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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

SARAH P. ESPINOZA,

Plaintiffs,

vs.

LOVE'S COUNTRY STORES OF
CALIFORNIA; and DOES 1-100, Inclusive,

Defendants.

Case No. CIVDS2016481

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: June 13, 2022

Time: 10:00 a.m.

Judge: Hon. David Cohn

Dept.: S-26

I, Jean-Claude Lapuyade, Esq., declare as follows:

1. I am over eighteen years of age and if called as a witness, I could and would competently testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner of the law firm of JCL LAW FIRM, APC (hereinafter “Class Counsel”). I am counsel of record for Plaintiffs Estefania Renteria (“Renteria”) and Sarah Espinoza (“Espinoza”) (hereafter collectively “Plaintiffs” or “Class Representatives”) in this wage and hour class action filed against LOVE’S COUNTRY STORES OF CALIFORNIA (hereinafter “Defendant”).

2. This declaration is being submitted in support of Plaintiffs’ Motion for Final Approval of Class Action Settlement.

3. Attached hereto as **Exhibit “A”** are true and correct copies of the fully executed Stipulation of Settlement of Class Action and PAGA Action and Release of Claims (hereinafter collectively “Settlement Agreement”).

4. Attached hereto as **Exhibit “B”** is a true and correct copy of the conformed November 16, 2021, Preliminary Approval Order.

5. Attached hereto as **Exhibit “C”** is a true and correct copy of the April 28, 2022, proof of filing the proposed Settlement with the LWDA.

6. Attached hereto as **Exhibit “D”** is true and correct copy of the May 18, 2022, proof of filing this motion seeking final approval of this Settlement with the LWDA.

I. INTRODUCTION

7. An objective evaluation of the proposed settlement of \$2,219,318.18 (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Steven Rottman, Esq. a well-respected class action mediator. After deducting any Court-approved attorneys’ fees and costs, class representative incentive payments, administration costs, and the payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement fund shall be distributed to the Settlement Class based on the number of Workweeks they worked while employed by Defendant during the relevant time period. ***The Settlement Class***

1 *greeted news of the Settlement with overwhelming approval as 100% of the Settlement Class choose*
2 *to participate in the Settlement.* There are zero opt-outs and zero objections to the Settlement. The
3 unanimous approval by the Settlement Class evidences the clear fairness and reasonableness of the
4 Settlement.

5 8. This Settlement provides substantial recovery for Defendant's alleged wage and hour
6 violations. Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount
7 of \$1,326,586.71. This will result in an average Individual Settlement Payment of **\$792.47** and high
8 payment of **\$2,396.55**.

9 9. The relief offered by the Settlement is immediate and is particularly impressive when
10 viewed against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see*
11 *infra*). Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait
12 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain
13 litigation.

14 10. As discussed below, the proposed Settlement satisfies all criteria for final settlement
15 approval under California law and falls well within the range of reasonableness. Accordingly, Class
16 Representatives and Class Counsel respectfully request this Court grant final approval of the Agreement
17 and, entry of the proposed Final Approval Order and Judgment.

18 **II. OVERVIEW OF THE LITIGATION**

19 11. Defendant is a California corporation that owns and operates approximately thirteen full-
20 service travel stops in California. Defendant is part of the closely held family of companies known as
21 Love's Family of Companies. Defendant provides professional truck drivers and motorists with 24-
22 hour access to clean and safe places to purchase gasoline, diesel fuel, Compress Natural Gas (CNG),
23 travel items, electronics, snacks, restaurant offerings, and more. Plaintiff Renteria was employed by
24 Defendant as a non-exempt employee from April 2015 through March 2020. Plaintiff Espinoza was
25 employed by Defendant from January 2019 through April 2019 as a non-exempt cashier. At all times
26 during their employment, Plaintiffs earned an hourly wage plus certain non-discretionary flat-sum
27 incentive awards and were entitled to legally complaint meal and/or rest periods, and minimum, regular,

1 and overtime wages for all hours worked. Throughout their employment, Plaintiffs were subject to
2 Defendant's written policies and procedures contained in, among other documents, the Employee
3 Handbook.

4 12. Generally, Plaintiffs claim that Defendant failed to pay for all time worked, failed to
5 provide suitable seating, failed to furnish accurate itemized wage statements, failed to provide
6 compliant meal and rest periods, and failed to pay all wages upon separation of employment. Defendant
7 forcefully denies liability for each of Plaintiffs' claims. Further, Defendant asserts that it fully complied
8 with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims,
9 including but not limited to, facially compliant meal and rest period policies, timely paid all wages due
10 upon separation of employment, accurately calculated the regular rate of pay, and provided suitable
11 seating.

12 13. On May 27, 2020, Plaintiff Renteria served Defendant and the Labor and Workforce
13 Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff Renteria's
14 PAGA Notice set for the facts and theories supporting Defendant's alleged violations of various
15 provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage
16 Order and of her intent to pursue claims under the California Labor Code Private Attorneys General
17 Act, Cal. Lab. Code Sections 2698, *et seq.* ("PAGA").

18 14. On May 28, 2020, Plaintiff Renteria filed a class action complaint in the Kern Superior
19 Court, Case Number BCV-20-101260 ("Renteria Action"). The Renteria Action alleged seven causes
20 of action against Defendant for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200
21 *et. seq.*; (2) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, *et seq.*; (3) Failure
22 to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (4) Failure to Provide
23 Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5)
24 Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the
25 Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Wage Statements in Violation
26 of Cal. Lab. Code § 226; and (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code
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§§ 201-203. On August 3, 2020, Plaintiff Renteria filed a First Amended Complaint (“FAC”) against Defendant adding an eighth cause of action for violations of PAGA.

15. On July 29, 2020, Plaintiff Espinoza filed a PAGA Notice with the LWDA and served the same on Defendant. On July 30, 2020, Plaintiff Espinoza filed a lawsuit in the San Bernardino Superior Court, Case Number CIV-DS-2016481 (“Espinoza Action”). The Espinoza Action alleged six causes of action against Defendant for: (1) Failure to Properly Calculate and Pay Overtime; (2) Failure to Provide Meal Breaks; (3) Failure to Provide Rest Breaks; (4) Failure to Pay All Wages Due at the End of Employment; (5) Failure to Furnish Accurate Itemized Wage Statements; and (6) Unlawful Business Practices. On October 7, 2020, Plaintiff Espinoza filed a First Amended Complaint against Defendant adding a seventh cause of action for violations of PAGA.

16. Plaintiff Renteria commenced written discovery in the Action in September 2020. After failing to answer Plaintiff Renteria’s written discovery, the Parties agreed to collectively mediate the Action. In anticipation of mediation, the Parties agreed to stay additional formal discovery and continue deadlines for class certification in the Action. To prepare for mediation, the Parties agreed to informally produce additional documents and data points subject to the mediation privilege, including but not limited to, the Class Members’ time data and certain payroll data points. As discussed *infra*, Plaintiffs’ counsel retained the forensic consultants at Econ One Research, Inc. (“Econ One”) to analyze Defendant’s time and payroll data.

17. On May 25, 2021, the Parties participated in mediation presided over by Steven Rottman, Esq., a well-respected class action mediator. At the conclusion of the negotiations, Mediator Rottman presented a mediator’s proposal that was ultimately accepted by all Parties for the Gross Settlement Amount of \$2,100,000¹. The parties subsequently executed a binding and enforceable Memorandum of Understanding (“MOU”). After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. As part of the Agreement, the Parties stipulated to the filing of a Second Amended Complaint (“SAC”) in the Espinoza Action to

¹ As discussed *infra*, an escalator provision was subsequently triggered thereby increasing the Gross Settlement Amount to \$2,219,318.18.

incorporate the claims and factual allegations asserted in the Renteria Action, as well as add Plaintiff Renteria as a named Plaintiff in the Espinoza Action.

18. The Court preliminarily approved an initial Gross Settlement Amount of \$2,100,000 based on a total of approximately 50,296 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class Representative Service Awards; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action.

19. As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by the Settlement Class and absence of any objections to the Settlement.

20. Further supporting final approval, the average Individual Settlement Payment of \$792.47 is comparable to settlement payments in similar wage and hour class actions. This result is particularly favorable considering that liability and certification were far from certain. Given the complexities of this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable, and adequate, and should be granted final approval.

III. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

A. Adequate Investigation

21. Months before filing the Action, Class Counsel began its pre-filing investigation into the Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiffs. As part of the interview process, Plaintiffs produced documents related to their employment, including portions of their earning statements and payroll records. At the conclusion of the interviews, Class Counsel determined that each of Plaintiffs' complaints justified further inquiry.

22. Class Counsel subsequently requested Plaintiffs' employee files from Defendant. In response, Defendant produced thousands of pages of documents, including but not limited, copies of Plaintiffs' hiring documents, payroll records, and time records, and Defendant's employee handbooks. Class Counsel reviewed and analyzed the documents and determined the documents appeared to

1 substantiate Plaintiffs' claim that Defendant failed to, among other things, pay for all time worked and
2 provide compliant meal and rest periods.

3 23. Additionally, during the pre-litigation meetings with Class Counsel, Plaintiffs provided
4 the names and contact information for several Class Members. During the litigation, as a result of
5 Plaintiff's formal discovery requests, Defendant produced the names and contact information for the
6 Class Members. During the litigation, Class Counsel interviewed dozens of Class Members to further
7 investigate the allegations asserted in the Class Action.

8 24. Considering the many anticipated factual disputes, the Parties agreed, relatively early in
9 the litigation, that it would be in the best interest of both Parties to mediate the matter. To prepare for
10 mediation, Class Counsel requested documents and data points to further evaluate Plaintiffs' claims and
11 Defendant's liability exposure to the Class Members. In response to Class Counsel's request, Defendant
12 produced the time records for the Class Members, aggregate workweek and pay period data for the
13 Class Members, average hourly rate for the Class Members, and copies of applicable policies and
14 agreements containing, *inter alia*, compensation, timekeeping and meal and rest period policies. In total,
15 Defendant produced approximately 48,190 pages of pertinent policy documents and time and payroll
16 data for Class Counsel to analyze.

