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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

NADIA TULIAU, an individual, on
behalf of herself and all others similarly
situated and as a private attorney general
pursuant to the Private Attorneys General
Act,

Plaintiff,

v.

THE KROGER CO., RALPHS
GROCERY COMPANY, and DOES 1
through 10,

Defendants.

Lead Case No. RIC2002168
Consolidated with Case No. CVRI2100447

Hon. Harold W. Hopp
Dept. 1

CONSOLIDATED CLASS AND PAGA ACTION

**DECLARATION OF CAROLYN H.
COTTRELL IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT**

Date Action Filed: June 26, 2020
Trial Date: Not Yet Set

1 **DECLARATION**

2 I, Carolyn H. Cottrell, declare as follows.

3 1. I am an attorney duly licensed to practice law in the State of California. I am a
4 member in good standing of the State Bar of California, and am admitted to the United States
5 District Courts for each District of California (Northern, Southern, Eastern, and Central). I am
6 admitted to the Ninth Circuit Court of Appeals and am a member of the Bar of the United States
7 Supreme Court.

8 2. I submit this Declaration in support of the Motion for Preliminary Approval of Class
9 Action and PAGA Settlement (“Motion”) filed by my clients Plaintiffs Karlos White-Valdez and
10 Nadia Tuliau (“Plaintiffs”) in the above-captioned matter (“Action”). I am familiar with the file,
11 the documents, and the history of the Action. I make the statements in this declaration based on my
12 personal knowledge and review of the file. If called as a witness in this action, I could and would
13 testify competently to these facts under oath.

14 3. I am a partner at Schneider Wallace Cottrell Konecky LLP (“SWCK”). SWCK
15 specializes in class and representative action litigation in state and federal court. SWCK represents
16 Plaintiffs White-Valdez and Tuliau in this action.

17 4. A true and correct copy of the fully executed Class Action and PAGA Settlement
18 Agreement and Release and Amendment to the Class Action and PAGA Settlement Agreement and
19 Release (“Settlement”) is attached hereto as **Exhibit 1**.

20 5. The proposed Court Approved Notice of Settlement of Class Action (“Notice”) is
21 attached to the Settlement as **Exhibit A**.

22 **COUNSEL’S QUALIFICATIONS, EXPERIENCE, AND EXPERTISE**

23 6. SWCK is regarded as one of the leading private plaintiffs’ firms in wage and hour
24 class actions and employment class actions. In November 2012, the Recorder listed the firm as one
25 of the “top 10 go-to plaintiffs’ employment firms in Northern California.” SWCK partners and
26 attorneys have litigated major wage and hour class actions, have won several prestigious awards,
27 and sit on important boards and committees in the legal community. SWCK was founded by Todd
28

1 Schneider in 1993, and I have been a member of the firm since 1995.

2 7. SWCK has acted or is acting as class counsel in numerous cases. A partial list of
3 cases which have been certified and/or settled as class actions includes: *Salonga, et al. v. Aegis*
4 *Senior Communities, LLC, et al.* (Case No. 22CV007450) (Alameda Superior Court, August 30,
5 2024) (final approval of FLSA collective, California class, and PAGA representative action);
6 *Chavez v. Teasdale Foods, Inc.* (Case No. 21CV-03035) (Merced Superior Court, August 28, 2024)
7 (class certification of a California class and subclasses); *Walker v. Nursefinders, LLC, et al.* (Case
8 No. 3:22-CV-04084-AGT) (Northern District of California, August 27, 2024) (final approval of
9 California class and PAGA representative action settlement); *Magana v. Goya Foods of California,*
10 *Inc., et al.* (Case No. 20STCV43233) (Los Angeles Superior Court, July 10, 2024) (class
11 certification of California rounding, meal, and wage statement subclasses); *Bonner v. Providence*
12 *Health System-Southern California* (Case No. 21STCV09585) (Los Angeles Superior Court, July
13 16, 2024) (class certification of a California rounding subclass and derivative subclasses); *Miles v.*
14 *Kirkland* (Case No. 5:18-cv-01559-JWH) (Central District of California, June 7, 2024) (class
15 certification of a California rest break subclass); *Clavel v. San Diego Sunrise Management*
16 *Company* (Case No. 37-2020-00028205-CU-OE-CTL) (San Diego Superior Court, May 29, 2024)
17 (final approval of California class action settlement); *Randall, et al. v. Integrated Communication*
18 *Service Inc., et al.* (Case No. 3:20-cv-05438-DGE) (Western District of Washington, March 29,
19 2024) (final approval of three-state class and FLSA collective action settlement); *Wright, et al. v.*
20 *Frontier Mgmt. LLC, et al.,* (Case No. 2:19-cv-01767-JAM-CKD) (Eastern District of California,
21 March 13, 2023) (final approval of California, Illinois, Oregon, and Washington class and FLSA
22 collective action settlement); *Campos v. Extra Express (Cerritos) Inc.,* (Case No. BC715057) (Los
23 Angeles Superior Court, Jan. 18, 2023) (final approval of California wage and hour class action
24 settlement); *Huddleston v. John Christner Trucking, LLC,* (Case No. 4:17-cv-00549-GKF-CDL)
25 (Northern District of Oklahoma, October 31, 2022) (final approval of California and Oklahoma
26 class and FLSA collective action settlement where Plaintiff obtained class certification on behalf
27 of misclassified truck drivers); *Tinaco v. Quik Stop Markets, Inc.* (Case No. RG20061119)
28 (Alameda County Superior Court, June 23, 2022) (final approval of a class action settlement for

1 failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide
2 meal and rest breaks, waiting time penalties, and failure to provide itemized wage statements, under
3 California law); *Ramirez, et al. v. Rite Aid Corp., et al.*, (Case No. CV 20-3531-GW-SKx) (Central
4 District of California, May 19, 2022) (final approval of California class action and PAGA
5 representative action settlement); *Madrigal v. Mission Lakes Country Club, Inc.* (Case No.
6 RIC2003428) (Riverside County Superior Court, May 18, 2022) (final approval of California class
7 action and PAGA representative action settlement); *Hazel v. Himagine Sols., Inc.*, Case No.
8 RG20068159 (Alameda Co. Superior Court 2021) (final approval of a California class action
9 settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages,
10 failure to provide meal and rest breaks, failure to reimburse necessary business expenditures,
11 waiting time penalties, and failure to provide itemized wage statements); *Pine Manor Invs., LLC v.*
12 *FPI Mgmt., Inc.*, Case No. 34-2018-00237315 (Sacramento Co. Superior Court 2021) (final
13 approval of a California class action settlement in action that alleged improper billing for workers
14 compensation charges by an apartment complex management company); *Etcheverry v. Franciscan*
15 *Health Sys.*, Case No. 3:19-cv-05261-RJB-MAT (W.D. Wash. 2021) (final approval of hybrid Fair
16 Labor Standards Act and Washington class action); *Jean-Pierre v. J&L Cable TV Servs., Inc.*, Case
17 No. 1:18-cv-11499-MLW) (D. Mass 2021) (final approval of hybrid Fair Labor Standards Act and
18 Massachusetts, New Hampshire, Maine, and Pennsylvania class action); *Amaraut v. Sprint/United*
19 *Mgmt. Co.*, Case No. 19-cv-411-WQH-AHG (S.D. Cal. 2021) (final approval of hybrid Fair Labor
20 Standards Act and California class action); *Diaz v. TAK Commc'ns CA, Inc.*, Case No.
21 RG20064706 (Alameda Co. Superior Court 2021) (final approval of hybrid Fair Labor Standards
22 Act and California class action); *Villafan v. Broadpectrum Downstream Servs., Inc.*, Case No.
23 3:18-cv-06741-LB (N.D. Cal. 2021) (final approval of class and collective action settlement for
24 failure to pay minimum wages and overtime rates, failure to provide meal and rest breaks, failure
25 to reimburse business expenses, and failure to provide itemized wage statements); *Jones, et al. v.*
26 *CertifiedSafety, Inc., et al.* (lead Case No. 3:17-cv-02229-EMC) (Northern District of California,
27 June 1, 2020) (final approval of hybrid Fair Labor Standards Act and California, Washington,
28 Illinois, Minnesota, Alaska, and Ohio class action settlement for failure to pay for all hours worked,

1 failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties,
2 and failure to provide itemized wage statements); *El Pollo Loco Wage and Hour Cases*, Case No.
3 JCCP 4957 (Orange Co. Superior Court 2020) (final approval of a class action settlement for failure
4 to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business
5 expenses, waiting time penalties, and failure to provide itemized wage statements, under California
6 law); *Soto v. O.C. Commc'ns, Inc.*, Case No. 3:17-cv-00251-VC (N.D. Cal. 2019) (final approval
7 of a hybrid Fair Labor Standards Act and California and Washington law Rule 23 action with joint
8 employer allegations); *Manni v. Eugene N. Gordon, Inc.*, Case No. 34-2017-00223592 (Sacramento
9 Co. Superior Court) (final approval of a class action settlement for failure to pay for all hours
10 worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks,
11 waiting time penalties, and failure to provide itemized wage statements, under California law); *Van*
12 *Liew v. North Star Emergency Servs., Inc.*, Case No. RG17876878 (Alameda Co. Superior Court)
13 (final approval of a class action settlement for failure to pay for all hours worked, failure to pay
14 minimum and overtime wages, failure to provide meal and rest breaks, failure to reimburse for
15 necessary business expenditures, waiting time penalties, and failure to provide itemized wage
16 statements, under federal law); *Asalati v. Intel Corp.*, Case No. 16cv302615 (Santa Clara Co.
17 Superior Court) (final approval of a class and collective action settlement for failure to pay for all
18 hours worked, failure to pay overtime, failure to provide meal and rest breaks, failure to reimburse
19 for necessary business expenditures, failure to adhere to California record keeping requirements,
20 waiting time penalties, and failure to provide itemized wage statements, under federal and
21 California law); *Harmon v. Diamond Wireless, LLC*, Case No. 34-2012-00118898 (Sacramento Co.
22 Superior Court) (final approval of a class action settlement for failure to pay wages free and clear,
23 failure to pay overtime and minimum wages, failure to provide meal and rest breaks, failure to pay
24 full wages when due, failure to adhere to California record keeping requirements, and failure to
25 provide adequate seating, under California law); *Aguilar v. Hall AG Enters., Inc.*, Case No. BCV-
26 16-10994-DRL (Kern Co. Superior Court) (final approval of a class action settlement for failure to
27 provide meal and rest periods, failure to compensate for all hours worked, failure to pay minimum
28 and overtime wages, waiting time penalties, failure to provide itemized wage statements, and failure

1 to pay undiscounted wages, under California law); *Viceral and Krueger v. Mistras Grp., Inc.*, Case
2 No. 3:15-cv-02198-EMC (N.D. Cal.) (final approval of a class and collective action settlement for
3 failure to compensate for all hours worked, including overtime, under federal and California law);
4 *Jeter-Polk v. Casual Male Store, LLC*, Case No. 5:14-CV-00891 (C.D. Cal.) (final approval of a
5 class action settlement for failure to provide meal and rest periods, failure to compensate for all
6 hours worked, failure to pay overtime wages, unpaid wages and waiting time penalties, and failure
7 to provide itemized wage statements); *Meza v. S.S. Skikos, Inc.*, Case No. 15-cv-01889-TEH (N.D.
8 Cal.) (final approval of class and collective action settlement for failure to compensate for all hours
9 worked, including overtime, under federal and California law, failure to provide meal and rest
10 breaks, failure to reimburse for necessary business uniforms, failure to pay full wages upon
11 termination to, and failure to provide accurate itemized wage statements); *Holmes v. Xpress Global*
12 *Sys., Inc.*, Case No. 34-2015-00180822 (Sacramento Co. Superior Court) (final approval of a class
13 action settlement for failure to provide meal and rest breaks and failure to provide accurate itemized
14 wage statements); *Guilbaud v. Sprint Nextel Corp.*, Case No. 3:13-cv-04357-VC (N.D. Cal.) (final
15 approval of a class and collective action settlement for failure to compensate for all hours worked,
16 including overtime, failure to provide meal and rest breaks, failure to reimburse for necessary
17 business uniforms, failure to pay full wages upon termination to, and failure to provide accurate
18 itemized wage statements); *Molina v. Railworks Track Systems, Inc.*, Case No. BCV-15-10135
19 (Kern Co. Superior Court) (final approval of a class action settlement for failure to provide meal
20 and rest breaks, unpaid wages, unpaid overtime, off-the-clocker work, failure to pay full wages
21 upon termination to, and failure to provide accurate itemized wage statements); *Allen v. County of*
22 *Monterey*, Case No. 5:13-cv-01659 (N.D. Cal.) (settlement between FLSA Plaintiffs and Defendant
23 to provide relief to affected employees); *Barrera v. Radix Cable Holdings, Inc., et al.*, (Case No.
24 CIV 1100505) (Marin County Superior Court) (final approval of class action settlement for failure
25 to provide meal and rest breaks to, off-the-clock work by, failure to provide overtime compensation
26 to, failure to reimburse business expenditures to, failure to pay full wages upon termination to, and
27 failure to provide accurate itemized wage statements to retention specialists working for cable
28 companies); *Glass Dimensions, Inc., et al. v. State Street Corp. et al.*, (Case No. 1:10-cv-10588)

(District of Massachusetts) (final approval of class action settlement for claims of breach of fiduciary duty and self-dealing in violation of ERISA); *Friend, et al. v. The Hertz Corp.*, (Case No. 3:07-052222) (Northern District of California) (settlement of claims that rental car company misclassified non-exempt employees, failed to pay wages, failed to pay premium pay, and failed to provide meal periods and rest periods); *Hollands v. Lincare, Inc., et al.*, (Case No. CGC-07-465052) (San Francisco County Superior Court) (final approval of class action settlement for overtime pay, off-the-clock work, unreimbursed expenses, and other wage and hour claims on behalf of a class of center managers); *Jantz, et al. v. Colvin*, (Case No. 531-2006-00276X) (In the Equal Employment Opportunity Commission Baltimore Field Office) (final approval of class action settlement for the denial of promotions based on targeted disabilities); *Shemaria v. County of Marin*, (Case No. CV 082718) (Marin County Superior Court) (final approval of class action settlement on behalf of a class of individuals with mobility disabilities denied access to various facilities owned, operated, and/or maintained by the County of Marin); *Perez, et al. v. First American Title Ins. Co.*, (Case No. 2:08-cv-01184) (District of Arizona) (final approval of class action settlement in action challenging unfair discrimination by title insurance company); *Perez v. Rue21, Inc., et al.*, (Case No. CISCv167815) (Santa Cruz County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of retail employees); *Sosa, et al. v. Dreyer's Grand Ice Cream, Inc., et al.*, (Case No. RG 08424366) (Alameda County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of ice cream manufacturing employees); among many others.

8. Nearly my entire legal career has been devoted to advocating for the rights of individuals who have been subjected to illegal pay policies, discrimination, harassment and retaliation and representing employees in wage and hour and discrimination class actions. I have litigated hundreds of wage and hour, employment discrimination and civil-rights actions, and I manage many of the firm's current cases in these areas. I am a member of the State Bar of California, and have had memberships with Public Justice, the National Employment Lawyers Association, the California Employment Lawyers Association, and the Consumer Attorneys of

1 California. I served on the Board of Directors for the San Francisco Trial Lawyers Association and
2 co-chaired its Women's Caucus. I was named one of the "Top Women Litigators for 2010" by the
3 Daily Journal. In 2012, I was nominated for Woman Trial Lawyer of the Year by the Consumer
4 Attorneys of California. I have been selected as a Super Lawyer every year since 2014. I earned
5 my Bachelor's degree from the University of California, and I am a graduate of the University of
6 the Pacific, McGeorge School of Law.

7 **BACKGROUND FACTS**

8 9. Defendants own, operate, and manage various supermarket retail stores and
9 distribution centers throughout the United States and California and employ tens of thousands of
10 hourly non-exempt workers.

11 10. Plaintiffs worked for Defendants as non-exempt employees in Riverside, California.

12 11. In this consolidated action,¹ Plaintiffs allege that Defendants are liable for
13 substantial penalties under Labor Code § 226(e) and PAGA for their failure to provide Plaintiffs,
14 the Class Members, and the PAGA Group Members with accurate wage statements and for their
15 (1) failure to compensate employees for all hours worked; (2) failure to pay employees overtime
16 wages as required by California law; (3) failure to provide employees accurate, itemized wage
17 statements; and (4) failing to timely pay employees wages owed upon termination of employment.

18 12. On July 29, 2021, Defendants deposed Plaintiff White-Valdez in connection to the
19 White-Valdez PAGA Action.

20 13. Following the deposition, the Parties agreed to attend a mediation session to resolve
21 the claims and agreed to do informal discovery. On April 29, 2022, Defendants provided documents
22 and datapoints for Defendants' California distribution centers.

23 14. On May 17, 2022, Plaintiff White-Valdez and Defendants mediated before third
24 party neutral Stephanie Chow. The Parties did not reach an agreement to resolve the White-Valdez
25 Action at that time.

26
27 ¹ This consolidated action consists of Lead Case No. RIC2002168 (the "*Tuliau* Action") and Case No. CVRI2100447
28 (the "*White-Valdez* Action"). These two actions, along with the JAMS arbitration of Plaintiff White-Valdez's individual
PAGA claims (discussed below), are referred to collectively herein as the "Actions."

1 15. On May 10, 2023, this Court certified a class for Defendants' violation of Labor
2 Code 226(a)(8) in the *Tuliau* Action.

3 16. Subsequently, the Parties engaged in informal discovery and prepared for a second
4 mediation session. Pursuant to meet and confers, Defendants provided documents and updated data
5 points, including the total number of Class Members from the certified *Tuliau* wage statement class
6 (256), the total number of PAGA Members (3,617), and the aggregate number of PAGA Pay
7 Periods (600,000) during the PAGA period.

8 17. On June 6, 2024, the Parties attended a full-day mediation before experienced
9 mediator Michael Loeb. This was the second mediation session done between Plaintiff White-
10 Valdez and Defendants. After a full-day's mediation and several subsequent weeks of negotiations
11 and revisions, the parties executed the Settlement on October 16, 2024. The Settlement globally
12 resolves all claims in the Actions. The Parties executed an Amendment to the Settlement Agreement
13 to adjust the costs on November 13, 2024.

14 18. There is one related case pending in other jurisdictions. The case is entitled *Mario*
15 *Tejada v. Ralphs Grocery Company and The Kroger Co.*, Los Angeles Superior Court Case No.
16 22STCV33463, filed October 13, 2022. Class Counsel has made a reasonable inquiry.

17 **ARGUMENTS SUPPORTING PRELIMINARY APPROVAL**

18 **The Court Should Preliminarily Approve the Settlement**

19 19. The Gross Settlement Fund is \$3,600,000.00. The key financial terms of the
20 settlement are as follows:

Gross Settlement Fund	\$3,600,000.00
Attorneys' Fees	\$1,260,000.00
Litigation Costs	Not to exceed \$60,000.00
Settlement Administrator Fee	\$17,500.00
Plaintiffs' Service Awards	\$15,000.00 for each Plaintiff for a total of \$30,000.00

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27 20. The Parties have agreed to retain Phoenix Class Action Administration Solutions
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1 (“Phoenix”) as the Settlement Administrator and have determined that its bid for administration is
2 fair after comparison from other bids submitted for this matter. Class Counsel received a bid from
3 a potential bidder of \$26,500.00. Phoenix’s bid was significantly lower for the same efforts and
4 Class Counsel selected Phoenix after comparison.

5 21. Class Counsel has used Phoenix to administer dozens of settlements, and Class
6 Counsel is informed that Phoenix is a qualified and experienced settlement administrator with
7 procedures in place to provide security for class data and adequate insurance in the event of a data
8 breach or misuse of funds.

9 22. The Released Class Claims are limited to the certified class claim alleged in the
10 *Tuliau* complaint and are proper under applicable California law.

11 23. The Parties only agreed to the material terms of the settlement after significant
12 investigation and discovery. The Parties engaged in informal discovery ahead of the two mediation
13 sessions and also exchanged formal written discovery.

14 **The PAGA component of the Settlement is fair and reasonable**

15 24. Plaintiffs contend that the Settlement is fair, reasonable, and adequate in view of
16 PAGA’s purposes to remediate present Labor Code violations, deter future ones, and maximize
17 enforcement of California’s labor laws.

18 25. The PAGA Settlement amount is \$2,219,500.00. From the PAGA Settlement
19 Amount, 75% (\$1,664,625.00) shall be paid to the LWDA and 25% (\$554,875.00) shall form the
20 PAGA Fund to be paid to PAGA Group Members.

21 26. The Settlement will result in a substantial payment to the LWDA (\$1,664,625.00)
22 to use for furthering its mission of protecting workers, as well as reasonable payments to the PAGA
23 Group Members, who will receive an estimated average net recovery of \$153.40 each (\$554,875.00
24 divided by 3,617 PAGA Group Members).

25 27. The PAGA Settlement Amount of \$2,219,500.00 compared to Defendants’
26 estimated exposure supports the reasonableness of the Settlement. Defendants represented that
27 3,617 PAGA Group Members worked 387,280 PAGA Pay Periods during the PAGA Period up
28 until August 2023. Notably, Defendants compensated their employees on a *weekly* basis (rather

1 than the usual biweekly basis), driving the total pay periods in this case to double than in the usual
2 case.

