

1 Larry W. Lee, Esq. (SBN 228175)
Simon L. Yang, Esq. (SBN 260286)
2 **DIVERSITY LAW GROUP, P.C.**
515 South Figueroa Street, Suite 1250
3 Los Angeles, California 90071
Telephone: (213) 488-6555
4
William L. Marder, Esq. (SBN 170131)
5 **POLARIS LAW GROUP LLP**
501 San Benito Street, Suite 200
6 Hollister, California 95023
Telephone: (831) 531-4214
7
Attorneys for Plaintiffs,
8 HOLLY McCARTHY on behalf of herself
and all others similarly situated
9
Carolyn H. Cottrell, Esq. (SBN 166977)
10 Esther L. Bylsma, Esq. (SBN 264208)
SCHNEIDER WALLACE
11 **COTTRELL KONECKY LLP**
2000 Powell Street, Suite 1400
12 Emeryville, California 94608
Telephone: (415) 421-7100
13 Facsimile: (415) 421-7105
14 Attorneys for Plaintiffs,
RACHEL MENDOZA on behalf of herself
15 and all others similarly situated
16
17
18
19
20
21
22
23
24
25
26
27
28

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

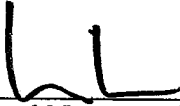
2 PLEASE TAKE NOTICE that on June 8, 2023, at 10:00 a.m., in Department S26 of the
3 Superior Court of the State of California, plaintiffs, Leticia Rodarte, Holly McCarthy, and Rachel
4 Mendoza on behalf of themselves and all others similarly situated will move and hereby do move
5 for Preliminary Approval of the proposed Class Settlement in this case. This motion is unopposed
6 and based on the Stipulation of Class Action Settlement and Settlement Agreement, which is
7 submitted herewith.

8 This motion will be based on this Notice of Motion, the Memorandum of Points and
9 Authorities filed herewith, the Declaration of Michael Nourmand exhibits attached thereto,
10 argument of counsel and upon such other material contained in the file and pleadings of this action.
11

12 DATED: April 12, 2023

THE NOURMAND LAW FIRM, APC

13
14 By:



Michael Nourmand, Esq.
James A. De Sario, Esq.
Attorneys for Plaintiffs and Putative Class

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiffs, Leticia Rodarte, Holly McCarthy, and Rachel Mendoza on behalf of themselves
4 and all others similarly situated ("Plaintiffs") and defendant, The Vons Companies, Inc.
5 ("Defendant") (collectively, "Parties") hereby apply for preliminary approval of the proposed class
6 settlement upon the terms and conditions set forth in the Stipulation of Class Action Settlement
7 and Settlement Agreement ("Settlement Agreement"), a copy of which is attached hereto as
8 Exhibit "1."

9 On February 13, 2020, plaintiff, Leticia Rodarte, filed a Class Action Complaint
10 ("Complaint") alleging claims failure to pay overtime wages; failure to pay minimum wages;
11 failure to provide rest periods; failure to pay all wages upon termination; failure to provide accurate
12 wage statements; and unfair competition ("Rodarte Action"). On September 9, 2020, in the
13 Rodarte Action, plaintiff filed a First Amended Class Action Complaint ("FAC") which added a
14 cause of action for civil penalties under the Private Attorney General Act of 2004 ("PAGA"). On
15 August 6, 2021, in the Rodarte Action, plaintiff filed a Second Amended Class Action Complaint
16 ("SAC") which added a cause of action for failure to provide meal periods. On September 28,
17 2020, plaintiff, Holly McCarthy filed a Class Action Complaint alleging failure to pay sick pay
18 wages; failure to pay overtime wages; failure to provide accurate wage statements; unfair
19 competition; and civil penalties under PAGA ("McCarthy Action"). On May 24, 2021, plaintiff,
20 Rachel Mendoza filed a stand alone PAGA Representative Action ("Mendoza Action"). On March
21 6, 2023, the Parties filed a First Amended Class Action Complaint ("Operative Complaint")
22 adding all plaintiffs, Leticia Rodarte and Rachel Mendoza along with all claims asserted in their
23 respective complaints to the McCarthy Action. The Operative Complaint in the McCarthy Action
24 will be referred to as the "Litigation."

25 In the Litigation, Plaintiffs allege, *inter alia*, that Defendant failed to provide meal and rest
26 periods or compensation in lieu thereof, failed to pay minimum and overtime wages, failed to pay
27 wages upon termination, failed to provide accurate wage statements, failed to pay sick pay wages,
28 and violated the California Business and Professions Code §17200, et seq. Defendant denies each

1 of the allegations asserted in the Litigation, has repeatedly asserted and continues to assert defenses
2 to Plaintiffs' claims and contentions, expressly denies that it engaged in any wrongdoing or has any
3 liability arising out of any of the facts or conduct alleged in the Litigation.

4 Class Counsel engaged in formal and informal discovery which yielded information and
5 documentation concerning the claims set forth in the Litigation, such as obtaining sampling of time
6 and payroll records for the class, Defendant's employee handbook, twenty-four collective
7 bargaining agreements ("CBA"), policies and procedures, total number of class members during
8 the class period, the average hourly rate, etc. Furthermore, counsel for the Parties have
9 investigated the law as applied to the facts discovered regarding the alleged claims of Plaintiffs and
10 potential defenses thereto, and the potential damages claimed by Plaintiffs.

11 Counsel for the Parties engaged in extensive discussions about the strengths and
12 weaknesses of the claims and defenses. Plaintiffs and Defendant undertook two sessions of
13 extensive mediation efforts. The first session took place on December 6, 2021 with Jill R. Sperber,
14 Esq. ("Ms. Sperber"), the Parties were not able to reach a settlement at mediation with Ms.
15 Sperber. The second session took place on February 24, 2022 with Gig Kyriacou, Esq. ("Mr.
16 Kyriacou"), the Parties were not able to reach a settlement at mediation with Mr. Kyriacou. Mr.
17 Kyriacou continued settlement discussion with counsel and eventually the Parties reached a class
18 wide settlement which was eventually memorialized in a Memorandum of Understanding
19 ("MOU") which was executed by the Parties.

20 The Parties concluded that there were benefits associated with settling the Litigation.
21 Specifically, the Parties concluded, after taking into account the sharply disputed factual and legal
22 issues involved in this Litigation, the risks attending further prosecution, the substantial benefits to
23 be received pursuant to the compromise and settlement of the Litigation as set forth in the
24 Settlement Agreement, that settlement on the terms set forth herein is in the best interest of
25 Plaintiffs, the proposed Class and Defendant, and is fair and reasonable.

26 ///

27 ///

28 ///

II. THE SETTLEMENT

Subject to Court approval pursuant to California Code of Civil Procedure §382 and California Rules of Court 3.769, et seq., Plaintiffs and Defendant have agreed to settle the Litigation by agreement upon the terms and conditions and for the consideration set forth in the Settlement Agreement, a copy of which is attached hereto as Exhibit "1." A summary of the terms of the settlement are as follows:

- Defendant will stipulate, for purposes of this settlement only, to certification of a class defined as: All current and former non-exempt employees of Defendant in the State of California during the period of February 13, 2016 through April 30, 2022 excluding employees who worked at the distribution centers and plants, drivers, pharmacists and, through August 7, 2020, non-union employees;
- PAGA Group Members was defined as: All current and former non-exempt employees of Defendant in the State of California during the period of February 13, 2019 through April 30, 2022 excluding employees who worked at the distribution centers and plants, drivers, pharmacists and, through August 7, 2020, non-union employees;
- Defendant will pay a maximum of \$3,812,500, which is referred to herein as the Gross Settlement Amount or Maximum Gross Settlement Amount;
- Class Members will be paid their proportionate share based on the number of workweeks and other factors in accordance with an agreed upon formula, as provided in the Settlement Agreement, they worked during the class period;
- The Settlement Administration costs of approximately \$180,750 will be paid out of the Gross Settlement Amount;
- Class Counsel's attorneys' fees and costs will be paid out of the Gross Settlement Amount;
- Class Counsel will apply for, and Defendant will not oppose, attorneys' fees of \$1,321,250, which represents approximately thirty-five percent of \$3,775,000 and Costs not to exceed \$40,000;

- Class Counsel will apply for, and Defendant will not oppose, an enhancement award of \$10,000 for each named plaintiff, Leticia Rodarte, Holly McCarthy, and Rachel Mendoza for a total of \$30,000. The enhancement award will be paid out of the Gross Settlement Amount;
- Employer's share of payroll taxes estimated at 20% of the amount of wages to be paid to Class Members are included in the Gross Settlement Amount; and
- Defendant has agreed to pay \$100,000 as PAGA penalties, seventy-five percent (75%) or \$75,000 of which will be paid to the LWDA and twenty-five percent (25%) or \$25,000 of which will be distributed to PAGA Group Members. The PAGA penalties will be paid out of the Gross Settlement Amount.

III. THE TWO-STEP APPROVAL PROCESS

Any settlement of class litigation must be reviewed and approved by the court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the class members for their comment or objections. The Manual for Complex Litigation Second states at §30.44 (1985),

A two-step process is followed when considering class settlements . . . if the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

Thus, the preliminary approval of the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, "The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing." 4 Conte & Newberg, Newberg on Class Actions, §11.26 (4th Ed. 2002) (hereinafter "Newberg on Class Actions").

///

1 The procedures for submission of a proposed settlement for preliminary approval is
2 discussed at Newberg on Class Actions, §11.24-11.26. Newberg observes at Section 11.24:

3 When the parties to an action reach a monetary settlement, they will usually prepare
4 and execute a joint stipulation of settlement, which is submitted to the court for
5 preliminary approval. The stipulation should set forth the central terms of the
6 agreement, including but not limited to, the amount of the settlement, form of
7 payment, manner of determining the effective date of settlement, and any recapture
8 clause.

9 The settlement in this case is fair, reasonable, and in the best interest of the class.

10 IV. THE PRESUMPTION OF FAIRNESS

11 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
12 evidence to the contrary is offered. In short, there is a presumption that the negotiations were
13 conducted in good faith. Newberg on Class Actions, §11.51, In re Chicken Anti-Trust Litigation
14 (N.D. Ga. 1980) 560 F. Supp. 857, 962; Pridd v. Edelman (6th Cir. 1989) 883 F. 2d 438, 447; Mars
15 Steel Corp. v. Continental Illinois National Bank and Trust Co. (7th Cir. 1987) 834 F. 2d 677, 682.

16 Courts do not substitute their judgment for that of the proponents, particularly where, as here,
17 settlement has been reached with the participation of experienced counsel familiar with the
18 litigation. Hammon v. Barry (D.D.C. 1990) 752 F. Sup. 1087; Steinberg v. Carey (S.D. N.Y.
19 1979) 470 F. Supp. 471; In re Armored Car Anti-Trust Litigation (N.D. Ga. 1979) 472 F. Supp.
20 1357; Sommers v. Abraham Lincoln Federal Savings & Loan Association (E.D. Pa. 1978) 79
21 F.R.D. 571.

22 While the recommendations of counsel proposing the settlement are not conclusive, the
23 Court can properly take them into account, particularly where, as here, they have been involved in
24 litigation for some period of time, appear to be competent, have experience with this type of
25 litigation, and have obtained substantial data from the opposing party. See Newberg on Class
26 Actions, §11.47.

27 In this case, the settlement was reached after extensive factual and legal research, formal
28 and informal discovery, preparation of damage analysis, and two sessions of mediation with two
experienced class action mediators. The settlement that has been reached, subject to this Court's
approval, is the product of tremendous effort, and a great deal of expense by the Parties and their

1 counsel. The settlement amount is, of course, a compromise figure. However, counsel for
2 Plaintiffs and Defendant are satisfied that this figure is reasonable in light of the risks and expense
3 of continued litigation.

4 **V. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

5 Attached hereto as Exhibit "1" is the Settlement Agreement. Attached to the Settlement
6 Agreement as Exhibit "A" is the proposed Notice of Class Action Settlement ("Class Notice") to
7 be distributed to Class Members. A notice of settlement of a class action "must contain an
8 explanation of the proposed settlement and procedures for class members to follow in filing written
9 objections to it and in arranging to appear at the settlement hearing and state any objections to the
10 proposed settlement." California Rules of Court 3.769(f). The proposed Class Notice satisfies
11 these requirements.

12 The Parties respectfully request that this Court approve the above-referenced Class Notice
13 and dissemination of the Class Notice to the Class Members, consistent with the manner and
14 timing as set forth in the Settlement Agreement. The Parties have agreed to use CPT Group, Inc.,
15 an experienced Settlement Administrator, to administer the settlement. The administration costs
16 will be paid out of the Gross Settlement Amount. It is requested that the Court appoint CPT
17 Group, Inc. to serve as the Settlement Administrator.

18 **VI. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON**
19 **OBJECTIVE EVIDENCE**

20 **A. The Settlement Was Negotiated at Arms Length and Not Collusive**

21 The settlement that has been reached, subject to this Court's approval, is the product of
22 substantial effort by the Parties and their counsel. The settlement was reached after extensive
23 factual and legal investigation and research, numerous discussions, exchanges of documents and
24 information, correspondence, and three sessions of mediation. The settlement amount is, of
25 course, a compromise figure. It took into account the risks related to liability, damages, and all the
26 defenses asserted by Defendant.

27 Plaintiffs assert that the wage and hour claims and the claims for resulting penalties would
28 be certified. Plaintiffs' counsel reviewed documents produced by Defendant, including but not

1 limited to CBAs/employee handbooks, sampling of payroll records for the Class, etc. and based
2 thereon reasonably believed that Plaintiffs would have a significant chance of certifying the class.

3 On the other hand, Defendant has argued that Plaintiffs cannot meet the requirements of
4 class certification. In particular, Defendant believes that Plaintiffs would face difficulty in
5 certifying the class because meal and rest breaks were provided, Defendant did not deter employees
6 from taking meal and rest breaks, Defendant's meal and rest break policies were compliant, Any
7 claim for regular rate would be futile in light of the CBA and Labor Code §514 and Defendant's
8 rounding was neutral. Defendant further contends that class certification would not be warranted
9 because individual liability issues predominate Plaintiffs' claims.

10 While Plaintiffs believe in their chance of success of certifying the claims, Plaintiffs
11 recognized the potential risk, expense and complexity posed by further litigation. Litigating
12 Plaintiffs' claims in this Litigation— claims that involve numerous Class Members during the Class
13 Period— would require substantial additional preparation and discovery and ultimately would
14 involve the deposition and presentation of numerous witnesses (including expert witnesses), as
15 well as the consideration, preparation and analysis of expert reports. Therefore, should litigation
16 have progressed any further, there would have been significant expense incurred by each side.

17 Again, Plaintiffs and Defendant have very strong positions on liability in this case.
18 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in
19 Plaintiffs' Operative Complaint, and further denies that, for any purpose other than that of settling
20 this lawsuit, this action is appropriate for class treatment. In light of the sharply contested legal
21 and factual issues, the risks of continued litigation, and substantial benefits to Class Members
22 under the Settlement, the terms and conditions of this class settlement are fair and reasonable to all
23 sides.

24 **B. The Settlement Amount is Well Within Range of Reasonableness**

25 The settlement amount reached in this case provides significant recovery to participating
26 class members and easily falls within the range of reasonableness.

27 Rounding Claim: Plaintiffs' failure to pay minimum and overtime wage claims were
28 partially based on the assertion that Defendant unevenly rounded its employees time which, in the

1 aggregate, resulted in underpayment of wages to employees for all hours worked. Defendant
2 identified approximately 62,604 class members and provided a sampling of time and payroll
3 records for approximately 400 employees. Plaintiff analyzed 143,294 shifts on behalf 400
4 employees and determined that there were 346 net underpaid hours, that is, out of 8,269.16 hours
5 worked during the 143,294 shifts, there was a net underpayment of 346 hours. Based on these
6 metrics, Plaintiffs determined that Defendant's rounding practice was neutral.

7 Regular Rate Claim: Plaintiffs contend that Defendant was required to pay employees a
8 premium wage at the regular rate of pay when earning other forms of remuneration during the same
9 pay period and include other forms of remuneration to determine the regular rate of pay when
10 employee worked overtime hours and concurrently earned other forms of remuneration during the
11 same pay period. This claim is limited to the time period of February 13, 2016 to September 30,
12 2019. It is estimated based on the sampling of time and payroll records 209 employees were not
13 properly paid overtime wages as a result of Defendant's failure to include all forms of
14 remuneration in calculating the regular rate. This equates to 52% of the employees being harmed.
15 $32,554$ (number of employees underpaid) x $\$6.75$ (average underpayment per employee) =
16 $\$219,739.50$. Plaintiffs also contend that Defendant failed to pay premium wages at the regular
17 rate. This claim is limited to the time period of February 14, 2016 to September 30, 2016. It is
18 estimated based on the sampling of time and payroll records that 33 employees were not paid
19 premium wages at the regular rate. This equates to a 8.25% violation rate. $5,165$ (number of
20 employees underpaid) x $\$.30$ (average underpayment per employee) = $\$1,549.50$. Total exposure
21 for regular rate is $\$221,289$. Defendant argued that these claims are futile based on its CBAs and
22 Labor Code §514.

23 Sick Pay Wages: Plaintiffs contend that Defendant failed to pay sick pay at the regular rate.
24 It was determined that during the 2020 calendar year Defendant failed to pay sick pay at the regular
25 rate. Within the 2020 calendar year, based on the sampling of time and payroll records, there were
26 53 out of 400 employees (.13%) who were underpaid sick leave with a total principal damages of
27 $\$773.00$ ($\$14.58$ per employee). $10,434$ (approximate number of employee who worked in 2020) x
28

1 .13 (violation rate) = 1,356 x \$14.58 (average amount underpaid sick leave) = \$19,776.60 exposure
2 for sick leave wages.

3 Recovery of Meal Breaks: The sampling of time records demonstrated that there were short
4 meal breaks, late meal breaks and missed meal breaks for employee who worked shifts greater than
5 six hours. The violation rate for meal breaks is 5.3%. 21,047,183 (total shifts greater than six
6 hours during the class period) x 5.3% (violation rate) = 1,115,501 (shifts with at least one meal
7 break violation) x \$16.50 (average hourly rate) = \$18,405,766.50. The sampling of time and
8 payroll records confirmed that Defendant paid premium wages for non-compliant meal breaks.
9 However, it was determined that Defendant paid premium wages for only 18% of the meal break
10 violations. \$18,405,766.50 (exposure for meal break violations) x .18 (meal break premiums paid)
11 = \$3,313,037.97. \$18,405,766.50 (exposure for meal break violations) - \$3,313,037.97 (meal break
12 premiums paid) = \$15,092,728.53 total exposure for meal break violations. Defendant contends
13 that it had compliant meal break policy and practice and it did not deter employees from taking
14 their meal breaks.

15 Recovery of Rest Breaks - Plaintiffs contend that they were not provided with a third rest
16 break when working shifts greater than ten hours. 709,259 (number of shifts when an employee
17 would have been entitled to a third rest break) x 1 (100% violation rate) = 709,259 x \$16.50
18 (average hourly rate) = \$11,702,773.50 exposure for rest break violation. Defendant contends that
19 it had compliant rest break policy and practice and it did not deter employees from taking their rest
20 breaks.

21 Recovery of Penalties: Plaintiffs contend that they would have been entitled to recover
22 penalties for Defendant's failure to issue compliant wage statements under California Labor Code
23 §226(e) and for Defendant's failure to issue all earned wages immediately upon termination or
24 within 72 hours of resignation under California Labor Code §§ 201, 202 and 203. The penalties
25 are derivative of the wage and hour claims. As a result of Defendant's failure to provide compliant
26 wage statements each pay period, each aggrieved employee could recover up to a maximum of a
27 \$4,000.00 aggregate penalty pursuant to Labor Code §226(e), depending on the number of pay
28 periods she or he was issued a non-compliant wage statement. As a result of Defendant's failure to

1 pay all earned wages immediately upon termination or within 72 hours of resignation, each former
2 aggrieved employee could recover up to a maximum of a 30 day penalty. However, there are
3 certain inherent risks associated with these claims. With respect to the wage statement claim, it
4 commands a one year statute of limitations period, which would significantly weigh on this claim.
5 With respect to the waiting time penalty claim, Plaintiffs anticipated that Defendant would argue
6 that the Labor Code requires that there be a willful showing that the employer knew of its
7 obligation and intentionally refused to act. Baker v. American Horticulture Supply, Inc. (2010)
8 186 Cal.App.4th 1059, 1076.