17 25. Class Counsel then retained the statisticians and economists at Econ One to evaluate the
18 Class Members' payroll and time data. Econ One provides data analysis and damage modeling
19 consulting services specializing in economic consulting, data analytics, and damages and valuations.
20 Econ One's team of financial and data analysts are credentialed and experienced experts in their fields
21 and have provided their expertise on thousands of cases. Stated differently, the Econ One is uniquely
22 qualified to analyze Defendant's time and payroll data.

23 26. Econ One analyzed Defendant's time and payroll data to assist in the development of
24 various damage models. Among other things, Econ One determined the approximate number of work
25 shifts, workweeks, pay periods, average length of shift, and average number of hours worked per week
26 and pay periods during the Class Period. Econ One also estimated the number of missed, late or
27

truncated meal and rest periods, the amount of paid missed meal period premiums paid during the Class Period, and the amount of unpaid wages due to the Class Members during the Class Period.

27. In advance of mediation, Class Counsel created several damage models predicated on the Econ One analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions.

28. In addition to formal and informal discovery, witness interviews, document review, data analysis, and legal research, Class Counsel also researched similar wage and hour actions. Here, Class Counsel's investigation uncovered *Chavez v. Adidas America, Inc.*, United States District Court, Northern District of California, Case Number 5:16-cv-6533 LHK a prior wage and hour class action against Defendant. In that case, Defendant resolved the class claims asserted on behalf of 3,700 class members (a number similar to class members covered by this Settlement) for the period between October 11, 2012 and September 15, 2017 for \$1.5 Million Dollars. Although no two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against.

29. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiffs' suitability as a putative class representatives through interviews, background investigations, and analysis of their employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiffs' claims and estimating Defendant's liability for purposes of settlement; (8) holding phone interviews with several putative class members; (9) drafting the mediation brief; and (10) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed.

30. Class Counsel only agreed to enter the Settlement following his thorough investigation and evaluation of Plaintiffs' claims. Based on his investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement

B. The Parties Settled Shortly After Mediation

31. The Settlement is the product of a mediation session and subsequent negotiations with a respected mediator over the terms of the Settlement. At the conclusion of the negotiations, Mediator Rottman presented a mediator's proposal that was ultimately accepted by all Parties. The negotiations were adversarial, conducted at arm's length and tempered by the efforts of both sides to serve the interests of their clients. The amount of the service awards was not negotiated until after the parties agreed to the Gross Settlement Amount and many other terms.

C. Class Counsel is Experienced in Similar Litigation

32. Plaintiffs are represented by competent and experienced counsel to pursue their claims. I established the JCL Law Firm, APC ("Firm"), in 2010. The Firm is a boutique plaintiff firm representing aggrieved employees and consumers throughout California in wage and hour class actions and complex multi-party product liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade, Esq. (Partner/Owner), Eduardo Garcia (Associate Attorney), Tesla Stone (Paralegal), Jennifer Hemming (Legal Secretary), Sydney Castillo-Johnson (Law Clerk), and Sara Christensen (Legal Assistant).

33. I am qualified to represent the Plaintiffs, the State of California, and the Aggrieved Employees. I have extensive experience with wage and hour class and representative actions litigation like this matter, and employment matters in general. Additionally, I have extensive complex mass tort litigation experience and complex construction product liability experience. I can, will and have adequately represented the interests of the Plaintiffs, the State of California, and the Aggrieved Employees throughout this action.

34. I have represented consumers and employees in California class actions, and complex multi-party product liability actions exclusively for more than 14 years. I have been in practice as a plaintiffs' civil litigation attorney since April 2007.

35. I have significant class counsel and collective action counsel experience. I served as class and/or collective (PAGA) counsel in the following matters:

a. *Felix v. TVI, Inc., d.b.a. Savers*, Santa Clara Superior Court Case No. 21CV376407 (February 18, 2022) Hon. Sunil R. Kulkarni approved a \$1.8 million dollar class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.

b. *Munoz v. AMTCR*, San Bernardino Superior Court Case No. CIV-DS2001914 (August 24, 2021) Hon. David Cohn approved a \$1.8 million dollar class and PAGA settlement for, *inter alia*, inaccurate itemized wage statements. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)

c. *Nunes v. Home Depot U.S.A., Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross approved a \$1.5 million dollar class and PAGA settlement for, *inter alia*, miscalculated meal period premiums and appointed Jean-Claude Lapuyade, Esq, as Class Counsel.)

d. *Pillsbury v. T&T Restaurants CA, Inc.*, Del Norte Superior Court Case No. CVUJ-20-1214 (December 14, 2021 – Hon. Darren McElfresh approved \$550 billing rate and appointed Jean-Claude Lapuyade, Esq, as Class Counsel in a wage and hour class action settlement.)

e. *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No. CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed the JCL Law Firm, APC as Class Counsel)

- f. *Elias Kaser v. Aviation Consultants, Inc.*, Orange County Superior Court Case No. 30-2021-01191204-CU-OE-CXC (September 22, 2021 – Hon. Peter J. Wilson approved \$550 billing rate in a representative California Labor Code Private Attorney General Act settlement).
- g. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)
- h. *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a PAGA Settlement negotiated on behalf of the State of California and the aggrieved employees by the JCL Law Firm, APC.)
- i. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for, *inter alia*, missed meal and rest periods.)
- j. *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)
- k. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*, off-the-clock work.)

- l. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)
- m. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)
- n. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)
- o. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC, acted as lead counsel.)
- p. *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)
- q. *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)
- r. *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as class counsel and granted final approval of wage and hour class action for unpaid overtime.)

s. *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No. 37-2018-00043601 (May 31, 2019 – Hon. Gregory Pollack appointed JCL Law Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour class action settlement involving nearly 900 current and former employees. Final approval scheduled for October 4, 2019)

t. *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement for *inter alia*, missed meal and rest periods and independent contractor misclassification.)

u. *Moschetto v. Pillow Global, Inc.* San Diego Superior Court, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)

v. *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)

w. *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);

x. *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);

y. *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)

1 z. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-
2 00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and
3 rest periods)

4 aa. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-
5 00012373-CU-OE-CTL (2017 - Certified and settled class action for employee
6 misclassification);

7 bb. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No.
8 BC617160 (2017 - Certified and settled wage and hour class action.);

9 cc. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case
10 No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);

11 dd. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-
12 CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices
13 arising out of Civil Code Section 1940.1);
14

15 36. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a
16 favorable verdict for the firm's clients.

17 37. Finally, I have published appellate experience in *William Blanchette et al., v. The*
18 *Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

19 38. Consequently, I have been named to the prestigious Thomson Reuters, Super Lawyers,
20 Rising Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super Lawyers,
21 Rising Star list recognizes the top 2.5% of eligible attorneys. (see
22 https://www.superlawyers.com/about/selection_process.html.)

23 **D. Strength of Plaintiffs' Case**

24 39. Here, the Settlement is clearly within the "ballpark" of reasonableness because the
25 Settlement provides a sizeable recovery to the Settlement Class Members and need not necessarily
26 obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*,
27 91 Cal.App.4th at 250. While the Gross Settlement Amount of \$2,219,318.18 represents a discount on
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1 Defendant's potential exposure if Plaintiffs established liability on all claims and were awarded the full
2 amount of the estimated damages at trial, this compromise is reasonable because (1) the formidable
3 defenses raised by Defendant presented a risk that could award significantly less in damages than
4 Plaintiffs' estimate and (2) any theoretical post-trial recovery may require many more years of litigation,
5 resulting in added fees and costs without any guarantee of recovery for the Class.

6 40. Although Class Counsel believes strongly in Plaintiffs' claims, it would be misguided to
7 ignore the asserted defenses. If successful on any one its defenses, Defendant could defend the action
8 or, at least, drastically undercut Plaintiffs' claims.

9 **E. Risks of Continued Litigation**

10 41. With respect to the most immediate challenge, i.e., class certification, the risks attendant
11 to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*
12 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded
13 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed
14 the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies,*
15 *Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
16 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
17 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
18 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly
19 individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176
20 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to
21 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
22 harm); *Campbell v. Best Buy Stores, L.P.,* (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
23 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
24 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
25 certification of driver meal and rest period claims based on the predominance of individual issues).
26 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
27
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1 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
2 settlement.

3 42. Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless
4 recognize that Defendant has factual and legal defenses that, if successful, would potentially defeat or
5 impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
6 drastically affect the value of Plaintiffs' claims and, in fact, already has. Recently, the California Court
7 of Appeal, Second District, held that meal and rest period violations do not entitle employees to pursue
8 the derivative waiting time and itemized wage statement penalties. *Naranjo v. Spectrum Security*
9 *Services, Inc.* (2019) 40 Cal.App.5th 444 (review granted). The *Naranjo* decision gutted Plaintiffs'
10 claims for Labor Code Section 226 penalties and Labor Code Section 203 waiting time penalties
11 predicated on meal and rest period violations.

12 43. As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668 and *O'Conner v. Uber*
13 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
14 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
15 that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to post a
16 bond and appeal. A post-judgment appeal by Defendant would have required many more years to
17 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
18 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
19 an uncertain result three or more years in the future.

20 44. Class Representatives and Class Counsel recognize the expense and length of a trial
21 against Defendant through possible appeals which could take another three years. In arriving at their
22 informed belief that the present settlement is fair and adequate, Class Counsel accounted for the
23 uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful
24 of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in
25 the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have
26 mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an
27 ultimate victory. Class Representatives and Class Counsel believe that the Settlement confers

substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representatives and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable, and adequate, and should be granted final approval. With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. (*See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues).) Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement.