3 28. Assuming a full 100% violation rate for each pay period at \$100 per employee for
4 all PAGA Group Members, the penalties that amount for a substantive violation of failing to pay
5 wages is \$38,728,000.00. Class Counsel recognize that courts generally disfavor and/or reject
6 calculations stacking civil penalties, particularly when civil penalties are for violations that are
7 derivative of the substantive violation. *See e.g., Smith v. Lux Retail N. Am., Inc.*, No. C 13-01579
8 WHA, 2013 U.S. Dist. LEXIS 83562, at *9 (N.D. Cal. June 13, 2013) (rejecting calculation
9 stacking penalties; “But is it plausible that we would really pile one penalty on another for a single
10 substantive wrong?”). However, if the Court in this case permitted full stacking, and without any
11 discounting of any violation, Defendants’ undiscounted penalties exposure for Plaintiffs’ claims on
12 all cumulative theories could be as high as \$137,835,850.00. The undiscounted exposure considers
13 the stacking of nine different and labor code violations, including derivative violations.

14 29. This undiscounted exposure number is unrealistic, however, considering Class
15 Counsel’s factual and legal analyses in this case. My co-counsel describes these defenses and risks
16 in detail in his declaration. *See Dion-Kindem Decl*², ¶¶9-11. For example, regarding the bag
17 security checks, Defendants contended that not every was subject to these checks, and that many
18 workers simply walked by without stopping. *Id.*, ¶10. Defendants have argued that the security
19 check claim was unmanageable and would require the individual testimony of every worker and
20 therefore there is no meaningful PAGA exposure. *Id.* Although Plaintiffs dispute Defendants’
21 contentions, there is a real risk that a Court would limit or foreclose this claim at trial. *Id.*

22 30. Plaintiffs’ strongest substantive claim was its car search claim. Defendants have
23 admitted that during the PAGA period, for certain (but not all) locations, it had a process where
24 certain employees would be subject to a random “blue light” search before being allowed to leave.
25 *Id.*, ¶9. Defendants’ PMK testified that this exit search could take between 45 seconds and a minute
26 and a half. *Id.* Ralphs did not pay for this time. *Id.* Based on the analysis of the data and information
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28 ² Declaration of Peter R. Dion-Kindem (“Dion-Kindem Decl.”)

1 provided by Defendants, the potential PAGA penalties for the blue-light search violations is
2 \$628,300.00 assuming a \$100 violation per pay period.

3 31. The PAGA Settlement Amount of \$2,219,500.00 exposure reflects *a multiple of*
4 **3.53** of the \$628,300.00 exposure amount of Plaintiff's strongest substantive claim. The PAGA
5 Settlement Amount of \$2,219,500.00 is also meaningful considering the risks of continuing
6 litigation, which Class Counsel carefully assessed. Although Plaintiffs believe their case is strong,
7 trials are inherently risky, and fees and costs would increase significantly if the Actions were to go
8 to trial and/or proceed in arbitration. Plaintiffs' claims would require substantial additional
9 preparation and discovery. They would require depositions of experts, the presentation of percipient
10 and expert witnesses at trial, as well as the consideration, preparation, and presentation of
11 voluminous documentary evidence and the preparation and analysis of expert reports. Moreover,
12 there is high risk that the Court may choose to exercise its discretion to reduce PAGA penalties.
13 *See* Cal. Lab. Code § 2699(e)(2) ("a court may award a lesser amount than the maximum civil
14 penalty amount ...if, based on the facts and circumstances of the particular case, to do otherwise
15 would result in an award that is unjust, arbitrary and oppressive, or confiscatory"). *See also, e.g.,*
16 *Fleming v. Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590, *2 (C.D. Cal., Oct. 13, 2011) (reducing
17 penalties by approximately 82% from \$2,800,000 to \$500,000).

18 32. By contrast, resolving this case by means of the Settlement will yield a prompt,
19 certain, and substantial recovery for the PAGA Group Members and the State. Such a result will
20 benefit the parties and the court system and will bring finality to over four years of litigation that
21 spanned the Actions.

22 **The Class component of the Settlement is fair and reasonable**

23 33. Plaintiffs contend that the Settlement also satisfies the factors courts consider in
24 assessing the fairness, reasonableness, and adequacy of a class-action settlement.

25 34. The Settlement was the product of a mediation session with respected mediator,
26 Michael Loeb³ after extensive discovery and investigation. The mediation was then followed by
27

28 ³ The *White-Valdez* Action was also mediated in May of 2022. (Cottrell Decl., ¶ 14).

1 weeks of negotiation of the Settlement’s terms among experienced counsel.

2 35. Pursuant to *Kullar v. Foot Locker Retail, Inc.* (Cal.App. 2008) 168 Cal.App.4th 116,
3 Plaintiffs conducted a significant amount of discovery and analysis to evaluate the potential value
4 and merit of their class claim. Through formal and informal discovery, review of policy documents
5 and other materials, Class outreach and interviews, and analysis of Defendants’ time and pay
6 records, Plaintiffs have confirmed that a significant number of employees (256) suffered the alleged
7 Class violation during their employment with Defendants.

8 36. Plaintiffs used this information—which indicates, among other things, that 256
9 employees received a wage statement that did not reflect “Ralphs Grocery Company” as the
10 employer during the Class Period—to prepare for mediation and to formulate a damages model.
11 Plaintiffs therefore understood the strengths and weaknesses of their Class claim, as well as its
12 value, before reaching the Settlement.

13 37. The 256 Class Members will each be paid a pro-rata share of the Wage Statement
14 Class Fund, which the Parties have agreed shall be \$13,000.00, subject to approval by the Court.
15 The estimate of the likely recovery for each Class Member is \$50.78.

16 38. Class Counsel’s damages analysis supports the Settlement. If Plaintiff Tuliau
17 prevails on her wage statement claim, Plaintiff estimates damages of approximately \$13,000.00 for
18 the sole certified wage statement claim. Plaintiff’s settlement portion for the Class Fund accounts
19 for the whole class exposure for the wage statement claim. Plaintiffs anticipate that the number of
20 objectors will be small.

21 39. Furthermore, Plaintiffs are represented by experienced counsel - SWCK, Peter
22 Dion-Kindem, P.C. (“PDK”), The Blanchard Law Group, APC (“BLG”), and The Holmes Law
23 Group, APC (“HLG”).

24 40. In the event there are any uncashed checks and/or unclaimed funds, any amounts
25 from cancelled checks after 180 days from the effective date, shall be transmitted to the Office of
26 the Controller of California, Unclaimed Property Division, with an identification of the person to
27 whom the funds belong, in accordance with Code of Civil procedure section 384.

28 **The proposed attorneys’ fees and costs are reasonable**

1 41. Plaintiffs seek reasonable attorneys' fees and costs from the Gross Settlement Fund.
2 Under the terms of the Settlement, Class Counsel may seek up to 35% of the Gross Settlement
3 Fund, or \$1,260,000.00.

4 42. In this case, there was no guarantee of compensation or reimbursement. Instead,
5 Class Counsel has undertaken all the risks of this litigation on a completely contingent-fee basis.
6 Class Counsel has litigated this matter for over four years and has fronted the costs for the Actions.
7 The inherent risk of proving liability and damages on a class-wide basis and Defendants'
8 representation by skillful counsel confronted Class Counsel with the prospect of recovering nothing
9 or close to nothing for their commitment to and investment in the Actions. Nevertheless, Plaintiffs
10 and Class Counsel have committed themselves to developing and pressing Plaintiffs' claims to
11 enforce their fellow employees' rights and maximize recovery. This commitment and risks
12 involved are precisely the reasons for multipliers in contingency-fee cases. As PAGA and Class
13 Members will receive a significant payment if the Settlement is approved, Class Counsel seeks a
14 reasonable fee award for their efforts and the risk they have assumed.

15 43. The \$3,600,000.00 Settlement Fund achieved by Plaintiffs' counsel is an excellent
16 settlement and an especially favorable result considering the number of PAGA Group Members
17 and the challenges Plaintiffs may have faced at trial.

18 44. This result was achieved by the work and success of Plaintiffs' counsel, who
19 negotiated the Settlement after extensive preparation. Second, Plaintiffs faced risks and expense
20 going forward with this litigation, as discussed above.

21 45. Third, Plaintiffs' counsel are experienced representative-action litigators. This
22 experience and expertise, combined with the high quality of work performed in this case by
23 Plaintiffs' counsel, resulted in the Settlement.

24 46. Fourth, Plaintiffs' counsel have been representing Plaintiffs, the Class and PAGA
25 Group Members, and the State in this matter on strictly contingency-fee basis. Plaintiffs' counsel
26 have exposed themselves to the risk of zero recovery after a substantial investment of time, money,
27 and resources, and have done so since the inception of the Actions without any payment or
28 compensation. Class counsel will not receive any compensation until recovery is obtained.

47. Plaintiffs will submit detailed lodestar information with their final approval papers. As of present, Plaintiffs' counsel has expended 2,030.65 hours on the Actions, corresponding to \$1,902,102.25 in fees. The requested fee award is more than the amount of fees incurred. Plaintiffs will incur additional fees in connection with settlement administration and final approval.

Attorney	Years of Experience	Hours	Rate	Fees
Peter R. Dion-Kindem	Since 1980	640	\$1,125	\$720,000.00
Lonnie C. Blanchard III	Since 1980	502.25	\$1,125	\$565,031.25
Schneider Wallace Cottrell Konecky LLP	Since 1993	888.4	Carolyn Cottrell \$1,125	\$617,071.00

48. Reasonable litigation expenses are also ordinarily included with an award of attorneys' fees pursuant to California wage-and-hour law. Class Counsel's expenses here were reasonable, were necessary to the prosecution, and are of the type customarily billed to fee-paying clients.

The proposed service payments are reasonable

49. The service payments requested here are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in pursuing the Class and representative claims. Both Plaintiffs also were deposed for full-day sessions by Defendants.

50. Plaintiffs also took on great risk in pursuing a case against a former employer. By bringing the Actions, Plaintiffs incurred a real risk of retaliation from future employers that will be present for the rest of their work lives. Such conduct may be considered by future employers when choosing between an applicant who has never sued a prior employer and one that has. Accordingly, it is appropriate and just for Plaintiffs to receive a reasonable service award in the amount of

1 \$15,000.00 in addition to their shares of the Class Settlement Award and PAGA Fund for their time
2 and service as Representatives.

3 **The proposed Notice is adequate**

4 51. The proposed Notice provides information on the meaning and nature of the
5 Settlement, the terms and provisions of the proposed Settlement, the relief the proposed Settlement
6 will provide to the Class Members, the application of Class Counsel for reimbursement of costs
7 and attorneys' fees, the date, time, and place of the final approval hearing, and the procedure and
8 deadlines for objecting to the Settlement. It is consistent with class certification notices approved
9 by numerous state and federal Courts.

10 52. The proposed Notice summarizes the proceedings to date and the terms and
11 conditions of the proposed Settlement in an informative and coherent manner, and it recognizes
12 that the Court has not yet granted final approval and appries the Class Members of how to object
13 to the proposed Settlement and provides an objection form Class Members may use. The proposed
14 Notice does not include an opportunity to opt out because the Wage Statement Class already had
15 an opportunity to opt out after certification.

16 53. The proposed Notice satisfies all due process requirements and complies with the
17 standards of fairness, completeness, and neutrality.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20 Executed on November 13, 2024 in Auburn, California.

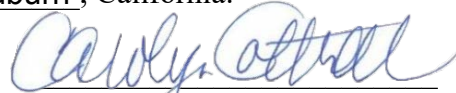
21 
22 Carolyn H. Cottrell
23
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28

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

The undersigned Parties agree, subject to the approval of the Court, that the settlement of this Action shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article II or elsewhere in this Class Action and Private Attorneys General Act Settlement Agreement and Release (“Agreement”). This Agreement is entered into by and between Nadia Tuliau (“Tuliau”) and Karlos White-Valdez¹ (“White-Valdez”) (together, “Plaintiffs”), on the one hand, individually and on behalf of the Class, the PAGA Group, and the State of California, and Ralphs Grocery Company (“Ralphs”) and The Kroger Co. (together, “Defendants”), on the other hand, subject to the approval of the Court. Plaintiffs and Defendants collectively are referred to herein as the “Parties.”

¹ White-Valdez, the named plaintiff in the related action entitled *Karlos White-Valdez v. The Kroger Co. and Ralph’s Grocery*, Riverside Superior Court Case No. CVRI2100447, will be added as a named plaintiff in the consolidated Second Amended Complaint (to be filed for settlement purposes as set forth herein). Consequently, and for ease of reference, White-Valdez is referred to as a Plaintiff as appropriate in this Agreement.

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

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CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

I. RECITALS

A. The *Tuliau* Action

On June 26, 2020, Tuliau filed a Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *et seq.* (the “*Tuliau* Complaint”) against Defendants in the Superior Court of the State of California, County of Riverside, thereby commencing the action entitled *Nadia Tuliau v. The Kroger Co. and Ralphs Grocery Company*, Case No. RIC2002168 (the “*Tuliau* Action”).

On July 14, 2020, Tuliau filed a First Amended Complaint in the *Tuliau* Action (the “*Tuliau* First Amended Complaint”). The *Tuliau* Action contains five causes of action asserted on behalf of Tuliau and other California distribution center employees alleging (1) failure to pay all wages owed, (2) failure to pay wages timely upon termination, (3) failure to provide accurate itemized wage statements, (4) statutory unfair competition (Bus. & Prof. Code, § 17203), and (5) civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA,” Labor Code § 2698 *et seq.*). Before filing the *Tuliau* First Amended Complaint, Tuliau, through her counsel, filed a notice with the California Labor & Workforce Development Agency (LWDA) on April 17, 2020, stating her intent to file an action against Defendants seeking PAGA penalties (the “*Tuliau* PAGA Notice”).

Defendants answered the *Tuliau* First Amended Complaint on October 16, 2020, generally denying all the allegations contained in it and asserting numerous separate and additional defenses.

Tuliau moved for class certification of her claims against Defendant Ralphs on November 15, 2022. On May 10, 2023, the Court denied certification of the three putative classes whose claims were based on alleged security screenings and certified a class defined as “all non-exempt employees of Ralphs Grocery Company who received a wage statement that did not reflect Ralphs Grocery Company as the employer at any time during the period from April 17, 2019 to November 15, 2021 and who did not sign an arbitration agreement” (the “Wage Statement Class”).

On or around August 23, 2023, pursuant to the Court’s direction, Tuliau and Defendants caused a notice to be sent to the Wage Statement Class, which contained information about the *Tuliau* Action and how to opt out of the class if desired. The notice and opt-out process concluded, and in October 2023, the notice administrator provided Tuliau’s counsel and Defendants’ counsel with a list identifying the 256 individuals who did not opt out of the Wage Statement Class and the four individuals who chose to opt out of the Wage Statement Class.

On September 6, 2023, Defendants moved to strike Tuliau’s PAGA claims or, alternatively, to limit the PAGA claims on manageability grounds. On February 8, 2024, in light of the California Supreme Court’s decision in *Estrada v. Royalty Carpet Mills* (S274340, Cal. May 2, 2022), the Court denied Defendants’ motion to strike Tuliau’s PAGA claims, and Defendants withdrew their motion to limit Tuliau’s PAGA claims, without prejudice to renewing the motion at a later date.

On February 23, 2024, Tuliau submitted her proposed trial plan for her group-wide PAGA claims. On March 15, 2024, Defendants filed their response to Tuliau’s proposed trial plan. Instead of engaging in further motion practice at the time regarding the parties’ disputes over the sufficiency of Tuliau’s proposed trial plan, Tuliau and Defendants agreed to explore whether a resolution could be reached through private mediation.

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

B. The *White-Valdez* Action

On January 29, 2021, White-Valdez filed a Complaint for Enforcement under the Private Attorneys General Act, California Labor Code § 2698 *et seq.* (the “*White-Valdez* Complaint”) against Defendants in the Superior Court of the State of California, County of Riverside, thereby commencing the action entitled *Karlos White-Valdez v. The Kroger Co. and Ralph’s Grocery*, Case No. CVRI2100447 (the “*White-Valdez* Action”). The *White-Valdez* Action seeks civil penalties pursuant to PAGA on behalf of White-Valdez and other alleged “aggrieved” California distribution center employees for alleged failures to (1) compensate employees for all hours worked, (2) pay employees overtime wages as required by California law, (3) provide employees with accurate, itemized wage statements, and (4) pay wages owed upon termination of employment. Before filing the *White-Valdez* Complaint, White-Valdez, through his counsel, filed a notice with the California Labor & Workforce Development Agency (LWDA) on October 22, 2020, stating his intent to file an action against Defendants seeking PAGA penalties (the “*White-Valdez* PAGA Notice”).

On March 23, 2021, Defendants filed a Notice of Related Cases, giving the Court notice pursuant to Rule 3.300 of the California Rules of Court that the *White-Valdez* Action and the *Tuliau* Action were related within the meaning of Rule 3.300(a).

On March 26, 2021, Defendants filed a Special Demurrer and Motion to Stay proceedings based on the *Tuliau* Action. Defendants answered the *White-Valdez* Complaint on May 24, 2021, generally denying all the allegations contained in it and asserting numerous affirmative defenses. On May 31, 2021, the Court denied Defendants’ Special Demurrer and Motion to Stay.

On May 17, 2022, White-Valdez and Defendants mediated before third party neutral Stephanie Chow. The parties did not reach an agreement to resolve the *White-Valdez* Action at that time.

On July 14, 2022, Defendants moved to compel arbitration of White-Valdez’s individual PAGA claims and to dismiss his non-individual PAGA claims. On August 10, 2022, the Court granted Defendants’ motion to compel White-Valdez’s individual PAGA claims to arbitration and stayed White-Valdez’s non-individual PAGA claims pending the arbitration.

On May 18, 2023, White-Valdez submitted a demand for arbitration with JAMS seeking individual civil penalties pursuant to PAGA (the “*White-Valdez* Demand”). The arbitration commenced on August 3, 2023 (the “*White-Valdez* Arbitration”) before Arbitrator Deborah Saxe. On November 17, 2023, Defendants submitted their Answer to the *White-Valdez* Demand denying all of the allegations in it and asserting a number of separate and additional defenses.

Before the June 6, 2024 mediation, the Parties had already engaged in extensive formal discovery in the *Tuliau* Action, the *White-Valdez* Action, and the *White-Valdez* Arbitration (collectively, the “Actions”), including deposing witnesses and propounding and responding to written discovery requests, including, without limitation, requests for policy documents, time and pay records, employee headcounts, and the number of Pay Periods worked during the relevant periods.

In these and other ways, the Parties investigated the facts and analyzed the relevant legal issues regarding the claims in the Actions and Defendants’ defenses to them. Based on this investigation and analysis, Plaintiffs believe the Actions have merit, while Defendants believe the Actions have no merit.

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

On June 6, 2024, the Parties participated in a mediation of the Actions before Michael Loeb, Esq. of JAMS. At the conclusion of the mediation, Mr. Loeb presented a mediator's proposal for the Parties' consideration that would globally resolve the Actions in their entirety. Both sides ultimately accepted the mediator's proposal by the mediator's deadline on June 13, 2024.

The Parties have each considered the uncertainties of continued litigation and the benefits to be obtained under the proposed settlement and have considered the costs, risks, and delays associated with the continued prosecution of the Actions and the likely appeals of any rulings in favor of any of the Plaintiffs or Defendants.

Plaintiffs are represented by Peter R. Dion-Kindem of Peter Dion-Kindem, P.C., Lonnie C. Blanchard III of The Blanchard Law Group, APC, Jeff Holmes of the Holmes Law Group, APC, and Carolyn Cottrell, Esther Bylsma, and Sandra Acosta Tello of Schneider Wallace Cottrell Konecky LLP in the Actions. Defendants are represented by Davis Wright Tremaine LLP in the Actions. The Parties, through their counsel, have engaged in arm's-length negotiations concerning a resolution of the Actions, Released Class Claims, and Released PAGA Claims.

It is the Parties' intention and the objective of this Agreement to avoid the costs of further litigation and trial and to settle and dispose of, fully and completely and forever, the Actions in their entirety and the claims released herein and described below.

In light of their agreement to resolve the Actions, and pursuant to the terms of the mediator's proposal that the Parties accepted, the Parties met and conferred about the filing of a Second Amended Complaint in the *Tuliau* Action, for settlement purposes only, consolidating into the *Tuliau* Action both Plaintiffs and all of the claims and theories in all of the Actions and fleshing out the allegations that have been investigated, litigated, mediated, and resolved, for the sole purpose of implementing the settlement and facilitating the administration of settlement of the Actions.

II. DEFINITIONS

As used in this Agreement, the terms set forth in this Paragraph 2 shall have the meanings ascribed to them below.

A. Actions

The *Tuliau* Action, the *White-Valdez* Action, and the *White-Valdez* Arbitration.

B. Agreement

This Class Action and PAGA Settlement Agreement and Release, including all Exhibits referred to herein and attached hereto.

C. Allocations

The amounts to be paid from the Wage Statement Class Fund to the Class Members and from the PAGA Fund to the PAGA Group Members, as provided herein.

D. Class Counsel

Peter Dion-Kindem of Peter Dion-Kindem, P.C., Lonnie C. Blanchard III of The Blanchard Law Group, APC, Jeff Holmes of the Holmes Law Group, APC, and Carolyn Cottrell, Esther Bylsma, and Sandra Acosta Tello of Schneider Wallace Cottrell Konecky LLP.