9 • Wage Statement Penalties - There are approximately 2,166,856 pay periods with a
10 wage statement violation which equates to \$132,004.220 exposure for wage statement violations.

11 • Waiting Time Penalties - There are approximately 30,519 former employees who
12 fall within the liability period for this claim multiplied by \$3,960 (\$16.50 average hourly rate x 8
13 hours = \$132 daily rate x 30 days = \$3,960) provides an exposure of approximately \$120,855,240.

14 • PAGA Civil Penalties - There are approximately 2,166,856 pay periods during the
15 relevant liability period. Assuming that there was at least one underlying labor code violation per
16 pay period per employee who falls within the relevant liability period, the PAGA exposure is
17 approximately \$216,685,600.

18 Plaintiffs' counsel obtained a Gross Settlement Amount of \$3,812,500. Class Counsel
19 considers this to be an excellent settlement for class members, when taking into account all issues
20 and risks related to liability, class certification, and considering the case law regarding fair,
21 reasonable, and adequate settlements. Rebney v. Wells Fargo Bank (1990) 220 Cal.App.3d 1117,
22 1139 ["Compromise is inherent and necessary in the settlement process. . .even if the relief
23 afforded by the proposed settlement is substantially narrower than it would be if the suits were to
24 be successfully litigated, this is no bar to a class settlement because the public interest may indeed
25 be served by a voluntary settlement in which each side gives ground in the interest in avoiding
26 litigation."]; Officers for Justice v. Civil Service Comm'n (9th Cir. 1982) 688 F.2d 615, 628 ["It is
27 well-settled law that a cash settlement amounting to only a fraction of the potential recovery does
28 not. . .render the settlement inadequate or unfair."].

1 **VII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

2 Class Counsel seeks an attorneys' fees award of \$1,321,250, which is approximately thirty-
3 five percent of \$3,775,000 and costs not to exceed \$40,000. The requested fee falls well within the
4 historical range of attorney's fee awards under the common fund theory, which is generally from
5 20% to 50%. The requested fee is fair compensation for undertaking complex, risky, expensive,
6 and time-consuming litigation on a contingent fee basis. This case was litigated, investigated, and
7 extensive research was conducted.

8 Both California and federal courts have recognized that an appropriate method for awarding
9 attorney's fees in class actions is to award a percentage of the "common fund" created as a result of
10 the settlement. Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254 (recognizing
11 both the "percentage of recovery" and "lodestar/ multiplier" methods); Vincent v. Hughes Air
12 West, Inc. (9th Cir. 1977) 557 F.2d 759, 769.

13 The purpose of the common fund/percentage approach is to "spread litigation costs
14 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
15 burden alone." Vincent, supra, 557 F.2d at 769. In Quinn v. State of California (1995) 15 Cal.3d
16 162, at 167, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a
17 suit which creates a fund from which others derive benefits may require those passive beneficiaries
18 to bear a fair share of the litigation costs." Similarly, in City and County of San Francisco v. Sweet
19 (1995) 12 Cal.4th 105, 110, the California Supreme Court recognized that the common fund
20 doctrine has been applied "consistently in California when an action brought by one party creates a
21 fund in which other persons are entitled to share." The reasons for applying the common fund
22 doctrine include: "...fairness to the successful litigant, who might otherwise receive no benefit
23 because his recovery might be consumed by the expenses; correlative prevention of an unfair
24 advantage to the others who are entitled to share in the fund and who should bear their share of the
25 burden of its recovery; encouragement of the attorney for the successful litigant, who will be more
26 willing to undertake and diligently prosecute proper litigation for the protection or recovery of the
27 fund if he is assured that he will be properly and directly compensated should his efforts be
28 successful." Id.

1 Several courts have expressed frustration with the alternative “lodestar” approach for
2 deciding fee awards, which usually involves wading through voluminous and often indecipherable
3 time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote in In re
4 Activision Securities Litigation, (N.D. Cal 1989) 723 F. Supp. 1373, 1375:

5 “This court is compelled to ask, ‘Is this process necessary?’ Under a cost-benefit
6 analysis, the answer would be a resounding, ‘No!’ Not only do the Lindy Kerr-
7 Johnson analyses consume an undue amount of court time with little resulting
8 advantage to anyone, but in fact, it may be to the detriment of the class members.
9 They are forced to wait until the court has done a thorough, conscientious analysis
10 of the attorneys’ fee petition. Or, class members may suffer a further diminution of
11 their fund when a special master is retained and paid from the fund. Most
12 important, however, is the effect the process has on the litigation and the timing of
13 settlement. Where attorneys must depend on a lodestar approach, there is little
14 incentive to arrive at an early settlement.” [Emphasis added.]

15 The percentage approach is preferable to the lodestar because: (1) it aligns the interests of
16 class counsel and absent class members; (2) it encourages efficient resolution of the litigation by
17 providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on
18 judicial resources. Id. at 1378-79. The Ninth Circuit now routinely uses the percentage of the
19 common fund approach to determine the award of attorney’s fees. (E.g., In re Pacific Enterprises
20 Securities City and County of San Francisco Litigation (9th Cir. 1994) 47 F.3d 373, 378-79
21 (approving attorney’s fee of 33 1/3%).

22 Plaintiffs’ counsel’s request for fees of approximately thirty-five percent of \$3,775,000 is
23 within the range of reasonableness. Historically, courts have awarded percentage fees in the range
24 of 20% to 50%, depending on the circumstances of the case. Newberg on Class Actions, supra,
25 §14.03; In re Activision Securities Litigation (N.D.Cal. 1989) 723 F.Supp. 1373, 1378.)
26 According to Newberg on Class Actions: “No general rule can be articulated on what is a
27 reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a
28 reasonable fee award from a common fund in order to assure that the fees do not consume a
disproportionate part of the recovery obtained for the class, although somewhat larger percentages
are not unprecedented.” Newberg on Class Actions, §14.03.

///

///

1 Newberg on Class Actions further notes: “[A]chievement of a substantial recovery with
2 modest hours expended should not be penalized but should be rewarded for considerations of time
3 saved by superior services performed.” Newberg on Class Actions, §14.01, p. 14-10:14-11.

4 Class Counsel have borne, and continue to bear, the entire risk and cost of litigation
5 associated with this class action on a pure contingency basis. The factual and legal issues posed in
6 this case were evolving and difficult. Based on Class Counsel’s past experience in wage and hour
7 class action litigation, it is safe to state that Class Counsel is very likely to be called upon, after the
8 Class Notice has been sent, to expend substantial amounts of additional time to help Class
9 Members understand the terms of the proposed settlement, and to assist Class Members in the
10 preparation and documentation of their claims. It is also likely that, even after final approval of the
11 settlement has been granted, Class Counsel will be called upon to expend additional amounts of
12 time in the presentation and resolution of contests and disputes relating to Class Members’ claims
13 under the terms of the proposed settlement, as to the amounts of individual claims and perhaps
14 other individual issues.

15 The Court should preliminarily approve the requested attorneys’ fees and costs, which are
16 justified by the outstanding results achieved, the complexity of the issues, the difficulty of the case,
17 and the great risk undertaken by Class Counsel. The requested attorneys’ fees will not be opposed
18 by Defendant, and are well within established guidelines.

19 **VIII. THE REQUESTED ENHANCEMENT AWARD TO THE NAMED**
20 **PLAINTIFFS AND CLASS REPRESENTATIVES IS REASONABLE**

21 Plaintiffs are entitled to an enhanced award for their service as class representatives and
22 risk in being the Plaintiffs, not to mention that Plaintiffs will be providing Defendant a general
23 release of all claims in exchange for the enhancement award. Defendant does not oppose the
24 requested enhancement to Plaintiffs. Class Counsel can attest that Plaintiffs devoted a great deal of
25 time and work assisting counsel in this case, communicated with counsel very frequently, and were
26 a very valuable participant in the strategy for and success of the mediation. Plaintiffs risked
27 intrusive discovery and the payment of employer costs. Class Counsel seeks an enhancement of
28 \$10,000 for each named plaintiff, a total of \$30,000, for their service.

1 **IX. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES**

2 **A. The Class Should Be Preliminarily Certified**

3 In California, there are two certification prerequisites: (1) the existence of an “ascertainable
4 class,” and (2) “a well defined community of interest in the questions of law and fact involved
5 affecting the parties to be represented.” Daar v. Yellow Cab Co. (1967) 67 Cal.2d 695, 704
6 (citation omitted). In addition, as set forth above, California courts utilize the procedures
7 prescribed by the Federal Rules of Civil Procedure in class actions filed in California. Schneider v.
8 Vennard (1986) 183 Cal.App.3d 1340, 1345-46; Daar, 67 Cal.2d at 695; Vasquez v. Sup. Ct.
9 (1971) 4 Cal.3d 800. California Civil Code §1781(b) provides:

10 The court shall permit the suit to be maintained on behalf of all members to the
11 represented class if all of the following conditions exist: (1) It is impracticable to
12 bring all members of the class before the court. (2) The questions of law or fact
13 common to the class are substantially similar and predominate over the questions
14 affecting the individual members. (3) The claims or defenses of the representative
15 plaintiffs are typical of the claims or defenses of the class. (4) The representative
16 plaintiffs will fairly and adequately protect the interests of the class.

17 Each of the criteria for class certification is clearly satisfied herein.

18 **1. Numerosity** - California law requires the class to be so numerous that
19 utilization of the class action procedure will inure to the benefit of the judicial system. Richmond
20 v. Dart Indus., Inc. (1981) 29 Cal.3d 462, 470. Defendant identified potential class members from
21 its time and payroll records and upon final preliminary approval has agreed to provide the class list
22 to the Claims Administrator. Defendant identified a total of approximately 62,604 class members
23 at the time of mediation. This number exceeds the minimum number of individuals required to
24 meet the numerosity requirement.

25 **2. Commonality** - California law also requires that “questions of law or fact
26 common to the class [be] substantially similar and predominate over the questions affecting the
27 individual members.” Common issues predominate when they would be “the principal issues in
28 any individual action, both in terms of time to be expended in their proof and of their importance.”
Vasquez 4 Cal.3d at 810. Common questions need only be “sufficiently pervasive to permit
adjudication in a class action rather than in a multiplicity of suits.” Id. Commonality is easily

1 satisfied if there is one issue common to class members. Hanlon v. Chrysler Corp. (9th Cir. 1988)
2 150 F.3d 1011, 1019.

3 Here, common issues, without limitation, include whether Defendant violated applicable
4 wage laws, i.e., failed to pay its non-exempt employees minimum and overtime wages, failed to
5 provide meal and rest breaks, failed to provide compliant wage statements, failed to pay sick pay
6 wages, and failed to timely pay all earned wages to terminated and/or resigned employees.
7 Because there are common issues, this requirement is satisfied for purposes of settlement.

8 3. **Typicality** - Typicality requires only that the named plaintiff's interests in
9 the action be significantly similar to those of other class members. Richmond, 29 Cal.3d at 74-75.
10 A representative plaintiff's claims are typical if they arise from the same event, practice, or course
11 of conduct that gives rise to the claims of other class members, and if his or her claims are based
12 on the same legal theories. Miller v. Woods (1983) 16 Cal.App.3d 862, 874. Indeed, when the
13 same underlying conduct affects the named plaintiffs and the class sought to be represented, the
14 typicality requirement is met irrespective of any varying fact patterns that may underlie individual
15 claims. Daniels v. Centennial Group, Inc. (1993) 16 Cal.App.4th 467, 473 - named plaintiff's
16 interests must only be significantly similar to other class members.

17 In this case, the Plaintiffs' claims are precisely the same as those of the class they seek to
18 represent: like other members of the Class, they were employed by Defendant during the relevant
19 time period, performed similar duties for Defendant, and Defendant's policies were uniformly
20 applied to their employees.

21 As the court in B.W.I. Custom Kitchen v. Owens-Illinois, Inc. (1987) 191 Cal.App.3d
22 1341, explained:

23 [I]t has never been the law in California that the class representative must have
24 *identical* interests with the class members. The only requirements are that common
25 questions of law and fact *predominate* and that the class representative be *similarly*
situated. Id. at 1347 (citation omitted, emphasis in original).

26 Accordingly, Plaintiffs' claims are typical of those of the Class Members.

27 ///

28 ///

1 **4. Adequacy of Representation** - To maintain a class action, the
2 representative plaintiff must adequately protect the interests of the class. California Civil Code
3 §1781(b)(4). Adequacy of representation consists of two components. First, there must be no
4 disabling conflicts of interest between the class representatives and the class. Second, the class
5 representative must be represented by counsel who are competent and experienced in the kind of
6 litigation to be undertaken. McGhee v. Bank of Am. (1976) 60 Cal.App.3d 442, 450.

7 (i) **No Disabling Conflict of Interest Exist Between the Class**
8 **Representatives and the Class**

9 No conflicts, disabling or otherwise, exist between the Class Representatives and Class
10 Members because the Plaintiffs have allegedly been damaged by the same alleged conduct and
11 have the incentive to fairly represent all Class Members' claims to achieve the maximum possible
12 recovery. Indeed, the Class Representatives stand in the same shoes as the Class Members with the
13 same incentive to maximize the overall recovery. Richmond, 29 Cal.3d at 473; Harrison v. Bd. of
14 Supervisors (1975) 44 Cal.App.3d 852, 863.

15 (ii) **Class Counsel are Experienced Class Action Attorneys**

16 Class Counsel are experienced class action attorneys, have been appointed as class counsel
17 in numerous class actions, and have a successful track record in litigating class actions. After a
18 thorough investigation and settlement discussions, the parties arrived at terms that they viewed was
19 in the best interest of both the Class Members and the parties.

20 Plaintiffs' goals have been realized to have redress for the employees whose wage and hour
21 rights were violated. While Defendant denies liability, it has nonetheless agreed to settle the
22 matter to avoid any potential expense. Should the Court refuse to grant preliminary approval of
23 this Settlement, many of the Class Members may be denied any recourse for Defendant's alleged
24 violations.

25 **5. Superiority of Class Action** - Also relevant to the Court's certification
26 decision is whether a class action is the superior method of adjudication. Schneider 183
27 Cal.App.3d at 1347. The California Supreme Court has "repeatedly emphasized the importance of
28 the class action device for vindicating the rights asserted by large groups of persons." Keating v.

1 Sup. Ct. (1982) 31 Cal.3d at 469 (recognizing that class actions are useful for fashioning effective
2 and inclusive group remedy). The class device is even more appropriate to adjudicate the rights of
3 large numbers of similarly situated victims who lack the sophistication, financial wherewithal, or
4 individual incentive to sue on their own. For example, in Vasquez v. Sup. Ct., the California
5 Supreme Court emphasized that “[i]ndividual actions by each of the defrauded consumers is often
6 impracticable because the amount of individual recovery would be insufficient to justify bringing a
7 separate action; thus an unscrupulous seller retains the benefits of its wrongful conduct.” Vasquez
8 4 Cal.3d at 808. The Court in Vasquez also recognized several other benefits of class action
9 treatment:

10 A class action by consumers produces several salutary byproducts, including a
11 therapeutic effect upon those sellers who indulge in fraudulent practices, aid to
12 legitimate business enterprises by curtailing illegitimate competition, and avoidance
13 to the judicial process of the burden of multiple litigation involving identical claims.
Id. State v. Levi Strauss & Co. (1986) 41 Cal.3d 460, 471 - noting that consumer
class actions are “an essential tool for the protection of consumers against
exploitative business practices”.

14 This case is no exception. Given the size of the potential individual recovery, it would be
15 impracticable to bring each Class Member’s claim as an individual claim.

16 Accordingly, the Class meets all criteria for certification and should be certified for
17 purposes of effectuating this settlement. Hogya v. Sup. Ct. (1977) 75 Cal.App.3d 122 - if the
18 action satisfies the statutory criteria, the court must certify the class; Dunk 48 Cal.App.4th at 1807
19 n. 19 - a lesser standard of scrutiny applies when evaluating these criteria for settlement purposes
20 and courts should take settlement into account in evaluating class certification; Amchen Products,
21 Inc. v. Windsor (1977) 521 U.S. 591, 620 - because the Court is certifying this action for
22 settlement purposes only, it need not determine whether the class would be manageable for
23 litigation purposes.

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

9

O

2

3

4

DECLARATION OF MICHAEL NOURMAND

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2

3
4
5
6
7

Q

9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

5
6
7
8

1 denies each of the allegations asserted in the Litigation, has repeatedly asserted and continues to
2 assert defenses to Plaintiffs' claims and contentions, expressly denies that it engaged in any
3 wrongdoing or has any liability arising out of any of the facts or conduct alleged in the Litigation.

4 4. Class Counsel engaged in formal and informal discovery which yielded information
5 and documentation concerning the claims set forth in the Litigation, such as obtaining sampling of
6 time and payroll records for the class, Defendant's employee handbook, twenty-four collective
7 bargaining agreements ("CBA"), policies and procedures, total number of class members during
8 the class period, the average hourly rate, etc. Furthermore, counsel for the Parties have
9 investigated the law as applied to the facts discovered regarding the alleged claims of Plaintiffs and
10 potential defenses thereto, and the potential damages claimed by Plaintiffs.

11 5. Counsel for the Parties engaged in extensive discussions about the strengths and
12 weaknesses of the claims and defenses. Plaintiffs and Defendant undertook two sessions of
13 extensive mediation efforts. The first session took place on December 6, 2021 with Jill R. Sperber,
14 Esq. ("Ms. Sperber"), the Parties were not able to reach a settlement at mediation with Ms.
15 Sperber. The second session took place on February 24, 2022 with Gig Kyriacou, Esq. ("Mr.
16 Kyriacou"), the Parties were not able to reach a settlement at mediation with Mr. Kyriacou. Mr.
17 Kyriacou continued settlement discussion with counsel and eventually the Parties reached a class
18 wide settlement which was eventually memorialized in a Memorandum of Understanding
19 ("MOU") which was executed by the Parties.

20 6. The Parties concluded that there were benefits associated with settling the
21 Litigation. Specifically, the Parties concluded, after taking into account the sharply disputed
22 factual and legal issues involved in this Litigation, the risks attending further prosecution, the
23 substantial benefits to be received pursuant to the compromise and settlement of the Litigation as
24 set forth in the Settlement Agreement, that settlement on the terms set forth herein is in the best
25 interest of Plaintiffs, the proposed Class and Defendant, and is fair and reasonable.

26 ///

27 ///

28 ///

The Proposed Settlement

7. Plaintiffs and Defendant have agreed to settle the Litigation by agreement upon the terms and conditions and for the consideration set forth in the Settlement Agreement, a copy of which is attached hereto as Exhibit "1." A summary of the terms of the settlement are as follows:

- Defendant will stipulate, for purposes of this settlement only, to certification of a class defined as: All current and former non-exempt employees of Defendant in the State of California during the period of February 13, 2016 through April 30, 2022 excluding employees who worked at the distribution centers and plants, drivers, pharmacists and, through August 7, 2020, non-union employees;
- PAGA Group Members was defined as: All current and former non-exempt employees of Defendant in the State of California during the period of February 13, 2019 through April 30, 2022 excluding employees who worked at the distribution centers and plants, drivers, pharmacists and, through August 7, 2020, non-union employees;
- Defendant will pay a maximum of \$3,812,500, which is referred to herein as the Gross Settlement Amount or Maximum Gross Settlement Amount;
- Class Members will be paid their proportionate share based on the number of workweeks and other factors in accordance with an agreed upon formula, as provided in the Settlement Agreement, they worked during the class period;
- The Settlement Administration costs of approximately \$180,750 will be paid out of the Gross Settlement Amount;
- Class Counsel's attorneys' fees and costs will be paid out of the Gross Settlement Amount;
- Class Counsel will apply for, and Defendant will not oppose, attorneys' fees of \$1,321,250, which represents approximately thirty-five percent of \$3,775,000 and Costs not to exceed \$40,000;
- Class Counsel will apply for, and Defendant will not oppose, an enhancement award of \$10,000 for each named plaintiff, Leticia Rodarte, Holly McCarthy, and Rachel

1 Mendoza for a total of \$30,000. The enhancement award will be paid out of the
2 Gross Settlement Amount;

- 3 • Employer's share of payroll taxes estimated at 20% of the amount of wages to be
4 paid to Class Members are included in the Gross Settlement Amount; and
- 5 • Defendant has agreed to pay \$100,000 as PAGA penalties, seventy-five percent
6 (75%) or \$75,000 of which will be paid to the LWDA and twenty-five percent
7 (25%) or \$25,000 of which will be distributed to PAGA Group Members. The
8 PAGA penalties will be paid out of the Gross Settlement Amount.