F. The Gross Settlement Amount is Fair and Reasonable

45. The Gross Settlement Amount of \$2,219,318.18 in this case is fair and well within the range of recognized reasonableness. As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Class Counsel developed varied economic

1 damages models measuring Defendant's liability exposure while accounting for the uncertainties of
2 continued litigation. The various models were informed by Class Counsel's investigation, including the
3 analysis of a significant sample of time and payroll data. As detailed in greater depth during the
4 preliminary approval process, Class Counsel projected a range of Defendant's liability exposure for the
5 claims asserted on behalf of the Settlement Class. The Gross Settlement Amount represents
6 approximately 34.11% of Defendant's *class-wide* liability exposure as estimated by Class Counsel at
7 the time of mediation.

8 46. Clearly the goal of this litigation to obtain redress for the class has been met by this
9 Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations
10 between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final
11 approval.

12 **IV. THE PENALTIES UNDER PAGA ARE REASONABLE**

13 47. Here, Plaintiffs and Defendant negotiated a good faith PAGA Settlement in the amount
14 of \$80,000 which is 3.6% of the Gross Settlement Amount. This amount falls well within the range of
15 approved PAGA Settlements. Seventy-Five percent (75%) of the PAGA Settlement (\$60,000) will be
16 paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) to be distributed
17 to the Aggrieved Employees, which is within the range of PAGA penalties approved by courts and
18 should be approved.

19 48. Further on April 28, 2022, Class Counsel gave the LWDA notice of this Settlement and
20 proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with
21 the LWDA. On May 18, 2022, Plaintiffs gave the LWDA notice of this motion seeking final approval
22 of this settlement.

23 I declare under the penalty of perjury under the laws of the State of California that the foregoing
24 is true and correct. Executed this 19th day of May 2022, at San Diego, California.

25 **JCL LAW FIRM, APC**

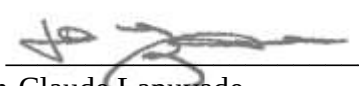
26 By: 
27 Jean-Claude Lapuyade

EXHIBIT A

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

SARAH P. ESPINOZA; an individual, on
behalf of herself and on behalf of all persons
similarly situated,

PLAINTIFF,

vs.

LOVE'S COUNTRY STORES OF
CALIFORNIA; and DOES 1 through 50,
Inclusive;

DEFENDANTS.

Case No. CIV DS 2016481

[Action Filed 10/07/2020]

**STIPULATION OF SETTLEMENT OF
CLASS ACTION AND PAGA ACTION
AND RELEASE OF CLAIMS**

Judge: Honorable David Cohn.
Dept.: S-26

1 This Stipulation of Class Action Settlement and Release of Claims is entered into by and
2 between Plaintiffs ESTEFANIA RENTERIA and SARAH P. ESPINOZA (hereinafter collectively
3 “Plaintiffs”), individually and on behalf of the Settlement Class, and in their representative capacity
4 on behalf of the State of California and the Aggrieved Employees, and Defendant LOVE’S
5 COUNTRY STORES OF CALIFORNIA, a California Corporation. (hereinafter “Defendants”).

6 **I. DEFINITIONS**

7 A. “Actions” shall mean the following collectively, *Renteria v. Love’s Country Stores of*
8 *California*, Kern County Superior Court, Case No. BCV-20-101260, filed May 28,
9 2020 (hereinafter the “*Renteria* Action”) and *Espinoza v. Love’s Country Stores of*
10 *California*, San Bernardino Superior Court, Case No. CIV-DS-2016481, filed
11 October 7, 2020 (hereinafter the *Espinoza* Action”).

12
13 B. “Aggrieved Employees” shall mean all non-exempt employees, who are or previously
14 were employed by Defendant in California during the PAGA Period.

15
16 C. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of
17 Class Action and Release of Claims.

18
19 D. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC,
20 Robert Wasserman, Esq and Jenny Baysinger, Esq. of Mayall Hurley, PC, and Shani
21 Zakay of Zakay Law Group, APLC.

22
23 E. “Class Counsel Award” means the award of fees and expenses that the Court
24 authorizes to be paid to Class Counsel for the services they have rendered to
25 Plaintiffs and the Class in the Action, consisting of attorneys’ fees currently not to
26 exceed one-third of the Gross Settlement Amount currently estimated to be \$700,000
27 out of \$2,100,00.00, plus costs and expenses not to exceed \$30,000 and supported
28

1 by declaration as to the reasonableness of attorney's fees and costs. Class Counsel's
2 award for attorneys' fees will be allocated between Class Counsel as follows: Thirty
3 percent (30%) to the JCL Law Firm, APC; thirty percent (30%) to the Zakay Law
4 Group, APLC; and forty percent (40%) to Mayall Hurley, P.C.
5

6 F. "Class Data" means information regarding Class Members that Defendant will in
7 good faith compile from its records and provide to the Settlement Administrator. It
8 shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class
9 Member's full name; last known address; Social Security Number; start dates and end
10 dates of employment.
11

12 G. "Class Members" or the "Class" means all persons Defendant classified as non-
13 exempt employees who are or previously were employed by Defendant in California
14 during the Class Period.
15

16 H. "Class Period" means the period from May 15, 2019, through and including May 25,
17 2021.
18

19 I. "Class Representative Service Awards" means the amount that the Court authorizes
20 to be paid to the Class Representatives, in addition to their Individual Settlement
21 Payments and their pro-rata share of the PAGA Settlement, in recognition of their
22 efforts and risks in assisting with the prosecution of the Actions and in exchange for
23 executing a General Release of Defendant and waiver of Civil Code 1542 from the
24 named Plaintiffs. Defendant does not oppose service awards to Plaintiffs in the
25 amount of \$10,000 to each, in exchange for their releases identified above.
26
27
28

1 J. "Class Representatives" shall mean plaintiffs ESTEFANIA RENTERIA and SARAH
2 P. ESPINOZA.

3
4 K. "Court" means the Superior Court for the State of California, County of San
5 Bernardino presiding over the Espinoza Action.

6
7 L. "Defendant" shall mean Love's Country Stores of California, a California
8 Corporation.

9
10 M. "Effective Date" means the earliest date, following entry by the Court of an order and
11 judgment finally approving this Settlement, upon which one of the following have
12 occurred: (i) if no objection is filed to the settlement and no objector appears at the
13 hearing on final approval, the date of the Court's entry of the order granting final
14 approval, (ii) if an objection is filed to the settlement and/or an objector appears at the
15 hearing on final approval, then the earlier of the following: (a) the expiration of all
16 potential appeal periods without a filing of a notice of appeal of the final approval
17 order or judgment; (b) final affirmance of the final approval order and judgment by
18 an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all
19 such appeals (including any petition for review, rehearing, certiorari, etc.) such that
20 the final approval order and judgment is no longer subject to further judicial review.

21
22
23 N. "Funding Date" shall mean sixty-five (65) calendar days after the Effective Date and
24 is the date Defendant transfers the Gross Settlement Amount into the QSF in accord
25 with the terms of this Agreement.

26
27 O. "Gross Settlement Amount" means Two Million One Hundred Thousand Dollars
28 (\$2,100,000.00) that Defendant must pay into the QSF in connection with this

1 Settlement, inclusive of the sum of the Individual Settlement Payments, the Class
2 Representative Service Awards, the Class Counsel Award (inclusive of attorneys'
3 fees and costs), PAGA Settlement and the Settlement Administration Costs and
4 *exclusive* of the employer's share of payroll tax, if any, triggered by any payment
5 under this Settlement.
6

7 P. "Individual Settlement Payment" means the amount payable from the Net Settlement
8 Amount to each Settlement Class Member and excludes any amounts distributed to
9 Aggrieved Employees pursuant to PAGA.
10

11 Q. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less Class
12 Counsel Award (inclusive of attorneys' fees and costs), Class Representative Service
13 Award, PAGA Settlement, and Settlement Administration Costs.
14

15 R. "Notice Packet" means the Class Notice to be provided to the Class Members by the
16 Settlement Administrator, as approved by the Court, and in substantially the form set
17 forth as Exhibit A to this Agreement (other than formatting changes to facilitate
18 printing by the Settlement Administrator and/or other changes necessitated by the
19 Court).
20

21 S. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
22 Labor Code § 2698 *et seq.*
23

24 T. "PAGA Payment Ratio" means the respective Workweeks during the PAGA Period
25 for each Aggrieved Employee divided by the sum total of the Workweeks for all
26 Aggrieved Employees during the PAGA Period.
27
28

- 1 U. "PAGA Period" means the period of April 6, 2019, through and including May 25,
2 2021 (the "PAGA Period").
3
- 4 V. "PAGA Settlement" shall mean Eighty Thousand Dollars (\$80,000.00) to be allocated
5 from the Gross Settlement Amount.
6
- 7 W. "Parties" means Plaintiffs and Defendant, collectively, and "Party" shall mean either
8 Plaintiffs or Defendant, individually.
9
- 10 X. "Payment Ratio" means the respective Workweeks for each Class Member divided
11 by the total Workweeks for all Class Members during the Class Period.
12
- 13 Y. "Plaintiffs" shall mean ESTEFANIA RENTERIA and SARAH P. ESPINOZA.
14
- 15 Z. "QSF" means the Qualified Settlement Fund established, designated and maintained
16 by the Settlement Administrator to fund the Total Settlement Amount.
17
- 18 AA. "Released Class Claims" means all class claims alleged in the operative complaint in
19 the Renteria Action and/or Espinoza Action, which occurred during the Class Period,
20 and expressly excluding all other claims, including claims for vested benefits,
21 wrongful termination, unemployment insurance, disability, social security, workers'
22 compensation, and class claims outside the Class Period, and excluding claims arising
23 from allegations of misclassification of employees as exempt.
24
- 25 BB. "Released PAGA Claims" means a release from the Aggrieved Employees of all
26 PAGA claims alleged in the operative complaint and Plaintiffs' PAGA notices to the
27 LWDA in the Renteria Action and/or the Espinoza Action, which occurred during the
28 PAGA period, and expressly excluding all other claims, including claims for vested

benefits, unpaid wages, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA class claims outside of the PAGA period, and excluding claims arising from allegations of misclassification of employees as exempt.