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

E. Class Members or Class

All non-exempt employees employed by Ralphs who received a wage statement that did not reflect Ralphs Grocery Company as the employer at any time during the Class Period, who did not sign an arbitration agreement, and who did not previously opt out of the Wage Statement Class.

F. Class Period

The period from April 17, 2019 to November 15, 2021.

G. Class Settlement

The settlement and resolution of all Released Class Claims as defined herein.

H. Class Settlement Award

The amount that the Settlement Administrator determines is owed to a Class Member pursuant to the Plan of Allocation described herein. The Class Settlement Awards are to be paid for resolution of the class claims alleged on behalf of the Wage Statement Class in the *Tuliau* Action.

I. Class Settlement Notice

The Notice of Settlement of Class Action to be mailed to Class Members. The Class Settlement Notice shall be substantially in the form of **Exhibit A** hereto.

J. Complaints

The *Tuliau* Complaint, the *Tuliau* First Amended Complaint, the *Tuliau* Second Amended Complaint, the *White-Valdez* Complaint, and the *White-Valdez* Demand.

K. Counsel for Defendants

Davis Wright Tremaine LLP.

L. Court

The Superior Court of the State of California, County of Riverside.

M. Defendants

Ralphs Grocery Company and The Kroger Co.

N. Effective Date

Either (a) the date sixty (60) days after the entry of the Final Approval Order and Judgment, if no motions for reconsideration and no appeals or other efforts to obtain review have been filed, or (b) in the event that a motion for reconsideration, an appeal, or other effort to obtain review of the Final Approval Order and Judgment have been filed, the date sixty (60) days after such reconsideration, appeal, or review has been finally concluded and is no longer subject to review, whether by appeal, petition for rehearing, petition for review, or otherwise.

O. Fee and Expense Award

Such award of attorneys' fees and costs/expenses as the Court may authorize to be paid to Class Counsel for the services they have rendered in the Actions as contemplated herein.

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

P. Final Approval Hearing

The hearing at or after which the Court will make a final decision on whether to grant Final Approval of the Settlement as fair, reasonable, and adequate, implement the terms of this Agreement, and enter Judgment. The Final Approval Hearing shall be scheduled for a date approximately ninety (90) days after the Preliminary Approval Date.

Q. Final Approval or Judgment

The Final Approval Order and Judgment finally approving the Settlement and this Agreement, as contemplated herein.

R. Gross Settlement Amount

The maximum total amount that Defendants shall be required to pay for any and all purposes under this Agreement, unless Defendants elect the terms set forth in the Escalator Clause below. The Gross Settlement Amount shall be Three Million Six Hundred Thousand Dollars (\$3,600,000.00). The following shall be paid from the Gross Settlement Amount pursuant to the Plan of Allocation set forth herein: (a) Class Settlement Awards, (b) PAGA Settlement Amount, (c) Fee and Expense Award, (d) Service Payments, and (e) Settlement Administration Costs. Under no circumstances shall Defendants pay any sum in excess of the Gross Settlement Amount in connection with the Settlement. Under no circumstances shall Defendants pay any sum in excess of the Gross Settlement Amount in connection with the Settlement, except if the Escalator Clause set forth below is triggered and Defendants elect the longer PAGA Period.

S. Objection

A written statement submitted to the Settlement Administrator by a Class Member objecting to the Settlement. An Objection must be submitted in the manner and form described in this Agreement.

T. Objection Deadline

The date forty-five (45) calendar days from the date of initial mailing of the Class Settlement Notice or such other date set by the Court in the Preliminary Approval Order, which is the date by which any Objections must be submitted in order to be deemed timely. If a Class Settlement Notice is re-mailed to a Class Member, the Objection Deadline for that Class Member shall be extended by fifteen (15) calendar days from the date of the original Objection Deadline.

U. PAGA Fund

25% of the PAGA Settlement Amount, which is the portion to be paid to PAGA Group Members.

V. PAGA Group Members or PAGA Group

Plaintiffs and all current and former non-exempt distribution center employees who were employed by Ralphs in California during the PAGA Period.

W. PAGA Period

The period from April 17, 2019 to and including the Preliminary Approval Date, or an earlier date that may be selected by Defendants to avoid triggering the Escalator Clause, as set forth below.

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

X. PAGA Notices

The *Tuliau* PAGA Notice filed by Tuliau with the LWDA on or about April 17, 2020 and the *White-Valdez* PAGA Notice filed by White-Valdez with the LWDA on or about October 22, 2020.

Y. PAGA Pay Periods

The number of weeks during the PAGA Period that a PAGA Group Member was employed by Ralphs for at least one day in California as a non-exempt distribution center employee. PAGA Pay Periods shall be calculated by Ralphs and included in the Class and PAGA Information List by counting every week during the PAGA Period that a PAGA Group Member was included in Ralphs's pay data.

Z. PAGA Settlement

The settlement and resolution of the Released PAGA Claims as defined in this Agreement.

AA. PAGA Settlement Amount

\$2,239,500 or such other amount approved by the Court, 75% of which is to be paid to the LWDA and 25% of which is to form the PAGA Fund to be paid to PAGA Group Members as described in this Agreement. The PAGA Settlement Amount is to be paid for resolution of the PAGA claims alleged in the Actions.

BB. PAGA Settlement Award

The Award amount the Settlement Administrator determines is owed to a PAGA Group Member pursuant to the Plan of Allocation described in this Agreement.

CC. Parties

Plaintiffs Nadia Tuliau and Karlos White-Valdez and Defendants Ralphs Grocery Company and The Kroger Co. (each is referred to individually as a "Party").

DD. Plaintiffs

Nadia Tuliau and Karlos White-Valdez.

EE. Plan of Allocation

The way the Wage Statement Class Fund shall be allocated to Class Members and the PAGA Fund shall be allocated to PAGA Group Members, as specified in this Agreement.

FF. Preliminary Approval or Preliminary Approval Order

The order preliminarily approving the Settlement, which shall, among other things, approve Phoenix Class Action Administration Solutions as the Settlement Administrator, approve the content and distribution of the Class Settlement Notice, set the Objection Deadline, and set the date for the Final Approval Hearing, all as contemplated in this Agreement.

GG. Preliminary Approval Date

The date upon which the Court enters the Preliminary Approval Order.

HH. Ralphs

Defendant Ralphs Grocery Company.

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

II. Released Class Claims

All claims, debts, liabilities, demands, obligations, damages, and actions or causes of action of any kind arising during the Class Period made on behalf of the Wage Statement Class that were alleged in any of the Complaints or that could have been alleged against any of the Released Parties based on the facts alleged in any of the Complaints as they relate to wage statement obligations, including under Labor Code sections 226, 226.3, 1174, 1174.5, the applicable IWC Wage Orders, Code of Civil Procedure section 1021.5, and Business and Professions Code paragraph 17200 *et seq.* as it relates to wage statement violations.

JJ. Released PAGA Claims

All claims that were or could have been asserted pursuant to PAGA that arose during the PAGA Period and that were alleged in any of the Complaints or either of the PAGA Notices, or that could have been alleged based on any facts alleged in any of the Complaints or either of the PAGA Notices against any of the Released Parties, including but not limited to PAGA claims premised on Labor Code sections 200, 201, 202, 203, 204, 210, 212, 216, 218.5, 221, 222, 223, 225.5, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, and 2802, the applicable IWC Wage Orders, and Code of Civil Procedure section 1021.5. The Released PAGA Claims are released by the State of California and all PAGA Group Members as part of this Settlement.

KK. Released Parties

Defendants Ralphs Grocery Company and The Kroger Co. and each of their present, former, and future parents, subsidiaries, affiliates, divisions, corporations in common control, predecessors, successors, and assigns, and each of their respective present, past, and future officers, directors, employees, partners (both general and limited), members, shareholders, agents, attorneys, insurers, and any other successors, assigns, and legal representatives.

LL. Service Payment

The payment authorized by the Court to each of the Plaintiffs, if any, as contemplated in this Agreement.

MM. Settlement

This Agreement and all actions taken pursuant to and in furtherance of this Agreement.

NN. Settlement Administration Costs

The amounts approved by the Court to be paid for the services of the Settlement Administrator to perform the duties of settlement administrator. It is estimated that the Settlement Administration Costs will not exceed \$17,500.

OO. Settlement Administrator

Phoenix Class Action Administration Solutions, which shall be responsible for administering the Settlement pursuant to the terms of the Agreement, the Class Settlement Notice, the Preliminary Approval Order, and the Final Approval Order and Judgment. The Settlement Administrator shall agree to confidentiality terms as may be required by Defendants regarding personnel and payroll data provided to the Settlement Administrator and shall work with Class Counsel and Counsel for Defendants to implement and administer appropriate fraud-prevention

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

policies. The Settlement Administration Costs shall be paid out of the Settlement Fund Amount, subject to Court approval.

PP. Settlement Class

Tuliau and all Class Members.

QQ. Settlement Fund

The fund established and administered by the Settlement Administrator for the purpose of receiving and disbursing amounts to be paid to Class Members, PAGA Group Members, the LWDA, Plaintiffs, Class Counsel, and the Settlement Administrator pursuant to this Agreement. The Settlement Fund shall be funded by Defendants following the Effective Date in accordance with this Agreement.

RR. Settlement Fund Amount

The total amount that Defendants shall remit to the Settlement Administrator in accordance with this Agreement, which shall consist of the following amounts, the aggregate of which shall not exceed the Gross Settlement Amount: (a) the Wage Statement Class Fund, (b) the Fee and Expense Award, (c) the PAGA Settlement Amount, (d) the Service Payments, and (e) the Settlement Administration Costs.

SS. Tuliau

Plaintiff Nadia Tuliau.

TT. *Tuliau* Second Amended Complaint

The Second Amended Complaint attached as **Exhibit E**, to be filed by Plaintiffs in the *Tuliau* Action for settlement purposes only.

UU. Wage Statement Class

The class certified by the Court in its May 10, 2023 order and defined as “all non-exempt employees of Ralphs Grocery Company who received a wage statement that did not reflect Ralphs Grocery Company as the employer at any time during the period from April 17, 2019 to November 15, 2021 and who did not sign an arbitration agreement.”

VV. Wage Statement Class Fund

The amount of \$13,000, which shall be paid to the Wage Statement Class Members as set forth herein.

WW. White-Valdez

Plaintiff Karlos White-Valdez.

III. SETTLEMENT TERMS

A. Interim Stay of Proceedings

The Parties agree to the entry of a formal stay of all proceedings in all the Actions, including with respect to Code of Civil Procedure section 583.310, except such proceedings as may be necessary to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by the Court.

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B. *Tuliau* Second Amended Complaint and Answer Thereto

Plaintiffs shall file the *Tuliau* Second Amended Complaint attached as **Exhibit E** hereto, for settlement purposes only, and Defendants shall file their Answer thereto attached as **Exhibit F** hereto, also for settlement purposes only. The *Tuliau* Second Amended Complaint shall add White-Valdez as a second named plaintiff and PAGA representative and include all claims and theories of liability asserted in the Actions. The *Tuliau* Second Amended Complaint and the Answer shall both be deemed filed as of the Preliminary Approval Date.

C. *Tuliau* Second Amended Complaint Withdrawn if Settlement Is Not Effectuated

The Parties understand and agree that the *Tuliau* Second Amended Complaint and the Defendants' Answer thereto are being filed solely for the purpose of implementing the Settlement and facilitating the administration of settlement of the Actions and that its filing is not and shall not be deemed an agreement to consolidate the claims in the Actions into one action except for the purpose of settlement only or an admission as to the propriety of consolidation for any purpose other than settlement or as to the merits of any of the allegations contained in any of the Complaints, all of which Defendants expressly and generally deny and have asserted various defenses thereto. All rights and defenses that Defendants may assert with respect to the *Tuliau* Second Amended Complaint are expressly reserved. If the Settlement is not preliminarily or finally approved or is not effectuated for whatever reason, the *Tuliau* Second Amended Complaint and Defendants' Answer thereto shall be withdrawn and shall no longer have any force or effect and the Parties will be returned to their status quo ante positions, meaning without limitation that the *Tuliau* First Amended Complaint and Defendants' Answer thereto will once again become the operative complaint and answer in the *Tuliau* Action.

D. Right to Declare Agreement Null and Void if Settlement Is Not Approved

If the Court does not approve the terms and conditions of this Agreement without requiring the Parties to make substantial and material modifications, Defendants and Plaintiffs reserve the right in their sole discretion to declare this Agreement null and void within fourteen (14) days thereafter; *provided, however*, the Party exercising this right must do so in writing provided to counsel for the non-exercising Party and the Party exercising the right shall be solely responsible for the Settlement Administrator's expenses incurred through the date of that Party's exercise, not to exceed the not-to-exceed bid of the Settlement Administrator.

E. Settlement Payment by Defendants

Following the Effective Date, in full settlement of the Released Class Claims and Released PAGA Claims as provided herein, Defendants shall deliver the Settlement Fund Amount to the Settlement Administrator for establishment of the Settlement Fund as set forth below.

F. Attorneys' Fees and Expenses

Defendants agree not to oppose Plaintiffs' application for attorneys' fees in an amount up to 35% of the Gross Settlement Amount and reimbursement of litigation costs and expenses in an amount not to exceed \$40,000.00, subject to the Court's approval. Plaintiffs agree not to petition the Court for an Award of attorneys' fees or reimbursement of litigation costs and expenses more than these amounts, and in no event shall Defendants be liable for any attorneys' fees or costs in excess of these amounts. The Fee and Expense Award shall represent payment for all claims for Class Counsels' attorneys' fees and litigation costs and expenses, past and future, incurred in the

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Actions. The Fee and Expense Award shall be paid from the Settlement Fund Amount and Defendants shall not otherwise be required to pay for any portion of Plaintiffs' or the Class Members' attorneys' fees, costs, or expenses. The Fee and Expense Award shall be paid to Class Counsel following the Effective Date pursuant to this Agreement. An Award by the Court of attorneys' fees or costs that is less than the amounts applied for will not be grounds for Plaintiffs or Class Counsel to challenge or withdraw from the Settlement.

G. PAGA Settlement Amount

Subject to any adjustment of the Gross Settlement Amount if the Escalator Clause set forth below is triggered and Defendants elect the longer PAGA Period, Plaintiffs shall seek approval from the Court for a total payment of \$2,239,500 (\$3.6 million, less the Fee and Expense Award not to exceed \$1.3 million, administration costs of \$17,500, \$13,000 for the Wage Statement Class Fund, and Service Fees (not to exceed \$30,000)) for resolution of the PAGA claims alleged in the Actions. 75% of the PAGA Settlement Amount (\$1,679,625) shall be paid to the LWDA and 25% of the PAGA Settlement Amount (\$559,875) shall form the PAGA Fund to be paid to PAGA Group Members in accordance with the Plan of Allocation set forth herein. To the extent the sum of the Fee and Expense Award, Service Payments, and Settlement Administration Costs awarded by the Court is less than the sum of the respective amounts requested by Plaintiffs, in accordance with this Agreement, the PAGA Settlement Amount shall be increased by the difference between the sum of the amounts requested by Plaintiffs and the sum of the amounts awarded by the Court.

H. Escalator Clause

At the mediation resulting in the Settlement, Defendants reported to the mediator that there were approximately 600,000 PAGA Pay Periods worked by PAGA Group Members for the period from April 17, 2019 through June 5, 2024. If it is determined that the number of PAGA Pay Periods worked by PAGA Group Members exceeds 660,000 PAGA Pay Periods (600,000, plus 10% of 600,000), then, at their option, Defendants may elect to end the PAGA Period on a date on which the number of PAGA Pay Periods did not exceed 660,000, or increase the Gross Settlement Amount in proportion to the increased percentage. For example, if such increase in PAGA Pay Periods is 15% over 600,000 PAGA Pay Periods, either Defendants will elect to end the PAGA Period on a date when the total PAGA Pay Periods are no more than 660,000, or the Gross Settlement Amount will increase by 5%.

I. Service Payments

Defendants agree not to oppose Plaintiffs' application for Service Payments of up to \$15,000 each per Plaintiff (for a total of \$30,000), which shall be for Plaintiffs' efforts as class and PAGA representatives in furtherance of litigation and resolving the Actions and in consideration of Plaintiffs' general release of claims set forth herein. Each Service Payment shall be reported by the Settlement Administrator on IRS Form 1099-MISC as non-wage income and provided by it to the Plaintiff receiving the Service Payment as well as applicable governmental authorities. The Service Payments are separate from and in addition to any Class Settlement Award and PAGA Settlement Award to be paid to Tuliau as a Class Member and PAGA Group Member hereunder and any PAGA Settlement Award to be paid to White-Valdez as a PAGA Group Member hereunder. An Award by the Court of Service Payments that is less than the amounts applied for will not be grounds for Plaintiffs or Class Counsel to challenge or withdraw from the Settlement.

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IV. CLASS SETTLEMENT PROCEDURES

A. Preliminary Approval

As soon as practicable, Tuliau shall move for Preliminary Approval of the Settlement. Tuliau's motion shall request the Court to:

1. Preliminarily approve this Agreement as fair, reasonable, and adequate;
2. Preliminarily approve the form, manner, and content of the Class Settlement Notice attached as **Exhibit A**;
3. Set deadlines for the Settlement Administrator to provide the Class Settlement Notice, and for Class Members to object to the Class Settlement;
4. Set the date and time for the Final Approval Hearing;
5. Stay all proceedings in the *Tuliau* Action, as well as continue the stay in the *White-Valdez* Action, until Final Approval; and
6. Approve Phoenix Class Action Administration Solutions as the Settlement Administrator.

The Preliminary Approval Order shall be substantially the same as the proposed order attached as **Exhibit C**. Class Counsel shall draft the preliminary approval papers and give Counsel for Defendants a draft of the motion for preliminary approval brief and proposed order to review at least three (3) court days before they are filed.

B. Class Settlement Notice

Subject to Court approval, the Parties agree that as soon as practicable after entry of the Preliminary Approval Order, the Settlement Administrator shall provide notice to the Settlement Class pursuant to the following procedures:

1. Information Regarding Class and PAGA Group Members

Within twenty (20) business days following its receipt of notice of entry of the Preliminary Approval Order, Ralphs will provide the Settlement Administrator the following information with respect to each Class Member and PAGA Group Member: (i) last known full name, (ii) last known mailing address, (iii) last known telephone number, (iv) Social Security number, (v) whether the individual is a Class Member, a PAGA Group Member, or both, and (vi) individual number of PAGA Pay Periods during the PAGA Period (if applicable) (together, this information is the "Class and PAGA Information List"). The information Ralphs provides to the Settlement Administrator, along with any updated contact information identified by the Settlement Administrator as set forth herein shall be used solely to administer the Class Settlement Notice and Plan of Allocation process described herein, shall remain confidential, and shall not be disclosed to anyone, except pursuant to the express written authorization of Defendants or the individual in question, by order of the Court, or to the extent necessary to fulfill the Settlement Administrator's reporting obligations hereunder. Nevertheless, the Settlement Administrator may share redacted information (*i.e.*, redacting Social Security numbers and mailing addresses) regarding submissions or requests by Class Members, PAGA Group Members, or those claiming to be Class Members and PAGA Group Members, with Class Counsel.

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2. Settlement Administrator's Duties

The Settlement Administrator's duties shall include, without limitation: (i) printing and mailing the Class Settlement Notice to Class Members as directed by the Court; (ii) taking all steps reasonably necessary to ensure Class Members timely receive the Class Settlement Notice; (iii) resolving any questions or disputes received from Class Members or PAGA Group Members related to the Settlement; (iv) taking receipt of and safeguarding the Settlement Fund Amount; (v) calculating and distributing Class Settlement Awards, PAGA Settlement Awards, the portion of the PAGA Settlement Amount payable to the LWDA, the Service Payments, and the Fee and Expense Award, provided such amounts are approved by the Court; (vi) issuing IRS Forms 1099-MISC, as applicable; and (vii) filing such other reports with the taxing authorities as required by law, together with such other tasks as the Parties may mutually agree or the Court may order the Settlement Administrator to perform. The Settlement Administrator shall take all reasonable steps to ensure that (a) the highest percentage of Class Members receive the Class Settlement Notice and (b) it has the most current and accurate addresses for Class Members, including but not limited to performing an initial National Change of Address database search on all Class Members. The Settlement Administrator shall also provide toll-free telephone support to Class Members and make a copy of this Agreement, the Preliminary Approval Order, and the Final Approval Order and Judgment available on a portion of its website; maintain appropriate databases to fulfill its duties; receive, control, and account for all returned Class Settlement Notices and Objections; calculate the Class Members' and PAGA Group Members' payments; and prepare and deliver reports to Class Counsel and Counsel for Defendants on a weekly basis that communicate the status of the notice process, including the number of Class Settlement Notices mailed, returned, searched, and re-mailed as well as Objections that it has received. In addition to the duties identified above, the Settlement Administrator shall prepare final declarations, reports, and invoices that accurately describe the notice process, the level of participation, and actions taken to ensure the best possible notice of the Settlement was provided to Class Members. Before the Final Approval Hearing, the Settlement Administrator shall provide Class Counsel with a declaration that (1) identifies the four Wage Statement Class Members who opted out after receiving notice of the Court's May 10, 2023 order certifying the Wage Statement Class, and (2) attaches all Objections that it receives, as one or more exhibits, for filing with the Court. The Settlement Administrator shall give notice to any objecting party of any continuance of the hearing of the Final Approval Hearing. The Settlement Administrator shall mail a reminder postcard to any Class Member whose settlement distribution check has not been negotiated within 60 days after the date of mailing.

