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on behalf of himself and others similarly situated

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Attorneys for Defendant
LOVE'S COUNTRY STORES OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

DANIEL DIAMOND, on behalf of himself and
others similarly situated

Plaintiff,

vs.

LOVE'S COUNTRY STORES OF
CALIFORNIA, a corporation; and DOES 1 to
100, Inclusive.

Defendants.

Case No.: CIVDS2012915

CLASS ACTION

*[Assigned for all purposes to the Hon.
David Cohn, Dept. S-26]*

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND
RELEASE**

1 This Joint Stipulation of Class Action Settlement and Release (the “Settlement” and/or
2 “Agreement”) is made and entered into by and between: (a) Plaintiff DANIEL DIAMOND
3 (“Plaintiff” or “Class Representative”), on behalf of himself and each member of the “Settlement
4 Class” (as defined below); and (b) Defendant LOVE’S COUNTRY STORES OF CALIFORNIA
5 (“Defendant”) (collectively with Plaintiff, the “Parties”).

6 **I. BACKGROUND; DENIALS OF LIABILITY**

7 On May 29, 2020, Plaintiff filed his class action complaint in the San Bernardino County
8 Superior Court as Case No. CIVDS2012915 and then filed a First Amended Complaint on July 23,
9 2020 (the “Action”) asserting the following causes of action on a class and/or representative basis:
10 (1) misclassification of Plaintiff and other similarly-situated managers and/or assistant managers as
11 exempt employees; (2) failure to pay minimum, regular, and overtime wages for all hours worked;
12 (3) failure to provide meal periods; (4) failure to provide rest breaks, (5) failure to
13 indemnify/reimburse expenses; (6) failure to provide accurate wage statements; (7) failure to timely
14 pay wages upon separation of employment; (8) violations for Business & Professions Code Sections
15 17200, et seq. and (9) violations of the Private Attorneys General Act (“PAGA”). In the Action,
16 Plaintiff seeks on behalf of the class monetary relief (including damages, restitution, and penalties)
17 and other relief.

18 On April 15, 2022, Plaintiff and Defendant participated in a private mediation session with
19 well-respected wage and hour class action mediator, Steve Rottman, Esq. During the mediation, the
20 Parties reached terms resulting in this arm’s-length Settlement. This Settlement among other things,
21 resolves and settles on behalf of the Settlement Class and PAGA employees all claims asserted in
22 the operative complaint in the Action. Prior to the mediation, the Parties conducted significant
23 investigation and informal discovery of the facts and law both before and after the Action was filed.
24 Prior to mediation, Defendant produced the following information for the employees that it
25 classified as exempt during the class period: total number of current and former employees, title and
26 description of duties, salary information (there were no punch data or records since Defendant
27 classified them as exempt, they did not clock in or out), historical salary information, pay frequency,
28 and sample schedules. With this data, Plaintiff’s counsel retained an expert witness who was able

1 to determine the following information as it pertained to employees who Defendant classified as
2 exempt: the number of unique exempt employees, the number of workweeks, the number of pay
3 periods, the conversation of average salary to an average hourly rate, the total compensated paid,
4 and the total hours worked. The Parties agree that the above-described investigation and evaluation,
5 as well as the information exchanged during the settlement negotiations, are more than sufficient to
6 assess the merits of the respective Parties' positions and to compromise the issues on a fair and
7 equitable basis.

8 Based on the discovery exchanged as well as their own investigation and evaluation, the
9 Parties considered the claims asserted by Plaintiff, the defenses asserted by Defendant, the risks
10 associated with the continued prosecution of the Action, the cost of continued litigation through trial
11 and appeals, and after considering all the circumstances, the Parties have concluded that the
12 proposed settlement set forth in this Settlement Agreement is fair, adequate, and reasonable and
13 confers substantial benefits upon the putative Class Members.

14 In entering into this Settlement, Defendant does not admit, and specifically denies, on behalf
15 of itself and each of the "Released Parties" as defined below, each and all such claims whether
16 asserted or to be asserted by Plaintiff individually or on behalf of any putative class or represented
17 group. Defendant, on behalf of itself and each of the Released Parties denies that any Released Party
18 is liable in any way to Plaintiff or any putative member of any class or any represented group; denies
19 that Plaintiff or any putative member of any class or any represented group is entitled to any
20 monetary compensation or payment of any kind (or any other form of relief) under California,
21 federal, or any other law; and denies that Plaintiff or any putative member of any class or any
22 represented group are, were, or could have been harmed by any conduct, acts, or omissions by
23 Defendant or any Released Party. Defendant also denies that any of the settled claims could ever
24 properly be certified as a class in any contested certification proceedings or could proceed as a
25 representative action. Except as necessary in a proceeding to enforce the terms of this Settlement,
26 this Settlement Agreement and its terms and provisions will not be offered or received as evidence
27 in any administrative or legal action or proceeding, including but not limited to arbitrations, to
28 establish any liability or admission on the part of Defendant or to establish the existence of any

1 condition constituting a violation of, or a non-compliance with, federal, state, local or other
2 applicable law. Defendant reserves the right to contest any issues relating to class certification and
3 liability if the Settlement is not approved.

4 NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND AGREED,
5 by Plaintiff for himself and on behalf of the Participating Class Members and by Defendant, that
6 subject to the approval of the Court, the Action shall be settled, compromised, and the released Class
7 Claims, shall be finally and fully compromised, settled and dismissed as to the Released Parties, in
8 the manner and upon the terms and conditions hereafter set forth in this Agreement.

9 **II. DEFINITIONS**

10 1. "Class Counsel" refers to Joseph Lavi, Vincent Granberry, Melissa A. Huether, and
11 Courtney Miller of Lavi & Ebrahimian, LLP, 8889 W. Olympic Blvd., Suite 200, Beverly Hills,
12 California 90211.

13 2. "Class Notice" means the notice of this Settlement, substantially in the form of
14 **Exhibit A**, to be sent to Settlement Class Members to notify them of this Settlement and their right
15 to Opt Out.

16 3. "Class Period" means the time period from and including May 29, 2016, through the
17 date the court enters an order granting preliminary approval or 30 days after the motion for
18 preliminary approval is filed, whichever date is earlier.

19 4. "Defendant" means LOVE'S COUNTRY STORES OF CALIFORNIA.

20 5. "Defense Counsel" means counsel for Defendant, who are:

21 Caroline G. Massey, Esq. (SBN 299691)

22 Email: caroline.massey@dinsmore.com

23 Dorota A. James, Esq. (SBN 309933)

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26 655 West Broadway, Suite 800

27 San Diego, California 92101

28 Telephone: (619) 400-0500

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6. "Effective Date" means the date on which the Superior Court's Judgment approving this Settlement becomes "Final."

7. "Enhancement Payment" means a monetary amount not to exceed Nine Thousand Dollars (\$9,000) for the Class Representative which, subject to Court approval, shall be paid pursuant to Section V of the Agreement, as provided below.

8. "Final" means the following with respect to the Superior Court's Final Class Order approving this Settlement:

The 65th calendar day after notice of entry of the Final Class Order, plus any extension of the time to appeal resulting from the filing of a motion that extends the deadline to appeal (assuming no appeal, writ or other request for appellate review is filed within the foregoing time period).

If any appeal, writ, or other request for appellate review is filed within the foregoing time period, the date when that appeal, writ, or request for appellate review is finally ruled upon, denied, or dismissed, and no other appeal, writ or appellate review is possible.

9. "Final Class Order" means the order of the Superior Court granting final approval this Agreement without material changes, confirming the releases of claims by Participating Class Members, and finally resolving the Action and entering a judgment approving this Agreement and the terms provided herein or as the same may be modified by subsequent written agreement of the parties.

10. "Individual Settlement Payment" means the amount to be allocated under this Settlement to individual Settlement Class Members as calculated below.

11. "Judgement" refers to the judgment entered by the Court in conjunction with the Final Order.

12. "Maximum Settlement Amount" means the maximum amount to be paid under this Settlement which is Five Hundred Thousand Dollars and No Cents (\$500,000.00) which includes Individual Settlement Payments to Participating Class Members, Attorneys' Fees and Costs, Enhancement Payment, allocation to penalties pursuant to PAGA, and Settlement Administration Costs. The Maximum Settlement Amount does not include the employer's share of taxes which Defendant has agreed to pay separately and in addition to Maximum Settlement Amount.

1 13. “Net Settlement Amount” means the Maximum Settlement Amount less the
2 following amounts: (1) Attorneys’ Fees and Costs to Class Counsel; (2) Enhancement Payments to
3 Plaintiff; (3) Settlement Administration Costs to the Settlement Administrator; and (4) PAGA
4 Settlement Amount.