CC. "Plaintiffs Releases." Plaintiffs Espinoza and Renteria agree to enter into a general release of liability and waiver of Civil Code section 1542 and agree to participate in this settlement and not opt out of the settlement. Plaintiffs Espinoza and Renteria further agree that this settlement fully and finally resolves any and all claims that were pled or could have been pled based on the factual allegations contained in the operative complaint(s) and/or any amendment(s) thereto.

DD. "Released Parties" shall mean Defendant, and its present and former partners, shareholders, members, employees, agents, directors, officers, attorneys, insurers, reinsurers, predecessors, successors, assigns, heirs, executors, administrators, and related entities, and all other persons, firms, corporations, associations, partnerships or entities having any legal relationship to each other.

EE. "Response Deadline" means the date forty-five (45) days after the Settlement Administrator mails Notice Packets to Class Members and the last date on which Class Members may submit requests for exclusion or objections to the Settlement.

FF. "Settlement" means the disposition of the Action pursuant to this Agreement.

GG. "Settlement Administrator" means ILYM Group Inc., 14771 Plaza Drive, Ste. L, Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185. The Settlement Administrator establishes, designates and maintains, as a QSF under Internal Revenue

Code section 468B and Treasury Regulation section 1.468B-1, into which the amount of the Total Settlement Amount is deposited for the purpose of resolving the claims of Settlement Class Members. The Settlement Administrator shall maintain the funds until distribution in an account(s) segregated from the assets of Defendant and any person related to Defendant. *All accrued interest shall be paid and distributed to the Settlement Class Members as part of their respective Individual Settlement Payment.*

HH. “Settlement Class Members” or “Settlement Class” means all Class Members who have not submitted a timely and valid request for exclusion as provided in this Agreement.

II. “Workweeks”, for purposes of calculating the distribution of the Net Settlement Amount, means the number of weeks of employment during the Class Period that each Class Member worked in California for Defendant, excluding any week of employment during which the Class Member did not perform any work for Defendant. For purpose of determining the Individual Settlement Payments and the Settlement Allocation, each Class Member who is a former employee no longer working for Defendant will be assigned four (4) additional Workweeks.

JJ. “PAGA Workweeks”, for purposes of calculating the distribution of the Aggrieved Employee Payment, as defined herein, means the number of weeks of employment during the PAGA Period that each Aggrieved Employee worked in California for Defendant, excluding any week of employment during which the Aggrieved Employee did not perform any work for Defendant. The Settlement Administrator will calculate the number of Workweeks by calculating the number of days each

1 Aggrieved Employee was employed during the PAGA Period, dividing by seven (7),
2 and rounding up to the nearest whole number.

3
4 **II. RECITALS**

5 A. On May 27, 2020, Plaintiff Renteria filed a Notice of Violations with the Labor and
6 Workforce Development Agency (LWDA) and served the same on Defendant.

7
8 B. On May 28, 2020, Plaintiff Renteria filed the Lawsuit for:

9 1. Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*;

10
11 2. Failure to pay overtime wages in violation of California Labor Code sections
12 510 *et seq*;

13
14 3. Failure to pay minimum wages in violation of California Labor Code sections
15 1194, 1197 and 1197.1

16
17 4. Failure to provide required meal periods in violation of California Labor Code
18 sections 226.7 and 512 and the applicable IWC wage order;

19
20 5. Failure to provide required rest periods in violation of California Labor Code
21 sections 226.7 and 512 and the applicable IWC wage order;

22
23 6. Failure to provide accurate itemized wage statements in violation of California
24 Labor Code section 226;

25
26 7. Failure to provide wages when due in violation of California Labor Code
27 sections 201, 202 and 203.
28

1 C. On August 3, 2020, Plaintiff Renteria filed the First Amended Complaint ("FAC")
2 against Defendant adding an eighth cause of action for violations of PAGA.

3
4 D. On July 29, 2020, Plaintiff Espinoza filed a Notice of Violations with the Labor and
5 Workforce Development Agency (LWDA) and served the same on Defendant.

6
7 E. On July 30, 2020, Plaintiff Espinoza filed the Lawsuit for:

- 8 1. Failure to properly calculate and pay overtime;
9
10 2. Failure to provide meal break;
11
12 3. Failure to provide rest breaks;
13
14 4. Failure to pay all wages due at the end of employment;
15
16 5. Failure to furnish accurate itemized wage statements;
17
18 6. Unlawful business practices.

19 F. On October 7, 2020, Plaintiff Espinoza filed the First Amended Complaint ("FAC")
20 against Defendant adding a seventh cause of action for violations of PAGA.

21 G. On May 25, 2021, the Parties participated in mediation presided over by Steven
22 Rottman, Esq., a well-respected wage and hour class action mediator. The mediation
23 concluded without a settlement. However, following the mediation, each side,
24 represented by its respective counsel, agreed to settle the Action based on a
25 Mediator's proposal which was memorialized in the form of a Memorandum of
26 Understanding.
27
28

1 H. This Agreement replaces and supersedes the Memorandum of Understanding and any
2 other agreements, understandings, or representations between the Parties. This
3 Agreement represents a compromise and settlement of highly disputed claims.
4 Nothing in this Agreement is intended or will be construed as an admission by
5 Defendant that the claims in the Actions of Plaintiffs or the Class Members have merit
6 or that Defendant bears any liability to Plaintiffs or the Class on those claims or any
7 other claims, or as an admission by Plaintiffs that Defendant's defenses in the Action
8 have merit. The Parties agree to certification for the Class for purposes of this
9 Settlement only. If for any reason the settlement does not become effective,
10 Defendant reserves the right to contest certification of any class for any reason and
11 reserves all available defenses to the claims in the Action.
12

13
14 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:
15

16 **III. TERMS OF AGREEMENT**

17 A. Settlement Consideration and Settlement Payments by Defendant.
18

- 19 1. Settlement Consideration. In full and complete settlement of the Actions, and
20 in exchange for the releases set forth below, Defendant and the Released
21 Parties will pay the sum of the Individual Settlement Payment, the Class
22 Representative Service Awards, the Class Counsel Award, PAGA Settlement,
23 and the Settlement Administration Costs, as specified in this Agreement, equal
24 to the Gross Settlement Amount of Two Million One Hundred Thousand
25 Dollars (\$2,100,000.00). The Parties agree that this is a non-reversionary
26 Settlement and that no portion of the Gross Settlement Amount shall revert to
27 Defendant. Other than the Defendant's share of employer payroll taxes, or as
28

1 otherwise specified in the Agreement, Defendant shall not be required to pay
2 more or less than the Gross Settlement Amount, except as provided for
3 hereinbelow, and specifically in paragraph III.A.2.
4

5 2. Class Size/Escalator. At the time of mediation, Defendant estimated that the
6 Settlement Class was comprised of 1,440 individuals that collectively worked
7 approximately 50,296 Workweeks (“Projected Workweeks”) during the Class
8 Period (additional workweeks allocated to Class Members whose employment
9 ended during the Class Period *shall not be included* in determining total
10 workweeks). In regard hereto, Defendant will provide a declaration under
11 penalty of perjury confirming the number of applicable Class Members and
12 Workweeks they worked during the applicable Class Period. The Settlement
13 Amount will increase proportionally with added class members or workweeks
14 if any of these are more than 10% of the estimate set forth herein. The largest
15 percentage increase will be controlling (i.e. if the workweeks increases by
16 11% and the number of class members increases by 15%, the Gross Settlement
17 Amount will increase by 5%). In the event this provision is triggered, the
18 Gross Settlement Amount will automatically increase accordingly, the Class
19 Counsel Award requested will increase proportionally, the Administration
20 costs will increase as necessary, and all such changes will be incorporated into
21 the Notice Packet without the need for further/additional approval of the
22 Court.
23
24

25
26 3. Settlement Payment. Defendant and the Released Parties, and each of them,
27 are jointly and severally liable for payment of the Gross Settlement Amount.
28

1 Defendant shall pay, via wire transfer, the Gross Settlement Amount to the
2 Settlement Administrator on the Funding Date:

3
4 4. Defendant's Share of Payroll Taxes. Defendant's share of employer side
5 payroll taxes is in addition to the Gross Settlement Amount and shall be paid
6 together with the Gross Settlement Amount.

7
8 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
9 consideration set forth in this Agreement, Plaintiffs and the Settlement Class Members
10 release the Released Parties from the Released Class Claims for the Class Period.

11 C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
12 consideration set forth in this Agreement, the Plaintiffs, the LWDA and the State of
13 California release the Released Parties from the PAGA Released Claims for the PAGA
14 Period.