3. Mailing of Class Settlement Notice to Class Members

No later than ten (10) business days following receipt of the information to be provided under section 2 above, the Settlement Administrator shall mail the Class Settlement Notice to all Class Members. The Settlement Administrator shall send to Class Members a copy of the Class Settlement Notice in the format approved by the Court in its Preliminary Approval Order, via first class United States mail, using the most current mailing address. Any Class Settlement Notices returned to the Settlement Administrator within thirty (30) calendar days of the initial mailing of the Class Settlement Notices, with a forwarding address, shall be immediately re-mailed by the Settlement Administrator. The Settlement Administrator shall conduct one skip trace address search for any Class Member's Class Settlement Notice that is returned to the Settlement Administrator within thirty (30) calendar days of the initial mailing of the Class Settlement Notice.

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without a forwarding address and shall, upon obtaining a new or different address, immediately re-mail the Class Member's Class Settlement Notice. Plaintiffs, Defendants, and their respective counsel each agree that, other than as provided in this Agreement, they will not distribute or make available any documents, notices, or information regarding this Action or the Settlement to any Class Member, unless a specific request is first made by the Class Member.

4. Class Members Bound by Class Settlement

Each Wage Statement Class Member who did not previously timely submit a valid request for exclusion in response to the class notice of the Court's Certification Order, sent on or around August 23, 2023, is a Class Member and shall be bound by the Class Settlement and any Court order approving the terms of the Class Settlement, regardless of whether he or she cashes the Class Settlement Award issued to him or her.

C. No Right to Exclusion by PAGA Group Members

Because the Settlement resolves claims and actions brought pursuant to PAGA by Plaintiffs acting as a proxy and as a Private Attorney General of and for the State of California and the LWDA, the Parties agree that no PAGA Group Member has the right to exclude himself or herself from the PAGA Settlement. PAGA Group Members shall be bound by the terms of the PAGA Settlement upon its approval by the Court regardless of whether he or she requested exclusion from the Wage Statement Class and thus is not a Class Member and regardless of whether he or she cashes the PAGA Settlement Award issued to him or her.

D. Objections

Only Class Members (*i.e.*, those Wage Statement Class Members who have not previously opted out from the Wage Statement Class) may object to the Class Settlement.

1. Manner of Objecting

Class Members who wish to object to the Class Settlement must submit to the Settlement Administrator a signed, written statement objecting to the Settlement. An Objection must contain: (i) a reference to the name and case number of the *Tuliau* Action (*Nadia Tuliau v. The Kroger Co. and Ralphs Grocery Company*, Riverside Superior Court Case No. RIC2002168); (ii) the full name, signature, address, telephone number and last four digits of the Social Security number of the objecting Class Member; and (iii) a written statement of the grounds for objecting to the Class Settlement. Written Objections must be submitted to the Settlement Administrator by U.S. mail and postmarked no later than the Objection Deadline. Class Members may, but are not required to, appear at the Final Approval Hearing. Class Members also have the option to orally present their objections to the Class Settlement to the Court at the Final Approval Hearing, regardless of whether they have submitted a written Objection. The Objection Form attached as **Exhibit A.1** shall be attached as Form A to the Class Settlement Notice.

2. No Right to Objections by PAGA Group Members

Because the Settlement resolves claims and actions brought pursuant to PAGA by Plaintiffs acting as a proxy and as a Private Attorney General of and for the State of California and the LWDA, the Parties agree that no PAGA Group Member has the right to object to the PAGA Settlement, regardless of whether he or she has objected to the Class Settlement as a Class Member.

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E. Plan of Allocation: Calculation of All Settlement Awards

The Settlement Administrator shall be responsible for the Allocations of the Wage Statement Class Fund to Class Members and of the PAGA Fund to PAGA Group Members which shall be calculated and paid on the following basis.

1. The Class Settlement Award for each Class Member shall be the Class Member's pro-rata share of the Wage Statement Class Fund, with each Class Member receiving an equal share.
2. The Settlement Administrator shall pay Class Settlement Awards from the Wage Statement Class Fund and shall pay only those Class Settlement Awards payable to Class Members. Wage Statement Class members who previously submitted timely and valid requests to opt out from the certified class are not Class Members and shall not receive a Class Settlement Award.
3. The PAGA Settlement Award for each PAGA Group Member shall be the PAGA Group Member's pro-rata share of the PAGA Fund, calculated as follows: The Settlement Administrator shall calculate the total number of PAGA Pay Periods worked by all PAGA Group Members during the PAGA Period by adding together all the PAGA Pay Periods provided by Ralphs for each PAGA Group Member. The Settlement Administrator shall then divide the PAGA Fund by the total PAGA Group Member Pay Periods, resulting in a per PAGA Pay Period value. The Settlement Administrator shall then take the per PAGA Pay Period value and multiply it by the individual number of PAGA Pay Periods worked by each PAGA Group Member to yield his or her PAGA Settlement Award.
4. At its discretion, the Settlement Administrator may combine the Class Settlement Award and PAGA Settlement Award to be issued to an individual who is both a Class Member and PAGA Group Member into a single check. At the time of distributing a PAGA Settlement Award to anyone who is a PAGA Group Member but not a Class Member, the Settlement Administrator shall enclose a cover letter in the form of **Exhibit B** advising the recipient that the payment is in connection with the PAGA Settlement memorialized in this Agreement. The Parties understand and acknowledge that a given person may be both a Class Member and a PAGA Group Member or may be a PAGA Group Member but not a Class Member.
5. To determine the individual Class Settlement Awards and PAGA Settlement Awards, the Settlement Administrator shall use the information provided by Ralphs. If any dispute arises with respect to a Settlement Award amount, the Settlement Administrator shall make the final determination after consultation with Class Counsel and Counsel for Defendants.

F. Taxes

1. Class Member and PAGA Group Member Obligations

The Parties agree that, for purposes of this Settlement, and given that the relevant claims in the Actions are for civil and statutory penalties, the entirety of each Class Settlement Award and each PAGA Settlement Award shall be allocated as penalties, interest, and non-wage damages.

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Each Class Member and/or PAGA Group Member receiving a Class Settlement Award and/or PAGA Settlement Award shall be responsible for paying applicable federal, state, and local income taxes, if any, on all amounts such person receives pursuant to this Agreement, and Defendants shall have no liability therefor.

2. Settlement Administrator Responsibilities Regarding Taxes

The Settlement Administrator or its designee must timely and properly prepare and deliver the necessary tax documentation for signature by all necessary parties and file all necessary information and other tax returns. Payments to Class Members, PAGA Group Members, Plaintiffs, and Class Counsel pursuant to this Agreement shall be reported on IRS Form 1099-MISC and shall be provided to the respective Class Members, PAGA Group Members, Plaintiffs, Class Counsel, and all applicable governmental entities as required by law.

3. Tax Expenses Resulting from Settlement Administration

All reasonable and direct expenses and costs incurred by or at the direction of the Settlement Administrator in connection with the administration of the Settlement (including, without limitation, expenses of tax attorneys and/or accountants incurred in providing advice to the Settlement Administrator, and mailing and distribution costs and expenses relating to the filing, or failure to file, the informational and other tax returns described above) shall be considered a cost of administration of the Settlement and shall be part of the Settlement Administration Costs, to be paid out of the Settlement Fund Amount.

4. No Claims

No person shall have any claim against Defendants, Counsel for Defendants, Plaintiffs, the Class Members, Class Counsel, or the Settlement Administrator based on mailings, distributions, and payments made in accordance with or pursuant to this Agreement.

G. Final Approval and Entry of Judgment in the *Tuliau* Action

Following the Objection Deadline and before the Final Approval Hearing, on or before the date set by the Court, Plaintiffs shall move for Final Approval of the Class and PAGA Settlement in the *Tuliau* Action. The Final Approval Order and Judgment shall be substantially the same as the proposed order attached as **Exhibit D**. Class Counsel shall draft the final approval papers and give Counsel for Defendants a draft of the papers to review at least three (3) court days before they are filed.

H. Abandonment of Any Right to Appeal the Denial of Class Certification in the *Tuliau* Action

If this Settlement is finally approved, Tuliau and Class Counsel agree to abandon any rights to appeal the Court's order denying in part Tuliau's motion for class certification in the *Tuliau* Action.

I. Dismissal with Prejudice of the *White-Valdez* Action and the *White-Valdez* Arbitration

Within five (5) court days of the date of Final Approval of the Settlement, White-Valdez shall take all steps necessary to secure: (i) the dismissal of his individual claims, PAGA or otherwise, in the *White-Valdez* Action, with prejudice; (ii) the dismissal of the non-individual

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PAGA representative claims in the *White-Valdez* Action, without prejudice; and (iii) the dismissal of the *White-Valdez* Arbitration in its entirety, with prejudice.

J. Calculation of Settlement Fund Amount

Within twenty (20) business days from the date of Final Approval of the Settlement, the Settlement Administrator shall calculate and advise Counsel for Defendants of the Settlement Fund Amount as set forth herein.

K. Distribution of Settlement Payments to Class Members and PAGA Group Members

After the Effective Date, the Settlement Administrator shall distribute the Class Settlement Awards to Class Members and the PAGA Settlement Awards to PAGA Group Members in accordance with the procedures set forth below:

1. Remittance of Settlement Fund Amount

Within ten (10) business days from the Effective Date, Defendants will remit the Settlement Fund Amount to the Settlement Administrator for the establishment of the Settlement Fund.

2. Delivery of Payments

Within ten (10) business days from Defendants' remittance to the Settlement Administrator of the Settlement Fund Amount, the Settlement Administrator shall establish the Settlement Fund and distribute (a) the Class Settlement Award checks to Class Members and the PAGA Settlement Award checks to PAGA Group Members, (b) the portion of the PAGA Settlement Amount payable to the LWDA, (c) the Service Payments to Plaintiffs, (d) the Fee and Expense Award to Class Counsel, and (e) the Settlement Administration Costs to itself. No payments shall be made or distributed unless and until the orders and Final Approval Order and Judgment described in this Agreement are final (meaning that the right to appeal or otherwise seek review of such orders or the Judgment has expired) and on the condition that no appeals from the orders and the Final Approval Order and Judgment have been filed. Additionally, by no later than the date set by the Court in its Final Approval Order and Judgment, the Settlement Administrator shall file a report with the Court setting forth (1) the total amount of money paid to the Class Members and PAGA Group Members, (2) the portion of the PAGA Settlement Amount paid to the LWDA, (3) the Service Payments paid to Plaintiffs, and (4) the Fee and Expense Award paid to Class Counsel.

3. Negotiation of Settlement Checks

Any checks tendered to Class Members or PAGA Group Members shall remain valid and negotiable for one hundred eighty (180) days from the date of their issuance and shall thereafter be automatically cancelled if not cashed, deposited, or otherwise negotiated by the Class Member or PAGA Group Member within that time, although the individual shall remain a Class Member and/or PAGA Group Member bound by the Judgment entered in the *Tuliau* Action. After 180 days, any amounts from cancelled checks shall be transmitted to the Office of the Controller of the State of California, Unclaimed Property Division, with an identification of the person to whom the funds belong, in accordance with Code of Civil Procedure section 384, to be held in trust for those persons who did not timely cash their settlement checks. Any checks tendered to Class Members or PAGA Group Members that are returned as undeliverable will also be transmitted to the State Controller's Office Unclaimed Property Division with an identification of the person to whom the

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funds belong, in accordance with Code of Civil Procedure section 384, to be held in trust for those persons. The Parties agree that this disposition results in no “unpaid residue” under Code of Civil Procedure section 384, as the entire Wage Statement Class Fund and PAGA Fund will be paid out to Class Members or PAGA Group Members, whether or not they all cash their settlement checks. Therefore, Defendants will not be required to pay any interest on such amounts. Administration of the Settlement shall be completed no later than two hundred and seventy (270) days from the Effective Date. The Settlement Administrator, Defendants, Defendants’ Counsel, Plaintiffs, and Plaintiffs’ Counsel will not have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks, and will not have any duty to seek any funds from the Controller of the State of California.

4. Discharge of Obligations

Defendants shall fully discharge their obligations to Plaintiffs, the Class Members, the PAGA Group Members, and the State of California through the remittance of the Settlement Fund Amount to the Settlement Administrator as set forth herein regardless of whether checks representing Class Settlement Awards and/or PAGA Settlement Awards are actually received and/or negotiated by the payee. Once Defendants have complied with their obligation set forth herein, they will be deemed to have satisfied all terms and conditions under this Agreement, shall be entitled to all protections afforded to it under this Agreement, and shall have no further obligations under the terms of this Agreement, regardless of what occurs with respect to the further administration of the Settlement. Without prejudice to any other remedies, the Settlement Administrator shall hold Defendants harmless from and against all liabilities, claims, causes of action, costs, and expenses (including legal fees and expenses) arising out of any failure to timely or properly compensate Class Members and PAGA Group Members as provided for in this Agreement.

L. Questions and Disputes

If questions or disputes arise regarding the entitlement of any Class Member or PAGA Group Member under this Agreement, counsel for each Party shall cooperate to provide to counsel for the other Party and the Settlement Administrator all available information reasonably necessary to resolve them. Such information shall be provided in either electronic form or hard copy, as the Settlement Administrator may reasonably request. If the Parties cannot resolve any dispute concerning the entitlement of any Class Member or PAGA Group Member under this Agreement, the dispute(s) shall be submitted to the Court who shall resolve the dispute(s) and whose decision shall be final and binding. In such a dispute, the information provided by Defendants will be presumed accurate.

M. Notification and Certification by Settlement Administrator

The Settlement Administrator shall keep Counsel for Defendants and Class Counsel apprised of the status of the settlement administration process and its distribution of all sums pursuant to this Agreement. Upon completion of administration of the Settlement, the Settlement Administrator shall provide a detailed, written certification of such completion to the Court and counsel for the Parties.

N. Nullification of Settlement Agreement if Settlement Not Approved

If (a) the Court does not preliminarily approve the Settlement in the *Tuliau* Action as provided herein; (b) the Court does not finally approve the Settlement in the *Tuliau* Action as

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provided herein; (c) the Court does not enter the Final Approval Order and Judgment in the *Tuliau* Action as provided herein; (d) White-Valdez does not dismiss the *White-Valdez* Action and the *White-Valdez* Arbitration as provided herein; or (e) the Settlement does not become final for any other reason, this Agreement shall be null and void *ab initio* (with the exception of this paragraph and paragraph III(D) (relating to administration expenses) and any order or Final Approval Order and Judgment entered by the Court in furtherance of the Settlement shall be treated as withdrawn or vacated by stipulation of the Parties. In such case, the Parties shall be returned to their respective statuses as of June 13, 2024. If an appeal is filed from the Final Approval Order and Judgment or any other appellate review is sought before the Effective Date, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review.

V. ENTRY OF JUDGMENT AND RELEASES**A. Obtaining Approval**

As soon as practicable after execution of this Agreement, Class Counsel shall, with the cooperation of Counsel for Defendants as reasonably requested by Class Counsel, take all necessary steps to secure Preliminary Approval and Final Approval of this Agreement by the Court.

B. Entry of Judgment

The Final Approval Order and Judgment in the *Tuliau* Action shall include a provision for entry of judgment in accordance with this Agreement, with each Party to bear all of such Party's own costs and attorneys' fees, except as expressly set forth herein.

C. The Settlement Class Release

Upon the Effective Date and full funding of the Settlement Fund, all Class Members shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, expressly released, waived, and relinquished the Released Class Claims. Class Members shall not sue or otherwise make a claim against any of the Released Parties for any of the Released Class Claims and shall be barred from filing any actions, claims, complaints, or proceedings regarding the Released Class Claims with the California Division of Labor Standards Enforcement or from initiating any other proceedings against the Released Parties regarding the Released Class Claims. Class Members' release, waiver, and relinquishment of the Released Class Claims shall preclude them from participating in any judgment or settlement of any of the Released Class Claims in any other class, collective, or representative action.

D. The PAGA Group Release

Upon the Effective Date and full funding of the Settlement Fund, all PAGA Group Members and the State of California shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, expressly released, waived, and relinquished the Released PAGA Claims. PAGA Group Members shall be barred from bringing, joining, or otherwise participating in a PAGA representative action or otherwise making, joining, or otherwise participating in a claim against any of the Released Parties for any of the Released PAGA Claims, and the State of California shall also be barred from pursuing recovery of any civil penalties or any other relief from any of the Released Parties for any of the Released PAGA Claims.

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E. Plaintiffs' General Release

Upon the Effective Date and full funding of the Settlement Fund, Tuliau and White-Valdez, and each of her or his successors, assigns, heirs, personal representatives, and all those who claim through her or him or who assert claims on her or his behalf, shall each be deemed to have, and by operation of the Final Approval Order and Judgment shall have, expressly released, waived, and relinquished any and all claims, demands, rights, liabilities, and causes of action she or he has or has ever had against any of the Released Parties, whether for economic damages, noneconomic damages, exemplary damages, penalties, restitution, injunctive or declaratory relief, interest, attorneys' fees, costs, or any other forms of monetary or non-monetary relief in any way arising out of or relating to any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions, or failures to act from the beginning of time to the date she or he signs this Agreement, including but not limited to any claims arising from or related to her or his employment with Ralphs or the termination of that employment, in addition to their release of the Released Parties from the Released Class Claims and Released PAGA Claims. This general release by Tuliau and White-Valdez shall become effective upon the Effective Date and full funding of the Settlement Fund and include all statutory claims, common law claims (including but not limited to those sounding in contract, tort, and equity), and claims for compensation to the fullest extent permitted by law. Tuliau and White-Valdez each further agree not to sue or otherwise make a claim against any of the Released Parties for any of the claims that are released pursuant to this paragraph.

Tuliau and White-Valdez each acknowledges that the general release herein pertaining to them individually includes potential claims and costs that may not be known or suspected by her or him to exist, and they each expressly and affirmatively waives and relinquishes any and all rights and benefits which may otherwise exist relating to the claims released pursuant to Civil Code section 1542 and any similar law of any state or territory of the United States. Section 1542 of the Civil Code states as follows:

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

VI. ADDITIONAL PROVISIONS

A. No Admission of Liability

Defendants contend that all of their employment practices comply and have complied with all applicable laws and regulations; that Class Members and PAGA Group Members were and are properly compensated for all wages, including (without limitation) all minimum wages and overtime wages, were and are timely paid all final wages, were and are timely paid all wages during employment, and were and are furnished accurate itemized wage statements; that Defendants did not and does not engage in unfair competition, business acts, or practices; and that Defendants' conduct was not and is not willful, knowing and intentional, or otherwise unlawful with respect to any of the claims alleged in the Actions or in the PAGA Notices. Defendants have

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

denied and continue to deny each of the claims alleged and the contentions made by Plaintiffs in the Actions and in the PAGA Notices. Defendants deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Actions and in the PAGA Notices, and believe they have valid defenses to Plaintiffs' claims. This Agreement reflects the compromise and settlement of disputed claims between the Parties, and its provisions and any and all drafts, communications or discussions relating thereto do not constitute, are not intended to constitute, and will not under any circumstances be deemed to constitute an admission by Defendants as to the merits, validity, or accuracy of any of the allegations or claims in the Actions or in the PAGA Notices, nor a waiver of any defense.

B. Sexual Harassment Claims

Nothing in this Agreement is intended to prevent or restrict discussion or disclosure of factual information regarding sexual assault, sexual harassment, harassment, discrimination, unlawful acts in the workplace (*e.g.*, harassment or discrimination or any other conduct for which there is reason to believe said conduct is unlawful), failure to prevent an act of workplace harassment or discrimination, and/or an act of retaliation against a person for reporting or opposing harassment or discrimination.

C. Parties Represented by Counsel

The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Agreement by independent counsel of their own choosing, they have read this Agreement and have had it fully explained to them by such counsel, and they are fully aware of the contents of this Agreement and of its legal effect.

D. Voluntary Agreement

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any Party, or of any other person, firm or entity. Each Party has made such investigation of the facts pertaining to this Agreement and of all other matters pertaining hereto as he or it deems necessary.