5 14. “Opt Out(s)” means any Settlement Class Member who submits a complete and
6 timely request to be excluded from this Settlement, by submitting a Request for Exclusion under the
7 procedures set forth below.

8 15. “PAGA Period” means April 28, 2019 through the date the court enters an order
9 granting preliminary approval or 30 days after the motion for preliminary approval is filed,
10 whichever date is earlier.

11 16. “Participating Class Member” means any Settlement Class Member who does not
12 submit a timely Request for Exclusion under the procedures set forth below.

13 17. “Parties” means Defendant, Plaintiff, and the Settlement Class.

14 18. “Plaintiff” and/or “Representative Plaintiff” means the estate of Plaintiff DANIEL
15 DIAMOND, who is the named Plaintiff in the Action.

16 19. “Released Parties” means: (a) Defendant and each and all past or present partners,
17 parents, subsidiaries, or affiliates (regardless whether such partners, parents, subsidiaries, or
18 affiliates are individuals, corporations, partnerships, limited partnerships, limited liability
19 companies, or other forms of entity) of Defendant; (b) each and all of the predecessor or successor
20 entities of any of those entities identified in subparagraph (a); (c) any other individuals or entities
21 of any kind, including but not limited to any payroll companies, which have been or could be alleged
22 to be in any manner responsible (whether on an alter ego, joint employer, integrated enterprise, or
23 any other theory) for any violations described in the releases below and occurring as a result of
24 employment; and (d) all past and present directors, officers, representatives, insurers, agents,
25 shareholders, partners, members, lawyers, and employees of any of the individuals or entities
26 identified in subparagraphs (a), (b), or (c).

27 20. “Request for Exclusion” means a Settlement Class Member’s request, in writing, for
28 exclusion from the Settlement.

1 21. “Response Deadline” means the last date for Settlement Class Members to postmark,
2 for return to the Settlement Administrator, Requests for Exclusion or Objections. The Response
3 Deadline shall be forty-five (45) days after the Settlement Administrator has postmarked the Class
4 Notice for mailing to Settlement Class Members, subject to adjustment in the case of re-mailings,
5 as specified in Section XVI below.

6 22. “Settlement” means the settlement reflected in and to be effectuated through this
7 Agreement.

8 23. “Settlement Class” shall consist of all current and former managers and/or assistant
9 managers who were employed by Love’s Country Stores of California in the State of California and
10 who were classified as an exempt employee but did not meet the minimum salary required for
11 exempt employees during the Class Period. The Settlement Class consists of approximately twenty
12 (20) individuals who worked approximately 2,000 workweeks during the Class Period.

13 24. “Settlement Class Members” means all members of the Settlement Class, including
14 any Opt Outs.

15 25. “Settlement Administrator” refers to Simpluris, Inc., an independent third party
16 agreed to by the Parties and paid out of the Maximum Settlement Amount, as described below, to
17 perform the notice, settlement administration, and distribution functions further described in this
18 Agreement.

19 26. “Superior Court” means the San Bernardino County Superior Court.

20 **III. THE SETTLEMENT CLASS**

21 For purposes of this Settlement only, the Parties agree to seek, under the procedures
22 described below, the Superior Court’s approval of certification of the following “Settlement Class”:
23 “All current and former managers and/or assistant managers who were employed by Love’s Country
24 Stores of California in the State of California and were classified as an exempt employee but did not
25 meet the minimum salary required for exempt employees during the Class Period. The class shall
26 include any heirs, successors, or assigns or purported assigns of the above-described persons.”

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1 **IV. MAXIMUM SETTLEMENT AMOUNT**

2 The maximum amount to be paid under this Settlement is Five Hundred Thousand Dollars
3 and No Cents (\$500,000.00) (i.e., Maximum Settlement Amount).

4 The Settlement Class is estimated to consist of approximately 20 Settlement Class Members,
5 including Plaintiff, who approximately worked 2,000 workweeks in the Class Period. If the
6 Settlement Administrator's calculation of the workweeks (at the time the Court grants preliminary
7 approval of the settlement) is 10% more than 2,000 (or more than 2,200), the Maximum Settlement
8 Amount shall be increased by the same percentage exceeding 10% (e.g., to the extent there actually
9 are 2,220 workweeks, or 11% more than 2,000 workweeks, then the Maximum Settlement Amount
10 shall be increased by 1%).

11 The Maximum Settlement Amount shall be used to pay all of Class Counsel's attorneys'
12 fees and costs, all costs of settlement administration, the Enhancement Payment paid to Plaintiff, all
13 payments to the California Labor Workforce and Development Agency, all settlement payments to
14 Participating Class Members, and the employee's share of all "Wage Withholdings" (as defined
15 below) on such payments. No Released Party shall be required to pay anything above or beyond the
16 Maximum Settlement Amount, under any circumstance, as a result of this Settlement, except in the
17 event that the workweeks at the time of preliminary approval is 10% more than 2,000 and/or except
18 Defendant's obligation to pay the employer's share of taxes with respect to Participating Class
19 Members' Individual Settlement Payments.

20 **V. PAYMENT TO PLAINTIFF OF ENHANCEMENT PAYMENTS AND TO**
21 **PLAINTIFF FOR A GENERAL RELEASE**

22 Plaintiff will apply to the Superior Court for approval of an Enhancement Payment in the
23 amount of no more than Nine Thousand Dollars and No Cents (\$9,000.00) ("Enhancement
24 Payment") which will be paid to Plaintiff. Defendant will not oppose Plaintiff's request. The
25 Settlement Administrator will pay Plaintiff (from the Maximum Settlement Amount) the
26 Enhancement Payment awarded by the Superior Court. Plaintiff understands and agrees that the
27 Superior Court may in its discretion award a lesser amount, and Plaintiff agrees that he will accept
28

DS
[Signature]

1 whatever amount, if any, the Superior Court awards. Any such reduction shall constitute part of the
2 amount to be distributed pursuant to Section IX as described below.

3 Plaintiff agrees that the Enhancement Payment awarded to Plaintiff is not a wage payment.
4 The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff for his Enhancement
5 Payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on his
6 Enhancement Payment. Plaintiff agrees to indemnify the Released Parties for any tax obligations
7 arising out of payments to him of his Enhancement Payment. The Enhancement Payment is in
8 addition to the Individual Settlement Payment to be paid to Plaintiff. The Enhancement Payment
9 represents payment for the time incurred and services rendered by Plaintiff on behalf of the
10 Settlement Class in obtaining this Settlement.

11 **VI. ATTORNEYS' FEES AND COSTS**

12 Class Counsel will apply to the Superior Court for approval of reasonable attorneys' fees
13 incurred for representing Plaintiff and the Settlement Class in the Action in an amount not to exceed
14 one-third of the Maximum Settlement Amount, or a maximum total of One Hundred Sixty-Six
15 Thousand Sixty Hundred Sixty-Six Dollars and Sixty-Six Cents (\$166,666.66) ("Attorneys' Fees").
16 Class Counsel will also apply to the Superior Court for an award of actual costs in an amount of not
17 more than Twenty-Five Thousand Dollars (\$25,000.00) (together, "Attorneys' Fees and Costs").
18 Defendant will not oppose Class Counsel's request for an award of Attorneys' Fees and Costs up to
19 the specified amounts, and the Settlement Administrator will pay Class Counsel (from the Maximum
20 Settlement Amount) the fees and costs awarded by the Superior Court up to the specified amounts.
21 In the event that the escalator clause described in section IV herein is triggered and the Maximum
22 Settlement Amount is increased, Class Counsel may, in its discretion, increase its Attorneys' Fees
23 in order to remain one-third of the Maximum Settlement Amount.

24 Class Counsel and Plaintiff understand and agree that the Superior Court may in its
25 discretion award lesser amounts in Attorneys' Fees and Costs than requested by Class Counsel. If
26 Class Counsel receive Attorneys' Fees or Costs less than the specified amounts, any such reduction
27 shall not revert to Defendant but shall instead constitute part of the amount to be distributed pursuant
28 to Section IX below.

1 The amounts so awarded shall be for and in complete satisfaction of all attorneys' fees and
2 costs incurred to date by Plaintiff and/or Class Counsel on behalf of Plaintiff and the Settlement
3 Class, and of all such future fees and costs including, but not limited to, fees and costs incurred in
4 documenting this Settlement, securing Superior Court approval of this Settlement, monitoring this
5 Settlement, reviewing and participating in the settlement administration process, and obtaining the
6 Final Class Order.

