (a) name; (b) available contact information, including phone, email, and address; and (c) amount owed (the “Claim Payment”). The Claim Payment will reflect amounts owed to each Eligible Employee as identified in the attached Appendix A.
- b. *Reasonable Efforts to Identify Eligible Employees and Contact Information.* SAX shall use an Eligible Employee’s last-known contact information to create the Claims Ledger. If an Eligible Employee’s last-known contact information is unknown, SAX shall retain a vendor to conduct a skip trace search to locate last-known contact information.
- c. *Reasonable Efforts to Contact Eligible Employees and Distribute Claim Payments.* SAX shall make an attempt to contact each Eligible Employee by phone, mail, or email to provide a notice and release (“Notice and Release”) regarding distribution of their Claim Payment within one hundred twenty (120) days of the Effective Date. SAX must make multiple attempts to contact all Eligible Employees by phone, mail, and email within one hundred eighty (180) days after the Effective Date of this Settlement Agreement. The Notice and Release shall contain an easily understood explanation, in layman’s terms, of this Settlement Agreement and the Eligible Employee’s ability to claim a portion of SAX’s Payments to Eligible Employees in exchange for executing an agreement releasing the claims at issue in this Settlement Agreement. A Notice and Release in the format attached as Appendix B is deemed acceptable to the OAG as being in compliance with this paragraph 16(c).
- d. *Distribution of Payments.* Within one hundred eighty (180) day after the Effective Date, the Company shall distribute payments to Eligible Employees who completed the Notice and Release form consistent with the amounts listed as due to each Eligible Employee under Appendix A.
- e. *Records and Reporting.* The Company shall record the dates and methods (*i.e.*, direct deposit or cashed check) by which payments were distributed to Eligible Employees. Within seven (7) months of the Effective Date, the Company shall provide the District with a final report that shows all payments distributed to Eligible Employees and all payments remaining unclaimed by Eligible Employees (the total of which is referred to as the “Undistributed Funds”).
- f. *Payment of Undistributed Funds to the District.* Within 30 days after providing the records required by paragraph (b) above, the Company shall make a payment to the District in the amount of the Undistributed Funds. Payments made to the District pursuant to this term may be used for any lawful purpose, including, but not limited to: deposit to the District’s litigation support fund or restitution fund; defrayal of the costs of the inquiry leading hereto; defrayal of the costs of administration or

distribution; or for other uses permitted by District law, at the sole discretion of the Attorney General for the District of Columbia.

17. **Payment to the District.** In addition to the payments described in Paragraph 16, the Company shall also pay **\$30,000** to the District as a civil penalty, within one (1) year of the Effective Date.

18. All payments to the District shall be made by cashier's check made payable to "D.C. Treasurer" and delivered to Conny Tello, Office of Attorney General for the District of Columbia, 400 6th Street NW, 10th Floor, Washington, DC 20001 or by electronic funds transfer pursuant to the written instructions provided by the Office of the Attorney General for the District of Columbia.

#### **VI. RELEASE**

19. The Parties have agreed to the terms of this Settlement Agreement to resolve the District's allegations against the Company concerning the Covered Conduct. In exchange for the performance of the Company's obligations under this Settlement Agreement, and upon payment of all amounts due under this Agreement, the District hereby releases the Company and its principals, owners, members, officers, directors, managers, employees and agents from any and all civil claims that the Attorney General could have asserted under the MWRA, WPCL, and SSLA for claims arising out of the Covered Conduct. The District has not investigated whether the Company has committed any criminal violations and the District makes no findings in this respect.

#### **VII. ADDITIONAL TERMS**

20. This Settlement Agreement shall be considered effective and fully executed on the Effective Date. This Settlement Agreement may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature. Copies of signature pages transmitted electronically shall have the same effect as

originals of those signature pages.

21. The Company shall not knowingly permit third parties authorized by the Company to act on its behalf to engage in practices that would be violative of this Settlement Agreement.

22. This Settlement Agreement represents the full and complete terms of the settlement entered by the Parties. In any action undertaken by the Parties, neither prior versions of this Settlement Agreement nor prior versions of any of its terms may be introduced for any purpose whatsoever.

23. All notices sent pursuant to this Settlement Agreement shall be provided to the following address via first class and electronic mail, unless a different address is specified in writing by the party changing such address:

Graham Lake  
Chief, Workers' Rights and Antifraud Section  
Office of the Attorney General  
400 6th St., NW, 10<sup>th</sup> Floor  
Washington, D.C. 20001  
Graham.Lake@dc.gov

*Counsel for the District of Columbia*

Karen A. Doner  
Doner Law, PLC  
1750 Tysons Boulevard, Suite 1500  
Tysons Corner, VA 22102  
kdoner@donerlawplc.com

*Counsel for SAX*

24. Any failure by any party to this Settlement Agreement to insist upon the strict performance by any other party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of the provisions of this Settlement Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Settlement Agreement.

25. If any clause, provision or section of this Settlement Agreement shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section, or other provision had not been contained herein.

26. Nothing in this Settlement Agreement shall be construed as relieving the Company of the obligation to comply with all state and federal laws, regulations, or rules, nor shall any of the provisions of this Settlement Agreement be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

27. The Company shall not form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part that are prohibited in this Settlement Agreement.

BRIAN L. SCHWALB  
Attorney General for the District of Columbia

James Graham Lake

Date: 9/16/24

Graham Lake  
Chief, Workers' Rights and Antifraud Section  
Office of the Attorney General  
400 6th St., NW, 10<sup>th</sup> Floor  
Washington, D.C. 20001

*Counsel for the District of Columbia*



Date: 9/13/24

*SAX Signatory*