9 **Settlement Agreement and Accompanying Documents**

10 8. Attached hereto as Exhibit "1" is the Settlement Agreement. Attached to the
11 Settlement Agreement as Exhibit "A" is the proposed Notice of Class Action Settlement ("Class
12 Notice") to be distributed to Class Members. A notice of settlement of a class action "must contain
13 an explanation of the proposed settlement and procedures for class members to follow in filing
14 written objections to it and in arranging to appear at the settlement hearing and state any objections
15 to the proposed settlement." California Rules of Court 3.769(f). The proposed Class Notice
16 satisfies these requirements.

17 9. The Parties respectfully request that this Court approve the above-referenced Class
18 Notice and dissemination of the Class Notice to the Class Members, consistent with the manner
19 and timing as set forth in the Settlement Agreement. The Parties have agreed to use CPT Group,
20 Inc., an experienced Settlement Administrator, to administer the settlement. The administration
21 costs will be paid out of the Gross Settlement Amount. It is requested that the Court appoint CPT
22 Group, Inc. to serve as the Settlement Administrator.

23 **The Settlement Was Negotiated at Arms Length and Not Collusive**

24 10. The settlement that has been reached, subject to this Court's approval, is the product
25 of substantial effort by the Parties and their counsel. The settlement was reached after extensive
26 factual and legal investigation and research, numerous discussions, exchanges of documents and
27 information, correspondence, and three sessions of mediation. The settlement amount is, of
28

1 course, a compromise figure. It took into account the risks related to liability, damages, and all the
2 defenses asserted by Defendant.

3 11. Plaintiffs assert that the wage and hour claims and the claims for resulting penalties
4 would be certified. Plaintiffs' counsel reviewed documents produced by Defendant, including but
5 not limited to CBAs/employee handbooks, sampling of payroll records for the Class, etc. and based
6 thereon reasonably believed that Plaintiffs would have a significant chance of certifying the class.

7 12. On the other hand, Defendant has argued that Plaintiffs cannot meet the
8 requirements of class certification. In particular, Defendant believes that Plaintiffs would face
9 difficulty in certifying the class because meal and rest breaks were provided, Defendant did not
10 deter employees from taking meal and rest breaks, Defendant's meal and rest break policies were
11 compliant, Any claim for regular rate would be futile in light of the CBA and Labor Code §514 and
12 Defendant's rounding was neutral. Defendant further contends that class certification would not be
13 warranted because individual liability issues predominate Plaintiffs' claims.

14 13. While Plaintiffs believe in their chance of success of certifying the claims, Plaintiffs
15 recognized the potential risk, expense and complexity posed by further litigation. Litigating
16 Plaintiffs' claims in this Litigation— claims that involve numerous Class Members during the Class
17 Period— would require substantial additional preparation and discovery and ultimately would
18 involve the deposition and presentation of numerous witnesses (including expert witnesses), as
19 well as the consideration, preparation and analysis of expert reports. Therefore, should litigation
20 have progressed any further, there would have been significant expense incurred by each side.

21 14. Again, Plaintiffs and Defendant have very strong positions on liability in this case.
22 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in
23 Plaintiffs' Operative Complaint, and further denies that, for any purpose other than that of settling
24 this lawsuit, this action is appropriate for class treatment. In light of the sharply contested legal
25 and factual issues, the risks of continued litigation, and substantial benefits to Class Members
26 under the Settlement, the terms and conditions of this class settlement are fair and reasonable to all
27 sides.

28 ///

1 **The Settlement Amount is Well Within Range of Reasonableness**

2 15. The settlement amount reached in this case provides significant recovery to
3 participating class members and easily falls within the range of reasonableness.

4 **Rounding Claim:** Plaintiffs' failure to pay minimum and overtime wage claims were
5 partially based on the assertion that Defendant unevenly rounded its employees time which, in the
6 aggregate, resulted in underpayment of wages to employees for all hours worked. Defendant
7 identified approximately 62,604 class members and provided a sampling of time and payroll
8 records for approximately 400 employees. Plaintiff analyzed 143,294 shifts on behalf 400
9 employees and determined that there were 346 net underpaid hours, that is, out of 8,269.16 hours
10 worked during the 143,294 shifts, there was a net underpayment of 346 hours. Based on these
11 metrics, Plaintiffs determined that Defendant's rounding practice was neutral.

12 **Regular Rate Claim:** Plaintiffs contend that Defendant was required to pay employees a
13 premium wage at the regular rate of pay when earning other forms of remuneration during the same
14 pay period and include other forms of remuneration to determine the regular rate of pay when
15 employee worked overtime hours and concurrently earned other forms of remuneration during the
16 same pay period. This claim is limited to the time period of February 13, 2016 to September 30,
17 2019. It is estimated based on the sampling of time and payroll records 209 employees were not
18 properly paid overtime wages as a result of Defendant's failure to include all forms of
19 remuneration in calculating the regular rate. This equates to 52% of the employees being harmed.
20 $32,554$ (number of employees underpaid) x $\$6.75$ (average underpayment per employee) =
21 $\$219,739.50$. Plaintiffs also contend that Defendant failed to pay premium wages at the regular
22 rate. This claim is limited to the time period of February 14, 2016 to September 30, 2016. It is
23 estimated based on the sampling of time and payroll records that 33 employees were not paid
24 premium wages at the regular rate. This equates to a 8.25% violation rate. $5,165$ (number of
25 employees underpaid) x $\$.30$ (average underpayment per employee) = $\$1,549.50$. Total exposure
26 for regular rate is $\$221,289$. Defendant argued that these claims are futile based on its CBAs and
27 Labor Code §514.

28 ///

1 Sick Pay Wages: Plaintiffs contend that Defendant failed to pay sick pay at the regular rate.
2 It was determined that during the 2020 calendar year Defendant failed to pay sick pay at the regular
3 rate. Within the 2020 calendar year, based on the sampling of time and payroll records, there were
4 53 out of 400 employees (.13%) who were underpaid sick leave with a total principal damages of
5 \$773.00 (\$14.58 per employee). $10,434$ (approximate number of employee who worked in 2020) x
6 $.13$ (violation rate) = $1,356$ x $\$14.58$ (average amount underpaid sick leave) = $\$19,776.60$ exposure
7 for sick leave wages.

8 Recovery of Meal Breaks: The sampling of time records demonstrated that there were short
9 meal breaks, late meal breaks and missed meal breaks for employee who worked shifts greater than
10 six hours. The violation rate for meal breaks is 5.3%. $21,047,183$ (total shifts greater than six
11 hours during the class period) x 5.3% (violation rate) = $1,115,501$ (shifts with at least one meal
12 break violation) x $\$16.50$ (average hourly rate) = $\$18,405,766.50$. The sampling of time and
13 payroll records confirmed that Defendant paid premium wages for non-compliant meal breaks.
14 However, it was determined that Defendant paid premium wages for only 18% of the meal break
15 violations. $\$18,405,766.50$ (exposure for meal break violations) x $.18$ (meal break premiums paid)
16 = $\$3,313,037.97$. $\$18,405,766.50$ (exposure for meal break violations) - $\$3,313,037.97$ (meal break
17 premiums paid) = $\$15,092,728.53$ total exposure for meal break violations. Defendant contends
18 that it had compliant meal break policy and practice and it did not deter employees from taking
19 their meal breaks.

20 Recovery of Rest Breaks - Plaintiffs contend that they were not provided with a third rest
21 break when working shifts greater than ten hours. $709,259$ (number of shifts when an employee
22 would have been entitled to a third rest break) x 1 (100% violation rate) = $709,259$ x $\$16.50$
23 (average hourly rate) = $\$11,702,773.50$ exposure for rest break violation. Defendant contends that
24 it had compliant rest break policy and practice and it did not deter employees from taking their rest
25 breaks.

26 Recovery of Penalties: Plaintiffs contend that they would have been entitled to recover
27 penalties for Defendant's failure to issue compliant wage statements under California Labor Code
28 §226(e) and for Defendant's failure to issue all earned wages immediately upon termination or

1 within 72 hours of resignation under California Labor Code §§ 201, 202 and 203. The penalties
2 are derivative of the wage and hour claims. As a result of Defendant's failure to provide compliant
3 wage statements each pay period, each aggrieved employee could recover up to a maximum of a
4 \$4,000.00 aggregate penalty pursuant to Labor Code §226(e), depending on the number of pay
5 periods she or he was issued a non-compliant wage statement. As a result of Defendant's failure to
6 pay all earned wages immediately upon termination or within 72 hours of resignation, each former
7 aggrieved employee could recover up to a maximum of a 30 day penalty. However, there are
8 certain inherent risks associated with these claims. With respect to the wage statement claim, it
9 commands a one year statute of limitations period, which would significantly weigh on this claim.
10 With respect to the waiting time penalty claim, Plaintiffs anticipated that Defendant would argue
11 that the Labor Code requires that there be a willful showing that the employer knew of its
12 obligation and intentionally refused to act. Baker v. American Horticulture Supply, Inc. (2010)
13 186 Cal.App.4th 1059, 1076.

14 • Wage Statement Penalties - There are approximately 2,166,856 pay periods with a
15 wage statement violation which equates to \$132,004.220 exposure for wage statement violations.

16 • Waiting Time Penalties - There are approximately 30,519 former employees who
17 fall within the liability period for this claim multiplied by \$3,960 (\$16.50 average hourly rate x 8
18 hours = \$132 daily rate x 30 days = \$3,960) provides an exposure of approximately \$120,855,240.

19 • PAGA Civil Penalties - There are approximately 2,166,856 pay periods during the
20 relevant liability period. Assuming that there was at least one underlying labor code violation per
21 pay period per employee who falls within the relevant liability period, the PAGA exposure is
22 approximately \$216,685,600.

23 16. Plaintiffs' counsel obtained a Gross Settlement Amount of \$3,812,500. Class
24 Counsel considers this to be an excellent settlement for class members, when taking into account
25 all issues and risks related to liability, class certification, and considering the case law regarding
26 fair, reasonable, and adequate settlements.

27 ///

28 ///

The Proposed Attorney's Fees and Costs are Reasonable

17. Class Counsel seeks an attorneys' fees award of \$1,321,250, which is approximately thirty-five percent of \$3,775,000 and costs not to exceed \$40,000. The requested fee falls well within the historical range of attorney's fee awards under the common fund theory, which is generally from 20% to 50%. The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis. This case was litigated, investigated, and extensive research was conducted.

18. Class Counsel have borne, and continue to bear, the entire risk and cost of litigation associated with this class action on a pure contingency basis. The factual and legal issues posed in this case were evolving and difficult. Based on Class Counsel's past experience in wage and hour class action litigation, it is safe to state that Class Counsel is very likely to be called upon, after the Class Notice has been sent, to expend substantial amounts of additional time to help Class Members understand the terms of the proposed settlement, and to assist Class Members in the preparation and documentation of their claims. It is also likely that, even after final approval of the settlement has been granted, Class Counsel will be called upon to expend additional amounts of time in the presentation and resolution of contests and disputes relating to Class Members' claims under the terms of the proposed settlement, as to the amounts of individual claims and perhaps other individual issues.

19. The Court should preliminarily approve the requested attorneys' fees and costs, which are justified by the outstanding results achieved, the complexity of the issues, the difficulty of the case, and the great risk undertaken by Class Counsel. The requested attorneys' fees will not be opposed by Defendant, and are well within established guidelines.

20. I graduated from UCLA with a B.A. in Political Science (Cum Laude) in 1994. Thereafter I attended Loyola Law school and graduated in May of 1998. I became a member of the California State Bar in December 1998. In September 1999, I along with my former business partner Bruce Kokozian, started the law firm of Kokozian & Nourmand LLP and began to represent plaintiffs in the area of personal injury, insurance bad-faith, employment law, wage and hour, and class actions. In June 2010, I dissolved my partnership at Kokozian & Nourmand LLP and started

1 The Nourmand Law Firm, APC exclusively representing plaintiffs in the areas of employment law,
2 wage and hour, and class actions. Prior to starting my own law firm, I worked for a plaintiff's law
3 firm, Rose, Klein & Marias, Law Offices of Gary Bostwick and externed at the U.S. Attorney's
4 Office, Civil Fraud Division and U.S. Bankruptcy Court, Honorable Judge Barry Russell. I am
5 admitted to practice in all state courts in California, the United States District Courts of California -
6 Central District, Southern District, Norther District, and the United States Supreme Court. In July
7 2011 I was selected as one of 75 Top Labor & Employment Lawyers in California by the Daily
8 Journal; in 2011 and 2012 I was selected as a Rising Star by Super Lawyers and in 2013 through
9 2022 I was selected as a Super Lawyer by Super Lawyers. I was also selected for inclusion in The
10 Best Lawyers in America for 2016 through 2022. I am also an active member of the California
11 Employment Lawyer's Association ("CELA"), Consumer Attorneys of California ("CAOC"),
12 National Employment Lawyer's Association ("NELA"), Consumer Attorneys Association of Los
13 Angeles ("CAALA"), California State Bar, Labor and Employment Section, and the Los Angeles
14 County Bar.

15 21. My firm has the experience, resources, and means necessary to allow us to provide
16 adequate representation as Class Counsel to all class members in this litigation. Currently, my firm
17 is acting as lead counsel in over twenty other wage and hour class actions.

18 **The Proposed Enhancement Award to Plaintiffs as Class Representatives is Reasonable**

19 22. Plaintiffs are entitled to an enhanced award for their service as class representatives
20 and risk in being the Plaintiffs, not to mention that Plaintiffs will be providing Defendant a general
21 release of all claims in exchange for the enhancement award. Defendant does not oppose the
22 requested enhancement to Plaintiffs. Class Counsel can attest that Plaintiffs devoted a great deal of
23 time and work assisting counsel in this case, communicated with counsel very frequently, and were
24 a very valuable participant in the strategy for and success of the mediation. Plaintiffs risked
25 intrusive discovery and the payment of employer costs. Class Counsel seeks an enhancement of
26 \$10,000 for each named plaintiff, a total of \$30,000, for their service.

27 ///

28 ///

1 **Class Certification**

2 **Numerosity & Ascertainability**

3 23. California law requires the class to be so numerous that utilization of the class action
4 procedure will inure to the benefit of the judicial system. Richmond v. Dart Indus., Inc. (1981) 29
5 Cal.3d 462, 470. Defendant identified potential class members from its time and payroll records
6 and upon final preliminary approval has agreed to provide the class list to the Claims Administrator.
7 Defendant identified a total of approximately 62,604 class members at the time of mediation. This
8 number exceeds the minimum number of individuals required to meet the numerosity requirement.

9 **Commonality**

10 24. California law also requires that "questions of law or fact common to the class [be]
11 substantially similar and predominate over the questions affecting the individual members."
12 Common issues predominate when they would be "the principal issues in any individual action,
13 both in terms of time to be expended in their proof and of their importance." Vasquez 4 Cal.3d at
14 810. Common questions need only be "sufficiently pervasive to permit adjudication in a class
15 action rather than in a multiplicity of suits." Id. Commonality is easily satisfied if there is one issue
16 common to class members. Hanlon v. Chrysler Corp. (9th Cir. 1988) 150 F.3d 1011, 1019.

17 25. Here, common issues, without limitation, include whether Defendant violated
18 applicable wage laws, i.e., failed to pay its non-exempt employees minimum and overtime wages,
19 failed to provide meal and rest breaks, failed to provide compliant wage statements, failed to pay
20 sick pay wages, and failed to timely pay all earned wages to terminated and/or resigned employees.
21 Because there are common issues, this requirement is satisfied for purposes of settlement.

22 **Typicality**

23 26. Typicality requires only that the named plaintiff's interests in the action be
24 significantly similar to those of other class members. Richmond, 29 Cal.3d at 74-75. A
25 representative plaintiff's claims are typical if they arise from the same event, practice, or course of
26 conduct that gives rise to the claims of other class members, and if his or her claims are based on
27 the same legal theories. Miller v. Woods (1983) 16 Cal.App.3d 862, 874. Indeed, when the same
28 underlying conduct affects the named plaintiffs and the class sought to be represented, the typicality

1 requirement is met irrespective of any varying fact patterns that may underlie individual claims.
2 Daniels v. Centennial Group, Inc. (1993) 16 Cal.App.4th 467, 473 - named plaintiff's interests must
3 only be significantly similar to other class members.

4 27. In this case, the Plaintiffs' claims are precisely the same as those of the class they
5 seek to represent: like other members of the Class, they were employed by Defendant during the
6 relevant time period, performed similar duties for Defendant, and Defendant's policies were
7 uniformly applied to their employees.

8 **Adequacy of Representation**

9 28. No conflicts, disabling or otherwise, exist between the Class Representatives and
10 Class Members because the Plaintiffs have allegedly been damaged by the same alleged conduct
11 and have the incentive to fairly represent all Class Members' claims to achieve the maximum
12 possible recovery. Indeed, the Class Representatives stand in the same shoes as the Class Members
13 with the same incentive to maximize the overall recovery. Richmond, 29 Cal.3d at 473; Harrison v.
14 Bd. of Supervisors (1975) 44 Cal.App.3d 852, 863.

15 29. Class Counsel are experienced class action attorneys, have been appointed as class
16 counsel in numerous class actions, and have a successful track record in litigating class actions.
17 After a thorough investigation and settlement discussions, the parties arrived at terms that they
18 viewed was in the best interest of both the Class Members and the parties.

19 30. Plaintiffs' goals have been realized to have redress for the employees whose wage
20 and hour rights were violated. While Defendant denies liability, it has nonetheless agreed to settle
21 the matter to avoid any potential expense. Should the Court refuse to grant preliminary approval of
22 this Settlement, many of the Class Members may be denied any recourse for Defendant's alleged
23 violations.

24 **Superiority of Class Action**

25 31. Also relevant to the Court's certification decision is whether a class action is the
26 superior method of adjudication. Schneider 183 Cal.App.3d at 1347. The California Supreme
27 Court has "repeatedly emphasized the importance of the class action device for vindicating the
28 rights asserted by large groups of persons." Keating v. Sup. Ct. (1982) 31 Cal.3d at 469

1 (recognizing that class actions are useful for fashioning effective and inclusive group remedy). The
2 class device is even more appropriate to adjudicate the rights of large numbers of similarly situated
3 victims who lack the sophistication, financial wherewithal, or individual incentive to sue on their
4 own. For example, in Vasquez v. Sup. Ct., the California Supreme Court emphasized that
5 “[i]ndividual actions by each of the defrauded consumers is often impracticable because the amount
6 of individual recovery would be insufficient to justify bringing a separate action; thus an
7 unscrupulous seller retains the benefits of its wrongful conduct.” Vasquez 4 Cal.3d at 808. The
8 Court in Vasquez also recognized several other benefits of class action treatment:

9 A class action by consumers produces several salutary byproducts, including a
10 therapeutic effect upon those sellers who indulge in fraudulent practices, aid to
11 legitimate business enterprises by curtailing illegitimate competition, and avoidance
12 to the judicial process of the burden of multiple litigation involving identical claims.
13 Id. State v. Levi Strauss & Co. (1986) 41 Cal.3d 460, 471 - noting that consumer
14 class actions are “an essential tool for the protection of consumers against
15 exploitative business practices”.