7 The Settlement Administrator will give Class Counsel an IRS Form 1099 for the Attorneys'
8 Fees and Costs awarded. Class Counsel understand and agree that they shall be solely responsible
9 for any and all taxes and/or penalties arising from payment of the costs and attorneys' fees provided
10 herein. Not later than the Effective Date, Class Counsel shall provide a fully and properly executed
11 IRS Form W-9 for purposes of the payments which the Settlement Administrator will electronically
12 wire to Class Counsel.

13 **VII. SETTLEMENT ADMINISTRATION AND EXPENSES**

14 The Parties have agreed to use Phoenix Class Action Administration Solutions to administer
15 the settlement and have allocated Six Thousand Dollars (\$6,000.00) to reimbursement of costs for
16 administration which will be paid from the Maximum Settlement Amount ("Settlement
17 Administration Costs"). If the allocated Settlement Administration Costs exceed the actual costs
18 sought by the Settlement Administrator, the excess will remain part of the Net Settlement Amount.
19 The Settlement Administrator shall do the following:

- 20 a) Send the Class Notice to Settlement Class Members;
- 21 b) Prepare and issue the checks to Participating Class Members and PAGA Employees
22 for their Individual Settlement and PAGA Payments; Class Counsel for Attorneys'
23 Fees and Costs; Plaintiff for his Enhancement Payment; and the California Labor
24 Workforce Development Agency ("LWDA");
- 25 c) Establish a Qualified Settlement Fund, pursuant to Treasury Regulations section
26 1.468B for purposes of distributing these amounts;
- 27 d) File all required tax returns for the Qualified Settlement Fund;
- 28

- 1 e) Calculate, and then remit to appropriate taxing and other governmental authorities,
2 all amounts to be deducted or paid on account of the Individual Settlement Payments,
3 including employee's share of "Wage Withholdings," as more specifically described
4 and defined below;
- 5 f) Provide appropriate indemnities against mistakes or inaccuracies in such tasks and
6 against any misuse or breach of confidentiality for Settlement Class Members' social
7 security numbers, telephone numbers, addresses, or other private information;
- 8 g) Perform all other tasks necessary to administer the Settlement.

9 All disputes relating to the Settlement Administrator's performance of its duties shall be
10 referred to the Superior Court for a final and binding determination, not subject to further review or
11 appeal of any kind.

12 **VIII. PAYMENTS TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY**

13 The Parties have agreed to pay a certain sum to the California Labor and Workforce
14 Development Agency ("LWDA") in connection with the Labor Code Private Attorneys General Act
15 of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA"). The Parties have agreed that a total of Twenty
16 Thousand Dollars and No Cents (\$20,000.00) of the Maximum Settlement Amount will be allocated
17 to the resolution of Settlement Class Members' claims arising under PAGA for the PAGA Period
18 ("PAGA Settlement Amount"). Pursuant to PAGA, Seventy-Five Percent (75%), or Fifteen
19 Thousand and No Cents (\$15,000.00), of the PAGA Settlement Amount will be paid to the LWDA
20 ("LWDA Payment"), and Twenty-Five Percent (25%), or Five Thousand Dollars and No Cents
21 (\$5,000.00), of the PAGA Settlement Amount shall be distributed to Settlement Class Members
22 who were employed during the PAGA Period ("PAGA Employees") as specified below. This
23 \$5,000.00 shall be referred to as the "PAGA Employees Portion."

24 The Settlement Administrator will pay to the LWDA, in accordance with California Labor
25 Code section 2699(i), the amount of Fifteen Thousand Dollars and No Cents (\$15,000.00). The
26 Settlement Administrator will advise Class Counsel when this payment is made.

27 **IX. PAYMENTS TO PARTICIPATING CLASS MEMBERS**

1 1. After the Enhancement Payment, Attorneys' Fees and Costs, Settlement
2 Administration Costs, and PAGA Settlement Amount (as specified above) have been satisfied from
3 the Maximum Settlement Amount, the remainder (i.e., Net Settlement Amount) shall be available
4 to satisfy the employee's share of Wage Withholdings and to pay Settlement Class Members who
5 did not Opt Out (i.e., Participating Class Members) for their share of the Net Settlement Amount
6 (i.e., their Individual Settlement Payments). The PAGA Settlement Amount will be distributed (as
7 described above) 75% to the LWDA (i.e., LWDA Payment) and the remaining 25% shall be
8 distributed to PAGA Employees on a *pro rata* basis.

9 2. Under this Agreement, each Settlement Class Member shall be allocated an
10 Individual Settlement Payment based on the number of weeks each Settlement Class Member
11 worked for Defendant in California during the Class Period ("Workweeks"). The Individual
12 Settlement Payment for each Class Member who does not Opt Out and is deemed a Participating
13 Class Member shall be calculated as follows: (a) the number of Workweeks of each Participating
14 Class Member worked for Defendant in California during the Class Period; divided by (b) the
15 aggregate number of Workweeks for all Participating Class Members as calculated under
16 subparagraph (a); and then multiplied by (c) the Net Settlement Amount. The Workweeks worked
17 shall be calculated using Defendant's payroll and timekeeping records. Because PAGA Employees
18 cannot opt out of the PAGA claims, each PAGA Employee, whether or not a Participating Class
19 Member, shall also receive his or her share of the PAGA Employees Portion ("Individual PAGA
20 Payment") calculated as follows: (a) the number pay periods each PAGA Employee worked for
21 Defendant in California during the PAGA Period; divided by (b) the aggregate number of pay
22 periods worked by all PAGA Employees during the PAGA Period; and then multiplied by (c) the
23 PAGA Employees Portion.

24 3. The Parties agree that the Individual Settlement Payments shall constitute 20%
25 wages ("wage portion"), 40% penalties, and 40% interest ("non-wage portion"). Each Individual
26 PAGA Payment shall be treated as 100% penalties. The Settlement Administrator shall calculate
27 and deduct from the wage portion of each Participating Class Member's Individual Settlement
28 Payment the employee's share of required state, federal, and local tax, and other wage obligations

1 or withholdings. These shall include, without limitation, all federal, state, and local employment
2 taxes (such as Social Security Taxes, Federal Unemployment Taxes, and California Unemployment
3 and Training Taxes) and all state and federal income taxes (collectively, the "Wage Withholdings").
4 The Settlement Administrator shall remit these amounts to the appropriate authorities.

5 4. The Settlement Administrator shall pay to each Participating Class Member his or
6 her share (after any Wage Withholdings) of the Individual Settlement Payment, in the manner and
7 on the schedule set forth below and shall make remittances of Wage Withholdings to the required
8 authorities as and when required.

9 5. The Settlement Administrator shall issue to each Participating Class Member an IRS
10 Form W-2 to report the wage portion of his or her Individual Settlement Payment. The Settlement
11 Administrator shall issue to each Participating Class Member and PAGA Employee an IRS Form
12 1099 for the non-wage portion of his or her Individual Settlement Payment and/or Individual PAGA
13 Payment (if applicable).

14 6. Defendant, Defense counsel, Plaintiff, and Class Counsel make no representation as
15 to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff and Settlement
16 Class Members are not relying on any statement, representation, or calculation by Defendant,
17 Defense counsel, Plaintiff, Class Counsel, or the Settlement Administrator in this regard. Plaintiff
18 and Settlement Class Members understand and agree that they will be solely responsible for the
19 payment of any taxes and penalties assessed on the payments described herein. Each of the
20 Participating Class Members and PAGA Employees agrees to indemnify the Released Parties for
21 any tax obligations arising out of payments to him or her of any portion of an Individual Settlement
22 Payment or Individual PAGA Payment.

23 7. Settlement Class Members shall not, on account of receiving any Individual
24 Settlement Payment or Individual PAGA Payment, be entitled to any other or additional
25 compensation, benefits, contributions, or matching employer funding of any kind under any
26 agreement or plan governing benefits or compensation (such as but not limited to any agreements
27 or plans for incentives, stock options, retirement, deferred compensation) regardless of any contrary
28 language or provisions in any such agreement or plan. The Individual Settlement Payment and/or

1 Individual PAGA Payment shall be the sole compensation and benefit to the Participating Class
2 Members and PAGA Employees under this Agreement.

3 8. Participating Class Members and PAGA Employees will have one hundred eighty
4 (180) calendar days from the date of issuance of the check to cash or otherwise deposit their
5 check. For any check not cashed after 180 calendar days, the Settlement Administrator shall cancel
6 the check and remit the funds to the California State Controller's Office, Unclaimed Property
7 Division in the name of the Participating Class Member who failed to cash their check. The
8 Settlement Administrator shall inform the Parties regarding the status of any uncashed checks at the
9 conclusion of the 180 calendar day check cashing period, including the amount at issue.