E. Notices

The Parties, Class Counsel, and Counsel for Defendants acknowledge and agree that for the purposes of any claims, actions, or proceedings arising out of this Agreement, notice provided to Class Counsel shall be deemed notice to Plaintiffs and to Class Members. All notices, requests, demands, and other communications required to be given to counsel for the Parties under this Agreement shall be in writing and shall be delivered personally, faxed, emailed or mailed, postage prepaid, by first class United States mail, addressed as follows:

To Class Members or to Plaintiffs:

Peter R. Dion-Kindem (peter@dionkindemlaw.com)
 THE DION-KINDEM LAW FIRM
 PETER R. DION-KINDEM, P.C.
 3856 Davids Road
 Agoura Hills, CA 91301
 Telephone: (818) 883-4900

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

Lonnie C. Blanchard III (lonnieblanchard@gmail.com)
THE BLANCHARD LAW GROUP, APC
177 East Colorado Blvd., Suite 200
Pasadena, CA 91105
Telephone: (213) 599-8255

Jeff Holmes (jeffholmesjh@gmail.com)
HOLMES LAW GROUP, APC
2801 Ocean Park Blvd., #1035
Santa Monica, CA 90405
Telephone: 310-396-9045

Carolyn Cottrell (ccottrell@schneiderwallace.com)
Esther Bylsma (ebylsma@schneiderwallace.com)
Sandra Acosta Tello (sacostatello@schneiderwallace.com)
SCHNEIDER WALLACE COTTRELL KONECKY LLP
300 S. Grand Avenue, Suite 2700
Los Angeles, CA 90071
Telephone: (213) 835-1550

To Defendants:

Tritia M. Murata (TritiaMurata@dwt.com)
David P. Zins (DavidZins@dwt.com)
DAVIS WRIGHT TREMAINE LLP
865 South Figueroa Street, 24th Floor
Los Angeles, California 90017-2566
Telephone: (213) 633-6800

F. No Press Releases/Public Comment

Unless they first obtain Defendants' express written consent, Class Counsel and Plaintiffs shall not (a) discuss, reveal, disclose, publicize, or promote the terms of the Settlement, or the negotiations leading to the Settlement, to any third party (including but not limited to the media, the legal community, or the public at large), or (b) issue any press releases or initiate any contact with the media regarding the Settlement, or otherwise advertise or publicize the Settlement. Nothing in this Agreement is intended to prevent Plaintiffs or Class Counsel from disclosing or discussing the terms of the Settlement (i) with the Court, (ii) with any Class Member or PAGA Group Member, (iii) with the Settlement Administrator, (iv) with the LWDA in conformity with PAGA, or (v) as otherwise required by law. Moreover, nothing herein will restrict Class Counsel from including publicly available information regarding the Settlement in future judicial submissions regarding Class Counsel's qualifications and experience.

G. Authorization

The Parties hereto represent and warrant that each signatory hereto has the full right and authority to enter into this Agreement and bind the Party on whose behalf he, she or it has executed this Agreement.

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

H. Agreement Binding on Successors in Interest

This Agreement shall be binding on and inure to the benefit of the respective successors, assigns, heirs, and personal representatives of the Parties.

I. Time Periods

The time periods and dates set forth in this Agreement with respect to the giving of notices and hearings are subject to approval and modification by the Court or the written stipulation of counsel for the Parties.

J. Mutual Full Cooperation

The Parties agree to cooperate fully with each other to accomplish the terms of this Agreement, including but not limited to execution and delivery of any and all additional papers, documents, and other assurances and taking such other action that may be reasonably necessary to implement the terms of this Agreement. The Parties and their counsel shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, to effectuate this Agreement and the terms set forth herein.

K. Entire Agreement

This Agreement contains the entire agreement between the Parties and constitutes the complete, final, and exclusive embodiment of their agreement with respect to the subject matter hereof. This Agreement is executed without reliance upon any promise, representation, or warranty by any Party or any representative of a Party, other than those expressly set forth herein. Any inconsistency between this Agreement and the attached Exhibits will be resolved in favor of this Agreement.

L. Headings

The various headings used in this Agreement are solely for the convenience of the Parties and shall not be used to interpret this Agreement.

M. No Construction Against Drafter

This Agreement shall be deemed to have been drafted jointly by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

N. Amendment and Modification

Except as expressly provided in **Paragraph I**, above, with respect to time periods and dates set forth herein, this Agreement may not be amended, altered, or modified except in writing and signed by the Parties hereto, their successors in interest, or their duly authorized representatives, and approved by the Court.

O. Governing Law

This Agreement is entered into in accordance with the laws of the State of California and shall be governed by and interpreted in accordance with those laws.

P. Jurisdiction of the Court

Any dispute regarding the interpretation or validity or otherwise arising out of this Agreement or relating to the Actions, the Released Class Claims, or the Released PAGA Claims, shall be subject to the exclusive jurisdiction of the Court, and the Plaintiffs, Class Members, PAGA

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

Group Members, the LWDA, and Defendants agree to submit to the personal and exclusive jurisdiction of the Court for the purpose of resolving any such dispute. Following the Effective Date, the Court shall retain jurisdiction solely with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

Q. Agreement Constitutes a Complete Defense

To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement.

R. Signatures

Signatures by facsimile, in Portable Document Format (PDF), or by other electronic means, shall have the same force and effect as original signatures.

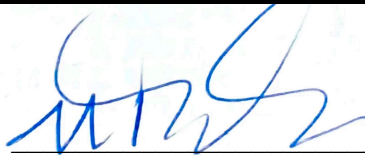
S. Execution Date and Execution in Counterparts

This Agreement shall be deemed executed upon the last date of signature of all the undersigned. The Parties may execute this Agreement in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument having the same force and effect as if all Parties had signed the same instrument.

Signatures on following page

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

Dated: 10/14/2024



NADIA TULIAU

On behalf of herself and the Settlement Class and
on behalf of the State of California and PAGA
Group Members as a private attorney general

Dated: 10 / 11 / 2024



KARLOS WHITE-VALDEZ

On behalf of himself, the State of California, and
PAGA Group Members as a private attorney
general

Dated: _____

RALPHS GROCERY COMPANY
THE KROGER CO

By: Steven J. Prough
as an authorized representative for
Defendants Ralphs Grocery Company and
The Kroger Co.

APPROVED AS TO FORM AND NOT AS A PARTY TO THIS AGREEMENT:

Dated: 10/14/2024



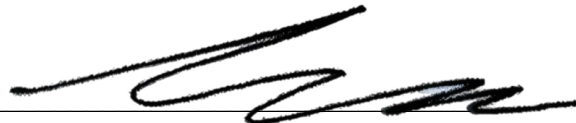
THE DION-KINDEM LAW FIRM

PETER R. DION-KINDEM, P.C.

Peter R. Dion-Kindem

Attorneys for Plaintiffs NADIA TULIAU and
KARLOS WHITE-VALDEZ

Dated: 10/14/2024



THE BLANCHARD LAW GROUP, APC

Lonnie C. Blanchard III

Attorneys for Plaintiffs

NADIA TULIAU and KARLOS WHITE-VALDEZ

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

Dated: _____

NADIA TULIAU
On behalf of herself and the Settlement Class and
on behalf of the State of California and PAGA
Group Members as a private attorney general

Dated: _____

KARLOS WHITE-VALDEZ
On behalf of himself, the State of California, and
PAGA Group Members as a private attorney
general

Dated: 10/16/2024 _____

DocuSigned by:


C972B1885B64427
RALPHS GROCERY COMPANY
THE KROGER CO
By: Steven J. Prough
as an authorized representative for
Defendants Ralphs Grocery Company and
The Kroger Co.

APPROVED AS TO FORM AND NOT AS A PARTY TO THIS AGREEMENT:

Dated: _____

THE DION-KINDEM LAW FIRM
PETER R. DION-KINDEM, P.C.
Peter R. Dion-Kindem
Attorneys for Plaintiffs NADIA TULIAU and
KARLOS WHITE-VALDEZ

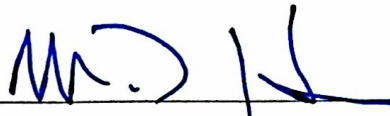
Dated: _____

THE BLANCHARD LAW GROUP, APC
Lonnie C. Blanchard III
Attorneys for Plaintiffs
NADIA TULIAU and KARLOS WHITE-VALDEZ

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

Dated: _____

10/15/24



THE HOLMES LAW GROUP, APC

Jeff Holmes

Attorneys for Plaintiffs

NADIA TULIAU and KARLOS WHITE-VALDEZ

Dated: October 11, 2024



SCHNEIDER WALLACE COTTRELL

KONECKY LLP

Carolyn Cottrell

Attorneys for Plaintiffs

NADIA TULIAU and KARLOS WHITE-VALDEZ

Dated: _____

DAVIS WRIGHT TREMAINE LLP

Tritia M. Murata

Attorneys for Defendants

RALPHS GROCERY COMPANY and
THE KROGER CO.

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE

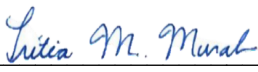
Dated: _____

THE HOLMES LAW GROUP, APC
Jeff Holmes
Attorneys for Plaintiffs
NADIA TULIAU and KARLOS WHITE-VALDEZ

Dated: _____

SCHNEIDER WALLACE COTTRELL
KONECKY LLP
Carolyn Cottrell
Attorneys for Plaintiffs
NADIA TULIAU and KARLOS WHITE-VALDEZ

Dated: October 17, 2024



DAVIS WRIGHT TREMAINE LLP
Tritia M. Murata
Attorneys for Defendants
RALPHS GROCERY COMPANY and
THE KROGER CO.

**AMENDMENT TO CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND
RELEASE**

The undersigned Parties agree to modify the Class Action and Private Attorneys General Act Settlement Agreement and Release ("Agreement") as follows:

Paragraph II.AA. is amended as follows:

AA. PAGA Settlement Amount

\$2,219,500 or such other amount approved by the Court, 75% of which is to be paid to the LWDA and 25% of which is to form the PAGA Fund to be paid to PAGA Group Members as described in this Agreement. The PAGA Settlement Amount is to be paid for resolution of the PAGA claims alleged in the Actions.

Paragraph III.F. is amended to provide as follows:

F. Attorneys' Fees and Expenses

Defendants agree not to oppose Plaintiffs' application for attorneys' fees in an amount up to 35% of the Gross Settlement Amount and reimbursement of litigation costs and expenses in an amount not to exceed **\$60,000.00**, subject to the Court's approval. Plaintiffs agree not to petition the Court for an Award of attorneys' fees or reimbursement of litigation costs and expenses more than these amounts, and in no event shall Defendants be liable for any attorneys' fees or costs in excess of these amounts. The Fee and Expense Award shall represent payment for all claims for Class Counsels' attorneys' fees and litigation costs and expenses, past and future, incurred in the Actions. The Fee and Expense Award shall be paid from the Settlement Fund Amount and Defendants shall not otherwise be required to pay for any portion of Plaintiffs' or the Class Members' attorneys' fees, costs, or expenses. The Fee and Expense Award shall be paid to Class Counsel following the Effective Date pursuant to this Agreement. An Award by the Court of attorneys' fees or costs that is less than the amounts applied for will not be grounds for Plaintiffs or Class Counsel to challenge or withdraw from the Settlement.

Paragraph III.G. is amended to provide as follows:

G. PAGA Settlement Amount

Subject to any adjustment of the Gross Settlement Amount if the Escalator Clause set forth below is triggered and Defendants elect the longer PAGA Period, Plaintiffs shall seek approval from the Court for a total payment of **\$2,219,500** (\$3.6 million, less the Fee and Expense Award not to exceed **\$1.32** million, administration costs of \$17,500, \$13,000 for the Wage Statement Class Fund, and Service Fees (not to exceed \$30,000)) for resolution of the PAGA claims alleged in the Actions. 75% of the PAGA Settlement Amount (**\$1,664,625**) shall be paid to the LWDA and 25% of the PAGA Settlement Amount (**\$554,875**) shall form the PAGA Fund to be paid to PAGA Group Members in accordance with the Plan of Allocation set forth herein. To the extent the sum of the Fee and Expense Award, Service Payments, and Settlement Administration Costs awarded by the Court is less than the sum of the respective amounts requested by Plaintiffs, in accordance with this Agreement, the PAGA Settlement Amount shall be increased by the difference between

**AMENDMENT TO CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND
RELEASE**

the sum of the amounts requested by Plaintiffs and the sum of the amounts awarded by the Court.

Exhibit A (Notice of Settlement of Class Action) at p. 3 is amended to read as follows:

Fee and Expense Award to Class Counsel: Upon approval by the Court, Defendants will pay attorneys' fees and reimburse litigation costs and expenses to Class Counsel. The proposed Settlement permits Class Counsel to request up to 35% of the Gross Settlement Amount (\$1,260,000.00) as their fees for prosecuting this case and up to \$60,000.00 for reimbursement of their costs and expenses incurred in the Action. You are not personally responsible for any of Class Counsel's attorneys' fees, costs, or expenses.

PAGA Settlement Amount: The proposed Settlement provides for a payment of \$2,219,500.00 for resolution of the PAGA claims alleged in the Actions. Of that amount, 75% (or \$1,664,625.00) of the PAGA Settlement Amount shall be paid to the LWDA and 25% (or \$554,875.00) of the PAGA Settlement Amount shall form the PAGA Fund to be paid to PAGA Group Members.

Dated: November 11, 2024 _____

Nadia Tuliau

NADIA TULIAU

On behalf of herself and the Settlement Class and
on behalf of the State of California and PAGA
Group Members as a private attorney general

Dated: _____

KARLOS WHITE-VALDEZ

On behalf of himself, the State of California, and
PAGA Group Members as a private attorney
general

Dated: _____

RALPHS GROCERY COMPANY
THE KROGER CO

By: Steven J. Prough
as an authorized representative for
Defendants Ralphs Grocery Company and
The Kroger Co.

**AMENDMENT TO CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND
RELEASE**

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PAGA Settlement Amount: The proposed Settlement provides for a payment of \$2,219,500.00 for resolution of the PAGA claims alleged in the Actions. Of that amount, 75% (or \$1,664,625.00) of the PAGA Settlement Amount shall be paid to the LWDA and 25% (or \$554,875.00) of the PAGA Settlement Amount shall form the PAGA Fund to be paid to PAGA Group Members.

Dated: _____

NADIA TULIAU
On behalf of herself and the Settlement Class and
on behalf of the State of California and PAGA
Group Members as a private attorney general

Dated: 11 / 08 / 2024 _____



KARLOS WHITE-VALDEZ
On behalf of himself, the State of California, and
PAGA Group Members as a private attorney
general

Dated: _____

RALPHS GROCERY COMPANY
THE KROGER CO
By: Steven J. Prough
as an authorized representative for
Defendants Ralphs Grocery Company and
The Kroger Co.

**AMENDMENT TO CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND
RELEASE**

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PAGA Settlement Amount: The proposed Settlement provides for a payment of \$2,219,500.00 for resolution of the PAGA claims alleged in the Actions. Of that amount, 75% (or \$1,664,625.00) of the PAGA Settlement Amount shall be paid to the LWDA and 25% (or \$554,875.00) of the PAGA Settlement Amount shall form the PAGA Fund to be paid to PAGA Group Members.

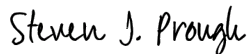
Dated: _____

NADIA TULIAU
On behalf of herself and the Settlement Class and
on behalf of the State of California and PAGA
Group Members as a private attorney general

Dated: _____

KARLOS WHITE-VALDEZ
On behalf of himself, the State of California, and
PAGA Group Members as a private attorney
general

Dated: 11/8/2024

DocuSigned by:

C872B19B5B64427...

RALPHS GROCERY COMPANY
THE KROGER CO
By: Steven J. Prough
as an authorized representative for
Defendants Ralphs Grocery Company and
The Kroger Co.

**AMENDMENT TO CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND
RELEASE**

APPROVED AS TO FORM AND NOT AS A PARTY TO THIS AGREEMENT:

Dated: _____

Peter R. Dion-Kindem

THE DION-KINDEM LAW FIRM
PETER R. DION-KINDEM, P.C.
Peter R. Dion-Kindem
Attorneys for Plaintiffs NADIA TULIAU and
KARLOS WHITE-VALDEZ

Dated: _____

Lonnie C. Blanchard

THE BLANCHARD LAW GROUP, APC
Lonnie C. Blanchard III
Attorneys for Plaintiffs
NADIA TULIAU and KARLOS WHITE-VALDEZ

Dated: _____

M.D. H.

THE HOLMES LAW GROUP, APC
Jeff Holmes
Attorneys for Plaintiffs
NADIA TULIAU and KARLOS WHITE-VALDEZ

Dated: _____

SCHNEIDER WALLACE COTTRELL
KONECKY LLP
Carolyn Cottrell
Attorneys for Plaintiffs
NADIA TULIAU and KARLOS WHITE-VALDEZ

Dated: _____

DAVIS WRIGHT TREMAINE LLP
Tritia M. Murata
Attorneys for Defendants
RALPHS GROCERY COMPANY and
THE KROGER CO.

**AMENDMENT TO CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND
RELEASE**

APPROVED AS TO FORM AND NOT AS A PARTY TO THIS AGREEMENT:

Dated: _____

THE DION-KINDEM LAW FIRM
PETER R. DION-KINDEM, P.C.
Peter R. Dion-Kindem
Attorneys for Plaintiffs NADIA TULIAU and
KARLOS WHITE-VALDEZ

Dated: _____

THE BLANCHARD LAW GROUP, APC
Lonnie C. Blanchard III
Attorneys for Plaintiffs
NADIA TULIAU and KARLOS WHITE-VALDEZ

Dated: _____

THE HOLMES LAW GROUP, APC
Jeff Holmes
Attorneys for Plaintiffs
NADIA TULIAU and KARLOS WHITE-VALDEZ

Dated: 11/8/2024 _____



SCHNEIDER WALLACE COTTRELL
KONECKY LLP
Carolyn Cottrell
Attorneys for Plaintiffs
NADIA TULIAU and KARLOS WHITE-VALDEZ

Dated: _____

DAVIS WRIGHT TREMAINE LLP
Tritia M. Murata
Attorneys for Defendants
RALPHS GROCERY COMPANY and
THE KROGER CO.

**AMENDMENT TO CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND
RELEASE**

APPROVED AS TO FORM AND NOT AS A PARTY TO THIS AGREEMENT:

Dated: _____

THE DION-KINDEM LAW FIRM
PETER R. DION-KINDEM, P.C.
Peter R. Dion-Kindem
Attorneys for Plaintiffs NADIA TULIAU and
KARLOS WHITE-VALDEZ

Dated: _____

THE BLANCHARD LAW GROUP, APC
Lonnie C. Blanchard III
Attorneys for Plaintiffs
NADIA TULIAU and KARLOS WHITE-VALDEZ

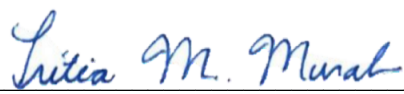
Dated: _____

THE HOLMES LAW GROUP, APC
Jeff Holmes
Attorneys for Plaintiffs
NADIA TULIAU and KARLOS WHITE-VALDEZ

Dated: _____

SCHNEIDER WALLACE COTTRELL
KONECKY LLP
Carolyn Cottrell
Attorneys for Plaintiffs
NADIA TULIAU and KARLOS WHITE-VALDEZ

Dated: November 8, 2024



DAVIS WRIGHT TREMAINE LLP
Tritia M. Murata
Attorneys for Defendants
RALPHS GROCERY COMPANY and
THE KROGER CO.

Exhibit A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

NADIA TULIAU, an individual, on behalf of
herself and all others similarly situated and as
a private attorney general pursuant to the
Private Attorneys General Act,

Plaintiff

vs.

THE KROGER CO., RALPHS GROCERY
COMPANY, and DOES 1 through 10,

Defendants

Case No. RIC2002168

**NOTICE OF SETTLEMENT OF
CLASS ACTION**

ATTENTION: If you are receiving this Class Settlement Notice (the “Notice”), you were identified as a member of a certified class comprised of all non-exempt employees employed by Defendant Ralphs Grocery Company (“Ralphs”) who received a wage statement that did not reflect Ralphs as the employer during the period from April 17, 2019 to November 15, 2021 (the “Class Period”) and who did not sign an arbitration agreement (the “Wage Statement Class”), and who did not opt out of the Wage Statement Class pursuant to a Notice of Pendency of Class Action and Right to Opt Out, sent on or around August 23, 2023 (the “Class”).

PLEASE READ THIS NOTICE CAREFULLY. This Notice relates to the proposed Class Settlement. If you are a Class Member, it contains important information affecting your rights to participate in the Class Settlement as further described below. This Notice advises you of the terms of the Class Settlement and your rights and options under it.

To be eligible for your share of the Class Settlement, you are not required to make a claim. However, to ensure receipt of your share, you must update the Settlement Administrator, Phoenix Class Action Administration Solutions, with any change of address.

What is this proposed Settlement about?

Plaintiff Nadia Tuliau filed a class action lawsuit against Ralphs and its parent, The Kroger Co. (together with Ralphs, “Defendants”), in the Superior Court of California, County of Riverside, entitled *Nadia Tuliau v. Ralphs Grocery Company et al.* (the “*Tuliau Action*”).

As relevant to this Notice, the operative Second Amended Complaint in the *Tuliau Action* alleges that Defendants violated Labor Code section 226(a)(8) by failing to accurately reflect the name of Ralphs on certain wage statements. The operative Second Amended Complaint seeks to recover statutory penalties for this alleged violation, as well as interest, costs, and attorney’s fees. Defendants deny that they violated any law and contend that the lawsuit has no merit.

On May 10, 2023, the Riverside County Superior Court (the “Court”) issued an Order certifying the Wage Statement Class for purposes of litigating the merits of Plaintiff’s claim. On or around August 23, 2023, members of the Wage Statement Class were sent a notice informing them of the Court’s Order and giving them an opportunity to exclude themselves from the Class.

You are receiving this Notice because relevant records indicate that you belong to the Wage Statement Class and did not exclude yourself from the Class. The parties to the *Tuliau* Action have reached an agreement to settle the action in its entirety, together with the related action entitled *Karlos White-Valdez v. The Kroger Co. and Ralph’s Grocery*, Case No. CVRI2100447 (filed Jan. 29, 2021) (the “*White-Valdez* Action”) and the individual arbitration entitled *Karlos White-Valdez v. The Kroger Co. and Ralph’s Grocery*, JAMS Reference No. 5220003299 (filed Aug. 3, 2023) (the “*White-Valdez* Arbitration,” and together with the *Tuliau* Action and the *White-Valdez* Action, the “Actions”).