15
16 D. General Release by Plaintiffs. As of the Funding Date, for the consideration set forth
17 in this Agreement, Plaintiffs waive, release, acquit and forever discharge the
18 Released Parties from any and all claims, whether known or unknown, which exist or
19 may exist on either Plaintiff's behalf as of the date of this Agreement, including but
20 not limited to any and all tort claims, contract claims, wage claims, wrongful
21 termination claims, disability claims, benefit claims, public policy claims, retaliation
22 claims, statutory claims, personal injury claims, emotional distress claims, invasion
23 of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any
24 and all claims arising under any federal, state or other governmental statute, law,
25 regulation or ordinance, including, but not limited to claims for violation of the Fair
26 Labor Standards Act, the California Labor Code, the Wage Orders of California's
27
28

1 Industrial Welfare Commission, other state wage and hour laws, the Americans with
2 Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee
3 Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the
4 California Fair Employment and Housing Act, the California Family Rights Act, the
5 Family Medical Leave Act, California's Whistleblower Protection Act, California
6 Business & Professions Code Section 17200 et seq., and any and all claims arising
7 under any federal, state or other governmental statute, law, regulation or ordinance.
8 Plaintiffs also waive and relinquish any and all claims, rights or benefits that they
9 may have under California Civil Code § 1542, which provides as follows:
10
11

12 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
13 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
14 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
15 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
16 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE***
17 ***DEBTOR OR RELEASED PARTY.***
18

19 Thus, notwithstanding the provisions of section 1542, and to implement a full and
20 complete release and discharge of the Released Parties, Plaintiffs expressly
21 acknowledge this Settlement Agreement is intended to include in its effect, without
22 limitation, all claims Plaintiffs do not know or suspect to exist in Plaintiffs' favor at
23 the time of signing this Settlement Agreement, and that this Settlement Agreement
24 contemplates the extinguishment of any such claims. Plaintiffs warrant that Plaintiffs
25 have read this Settlement Agreement, including this waiver of California Civil Code
26 section 1542, and that Plaintiffs have consulted with or had the opportunity to consult
27
28

1 with counsel of Plaintiffs' choosing about this Settlement Agreement and specifically
2 about the waiver of section 1542, and that Plaintiffs understand this Settlement
3 Agreement and the section 1542 waiver, and so Plaintiffs freely and knowingly enter
4 into this Settlement Agreement. Plaintiffs further acknowledge that Plaintiffs later
5 may discover facts different from or in addition to those Plaintiffs now know or
6 believe to be true regarding the matters released or described in this Settlement
7 Agreement, and even so Plaintiffs agree that the releases and agreements contained in
8 this Settlement Agreement shall remain effective in all respects notwithstanding any
9 later discovery of any different or additional facts. Plaintiffs expressly assume any and
10 all risk of any mistake in connection with the true facts involved in the matters,
11 disputes, or controversies released or described in this Settlement Agreement or with
12 regard to any facts now unknown to Plaintiffs relating thereto.
13
14

15 E. Amended Pleading: To facilitate the settlement, and review by the Court, the Parties
16 will stipulate to the filing of a Second Amended Class Action Complaint in the matter
17 of *Espinoza v. Love's Country Store of California*, San Bernardino County Case No.
18 COV DS 2016481 to incorporate the claims and factual allegations asserted in *Renteria*
19 *v. Love's Country Stores of California*, Kern County Case No. BCV-20-101260, as
20 well as add Estefania Renteria as a named plaintiff in the *Espinoza* action. The Second
21 Amended Complaint shall be in the format reflected as **Exhibit B** hereto.
22
23

24 F. Dismissal of the Renteria Action: Upon the Effective Date, and prior to the Funding
25 Date, Class Counsel will take all steps necessary to dismiss the *Renteria* Action with
26 prejudice.
27
28

1 G. Conditions Precedent: This Settlement will become final and effective only upon the
2 occurrence of all of the following events:

- 3
- 4 1. The Court enters an order granting preliminary approval of the Settlement;
- 5
- 6 2. The Court enters an order granting final approval of the Settlement and a Final
7 Judgment;
- 8
- 9 3. If an objector appears at the final approval hearing, the time for appeal of the
10 Final Judgment and Order Granting Final Approval of Class Action
11 Settlement expires; or, if an appeal is timely filed, there is a final resolution of
12 any appeal from the Judgment and Order Granting Final Approval of Class
13 Action Settlement; and
- 14
- 15 4. Defendant fully funds the Gross Settlement Amount.

16 H. Nullification of Settlement Agreement. In the event that this Settlement Agreement is
17 not preliminarily or finally approved by the Court, fails to become effective, or is
18 reversed, withdrawn or modified by the Court:

- 19
- 20 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
21 and shall not be admissible in any judicial, administrative or arbitral
22 proceeding for any purpose or with respect to any issue, substantive or
23 procedural;
- 24
- 25 2. The conditional class certification (obtained for any purpose) shall be void *ab*
26 *initio* and of no force or effect, and shall not be admissible in any judicial,
27

1 administrative or arbitral proceeding for any purpose or with respect to any
2 issue, substantive or procedural; and

3
4 3. None of the Parties to this Settlement will be deemed to have waived any
5 claims, objections, defenses or arguments in the Action, including with respect
6 to the issue of class certification.

7
8 4. Defendant shall bear the sole responsibility for any cost to issue or reissue any
9 curative notice to the Settlement Class Members and all Settlement
10 Administration Costs incurred to the date of nullification.

11
12 I. Certification of the Settlement Class. The Parties stipulate to conditional class
13 certification of the Class for the Class Period for purposes of settlement only. In the
14 event that this Settlement is not approved by the Court, fails to become effective, or is
15 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
16 Defendant from obtaining a complete resolution of the Released Claims, the
17 conditional class certification (obtained for any purpose) shall be void *ab initio* and of
18 no force or effect, and shall not be admissible in any judicial, administrative or arbitral
19 proceeding for any purpose or with respect to any issue, substantive or procedural.
20

21 J. Tax Liability. The Parties make no representations as to the tax treatment or legal
22 effect of the payments called for, and Class Members and/or Aggrieved Employees are
23 not relying on any statement or representation by the Parties in this regard. Class
24 Members and/or Aggrieved Employees understand and agree that they will be
25 responsible for the payment of any taxes and penalties assessed on the Individual
26 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
27
28

1 Settlement described and will be solely responsible for any penalties or other
2 obligations resulting from their personal tax reporting of Individual Settlement
3 Payments and/or Aggrieved Employees' individual shares of the PAGA Settlement.
4

5 K. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
6 the "acknowledging party" and each Party to this Agreement other than the
7 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision
8 of this Agreement, and no written communication or disclosure between or among the
9 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
10 such communication or disclosure constitute or be construed or be relied upon as, tax
11 advice within the meaning of United States Treasury Department circular 230 (31 CFR
12 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
13 her or its own, independent legal and tax counsel for advice (including tax advice) in
14 connection with this Agreement, (b) has not entered into this Agreement based upon
15 the recommendation of any other Party or any attorney or advisor to any other Party,
16 and (c) is not entitled to rely upon any communication or disclosure by any attorney
17 or adviser to any other party to avoid any tax penalty that may be imposed on the
18 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
19 any limitation that protects the confidentiality of any such attorney's or adviser's tax
20 strategies (regardless of whether such limitation is legally binding) upon disclosure by
21 the acknowledging party of the tax treatment or tax structure of any transaction,
22 including any transaction contemplated by this Agreement.
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1 L. Preliminary Approval Motion. At the earliest practicable time, Plaintiffs shall file with
2 the Court a Motion for Order Granting Preliminary Approval and supporting papers,
3 which shall include this Settlement Agreement.

4
5 M. Settlement Administrator. The Settlement Administrator shall be responsible for:
6 establishing and administering the QSF; calculating, processing and mailing payments
7 to the Class Representatives, Class Counsel, LWDA and Class Members; printing and
8 mailing the Notice Packets to the Class Members as directed by the Court; receiving
9 and reporting the objections and requests for exclusion; calculating, deducting and
10 remitting all legally required taxes from Individual Settlement Payments and
11 distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual
12 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
13 Settlement; processing and mailing tax payments to the appropriate state and federal
14 taxing authorities; providing declaration(s) as necessary in support of preliminary
15 and/or final approval of this Settlement; and other tasks as the Parties mutually agree
16 or the Court orders the Settlement Administrator to perform. The Settlement
17 Administrator shall keep the Parties timely apprised of the performance of all
18 Settlement Administrator responsibilities by among other things, sending a weekly
19 status report to the Parties' counsel stating the date of the mailing, the of number of
20 Elections Not to Participate in Settlement it receives (including the numbers of valid
21 and deficient), and number of objections received.

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23
24
25 N. Notice Procedure.

26
27 1. Class Data. No later than ten (10) business days after the Preliminary
28 Approval Date, Defendant shall provide the Settlement Administrator with the

1 Class Data for purposes of preparing and mailing Notice Packets to the Class
2 Members.

3
4 2. Notice Packets.

- 5 a) The Notice Packet shall contain the Notice of Class Action Settlement
6 in a form substantially similar to the form attached as Exhibit A. The
7 Notice of Class Action Settlement shall inform Class Members and
8 Aggrieved Employees that they need not do anything in order to
9 receive an Individual Settlement Payment and/or Aggrieved
10 Employees' individual shares of the PAGA Settlement and to keep the
11 Settlement Administrator apprised of their current mailing address, to
12 which the Individual Settlement Payments and/or Aggrieved
13 Employees' individual shares of the PAGA Settlement will be mailed
14 following the Funding Date. The Notice of Class Action Settlement
15 shall set forth the release to be given by all members of the Class who
16 do not request to be excluded from the Settlement Class and/or
17 Aggrieved Employees' in exchange for an Individual Settlement
18 Payment and/or Aggrieved Employees' individual shares of the PAGA
19 Settlement, the number of Workweeks worked by each Class Member
20 during the Class Period and PAGA Period, if any, and the estimated
21 amount of their Individual Settlement Payment if they do not request
22 to be excluded from the Settlement and each Aggrieved Employee's
23 share of the PAGA Settlement, if any. The Settlement Administrator
24
25
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1 shall use the Class Data to determine Class Members' Workweeks and
2 PAGA Workweeks.