10 **X. TIMING OF PAYMENT OBLIGATIONS**

11 Defendant shall electronically wire the Maximum Settlement Amount and an amount
12 sufficient to pay the employer's share of taxes on the wage portion of the Individual Settlement
13 Payments to the Settlement Administrator within ten (10) business days after the Effective Date.

14 The Settlement Administrator shall place the funds in an interest-bearing account, and any
15 interest earned shall be paid to the Individual Settlement Payments for Participating Class Members.

16 The Settlement Administrator shall make each of the payments set forth above (including,
17 Individual Settlement Payments to Participating Class Members, Individual PAGA Payments to
18 PAGA Employees, Court-approved Attorneys' Fees and Costs to Class Counsel, the Court-
19 approved Enhancement Payment to Plaintiff, the LWDA Payment to the LWDA, and the Court-
20 approved Settlement Administration Costs to itself) within fifteen (15) business days after the
21 Effective Date. The Settlement Administrator shall mail payments to the LWDA and simultaneously
22 advise Class Counsel regarding their tender of the payment.

23 **XI. NO OTHER PAYMENTS**

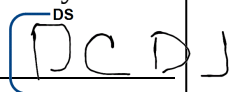
24 Except for the payments and obligations provided above, all of which shall be satisfied from
25 the Maximum Settlement Amount, no Released Party shall have any obligation to make any
26 payment to any Plaintiff, to the Settlement Class, or to any other person or entity as a result of the
27
28

1 Action or this Agreement. Except as set forth above, the Parties shall bear all their own costs and
2 attorneys' fees in connection with this Agreement and the Action.

3 **XII. RELEASES BY PARTICIPATING CLASS MEMBERS**

4 1. As of the Effective Date and full funding of the Maximum Settlement Amount, each
5 Participating Class Member hereby fully, finally, and forever releases and discharges each and every
6 one of the Released Parties from all claims, demands, rights, liabilities, and causes of action arising
7 in whole or in part, during the Class Period, for any of the following: a) misclassification as exempt
8 employees b) failure to pay minimum and regular wages for all hours worked; c) failure to pay for
9 all overtime hours worked at the applicable overtime rate of pay; d) failure to provide legally
10 complaint meal periods and/or pay meal period premium wages; e) failure to provide legally
11 complaint rest periods and/or pay rest period premium wages; f) failure to indemnify for
12 employment-related losses/ expenditures; g) failure to provide complete and accurate wage
13 statements; h) failure to timely pay employees after termination or resignation of employment;
14 applicable civil penalties; or any alleged or actual failure to pay any interest or penalties owed as a
15 result of any of the foregoing; or i) in any manner arising out of any of the other facts or legal
16 theories alleged or asserted in the Action, whether formally raised in the operative complaint in this
17 Action, or otherwise (collectively, the "Released Class Claims"). These claims include all claims
18 that arose during the class period under Labor Code section 201, 202, 203, 226, 226.7, 227.3, 510,
19 512, 1194, 1194.2, 1197, 1199, as well as the IWC Wage Order, and section 17200 et. seq of. the
20 California Business and Professions Code, based on the foregoing, as well as any civil penalty
21 claims predicated on the claims alleged in the LWDA letter and/or Complaint under PAGA, Labor
22 Code 2699 et seq. The Parties understand and agree that the word "claims" includes all actions,
23 group actions, complaints and grievances that could potentially be brought by Representative
24 Plaintiff against the Released Parties.

25 2. As of the Effective Date and full funding of the Maximum Settlement Amount, each
26 PAGA Employee and the State of California hereby fully, finally, and forever releases and
27 discharges each and every one of the Released Parties from all claims, demands, rights, liabilities,
28 and causes of action: (a) arising in whole or in part, during the PAGA Period, for any of the



1 following: any alleged or actual unfair business practices or any alleged or actual violations of the
2 Private Attorneys General Act, Labor Code section 2699 *et seq.* ("PAGA") which derive from the
3 foregoing Released Class Claims; or (b) in any manner arising out of any of the other facts or legal
4 theories alleged or asserted in the Action, whether formally raised in the operative complaint in this
5 Action, the April 28, 2020 letter to the LWDA, or otherwise (collectively, the "Released PAGA
6 Claims") (together the Released Class Claims and Released PAGA Claims are the "Released
7 Claims").

8 3. The Released Claims include without limitation, but in each case only to the extent
9 described in the preceding paragraph, claims: (a) arising under or out of any unfair competition laws
10 as defined in California Business and Professions Code Section 17200 *et seq.*; and (b) for declaratory
11 or injunctive relief or for monetary compensation, whether in the form of wages, damages,
12 liquidated damages, penalties, restitution, costs, attorneys' fees, interest, or otherwise.

13 **XIII. PLAINTIFF'S FURTHER RELEASE**

14 In addition to the Settlement Class Members' Released Class Claim and in partial
15 consideration for the Enhancement Payment and other benefits under this Agreement, Plaintiff
16 provides the following additional releases: as of the Effective Date, Plaintiff shall fully, finally, and
17 forever release and discharge each and every one of the Released Parties from all claims, demands,
18 rights, liabilities, and causes of action of every nature and description whatsoever, whether known
19 or unknown, whether sounding in tort, in contract, in law, in equity or otherwise, and including but
20 not limited to all claims for violation of any local, state, or federal statute, rule, or regulation, which
21 plaintiff now has, owns, or holds, or claims to have, own, or hold, or which he ever had, owned or
22 held, whether known or unknown, suspected or unsuspected, at any time prior to the date he executes
23 this Agreement (collectively "Plaintiff's Released Claims"). Plaintiff's Released Claims include,
24 without limitation, any claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act
25 of 1866, 42 U.S.C. section 1981, the Civil Rights Act of 1991, the Americans with Disabilities Act
26 of 1991, the Family and Medical Leave Act of 1993, the California Government Code, any claims
27 for fraud, promises without the intent to perform, intentional or negligent misrepresentation, breach
28 of contract, breach of the implied covenant of good faith and fair dealing, wrongful termination in

1 violation of public policy, retaliatory discharge, arising out of his separation from his relationship
2 with Defendant, violations of the California Labor Code, violations of the Fair Labor Standards Act,
3 accounting, intentional or negligent infliction of emotional distress, violations of California
4 Business and Professions Code section 17200 *et seq.*, or violations of the California Fair
5 Employment and Housing Act.

6 With respect to Plaintiff's Released Claims, Plaintiff stipulates and agrees that, upon the
7 Effective Date, he shall be deemed to have expressly waived and relinquished to the fullest extent
8 permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code
9 or any other similar provision under federal, state, or local law. Section 1542 provides:

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

16 Plaintiff may hereafter discover facts in addition to or different from those which they now
17 know or believe to be true with respect to the subject matter of Plaintiff's Released Claims, but
18 Plaintiff, upon the Effective Date, shall be deemed to have fully, finally, and forever settled and
19 released any and all of Plaintiff's Released Claims, known or unknown, suspected or unsuspected,
20 contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore
21 have existed, upon any theory of law or equity now existing or coming into existence in the future,
22 including, without limitation, conduct which is negligent, intentional, with or without malice, or a
23 breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such
24 different or additional facts.

25 Plaintiff represents, covenants, and warrants that he is the owner of all of Plaintiff's Released
26 Claims, and that he has not directly or indirectly assigned, transferred, or encumbered, or purported
27 to assign, transfer or encumber to any person or entity, whether by operation of law or otherwise,
28 any portion of Plaintiff's Released Claims.

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[Signature]

1 Plaintiff shall not be permitted to seek any further payment or any personal relief of any
2 kind, including any payment for damages, wages, fees, costs, penalties, or interest, other than the
3 consideration he is receiving under this Agreement, on account of Plaintiff's Released Claims.
4 Exempted from this release shall be the amount Plaintiff is paid as the Enhancement Payment and
5 as an Individual Settlement Payment and Individual PAGA Payment, and any claims that are
6 currently subject to any workers' compensation claim.

7 **XIV. COVENANT NOT TO SUE OR SEEK RECOVERY**

8 Plaintiff hereby warrants and represents that he has not filed any complaint, lawsuit,
9 grievance, demand for arbitration, charge, and/or other claim against any of the Released Parties,
10 with any court, governmental or administrative agency or entity asserting any claim or claims based
11 on any of Plaintiff's Released Claims, other than the Action and the letters to the LWDA concerning
12 the allegations in the Action.

