

1 Shaun Setareh (SBN 204514)
shaun@setarehlaw.com
2 Thomas Segal (SBN 222791)
thomas@setarehlaw.com
3 Jose Maria D. Patino, Jr. (SBN 270194)
jose@setarehlaw.com
4 SETAREH LAW GROUP
9665 Wilshire Boulevard, Suite 430
5 Beverly Hills, California 90212
Telephone (310) 888-7771
6 Facsimile (310) 888-0109

7 Attorneys for Plaintiff
ADAN ORTIZ

8
9 *[Additional attorneys listed on next page]*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN MATEO
12 UNLIMITED JURISDICTION
13

14 ADAN ORTIZ, on behalf of himself, all others
similarly situated, and the general public,

15 *Plaintiff,*

16 vs.

17 STAFFMARK HOLDINGS, INC., an Ohio
18 corporation; STAFFMARK INVESTMENT,
LLC, an Ohio Limited Liability Company;
19 WALMART, INC., an Arkansas Corporation;
and DOES 1 through 50, inclusive,

20 *Defendants.*
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Case No. 20-CIV-01733

Assigned for All Purposes to the Honorable
Raymond Swope, Department 23

**JOINT STIPULATION REQUESTING
APPROVAL OF SETTLEMENT PURSUANT
TO THE PRIVATE ATTORNEYS GENERAL
ACT OF 2004**

*[Filed concurrently with the Declaration of Shaun
Setareh in support thereof and [Proposed] Order]*

1 Susan M. Steward (SBN 224805)
ssteward@aalrr.com
2 Kieran D. Hartley (SBN 301947)
kieran.hartley@aalrr.com
3 ATKINSON, ANDELSON, LOYA, RUUD &
ROMO, A Professional Law Corporation
4 12800 Center Court Drive South, Suite 300
Cerritos, CA 90703-9364
5
Attorneys for Defendants STAFFMARK HOLDINGS, INC. and STAFFMARK INVESTMENT LLC
6
7 Robert J. Herrington (SBN 234417)
herringtonr@gtlaw.com
8 Matthew R. Gershman (SBN 253031)
gershmanm@gtlaw.com
9 GREENBERG TRAURIG, LLP
1840 Century Park East, 19th Floor
10 Los Angeles, CA 90067-2121
11 Attorneys for Defendant WALMART INC.
12
13
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1 **JOINT STIPULATION FOR APPROVAL OF PAGA SETTLEMENT**

2 Plaintiff ADAN ORTIZ (“Plaintiff”) and Defendants STAFFMARK INVESTMENT LLC,
3 (“Staffmark Investment”), STAFFMARK HOLDINGS, INC. (“Staffmark Holdings”), and Walmart Inc.
4 (“Walmart”) (collectively “Defendants”) (Plaintiff and Defendants, collectively, the “Parties”), by and
5 through their respective counsel of record, hereby stipulate and agree as follows:

6 WHEREAS, on January 29, 2020, Plaintiff submitted a letter to the California Labor and
7 Workforce Development Agency (“LWDA”) to notify the LWDA pursuant to the Private Attorneys
8 General Act of 2004, Labor Code section 2698, *et seq.* (“PAGA”), of Plaintiff’s intent to seek civil
9 penalties under PAGA for violations of Labor Code sections 201, 202, 203, 204, 223, 226, 226.7, 510,
10 512, 558, 1194, 1197, 1197.1, 1198, 1199, and 2802;

11 WHEREAS, on April 21, 2020, Plaintiff filed the complaint in this Action in the above-titled
12 Court with a single cause of action for recovery of civil penalties under PAGA against Defendant,
13 alleging violations of Labor Code sections 201, 202, 203, 204, 223, 226, 226. 7, 227.3, 510, 512, 1194,
14 1197, 1198, and 2802 (the “Action”);

15 WHEREAS, May 26, 2020, Defendants Staffmark Holdings and Staffmark Investment filed an
16 Answer to the Complaint denying the allegations and pleading affirmative defenses;

17 WHEREAS, on July 13, 2020, Defendant Walmart filed an Answer to the Complaint denying
18 the allegations and pleading affirmative defenses;