3
4 b) The Notice Packet's mailing envelope shall include the following
5 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
6 ENTITLED TO PARTICIPATE IN A CLASS ACTION
7 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
8 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
9 NOTICE."
10

11 3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data,
12 the Settlement Administrator will perform a search based on the National
13 Change of Address Database to update and correct any known or identifiable
14 address changes. No later than fourteen (14) calendar days after receiving the
15 Class Data from Defendant, the Settlement Administrator shall mail and email
16 copies of the Notice Packet to all Class Members via regular First-Class U.S.
17 Mail and electronic mail. The Settlement Administrator shall exercise its best
18 judgment to determine the current mailing address for each Class Member.
19 The address identified by the Settlement Administrator as the current mailing
20 address shall be presumed to be the best mailing address for each Class
21 Member.
22

23
24 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
25 Administrator as non-delivered on or before the Response Deadline shall be
26 re-mailed to any forwarding address provided. If no forwarding address is
27 provided, the Settlement Administrator shall promptly attempt to determine a
28

1 correct address by lawful use of skip-tracing, or other search using the name,
2 address and/or Social Security number of the Class Member involved, and
3 shall then perform a re-mailing, if another mailing address is identified by the
4 Settlement Administrator. In addition, if any Notice Packets, which are
5 addressed to Class Members who are currently employed by Defendant, are
6 returned to the Settlement Administrator as non-delivered and no forwarding
7 address is provided, the Settlement Administrator shall notify Defendant.
8 Defendant will request that the currently employed Class Member provide a
9 corrected address, and transmit to the Administrator any corrected address
10 provided by the Class Member. Class Members who received a re-mailed
11 Notice Packet shall have their Response Deadline extended fifteen (15) days
12 from the original Response Deadline.
13
14

- 15 5. Disputes Regarding Individual Settlement Payments. Class Members will
16 have the opportunity, should they disagree with Defendant's records regarding
17 the start and end dates of employment to provide documentation and/or an
18 explanation to show contrary dates. If there is a dispute, the Settlement
19 Administrator will consult with the Parties to determine whether an
20 adjustment is warranted. The Settlement Administrator shall determine the
21 eligibility for, and the amounts of, any Individual Settlement Payments under
22 the terms of this Agreement. The Settlement Administrator's determination
23 of the eligibility for and amount of any Individual Settlement Payment shall
24 be binding upon the Class Member and the Parties.
25
26
27
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1 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
2 by the Settlement Administrator concerning the administration of the
3 Settlement will be resolved by the Court under the laws of the State of
4 California. Before any such involvement of the Court, counsel for the Parties
5 will confer in good faith to resolve the disputes without the necessity of
6 involving the Court.

7
8 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
9 Packet shall state that Class Members who wish to exclude themselves from
10 the Settlement must submit a written request for exclusion by the Response
11 Deadline. The written request for exclusion must state that the Class Member
12 wishes to exclude himself or herself from the Settlement and (1) must contain
13 the name, address, and the last four digits of the Social Security number of the
14 person requesting exclusion; (2) must be signed by the Class Member;
15 (3) must be postmarked or fax stamped by the Response Deadline and
16 returned to the Settlement Administrator at the specified address or fax
17 telephone number; and (4) contain a typewritten or handwritten notice stating
18 in substance: "I wish to opt out of the settlement of the class action lawsuit
19 entitled *Espinoza v. Love's Country Stores of California*, currently pending
20 the San Bernardino Superior Court, Case No. CIV-DS-2016481. I understand
21 that by requesting to be excluded from the settlement, I will receive no money
22 from the Settlement described in this Notice." The request for exclusion will
23 not be valid if it is not timely submitted, if it is not signed by the Class
24 Member, or if it does not contain the name and address and last four digits of
25 the Social Security number of the Class Member. The date of the postmark
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1 on the mailing envelope or fax stamp on the request for exclusion shall be the
2 exclusive means used to determine whether the request for exclusion was
3 timely submitted. Any Class Member who requests to be excluded from the
4 Settlement Class will not be entitled to an Individual Settlement Payment and
5 will not be otherwise bound by the terms of the Settlement or have any right
6 to object, appeal or comment thereon. However, any Class Member that
7 submits a timely request for exclusion that is also a member of the Aggrieved
8 Employees will still receive their pro rata share of the PAGA Settlement, as
9 specified below, and in consideration, will be bound by the Release by the
10 Aggrieved Employees as set forth herein. Settlement Class Members who fail
11 to submit a valid and timely written request for exclusion on or before the
12 Response Deadline shall be bound by all terms of the Settlement and any final
13 judgment entered in this Action if the Settlement is approved by the Court.
14 No later than fourteen (14) calendar days after the Response Deadline, the
15 Settlement Administrator shall provide counsel for the Parties with a final list
16 of the Class Members who have timely submitted written requests for
17 exclusion. At no time shall any of the Parties or their counsel seek to solicit
18 or otherwise encourage members of the Class to submit requests for exclusion
19 from the Settlement.
20
21
22

- 23 8. Objections. The Notice of Class Action Settlement contained in the Notice
24 Packet shall state that Class Members who wish to object to the Settlement
25 may submit to the Settlement Administrator a written statement of objection
26 (“Notice of Objection”) by the Response Deadline. The postmark date of
27 mailing shall be deemed the exclusive means for determining that a Notice of
28

1 Objection was served timely. The Notice of Objection must be signed by the
2 Settlement Class Member and state: (1) the case name and number; (2) the
3 name of the Settlement Class Member; (3) the address of the Settlement Class
4 Member; (4) the last four digits of the Settlement Class Member's Social
5 Security number; (4) the basis for the objection; and (5) if the Settlement Class
6 Member intends to appear at the Final Approval/Settlement Fairness Hearing.
7 Class Members who fail to make objections in writing in the manner specified
8 above may still make their objections orally at the Final Approval/Settlement
9 Fairness Hearing with the Court's permission. Settlement Class Members will
10 have a right to appear at the Final Approval/Settlement Fairness Hearing to
11 have their objections heard by the Court. At no time shall any of the Parties
12 or their counsel seek to solicit or otherwise encourage Class Members to file
13 or serve written objections to the Settlement or appeal from the Order and
14 Final Judgment. Class Members who submit a written request for exclusion
15 may not object to the Settlement. Class Members may not object to the PAGA
16 Settlement.
17
18
19

20 O. Funding and Allocation of the Gross Settlement Amount. Defendant is required to pay
21 the Gross Settlement Amount on or before the Funding Date, plus any employer's
22 share of payroll taxes as mandated by law within the time specified herein.
23

24 1. Individual Settlement Payments. Individual Settlement Payments shall be
25 paid from the Net Settlement Amount and shall be paid pursuant to the
26 formula set forth herein. Using the Class Data, the Settlement Administrator
27 shall add up the total number of Workweeks for all Class Members. The
28

1 respective Workweeks for each Class Member will be divided by the total
2 Workweeks for all Class Members, resulting in the Payment Ratio for each
3 Class Member. Each Class Member's Payment Ratio will then be multiplied
4 by the Net Settlement Amount to calculate each Class Member's estimated
5 Individual Settlement Payments. Each Individual Settlement Payment will be
6 reduced by any legally mandated employee tax withholdings (e.g., employee
7 payroll taxes, etc.). Individual Settlement Payments for Class Members who
8 submit valid and timely requests for exclusion will be redistributed to
9 Settlement Class Members who do not submit valid and timely requests for
10 exclusion on a pro rata basis based on their respective Payment Ratios.

11
12
13 2. Calculation of Individual Payments to the Aggrieved Employees. Using the
14 Class Data, the Settlement Administrator shall add up the total number of
15 PAGA Workweeks for all Aggrieved Employees during the PAGA Period.
16 The respective PAGA Workweeks for each Aggrieved Employee will be
17 divided by the total PAGA Workweeks for all Aggrieved Employees,
18 resulting in the "PAGA Payment Ratio" for each Aggrieved Employee. Each
19 Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the
20 Aggrieved Employee Payment to calculate each Aggrieved Employee's
21 estimated share of the PAGA Settlement.
22

23
24 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
25 Settlement Payments shall be allocated and treated as follows: 25% as wages
26 ("Wage Portion"); 75% as penalties and interest ("Non-Wage Portion"). The
27 Wage Portion is subject to wage withholdings and shall be reported on IRS
28

1 Form W-2. The Non-Wage Portion shall not be subject to wage withholdings
2 and shall be reported on IRS Form 1099.

3
4 4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved
5 Employee Settlement Payments shall be allocated and treated as 100%
6 penalties and shall be reported on IRS Form 1099.

7
8 5. No Credit Toward Benefit Plans. The Individual Settlement Payments and
9 individual shares of the PAGA Settlement made to Settlement Class Members
10 and/or Aggrieved Employees under this Settlement Agreement, as well as any
11 other payments made pursuant to this Settlement Agreement, will not be
12 utilized to calculate any additional benefits under any benefit plans to which
13 any Class Members may be eligible, including, but not limited to profit-
14 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,
15 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the
16 Parties' intention that this Settlement Agreement will not affect any rights,
17 contributions, or amounts to which any Class Members may be entitled under
18 any benefit plans.
19

20
21 6. All monies received by Settlement Class Members under the Settlement which
22 are attributable to wages shall constitute income to such Settlement Class
23 Members solely in the year in which such monies actually are received by the
24 Settlement Class Members. It is the intent of the Parties that Individual
25 Settlement Payments and individual shares of the PAGA Settlement provided
26 for in this Settlement agreement are the sole payments to be made by Defendant
27 to Settlement Class Members and/or Aggrieved Employees in connection with
28

1 this Settlement Agreement, with the exception of Plaintiffs, and that the
2 Settlement Class Members and/or Aggrieved Employees are not entitled to any
3 new or additional compensation or benefits as a result of having received the
4 Individual Settlement Payments and/or their shares of the PAGA Settlement.
5

6 7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments
7 shall be mailed by regular First-Class U.S. Mail to Settlement Class Members'
8 and/or Aggrieved Employees last known mailing address no later than fifteen
9 (15) calendar days after the Funding Date.
10

11 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved
12 Employees shall remain valid and negotiable for one hundred and eighty (180)
13 days from the date of their issuance. If a Settlement Class Member and/or
14 Aggrieved Employee does not cash his or her settlement check within 90 days,
15 the Settlement Administrator will send a letter to such persons, advising that
16 the check will expire after the 180th day, and invite that Settlement Class
17 Member and/or Aggrieved Employee to request reissuance in the event the
18 check was destroyed, lost or misplaced. In the event an Individual Settlement
19 Payment and/or Aggrieved Employee's individual share of the PAGA
20 Settlement check has not been cashed within one hundred and eighty (180)
21 days, all funds represented by such uncashed checks, plus any interest accrued
22 thereon, shall be distributed consistent with California Code of Civil
23 Procedure Section 384 as follows: to The Children's Advocacy Institute
24 (CAI), founded at the nonprofit University of San Diego School of Law in
25
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27
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1 1989. Class Counsel, Defendant's counsel, Plaintiffs and Defendant do not
2 have any interest, pecuniary or otherwise, in CAI.