13 **XV. PROCEDURE FOR OBTAINING PRELIMINARY APPROVAL OF JOINT**
14 **STIPULATION OF SETTLEMENT**

15 The Parties agree to work cooperatively in order to obtain preliminary and final approval of
16 the Settlement. The Parties shall cooperate in limiting the Superior Court proceedings to those
17 necessary for such preliminary and final approval. The Parties agree to take all steps reasonably
18 necessary to secure both preliminary and final approval of the Settlement.

19 **XVI. PROCEDURES FOR NOTICE, SUBMITTING REQUESTS FOR EXCLUSION,**
20 **OBJECTIONS, AND FINAL SETTLEMENT APPROVAL**

21 **A. Class Notices and Requests for Exclusion**

22 1. Within fifteen (15) calendar days after entry of the Preliminary Approval Order,
23 Defendant shall provide the Settlement Administrator the name, last known address, and Social
24 Security number of each Settlement Class Member, along their dates of employment and any other
25 information needed to calculate Individual Settlement Payments and Individual PAGA Payments
26 ("Class Data"). The Settlement Administrator will keep this information confidential and use it only
27 for the purposes described herein.
28

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[Signature]

1 2. Within fifteen (15) calendar days of receipt of the Class Data from Defendant, the
2 Settlement Administrator shall mail the Class Notice to all Settlement Class Members via first-class
3 U.S. mail. Prior to mailing the Class Notice, the Settlement Administrator shall run a check of the
4 addresses in the Class Data against the United States Postal Service National Change of Address
5 Database ("NCOA") to update for any reported address changes. If any Class Notice is returned as
6 undeliverable without a forwarding address, the Settlement Administrator shall take appropriate
7 steps to identify a current proper address for that Settlement Class Member, including conducting a
8 "standard search," also known as a "skip trace" or "credit header" search. The Settlement
9 Administrator shall then re-mail the Class Notice to the updated address. If a Class Notice is returned
10 to the Settlement Administrator as undeliverable with a forwarding address, the Settlement
11 Administrator will promptly forward the Class Notice to the address.

12 3. The Class Notice shall provide that any Settlement Class Member may dispute the
13 number of workweeks credited to them in their Class Notice. If any Settlement Class Member
14 disputes their workweeks information used to calculate the Individual Settlement Payment or
15 Individual PAGA Payment, the Settlement Class Member may state the basis of his or her
16 disagreement and submit documentation supporting the Settlement Class Member's position, by the
17 Response Deadline. The Settlement Administrator shall notify Class Counsel and Defendant's
18 counsel of any dispute so raised. The Settlement Administrator will review Defendant's records and
19 consult Defendant's counsel and Class Counsel in order to determine if there is a discrepancy. The
20 Settlement Administrator will decide the dispute using Defendant's records and the decision of the
21 Settlement Administrator shall be final.

22 4. Along with the Class Notice, each Settlement Class Member shall also receive
23 instructions on what needs to be stated in the Request for Exclusion if the Settlement Class Member
24 wants to be excluded from this Settlement. If a Settlement Class Member wishes to Opt Out from
25 this Settlement, and from the release of claims pursuant to this Settlement, he or she shall submit an
26 "Opt-Out Letter" or "Request for Exclusion" directly to the Settlement Administrator that must be
27 mailed or faxed and postmarked or fax-stamped on or before the Response Deadline, or within
28 fifteen (15) calendar days after the postmark of a Class Notice re-mailed to a corrected address for

that Settlement Class Member, whichever is later. The written Request for Exclusion shall: (1) make the following statement or a similar statement: "I wish to exclude myself from the settlement reached in the matter of *Diamond v. Love's County Stores of California*. I understand that, by excluding myself, I will not receive any money (other than the PAGA Settlement Amount) from the settlement reached in this matter"; (2) contain the name, address, and the last four digits of the Social Security number of the person requesting exclusion; (3) be signed by the Settlement Class Member; and (4) be postmarked or fax stamped by the Response Deadline and returned to the Settlement Administrator at the specified address or fax telephone number stated in the Class Notice. However, the Request for Exclusion will be valid unless it is not timely submitted, is not signed by the Settlement Class Member, or does not contain the name and address of the Settlement Class Member. The date of the postmark on the return mailing envelope or fax stamp on the Request for Exclusion shall be the exclusive means used to determine whether the Request for Exclusion was timely submitted. Any Settlement Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under the Settlement, will not be bound by the terms of the Settlement, and will not have any right to object, appeal, or comment thereon, except he or she shall receive his or her PAGA share of the settlement if he or she is a PAGA Employee (since he or she cannot opt out of the PAGA settlement). Settlement Class Members who fail to submit a valid and timely written Request for Exclusion on or before the Response Deadline shall be bound by all the terms of the Settlement and any Final Class Order.

5. The Settlement Administrator shall maintain a list of persons who have excluded themselves and shall include the names of the Settlement Class Members who Opt-Out in his/her declaration in support of final approval. The Settlement Administrator shall retain the originals of all Requests for Exclusion letters (including the envelopes with the postmarks) received and shall make copies or the originals available to Defendant's counsel or Class Counsel upon request.

B. Procedure for Obtaining Final Superior Court Approval of Settlement; Objections

1. The Class Notice shall provide that any Participating Class Member who wishes to object to this Settlement must mail to the Settlement Administrator by first class mail a written

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1 statement objecting to this Agreement setting forth the legal and factual grounds for any objections
2 (“Objection”), or if no written objection is submitted, the Participating Class Member may still
3 appear at the final settlement hearing to object. Such written objections should be mailed and
4 postmarked or fax-stamped on or before the Response Deadline, or within fifteen (15) calendar days
5 after the postmark of a Class Notice re-mailed to a corrected address for that Settlement Class
6 Member, whichever is later. The written Objection shall: (1) contain the name, address, and the last
7 four digits of the Social Security number of the person objecting; (2) be signed by the Participating
8 Class Member; (3) state the grounds on which the Participating Class Member is objecting as well
9 as any documents or evidence supporting his or her objection(s); and (4) be postmarked or fax
10 stamped by the Response Deadline and returned to the Settlement Administrator at the specified
11 address or fax telephone number stated in the Class Notice. Upon receipt of any Objections, the
12 Settlement Administrator will forward copies of said Objections to Class Counsel and Defense
13 counsel. To the extent that the Participating Class Member is represented by counsel, his/her
14 attorney shall file with the Superior Court a notice of appearance providing the attorney’s contact
15 information.

16 2. Approximately thirty (30) calendar days after the Response Deadline or as
17 determined by the Superior Court, the Superior Court shall conduct a final settlement hearing to
18 determine whether to finally approve this Settlement and to determine Class Counsel’s request for
19 Attorneys’ Fees and Costs, Enhancement Payment to Plaintiff, and the cost for administering the
20 Settlement to the Settlement Administrator. Within ten (10) calendar days after the Response
21 Deadline, the Settlement Administrator shall make a declaration regarding the administration of the
22 Settlement, of all Opt Outs, and of any written objections described above. Class Counsel shall
23 prepare a memorandum of points and authorities in support of this Settlement and request for
24 Attorneys’ Fees and Costs, Enhancement Payment, and administration costs, and shall file them
25 with the Superior Court, for purposes of the final settlement hearing.

26 3. After entry of the Final Class Order, the Superior Court shall have continuing
27 jurisdiction over the Action solely for purposes of addressing: (i) settlement administration matters;
28 and (ii) such post-Final Class Order matters as may be appropriate.

1 **XVII. TERMINATION OF SETTLEMENT**

2 The Parties have agreed to the certification of the Settlement Class for the sole purpose of
3 effectuating this Agreement. In the event: (i) the Superior Court should for any reason fail to certify
4 the Settlement Class; (ii) the Superior Court does not enter the Preliminary Approval Order; (iii) the
5 Superior Court fails to enter the Final Class Order in the form agreed to by the Parties (except for
6 the amount of attorney's fees, costs, and Enhancement Payment); (iv) the Final Class Order is
7 materially modified or reversed upon review by a higher court, Plaintiff or Defendant may, in their
8 sole and absolute discretion, terminate this Agreement. In the case of such a termination, this
9 Agreement shall be null and void as if it had never been executed, the Parties shall be returned to
10 their respective statuses as of the date and time immediately prior to the execution of this Agreement,
11 and Plaintiff and Defendant shall proceed with the Action in all respects as if Agreement had not
12 been executed. Prior to either Party exercising an option to terminate the Settlement, the Parties
13 agrees to meet and confer in good faith in an effort to resolve the issue(s) and proceed in a manner
14 most likely to result in approval of the Settlement. As provided above, the Superior Court's failure
15 to award the amount of costs, attorneys' fees, or Enhancement Payment sought by Class Counsel or
16 by Plaintiff shall not be a material change or entitle Plaintiff or Class Counsel to terminate this
17 Settlement.