19 WHEREAS, this Court scheduled an Order to Show Cause Regarding Dismissal on October 13,
20 2021, and continued that hearing to June 8, 2022 at 9:00 a.m.;

21 WHEREAS, on April 26, 2021, the Parties attended a full-day mediation with an experienced
22 wage-hour mediator, Steven J. Rottman, Esq., which resulted in settlement;

23 WHEREAS, the Parties negotiated and finalized the terms of a settlement memorialized in a
24 long-form “Private Attorneys General Act (Labor Code § 2698, *Et Seq.*) Settlement Agreement” (the
25 “Settlement,” “Agreement,” or “Settlement Agreement”), and a true and correct copy of the fully
26 executed Settlement is attached to the concurrently filed Declaration of Shaun Setareh in support of this
27 joint stipulation (“Setareh Decl.”) as **Exhibit 1**;

28 WHEREAS, before the mediation, the Parties engaged in an extensive informal exchange of

1 data about the allegedly aggrieved employees, Defendants produced time records from February 15,
2 2019 through March 21, 2021 for 240 employees and a wage statement aggregate register from
3 February 15, 2019 to pay period end date March 21, 2021 for the matching 240 employees, including
4 Adan Ortiz, and Defendants have previously produced Plaintiff's personnel file and a copy of all
5 employee handbooks and policies effective from February 15, 2019 to the present during formal
6 discovery;

7 WHEREAS, the Parties have concluded that there are benefits associated with settling the
8 Action and that, after taking into account the disputed factual and legal issues involved in this litigation,
9 the risks associated with further litigation, the substantial benefits to be received pursuant to the
10 compromise and settlement of the PAGA representative penalty claims as set forth in the Agreement,
11 and that settlement on the terms set forth therein is in the best interest of the Plaintiff, the LWDA, the
12 aggrieved employees covered by PAGA, and Defendants, and is fair, reasonable, and adequate;

13 WHEREAS, Defendants completely deny any liability, wrongdoing, or violation of the Labor
14 Code or of any kind associated with the claims alleged in the Action; Defendants further deny that this
15 Action is appropriate for PAGA representative treatment for any purpose other than settling this case;
16 Defendants contend, that they have complied at all times with the California Labor Code, the related
17 California Wage Orders, and the California Business & Professions Code, all other state wage laws and
18 other applicable laws, and further contend that this case is without merit; Defendants have denied and
19 continue to deny each and every allegation in the Action case and contend that Defendants did not harm,
20 aggrieve, or otherwise violate the Labor Code as it pertains to Plaintiff or any other employee;

21 WHEREAS, any settlement of a PAGA action brought by an aggrieved employee must be
22 approved by the court (Lab. Code§ 2699(1)(2)), and in 2009, the California Supreme Court held that an
23 aggrieved employee's representative action brought on behalf of the state and other allegedly aggrieved
24 employees against an employer for PAGA violations *does not* need to meet the requirements for class
25 certification nor does there need to be notice to the other employees (*Arias v. Superior Court*, 46 Cal.4th
26 969, 975); thus, the Court simply reviews the settlement and approves it if it is deemed to be fair and
27 reasonable. (*See Gutilla v. Aerotek, Inc.*, 2017 WL 2729864 at *3 (E.D. Cal. Mar. 2017) ["the court will
28 approve a settlement of PAGA claims upon a showing that the settlement terms (1) meet the statutory

requirements set forth by PAGA, and (2) are fundamentally fair, reasonable, and adequate in view of PAGA's public policy goals."]; *see also Rincon v. W. Coast Tomato Growers, LLC*, 2018 WL 828104 at *2 (S.D. Cal. 2018); *See also Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021) ["a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.])