3
4 9. Class Representative Service Award. In addition to the Individual Settlement
5 Payment and their individual share of the PAGA Settlement to be paid to
6 Plaintiffs, Plaintiffs will apply to the Court for an award of not more than
7 \$10,000 each, as the Class Representative Service Award. Defendant does
8 not presently intend to oppose a Class Representative Service Award of not
9 more than \$10,000 for each Plaintiff. In the event the Court reduces or does
10 not approve of the requested Service Award payments, Plaintiffs shall not
11 have the right to revoke the settlement and it will remain binding. Plaintiffs
12 each retain the right to appeal any denial of a requested Service Award. The
13 Settlement Administrator shall pay the Class Representative Service Award,
14 either in the amount stated herein if approved by the Court or some other
15 amount as approved by the Court, to Plaintiffs from the Total Settlement
16 Amount no later than ten (10) calendar days after the Funding Date. Any
17 portion of the requested Class Representative Service Awards that are not
18 awarded to the Class Representatives shall be part of the Net Settlement
19 Amount and shall be distributed to Settlement Class Members as provided in
20 this Agreement. The Settlement Administrator shall issue an IRS Form 1099
21 — MISC to Plaintiffs for their Class Representative Service Award. Plaintiffs
22 shall be solely and legally responsible to pay any and all applicable taxes on
23 their Class Representative Service Award and shall hold harmless the
24 Released Parties from any claim or liability for taxes, penalties, or interest
25 arising as a result of the Class Representative Service Awards. The Class
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1 Representative Service Award shall be in addition to Plaintiffs' Individual
2 Settlement Payment as a Settlement Class Member. Approval of this
3 Settlement shall not be conditioned on Court approval of the requested amount
4 of the Class Representative Service Award. In the event that the Court reduces
5 or does not approve the requested Class Representative Service Award,
6 Plaintiffs shall not have the right to revoke the Settlement, and it will remain
7 binding.
8

- 9
10 10. Class Counsel Award. Defendant understands a motion by Class Counsel for
11 attorneys' fees not to exceed one-third of the Total Settlement Amount
12 currently estimated to be \$700,000.00 plus costs and expenses supported by
13 declaration not to exceed Dollars (\$30,000), from the Total Settlement
14 Amount will be filed. Any portion of the requested Class Counsel Award that
15 is not awarded to Class Counsel shall be part of the Net Settlement Amount
16 and shall be distributed to Settlement Class Members as provided in this
17 Agreement. The Settlement Administrator shall allocate and pay the Class
18 Counsel Award to Class Counsel from the Total Settlement Amount no later
19 than five (5) calendar days after the Funding Date. Class Counsel shall be
20 solely and legally responsible to pay all applicable taxes on the payment made
21 pursuant to this paragraph. The Settlement Administrator shall issue an IRS
22 Form 1099 — MISC to Class Counsel for the payments made pursuant to this
23 paragraph. In the event the Court reduces or does not approve of the requested
24 Class Counsel Award payments, Class Counsel shall not have the right to
25 revoke the settlement and it will remain binding. Class Counsel each retain
26
27
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1 the right to appeal any denial of any portion of a request for a Class Counsel
2 Award.

3
4 11. PAGA Settlement. Eighty Thousand Dollars (\$80,000) shall be allocated
5 from the Gross Settlement Amount for settlement of claims for civil penalties
6 under the Private Attorneys General Act of 2004 (“PAGA Settlement”). The
7 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA
8 Settlement (\$60,000) to the California Labor and Workforce Development
9 Agency no later than twenty-five (25) calendar days after the Funding Date
10 (hereinafter “LWDA Payment”). Twenty-five (25%) of the PAGA Settlement
11 (\$20,000) will be distributed to the Aggrieved Employees as described in this
12 Agreement (hereinafter “Aggrieved Employee Payment”). For purposes of
13 distributing the PAGA Settlement to the Aggrieved Employees, each
14 Aggrieved Employee shall receive their pro-rata share of the Aggrieved
15 Employee Payment using the PAGA Payment Ratio as defined above.
16

17
18 12. Settlement Administration Costs. The Settlement Administrator shall be paid
19 for the costs of administration of the Settlement from the Total Settlement
20 Amount. The estimate of the Settlement Administration Costs is \$18,000.
21 The Settlement Administrator shall be paid the Settlement Administration
22 Costs no later than twenty-five (25) calendar days after the Funding Date.
23

24 P. Final Approval Motion. Class Counsel and Plaintiffs shall use best efforts to file with
25 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
26 twenty-eight (28) days following the expiration of the Response Deadline, which
27 motion shall request final approval of the Settlement and a determination of the
28

1 amounts payable for the Class Representative Service Award, the Class Counsel
2 Award, the PAGA Settlement, and the Settlement Administration Costs.

3
4 1. Declaration by Settlement Administrator. No later than fourteen (14) days
5 after the Response Deadline, the Settlement Administrator shall submit a
6 declaration in support of Plaintiffs' motion for final approval of this
7 Settlement detailing the number of Notice Packets mailed and re-mailed to
8 Class Members, the number of undeliverable Notice Packets, the number of
9 timely requests for exclusion, the number of objections received, the amount
10 of the average Individual Settlement Payment and highest Individual
11 Settlement Payment, the Settlement Administration Costs, and any other
12 information as the Parties mutually agree or the Court orders the Settlement
13 Administrator to provide.
14

15
16 2. Final Approval Order and Judgment. Class Counsel shall present an Order
17 Granting Final Approval of Class Action Settlement to the Court for its
18 approval, and Judgment thereon, at the time Class Counsel files the Motion
19 for Final Approval.
20

21 N. Cooperation. The Parties and their counsel will cooperate with each other and use
22 their best efforts to implement the Settlement.
23

24 O. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Actions,
25 except such proceedings necessary to implement and complete the Settlement, pending
26 the Final Approval/Settlement Fairness Hearing to be conducted by the Court
27
28

1 P. Amendment or Modification. This Agreement may be amended or modified only by
2 a written instrument signed by counsel for all Parties or their successors-in-interest,
3 and ultimately approved by the Court.

4
5 Q. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
6 Agreement among these Parties, and no oral or written representations, warranties or
7 inducements have been made to any Party concerning this Agreement or its Exhibit
8 other than the representations, warranties and covenants contained and memorialized
9 in this Agreement and its Exhibit.

10
11 R. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
12 represent they are expressly authorized by the Parties whom they represent to negotiate
13 this Agreement and to take all appropriate Action required or permitted to be taken by
14 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
15 documents required to effectuate the terms of this Agreement. The persons signing
16 this Agreement on behalf of Defendant represents and warrants that he/she is
17 authorized to sign this Agreement on behalf of Defendant. Plaintiffs represent and
18 warrant that they are authorized to sign this Agreement and that they have not assigned
19 any claim, or part of a claim, covered by this Settlement to a third-party.

20
21
22 S. No Public Comment: The Parties and their counsel agree that they will not issue any
23 press releases, initiate any contact with the press, respond to any press inquiry, or have
24 any communication with the press about the fact, amount or terms of the Settlement
25 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
26 of its terms for any marketing or promotional purposes. Nothing herein will restrict
27 Class Counsel from including publicly available information regarding this settlement
28

1 in future judicial submissions regarding Class Counsel's qualifications and experience.
2 Further, Class Counsel will not include, reference or use the Settlement Agreement for
3 any marketing or promotional purposes, or for attempting to influence business
4 relationships at Saver's locations, either before or after the Motion for Preliminary
5 Approval is filed.
6

7 T. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
8 to the benefit of, the successors or assigns of the Parties, as previously defined.
9

10 U. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
11 shall be governed by and interpreted according to the laws of the State of California.
12

13 V. Counterparts. This Agreement may be executed in one or more counterparts. All
14 executed counterparts and each of them shall be deemed to be one and the same
15 instrument provided that counsel for the Parties to this Agreement shall exchange
16 among themselves copies or originals of the signed counterparts.
17

18 W. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
19 is a fair, adequate and reasonable settlement of this Action and have arrived at this
20 Settlement after extensive arms-length negotiations, taking into account all relevant
21 factors, present and potential.
22

23 X. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
24 respect to the interpretation, implementation and enforcement of the terms of this
25 Agreement and all orders and judgments entered in connection therewith, and the
26 Parties and their counsel submit to the jurisdiction of the Court for purposes of
27
28

1 interpreting, implementing and enforcing the settlement and all orders and judgments
2 entered in connection with this Agreement.