18 The fact that the Parties were willing to stipulate to class certification as part of the
19 Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of
20 whether a class should be certified in a non-settlement context n this Action or any other action, and
21 in any of those events, Defendant expressly reserves the right to oppose any motion for class
22 certification.

23 **XVIII. DEFENDANT OPTION TO TERMINATE JOINT STIPULATION OF**
24 **SETTLEMENT**

25 If ten percent (10%) or more of the Settlement Class Members submit complete and timely
26 Requests for Exclusion, Defendant shall have, in their sole and absolute discretion, the option to
27 terminate this Agreement. Defendant shall be entitled to exercise these termination rights by
28 providing written notice to Class Counsel at any time within fifteen (15) calendar days of learning

1 of the condition triggering termination. In the event that Defendant exercises this option, Defendant
2 shall solely be responsible for all costs of administration.

3 In the case of a termination under this Section, this Agreement shall be null and void as if it
4 had never been executed, the Parties shall be returned to their respective statuses as of the date and
5 time immediately prior to the execution of this Agreement, and Plaintiff and Defendant shall proceed
6 with the Action in all respects as if this Agreement had not been executed.

7 **XIX. MISCELLANEOUS**

8 1. The descriptive headings of any paragraphs or sections of this Agreement are inserted
9 for convenience of reference only and do not constitute a part of this Agreement.

10 2. The Parties agree to hold in abeyance all proceedings in the Action, except such
11 proceedings necessary to implement and complete this Settlement, pending final approval of this
12 Agreement. In the event an appeal is filed from the Final Class Order, or any other appellate review
13 is sought prior to the Effective Date, administration of this Joint Stipulation of Settlement shall be
14 stayed pending final resolution of the appeal or other appellate review.

15 3. No waiver of any term or provision of this Joint Stipulation of Settlement shall be
16 binding unless in writing and signed by the Party waiving the breach. This Agreement may be
17 amended or modified only by a written instrument signed by counsel for all Parties or their
18 successors-in-interest.

19 4. This Joint Stipulation of Settlement constitutes the entire agreement among the
20 Parties with respect to the subject matter hereof, and fully supersede all prior agreements and
21 understandings between the Parties with respect thereto. No oral representations, warranties, or
22 inducements have been made to any Party concerning this Agreement other than the representations,
23 warranties, and covenants contained and memorialized in such documents.

24 5. In addition to the Parties, this Agreement shall be binding upon, and shall inure to
25 the benefit of, the Parties' respective heirs, representatives, executors, administrators, successors,
26 and assigns.

27 6. This Agreement is made and entered into in the State of California and shall in all
28 respects be interpreted, enforced, and governed under the laws of said state as applied to transactions

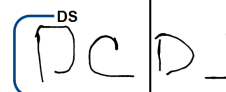
1 or events with contacts exclusively within California, and without applying California's conflict of
2 laws rules. The Parties agree that this Agreement may be enforced under Civil Code section 664.6
3 and that any action arising out of or to enforce this Agreement shall be brought exclusively within
4 San Bernardino County, California.

5 7. Counsel for all Parties warrant and represent that they are expressly authorized by
6 the Parties whom they represent to enter into this Agreement, to take all appropriate action required
7 or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to
8 execute any other documents required to effectuate the terms of this Agreement. The Parties and
9 their counsel will cooperate with each other and use their best efforts to effect the implementation
10 of this Agreement.

11 8. The Parties agree that neither they nor their counsel will solicit or otherwise directly
12 or indirectly encourage Settlement Class Members to request exclusion from the Settlement Class,
13 to object to this Agreement, or to appeal from the Final Class Order.

14 9. The Parties have cooperated in the drafting and preparation of this Agreement. This
15 Agreement shall not be construed against any Party on the basis that such Party was the drafter.

16 10. Plaintiff and his counsel will not publicize or promote the fact, terms, or amount of
17 this Settlement or the claims being settled through press release, press conference, or postings on
18 social media or websites until after final approval is granted. If asked for comment by the media or
19 third parties, Plaintiff shall respond only with "The matter has been resolved.". Class Counsel may
20 refer to the settlement in adequacy of counsel declarations. Further, the Parties understand and agree
21 that Class Counsel may disclose this Settlement if ordered to do so by the Court, *e.g.*, post any
22 settlement documents/orders on their respective websites and/or provide information to Settlement
23 Class Members about this Settlement. This Agreement shall not be subject to collateral attack by
24 any Settlement Class Members or any recipient of the Class Notice after the Final Effective Date.
25 Such prohibited collateral attacks shall include, but not be limited to, claims that the Settlement
26 Class Members failed for any reason to receive timely notice of the procedure for disputing the
27 calculations of his or her Individual Settlement Payment.

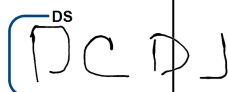
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1 11. To the fullest extent permitted by law, Plaintiff agrees to not disparage or publish or
2 disseminate information, whether oral or written, that is derogatory in any manner or which may be
3 harmful to any Released Party or their business or personal reputation, whether such information
4 was acquired before, during or after Plaintiff's employment with Defendant.

5 12. This Agreement may be executed in counterparts, and when each Party has signed
6 and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when
7 taken together with other signed counterparts, shall constitute one Agreement, which shall be
8 binding upon and effective as to all Parties. This Agreement may be signed through electronically
9 exchanged documents (such as PDFs) which shall be treated as original paper copy signatures. It
10 shall be not necessary in making proof of this Agreement or any counterpart hereof to produce or
11 account for any of the other counterparts.

12 13. The Parties believe that this is a fair, reasonable, and adequate Settlement and have
13 arrived at this Settlement through arms-length negotiations, taking into account all relevant factors,
14 present and potential.

15 14. Should any part, term or provision of this Agreement, with the exception of Sections
16 IV, IX, XII, XIII, XVII, and XVIII, be declared or determined by any court or other tribunal of
17 appropriate jurisdiction to be invalid or unenforceable, any such invalid or unenforceable part, term,
18 or provision shall be deemed stricken and severed from this Agreement and any and all of the other
19 terms of the Agreement shall remain in full force and effect to the fullest extent permitted by law.
20 The Sections specified above in this paragraph are of the essence of this Agreement, and, should
21 any term or provision of those Sections be deemed invalid or unenforceable, the court making such
22 determination shall have the power to limit the term or provision, to delete or rewrite specific words
23 or phrases in those terms or provisions, or to replace any invalid or unenforceable term or provision
24 to make the term or provision valid and enforceable; provided that any such modification must come
25 as close as possible to expressing the intention of the invalid or unenforceable term or provision and
26 provided further that such changes may not eliminate or amend any Parties' termination rights under
27 Sections XVII or XVIII.

28 

16. In any proceeding to enforce or construe this Joint Stipulation of Settlement, the prevailing Party shall be entitled to recover its costs and attorney's fees.

Daniel Diamond

By: _____
[NAME]
Title: _____

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15. Whether or not the settlement becomes final, neither this Agreement nor any of its terms nor the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Action, or any other civil, criminal, or administrative action or proceeding, except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to establish that a Class Member has resolved any of his/her claims released through this Agreement.

16. In any proceeding to enforce or construe this Joint Stipulation of Settlement, the prevailing Party shall be entitled to recover its costs and attorney's fees.

PLAINTIFF

Dated: _____, 2022

Daniel Diamond

DEFENDANT LOVE'S COUNTRY STORES OF CALIFORNIA

Dated: September 14, 2022

By: Larry Dixon
[NAME] Larry Dixon

Title: Manager of Risk

III

///

1 **APPROVED AS TO FORM:**

2 LAVI & EBRAHIMIAN, LLP

3 DocuSigned by:

Joseph Lavi

871E0169FCF244D...

4 Dated: September 13, 2022

By: _____

Joseph Lavi

Vincent C. Granberry

Counsel for Plaintiff Daniel Diamond, on behalf of
himself and all others similarly-situated current and
former employees of Defendant

8 DINSMORE & SHOHL LLP

10 Dated: _____, 2022

By: _____

Caroline G. Massey, Esq.

Dorota A. James, Esq.