WHEREAS, the Parties seek to obtain the Court's approval of the settlement terms and resolve this matter in the most efficient manner possible; and

WHEREAS, for the reasons set forth in the concurrently filed supporting declaration of Shaun Setareh, the PAGA settlement obtained here, including a gross PAGA settlement amount of \$2,000,000.00, is fair, reasonable, and adequate;

THEREFORE, IT IS HEREBY STIPULATED AND PROPOSED BY THE PARTIES
HERETO AS FOLLOWS:

The Parties stipulate and jointly request that the Court approve the terms of the fully executed Settlement, which includes the following key terms:

1. "Aggrieved Employees" is defined as all non-exempt employees who were placed as temporary employees by Staffmark Investment at Walmart in California from February 15, 2019 to April 18, 2021 (Settlement, § 1.01(b));
2. "Release Period" or "PAGA Period" means February 15, 2019 to April 18, 2021. (*Id.*, § 1.01(i));
3. Simpluris Inc ("Simpluris") will be appointed as the Settlement Administrator.
"Settlement Administrator" in the Settlement means Simpluris.
4. "Gross Settlement Amount" refers to the total settlement amount of \$2,000,000.00, which shall be paid wholly by Staffmark Investment, is, for the settlement of the Action, which includes payment to Plaintiff as a representative of the Aggrieved Employees, reasonable attorneys' fees and litigation costs, settlement administration costs, and a payment to the State of California under the Private Attorney General Act ("PAGA"), ("the Gross Settlement"). (*Id.*, § 1.01(f)). Defendants represent that the total number of

workweeks worked by the Aggrieved Employees during the PAGA Period is approximately 20,070 workweeks. If the actual number of workweeks worked by Aggrieved Employees during this time-period should exceed the foregoing representation by more than five percent (5%), the Gross Settlement shall be proportionally increased (*Id.*);

- a. Plaintiff's Counsel may request and be paid up to 33.33% of the Gross Settlement Amount (\$666,666.66) for attorneys' fees ("Plaintiff's Attorney's Fees.") (*Id.*, § 3.01(a));
- b. Plaintiff's Counsel may request up to \$20,000 of the Gross Settlement Amount as reimbursement for expenses incurred in the Action ("Litigation Costs") (*Id.*, § 3.01(b));
- c. Plaintiff's counsel may request up to \$40,000 of the Gross Settlement Amount as payment to the Settlement Administrator for costs incurred by the Settlement Administrator in connection with the Settlement, including mailing of the Notice of PAGA Settlement described herein ("Settlement Administration Costs") (*Id.*, § 3.01(c)) If the Parties' estimated PAGA administration fee is too little, it can be adjusted and shall be paid from the Gross Settlement Amount. (*Id.*) If the actual administration fee is less than the Parties' estimated administration fees, the difference between the actual and estimated PAGA administration fees will be included in the Net Settlement Amount to be paid to the Aggrieved Employees. (*Id.*)
- d. Defendants agree not to oppose a request for service award to be paid to Plaintiff of up to \$5,000.00 ("Service Fee") (*Id.*, § 3.01(d));
- e. The Net Settlement Amount shall be determined by deducting Plaintiff's Attorney's Fees, Litigation Costs, Settlement Administration Costs and Service Fee from the Gross Settlement Amount (*Id.*, § 3.01(e));

5. "Effective Date" of the Settlement shall be the date the Court's order approving the settlement and judgment thereon ("Judgment") becomes final. For purposes of the

Settlement Agreement, the Court's Judgment "becomes final" upon the later of: (i) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the Court's Judgment (i.e., 60 calendar days after notice of entry of the Court's Judgment); (ii) if an appeal is filed, the date affirmance of an appeal of the Judgment becomes final; or (iii) if an appeal is filed, the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Judgment (*Id.*, § 1.01(e));

6. The allegedly Aggrieved Employees are not permitted to opt-out or object to the Settlement Agreement (*see Robinson v. Southern Counties Oil Co.* (August 13, 2020), First Appellate Dist. A158791);

7. The Net Settlement Amount shall be characterized as 100% civil penalties; the Settlement Administrator shall pay 75% of the Net Settlement Amount to the LWDA. (Settlement Agreement §3.04(b));