16 This case is no exception. Given the size of the potential individual recovery, it would be
17 impracticable to bring each Class Member’s claim as an individual claim.

18 32. On April 12, 2023, my office submitted a copy of the Settlement Agreement to
19 the LWDA in compliance with Labor Code §2699(1)(2). A true and correct copy of the
20 confirmation from the LWDA is attached hereto as Exhibit “2.”

21 I declare under penalty of perjury under the laws of the State of California that the foregoing
22 is true and correct this 12th day of April 2023, at Beverly Hills, California.

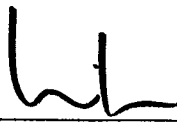
23 
24 _____
25 Michael Nourmand
26
27
28

EXHIBIT “1”

1 R. Brian Dixon, Bar No. 076247
bdixon@littler.com
2 Laura E. Hayward, Bar No. 204014
lhayward@littler.com
3 Adam J. Fiss, Bar No. 211799
afiss@littler.com
4 LITTLER MENDELSON, P.C.
333 Bush Street, 34th Floor
5 San Francisco, CA 94104
Telephone: 415.433.1940
6

7 Attorneys for Defendant
THE VONS COMPANIES, INC.

8 Larry W. Lee, Bar No. 228175
lwlee@diversitylaw.com
9 Simon L. Yang, Bar No. 260286
sly@diversitylaw.com
10 DIVERSITY LAW GROUP, P.C.
515 South Figueroa Street, Suite 1250
11 Los Angeles, CA 90071
Telephone: 213.488.6555
12

13 William L. Marder, Bar No. 170131
POLARIS LAW GROUP LLP
501 San Benito Street, Suite 200
14 Hollister, CA 95023
Telephone: 831.531.4214
15

16 Attorneys for Plaintiff HOLLY McCARTHY, the
Class, and Aggrieved Employees

17 (Additional Counsel on next page)

18 SUPERIOR COURT OF CALIFORNIA
19 COUNTY OF SAN BERNARDINO

20 HOLLY McCARTHY, LETICIA
21 RODARTE, and RACHEL MENDOZA,
on behalf of themselves and all others
22 similarly situated and as private attorneys
general,

23 Plaintiff,

24 v.

25 THE VONS COMPANIES, INC., a
26 Michigan corporation, and DOES 1
through 50, inclusive,

27 Defendants.
28

Case No. CIVDS2021085

**STIPULATION OF CLASS ACTION
SETTLEMENT AND SETTLEMENT
AGREEMENT**

**ASSIGNED FOR ALL PURPOSES TO
JUDGE DAVID COHN, DEPARTMENT
C-26**

COMPLEX CASE

Complaint filed: September 28, 2020

1 Michael Nourmand, Bar No. 198439
mnourman@nourmandlawfirm.com
2 James A. De Sario, Bar No. 262552
jdesario@nourmandlawfirm.com
3 THE NOURMAND LAW FIRM, APC
4 8822 West Olympic Boulevard
Beverly Hills, California 90211
5 Telephone: 310.553.3600

6 Attorneys for Plaintiff LETICIA RODARTE,
the Class, and Aggrieved Employees

7
8 Carolyn H. Cottrell, Bar No. 166977
ccottrell@schneiderwallace.com
9 Esther L. Bylsma, Bar No. 264208
ebylsma@schneiderwallace.com
10 SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
11 Emeryville, California 94608
Tel: (415) 421-7100; Fax: (415) 421-7105
12

13 Attorneys for Plaintiff RACHEL MENDOZA,
the Class, and Aggrieved Employees
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Subject to its terms and conditions and the approval of the Court, this Amended Joint
2 Stipulation of Class Action Settlement and Class Action Settlement Agreement and Release (the
3 "Settlement" or "Agreement") is made and entered into by and between Plaintiffs HOLLY
4 McCARTHY, RACHEL MENDOZA and LETICIA RODARTE, individually and on behalf of the
5 putative class ("Plaintiffs"), and Defendant THE VONS COMPANIES, INC. (herein "Vons" or
6 "Defendant"). Plaintiffs and Defendant are collectively referred to in this Settlement as the
7 "Parties."

8 **I. DEFINITIONS**

9 1. In addition to terms defined elsewhere in the Settlement, as used in this
10 Settlement the following terms have the meanings indicated below:

- 11 a. "Claims Administrator" means CPT Group, Inc., or an administrator mutually
12 agreed to by the Parties and approved by the Court that will perform the
13 customary duties of a claims administrator including but not limited to, the
14 duties enumerated in this Agreement.
- 15 b. "Class" shall include all current and former non-exempt employees of The
16 Vons Companies, Inc. in the State of California during the Covered Period
17 excluding employees who worked at the distribution centers and plants,
18 drivers, pharmacists and, through August 7, 2020, non-union employees.
19 Employees covered by the following settled actions are also excluded from
20 the class definition: *Fimbres v. The Vons Companies, Inc.*, Case No. RIC1
21 904892, filed on September 24, 2019, in Riverside County Superior Court
22 (class settlement period ending September 7, 2020); *Monica Luna, et al. v.*
23 *Albertsons Companies, Inc. et al.*, Case No. BC605621, filed on December 31,
24 2015, in Los Angeles County Superior Court (class settlement period ending
25 January 11, 2018). There are approximately 67,746 class members.
- 26 c. "Class Counsel" shall refer to Larry W. Lee and Simon L. Yang of Diversity
27 Law Group, P.C., William L. Marder of Polaris Law Group LLP, James De
28 Sario and Michael Nourmand of The Nourmand Law Firm, APC, and Carolyn

1 H. Cottrell and Esther L. Bylsma of Schneider Wallace Cottrell Konecky LLP.

2 d. "Class Member" shall refer to a current or former employee of Defendant who
3 falls within the definition of the Class.

4 e. "Class Notice" means the Notice which the Claims Administrator will mail to
5 each Class Member explaining the terms of the settlement contemplated by
6 this Agreement, in a format that is mutually acceptable to the parties. The
7 form of the Class Notice to be used is attached hereto as **Exhibit A**.

8 f. "Class Representatives" shall refer to Plaintiffs Holly McCarthy, Rachel
9 Mendoza and Leticia Rodarte.

10 g. "Class Representative Payments" means the Court-approved service payments
11 to Plaintiffs Holly McCarthy, Rachel Mendoza and Leticia Rodarte for their
12 services as Class Representatives and for their execution of a general release
13 of claims known and unknown.

14 h. "Consolidated Action" means the McCarthy Action amended to add Leticia
15 Rodarte and Rachel Mendoza as plaintiffs and class representatives and to
16 include the claims from the Rodarte Action and the Mendoza Action.

17 i. "Counsel for Defendant" or "Defense Counsel" means R. Brian Dixon, Laura
18 E. Hayward, and Adam J. Fiss of Littler Mendelson, A Professional
19 Corporation.

20 j. "Covered Period" shall be from February 13, 2016, through April 30, 2022.

21 k. "Defendant" means The Vons Companies, Inc.

22 l. "Employer Payroll Taxes" refers to the amount of FICA, FUTA, and all other
23 state and federal payroll taxes on the Settlement payments Defendant is
24 required to pay by law when paying wages to employees.

25 m. "Final Approval Hearing" means the hearing contemplated by the Parties, at
26 which the Court will approve, in final, the Settlement and make such other
27 final rulings as are contemplated by this Settlement Agreement.

28 n. "Final Approval Order" means the Court's order granting final approval of the

1 Settlement, which will constitute a "judgment" within the meaning of Code of
2 Civil Procedure section 577.

3 o. "Final Effective Date" shall be the first date after all of the following events or
4 conditions have been met or have occurred:

5 (1) the Court has, by entry of a Preliminary Approval Order:

6 (a) Approved the certification of the Class for settlement
7 purposes;

8 (b) Preliminarily approved the Settlement set forth in this
9 Settlement Agreement, and the method of providing the Court-
10 approved Class Notice to the certified class;

11 (2) The Court has entered a Final Approval Order approving this
12 Settlement and the Court has entered the Final Judgment as provided
13 in Paragraph 1.p. below;

14 (3) No valid rescission of the Settlement Agreement has occurred
15 pursuant to Paragraph 71, below;

16 (4) The time to appeal from the Final Approval Order has expired,
17 i.e., 65 days from the date the Court enters a Final Approval Order,
18 and no notice of appeal has been filed; and

19 (5) In the event that an appeal is actually filed, the latest of the
20 following, if applicable, has occurred:

21 (a) Any appeal from the Final Approval Order has been
22 finally dismissed;

23 (b) The Final Approval Order has been affirmed on appeal
24 in a form substantially identical to the form of the Final
25 Approval Order entered by the Court;

26 (c) The time to petition for review with respect to any
27 appellate decision affirming the Final Approval Order has
28 expired; or

1 (d) If a petition for review of an appellate decision is filed,
2 the petition has been denied or dismissed, or, if granted, has
3 resulted in affirmance of the Final Approval Order in a form
4 substantially identical to the form of the Final Approval Order
5 entered by the Court.

6 p. "Final Judgment" means the judgment entered by the Court in conjunction
7 with the Final Approval Order. The Parties shall submit an order of Final
8 Judgment setting forth the terms of this Settlement Agreement, by
9 incorporation or otherwise, for execution and entry by the Court at the time of
10 the Final Approval Hearing or at such other time as the Court deems
11 appropriate.

12 q. "Gross Individual Settlement Payment" means the gross amount of the Net
13 Settlement Distribution Amount each Participating Class Member will be
14 paid.

15 r. "Maximum Gross Settlement Amount" shall mean the maximum amount that
16 Defendant shall cause to be paid pursuant to this Settlement, which is Three
17 Million Eight Hundred Twelve Thousand Five Hundred Dollars and No Cents
18 (\$3,812,500.00), with the exception of any increase to the Net Settlement
19 Distribution Amount pursuant to the Escalator Clause discussed in Paragraph
20 25. That sum is and shall be inclusive of the following: (a) the Class
21 Representative Payments to Plaintiffs Holly McCarthy, Rachel Mendoza and
22 Leticia Rodarte in the amount of up to Ten Thousand Dollars and Zero Cents
23 (\$10,000.00) each; (b) Class Counsel's attorneys' fees in an amount up to
24 35.00% of \$3,775,000.00 (\$1,321,250.00), incurred or to be incurred in this
25 Consolidated Action; (c) costs and expenses associated with the Consolidated
26 Action in an amount of up to Forty Thousand Dollars and Zero Cents
27 (\$40,000.00), incurred or to be incurred in this Consolidated Action, including
28 any appeals, according to proof and approval by the Court; (d) the fees and

1 expenses of the third-party Claims Administrator estimated at \$180,750.00
2 and subject to reduction or increase to correspond with the actual fees and
3 expenses incurred; (e) the Private Attorney Generals Act ("PAGA") Payment
4 of One Hundred Thousand Dollars and Zero Cents (\$100,000.00), 75% (or
5 \$75,000.00) of which shall be remitted to the California Labor and Workforce
6 Development Agency and 25% (or \$25,000.00) to the PAGA Group Members
7 as consideration for the PAGA Release set forth in Paragraph 79; (f) the
8 employee portion of all applicable tax withholdings including, but not limited
9 to, FICA, SDI, and other employment- related taxes and withholding of
10 federal, state and local income taxes; (g) the Employer Payroll Taxes
11 estimated at 20% of the amount of the wages to be paid to Class Members;
12 and (h) the remainder which is the Net Settlement Distribution Amount to all
13 Participating Class Members. To the extent that the Court does not award any
14 amounts specified in sections (a)-(f) of this paragraph, the difference shall
15 become part of the Net Settlement Distribution Amount. This Settlement is
16 non-reversionary, and no amount shall revert to Defendant.

17 s. "McCarthy Action" means the civil action initiated on September 28, 2020, in
18 San Bernardino Superior Court styled as *Holly McCarthy v. The Vons*
19 *Companies, Inc., et al.*, Case No. CIVDS2021085, and includes any amended
20 complaints filed therein.

21 t. "Mendoza Action" means the civil action initiated on May 24, 2021, in
22 Alameda County Superior Court styled as *Rachel Mendoza v. The Vons*
23 *Companies, Inc.*, Case No. RG21100503, and includes any amended
24 complaints filed therein, in addition to the previously filed federal court matter
25 entitled *Rachel Mendoza v. Pavilions Market, The Vons Companies, Inc.,*
26 *Albertson's Companies, Inc.*, Case No. 2:21-cv-03353-JVS-JPR, which was
27 dismissed.

28 u. "PAGA Group Members" shall include all current and former non-exempt

1 employees of The Vons Companies, Inc. in the State of California during the
2 PAGA Period excluding employees who worked at the distribution centers
3 and plants, drivers, pharmacists and, through August 7, 2020, non-union
4 employees. Employees covered by the following settled actions are also
5 excluded from the definition: *Fimbres v. The Vons Companies, Inc.*, Case No.
6 RIC1 904892, filed on September 24, 2019, in Riverside County Superior
7 Court (class settlement period ending September 7, 2020); *Monica Luna, et al.*
8 *v. Albertsons Companies, Inc. et al.*, Case No. BC605621, filed on December
9 31, 2015, in Los Angeles County Superior Court (class settlement period
10 ending January 11, 2018).

11 v. "PAGA Payment" means the amount of One Hundred Thousand Dollars and
12 Zero Cents (\$100,000.00), 75% (or \$75,000.00) of which shall be remitted to
13 the California Labor and Workforce Development Agency and 25% (or
14 \$25,000.00) distributed to the PAGA Group Members as consideration for the
15 PAGA Release.

16 w. "PAGA Period" shall be from February 13, 2019, through April 30, 2022.

17 x. "Participating Class Members" means those members of the Class who do not
18 opt out of the Settlement in response to the Class Notice.

19 y. "Preliminary Approval Order" means the order of the Court granting
20 preliminary approval of this Settlement Agreement on the terms provided
21 herein or as the same may be modified by subsequent mutual agreement of the
22 Parties with, as appropriate, approval of the Court.

23 z. "Rodarte Action" means the civil action initiated on February 13, 2020, in Los
24 Angeles Superior Court styled as *Leticia Rodarte v. The Vons Companies,*
25 *Inc., et al.* Los Angeles County Superior Court Case No. 20STCV05641 and
26 includes any amended complaints filed therein.

27 ///

28 ///

1 **II. BACKGROUND AND REASONS FOR SETTLEMENT**

2 2. On or around September 24, 2020, Plaintiff McCarthy sent by certified mail a
3 letter to the California Labor and Workforce Development Agency ("LWDA") notifying the agency
4 of her allegations that Defendant violated the California Labor Code §§201-204 and 246 by failing
5 to pay sick pay at the regular rate of pay. On September 28, 2020, Plaintiff McCarthy amended her
6 PAGA letter to add claims for violation of California Labor Code §§201-204, 226(a), 510, 558 and
7 1194 based on a failure to pay overtime at one- and one-half times the regular rate of pay resulting
8 in unpaid overtime, wages being untimely paid during employment and after termination, and
9 inaccurate wage statements.

10 3. On September 28, 2020, Plaintiff McCarthy filed a Complaint in the Superior
11 Court of the State of California, County of San Bernardino, entitled *Holly McCarthy v. The Vons*
12 *Companies, Inc., et al.*, Case No. CIVDS2021085, on behalf of herself and other non-exempt
13 employees who worked for Defendant in California alleging claims for: failure to pay for paid sick
14 leave in full and at the correct rate of pay; failure to timely pay all wages during and/or at the
15 conclusion of employment, including all penalties for failing to do so; failure to pay overtime wages
16 in full and based on the regular rate of pay; failure to provide accurate wage statements or maintain
17 accurate records; Unfair Competition (Bus. & Prof. Code §§ 17200 et seq.) based on the Labor
18 Code sections alleged; penalties pursuant to PAGA (Lab. Code §§ 2698 et seq.). Plaintiff
19 McCarthy seeks lost wages, interest, penalties, injunctive relief, attorneys' fees and expenses.
20 Defendant denies all of the allegations in Plaintiff McCarthy's Complaint and maintains that the
21 Court should not certify the class or representative action proposed by Plaintiff, other than for the
22 sole purpose of this Settlement, as set forth in its Answer and Affirmative Defenses to Plaintiff
23 McCarthy's Class Action Complaint filed November 20, 2020.

24 4. On or about February 11, 2020, Plaintiff Rodarte sent by certified mail a letter
25 to the LWDA notifying the agency of her allegations that Defendant had violated the California
26 Labor Code by rounding and time shaving leading to minimum wage and overtime violations, rest
27 period violations, inaccurate pay wage statements, failure to timely pay wages at termination, and
28 seeking PAGA penalties based thereon.

1 5. On February 13, 2020, Plaintiff Rodarte filed a Complaint in the Superior
2 Court of the State of California, County of Los Angeles, entitled *Leticia Rodarte v. The Vons*
3 *Companies, Inc., et al.*, Case No. 20STCV05641 on behalf of herself and other non-exempt
4 employees who worked for Defendant in California alleging claims for: failure to pay overtime
5 wages, failure to pay minimum wages, failure to provide rest periods, failure to pay all wages upon
6 termination, failure to provide accurate wage statements and unfair competition. On September 8,
7 2020, Plaintiff Rodarte filed a First Amended Complaint to add a claim for penalties pursuant to
8 PAGA (Lab. Code §§ 2698 et seq.)

9 6. On June 28, 2021, Plaintiff Rodarte submitted an amended PAGA letter
10 alleging failure to pay overtime based on miscalculation of the regular rate of pay and meal period
11 violations and seeking PAGA penalties including Labor Code §558 penalties based thereon. On
12 July 20, 2021, Plaintiff Rodarte and Defendant stipulated to the filing of a Second Amended
13 Complaint which added a claim for failure to provide meal periods and adding further factual
14 allegations for unpaid overtime wages.

15 7. On or about March 15, 2021, Plaintiff Mendoza sent by certified mail a letter
16 to the LWDA notifying the agency of her allegations that Defendant had violated the California
17 Labor Code by failing to compensate for all hours worked, rounding and time shaving leading to
18 minimum wage and overtime violations, failing to provide meal and rest periods, providing
19 inaccurate pay wage statements, failing to timely pay wages at termination, engaging in unfair
20 business practices, and seeking PAGA penalties based thereon.

21 8. On April 19, 2021, Plaintiff Mendoza filed a Complaint in the U.S. District
22 Court, Central District of California, entitled *Rachel Mendoza v. Pavilions Market, The Vons*
23 *Companies, Inc., Albertson's Companies, Inc.*, Case No. 2:21-cv-03353-JVS-JPR on behalf of
24 herself and other non-exempt employees who worked for Defendant in California alleging claims
25 for: failure to pay for all hours worked, failure to pay minimum wages, failure to provide meal
26 periods, failure to provide rest periods, failure to pay all wages upon termination, failure to provide
27 accurate wage statements and unfair competition. On August 25, 2021, the District Court issued an
28 Order dismissing this case without prejudice in its entirety.

1 9. On May 24, 2021, Plaintiff Mendoza filed a Complaint in the Superior Court
2 of the State of California, County of Alameda, entitled *Rachel Mendoza v. The Vons Companies,*
3 *Inc.*, Case No. RG21100503 on behalf of herself and other non-exempt employees who worked for
4 Defendant in California alleging claims for penalties pursuant to PAGA (Lab. Code §§ 2698 et
5 seq.) in accordance with the allegations made in her March 15, 2021, PAGA letter.

6 10. On August 20, 2021, Plaintiff Mendoza filed a First Amended Complaint in
7 Case No. 20STCV05641 to add class claims on behalf of herself and other non-exempt employees
8 who worked for Defendant in California for the past four years for: failure to pay for all hours
9 worked, failure to pay minimum wages, failure to provide meal periods, failure to provide rest
10 periods, failure to reimburse for necessary business expenses, failure to pay all wages upon
11 termination, failure to provide accurate wage statements and unfair competition.