Counsel for Defendant

LOVE'S COUNTRY STORES OF CALIFORNIA

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1 APPROVED AS TO FORM:

2 LAVI & EBRAHIMIAN, LLP

3
4 Dated: _____, 2022

By: _____

5 Joseph Lavi
6 Vincent C. Granberry
7 Counsel for Plaintiff Daniel Diamond, on behalf of
himself and all others similarly-situated current and
former employees of Defendant

8 DINSMORE & SHOHL LLP

9
10 Dated: 09/14/2022 2022

By: Dorota James

11 Caroline G. Massey, Esq.
12 Dorota A. James, Esq.
13 Counsel for Defendant
14 LOVE'S COUNTRY STORES OF CALIFORNIA
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EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

DANIEL DIAMOND, on behalf of himself
and others similarly situated

Plaintiff,

vs.

LOVE'S COUNTRY STORES OF
CALIFORNIA, a corporation; and DOES 1
to 100, Inclusive.

Defendants

) Case No.: CIVDS2012915

)

) **NOTICE OF PENDENCY OF CLASS**

) **ACTION SETTLEMENT AND FINAL**

) **HEARING**

)

)

) Dept.: S26

) Judge: David Cohn

)

) Complaint Filed: May 29, 2020

)

Please Read This Notice Carefully. Your Rights May Be Affected. You May Be Entitled to Receive Money From This Proposed Settlement. You Do Not Have To Do Anything to Receive Your Settlement Share. You Do Not Have To Do Anything To Receive Your Settlement Share.

This is a court-authorized notice. This is not a solicitation from a lawyer.

TO: ANY CURRENT AND FORMER MANAGERS AND/OR ASSISTANT MANAGERS WHO WERE EMPLOYED BY LOVE'S COUNTRY STORES OF CALIFORNIA ("LOVE'S" AND/OR "DEFENDANT") IN THE STATE OF CALIFORNIA WHO WERE CLASSIFIED AS AN EXEMPT EMPLOYEES BUT DID NOT MEET THE MINIMUM SALARY REQUIRED FOR EXEMPT EMPLOYEES AND WERE EMPLOYED BY LOVE'S AT ANY TIME BETWEEN MAY 29, 2016 THROUGH [THE DATE THE COURT ENTERS AN ORDER GRANTING PRELIMINARY APPROVAL OR 30 DAYS AFTER THE MOTION FOR PRELIMINARY APPROVAL IS FILED, WHICHEVER DATE IS EARLIER].

Pursuant to the order of the San Bernardino County Superior Court, entered <<preliminary approval date>>, YOU ARE HEREBY NOTIFIED AS FOLLOWS: A proposed settlement has been reached between the Parties in the lawsuit identified in the caption above, pending in the San Bernardino County Superior Court, on behalf of the Settlement Class described above, which has been provisionally certified for purposes of this settlement. Your estimated individual settlement amount is <<_____>>.

This is only an estimate. The final amount may change and is subject to final approval by the Court. You have received this notice because records indicate you qualify as a member of the Settlement Class. This notice is designed to advise you of how you can participate in the settlement, how you can object to the settlement, and how you can exclude yourself from the settlement.

I. BACKGROUND OF THE CASE

On May 29, 2020, Daniel Diamond filed a class action complaint, amended by the First Amended Complaint filed on July 23, 2020, (“Complaint”) in the San Bernardino County Superior Court entitled Daniel Diamond v. Love’s Country Stores of California (“Defendant” or “Love’s”), Case No. CIVDS2012915, on behalf of himself and a proposed class consisting of current and former managers and/or assistant managers employed by Love’s in which he asserted claims for: 1. Misclassification of employees as exempt employees); 2 Failure to pay wages for all time worked, including minimum, regular, and overtime wages; 3. Failure to provide meal periods; 4. Failure to authorize or permit rest periods; 5. Failure to provide complete and accurate wage statements; 6. Failure to timely pay all earned wages due at time of separation of employment; 7. Unfair business practices; and 8. Representative action for civil penalties under the private attorneys general act.

Defendant contends the claims in the lawsuit are without merit, and disputes all claims for damages, penalties, and other relief. No court has ruled on the merits of the lawsuit. Daniel Diamond has vigorously prosecuted this case, and Defendant has vigorously defended it. The Parties have investigated the facts to assess the relative merits of Love’s class action and representative claims and Defendant’s defenses to those claims. Mr. Diamond’s attorneys (“Class Counsel”) reviewed extensive documents and information produced by Defendant and conducted extensive analysis of the potential damages and claims. The Parties believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including liability, and the amount of damages or penalties, if any, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, the Parties believe that the proposed settlement is fair, reasonable and adequate. The Parties have entered into a class action settlement agreement called the Joint Stipulation of Class Action Settlement and Release which has been granted preliminary approval by the Court. The Agreement provisionally certifies the Settlement Class for purposes of this settlement.

The actual and complete terms of the lawsuit and the settlement are set forth in the Complaint and Joint Stipulation of Class Action Settlement and Release which can be obtained by contacting Class Counsel or by reviewing the Court file (instructions below). After conducting extensive discovery and negotiations, the case has been settled for Five Hundred Thousand Dollars (\$500,000.00). The settlement was presented to the Court for Preliminary Approval on _____, 2022, which the Court granted. The Court conditionally certified this case as a class action for purposes of this settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

Love’s and Class Counsel support this settlement. Among the reasons given for support include the risk that class certification could be denied, the inherent risk of trial on the merits, and the delays associated with litigation, including appeals.

The settlement provides for the following:

- A. Maximum Settlement Amount:** Defendant will pay \$500,000.00 to settle the Litigation. The \$500,000.00 Maximum Settlement Amount shall consist of the following elements: (a) Class Counsel's Attorney's Fees; (b) Litigation Expenses; (c) Class Representative Service Award; (d) Settlement Administration Expenses; (e) PAGA Payment to the California Labor and Workforce Development Agency; and (f) Net Settlement Amount. Each of these components is described below.
- B. Class Counsel's Attorney's Fees:** Class Counsel anticipates requesting an attorney fee award of not more than one-third of the Maximum Settlement Amount (\$166,666.66), subject to court approval, which shall be paid from the Maximum Settlement Amount.
- C. Litigation Costs:** Class Counsel anticipates requesting an award of no more than \$25,000.00 subject to court approval, as reimbursement for litigation costs, which shall be paid from the Maximum Settlement Amount.
- D. Class Representative Service Award:** Daniel Diamond anticipates requesting a service award of no more than \$9,000.00 subject to court approval, for his role serving as Class Representative, which shall be paid from the Maximum Settlement Amount.
- E.. Private Attorneys General Act (PAGA) Allocation:** The Parties have designated \$20,000.00 of the Maximum Settlement Amount as representing the recovery of civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004. Of this amount, 75% (\$15,000.00) will be paid to the California Labor and Workforce Development Agency (LWDA), and the remaining 25% (\$5,000.00) shall be distributed to Settlement Class Members who were employed during the period from April 28, 2019 through [through the date the court enters an order granting preliminary approval or 30 days after the motion for preliminary approval is filed, whichever date is earlier].
- F. Settlement Administration Expenses:** The Parties have selected, and the court has approved, _____. (hereafter "_____") to administer the settlement. Upon final approval, Class Counsel will request that the court approve a payment to hereafter "_____ administering and disbursing the Net Settlement Amount, and other activities required to administer the settlement. The Parties estimate that the payment to _____ will be approximately \$_____, which shall be paid from the Maximum Settlement Amount.
- G. Net Settlement Amount:** Net Settlement Amount consists of all funds remaining from the Gross Settlement Amount after subtraction of court-approved Class Counsel's Attorney's Fees, Litigation Costs, Class Representative Service Award, PAGA Payment to the LWDA, and Settlement Administration Expenses. The Net Settlement Amount will be distributed to the Settlement Class as described below.

H. Class Defined: “Settlement Class” shall mean All current and former managers and/or assistant managers who were employed by Love’s Country Stores of California in the State of California and who were classified as an exempt employee but did not meet the minimum salary required for exempt employees during the Class Period. The class shall include any heirs, successors, or assigns or purported assigns of the above-described persons

I. Class Period: “Class Period” shall mean the time period from and including May 29, 2016 through the date the court enters an order granting preliminary approval or 30 days after the motion for preliminary approval is filed, whichever date is earlier.

J. Tax Treatment of Settlement Payments: Class Settlement Payments will be allocated as follows: 20% to unpaid wages, with all applicable taxes withheld, for which an IRS Form W-2 shall be issued, and 40% to penalties and 40% to interest (non-wage portion for which an IRS Form 1099 shall be issued. Love’s will pay its share of payroll taxes on the amounts allocated as unpaid wages.