Under the proposed Class Settlement, Defendants have agreed to make payments (“Class Settlement Awards”) to Class Members. The Class Settlement Awards are more fully described below.

Defendants have also agreed to pay the Settlement Administration Costs, Service Payments to Plaintiffs Tuliau and White-Valdez, a PAGA Settlement Amount to be paid to the California Labor & Workforce Development Agency (“LWDA”) and PAGA Group Members in settlement of claims alleged in the Actions pursuant to the Labor Code Private Attorneys General Act of 2004 (PAGA), and a Fee and Expense Award to Plaintiffs’ counsel (“Class Counsel”), subject to the Court’s approval. Defendants’ maximum total obligation under the proposed Settlement is \$3,600,000.

The proposed Settlement is not an admission of liability by Defendants. Throughout the course of litigation in the Actions, Defendants have denied and continue to deny any liability or wrongdoing, or that any compensable injury arose out of any of the matters alleged in any of them. Defendants contend that they have complied with all applicable laws and regulations regarding all of those matters.

Class Counsel believes that the proposed Settlement is in the best interests of the Class Members. Further proceedings would be very expensive and take a long time. Moreover, no one can predict the precise outcome of the disputed issues in this case. Therefore, Class Counsel believes that the proposed Settlement is fair, reasonable, and adequate for the Class Members.

The Court has preliminarily approved the proposed Settlement, meaning that it has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, reasonable, and adequate. The final determination of those issues will be made at the Final Approval Hearing to be held on [FA HEARING DATE] at [FA HEARING TIME] (“Final Approval Hearing”).

Summary of the proposed Settlement

Defendants have agreed to pay \$3,600,000 (“Gross Settlement Amount”) to globally resolve all claims that were alleged in any of the Complaints or that could have been alleged based on the

facts alleged in any of the Complaints or the Notices Plaintiffs filed with the LWDA pursuant to PAGA, for Class Members' release of claims described below, and for the release of PAGA claims in the PAGA Settlement. If finally approved by the Court, the proposed Settlement will distribute money as follows:

Class Settlement Awards to Class Members: The 256 Class Members will each be paid a Class Settlement Award, which is their pro-rata share of the Wage Statement Class Fund, which the Parties have agreed shall be \$13,000.00, subject to approval by the Court. The estimate of the likely recovery that each Class Member, including you, shall receive is \$50.78.

Class Settlement Awards shall be allocated entirely to interest, penalties, and non-wage damages.

Fee and Expense Award to Class Counsel: Upon approval by the Court, Defendants will pay attorneys' fees and reimburse litigation costs and expenses to Class Counsel. The proposed Settlement permits Class Counsel to request up to 35% of the Gross Settlement Amount (\$1,260,000.00) as their fees for prosecuting this case and up to \$40,000.00 for reimbursement of their costs and expenses incurred in the Action. You are not personally responsible for any of Class Counsel's attorneys' fees, costs, or expenses.

PAGA Settlement Amount: The proposed Settlement provides for a payment of \$2,239,500.00 for resolution of the PAGA claims alleged in the Actions. Of that amount, 75% (or \$1,679,625.00) of the PAGA Settlement Amount shall be paid to the LWDA and 25% (or \$559,875.00) of the PAGA Settlement Amount shall form the PAGA Fund to be paid to PAGA Group Members.

Other Payments: The proposed Settlement provides for a Service Payment to each of the Plaintiffs (Nadia Tuliau and Karlos White-Valdez) of up to \$15,000.00. The proposed Settlement further provides for payment estimated not to exceed \$17,500.00 to the Settlement Administrator, Phoenix Class Action Administration Solutions, for its services in mailing the Class Settlement Notice and administering the Settlement.

What are my rights and options?

1. **You can object to the Class Settlement:** You can object to the Settlement before the Court's final approval of the Settlement. To object, you should submit a written objection to the Settlement Administrator by [DATE – 45 days from mailing Class Settlement Notice / Notice Response Deadline]. Your written objection must contain: (i) a reference to the name and case number of the Tuliau Action (*Nadia Tuliau v. The Kroger Co. and Ralphs Grocery Company*, Riverside Superior Court Case No. RIC2002168); (ii) your full name, signature, address, telephone number and last four digits of your Social Security number; and (iii) a written statement of the grounds for objecting to the Class Settlement. You may also use the form included with this Class Settlement Notice as **Form A**. Written Objections must be submitted to the Settlement Administrator, by U.S. mail, postmarked no later than the Objection Deadline.

You may also appear and object to the Settlement at the Final Approval Hearing currently set for [FA HEARING TIME] on [FA HEARING DATE], in Department 1 of the Superior Court of

California, County of Riverside, located at the Riverside Historic Courthouse, 4050 Main Street, Riverside, California 92501. You are not required to appear, either personally or through counsel, at the Final Approval Hearing in order for your written objection to be considered.

You do not have the right to exclude yourself from the Class Settlement because you already had the opportunity to exclude yourself from the Class and did not do so. You also do not have the right to object to the PAGA Settlement, whether or not you object to the Class Settlement.

2. **You can do nothing:** If you do nothing, you will be bound by the proposed Settlement terms and you will be entitled to receive a Class Settlement Award as described above.

To the extent you are also a PAGA Group Member, you will also be entitled to receive a PAGA Settlement Award, regardless of whether you object to the Class Settlement or do nothing.

What claims am I releasing by participating in the Class Settlement?

In exchange for the consideration given by Defendants in the proposed Settlement, all Class Members will expressly release, waive, and discharge, and will be deemed to have released, waived, and discharged, all Released Class Claims against all Released Parties.

“Released Class Claims” means all claims, debts, liabilities, demands, obligations, damages, and actions or causes of action of any kind arising during the Class Period made on behalf of the Wage Statement Class that were alleged in any of the Complaints or that could have been alleged against any of the Released Parties based on the facts alleged in any of the Complaints as they relate to wage statement obligations, including claims under Labor Code sections 226, 226.3, 1174, 1174.5, the applicable IWC Wage Orders, Code of Civil Procedure section 1021.5, and Business and Professions Code paragraph 17200 *et seq.* as it relates to wage statement violations.

“Released Parties” means Defendants Ralphs Grocery Company and The Kroger Co. and each of their present, former, and future parents, subsidiaries, affiliates, divisions, corporations in common control, predecessors, successors, and assigns, and each of their respective present, past, and future officers, directors, employees, partners (both general and limited), members, shareholders, agents, attorneys, insurers, and any other successors, assigns, and legal representatives.

All Class Members intend and are deemed to intend that this Settlement shall be effective as a bar to any and all Released Class Claims against any and all Released Parties.

The Class Members further agree not to sue or otherwise make a claim against any of the Released Parties arising out of or related to any of the Released Class Claims. The Class Members further agree that their release, waiver, and relinquishment of the Released Class Claims shall preclude them from participating in any judgment or settlement of claims that are the subject of any of the Released Class Claims in any other class, collective, or representative action.

When is the next Court hearing?

A Final Approval Hearing will be held before the Honorable Harold W. Hopp in Department 1 of the Superior Court of California, County of Riverside, located at the Riverside Historic Courthouse, 4050 Main Street, Riverside, California 92501, on [FA HEARING DATE] at [FA HEARING TIME] to determine whether the Settlement is fair, reasonable, and adequate.

Judge Hopp will be asked to approve the plan for distributing the Class Settlement Awards, the Fee and Expense Award to Class Counsel, the Service Payments to the Plaintiffs, the PAGA Settlement Amount, and payment to the Settlement Administrator for its services. A motion for final approval of these items should be on file with the Court no later than [REDACTED], 2024 and will be available for review after that date. The Settlement Administrator will send further notice to objecting Class Members of any continuance of the Final Approval Hearing. It is not necessary for you to appear at this hearing.

What if I need more information?

Capitalized terms in this Notice have the same meaning they are given in the Class Action and PAGA Settlement Agreement and Release (“Agreement”), filed with the Court on [DATE] as an exhibit to the Declaration of Peter R. Dion-Kindem in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, which may be found at Department 1 of the Riverside Historic Courthouse, 4050 Main Street, Riverside, California 92501, or online at <https://epublic-access.riverside.courts.ca.gov/public-portal/>. For the precise terms and conditions of the Settlement, you should consult the detailed Agreement and the Preliminary Approval Order, which are also on file with the Court and available online. If you have any questions, you can contact the Settlement Administrator at [REDACTED]. You can also contact Class Counsel, below.

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**PLEASE DO NOT CONTACT THE COURT FOR INFORMATION
ABOUT THIS SETTLEMENT**

Exhibit A.1

**OBJECTION FORM
Form A**

Nadia Tuliau v. The Kroger Co., Ralphs Grocery Company
Riverside Superior Court, Case No. RIC2002168

To: [Class Member Name]

Your potential individual Class Settlement Award in the Settlement of the class action lawsuit listed above is based on your pro-rata share of the Net Settlement Sum and is calculated by dividing the Net Settlement Amount by the number of Class Members, with each Class Member receiving an equal share.

If you do not wish to object to the Class Settlement, you do not need to take any further action. You will receive your Class Settlement Award once the Settlement becomes final.

If you wish to object to the Class Settlement, you must either (a) complete, sign, and date this Objection Form, or (b) submit a written objection that contains (i) a reference to the name and case number of the Action (*Nadia Tuliau v. The Kroger Co. and Ralphs Grocery Company*, Riverside Superior Court Case No. RIC2002168); (ii) your full name, signature, address, telephone number and last four digits of your Social Security number; and (iii) a written statement of the grounds for objecting to the Settlement. You must mail this Objection Form or your written objection to the Settlement Administrator, Phoenix Class Action Administration Solutions, at [ADDRESS], postmarked no later than _____, 2024 [Notice Response Deadline].

Full Name (printed): _____

Address: _____

Telephone: _____

Last Four Digits of Social Security Number: _____

Grounds for Objecting to the Class Settlement:
(If more space is needed, please attach the additional pages to this form.)

Dated: _____ (signature)

Exhibit B

[Settlement Administrator Letterhead]

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

**Re: PAGA Settlement Award from *Nadia Tuliau v. The Kroger Co., Ralphs Grocery Company*
Superior Court of the State of California, County of Riverside, Case No. RIC2002168**

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your share of the proceeds from the settlement of the claims brought under the Labor Code Private Attorneys General Act of 2004 (“PAGA”) in the lawsuit entitled *Nadia Tuliau v. The Kroger Co., Ralphs Grocery Company*, pending in the Superior Court of the State of California, County of Riverside, Case No. RIC2002168.

The lawsuit alleged that Defendants Ralphs Grocery Company (“Ralphs”) and The Kroger Co. (together, the “Defendants”) failed to pay all wages, including all minimum and overtime wages; failed to timely pay all final wages; failed to timely pay all current wages during employment; failed to provide compliant wage statements; failed to keep requisite payroll records; failed to provide required rest breaks; and failed to reimburse all necessary business expenses, among other things, with respect to all current and former non-exempt distribution center employees in California during the period from April 17, 2019 through [Preliminary Approval Date] (the “PAGA Period”).

The lawsuit is now settled, including the PAGA claims brought on behalf of the State of California and the employees described above. The settlement is not an admission of liability by Defendants. To the contrary, Defendants have denied any liability or wrongdoing throughout the course of the litigation, and Defendants contend that they complied with all applicable laws and regulations with respect to the matters alleged in the lawsuit and related actions.

You are receiving the enclosed check because Ralphs’s records reflect that you are an individual on whose behalf the PAGA claims were brought. The settlement has been approved by the court, and no further action is required on your part. You should cash your check by [180 DAYS AFTER ISSUANCE], after which the check will be void and you will no longer be able to cash it. Whether or not you cash the check, you nonetheless remain bound by the PAGA Settlement, including the release of all Released PAGA Claims. Under governing law, you do not have a right to exclude yourself from, or object to, the PAGA Settlement.

The Court has not ruled on the merits of the lawsuit but it has approved the settlement, which includes a payment to settle the PAGA claims, of which 75% will be paid to the California Labor and Workforce Development Agency, and the remaining 25% will be paid to employees such as yourself. The enclosed check is your share of the PAGA settlement payment.

If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter). Please do not contact the Court for information about this settlement.

Very Truly Yours,

[Administrator]

Exhibit B

Exhibit C

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Attorneys for Plaintiffs NADIA TULIAU and
KARLOS WHITE-VALDEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

NADIA TULIAU, an individual, on behalf of
herself and all others similarly situated and as a
private attorney general pursuant to the Private
Attorneys General Act,

Plaintiff,

vs.

THE KROGER CO., RALPHS GROCERY
COMPANY, and DOES 1 through 10,
Defendants.

Case No. RIC2002168

*(Assigned for All Purposes to the
Hon. Harold W. Hopp, Dept. 01)*

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Action Filed: June 26, 2020
Trial Date: Not Yet Set

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

1 This matter has come before the Honorable Harold W. Hopp in Department 1 of the Superior
2 Court of the State of California, for the County of Riverside on _____, at
3 _____ a.m. for the motion of Plaintiffs Nadia Tuliau and Karlos White- Valdez (“Plaintiffs”)
4 for Preliminary Approval of Class Action and PAGA Settlement. The Dion-Kindem Law Firm and
5 Schneider Wallace Cottrell Konecky LLP appeared as counsel for Plaintiffs, and Davis Wright
6 Tremaine LLP appeared as counsel for Defendants Ralphs Grocery Company and The Kroger Co.
7 (“Defendants”).

8 The Court, having carefully considered the papers, argument of counsel, and all matters
9 presented to the Court, and good cause appearing, hereby GRANTS Plaintiffs’ Motion for Preliminary
10 Approval of Class Action and PAGA Settlement.

11 IT IS HEREBY ORDERED:

- 12 1. The Court preliminarily approves the Class Action and PAGA Settlement Agreement and
13 Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT [X]**”
14 to the Declaration of Peter R. Dion-Kindem in Support of Plaintiffs’ Motion for Preliminary
15 Approval of Class Action Settlement. This is based on the Court’s determination that the
16 Settlement falls within the range of possible approval as fair, adequate, and reasonable.
- 17 2. This Order incorporates by reference the definitions in the Settlement Agreement, and all
18 capitalized terms defined therein shall have the same meaning in this Order as set forth in the
19 Settlement Agreement.
- 20 3. It appears to the Court on a preliminary basis that the Settlement is fair, adequate, and
21 reasonable. It appears to the Court that extensive investigation, discovery, and research have
22 been conducted such that counsel for the parties at this time are able to reasonably evaluate their
23 respective positions. It further appears to the Court that the Settlement will avoid substantial
24 additional costs by all parties and avoid the delay and risks that would occur by the further
25 prosecution of the cases. It further appears that the Settlement has been reached as the result of
26 intensive, serious, and non-collusive, arms-length negotiations and was entered into in good
27 faith.

- 1 4. The Court preliminarily finds that the Settlement, including the allocations for the Fee and
2 Expense Award, Service Payments, PAGA Settlement Amount, Settlement Administration
3 Costs, and Class Settlement Awards to the Settlement Class Members provided thereby, appear
4 to be within the range of reasonableness of a settlement that could ultimately be given final
5 approval by this Court. The Court has reviewed the monetary recovery that is being granted as
6 part of the Settlement and preliminarily finds that the monetary settlement awards made
7 available to the Class Members are fair, adequate, and reasonable when balanced against the
8 probable outcome of further litigation relating to certification, liability, and damages issues.
- 9 5. The Court provisionally appoints Phoenix Class Action Administration Solutions to handle the
10 administration of the Settlement (“Settlement Administrator”).
- 11 6. Within twenty (20) business days of the date of this Order, Defendant Ralphs Grocery Company
12 shall provide the Settlement Administrator with the following information about each Class
13 Member and PAGA Group Member: last known full name, last known mailing address, last
14 known telephone number, Social Security number, whether the individual is a Class Member, a
15 PAGA Group Member, or both, and the individual number of PAGA Pay Periods during the
16 PAGA Period (if applicable), all in conformity with the Settlement Agreement (collectively, this
17 information is referred to as the “Class and PAGA Group Information List”).
- 18 7. The Court approves as to both form and content the Notice of Settlement of Class Action (“Class
19 Notice”) attached as “**EXHIBIT 1.**” The Class Notice shall be provided to Class Members in the
20 manner set forth in the Settlement Agreement. The Court finds that the Class Notice fully and
21 accurately informs the Class Members of all material elements of the Settlement and of Class
22 Members’ right and opportunity to object to the Class Settlement by mailing an Objection to the
23 Settlement Administrator. The Settlement Administrator shall give notice to any objecting party
24 of any continuance of the hearing of the motion for final approval. The Court further finds that
25 distribution of the Class Notice substantially in the manner and form set forth in the Settlement
26 Agreement and this Order and all other dates set forth in the Settlement Agreement and this
27 Order meet the requirements of due process and constitute due and sufficient notice to all
28

persons entitled thereto. The Court further orders the Settlement Administrator to mail the Class Notice by First-Class U.S. mail to all Class Members within ten (10) business days of receipt of the Class and PAGA Group Information List pursuant to the terms set forth in the Settlement Agreement.

8. A Final Approval Hearing shall be held before this Court on _____ at _____ a.m./p.m. in Department 1 of the Riverside County Superior Court, located at the Riverside Historic Courthouse, 4050 Main Street, Riverside, California 92501 to determine all necessary matters concerning the Settlement, including: whether the proposed settlement of the action on the terms and conditions provided for in the Settlement is fair, adequate, and reasonable and should be finally approved by the Court; whether a judgment as provided in the Settlement should be entered herein; whether the plan of allocation contained in the Settlement should be approved as fair, adequate, and reasonable to the Class Members; and whether the requests for the Fee and Expense Award, Service Payments, and Settlement Administration Costs should be finally approved.
9. Class Counsel shall file a motion for final approval of the Settlement and for Fee and Expense Award, Service Payments, and Settlement Administration Costs along with the appropriate declarations and supporting evidence, including the Settlement Administrator's declaration, by _____, to be heard at the Final Approval Hearing.
10. To object to the Class Settlement, a Class Member must mail his or her Objection to the Settlement Administrator on or before the Notice Response Deadline. The Objection must be signed and must contain the information that is required as set forth in the Class Settlement Notice, including and not limited to the grounds for the Objection. Class Members also have the option to orally present their objections to the Class Settlement in Court at the Final Approval Hearing regardless of whether they have submitted an Objection.
11. The Settlement is not a concession or admission and shall not be used against Defendants as an admission or indication with respect to any claim of any fault or omission by Defendants. Whether or not the Settlement is finally approved, neither the Settlement, nor any document,

statement, proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted into evidence as, received as or deemed to be in evidence for any purpose adverse to the Defendants, including, but not limited to, evidence of a presumption, concession, indication, or admission by Defendants of any liability, fault, wrongdoing, omission, concession, or damages of any kind whatsoever.

12. If the Settlement does not become effective in accordance with the terms of the Settlement Agreement or the Settlement is not finally approved, or is terminated, cancelled, or fails to become effective for any reason, this Order shall be rendered null and void, shall be vacated, and the Parties shall revert back to their respective positions as of before entering into the Settlement Agreement, including without limitation that the Second Amended Complaint in this action, attached as **Exhibit E** to the Settlement Agreement and deemed filed in this Action as of the date of preliminary approval, shall be withdrawn and shall no longer have any force or effect.

13. The Court reserves the right to adjourn or continue the date of the Final Approval Hearing and any dates provided for in the Settlement Agreement without further notice to the Class Members and retains jurisdiction to consider all further applications arising out of or connected with the Settlement.

Dated: _____

By: _____
The Honorable Harold W. Hopp
Judge of the Superior Court

Exhibit D

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Attorneys for Plaintiffs NADIA TULIAU and
KARLOS WHITE-VALDEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

NADIA TULIAU and KARLOS WHITE-
VALDEZ, on behalf of themselves and all
others similarly situated and as private
attorneys general pursuant to the Private
Attorneys General Act,

Plaintiff,

vs.

THE KROGER CO., RALPHS GROCERY
COMPANY, and DOES 1 through 10,

Defendants.

Case No. RIC2002168
CLASS ACTION
*(Assigned for All Purposes to the
Hon. Harold W. Hopp, Dept. 01)*

**[PROPOSED] FINAL APPROVAL ORDER
AND JUDGMENT**

Action Filed: June 26, 2020
Trial Date: Not Yet Set

1 This matter has come before the Honorable Harold W. Hopp in Department 1 of the
2 above-entitled Court on the Motion of Plaintiffs Nadia Tuliau and Karlos White-Valdez
3 (“Plaintiffs”) for Final Approval of Class Action and PAGA Settlement, Attorneys’ Fees and
4 Expenses, and Service Payments (“Motion for Final Approval”). The Dion-Kindem Law Firm
5 and Schneider Wallace Cottrell Konecky LLP appeared on behalf of Plaintiffs, and Davis Wright
6 Tremaine LLP appeared on behalf of Defendants Ralphs Grocery Company and The Kroger Co.
7 (“Defendants”).

8 On [the Preliminary Approval Date], the Court entered the Order Granting Preliminary
9 Approval of Class Action Settlement (“Preliminary Approval Order”), thereby preliminarily
10 approving the settlement of the above-entitled action in accordance with the Class Action and
11 PAGA Settlement Agreement and Release (“Settlement,” “Agreement,” or “Settlement
12 Agreement,” filed on [DATE] and attached as **Exhibit 1** to the declaration of attorney Peter R.
13 Dion-Kindem), which, together with the exhibits annexed thereto, set forth the terms and
14 conditions for the settlement of the Action.