12 11. On January 28, 2022, pursuant to a joint stipulation, Plaintiff Mendoza filed a
13 Second Amended Complaint in Case No. 20STCV05641 to clarify one of her minimum wage and
14 overtime factual allegations and the Labor Code sections she was seeking penalties for pursuant to
15 PAGA.

16 12. In conjunction with this Settlement, Plaintiffs will submit a Second Amended
17 PAGA letter in the McCarthy Action which shall add allegations under Labor Code §§225.5, 226.3,
18 1174, 1174.5, and 1182.12. Plaintiffs will also file an Amended Complaint in the McCarthy
19 Action, which will add Plaintiffs Rachel Mendoza and Leticia Rodarte as Plaintiffs and class
20 representatives and add the claims alleged in the Rodarte Action and the Mendoza Action, (the
21 “Amended McCarthy Complaint”). Both the Amended PAGA letter and the Amended McCarthy
22 Complaint will be subject to the approval of both Plaintiffs’ and Defendant’s counsel. The
23 allegations in the Amended McCarthy Complaint shall be deemed denied without further answer.

24 13. Upon the filing of the Amended McCarthy Complaint, Plaintiffs’ counsel will
25 request that the Rodarte Action and Mendoza Action be dismissed without prejudice. The
26 allegations in the Rodarte Action and the Mendoza Action will be deemed resolved upon final
27 approval of this Settlement.

28 ///

1 14. Plaintiffs' case is largely premised on the method that Vons used to calculate
2 its non-exempt employees' overtime rate of pay for overtime purposes. Under California law and
3 the FLSA, overtime is paid at an additional one-half an employee's "regular rate of pay." The
4 regular rate of pay calculation includes both cash wages and certain additional categories of
5 remuneration. Defendant argued that any amounts allegedly owed to Plaintiffs and the putative
6 class due to any alleged miscalculation of the regular rate are de minimis at best. Furthermore,
7 Defendant argued that under Labor Code section 514, any employee who works under a bona fide
8 collective bargaining agreement and is paid 130% or more of the state minimum wage is exempt
9 California's overtime requirements, including the requirement for daily overtime, greatly reducing
10 the number of pay periods at issue. Moreover, Vons argued that because it voluntarily pays
11 numerous premiums not required by law which serve as credits against any overtime, many
12 employees, including Plaintiffs, were paid much more than what was required under the law.

13 15. The parties agreed to attempt to resolve the matters through mediation and
14 agreed to engage in informal discovery leading up to that mediation. To prepare for mediation in
15 this case, data points based on a sample of 395 employees were analyzed and an extrapolation
16 factor was applied to the class population, including the number of employees who earned non-
17 discretionary incentives, shift differentials or premium payments in weeks in which employees
18 were paid sick pay, overtime and, sick pay or overtime, the average current and final hourly rate of
19 pay for those employees, the number of employers separated or furloughed during the data period,
20 the number of employees who worked such workweeks and the number of pay periods that
21 included such workweeks. Defendant also provided the total number and dollar amount of hours of
22 sick pay paid, number of regular hours paid, and number of overtime hours paid. Data was also
23 analyzed to determine the number of employees who were always paid at an hourly rate of at least
24 130% minimum wage and those who ever fell below this threshold in any pay period during the
25 class period, the number of pay periods with potential overtime violations before accounting for any
26 overtime credits, whether and to what extent that employee would have overtime credits within the
27 same pay period and/or on a cumulative basis, and the number of pay periods with alleged
28 violations accounting for overtime credits, the number of employees with potential sick pay

1 underpayments who were ever underpaid sick pay, who were ever underpaid sick pay and net
2 underpaid at the time of termination, the number of employees who were overpaid sick pay and
3 who were net overpaid sick pay at the time of termination (as well as the employees with a neutral
4 impact). In addition, Defendant provided relevant policy documents and personnel documents and
5 pay and time data for the Plaintiffs.

6 16. On December 6, 2021, the parties engaged in a mediation session with Jill R.
7 Sperber but were not able to reach a settlement. On February 24, 2022, the parties engaged in a
8 second mediation session under the guidance of an experienced wage and hour neutral, Gig
9 Kyriacou. While no settlement of was reached during the two sessions of mediation, over the course
10 of the next several months, the Parties continued to negotiate and were ultimately able to sign a
11 Memorandum of Understanding in July 2022.

12 17. Class Counsel represent that they have conducted a thorough investigation
13 into the facts of this case and have diligently pursued an investigation of the Class Members' claims
14 against Defendant, including (1) interviewing Class Members and analyzing the results of Class
15 Member interviews; (2) reviewing relevant policy documents; (3) researching the applicable law and
16 the potential defenses; and (4) reviewing relevant data including sample pay data and key statistics.
17 Class Counsel reviewed payroll records for the named Plaintiffs and other class members and
18 prepared a detailed damage analysis with input from their expert. Based on their own independent
19 investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable
20 and adequate and is in the best interest of the Class in light of all known facts and circumstances,
21 including the risk of significant delay, defenses asserted by Defendant, and potential appellate issues.
22 Defendant agrees that the Settlement is fair, reasonable and adequate.

23 18. It is the mutual desire of the Parties to fully, finally, and forever settle,
24 compromise, and discharge all disputes and claims raised in or related in any way to the
25 Consolidated Action. Thus, the entry of the Final Approval Order in this Consolidated Action shall
26 resolve all class claims which were, or which could have been alleged in the McCarthy, Rodarte and
27 Mendoza Actions except for the Labor Code section 2802 class claim in the Mendoza Action that is
28 being dismissed on a class basis without prejudice. The Parties agree to cooperate and take all steps

1 necessary and appropriate to obtain preliminary and final approval of this Settlement, and to
2 effectuate its terms. The Parties will mutually stipulate and agree to extend all deadlines for
3 responses to discovery and depositions indefinitely. The parties will amend the McCarthy Action to
4 include Rodarte and Mendoza as plaintiffs/class representatives and include the claims from the
5 Rodarte Action and Mendoza Action in the Consolidated Action. The complaint and PAGA letter in
6 the Consolidated Action shall add allegations for 225.5, 226.3, 1174, 1174.5, and 1182.12. The
7 complaint and PAGA letter in the Consolidated Action, as contemplated herein, shall be subject to
8 approval of both Plaintiffs' and Defendant's counsel. The Rodarte and Mendoza Actions will be
9 dismissed without prejudice when the complaint in the Consolidated Action is filed. The allegations
10 in the complaint in the Consolidated Action shall be deemed denied without further answer. The
11 allegations in the Rodarte Action and Mendoza Action will be deemed resolved upon final approval
12 in the Consolidated Action.

13 **III. NO ADMISSION**

14 19. Nothing contained in this Agreement and the Settlement contemplated in the
15 Agreement shall be construed or deemed an admission of liability, culpability, negligence, or
16 wrongdoing on the part of Defendant and Defendant denies liability therefor. While Defendant
17 believes that this Consolidated Action meets the prerequisites for certification of a settlement class,
18 the fact that Defendant seeks approval of this Settlement in the form of a class action shall not be
19 construed as an admission that the underlying action was properly brought as a class action or a
20 representative action under California Business and Professions Code section 17200 or California
21 Labor Code 2699 for purposes other than settlement. Each of the Parties has entered into this
22 Settlement with the intention to avoid further disputes and litigation with the attendant
23 inconvenience and expenses. Settlement of the Consolidated Action, the negotiation and execution
24 of this Agreement , and all acts performed or documents executed pursuant to or in furtherance of
25 this Agreement or the Settlement: (1) are not, shall not be deemed to be, and may not be used as, an
26 admission or evidence of any wrongdoing or liability on the part of Defendant, and each of them; (2)
27 are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or
28 omission on the part of Defendant in any civil, criminal, administrative or arbitral proceeding in any

1 court, administrative agency or other tribunal; and (3) are not, shall not be deemed to be, and may
2 not be used as, an admission or evidence of the appropriateness of these or similar claims for class
3 certification or administration other than for purposes of administering this Agreement. This
4 Agreement is a settlement document and shall be inadmissible in evidence in any proceeding, except
5 an action or proceeding to approve, interpret, or enforce the terms of the Agreement.

6 **IV. CERTIFICATION OF A CODE OF CIVIL PROCEDURE SECTION 382 CLASS**

7 20. For Settlement purposes only, the Parties stipulate to conditional certification
8 of the Settlement Class ("Class"), an opt-out class under California Code of Civil Procedure 382,
9 that is defined as follows:

10 All current and former non-exempt employees of The Vons Companies,
11 Inc. in the State of California during the Covered Period excluding
12 employees who worked at the distribution centers and plants, drivers,
13 pharmacists and, through August 7, 2020, non-union employees.
14 Employees covered by the following settled actions are also excluded
15 from the class definition: *Fimbres v. The Vons Companies, Inc.*, Case
No. RIC1 904892, filed on September 24, 2019, in Riverside County
Superior Court (class settlement period ending September 7, 2020);
Monica Luna, et al. v. Albertsons Companies, Inc. et al., Case No.
BC605621, filed on December 31, 2015, in Los Angeles County
Superior Court (class settlement period ending January 11, 2018).

16 21. The Parties stipulate that Plaintiffs Holly McCarthy, Rachel Mendoza and
17 Leticia Rodarte shall be appointed as the Class Representatives for the Settlement Class.

18 22. The Parties stipulate that Diversity Law Group, P.C., Polaris Law Group LLP
19 and The Nourmand Law Firm, APC and Schneider Wallace Cottrell Konecky LLP shall be
20 appointed Class Counsel for the Settlement Class.

21 23. The stipulations to certify the Settlement Class are completely contingent
22 upon final approval of this Agreement by the Court and are made for settlement purposes only. If
23 the Settlement is not approved by the Court, is overturned on appeal, or does not become final for
24 any other reason, the Parties agree that the certification of the Settlement Class is void ab initio and
25 that, if necessary, they shall stipulate to decertification of the Settlement Class without prejudice to
26 the propriety of class certification being adjudicated on the merits.

1 **V. TERMS OF THE SETTLEMENT**

2 **A. Maximum Gross Settlement Amount**

3 24. The Maximum Gross Settlement Amount under this Settlement is Three
4 Million Eight Hundred Twelve Thousand Five Hundred Dollars and No Cents (\$3,812,500.00), with
5 the exception of any pro rata increase triggered pursuant to the Escalator Clause discussed below in
6 Paragraph 25. Class Members do not need to submit claims forms to receive their payments. Class
7 Members will be bound by the settlement unless they opt out.

8 25. There are approximately 67,746 class members and 5,649,451 workweeks
9 from February 13, 2016, up to December 12, 2021. It is projected that there will be 6,020,951
10 workweeks by April 30, 2022, the end of the Covered Period. In the event the total workweeks
11 increase by the end of the Covered Period by more than 2.5%, *i.e.*, by more than 150,524, Defendant
12 shall increase the Net Settlement Distribution Amount by determining the additional workweeks in
13 excess of 6,171,475 (the "Escalator Clause"). For example, if the total workweeks are 6,181,475 and
14 if the workweek value is \$2.00, Defendant would have to increase the Net Settlement Distribution
15 Amount by \$20,000 ($6,181,475 - 6,171,475 = 10,000 \times \2.00). The actual workweek value will be
16 determined by the allocation of the Gross Settlement Amount as provided above.

17 26. This Settlement does not establish a fund for the payment of claims except as
18 expressly provided for herein. The Maximum Gross Settlement Amount shall remain in the
19 possession, custody, and control of Defendant until the funding of the Maximum Gross Settlement
20 Amount to the Claims Administrator. The Maximum Gross Settlement Amount shall not be
21 segregated but shall remain in Defendant's general funds until provided to the Claims Administrator
22 for distribution sufficiently in advance for the Claims Administrator to meet its obligations under the
23 Settlement Agreement. In the event that this Settlement Agreement is canceled, rescinded,
24 terminated, voided, or nullified, however that may occur, or the settlement of the Consolidated
25 Action is barred by operation of law, is invalidated, is not approved or otherwise is ordered not to be
26 carried out by the Court or any court of competent jurisdiction, Defendant will cease to have any
27 obligation to pay or provide any portion of the Maximum Gross Settlement Amount to anyone under
28 the terms of this Settlement Agreement.

1 **B. Attorneys' Fees and Costs**

2 27. The Consolidated Action alleges a potential claim for attorneys' fees and costs
3 pursuant to, *inter alia*, the California Labor Code. The Parties agree that any and all such claims for
4 attorneys' fees and costs have been settled in this Agreement subject only to approval by the Court.

5 28. Defendant understands that Class Counsel will apply to the Court for an award
6 of attorneys' fees and costs, which will be scheduled for determination at the Final Approval
7 Hearing described below. Class Counsel will apply for, and Defendant will not oppose, an award of
8 attorneys' fees in an amount up to, but not to exceed, 35% of the Maximum Gross Settlement
9 Amount (which is equal to One Million Three Hundred Thirty-Four Thousand Three Hundred
10 Seventy Five Dollars and Zero Cents (\$1,334,375.00)), and litigation costs and expenses in the
11 maximum amount of Forty Thousand Dollars and Zero Cents (\$40,000.00), according to proof and
12 approval by the Court, all of which shall be paid exclusively from the Maximum Gross Settlement
13 Amount, and will compensate Class Counsel for all of the work already performed in the
14 Consolidated Action and all work remaining to be performed in documenting the Settlement,
15 securing Court approval of the Settlement, administering the Settlement, ensuring that the Settlement
16 is fairly administered and implemented, obtaining a Judgment as well as all associated expenses.
17 The litigation costs and expenses shall be those costs and expenses incurred by Plaintiffs as set forth
18 on Class Counsel's billing statement, including but not limited to mediation fees, expert and
19 consultant fees, filing fees, attorney service charges, online research charges, travel expenses,
20 copying expenses, deposition expenses and delivery charges. Neither the Class Representatives,
21 Class Counsel, nor any other Participating Class Member shall seek payment of attorneys' fees or
22 reimbursement of costs or expenses from Defendant except as expressly set forth in this Agreement.

23 29. The substance of Class Counsel's application for attorneys' fees and costs is
24 not a material part of this Agreement and is to be considered separately from the consideration of the
25 fairness, reasonableness, adequacy, and good faith of the settlement of the Consolidated Action.
26 However, all claims for attorneys' fees and costs or expenses that the Settlement Class may possess
27 against Defendant have been compromised and resolved in this Agreement. Any proceedings related
28 to Class Counsel's application for attorneys' fees and costs shall not terminate or cancel this

1 Agreement. If Class Counsel appeals an adverse ruling of the Court regarding its fee and cost
2 application, the ruling of the appellate court (regardless of its substance) shall not constitute a
3 material alteration of a term of this Agreement. Class Counsel waives and releases any claim for
4 fees and costs in excess of that which are allowed by the Court or on appellate review of the Court's
5 fees and costs decision or otherwise. The amount, if any, by which the finally approved fees and
6 costs are less than the maximum amount which can be sought pursuant to this Agreement shall be a
7 part of the wages and non-wage income provided Class Members in equal proportions.

8 30. No later than fifteen (15) calendar days after the Court's approval of Class
9 Counsel's application for attorneys' fees and costs, Class Counsel shall deliver to the Claims
10 Administrator written instructions that describe the manner and mode of payment of such attorneys'
11 fees and costs (and, in the absence of such instructions, such attorneys' fees and costs shall be sent
12 by U.S. mail as set forth below), and fully-executed Form W-9s with respect to all persons or entities
13 to whom some or all of the attorneys' fees and costs shall be paid.

14 31. No later than fifteen (15) calendar days after the Final Effective Date,
15 Defendant shall mail, or wire transfer the Maximum Gross Settlement Amount to the Claims
16 Administrator. No later than seven (7) calendar days after the receipt of the Maximum Gross
17 Settlement Amount from Defendant, the Claims Administrator shall issue a payment to Class
18 Counsel for the amount of attorneys' fees and costs approved by the Court and in accordance with
19 the instructions provided by Class Counsel.

20 32. The Claims Administrator will issue to Class Counsel IRS Form 1099s for the
21 amounts paid for attorneys' fees and costs under this Settlement.

22 **C. Payment to Claims Administrator**

23 33. The fees and expenses of the Claims Administrator are estimated at
24 \$180,750.00. To the extent that the costs of administration exceed \$180,750.00, the shortfall will be
25 taken from the Net Settlement Distribution Amount and thereby reduce the amount payable to the
26 Participating Class Members. To the extent the cost of administration is less than \$180,750.00, the
27 excess shall become part of the Net Settlement Distribution Amount and shall increase the amount
28 payable to the Participating Class Members.

1 34. On or before the date of the Final Approval Hearing, the Claims
2 Administrator shall deliver to counsel for Defendant a fully executed Form W-9.

3 35. No later than fifteen (15) calendar days after the Final Effective Date,
4 Defendant shall mail, or wire transfer the Maximum Gross Settlement Amount to the Claims
5 Administrator. No later than seven (7) calendar days after the receipt of the Maximum Gross
6 Settlement Amount from Defendant, the Claims Administrator shall issue a payment to itself for the
7 amount of fees approved by the Court

8 36. Defendant will issue to the Claims Administrator an IRS Form 1099 for the
9 sum paid to it under this Settlement.

10 **D. Class Representative Payments to Class Representatives**

11 37. Defendant understands that Plaintiffs and Class Counsel will apply to the
12 Court for Class Representative Payments, which will be scheduled for determination at the Final
13 Approval Hearing. Plaintiffs and Class Counsel will apply for Class Representative Payments in an
14 amount up to, but not to exceed, Ten Thousand Dollars and No Cents (\$10,000.00) to each Class
15 Representative, which shall be paid exclusively from the Maximum Gross Settlement Amount and
16 will compensate Plaintiffs for their services as the Class Representatives. Defendant will not oppose
17 Plaintiffs' application for the Class Representative Payments up to the stated amount. The amount,
18 if any, by which the Class Representative Payments are less than the maximum amount which can be
19 sought pursuant to this Agreement shall be part of the Net Settlement Distribution Amount.

20 38. As condition precedent to the payment of this Class Representative Payments,
21 Plaintiffs release any and all claims against Defendant as set forth in the Class Representatives'
22 Release in Paragraph 80.

23 39. Any Class Representative Payment awarded by the Court shall be in addition
24 to the payment, if any, Plaintiffs may otherwise receive as Participating Class Members and/or
25 PAGA Group Members and shall not be subject to payroll tax withholding and deductions.

26 40. No later than seven (7) calendar days after the receipt of the Maximum Gross
27 Settlement Amount from Defendant, the Claims Administrator shall issue the Class Representative
28

1 Payments to Class Counsel or as instructed by Class Counsel on behalf of Plaintiffs in the amount
2 approved by the Court, subject to all authorized and required deductions.

3 41. The Claims Administrator will issue IRS Forms 1099-MISC to Plaintiffs for
4 the amount of the Class Representative Payments.

5 **E. Distribution to Participating Class Members**

6 42. The Gross Individual Settlement Payment to Participating Class Members will
7 be calculated and paid as follows: the total Net Settlement Distribution Amount, estimated at Two
8 Million Dollars and Zero Cents (\$2,000,000.00) will be distributed on a pro-rata basis based on the
9 number of workweeks worked during the class period and on a further "weighted" basis as follows:

- 10 • Employees will receive 1 point for each workweek employed during the Covered Period.
- 11 • Employees who worked during the period of February 13, 2016, to September 30, 2019
12 ("Regular Rate Period") and whose regular rate of pay was less than 130% of the then
13 applicable minimum wage will get 3 additional points for each such workweek.
- 14 • Employees whose employment ended during the period of February 13, 2017, to the end of
15 the Covered Period shall receive an additional 100 points (the "Waiting Time Penalty").
- 16 • Employees who worked during the period from September 30, 2019, to the end of the
17 Covered Period will receive 1 point per workweek for each workweek in which an employee
18 used Paid Sick Leave.

19 The total points and the number of points per employee will be calculated by Defendant's
20 consultant as well as the number of employees in each category. The total points shall be divided
21 into the amount to be distributed to the class and each Participating Class Member's payment shall
22 be based on the product of the result times that Class Member's total points. The dollar value
23 assigned to each point and to each Participating Class Member will be calculated by the Claims
24 Administrator.