K. Individual Settlement Payments to Class Member: The Individual Settlement Payment for each Class Member will be calculated based on the number of workweeks of each Participating Class Member worked for Defendant in California during the Class Period. The Workweeks worked will be calculated using Defendant’s payroll and timekeeping records

L. The Released Claims: In exchange for receiving payments under the Settlement, Plaintiff and each Class Member will fully, finally, and forever release and discharge each and every one of the Defendants from all claims, demands, rights, liabilities, and causes of action arising in whole or in part, during the Class Period, for any of the following: a) misclassification as exempt employees b) failure to pay minimum and regular wages for all hours worked; c) failure to pay for all overtime hours worked at the applicable overtime rate of pay; d) failure to provide legally compliant meal periods and/or pay meal period premium wages; e) failure to provide legally compliant rest periods and/or pay rest period premium wages; f) failure to indemnify for employment-related losses/ expenditures; g) failure to provide complete and accurate wage statements; h) failure to timely pay employees after termination or resignation of employment; applicable civil penalties; or any alleged or actual failure to pay any interest or penalties owed as a result of any of the foregoing; or i) in any manner arising out of any of the other facts or legal theories alleged or asserted in the Action, whether formally raised in the operative complaint in this Action, or otherwise (collectively, the “Released Class Claims”). These claims include all claims that arose during the class period under Labor Code section 201, 202, 203, 226, 226.7, 227.3, 510, 512, 1194, 1194.2, 1197, 1199, as well as the IWC Wage Order, and section 17200 et. seq. of. the California Business and Professions Code, based on the foregoing, as well as any civil penalty claims predicated on the claims alleged in the LWDA letter and/or Complaint under PAGA, Labor Code 2699 et seq.

III. YOUR INDIVIDUAL SETTLEMENT PAYMENT

Your portion of the settlement proceeds is expected to be approximately **\$[insert estimated pro rata share]**. This amount is based upon the payroll records of Defendant which is the best information known to the Parties and indicates that you worked **[insert workweeks]** for Defendant during the period between May 29, 2016 through **[the date the court enters an order granting preliminary approval or 30 days after the motion for preliminary approval is filed, whichever date is earlier]**.

If you want to dispute your number of estimated workweeks or pay periods, you need to provide written evidence supporting your claim by _____, and send to:

Daniel Diamond v. Love's Country Stores of California

_____, CA _____

Love's records are presumed to be correct unless you provide documentation to the Settlement Administrator that demonstrates otherwise. The Settlement Administrator will evaluate the evidence submitted by you and make the final decision as to whether you may be entitled to any additional settlement payment amount.

IV. WHY ARE CLASS COUNSEL RECOMMENDING THIS SETTLEMENT?

Considering the risks and costs of continuing the litigation, Class Counsel believes this settlement provides the best possible recovery and is in the best interest of the Class. This analysis results from a review of written discovery, and a review of numerous time records and payroll records, and a thorough evaluation of the financial condition of the Defendant. It is also based on interviews with affected employees who currently work for Defendant or have worked for Defendants May 29, 2016 through **[the date the court enters an order granting preliminary approval or 30 days after the motion for preliminary approval is filed, whichever date is earlier]**.

V. WHAT ARE YOUR OPTIONS

1. OPTION ONE – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT

If you do fall within the description of Settlement Class Members described on page 1 and you received this Notice, you are a member of the Settlement Class and will participate in the settlement and be bound by it unless you submit a valid and timely request for exclusion. You need do nothing further. **YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANY ADDITIONAL FEES TO THE LAWYERS IN THIS CASE.**

A. Providing Updated Information

To change or correct your contact information, you must contact the settlement administrator via the contact information below and provide any updated information regarding your contact information.

Daniel Diamond v. Love's Country Stores of California

[REDACTED]
[REDACTED]
[REDACTED], CA [REDACTED]

2. OPTION TWO – EXCLUDE YOURSELF FROM THE SETTLEMENT

If you wish to be excluded from the class settlement, you must submit a valid and timely request for exclusion. You will have no rights under the settlement; you will not share in any distribution of settlement monies, and you will not be bound by the settlement or the final judgment which the Court enters to implement the settlement.

If you wish to be excluded from the class settlement, your request must be in writing and must: (1) explicitly and unambiguously state the following statement or similar statement: *“I wish to exclude myself from the settlement reached in the matter of Daniel Diamond v. Love's Country Stores of California. I understand by excluding myself, I will not receive any money from the settlement reached in this matter.”*; (2) contain the name, address, and the last four digits of the Social Security number of the person requesting exclusion; (3) be signed by the Class Member; and (4) be postmarked or fax stamped by [REDACTED], 2022 and returned to the Settlement Administrator at the specified address or fax telephone number stated in this Class Notice. The Request for Exclusion will not be valid if it is not timely submitted, if it is not signed by the Settlement Class Member, or if it does not contain the name, and address of the Settlement Class Member. The date of the postmark on the return mailing envelope or fax stamp on the request for exclusion shall be the exclusive means used to determine whether the Request for Exclusion was timely submitted. Any Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement or have any right to object, appeal, or comment thereon. Settlement Class Members who fail to submit a valid and timely written request for exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any final judgment entered in this Action if the Settlement is approved by the Court. In addition, to be valid, your request for exclusion must be mailed to the following address and postmarked on or before [REDACTED], 2022:

Daniel Diamond v. Love's Country Stores of California

[REDACTED]
[REDACTED]
[REDACTED], CA [REDACTED]

3. OBJECT TO THE SETTLEMENT

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and you wish the Court to consider your objections, you must notify the Settlement Administrator by mailing your objection, in writing, on or before [REDACTED] to the Settlement Administrator. The objection must state your (i) full legal name, home address, telephone number, last four digits of your social security number (for identity verification purposes); (ii) the words “Notice of Objection” or “Formal Objection;” in clear and concise terms; (iii) the legal and factual arguments supporting the objection; and (iv) a list

identifying the witness(es) you may call to testify at the Final Approval Hearing and true and correct copies of any exhibit(s) you intend to offer. You may also appear at the Final Approval hearing, either in person or through your own attorney, at your own expense, if you wish.

The Settlement Administrator address is:

Daniel Diamond v. Love's Country Stores of California

[REDACTED]
[REDACTED]
[REDACTED], CA [REDACTED]

YOU DO NOT NEED TO ATTEND THIS HEARING UNLESS YOU WANT TO ATTEND.

If you have any questions or need additional information, contact either of the attorneys listed above or the Settlement Administrator at [REDACTED] by calling toll free [REDACTED].

VI. FINAL SETTLEMENT APPROVAL HEARING

A Final Settlement Approval Hearing will be held on [REDACTED], 2022 at [REDACTED] a.m., before the Honorable David Cohn, at the San Bernardino Superior Court, Department S-26, located at 247 West Third Street, San Bernardino, CA 92415-0210. The purpose of the Final Approval Hearing will be to confirm, among other things: (1) that the terms of the proposed settlement are fair, just, reasonable and adequate and in the best interest of the class and should be approved by the Court; (2) whether Class Counsel's application for an award of attorneys' fees and expenses should be approved; (3) whether the Plaintiff's application for an incentive/enhancement award should be approved; and, (4) whether a judgment be entered and the court retain jurisdiction over this action to enforce its terms.

Any member of the class may appear and be heard at the Final Approval Hearing, including for the purpose of objecting to the proposed settlement. In addition, any Class Member wishing to object to the settlement should give notice of their intent to appear at that hearing, as set forth above, in writing and mailed to the Settlement Administrator no later than [REDACTED].

VII. ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above summary is a summary of the terms of the settlement. For the precise terms and conditions of the settlement, you can review the detailed "Joint Stipulation and Settlement Agreement" by contacting the Settlement Administrator or by examining the file with the Clerk of the Court. You may also get more details by examining the Court's file on the Internet via the Court Access Portal page for the California Superior Court for the County of San Bernardino and entering the Case No. CIVDS2012915. The pleadings and other records in this lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415-0210.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [phone number]. Please refer to Diamond v. Love's Class Action Settlement. You may also contact Class Counsel at the information below:

Joseph Lavi, Esq. (SBN 209776)
Vincent C. Granberry, Esq. (SBN 276483)
Melissa A. Huether (SBN 316604)
Courtney M. Miller, Esq. (SBN 327850)
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8889 W. Olympic Boulevard, Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE.

BY ORDER OF THE COURT.