15 Having reviewed the Settlement Agreement and duly considered the parties’ papers and
16 oral argument, and good cause appearing,

17 THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:

- 18 1. All terms used herein shall have the same meaning as defined in the Settlement
19 Agreement and the Preliminary Approval Order.
- 20 2. This Court has jurisdiction over Plaintiffs, Defendants, and the claims of Plaintiffs,
21 the Class Members, the State of California, and the PAGA Group Members asserted herein.
- 22 3. The Court finds that the applicable requirements of Code of Civil Procedure
23 section 382 and California Rules of Court, rule 3.769 *et seq.*, have been satisfied with respect to
24 the Class and the Settlement.
- 25 4. The Notice of Class Action Settlement (“Notice”) that was provided to the Class
26 Members fully and accurately informed them of all material elements of the Settlement and of
27 their right to object to the Class Settlement, was the best notice practicable under the
28

circumstances, was valid, due, and sufficient notice to all Class Members, and complied fully with the laws of the State of California, the United States Constitution, due process and other applicable law. The Notice fairly and adequately described the Settlement and provided the Class Members with adequate instructions and a variety of means to obtain additional information.

5. Pursuant to California law, the Court hereby grants final approval of the Settlement and finds that it is fair, reasonable, and adequate and in the best interests of the Class as a whole. The Court finds that the allocation of \$12,800 toward the Wage Statement Class Fund to be divided equally among the 256 Class Members is fair, reasonable, and appropriate and hereby approves it. The Court further finds that the Settlement was reached following meaningful discovery and investigation conducted by The Dion-Kindem Law Firm and Peter R. Dion-Kindem, P.C, Lonnie C. Blanchard III and The Blanchard Law Group, APC, and Schneider Wallace Cottrell Konecky LLP (“Class Counsel”); that the Settlement is the result of serious, informed, adversarial, and arms-length negotiations between the parties; and that the terms of the Settlement are in all respects fair, adequate, and reasonable. In so finding, the Court has considered all the evidence presented, including evidence regarding the strength of Plaintiffs’ claims; the risk, expense, and complexity of the claims presented; the likely duration of further litigation; the amount offered in the Settlement; the extent of investigation and discovery completed; and the experience and views of Class Counsel. The Court has further considered the absence of objections to the Settlement submitted by Class Members. Accordingly, the Court hereby directs that the Settlement be affected in accordance with the Settlement Agreement and the following terms and conditions.

6. A full opportunity has been afforded to the Class Members to participate in the Final Approval Hearing, and all Class Members and other persons wishing to be heard have been heard. The Class Members also had a full and fair opportunity to exclude themselves from the Settlement, upon being provided with notice of this Court’s May 10, 2023 order granting certification of the Wage Statement Class. Accordingly, the Court determines that all Wage

Statement Class Members who did not timely and validly opt out of the Wage Statement Class at that time are Class Members bound by this Final Approval Order and Judgment.

7. The Court finds that Wage Statement Class Members Leonard Gonzales, Edwin McKellop, Steven Thomas, and Socorro Tovar timely and validly opted out of the Class and, thus, will not be bound by this Final Approval Order and Judgment.

8. The Court finds that the allocation of \$[AMOUNT] toward penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA Settlement Amount”) is fair, reasonable, and appropriate, and hereby approved. The Settlement Administrator shall distribute the PAGA Settlement Amount as follows: the amount of \$[AMOUNT] to the California Labor and Workforce Development Agency, and the amount of \$[AMOUNT] to form the PAGA Fund from which individual PAGA Settlement Awards will be determined and distributed to all PAGA Group Members, according to the terms and methodology set forth in the Settlement Agreement. PAGA Group Members are defined to include:

Plaintiffs and all current and former non-exempt distribution center employees who were employed by Ralphs in California during the PAGA Period.

9. The Court finds that payment of Settlement Administration Costs in the amount of \$[AMOUNT] is appropriate for the services performed and costs incurred and to be incurred for the notice and settlement administration process. It is hereby ordered that the Settlement Administrator, Phoenix Class Action Administration Solutions, shall issue payment to itself in the amount of its actual costs not to exceed \$[AMOUNT], in accordance with the terms and methodology set forth in Settlement Agreement.

10. The Court finds that the Service Payments sought are fair and reasonable for the work performed by Plaintiffs as class and PAGA representatives and in exchange for Plaintiffs’ general releases of claims. It is hereby ordered that the Settlement Administrator issue payments in the amounts of \$15,000.00 each to Plaintiffs Nadia Tuliau and Karlos White-Valdez for their respective Service Payments according to the terms and methodology set forth in the Settlement Agreement.

11. The Court finds that the request for attorneys' fees in the following amounts to Class Counsel falls within the range of reasonableness and that the results achieved justify the award sought.

Firm	Requested Attorneys' Fees
The Dion-Kindem Law Firm Peter R. Dion-Kindem, P.C.	
The Blanchard Law Group, APC	
Holmes Law Group, APC	
Schneider Wallace Cottrell Konecky LLP	

The requested attorneys' fees to Class Counsel are fair, reasonable, and appropriate and are hereby approved. It is hereby ordered that the Settlement Administrator issue payment in the amounts set forth above to Class Counsel for attorneys' fees in accordance with the terms and methodology set forth in the Settlement Agreement.

12. The Court finds that reimbursement of litigation costs and expenses in the following amounts to Class Counsel is reasonable and is hereby approved.

Firm	Requested Costs and Expenses
The Dion-Kindem Law Firm Peter R. Dion-Kindem, P.C.	
The Blanchard Law Group, APC	
Holmes Law Group, APC	
Schneider Wallace Cottrell Konecky LLP	

It is hereby ordered that the Settlement Administrator issue payment in the amounts set forth above to Class Counsel for reimbursement of litigation costs and expenses in accordance with the terms and methodology set forth in the Settlement Agreement.

13. The Court hereby enters Judgment by which each and every Class Member shall be and hereby is conclusively determined to have given a release of all Released Class Claims against all Released Parties, as set forth in the Settlement Agreement and Class Notice, and by which the State of California and each and every PAGA Group Member shall be and hereby are conclusively determined to have given a release of all Released PAGA Claims against any and all Released Parties.

14. It is hereby ordered that, within five (5) court days of the entry of this Judgment, Plaintiff White-Valdez shall take the steps necessary to secure: (i) the dismissal of his individual claims, PAGA or otherwise, in the *White-Valdez* Action, with prejudice; (ii) the dismissal of the non-individual PAGA representative claims in the *White-Valdez* Action, without prejudice; and (iii) the dismissal of the *White-Valdez* Arbitration in its entirety, with prejudice.

15. It is hereby ordered that Defendant shall remit the Settlement Fund Amount into a Settlement Fund established by the Settlement Administrator within ten (10) business days after the Effective Date in accordance with the terms and methodology set forth in the Settlement Agreement.

16. It is hereby ordered that the Settlement Administrator shall distribute Class Settlement Award checks to the Class Members and the PAGA Settlement Award checks to the PAGA Group Members within ten (10) business days after Defendant's remittance to the Settlement Administrator of the Settlement Fund Amount according to the methodology and terms set forth in the Settlement Agreement. Any envelope transmitting a settlement distribution to a Class Member shall bear the notation, "YOUR CLASS ACTION SETTLEMENT CHECK IS ENCLOSED."

17. Each check issued to a Class Member or PAGA Group Member shall remain valid and negotiable for a period of one hundred and eighty (180) calendar days from the date of issuance of the check. After this time period, the check(s) shall be automatically cancelled if not cashed, deposited, or otherwise negotiated by the Class Member or PAGA Group Member within that time, although the individual shall remain a Class Member and/or PAGA Group Member, as applicable, bound by the Judgment entered herein. The Settlement Administrator shall mail a reminder postcard to any Class Member whose settlement distribution check has not been negotiated within 60 days after the date of mailing. After 180 days, any amounts from cancelled checks shall be transmitted to the Controller of the State of California as further described in the Settlement Agreement in accordance with Code of Civil Procedure section 384.

18. After entry of this Final Approval Order and Judgment, pursuant to California Rules of Court, rule 3.769(h), the Court shall retain jurisdiction over the parties to construe, interpret, implement, and enforce the Settlement Agreement and this Final Approval Order and Judgment, to hear and resolve any contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in connection with the distribution of settlement benefits.

19. Notice of entry of this Final Approval Order and Judgment shall be given to the Class Members by posting a copy of the Final Approval Order and Judgment on Phoenix Class Action Administration Solutions' website for a period of at least sixty (60) calendar days after the date of entry of this Final Approval Order and Judgment. Individualized notice is not required.

20. A Final Report (Nonappearance) Hearing is set for _____, to report on the status of the settlement administration and distribution of settlement funds. No later than five (5) court days before the Final Report (Nonappearance) Hearing, Plaintiffs must file a report pursuant to Code of Civil Procedure section 384, subdivision (b), concerning the amount of money distributed and, if there is unpaid residue to be distributed, the report shall be accompanied by a proposed amended judgment. The report shall be in the form of a declaration from the Settlement Administrator and shall comply with Section J of the Court's Class Action Case Management Order #1, filed August 5, 2020.

Dated: _____

The Honorable Harold W. Hopp
Judge of the Superior Court

Exhibit E



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KARLOS WHITE-VALDEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

Nadia Tuliau and Karlos White-Valdez, on behalf
of themselves and all others similarly situated and
as private attorneys general pursuant to the Private
Attorneys General Act,

Plaintiffs,

vs.

The Kroger Co., Ralphs Grocery Company, and
Does 1 through 10,

Defendants.

Case No. RIC2002168

CLASS ACTION

*(Assigned for All Purposes to the
Hon. Harold W. Hopp, Dept. 01)*

Second Amended Complaint for:

- 1. Wage Statement Violations**
- 2. Recovery of Civil Penalties pursuant to
the California Private Attorneys General
Act**

Action Filed: June 26, 2020

Trial Date: Not Yet Set

1 Plaintiffs Nadia Tuliau and Karlos White-Valdez (“Plaintiffs”), individually, on behalf of all
2 other persons similarly situated, and on behalf of the State of California and Aggrieved Employees as
3 private attorneys general pursuant to the California Private Attorneys General Act of 2004 (“the PAGA”),
4 allege:

- 5 1. Plaintiffs are individuals over the age of eighteen and at all times mentioned in the Complaint were
6 residents of the State of California. Plaintiffs were employed in Riverside County by Defendants
7 as non-exempt employees.
- 8 2. Defendant Ralphs Grocery Company (“Ralphs”) is an Ohio corporation and is registered to do
9 business in California.
- 10 3. Defendant The Kroger Co. (“Kroger”) is an Ohio corporation with its headquarters located in
11 Cincinnati, Ohio. Kroger operates from locations throughout the United States, including
12 Riverside County in California.
- 13 4. Defendants acted as employers, co-employers, and/or joint employers of Plaintiffs and the class
14 members and PAGA members.
- 15 5. Plaintiffs do not presently know the true names and capacities of the defendants named as Does 1
16 through 10 and therefore sues such defendants by these fictitious names. Plaintiffs believe that the
17 Doe defendants are persons or entities who are involved in the acts set forth below, either as
18 independent contractors, suppliers, agents, servants or employees of the known defendants, or
19 through conspiring with the known Defendants to perform these acts for financial gain and profit
20 in violation of Plaintiffs’, class members’ and PAGA members’ rights.
- 21 6. Each of the Defendants has been or is the principal, officer, director, agent, employee, joint
22 employer, representative and/or co-conspirator of each of the other defendants and in such capacity
23 or capacities participated in the acts or conduct alleged herein and incurred liability therefor. At
24 an unknown time, some of the Defendants conspired with other Defendants to commit the
25 wrongful acts described herein. These wrongful acts were committed in furtherance of such
26 conspiracy. Defendants aided and abetted each other in committing the wrongful acts alleged
27
28

herein. Each of the Defendants acted for personal gain or in furtherance of their own financial advantage in committing the acts alleged herein.

7. The named Defendants and the Doe defendants are hereinafter referred to collectively as “Defendants.”

JURISDICTION AND VENUE

8. Venue is proper in this County pursuant to Code of Civil Procedure § 395(a). On information and belief, Defendants do not reside in the State of California.
9. This Court has jurisdiction over Plaintiffs’ claims for penalties pursuant to the PAGA. The Court also has jurisdiction over Defendants because they are corporations authorized to do business in the State of California and because Defendants in fact do business and employ workers in California.

First Cause of Action Wage Statement Violations (By Plaintiff Tuliau Against All Defendants)

10. Plaintiff Tuliau realleges all the preceding paragraphs.
11. Plaintiff Tuliau brings the first cause of action for herself and on behalf of the following class:

All non-exempt employees employed by Ralphs who received a wage statement that did not reflect Ralphs Grocery Company as the employer at any time during the period from April 17, 2019 to November 15, 2021 and who did not sign an arbitration agreement.
12. The term “class members” includes Plaintiff Tuliau and all class members.
13. During all or a portion of the class period, Plaintiff Tuliau and class members were employed by Defendants in California.
14. **Numerosity.** The number of class members is so numerous that joinder of all members is impractical. The names and addresses of the class members are identifiable through documents maintained by the Defendants, and the class members may be notified of the pendency of this action by published and/or mailed notice. There are believed to be more than 50 class members.
15. **Existence and Predominance of Common Questions of Law and Fact.** Common questions of law and fact exist as to all class members. These questions predominate over the questions

affecting only individual members. These common legal and factual questions include, among other things: whether Defendants violated Labor Code Section 226 by failing to timely furnish Plaintiff Tuliau and class members accurate wage statements reflecting the name and address of Defendant Ralphs.

16. **Typicality.** Plaintiff Tuliau's class claims are typical of the class members' claims. Plaintiff Tuliau and all class members sustained injuries and damages arising out of Defendants' common course of conduct in violation of the law as alleged herein. Plaintiff Tuliau is entitled to the same relief under the class action causes of action as the class members.

17. **Adequacy.** Plaintiff Tuliau will adequately and fairly protect the interests of the class members. Defendants employed Plaintiff Tuliau during the class period, and Plaintiff Tuliau is an adequate representative for the class members because Plaintiff Tuliau has no interest adverse to the interests of the class members and Plaintiff Tuliau has retained legal counsel with substantial experience in civil litigation, employment law and class action litigation. Plaintiff Tuliau and her counsel will fairly and adequately protect the class members' interests.

18. **Superiority.** A class action is superior to other available means of fair and efficient adjudication of the class members' claims. Joinder of all class members is impractical. Class action treatment will allow numerous similarly situated persons to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would cause to such plaintiffs or to the court system. Further, the damages of many class members may be relatively small, and the burden and expenses of individual litigation would make it difficult or impossible for individual class members to seek and obtain relief, while a class action will serve an important public interest. Furthermore, questions of law and fact common to the class members predominate over questions affecting only individual members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy. Individual litigation would present the potential for inconsistent or contradictory judgments. By contrast, the class action device will result in substantial benefits

to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in one case.

19. Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to maintain and furnish Plaintiff Tuliau and class members with accurate and complete wage statements reflecting all the information required under Section 226(a) and/or 1174. Defendants violated Section 226(a)(8) by failing to provide Plaintiff Tuliau and other class members with statements of wages that accurately showed the name and address of the legal entity that is the employer. For example, to the extent Ralphs was the employer, wage statements provided to Plaintiff Tuliau and class members did not reflect the name of Ralphs, but “Kroger.”
20. Plaintiff Tuliau and class members are deemed to have suffered injury as a result of Defendants’ violations. Moreover, Defendants’ failure to furnish Plaintiff Tuliau and class members with complete and accurate itemized wage statements resulted in actual injury because such failures led to, among other things, the non-payment of all the wages due them and deprived them of the information necessary to identify the discrepancies in Defendants’ reported data.
21. Plaintiff Tuliau and the other class members are entitled to damages and/or penalties pursuant to Labor Code Section 226.

**Second Cause of Action
Recovery of Penalties Pursuant to the Private Attorneys General Act
(By Plaintiffs Against All Defendants)**

22. Plaintiffs reallege all the preceding paragraphs.
23. One or more of the alleged violations set forth below were committed against Plaintiffs, and Plaintiffs are therefore “aggrieved employees” under Labor Code Section 2699(c).
24. Pursuant to the Private Attorneys General Act, Plaintiffs are entitled to recover civil penalties on behalf of persons who are or were employed by the alleged violator and against whom one or more of the alleged violations was committed (“PAGA members”). Plaintiffs are pursuing civil penalties for violations of the Labor Code sections alleged herein.

25. Defendants, as alleged herein, have committed Labor Code violations against Plaintiffs and other of Defendants' employees.
26. Plaintiffs bring this PAGA enforcement action on behalf of the State of California to collect all civil penalties recoverable under PAGA as a result of Defendants' systematic violations of California labor law with respect to Defendants' current and former non-exempt hourly distribution center workers in the State of California ("Aggrieved Employees").
27. This PAGA action against Defendants challenges their policies and practices of (1) failing to compensate employees for all hours worked; (2) failing to pay employees overtime wages as required by California law; (3) failing to provide employees accurate, itemized wage statements; and (4) failing to timely pay employees wages owed upon the termination of employment.
28. Defendants own and operate distribution centers throughout the United States and California, including the distribution center in Riverside County, California. Defendants employ hundreds of hourly non-exempt workers similarly situated to Plaintiffs across these facilities.
29. Defendants employ non-managerial employees in the State of California and uniformly classify them as non-exempt from overtime compensation under California law.
30. Plaintiff White-Valdez worked as a non-exempt order picker at the distribution center in Riverside County from approximately July 2020 to September 2020. Mr. White-Valdez's hourly rate of pay was \$19.88 per hour. While his shifts varied in length, Mr. White-Valdez typically worked approximately 12 hours per shift and 5 days per week. On average, Mr. White-Valdez worked 60 hours per week. His duties included selecting orders for customers, operating equipment needed to stack pallets, as well as staging and loading customer orders so they can be delivered without damage or errors.
31. Plaintiff White-Valdez worked more than 40 hours in a week on at least one workweek during the three years before this Complaint was filed.

32. Non-exempt, hourly workers employed by Defendants have a variety of responsibilities. For order pickers such as Plaintiff White-Valdez, employees must pull warehouse items from the shelves, ensure that orders are accurate, state items correctly for delivery, and operate handling equipment.
33. Plaintiff Tuliau was employed by Defendants at a distribution center in Riverside County.
34. Pursuant to a uniform, companywide policy and practice, Defendants fail to accurately track and compensate Plaintiffs and Aggrieved Employees for all hours worked, including minimum wage, overtime, and double time pay.
35. Before being allowed to drive to the warehouse, Plaintiff Tuliau was required to stop at a guard post where a guard would inspect Ms. Tuliau's employee badge or otherwise verify her identity before allowing her to enter. On occasion, there was a line of cars waiting to undergo this security check and the wait could be over 10 minutes. Once Ms. Tuliau arrived at the warehouse parking lot, she would walk to the warehouse. Ms. Tuliau would have to arrive at the parking lot at least 30 minutes before her start time so she could walk to the warehouse.
36. Once Plaintiff Tuliau arrived at the warehouse, she would have to use her security badge to swipe in and then walk through a security turnstile. After passing through the turnstile, Ms. Tuliau was required to show her security badge to a security guard. If an employee did not have a badge, the security guard would stop the employee and make the employee sign in on a clipboard. There were lines of employees that Ms. Tuliau was required to wait in to undergo this security process, and sometimes the lines were long.
37. Lockers were in the bathroom, which was inside the main breakroom. Because inventory employees worked in the refrigerator section, they were required to put on a bib, freezer jacket, steel toe boots, gloves and other protective wear. Employees were required to change into protective clothing in the bathroom before their shifts and before clocking in.
38. After changing into protective clothing, Plaintiff Tuliau walked to the clock-in station, which took two to three minutes, and clocked in.

39. Defendants also maintain as a matter of company policy and/or practice a security check for all non-managerial workers, including Plaintiffs and Aggrieved Employees, that takes place after the workers clock out for their shifts. After the clocking out at the end of the day, there was a process that could take 30 minutes or so of taking off all the protective gear and changing into clothes and walking through the warehouse to the security desk where security personnel checked to see if you had protective wear/freezer gear on. Sometimes employees rushed after clocking out and they would forget to take their protective wear off. Defendants claimed that they had caught people stealing merchandise and other items from the warehouse by hiding it in their protective gear, so, every day they would do a visual security check of the employees' clothes and certain bags being carried. Employees were required to open and show certain bags to the security guards. During this security check process, a supervisor looks through the workers' personal items such as a backpack, purse, or lunch pail, to check for stolen or other prohibited items. On occasion, certain bags had to be set down on a table and opened one bag a time, which could take two to three minutes. When there were lines for this security bag check, it could take four to five minutes or so to check employees' bags.

40. Additionally, approximately twice per week, Defendants randomly select employees to undergo a car search after their shift, purportedly to ensure that the selected employee had not stolen any items from the location where they work. Before being allowed to drive out of the parking lot, employees would have to pass the security guard gate at the entrance of the parking lot. Employees were required to stop at a guard gate where a guard would inspect Plaintiff Tuliau's employee badge or otherwise verify the employee's identity. Sometimes there was a line of cars that were waiting for this security check. The check-out process at the security guard gate would take between three to eight minutes or so. Defendants had a policy of conducting random security checks at the security guard gate. At least once a week, and once four times in a week, Plaintiff Tuliau was selected for a random vehicle inspection. If an employee was selected, the security guard would waive the employee over to the side and out of the line, then they would make the

employee wait until the entire line of cars had exited, which could take between three and eight minutes. The security guard would then close the gate to the parking lot, go into the security guard shack to gather the vehicle inspection paperwork and then walk to the employee's car. Once at the employee's vehicle, the security guard would take the employee's information including the department the employee worked in, the employee's name and badge number, and other shift-related information. The employee would then be asked to open the trunk so the security guard could inspect the vehicle. Once the security guard had finished the security check and closed the vehicle trunk, the security guard would open the gate and the employee was allowed to exit the parking lot. The inspection process could take five or more minutes or so.