25 43. All Gross Individual Settlement Payments shall be allocated 20% as
26 consideration for the release of wage claims and 80% for the release of non-taxable claims including
27 statutory penalties, and interest. All payments to PAGA Group Members shall be allocated as 100%
28 civil penalties. The amounts paid as consideration for the release of wage-related claims shall be

1 subject to all tax withholdings customarily made from employee's wages and all other authorized
2 and required withholdings and shall be reported by W2 form. The amounts paid as consideration for
3 the release of penalties and interest shall be subject to all authorized and required withholdings other
4 than the tax withholdings customarily made from employees' wages and shall be reported by 1099
5 form. The Gross Settlement Amount includes all payments to state and federal tax authorities for the
6 employees' and employer's share of all payroll taxes and other applicable withholdings.

7 44. All Participating Class Members and the Class Representatives will be
8 responsible for correctly characterizing the compensation they receive for tax purposes and for
9 paying any taxes on the amounts received, except for the employer contributions, which will be
10 handled as provided by this Agreement. Class Counsel and Defense Counsel do not intend this
11 Agreement to constitute legal advice relating to the tax liability of any Participating Class Member
12 and PAGA Group Members. To the extent that this Agreement is interpreted to contain or constitute
13 advice regarding any federal, state or local tax issue, such advice is not intended or written to be
14 used, and cannot be used, by any person for the purpose of avoiding any tax liability or penalties

15 45. Participating Class Members may dispute the number of workweeks as set
16 forth in Paragraph 42 and will be given the opportunity to provide documentation to substantiate any
17 such dispute. Any dispute must be in writing and received by the Claims Administrator no later than
18 forty-five (45) calendar days after the initial mailing of the Class Notice. If there is a dispute related
19 to the categorization, the Claims Administrator will consult with Class Counsel and Defense Counsel
20 to determine whether an adjustment is warranted. Upon a dispute being made, Defendant shall
21 provide the Claims Administrator within seven calendar (7) days any available evidence reasonably
22 necessary to evaluate the dispute. The Claims Administrator will make the final decision as to the
23 correct categorization.

24 46. Participating Class Members need not submit claims forms to participate.

25 47. Participating Class Members shall be paid their respective Individual
26 Settlement Payments as provided in this Agreement pursuant to Section IX below.

27 ///

28 ///

1 **F. PAGA Payment**

2 48. The Parties have agreed to allocate One Hundred Thousand Dollars and Zero
3 Cents (\$100,000.00) as consideration for the PAGA Release. Seventy-five percent of the PAGA
4 Payment (\$75,000.00) will be remitted to the California Labor and Workforce Development Agency.
5 The remaining 25% (\$25,000) will be distributed to all PAGA Group Members on a pro rata basis
6 based on the number of workweeks worked by each PAGA Group Member during the PAGA
7 Period.

8 49. This amount is subject to review and approval by the Court as part of the
9 settlement process pursuant to Labor Code section 2699(1)(2). This Settlement is contingent on the
10 Court approving the PAGA Release, set forth in Paragraph 79 and the PAGA Payment. Plaintiffs'
11 counsel will submit a copy of the Settlement to the LWDA at the same time the Settlement is
12 submitted to the Court in accordance with Labor Code section 2699 (1)(2).

13 50. Within seven (7) calendar days after the receipt of the Maximum Gross
14 Settlement Amount from Defendant, the Claims Administrator will remit the PAGA Payment to the
15 California Labor and Workforce Development Agency.

16 **VI. APPOINTMENT AND DUTIES OF CLAIMS ADMINISTRATOR**

17 51. The Claims Administrator shall perform the following duties in connection
18 with administration of the Settlement: (1) using the data provided by Defendant to prepare the Class
19 Notice in English or each Class Member, as described in Section VII.A of this Settlement;
20 (2) mailing the Class Notice to Class Members; (3) tracking non-delivered Class Notice and taking
21 reasonable steps to re-send them to Class Members' current addresses;; (4) setting up a settlement
22 website which contains copies of all papers and orders filed in connection with preliminary and final
23 approval, including the final Settlement Agreement, Complaint, and Final Judgment; (5) tracking
24 and providing weekly report to Class Counsel and Counsel for Defendant about any requests for
25 exclusion; (6) calculating and paying the amounts due to each Participating Class Member and
26 PAGA Group Member pursuant to the Settlement; (7) calculating the amount of employee and
27 Employer Payroll Taxes and paying the applicable employee and Employer Payroll Taxes and
28 deductions; (8) resolving disputes (if any) by Class Members regarding their categorization or other

1 matters, after timely notice to and consultation with Class Counsel and counsel for Defendant; (9)
2 transmitting funds to resolve the PAGA claim to the State of California as designated; (10) issuing
3 payments to Class Counsel and Class Representatives and associated tax forms; and (11) escheating
4 funds from uncashed checks to the State of California Unclaimed Funds in the name of the Class
5 Member and PAGA Group Member who did not cash his/her check within 180 days of issuance.

6 52. All disputes relating to the Claims Administrator's performance of its duties
7 will be referred to the Court, if necessary, which will have continuing jurisdiction over this
8 Settlement until all payments and obligations contemplated by this Settlement have been fully
9 carried out.

10 **VII. NOTICE TO THE CLASS OF THE SETTLEMENT**

11 **A. Mailing the Notice Packets to the Class Members**

12 53. Within fourteen (14) calendar days after the Court enters its Preliminary
13 Approval Order, Defendant will use its best efforts to provide to the Claims Administrator a database
14 that lists, for each Class Member, the individual's name, Social Security Number, last-known
15 address and telephone number; and workweeks within each category as set forth in Paragraph 42
16 during the Covered Period. This database will be drawn from Defendant's payroll and other
17 business records and will be in a format acceptable to the Claims Administrator and Defendant. The
18 data provided to the Claims Administrator and Class Counsel will remain confidential and will not
19 be disclosed to anyone, except as required to applicable tax authorities, pursuant to Defendant's
20 express written consent, or by order of the Court.

21 54. Within fifteen (15) calendar days after Defendant provides the Claims
22 Administrator the information stated pursuant to Paragraph 53, above, the Claims Administrator will
23 mail, by first-class mail, the Class Notice to all Class Members at their last known address, unless
24 modified by any updated address information that the Claims Administrator obtains in the course of
25 administration of the Settlement.

26 55. The Claims Administrator will use standard devices, including the National
27 Change of Address database or equivalent, to obtain forwarding addresses prior to mailing and will
28 use appropriate skip tracing to take appropriate steps to maximize the probability that the Class

1 Notice will be received by all Class Members. Class Members to whom the Class Notice is resent
2 after having been returned undeliverable to the Claims Administrator shall have ten (10) calendar
3 days thereafter, or until the response deadline has expired, whichever is later, to mail, fax or email
4 the request for exclusion, dispute workweeks or an objection. Class Notices that are resent shall
5 inform the recipient of this adjusted deadline. If a Class Member's Class Notice is returned to the
6 Claims Administrator more than once as non-deliverable, no additional Class Notice shall be sent.

7 56. The Claims Administrator shall provide weekly reports to Class Counsel and
8 Defense Counsel as to the mailings of the Class Notice, and the receipt of requests for exclusion,
9 dispute of workweeks and objections prior to the close of the period in which claims can be made.

10 **B. Challenges to Information Provided in Class Notice**

11 57. The Class Notice mailed to the Class Members will include the Class
12 Member's estimated Gross Individual Settlement Payment and number of workweeks.

13 58. Class Members will have the opportunity to challenge the information pre-
14 printed on their individualized Class Notice by submitting a written challenge in connection with the
15 Class Notice within the time period provided. All challenges must be received no later than forty-
16 five (45) calendar days after the initial date of mailing of the Class Notice.

17 59. Timely challenges will be resolved without hearing by the Claims
18 Administrator after consultation with Class Counsel and Counsel for Defendant. Defendant's
19 records will be presumed correct, but the Claims Administrator will evaluate the evidence submitted
20 by the Class Member and will make a final determination based on its evaluation of all the evidence
21 presented. All determinations will be made no later than fifteen (15) calendar days within receipt of
22 the challenge.

23 **D. Objections to Settlement**

24 60. The Class Members will have forty-five (45) calendar days after the date on
25 which the Claims Administrator mails the Class Notice to object to the Settlement by serving on the
26 Claims Administrator, by the forty-five (45)-day deadline, a written objection to the Settlement. The
27 Claims Administrator will email Class Counsel and defense counsel a copy of the objection
28 forthwith. Class Counsel will lodge a copy of the objection with the Court.

1 61. Any Class Member who has elected to opt-out of the Settlement may not
2 submit an objection to the Settlement.

3 62. Objections to the Settlement by any Class Member may be submitted in
4 writing by the original 45-day deadline according to the procedures set forth in the Class Notice.
5 Alternatively, or additionally, Class Members may make an oral objection directly to the Court by
6 appearing in person or through counsel, at his/her own expense, at the Final Approval Hearing to do
7 so.

8 63. The Claims Administrator shall provide the Parties a copy of any objections
9 received within one (1) business day of receipt. Counsel for the Parties shall file any objections and
10 any response thereto at least seven (7) calendar days before the Final Approval Hearing.

11 **E. Election Not to Participate in the Class Settlement**

12 64. In order for a Class Member to validly and effectively request exclusion from,
13 and opt out of, this Settlement, the Class Member must submit to the Claims Administrator a request
14 for exclusion from the Settlement according to the procedures set forth in the Class Notice.
15 Substantial compliance with the requirements set forth in the Class Notice will in most cases be
16 sufficient. To the extent additional information is required the Claims Administrator will
17 communicate with the Class Member. In order to be valid, the request for exclusion must be
18 postmarked for delivery to the Claims Administrator no later than forty-five (45) calendar days after
19 the date of mailing of the Class Notice. No request for exclusion will be accepted if postmarked for
20 delivery to the Claims Administrator after the deadline indicated. A Class Member who is also a
21 PAGA Group Member who requests timely exclusion will not impact the scope of the PAGA
22 Release and will receive his/her share of the PAGA penalties.

23 65. Any Class Member who does not properly and timely submit a request for
24 exclusion will automatically be bound by all terms and conditions of the Settlement, including its
25 release of claims, if the Settlement is approved by the Court, and be bound by the Final Approval
26 Order, regardless of whether he or she has objected to the Settlement.

27 66. A Class Member who is also a PAGA Group Member who properly and
28 timely submits a request for exclusion will not be bound by the Settlement with the exception of the

1 PAGA Release and will remain free to contest any claim brought by Plaintiffs that would have been
2 barred by the Settlement, and nothing in this Settlement will constitute or be construed as a waiver of
3 any defense Defendant has or could assert against such a claim.

4 67. Plaintiffs may not opt-out of the Settlement Class.

5 **F. Reports and Declaration by Claims Administrator**

6 68. By not later than fifteen (15) calendar days after expiration of the 45-day
7 deadline for submission of written requests for exclusion from the Class Settlement, the Claims
8 Administrator will submit to Class Counsel and Counsel for Defendant a report setting forth the
9 number of individuals who as of that date have submitted (a) valid requests for exclusion, (b) invalid
10 requests to be excluded from the Settlement, (d) disputed workweeks, and (d) objections to the
11 Settlement. In the event that the Claims Administrator subsequently receives a request for exclusion
12 from, disputed workweeks or objection to, the Settlement, it will promptly distribute an updated
13 report.

14 69. By not later than the date when Plaintiffs file their motion for final approval of
15 the Settlement, the Claims Administrator will prepare and submit for filing in support of the motion a
16 declaration attesting to its mailing of the Class Notice, its receipt of requests for exclusion, disputed
17 workweeks and objections, and its inability to deliver the Class Notice to potential Class Members
18 due to invalid addresses. As applicable, the Claims Administrator will prepare and submit for filing
19 in support of the motion for final approval, any supplemental declaration.

20 **G. Settlement Website**

21 70. The Claims Administrator will create a settlement website which contains
22 copies of all papers and orders filed in connection with preliminary and final approval, including the
23 final Settlement Agreement and Complaint. These documents will be posted not later than the
24 mailing of the Class Notice and will remain posted until the date of final approval. Pursuant to
25 California Rules of Court, Rule 3.771(b), the Claim Administrator shall post on its website a copy of
26 the Judgment for a period of thirty days from the date the Court signs the Judgment.

27 ///

28 ///

1 **VIII. RIGHT TO RESCIND**

2 71. In the event that more than five percent (5) of the Class Members submit valid
3 requests not to participate in the Settlement, Defendant will have the exclusive right in its sole
4 discretion to rescind the Settlement, and all actions taken in its furtherance will be null and void.
5 Defendant must exercise this right within ten (10) calendar days after the date on which the Claims
6 Administrator first informs Defendant that more than five percent (5%) of the potential Class
7 Members have made valid requests to be excluded from the Settlement. In the event Defendant
8 exercises its option to rescind the Settlement, Defendant shall be solely responsible for any costs
9 incurred by the Claims Administrator up to the date Defendant provides notice.

10 **IX. DISTRIBUTION OF THE SETTLEMENT PAYMENTS**

11 72. Defendant or Class Counsel shall confirm with the Claims Administrator the
12 Final Effective Date as soon as possible. No later than fifteen (15) calendar days after the Final
13 Approval Order, the Claims Administrator will prepare and provide counsel for Defendant and Class
14 Counsel with a report summarizing the total Participating Class Members and the Gross Individual
15 Settlement Payment for each Participating Class Member on that list. The Class Administrator shall
16 also calculate the amount of those Employer Payroll Taxes based on the wage portion of the Gross
17 Individual Settlement Payments for all of the individuals on that list.

18 73. Defendant will cause the Maximum Gross Settlement Amount to be wired to
19 the Claims Administrator no later than fifteen (15) calendar days after the Final Effective Date.

20 74. Within ten (10) calendar days after the receipt of the Maximum Gross
21 Settlement Amount from Defendant, the Claims Administrator will distribute to every Participating
22 Class Member and PAGA Group Member his or her Individual Settlement Payment. The Claims
23 Administrator shall make appropriate tax reporting and withholdings in accordance with this
24 Agreement and applicable law and regulations.

25 75. The Claims Administrator will timely remit the employer's and employee's
26 portion of the payroll and other taxes associated with the settlement payments to the proper
27 authorities, as required by law. In addition, the Claims Administrator will timely issue IRS Form W-
28 2 to each Participating Class Member that reflects the wage portion of the settlement payment and an

1 IRS Form 1099-MISC to each Participating Class Member and PAGA Group Member that reflects
2 the non-wage income portion of the settlement payment to the extent required by law.

3 76. If any Participating Class Member does not cash his or her settlement check(s)
4 within six (6) months after issuance, fifteen (15) calendar days after the check-cashing deadline the
5 Claims Administrator shall escheat the funds to the State of California Unclaimed Fund in the name
6 of the Class Member who did not cash his or her check within 180 days of issuance. The Parties
7 agree that this obligation shall satisfy and fully discharge Defendant's obligations under California
8 Code of Civil Procedure section 384.

9 **X. RELEASE OF CLAIMS**

10 **A. Released Claims by Class Members Who Do Not Opt Out**

11 77. As of the date the Final Approval Order is entered by the Court and Defendant
12 funding of the Maximum Gross Settlement Amount and except as to such rights or claims as may be
13 created by this Settlement, to the maximum extent allowed by law, each Class Member who has not
14 timely and effectively opted out will be deemed to have released claims as both a matter of contract
15 and judicial procedure as follows, which release shall be incorporated into the Class Notice:

16 The settlement shall resolve and the class shall release all claims for
17 wages, statutory and civil penalties, damages and liquidated damages,
18 interest, restitution, injunctive relief, fees and costs under California law
19 that were alleged in the operative Complaints and any Amended
20 Complaints in the McCarthy Action, the Rodarte Action, the Mendoza
21 Action (except for the Labor Code section 2802 class claim that is being
22 dismissed on a class basis without prejudice), and/or the Consolidated
23 Action, and/or claims which reasonable relate to or which reasonably arise
24 out of the same set of operative facts or theories pled therein, whether such
25 claims or forms of relief are known or unknown during the Covered
26 Period, including, but not limited to claims for: (1) failure to pay overtime
27 wages in full and based on the regular rate of pay (Lab. Code §§ 510, 558,
28 1194, and 1199); (2) failure to pay minimum wages in full and liquidated

1 damages for failing to pay the minimum wage (Lab. Code §§ 1182.12,
2 1194, 1194.2, 1197, and 1197.1); (3) failure to provide rest periods and
3 failure to pay premiums for non-compliant rest periods and/or to pay them
4 at the regular rate of pay (Lab. Code §§ 226.7 and 512); (4) failure to
5 provide meal periods and failure to pay premiums for non-compliant meal
6 periods and/or to pay them at the regular rate of pay (Lab. Code §§ 226.7
7 and 512); (5) failure to pay for paid sick leave in full and at the correct rate
8 of pay (Lab. Code §§ 245, 246, 248, 248.1, 248.2, 248.5, and 248.6); (6)
9 failure to timely pay all wages during and/or at the conclusion of
10 employment, including all penalties for failing to do so (Lab. Code §§
11 201, 202, 203, 204, 210, and 225.5); (7) failure to provide accurate wage
12 statements or maintain accurate records (Lab. Code §§ 226, 226.3, 1174,
13 and 1174.5); and (8) Unfair Competition (Bus. & Prof. Code §§ 17200 et
14 seq.) based on the Labor Code sections alleged, and with respect to the
15 penalties claimed in the Consolidated Action, any source of obligation as a
16 basis for claiming such penalties during the Covered Period, including any
17 and all obligations released above which are imposed by the applicable
18 Wage Orders (the “Released Claims”), against The Vons Companies, Inc.
19 (“Defendant”) and each and all of its past and present direct and indirect
20 parent, subsidiary, and affiliated corporations (including but not limited to
21 Safeway Inc., Albertsons Companies, Inc., Albertson’s LLC, Albertson
22 Safeway LLC), entities, divisions, general and limited partners, joint
23 venturers and affiliates, and each of their respective current and former
24 directors, officers, managers, employees, principals, members, agents,
25 insurers, reinsurers, shareholders, attorneys, advisors, representatives,
26 general partners, limited partners, joint venturers, and affiliated
27 companies, and each of their respective executors, predecessors,
28 successors, assigns and legal representatives (collectively, “Released

Parties”) in their representative and individual capacities whether under Labor Code §§ 558, 558.1. or otherwise.

78. The Gross Individual Settlement Payment to Participating Class Members will not result in any additional benefit payments beyond those provided by this Agreement to Plaintiffs and Participating Class Members. Participating Class Members will be deemed to have waived all such claims for benefits premised upon the Gross Individual Settlement Payments to them, whether known or unknown by them, as part of their Released Claims under this Agreement.

B. Released Claims by PAGA Group Members (“PAGA Release”)

79. As of the date the Final Approval Order is entered by the Court and Defendant funding of the Maximum Gross Settlement Amount, Plaintiffs, individually and in their capacity as representative of the LWDA, State of California, the LWDA, State of California, and PAGA Group Members release and discharge the Released Parties from any and all claims for civil Penalties under PAGA [Cal. Lab. Code §§ 2698, *et seq.*] based on the Labor Code violations alleged and that are based upon or arise from the factual allegations in any of Plaintiffs’ PAGA letters, amended PAGA letters and/or alleged in the operative Complaints and any Amended Complaints in the McCarthy Action, the Rodarte Action, the Mendoza Action, and/or the Consolidated Action, including all attorneys’ fees and costs related thereto, regardless of whether PAGA Group Members opt out from the Settlement.

B. Released Claims by the Class Representative

80. As of the date the Final Approval Order and Judgment is entered by the Court and Defendant funding the Maximum Gross Settlement Amount, except as to such rights or claims as may be created by this Settlement, to the maximum extent allowed by law, the Class Representative will be deemed to have released claims as follows:

The Class Representatives hereby fully and finally releases and discharges the Released Parties (defined in Paragraph 77, above) from any and all of the Released Claims (defined in Paragraph 77, above) and from any and all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, known or unknown, suspected or unsuspected, that the Class Representatives had, now has, or may hereafter claim to have against the Released Parties arising out

1 of, or relating in any way to, the Class Representatives' hiring by, employment with, separation of
2 employment with, or otherwise relating to the Released Parties, arising or accruing from the
3 beginning of time up through the date of the Final Approval Hearing ("Class Representatives'
4 Released Period") with the exception of claims which cannot be released by law ("Class
5 Representatives' Released Claims").

6 The Parties stipulate and agree that, upon the Effective Date, the Class
7 Representatives waive California Civil Code section 1542, which provides:

8 A general release does not extend to claims which the creditor does not
9 know or suspect to exist in his or her favor at the time of executing the
10 release, which if known by him or her must have materially affected
his or her settlement with the debtor.

11 **XI. DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

12 81. The Parties shall submit this Agreement to the Court in support of Plaintiffs'
13 Motion for Preliminary Approval and determination by the Court as to its fairness, adequacy, and
14 reasonableness. As soon as reasonably possible upon execution of this Agreement, the Parties shall
15 apply to the Court for the entry of an Order Granting Preliminary Approval of the Settlement and
16 Notice which shall provide for, among other things, the following:

17 a. Scheduling a final fairness and approval hearing on the question of
18 whether the proposed Settlement should be finally approved as fair, reasonable and adequate as to
19 the Settlement Class.

20 b. Approving as to form and content the proposed Class Notice described
21 herein;

22 c. Directing the mailing of the Class Notice by first class mail to the
23 Class Members;

24 d. Preliminarily approving the Settlement;

25 e. Preliminarily certifying the Class for settlement purposes only; and

26 f. Approving Larry W. Lee and Simon L. Yang of Diversity Law Group,
27 P.C., William L. Marder of Polaris Law Group LLP and James De Sario and Michael Nourmand of
28 The Nourmand Law Firm, APC and Carolyn H. Cottrell and Esther L. Bylsma of Schneider Wallace

1 Cottrell Konecky LLP as Class Counsel. Plaintiffs Holly McCarthy, Rachel Mendoza and Leticia
2 Rodarte as Class Representatives, and CPT Group, Inc., or an administrator mutually agreed to by
3 the Parties, as Claims Administrator.

4 82. After the Preliminary Approval Order is entered by the Court, and prior to the
5 deadline for objections, Plaintiffs shall file the motion for an award of attorneys' fees and costs to be
6 heard on the same hearing date as set by the Court for the Final Approval Hearing.

7 **XII. DUTIES OF THE PARTIES REGARDING FINAL COURT APPROVAL**

8 83. In connection with the final approval by the Court of the Settlement, the
9 Parties will submit a proposed Order Granting Final Approval of the Class Action Settlement and
10 Final Judgment, respectively, which shall provide, among other things, as follows:

11 a. Approving the Settlement, adjudging the terms thereof to be fair,
12 reasonable and adequate, and directing consummation of its terms and provisions;

13 b. Approving Class Counsel's application for an award of attorneys' fees
14 and reimbursement of costs;

15 c. Approving the Class Representatives' service payment;

16 d. Certifying the Settlement Class for purposes of this Settlement only;
17 and

18 e. Entering Judgment pursuant to California Rules of Court, rule 3.769(h)
19 which retains jurisdiction and permanently bars the Class Members who do not timely and validly
20 exclude themselves from the Settlement from prosecuting any and all Released Claims against the
21 Released Parties, and permanently bars the Class Representatives from prosecuting any and all Class
22 Representatives' Released Claims against the Released Parties. Notice of the Final Judgment shall
23 be given as provided in the Agreement.

24 **XIII. EFFECT OF NON-APPROVAL**

25 84. If this Agreement is not preliminarily or finally approved by the Court and/or
26 if a Final Approval Order is not entered or if Defendant exercise the option to rescind pursuant to
27 Paragraph 71, above (e.g., because the Court does not approve the settlement, or the opt-outs from
28 the Class exceed five percent and Defendant revokes the Agreement), this Agreement shall be null

1 and void. In such event, (1) nothing in this Agreement shall be construed as a determination,
2 admission, or concession of any issue in the Consolidated Action, and nothing in this Agreement
3 may be offered into evidence in any trial on the merits of the claims asserted in the Consolidated
4 Action or in any subsequent pleading; (2) the Parties expressly reserve their rights with respect to the
5 prosecution and defense of the Consolidated Action as if this Agreement never existed; and (3)
6 Defendant shall be responsible for any costs for Notice or claims administration incurred by the
7 Claims Administrator through that date. If there is any reduction in the attorneys' fees or costs
8 awards or the Class Representative Payments, such reduction may be appealed but is not a basis for
9 rendering this Agreement null, void, voidable and/or unenforceable.

10 **XIV. CONFIDENTIALITY PRECEDING MOTION FOR PRELIMINARY APPROVAL**

11 85. Plaintiffs and Plaintiffs' counsel agree to keep the settlement confidential until
12 filed with the court, with the exception of Defendant promptly filing notices of settlement in all
13 overlapping cases.

14 **XV. MUTUAL FULL COOPERATION**

15 86. The Parties will fully cooperate with each other and use their best efforts,
16 including all efforts contemplated by this Settlement and any other efforts that may become
17 necessary or ordered by the Court, or otherwise, to accomplish the terms of this Settlement in
18 accordance with the terms of the parties' memorandum of understanding, including but not limited
19 to, executing such documents and taking such other action as may reasonably be necessary to obtain
20 preliminary and final approval of this Settlement and to implement its terms.

21 **XVI. NO PRIOR ASSIGNMENTS**

22 87. The Parties represent, covenant, and warrant that they have not directly or
23 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
24 person or entity any portion of any claims, causes of action, demands, rights and liabilities of every
25 nature and description released under this Settlement.

26 **XVII. NOTICES**

27 88. Unless otherwise specifically provided by this Settlement, all notices,
28 demands or other communications given under this Settlement will be in writing and be deemed to

1 have been duly given as of the third business day after mailing by United States registered or
2 certified mail, return-receipt requested, addressed as follows:

3 **To Plaintiffs and the Settlement Class:**

4 LARRY W. LEE
5 SIMON L. YANG
6 DIVERSITY LAW GROUP, P.C.
7 515 South Figueroa Street, Suite 1250
8 Los Angeles, California 90071
9 Telephone: (213) 488-6555

10 WILLIAM L. MARDER
11 POLARIS LAW GROUP LLP
12 501 San Benito Street, Suite 200
13 Hollister, California 95023
14 Telephone: (831) 531-4214

15 MICHAEL NOURMAND
16 JAMES A. DE SARIO
17 THE NOURMAND LAW FIRM, APC
18 8822 West Olympic Boulevard
19 Beverly Hills, California 90211
20 Telephone: (310) 553-3600

21 CAROLYN H. COTTRELL
22 ESTHER L. BYLSMA
23 SCHNEIDER WALLACE
24 COTTRELL KONECKY LLP
25 2000 Powell Street, Suite 1400
26 Emeryville, California 94608
27 Telephone: (415) 421-7100

28 **To Defendant:**

R. BRIAN DIXON
LAURA E. HAYWARD
ADAM J. FISS
LITTLER MENDELSON, P.C.
333 Bush Street, 34th Floor
San Francisco, CA 94104
Telephone: (415) 433-1940

///

///

///

///

1 **XVIII. CONSTRUCTION**

2 89. This Settlement is the result of lengthy, arms-length negotiations between the
3 Parties. This Settlement will not be construed in favor of or against any Party by reason of the extent
4 to which any Party or her or its counsel participated in the drafting of this Settlement.

5 **XIX. CAPTIONS AND INTERPRETATIONS**

6 90. Paragraph and section titles, headings, or captions contained in this Settlement
7 are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
8 describe the scope of this Settlement or any of its provisions. Each term of this Settlement is
9 contractual and not merely a recital, except for those set forth in Section I, above.

10 **XX. MODIFICATION**

11 91. This Settlement may not be changed, altered, or modified, except in writing
12 and signed by counsel for the Parties and approved by the Court. This Settlement may not be
13 discharged except by performance in accordance with its terms or by a writing signed by the Parties.

14 **XXI. APPLICABLE LAW**

15 92. All terms and conditions of this Agreement will be governed by and
16 interpreted according to the laws of the State of California, without giving effect to any conflict of
17 law or choice of law principles.

18 **XXII. INTEGRATION CLAUSE**

19 93. This Settlement and all the attached Exhibits which by this reference are
20 incorporated into this Settlement constitutes the entire agreement between the Parties relating to the
21 Settlement and transactions contemplated by the Settlement. All prior or contemporaneous
22 agreements, understandings, representations, and statements, whether oral or written and whether by
23 a Party or a Party's counsel, are merged into this Settlement. No rights under this Settlement may be
24 waived except in writing.

25 **XXIII. BINDING ON ASSIGNS**

26 94. This Settlement will be binding upon and will inure to the benefit of the
27 Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

28 ///

1 **XXIV. CLASS MEMBER SIGNATORIES**

2 95. It is agreed that because the members of the Class are so numerous, it is
3 impossible or impractical to have each Class Member who does not timely and validly opt-out
4 execute this Settlement. The Class Notice will inform all Class Members of the binding nature of
5 the release contained herein will have the same force and effect as if this Settlement were executed
6 by each Class Member who does not timely and validly opt-out.

7 **XXV. COUNTERPARTS**

8 96. This Settlement may be executed in counterparts, and when each Party has
9 signed and delivered at least one such counterpart, each counterpart will be deemed an original, and,
10 when taken together with other signed counterparts, will constitute one Settlement, which will be
11 binding upon and effective as to all Parties.

12 97. This Settlement may be signed by facsimile signature or digital signature,
13 each of which will have the same force and effect as an original signature.

14 **XXVI. PARTIES' AUTHORITY TO SIGN**

15 98. The signatories to this Settlement hereby represent that they are fully
16 authorized to enter into this Settlement on behalf of themselves or their respective principals.

17 **EXECUTION BY PARTIES AND COUNSEL**

18 The Parties and their counsel hereby execute this document to evidence their
19 acceptance of and agreement to the Settlement.

20 Dated: 04/04/2023, 2023

21
22 DocuSigned by:
23 
24 HOLLY MCCARTHY
25 Plaintiff

26 Dated: _____, 2023

27 LETICIA RODARTE
28 Plaintiff

1 **XXIV. CLASS MEMBER SIGNATORIES**

2 95. It is agreed that because the members of the Class are so numerous, it is
3 impossible or impractical to have each Class Member who does not timely and validly opt-out
4 execute this Settlement. The Class Notice will inform all Class Members of the binding nature of
5 the release contained herein will have the same force and effect as if this Settlement were executed
6 by each Class Member who does not timely and validly opt-out.

7 **XXV. COUNTERPARTS**

8 96. This Settlement may be executed in counterparts, and when each Party has
9 signed and delivered at least one such counterpart, each counterpart will be deemed an original, and,
10 when taken together with other signed counterparts, will constitute one Settlement, which will be
11 binding upon and effective as to all Parties.

12 97. This Settlement may be signed by facsimile signature or digital signature,
13 each of which will have the same force and effect as an original signature.

14 **XXVI. PARTIES' AUTHORITY TO SIGN**

15 98. The signatories to this Settlement hereby represent that they are fully
16 authorized to enter into this Settlement on behalf of themselves or their respective principals.

17 **EXECUTION BY PARTIES AND COUNSEL**

18 The Parties and their counsel hereby execute this document to evidence their
19 acceptance of and agreement to the Settlement.

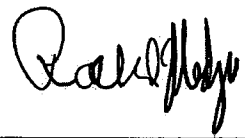
20 Dated: _____, 2023
21

22 _____
23 HOLLY McCARTHY
Plaintiff

24 Dated: 03-28-2023, 2023
25

26 _____
27 LETICIA RODARTE
Plaintiff
28

1 Dated: 03 / 30 / 2023, 2023



RACHEL MENDOZA
Plaintiff

5 Dated: _____, 2023

LARRY W. LEE
SIMON L. YANG
DIVERSITY LAW GROUP, P.C.

Attorneys for Plaintiffs and Settlement Class

10 Dated: _____, 2023

WILLIAM L. MARDER
POLARIS LAW GROUP LLP

Attorneys for Plaintiffs and Settlement Class

15 Dated: _____, 2023

MICHAEL NOURMAND
JAMES A. DE SARIO
THE NOURMAND LAW FIRM, APC

Attorneys for Plaintiffs and Settlement Class

20 Dated: April 3, 2023



CAROLYN H. COTTRELL
ESTHER L. BYLSMA
SCHNEIDER WALLACE COTTRELL
KONECKY LLP

Attorneys for Plaintiffs and Settlement Class

1 Dated: _____, 2023

2

3

RACHEL MENDOZA
Plaintiff

4

5 Dated: April 3, 2023

6

7


LARRY W. YEE
SIMON L. YANG
DIVERSITY LAW GROUP, P.C.

8

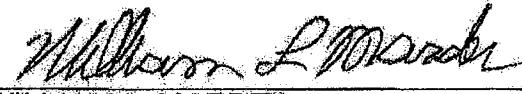
Attorneys for Plaintiffs and Settlement Class

9

10 Dated: April 4, 2023

11

12


WILLIAM L. MARDER
POLARIS LAW GROUP LLP

13

Attorneys for Plaintiffs and Settlement Class

14

15 Dated: _____, 2023

16

17

MICHAEL NOURMAND
JAMES A. DE SARIO
THE NOURMAND LAW FIRM, APC

18

19

Attorneys for Plaintiffs and Settlement Class

20

21 Dated: _____, 2023

22

23

24

CAROLYN H. COTTRELL
ESTHER L. BYLSMA
SCHNEIDER WALLACE COTTRELL
KONECKY LLP

25

26

Attorneys for Plaintiffs and Settlement Class

27

28

1 Dated: _____, 2023

2

3

RACHEL MENDOZA
Plaintiff

4

5 Dated: _____, 2023

6

7

LARRY W. LEE
SIMON L. YANG
DIVERSITY LAW GROUP, P.C.

8

Attorneys for Plaintiffs and Settlement Class

9

10 Dated: _____, 2023

11

12

WILLIAM L. MARDER
POLARIS LAW GROUP LLP

13

Attorneys for Plaintiffs and Settlement Class

14

15 Dated: 3/28, 2023

16

17



MICHAEL NOURMAND
JAMES A. DE SARIO
THE NOURMAND LAW FIRM, APC

18

Attorneys for Plaintiffs and Settlement Class

19

20 Dated: _____, 2023

21

22

23

CAROLYN H. COTTRELL
ESTHER L. BYLSMA
SCHNEIDER WALLACE COTTRELL
KONECKY LLP

24

25

Attorneys for Plaintiffs and Settlement Class

26

27

28

1 Dated: 04-03-2023 | 16:28:41 PDT, 2023

DocuSigned by:

Elena Dietrich

69758B38789F4D2...

THE VONS COMPANIES, INC.
Defendant

By Elena Dietrich

[Print Name]

Its SVP, Field Operations & Employment Law

2 Dated: April 4, 2023

Laura Hayward

R. BRIAN DIXON
LAURA E. HAYWARD
ADAM J. FISS
LITTLER MENDELSON, P.C.

Attorneys for Defendant
THE VONS COMPANIES, INC.

4869-2657-5448.1 / 001153-1740

EXHIBIT “A”

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

McCarthy, et al. v. The Vons Companies, Inc.
Case No. CIVDS2021085

NOTICE OF CLASS ACTION SETTLEMENT

A Court approved this Notice. This is not a solicitation from an attorney.

To: All current and former non-exempt employees of The Vons Companies, Inc. in the State of California during the period of February 13, 2016 through April 30, 2022 excluding employees who worked at the distribution centers and plants, drivers, pharmacists and through August 7, 2020 non-union employees.

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	Receive a settlement payment and give up your right to sue on the Released Claims described in Section V. Your estimated share of the settlement not attributed to Private Attorneys General Act ("PAGA") penalties is [\$AMT], and your estimated share of the PAGA penalties is [\$AMT]. The actual amounts you will receive may be different and will depend on a number of factors. You are automatically included and eligible to receive a payment if the Court approves the settlement.
EXCLUDE YOURSELF	You may "opt out" of the settlement and any right to a settlement payment. If you choose to opt out, you must submit a Request for Exclusion by _____, 2023 (see Section VIII). All persons who validly and timely opt out of the settlement will <u>not</u> receive any settlement payment and will preserve Released Claims described in Section V subject to applicable statutes of limitations, except that PAGA Group Members are nevertheless bound by the Released Claimed by PAGA Claims (see Section IV).
OBJECT	Write to the Settlement Administrator or appear at the Final Approval Hearing stating why you do not like the settlement by _____, 2023 (see Section X).
FINAL APPROVAL HEARING	The Final Approval Hearing is scheduled to take place on _____, 2023 at 8:30 a.m., in Department "S-26" at the San Bernardino Superior Court – Spring Street Courthouse located at 247 West Third Street, San Bernardino, California 92415. The Final Approval Hearing date and time may change. (See Section XII).

Your options are further explained in this Notice. To exclude yourself from, or object to, the settlement, you must take action by certain deadlines. If you want to participate in the settlement as proposed, you don't need to do anything to obtain your share of the settlement. The Vons Companies, Inc. ("Defendant") will not retaliate against you for any actions you take with respect to the settlement.

I. WHY DID I GET THIS NOTICE?

You are receiving this Notice because you are or were a current or former non-exempt employee of Defendant in the State of California during the period from February 13, 2016 through April 30, 2022 ("Class Period") excluding employees who worked at distributions centers and plants, drivers, pharmacists, and, through August 7, 2020, non-union employees ("Settlement Class Member") and may be entitled to recover money from a class action settlement.

This Notice informs you of your rights to share in the settlement of the class action lawsuit *McCarthy v. The Vons Companies, Inc., et al.* Case No. CIVDS2021085 (the "Lawsuit") or, if you so choose, to exclude yourself from the settlement or to object to the settlement terms. This Notice is being sent to you by the order of the Superior Court of California, County of San Bernardino, which preliminarily approved this class action settlement on **[TBD]**.

If you wish to participate in the settlement and receive a settlement payment, you need not take any action at this time. If the Court approves the settlement, you will be mailed a settlement check at the address on file with the Settlement Administrator.

II. WHAT IS THIS LAWSUIT AND SETTLEMENT ABOUT?

The Lawsuit was filed by plaintiffs, Holly McCarthy, Leticia Rodarte and Rachel Mendoza ("Plaintiffs"), on behalf of all hourly non-exempt employees who worked for Defendant in California during the time period of February 13, 2016 through April 30, 2022. The Lawsuit sought, and seeks, monetary and statutory damages, interest, attorneys' fees, and civil penalties for the following alleged claims: (a) failure to pay minimum and overtime wages; (b) failure to provide compliant meal breaks or compensation in lieu thereof; (c) failure to provide compliant rest breaks or compensation in lieu thereof; (d) failure to provide accurate wage statements; (e) failure to pay all wages upon termination; (f) failure to pay sick pay wages in full and at the correct rate of pay; (g) civil penalties pursuant to Labor Code Section 2699, *et seq.* premised on the above claims; and (h) unfair business practices premised on the above claims. Plaintiffs sought all damages, penalties, interest, fees, costs, and other amounts recoverable under the above causes of action under California law, including but not limited to under the California Labor Code.

Defendant denies Plaintiffs' allegations and denies that it violated the law. Defendant asserts that it has no liability for any of Plaintiffs' or the Settlement Class Members' claims under any statute, wage order, common law, or equitable theory. The Court did not decide in favor of Plaintiffs or Defendant, and there was no trial. Plaintiffs think they could have won at trial. Defendant thinks Plaintiffs would not have won anything at trial. Defendant does not admit any of the claims alleged in the Lawsuit, and it denies that it owes money to Plaintiffs or to the Settlement Class Members for any of the alleged claims. Defendant has entered into this settlement solely for purposes of resolving this dispute and so the parties

may buy their peace and avoid further time and costs associated with litigation. Plaintiffs and their attorneys think the settlement is best for the Settlement Class Members.