8. PAGA Notice and Payment Procedure:

a. No later than 10 calendar days after the Effective Date, Defendants shall provide the Settlement Administrator with a list of all allegedly Aggrieved Employees ("Aggrieved Employees List"), which shall state: the first name and last name in separate columns for each allegedly Aggrieved Employee; the last known home address for each allegedly Aggrieved Employee; each allegedly Aggrieved Employee's social security number; and each allegedly Aggrieved Employee's respective number of pay periods worked for Defendants during the Release Period (*Id.*, § 3.03(a)(1));

b. The Settlement Administrator shall utilize the United States National Change of Address ("NCOA") database and also perform an *Accurint* or similar skip tracing process to determine the best most recent addresses for the Aggrieved Employees prior to mailing the notices and settlement checks (*Id.*, § 3.03(a)(2));

c. No later than 21 calendar days after the Effective Date, the Settlement Administrator shall mail the Notice of PAGA Settlement (attached to the

1 Settlement as **Exhibit A**) together with a settlement payment to all Aggrieved
2 Employees by first-class United States mail, postage prepaid, with directions to
3 the Postmaster to forward the Notice of PAGA Settlement and return all
4 undeliverable Notices to the Settlement Administrator; for each Notice of PAGA
5 Settlement that is returned as undeliverable, the Settlement Administrator shall
6 promptly attempt to locate the allegedly Aggrieved Employee by performing an
7 additional skip trace and shall re-mail the Notice and settlement check no later
8 than 10 days following receipt of the undeliverable Notice (*Id.*, § 3.03(a)(3));

9 d. No later than 30 calendar days after the Effective Date, Defendants shall deposit
10 the Gross Settlement Amount with the Settlement Administrator. (*Id.*, § 3.04(a));

11 e. 75% of the Net Settlement Amount (“NSA”) will be paid to the LWDA, and
12 25% of the NSA will be split among the allegedly Aggrieved Employees,
13 which will be payable and divided among the allegedly Aggrieved Employees
14 based on the following formula: 25% of the NSA shall be divided by the total
15 pay periods worked for Defendant by all allegedly Aggrieved Employees
16 during the Release Period to yield the “Employee Settlement Share Value,”
17 and then each allegedly Aggrieved Employee shall be paid his or her
18 individual total pay periods worked for Defendant during the Release Period
19 multiplied by the Employee Settlement Share Value (*Id.*, § 3.04(b));

20 f. The settlement checks issued to Aggrieved Employees shall remain valid for one
21 hundred eighty (180) days. If checks remain uncashed after ninety (90) days, a
22 reminder postcard will be sent to those members of the Aggrieved Employees
23 with uncashed checks, advising them to cash the check or request a replacement
24 check. If checks still remain uncashed after 150 days, a similar postcard will be
25 sent to the Aggrieved Employees with uncashed checks. At 180 days, all
26 uncashed checks will be sent to the California State Controller’s office to be held
27 as “unclaimed property” in the name of the Aggrieved Employees.

28 g. No later than 35 days after the Effective Date, the Settlement Administrator shall

1 pay the court approved Plaintiffs' Attorneys' Fees and Litigation Costs to
2 Plaintiffs' Counsel (*Id.*, § 3.04(c¹)).

3 h. Upon completion of the Settlement Administrator's duties under the Agreement,
4 the Settlement Administrator shall pay itself its actual costs in administering the
5 settlement in the amount approved by the Court. (*Id.*, § 3.04(d²)).
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7 IT IS SO STIPULATED.

8 Dated: 06/01/2022

SETAREH LAW GROUP

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10 By: 

11 Shaun Setareh
12 Thomas Segal
13 Jose Maria D. Patino, Jr.
Attorney for Plaintiff
ADAN ORTIZ

14 Dated: 6/1/22

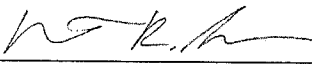
ATKINSON, ANDELSON, LOYA, RUDD & ROMO

15
16 By: 

17 Susan M. Steward
18 Kieran D. Hartley
Attorneys for Defendant
STAFFMARK HOLDINGS, INC and STAFFMARK
INVESTMENT LLC

19
20 Dated: 6/1/2022

GREENBERG TRAURIG LLP

21
22 By: 

23 Robert J. Herrington
24 Matthew R. Gershman
Attorneys for Defendant
WALMART INC.

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26
27
28 ¹ Erroneously labeled as section 3.04 (a) in the Settlement.

² Erroneously labeled as section 3.04 (b) in the Settlement. 9