41. Plaintiffs and Aggrieved Employees were entitled to be paid for all hours worked, including traveling to, waiting for, and undergoing the various security procedures, donning and doffing protective clothing, traveling between the various security procedures, and walking to and from the time clocks.
42. Defendants did not compensate Plaintiffs for all hours worked and, to the extent such hours worked exceeded eight hours in a day or 40 hours in a week and Aggrieved Employees were legally entitled to overtime under California law, Defendants did not compensate Plaintiffs and other Aggrieved Employees at the correct overtime rate.
43. Plaintiff White-Valdez was regularly directed by Defendants to spend between three and six minutes before the beginning and at the end of every shift performing services for Defendants' benefit while off-the-clock. As a matter of company policy and/or practice, Defendants require all workers, including Plaintiff White-Valdez and Aggrieved Employees, to arrive before their shifts and go through a health check line where the worker must show their badge. Additionally, Defendants check employees' temperature before allowing them to enter Defendants' facilities. This process takes approximately one minute, and sometimes more than two or three minutes if the line is long, and is performed prior to Aggrieved Employees clocking in for their shifts.

- 1 44. Plaintiffs are informed, believe, and thereon allege that the same security check system and
2 timekeeping system are used across all Defendants' facilities.
- 3 45. All this time goes uncompensated.
- 4 46. As a result of this off-the-clock work, Plaintiffs and Aggrieved Employees are not adequately
5 compensated for all hours worked at their regular rate or at the applicable overtime rates.
- 6 47. When Plaintiffs and Aggrieved Employees worked more than 40 hours in a workweek or more
7 than eight hours in a day, when they were entitled to overtime under California law, Defendants
8 failed to pay them for all overtime hours worked at the proper rate in violation of California law.
- 9 48. Defendants' failure to record all hours worked also resulted in a failure to provide Plaintiffs and
10 Aggrieved Employees accurate, itemized wage statements as required by California law. The wage
11 statements are inaccurate because they do not accurately reflect the total hours worked, premium
12 pay for overtime, and the gross and net wages earned, *inter alia*.
- 13 49. Further, Defendants do not provide Aggrieved Employees, including Plaintiffs, whose
14 employment has ended, with full payment of all wages owed at the end of their employment. As
15 these workers are owed for off-the-clock work, unpaid overtime, and premium pay when their
16 employment ends, these amounts remain unpaid under Defendants' policies and practices and
17 Defendants fail to pay all wages due upon termination. As a consequence, Defendants are subject
18 to waiting time penalties.
- 19 50. Additionally, Defendants require Plaintiffs and Aggrieved Employees to regularly cut short their
20 mandatory statutory rest periods. Plaintiffs and Aggrieved Employees cut short their rest periods
21 to meet productivity goals set by Defendants, which also often results in Plaintiffs and Aggrieved
22 Employees not being able to timely take their rest breaks. Plaintiffs and Aggrieved Employees do
23 not receive premium pay for taking abbreviated rest breaks or delaying their rest breaks after the
24 fourth hour of work.
- 25 51. Plaintiffs, on behalf of the State of California, seek to recover penalties and reasonable attorneys'
26 fees for these violations pursuant to Section 2699(a) and (f).
- 27
28

52. Labor Code § 2699(a) provides:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.

53. Labor Code §§ 201 and 202 require employers to immediately pay wages earned and unpaid to an employee that is discharged and to pay an employee who quits within 72 hours after he or she quits at the latest.

54. Labor Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

55. The employment of Plaintiffs and other Aggrieved Employees with Defendants terminated. When their employment terminated, Defendants violated Labor Code Sections 201 or 202 by willfully failing to pay the wages earned and unpaid that were due them within the time required by Sections 201 or 202.

56. Labor Code § 256 provides: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.”

57. Labor Code § 225.5 provides that every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and \$200 for each subsequent violation, or any willful or intentional violation, for each failure to pay each employee.

58. Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based

on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least four years at the place of employment or at a central location within the State of California.

59. Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.

60. Defendants violated Section 226(a)(1) as to Plaintiffs and other Aggrieved Employees by failing to provide them statements of wages that accurately showed gross wages actually earned.

61. Defendants violated Section 226(a)(2) by failing to provide Plaintiffs and other Aggrieved Employees statements of wages that accurately showed the total hours actually worked by Plaintiffs and other Aggrieved Employees.

62. Defendants violated Section 226(a)(5) by failing to provide Plaintiffs and other Aggrieved Employees with statements of wages that accurately showed net wages actually earned.

63. Defendants violated Section 226(a)(8) by failing to provide Plaintiffs and other Aggrieved Employees with statements of wages that accurately showed the name and address of the legal entity that is the employer. For example, to the extent Ralphs was the employer, wage statements provided to Plaintiffs and Aggrieved Employees did not reflect the name of Ralphs, but “Kroger.”

64. Defendants violated Section 226(a)(9) by failing to provide Plaintiffs and other Aggrieved Employees with statements of wages that accurately showed the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by failing accurately to show the actual number of hours worked at the applicable hourly rate at which they were to be paid.
65. Defendants' failure to furnish Plaintiffs and Aggrieved Employees with complete and accurate itemized wage statements resulted in actual injury because such failures led to, among other things, the non-payment of all the wages due them and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.
66. Labor Code § 1197 in relevant part provides:

The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.
67. Plaintiffs seek civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendants, as alleged above, to timely pay all wages owed to Plaintiffs and Aggrieved Employees in compliance with Labor Code §§ 201-202, and to pay wages owed at the end of employment to Plaintiffs and Aggrieved Employees in compliance with Labor Code § 203.
68. Plaintiffs also seek civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendants, alleged above, to provide Plaintiffs and Aggrieved Employees an accurate, itemized wage statement in compliance with Labor Code § 226(a).
69. Plaintiffs also seek civil penalties pursuant to Labor Code § 2699(a) for each violation of Labor Code § 510, alleged above, as well as any provision regulating hours and days of work in any order of the IWC.
70. Plaintiffs seek to recover all civil penalties recoverable under PAGA against Defendants, including without limitation penalties pursuant to Labor Code Sections 210, 226.3, 225.5, 256, 558, 1174.5, 1197.1, and 2699(f).
71. Labor Code § 2699(f) provides:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

72. Labor Code § 200 defines wages as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or method of calculation.”

73. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any employment are due and payable twice during each calendar month....”

74. Paragraph 4 of the applicable Wage Order provides in relevant part:

(B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

75. IWC Wage Orders 7-2001(2)(G) and 4-2001(2)(K) define hours worked as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

76. Labor Code § 1198 makes it unlawful for employers to employ employees under conditions that violate the Wage Order.

77. Labor Code § 2802 requires employers to indemnify employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

78. To the extent than any violation alleged herein does not carry penalties under Labor Code § 2699(a), Plaintiffs seek civil penalties pursuant to Labor Code § 2699(f) for Plaintiffs and Aggrieved Employees each pay period in which he or she was aggrieved in the amounts established by Labor Code § 2699(f). Plaintiffs seek civil penalties under Labor Code § 2699(f) for Defendant’s violations of Labor Code §§ 204, 226.7, 512, 1182.12, 1194, 1197, 1198, and 2802.

79. Plaintiffs seek the aforementioned penalties on behalf of the State, other Aggrieved Employees, and themselves as set forth in Labor Code § 2699(g)(i).

80. Labor Code Section 218.5 provides in relevant part:

(a) In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action. . . .

81. Plaintiffs have incurred attorneys' fees and costs in pursuing this claim.

82. On April 17, 2020, Plaintiff Tuliau's attorney gave written notice to the Labor and Workforce Development Agency ("LWDA") and to the Defendants by certified mail identifying violations set forth in this complaint, and 65 days have passed from the date of the mailing of the notice.

83. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff White-Valdez provided the LWDA with notice of his intention to file this claim. More than 65 calendar days have passed without notice from the LWDA. Plaintiffs have satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

84. Labor Code Section 2699(g) provides that any "employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." Plaintiffs have incurred attorney's fees and costs in pursuing this claim.

85. Defendants are liable to Plaintiffs, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiffs are also entitled to an award of attorneys' fees and costs.

WHEREFORE, Plaintiffs demand a jury trial on all claims so triable and request that judgment be entered against all Defendants as follows:

1. For certification of this action as a class action and the appointment of Plaintiff Tuliau as the representative of the class and Plaintiff Tuliau's counsel as lead counsel for the class;
2. For statutory penalties pursuant to Labor Code Section 226(e);
3. For the Court to declare, adjudge, and decree that Defendants have violated the California Labor Code as alleged herein;

4. For an order awarding the State of California, Plaintiffs, and Aggrieved Employees civil penalties recoverable under the PAGA;
5. For prejudgment interest;
6. For reasonable attorneys' fees;
7. For costs as allowed by law; and
8. For such other relief as this Court shall deem just and proper.

Dated: October 15, 2024

THE DION-KINDEM LAW FIRM

BY:



PETER R. DION-KINDEM, P.C.
PETER R. DION-KINDEM
Attorney for Plaintiffs

Demand for Jury Trial

Plaintiff Tuliau demands a jury trial.

Dated: October 15, 2024

THE DION-KINDEM LAW FIRM

BY:



PETER R. DION-KINDEM, P.C.
PETER R. DION-KINDEM
Attorney for Plaintiffs

Exhibit F

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Attorneys for Defendants
RALPHS GROCERY COMPANY and
THE KROGER CO.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

NADIA TULIAU, an individual, on behalf of
herself and all others similarly situated and as a
private attorney general pursuant to the Private
Attorneys General Act,

Plaintiff,

vs.

THE KROGER CO., RALPHS GROCERY
COMPANY, and DOES 1 through 10,

Defendants.

Case No. RIC2002168

(Assigned for All Purposes to the
Hon. Harold W. Hopp, Dept. 01)

**DEFENDANTS RALPHS GROCERY
COMPANY AND THE KROGER CO.'S
ANSWER TO PLAINTIFFS' UNVERIFIED
SECOND AMENDED COMPLAINT**

Action Filed: June 26, 2020
Trial Date: Not Yet Set

Defendants Ralphs Grocery Company and The Kroger Co. ("Defendants") hereby answer
the unverified Second Amended Complaint of Plaintiffs Nadia Tuliau and Karlos White-Valdez
("Plaintiffs") as follows:

1. Pursuant to section 431.30, subdivision (d) of the Code of Civil Procedure,
Defendants generally deny each and every allegation contained in the Second Amended
Complaint, and specifically deny that Plaintiffs, any members of any putative or certified class, or
any of the alleged "aggrieved employees" they purport to represent have been damaged as alleged
in the Second Amended Complaint or at all.

WHEREFORE, Defendants pray for judgment as hereinafter set forth.

FIRST SEPARATE AND ADDITIONAL DEFENSE

(Failure to State a Cause of Action)

2. The Second Amended Complaint and each purported cause of action alleged therein fail to state facts sufficient to constitute a cause of action.

SECOND SEPARATE AND ADDITIONAL DEFENSE

(Lack of Standing)

3. The Second Amended Complaint and each purported cause of action alleged therein are barred to the extent Plaintiffs lack standing to assert these matters against Defendants.

THIRD SEPARATE AND ADDITIONAL DEFENSE

(Preemption)

4. The Second Amended Complaint and each purported cause of action alleged therein are barred to the extent they are preempted under federal law, including (without limitation) the National Labor Relations Act and the Labor Management Relations Act.

FOURTH SEPARATE AND ADDITIONAL DEFENSE

(Claims Subject to Arbitration)

5. The Second Amended Complaint and each purported cause of action alleged therein are barred to the extent Plaintiffs, any members of any putative or certified class, or any alleged “aggrieved employees” agreed submit their individual claims to arbitration in accordance with any applicable arbitration agreement.

FIFTH SEPARATE AND ADDITIONAL DEFENSE

(Statute of Limitations)

6. The Second Amended Complaint and each purported cause of action alleged therein are barred to the extent Plaintiffs, any members of any putative or certified class, or any alleged “aggrieved employees” seek relief for conduct occurring outside the applicable statutes of limitation, as set forth in Code of Civil Procedure section 338, subdivision (a), section 340, subdivision (a), and section 343, among others.

SIXTH SEPARATE AND ADDITIONAL DEFENSE

(Violation of Due Process)

7. The Second Amended Complaint and each purported cause of action alleged therein are barred to the extent they violate Defendants' right to due process under the United States Constitution, the California Constitution, or other applicable law, or otherwise violate any of Defendants' constitutionally protected rights.

SEVENTH SEPARATE AND ADDITIONAL DEFENSE

(Unmanageability)

8. The Second Amended Complaint and each purported cause of action alleged therein are barred because litigating this action on a class, representative, or other group-wide basis would be unmanageable and would violate the due process rights of Defendants and persons who are not parties to this action.

EIGHTH SEPARATE AND ADDITIONAL DEFENSE

(Not Employer)

9. The Second Amended Complaint and each purported cause of action alleged therein are barred as to Defendant The Kroger Co. because it has never employed Plaintiffs, any members of any putative or certified class, or any alleged "aggrieved employee."

NINTH SEPARATE AND ADDITIONAL DEFENSE

(Good Faith)

10. Neither Plaintiffs nor any members of any putative or certified class or alleged "aggrieved employees" are entitled to any penalty award or other relief for any alleged violation of any Labor Code provision because at all times relevant herein, Defendants acted in good faith and had reasonable grounds for believing they did not violate any provision of the Labor Code or the Wage Orders promulgated thereunder.

TENTH SEPARATE AND ADDITIONAL DEFENSE

(No Knowing, Intentional, or Willful Failure)

11. The Second Amended Complaint and each purported cause of action alleged therein are barred because Defendants did not knowingly, intentionally, or willfully fail to comply with any provision of the Labor Code.

ELEVENTH SEPARATE AND ADDITIONAL DEFENSE

(Plaintiffs' Other Conduct)

12. The Second Amended Complaint and each purported cause of action alleged therein are barred to the extent any alleged damages were caused by the negligence, failure to perform, or other conduct of Plaintiffs or any members of any putative or certified class or alleged "aggrieved employees."

TWELFTH SEPARATE AND ADDITIONAL DEFENSE

(Failure to Comply with Policies)

13. The Second Amended Complaint and each purported cause of action alleged therein are barred to the extent Plaintiffs, any members of any putative or certified class, or any alleged "aggrieved employees" did not comply with Defendants' policies.

THIRTEENTH SEPARATE AND ADDITIONAL DEFENSE

(Failure to Exhaust Internal Remedies)

14. The Second Amended Complaint and each purported cause of action alleged therein are barred to the extent Plaintiffs, any members of any putative or certified class, or any alleged "aggrieved employees" failed to exhaust internal remedies.

FOURTEENTH SEPARATE AND ADDITIONAL DEFENSE

(Waiver)

15. The Second Amended Complaint and each purported cause of action alleged therein are barred to the extent Plaintiffs, any members of any putative or certified class, or any alleged "aggrieved employees," by their actions, have waived any claim they had against Defendants, to the extent they had any such claim (which Defendants deny).

FIFTEENTH SEPARATE AND ADDITIONAL DEFENSE

(Estoppel)

16. The Second Amended Complaint and each purported cause of action alleged therein are barred to the extent Plaintiffs, any members of any putative or certified class, or any alleged “aggrieved employees,” by their actions, are estopped to assert any claim they had against Defendants, to the extent they had any such claim (which Defendants deny).

SIXTEENTH SEPARATE AND ADDITIONAL DEFENSE

(Release)

17. The Second Amended Complaint and each purported cause of action alleged therein are barred to the extent they have been released by Plaintiffs or any members of any putative or certified class or any alleged “aggrieved employees.”

SEVENTEENTH SEPARATE AND ADDITIONAL DEFENSE

(Unclean Hands)

18. The Second Amended Complaint and each purported cause of action alleged therein are barred to the extent Plaintiffs, any members of any putative or certified class, or any alleged “aggrieved employees” have been guilty of improper conduct connected to the matters alleged in the SAC.

EIGHTEENTH SEPARATE AND ADDITIONAL DEFENSE

(Laches)

19. The Second Amended Complaint and each purported cause of action alleged therein are barred to the extent Plaintiffs, any members of any putative or certified class, or any alleged “aggrieved employees” inexcusably and unreasonably delayed filing this action, causing prejudice to Defendants.

NINETEENTH SEPARATE AND ADDITIONAL DEFENSE

(Offset)

20. Any damages, penalties, or other relief claimed by Plaintiffs, any members of any putative or certified class, or alleged “aggrieved employees” should be reduced to the extent they are subject to an offset, representing amounts improperly obtained from Defendants or that would

constitute unjust enrichment of Plaintiffs, any members of any putative or certified class, or any alleged “aggrieved employees.”

TWENTIETH SEPARATE AND ADDITIONAL DEFENSE

(Consent)

21. The Second Amended Complaint and each purported cause of action alleged therein are barred to the extent Plaintiffs, any members of any putative or certified class, or any alleged “aggrieved employees” consented to the alleged conduct of Defendants.

TWENTY-FIRST SEPARATE AND ADDITIONAL DEFENSE

(De Minimis Matters/Rule of Reason)

22. The Second Amended Complaint and each purported cause of action alleged therein are barred to the extent recovery is sought for de minimis matters and/or seeks recovery for periods of time or for amounts that are so brief, irregular of occurrence, or difficult to adequately measure or estimate that it would be neither reasonable to require Defendants to account for them nor sensible to devote judicial resources to litigating over them.

TWENTY-SECOND SEPARATE AND ADDITIONAL DEFENSE

(Paid All Sums)

23. The Second Amended Complaint and each purported cause of action alleged therein are barred because Defendants have paid Plaintiffs, the members of any putative or certified class, and the alleged “aggrieved employees” all sums due to them.

TWENTY-THIRD SEPARATE AND ADDITIONAL DEFENSE

(Failure to Mitigate)

24. Any damages, penalties, or other relief claimed by Plaintiffs, any members of any putative or certified class, or alleged “aggrieved employees” should be reduced to the extent that Plaintiffs, any members of any putative or certified class, or any alleged “aggrieved employees” failed to mitigate their alleged harm (which Defendants allege there was none).

TWENTY-FOURTH SEPARATE AND ADDITIONAL DEFENSE**(Failure to Exhaust PAGA Remedies)**

25. The Second Amended Complaint and the Second Cause of Action contained therein are barred to the extent Plaintiffs failed to exhaust administrative remedies under the Labor Code Private Attorneys General Act of 2004 (PAGA) as a prerequisite to filing suit.

TWENTY-FIFTH SEPARATE AND ADDITIONAL DEFENSE**(Excessive Fines)**

26. The Second Amended Complaint and each purported cause of action alleged therein are barred to the extent Plaintiffs or any of the alleged “aggrieved employees” seek to recover civil penalties that are disproportionate to the actual harm suffered (which Defendants allege there was none) because an award of penalties under such circumstances would constitute an excessive fine and otherwise would violate Defendants’ due process and other rights under the United States Constitution, the California Constitution, or other applicable law.

TWENTY-SIXTH SEPARATE AND ADDITIONAL DEFENSE**(No PAGA Penalties)**

27. No civil penalties under PAGA should be awarded because such an award would be unjust, arbitrary and oppressive, or confiscatory based on the circumstances of this case, and no other penalties or sums are recoverable.

TWENTY-SEVENTH SEPARATE AND ADDITIONAL DEFENSE**(No PAGA Penalties Beyond “Initial” Violation)**

28. The Second Amended Complaint is barred to the extent recovery is sought by Plaintiffs or any of the “alleged employees” they purport to represent beyond penalties for the “initial” violation, as described in Labor Code section 2699, subdivision (f)(2) (eff. through June 30, 2024).

TWENTY-EIGHTH SEPARATE AND ADDITIONAL DEFENSE

(No Right to Jury Trial)

29. To the extent Plaintiffs demand a jury trial as to their claims for civil penalties under PAGA, such demand is barred because there is no right to a jury trial in civil proceedings under PAGA, which are equitable actions triable only to the court.

30. Defendants reserve the right to amend their Answer to allege any additional defenses as may later become available or apparent. Further, Defendants reserve the right to withdraw any defenses that they subsequently determine to be inapplicable. Nothing stated in the foregoing defenses constitutes a concession that Defendants bear any burden of proof on any issue on which they would not otherwise bear such burden.

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiffs, the members of any putative or certified class, the alleged “aggrieved employees,” and the State of California take nothing by virtue of this action;

2. That judgment be entered in favor of Defendants and against Plaintiffs, the members of any putative or certified class, the alleged “aggrieved employees,” and the State of California, and the action be dismissed with prejudice;

3. For Defendants’ attorneys’ fees and costs of suit incurred herein; and

4. For such other and further relief as the Court deems just and proper.

DATED: October 15, 2024

DAVIS WRIGHT TREMAINE LLP

By: 
Tritia M. Murata

Attorneys for Defendants
RALPHS GROCERY COMPANY and
THE KROGER CO.