The Parties participated in two sessions of mediation with respected class action mediators and, as a result, the Parties reached a class-wide settlement. The Parties have since entered into a Stipulation of Class Action Settlement Agreement (“Settlement” or “Settlement Agreement”).

III. WHAT IS A CLASS ACTION?

In a class action lawsuit, one or more persons sue on behalf of other people who have similar claims. Holly McCarthy, Leticia Rodarte and Rachel Mendoza are the Class Representatives or Named Plaintiffs in the Lawsuit, and they assert claims on behalf of themselves and on behalf of employees who are similarly situated and have similar claims, who are referred to as “class members.” A class action allows the Court to resolve the claims of all the class members at the same time, rather than litigating or settling multiple individual lawsuits. A class member is bound by the determination or judgment entered in the case and may not file his or her own lawsuit on the same claims that were decided in the class action, unless he/she excludes him/herself from the class.

IV. WHO IS INCLUDED IN THE SETTLEMENT CLASS?

All current and former non-exempt employees of The Vons Companies, Inc. in the State of California during the period of February 13, 2016 through April 30, 2022 excluding employees who worked at the distribution centers and plants, drivers, pharmacists and through August 7, 2020 non-union employees (“Settlement Class Members”). Settlement Class Members shall not include any person who submits a timely and valid Request for Exclusion as provided in this Notice.

If the Court approves the compromise of the claim for civil penalties pursuant to Labor Code Section 2699, *et seq.* (“PAGA claim”), all current and former non-exempt employees of Defendant in the State of California during the period of February 13, 2019 through April 30, 2022 (“PAGA Period”) excluding employees who worked at the distribution centers and plants, drivers, pharmacists and, through August 7, 2020, non-union employees (“PAGA Group Members”) are bound by the Court’s resolution of the PAGA claim, regardless of whether they submitted a timely and valid Request for Exclusion. Settlement Class Members who are also PAGA Group Members who submit a Request for Exclusion will nevertheless receive their pro-rata share of the \$25,000 allocated for PAGA penalties.

V. WHAT ARE THE TERMS OF THE CLASS SETTLEMENT?

Defendant has agreed to pay \$3,812,500 (“Gross Settlement Amount”) in full settlement of this action. The Gross Settlement Amount of \$3,812,500 will be subject to certain deductions as described below. After deductions, the remaining amount will be the “Net Settlement Distribution.” The Net Settlement Distribution will be allocated as follows: Settlement Class Members will receive 1 point for each workweek employed during the Class Period; Settlement Class Members who worked during the period of February 13, 2016, to September 30, 2019 (“Regular Rate Period”) and whose regular rate of pay was less than 130% of the then applicable minimum wage will get 3 additional points for each such workweek; Settlement Class Members whose employment ended during the period of February 13, 2017, to the end of the Class Period shall receive an additional 100 points (the “Waiting Time Penalty”); Settlement Class Members who worked during the period from September 30, 2019, to the end of the

Class Period will receive 1 point per workweek for each workweek in which an employee used Paid Sick Leave. Amounts that will be deducted from the Gross Settlement Amount include: (a) the Class Representatives Enhancement Payment to the named Plaintiffs, not to exceed \$10,000 each for a maximum amount not to exceed \$30,000; (b) PAGA penalties in the amount of \$100,000, of which 75% or \$75,000 will be paid to the Labor Workforce Development Agency ("LWDA"), and 25% or \$25,000 to PAGA Group Members; (c) Settlement Administration Expenses not to exceed \$180,750; (d) Defendant's share of payroll taxes estimated to be approximately 20% of the amount of wages to be paid to Class Members; and (e) attorney's fees and costs awarded by the Court to Class Counsel (the "Class Counsel Award"), not to exceed \$1,321,250 in fees and \$40,000 in costs. After deducting items a, b, c, d and e from the Gross Settlement Amount, the remaining balance is the "Net Settlement Distribution." The Net Settlement Distribution will be distributed among all Settlement Class Members who do not exclude themselves from the Settlement. Per item b, \$25,000 from the Gross Settlement Amount will be distributed among all PAGA Group Members. The Class Counsel Fees and Costs and the Class Representatives Enhancement Payment are subject to Court approval.

This class action settlement shall resolve and the class shall release all claims for wages, statutory and civil penalties, damages and liquidated damages, interest, restitution, injunctive relief, fees and costs under California law that were alleged in the operative Complaints and any Amended Complaints in the McCarthy Action, the Rodarte Action, the Mendoza Action (except for the Labor Code section 2802 class claim that is being dismissed on a class basis without prejudice), and/or the Consolidated Action, and/or claims which reasonable relate to or which reasonably arise out of the same set of operative facts or theories pled therein, whether such claims or forms of relief are known or unknown during the Covered Period, including, but not limited to claims for: (1) failure to pay overtime wages in full and based on the regular rate of pay (Lab. Code §§ 510, 558, 1194, and 1199); (2) failure to pay minimum wages in full and liquidated damages for failing to pay the minimum wage (Lab. Code §§ 1182.12, 1194, 1194.2, 1197, and 1197.1); (3) failure to provide rest periods and failure to pay premiums for non-compliant rest periods and/or to pay them at the regular rate of pay (Lab. Code §§ 226.7 and 512); (4) failure to provide meal periods and failure to pay premiums for non-compliant meal periods and/or to pay them at the regular rate of pay (Lab. Code §§ 226.7 and 512); (5) failure to pay for paid sick leave in full and at the correct rate of pay (Lab. Code §§ 245, 246, 248, 248.1, 248.2, 248.5, and 248.6); (6) failure to timely pay all wages during and/or at the conclusion of employment, including all penalties for failing to do so (Lab. Code §§ 201, 202, 203, 204, 210, and 225.5); (7) failure to provide accurate wage statements or maintain accurate records (Lab. Code §§ 226, 226.3, 1174, and 1174.5); and (8) Unfair Competition (Bus. & Prof. Code §§ 17200 et seq.) based on the Labor Code sections alleged, and with respect to the penalties claimed in the Consolidated Action, any source of obligation as a basis for claiming such penalties during the Covered Period, including any and all obligations released above which are imposed by the applicable Wage Orders (the "Released Claims"), against Defendant and each and all of its past and present direct and indirect parent, subsidiary, and affiliated corporations (including but not limited to Safeway Inc., Albertsons Companies, Inc., Albertson's LLC, Albertson Safeway LLC), entities, divisions, general and limited partners, joint venturers and affiliates, and each of their respective current and former directors, officers, managers, employees, principals, members, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, general partners, limited partners, joint venturers, and affiliated companies, and each of their respective executors, predecessors, successors, assigns and legal representatives (collectively, "Released Parties") in their representative and individual capacities whether under Labor Code §§ 558, 558.1. or otherwise. The Released Claims will cover all Settlement Class Members who do not exclude themselves.

Furthermore, after the Court enters an order granting final approval of the Settlement and Defendant fully funds the Gross Settlement Amount, Named Plaintiffs, individually and in their capacity as representative of the LWDA, State of California, the LWDA, State of California, and PAGA Group Members release and discharge the Released Parties from any and all claims for civil Penalties under PAGA [Cal. Lab. Code §§ 2698, *et seq.*] based on the Labor Code violations alleged and that are based upon or arise from the factual allegations in any of the Plaintiffs' PAGA letters, amended PAGA letters and/or alleged in the operative Complaints and any Amended Complaints in the McCarthy Action, the Rodarte Action, the Mendoza Action, and/or the Consolidated Action, including all attorneys' fees and costs related thereto, regardless of whether PAGA Group Members opt out from the Settlement. ("Released PAGA Claims").

VI. HOW MUCH WILL MY PAYMENT BE?

Your share of the settlement will depend on (i) the final number of Settlement Class Members who have not excluded themselves from the Settlement; and (ii) the points formula described below based on the number of workweeks during which you worked and/or took paid sick leave depending on the specified time periods..

The Net Settlement Distribution (not including the \$25,000 allocated for PAGA Group Members) will be allocated as follows: Settlement Class Members will receive 1 point for each workweek employed during the Class Period; Settlement Class Members who worked during the period of February 13, 2016, to September 30, 2019 ("Regular Rate Period") and whose regular rate of pay was less than 130% of the then applicable minimum wage will get 3 additional points for each such workweek; Settlement Class Members whose employment ended during the period of February 13, 2017, to the end of the Class Period shall receive an additional 100 points (the "Waiting Time Penalty"); Settlement Class Members who worked during the period from September 30, 2019, to the end of the Class Period will receive 1 point per workweek for each workweek in which an employee used Paid Sick Leave. For each subclass, the allocated portion of the Net Settlement Distribution will be divided by the total number of workweeks worked by all subclass Members during the Class Period, and then multiplied by each individual Class Member's total number of workweeks to provide that employee's individual share of the Net Settlement Distribution for the subclass.

The \$25,000 allocated for PAGA penalties to PAGA Group Members will be divided by the total number of workweeks worked by all PAGA Group Members during the PAGA Period, and then this amount is multiplied by each PAGA Group Member's total number of workweeks to provide that employee's individual share of the \$25,000 allocated for PAGA penalties.

Defendant's records show that you were employed by Defendant as a non-exempt employee who worked in the State of California between February 13, 2016 and April 30, 2022 (Class Period) and worked [##] workweeks during the Class Period, and that you worked [##] workweeks between February 13, 2019 and April 30, 2022 (PAGA Period). (You may have worked for Defendant prior to February 13, 2016 or subsequent to April 30, 2022, but those time periods are not included for purposes of this settlement.) If the settlement is approved, based on those records, your estimated Individual Settlement Payment is \$ [XXX.XX] , less applicable taxes and payroll deductions, and your estimated PAGA payment is \$ [XXX.XX] . These amounts are only an estimate. The actual amount of the Individual Settlement

Payment and/or PAGA payment may increase or decrease based on several factors, including the number of employees who exclude themselves from the settlement.

If you disagree with the number of workweeks worked during the periods between February 13, 2016 and April 30, 2022, please contact the Settlement Administrator no later than _____, 2023. You will be asked to provide documents to support your dispute. If you do not provide any documents or other evidence to support your challenge, the Settlement Administrator may reject your challenge.

Contact information for the Settlement Administrator is provided below.

McCarthy, et al. v. The Vons Companies, Inc.

c/o SETTLEMENT ADMINISTRATOR

Mailing Address

Telephone numbers

Fax number

A portion, or twenty percent (20%), of each Individual Settlement Payment shall be considered settlement of alleged unpaid wages and subject to the withholding of federal, state and local income taxes, including FICA taxes, among other legally required withholdings and deductions. The remaining portions, or eighty percent (80%) of each Individual Settlement Payment shall not be subject to payroll withholding and 100% of each PAGA Groups Member's pro-rata share of the \$25,000 allocated for PAGA penalties shall be allocated as penalties and shall not be subject to payroll withholding.

The Settlement Administrator shall issue to each Settlement Class Member an IRS Form W-2 for the portion of the individual settlement that is designated as unpaid wages. The Settlement Administrator may issue an IRS Form 1099 to each Settlement Class Member and PAGA Group Member for the remaining portion of the Individual Settlement Payment that is not designated as unpaid wages and other amounts paid pursuant to this settlement. All Settlement Class Members will be responsible for correctly characterizing this income for tax purposes and for paying any taxes on the amounts received.

VII. WHAT DO I NEED TO DO TO RECEIVE A SETTLEMENT PAYMENT?

To receive a settlement payment, you do not need to do anything. If the Court approves this settlement at the final approval hearing, the Settlement Administrator will mail you a check within approximately seventy-five days from the date the Court grants final approval, unless an appeal is filed. If you do not exclude yourself from the Settlement, you will receive an Individual Settlement Payment and you will be bound by the terms of the Settlement Agreement.

VIII. HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?

To exclude yourself from the settlement, you must submit a written Request for Exclusion to the Settlement Administrator at the following address or fax number:

McCarthy, et al. v. The Vons Companies, Inc.

c/o Settlement Administrator

Mailing Address

Telephone numbers

Fax numbers

To be valid and timely, a written request for exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security Number of the person requesting exclusion; (2) be signed by the Settlement Class Member; (3) be postmarked or fax stamped by _____, 2023 and returned to and received by the Settlement Administrator at the specified address or fax telephone number above; and (4) state that the Settlement Class Member does not wish to be included in the settlement or words to that effect. Unless you timely request to be excluded from the settlement, you will be bound by the judgment upon final approval of the settlement, including the Release of Claims described in this Notice.

If you timely request to be excluded from the settlement, you will not be entitled to receive any payment under the settlement, and you cannot object to the settlement. Class Counsel will not represent your interests in this Lawsuit if you request to be excluded. If you are a PAGA Group Member, however, you will not be permitted to exclude yourself from the settlement of the PAGA claim. If you are a PAGA Group Member, you will still receive a pro-rata share of the \$25,000 allocated to the PAGA Group Members and be bound by the release of the Released PAGA Claims.

IX. WHAT IF I DO NOTHING?

If you do nothing, you will receive a settlement payment and you will be bound by the terms of the Settlement Agreement.

X. WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

If you are a Settlement Class Member who has not asked to be excluded from the settlement, you may object to the settlement and appear at the hearing where the Court will make a final decision whether or not to approve the settlement (the "Final Approval Hearing"). The Final Approval Hearing is scheduled to take place on _____, 2023, at 8:30 a.m., in Department "S26" at the San Bernardino Superior Court located at 247 West Third Street, San Bernardino, California 92415.

A Settlement Class Member who wishes to object must mail to the Settlement Administrator (at the address above) or fax a written statement of objection ("Notice of Objection"), postmarked or faxed by no later than _____, 2023. The Notice of Objection must be signed by the Settlement Class Member and state: (1) the full name of the Settlement Class Member; (2) the address and telephone number of the Settlement Class Member; (4) the last four digits of the Settlement Class Members' Social Security number and/or the Employee ID number; and (5) the basis for the objection to the settlement. Irrespective of whether you submit a Notice of Objection, you may appear at the Final Approval Hearing, either in person or through counsel, at your expense, to orally present your objection for the Court's consideration. Please be advised that if you choose to appear in-person at the Final Approval Hearing, the Court strongly recommends the use of well-fitting masks or respirators inside all courthouses. The Court strongly encourages all individuals to take advantage of the Court's remote courtroom appearance technology and service options by visiting the Court's website at <https://www.sb-court.org/sites/default/files/General%20Information/RemoteAppearancePostingCivilProbate.pdf> for instructions on how to schedule your remote appearance.

Submitting an objection will *not* exclude you from the Settlement Class. You will still have the right to receive an Individual Settlement Payment, unless you request to be excluded.

XI. WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING?

Objecting is simply telling the Court that you disagree with the terms of the settlement. You can object only if you stay in the Settlement Class. If you submit an objection, you will still receive an Individual Settlement Payment and be bound by the Settlement, if it is approved by the Court.

Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you and you will not receive any Settlement Payment.

XII. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, and Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the enhancement payment to class representatives on , 2023 at 8:30 a.m. in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415. The Final Approval Hearing date and time might be changed without further notice to you. If you are interested in participating at the Final Approval Hearing, you should confirm the date, time and location by either visiting the Court website and entering case number (CIVDS2021085): <https://cap.sb-court.org/search> or by contacting Class Counsel.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

XIII. DO I HAVE A LAWYER IN THIS CASE?

The Court has ordered that, for purposes of this Settlement, the interests of Plaintiffs and the Settlement Class Members are represented by:

Michael Nourmand, Esq.
James A. De Sario, Esq.
THE NOURMAND LAW FIRM, APC
8822 West Olympic Boulevard
Beverly Hills, California 90211
Telephone (310) 553-3600

Larry W. Lee, Esq.
Simon L. Lang, Esq.
DIVERSITY LAW GROUP, P.C.
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone (213) 488-6555

Carolyn H. Cottrell, Esq.
Esther L. Bylsma, Esq.
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
200 Powell Street, Suite 1400
Emeryville, California 94608

William L. Marder, Esq.
POLARIS LAW GROUP LLP
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone (831) 531-4214

Telephone (415) 421-7100

Settlement Class Members will not be charged for these lawyers. Instead, they will be paid from the settlement fund.

XIV. WHAT IF MY INFORMATION CHANGES?

If your address has changed or you plan to change your address in the near future, please contact the Settlement Administrator:

McCarthy, et al. v. The Vons Companies, Inc.

c/o Settlement Administrator

Mailing Address

Telephone numbers

Fax number

IT IS YOUR RESPONSIBILITY TO KEEP AN UPDATED ADDRESS ON FILE WITH THE SETTLEMENT ADMINISTRATOR. YOUR FAILURE TO UPDATE YOUR ADDRESS COULD RESULT IN YOUR SETTLEMENT PAYMENT BEING TRANSMITTED TO THE CALIFORNIA STATE CONTROLLER UNCLAIMED PROPERTY.

XV. FURTHER INFORMATION

The foregoing is only a summary of the settlement. To see a copy of the Stipulation of Class Action Settlement and Settlement Agreement, the Court's Preliminary Approval Order, Motion for Final Approval, the operative Complaint filed in the Lawsuit, and other filed documents related to the Lawsuit and this Settlement, you may view all such files at the Civil Clerk's Office at the San Bernardino Superior Court located at 247 West Third Street, San Bernardino, California 92415. Please be advised that if you choose to visit the Civil Clerk's Office in-person, the Court strongly recommends the use of well-fitting masks or respirators inside all courthouses.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [REDACTED]. Please refer to the *McCarthy, et al. v. The Vons Companies, Inc.* Class Action Settlement.

PLEASE DO NOT TELEPHONE OR CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

PLEASE DO NOT CONTACT DEFENDANT, ITS MANAGERS, OR ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT.

EXHIBIT “2”

Michael Nourmand

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Wednesday, April 12, 2023 10:29 AM
To: Michael Nourmand
Subject: Thank you for your Proposed Settlement Submission

04/12/2023 10:27:28 AM

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

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within entitled action; my business address is 8822 West Olympic
Boulevard, Beverly Hills, California 90211.

5 On April 12, 2023, I served the following document(s) described as:

6 **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS**
7 **ACTION SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR**
8 **SETTLEMENT PURPOSES ONLY; DECLARATION OF MICHAEL NOURMAND IN**
9 **SUPPORT THEREOF**

10 on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope,
11 with postage thereon fully prepaid, addressed as follows:

12 R. Brian Dixon, Esq.
Laura E. Hayward, Esq.
LITTLER MENDELSON, P.C.
333 Bush Street, 34th Floor
San Francisco, California 94104

13 **Courtesy Copy by Email: bdixon@littler.com; lhayward@littler.com**

14 Larry W. Lee, Esq.	William L. Marder, Esq.
Simon L. Yang, Esq.	POLARIS LAW GROUP LLP
15 DIVERSITY LAW GROUP, P.C.	501 San Benito Street, Suite 200
515 South Figueroa Street, Suite 1250	Hollister, California 95023
16 Los Angeles, California 90071	

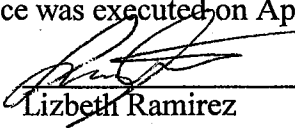
17 **Courtesy Copy by Email: lwlee@diversitylaw.com; sly@diversitylaw.com**

18 Carolyn H. Cottrell, Esq.
Esther L. Bylsma, Esq.
19 SCHNEIDER WALLACE
COTTRELL KONECKY LLP
20 2000 Powell Street, Suite 1400
Emeryville, California 94608

21 **Courtesy Copy By Email: ccottrell@schneiderwallace.com; ebylsma@schneiderwallace.com**

22 BY MAIL: As follows: I am readily familiar with our office's practice for collection and
23 processing of correspondence and other materials for mailing with the United States Postal
Service. On this date, I sealed the envelope(s) containing the above materials and placed the
24 envelope(s) for collection and mailing on this date at the address stated above, following our
office's ordinary business practices. The envelope(s) will be deposited with the United States
25 Postal Service on this date, in the ordinary course of business.

26 I declare under penalty of perjury under the laws of the State of California that the above is
27 true and correct and that this Proof of Service was executed on April 12, 2023, at Beverly Hills,
California.

28 
Lizbeth Ramirez