3
4 Y. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
5 the Court shall first attempt to construe the provisions valid to the fullest extent
6 possible consistent with applicable precedents so as to define all provisions of this
7 Agreement valid and enforceable.

8
9 Z. No Unalleged Claims. Plaintiffs and Class Counsel represent that they do not currently
10 intend to pursue any claims against the Released Parties, including, but not limited to,
11 any and all claims relating to or arising from Plaintiffs' employment with Defendant,
12 regardless of whether Class Counsel is currently aware of any facts or legal theories
13 upon which any claims or causes of action could be brought against Released Parties,
14 including those facts or legal theories alleged in the operative complaint in this Action.
15 The Parties further acknowledge, understand and agree that this representation is
16 essential to the Agreement and that this Agreement would not have been entered into
17 were it not for this representation.
18

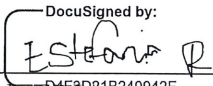
19
20 AA. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
21 certification for purposes of this settlement only.

22
23 BB. No Admissions by the Parties. Plaintiffs have claimed and continue to claim that the
24 Released Claims have merit and give rise to liability on the part of Defendant.
25 Defendant claims that the Released Claims have no merit and do not give rise to
26 liability. This Agreement is a compromise of disputed claims. Nothing contained in
27 this Agreement and no documents referred to and no action taken to carry out this
28

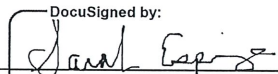
Agreement may be construed or used as an admission by or against the Defendant or Plaintiffs or Class Counsel as to the merits or lack thereof of the claims asserted. Other than as may be specifically set forth herein, each Party shall be responsible for and shall bear its/his own attorney's fees and costs.

IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFFS:

DATED: 9/21/2021

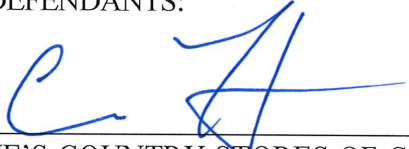
DocuSigned by:

 ESTEFANIA RENTERIA
D4F9D21B240942F...

DATED: 9/20/2021

DocuSigned by:

 SARAH ESPINOZA
1B94F7B11B94F7B1...

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

DATED: 10/20/21


 LOVE'S COUNTRY STORES OF CALIFORNIA, A
 CALIFORNIA CORPORATION

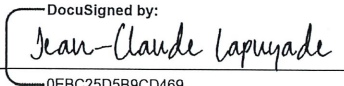
CHRIS FUNK
 Printed Name

MANAGER OF CLAIMS
 Title

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: 9/20/2021

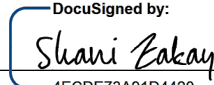
JCL LAW FIRM, A.P.C.

By: 
0EBC25D5B9CD469...

Attorneys for Plaintiffs and the Settlement Class
 Members

1
2
3 DATED: 9/20/2021
4 _____

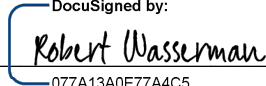
ZAKAY LAW GROUP, APLC

5 By: 
6 DocuSigned by:
7 4ECDE73A91D4420...

8 Attorneys for Plaintiffs and the Settlement Class
9 Members

10 DATED: 9/20/2021
11 _____

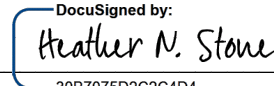
Mayall Hurley, PC

12 By: 
13 DocuSigned by:
14 077A13A0E77A4C5...

15 Attorneys for Plaintiffs and the Settlement Class
16 Members

17 DATED: 9/23/2021
18 _____

HEATHER N. STONE
DINSMORE & SCHOHL LLP

19 By: 
20 DocuSigned by:
21 30B7075D2C2C4D4...

Attorneys for Defendants

22 4828-2706-0977, v. 1
23
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27
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EXHIBIT B

ORIGINAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

SARAH P. ESPINOZA,

Plaintiffs,

vs.

LOVE'S COUNTRY STORES OF
CALIFORNIA;
and DOES 1-100, inclusive,

Defendants.

Case No.: CIVDS2016481

ORDER GRANTING PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

NOV 16 2021

BY

JESSICA MORALES, DEPUTY

Plaintiffs' Estefania Renteria and Sarah Espinoza's (collectively "Plaintiffs") unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval") came on regularly for hearing on November 16, 2021 at 9:00 a.m. in Department S-26 of the above-captioned court, before the Honorable David Cohn. The hearing was conducted telephonically. Jenny D. Baysinger, Shani Zakay, and Jena-Claude Lapuyade appeared on behalf of Plaintiffs and _____ appeared on behalf of Defendant Love's Country Stores of California ("Defendant"). The Court, having fully and carefully reviewed Plaintiffs' Motion for Preliminary Approval, the memorandum and declarations in support thereof, the Stipulation of Settlement of Class Action and PAGA Action and Release of Claims ("Settlement Agreement"), including the proposed Class Notice, hereby makes the following determinations and orders¹:

1. Plaintiffs Estefania Renteria and Sarah Espinoza are preliminarily appointed as Class Representatives.

2. JCL Law Firm, APC, Zakay Law Group, APLC, and Mayall Hurley P.C. are preliminarily approved and appointed as Class Counsel.

///

3. ILYM Group, Inc.

¹ All terms used in this Order Preliminary Approval of Class Action Settlement shall have the same meanings given those terms in the Parties' Stipulation of Settlement of Class Action and PAGA Action and Release of Claims ("Settlement Agreement", "Settlement", or "SA"), a copy which is attached as Exhibit 1 to the Declaration of Jenny D. Baysinger.

BY FAX

1 4. ILYM Group, Inc. is appointed as the Settlement Administrator and shall administer the
2 Settlement in accordance with the terms set forth in the Settlement Agreement and perform the
3 functions set forth therein. The Court also preliminarily approves declared fees and costs of
4 administering the Settlement of up to \$16,763.60.

5 5. The Class of employees covered by the Parties' Settlement consists of all persons
6 Defendant classified as non-exempt employees who are or previously were employed by Defendant in
7 California between May 15, 2019 and May 25, 2021 (the "Class").

8 6. Pursuant to California Civil Procedure section 382, and for purposes of settlement only,
9 the Class is preliminarily and conditionally certified. The Class is estimated to include approximately
10 1,440 individuals who worked 50,296 Workweeks within the Class Period.

11 7. The Court grants preliminary approval of the Settlement between Plaintiff and
12 Defendant, based upon the terms set forth in the Settlement Agreement.

13 a. As to the Class, the Settlement Agreement appears to be fair, adequate and
14 reasonable, and the Court preliminarily approves the terms of the Settlement
15 Agreement.

16 b. The Court approves, as to form and content, the Class Notice, in substantially the
17 form attached as **Exhibit A** to the Settlement Agreement. The Court further
18 approves the procedure by which Class Members may opt out of, and object to, the
19 Settlement as set forth in the Settlement Agreement and the Class Notice.

20 8. The Court directs mailing of the Class Notice in accordance with the terms of the
21 Settlement Agreement and on the schedule set forth below. The Court finds the dates selected for the
22 mailing and distribution of the Class Notice, as set forth below, meet the requirements of due process
23 and provide the best notice practicable under the circumstances and shall constitute due and sufficient
24 notice to all persons entitled thereto.

25 9. Subject to further consideration by the Court at the time of the Final Approval Hearing,
26 the proposed PAGA allocation of \$80,000 and payment to the LWDA of \$60,000 is preliminarily
27 approved. Distribution of \$20,000 to the Aggrieved Employees based on the formula outlined in the
28 Settlement Agreement is also approved.

10. Subject to further consideration by the Court at the time of the Final Approval Hearing, the proposed Class Representative Service Awards of \$10,000 each, 0.476% of the Gross Settlement Amount each (\$20,000 or 0.95% of the GSA, total), to Plaintiffs for each's respective service as Class Representative is preliminarily approved.

11. Subject to further consideration by the Court at the time of the Final Approval Hearing, Class Counsel's request of attorneys' fees in the amount of one-third of the Gross Settlement Amount, presently expected to be \$700,000, allocated 30% to JCL Law Firm, 30% to Zakay Law Group, and 40% to Mayall Hurley, P.C., and declared costs of up to \$30,000, are preliminarily approved.

12. The Court adopts the following dates and deadlines:

Defendant to provide Class Data to the Settlement Administrator.	Within 10 business days of the Court's execution of the Order Granting Preliminary Approval. SA ¶ III.N.1.
Settlement Administrator to mail Class Notice.	Within 14 calendar days of its receipt of the Class Data from Defendant. SA ¶ III.N.3.
Deadline for Class Members to object to, or opt out of, the Settlement.	Within 45 calendar days after the mailing of the Class Notice.
Deadline for Plaintiff to file Motions for Final Approval, Attorneys' Fees, Costs, and Service Payments	Not less than 16 court days before the Final Approval hearing.
Final Approval Hearing.	Not less than 100 days after the Court's execution of the Order Granting Preliminary Approval.

13. A Final Approval hearing on the question of whether the proposed Settlement, attorneys' fees to Class Counsel, and the Class Representatives' Service Payments should be finally approved as fair, reasonable and adequate is scheduled in for 3.8, 2022 at 10:00 (a.m.) / p.m.. The parties to the Agreement are directed to carry out their obligations under the Settlement Agreement.

Dated: 11/16/21

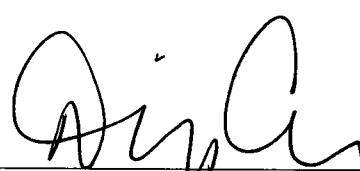

HON. DAVID COHN
SUPERIOR COURT JUDGE

EXHIBIT C

Leilani Edmonds

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Thursday, April 28, 2022 3:58 PM
To: Leilani Edmonds
Subject: Thank you for your Proposed Settlement Submission

04/28/2022 03:57:01 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT D