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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

DAMONTAE LEVINGSTON, KEVIN
PEARSON, MARK GUTIERREZ, and
PAUL RODRIGUEZ, as individuals and
on behalf of all others similarly situated,

Plaintiffs,

v.

COMMERCE DISTRIBUTION
COMPANY LLC., a California Limited
Liability Company; SMART & FINAL
LOGISTICS LLC, a Delaware limited
liability company; SMART & FINAL
STORES, LLC, a California limited
liability company, and SMART & FINAL
LLC, a Delaware limited liability company
and DOES 1 through 50, inclusive,

Defendants.

Case No. 22STCV05730

[Assigned for all purposes to the Hon. Randolph
M. Hammock, Dept. 49]

**DECLARATION OF EDWARD W. CHOI
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: April 5, 2023

Time: 8:30 a.m.

Dept.: 49

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Attorneys for Plaintiffs

1 I, Edward W. Choi, declare as follows:

2 1. I am an individual over the age of 18. I am one of the attorneys of record for
3 Named Plaintiff DAMONTAE LEVINGSTON (hereinafter referred to as “Plaintiff”). I have
4 personal knowledge of the facts set forth below and if called to testify I could and would do so
5 competently.

6 **CASE SUMMARY**

7 2. On February 15, 2022, Plaintiff initiated the instant action against Defendant,
8 titled *Damontae Levingston v. Commerce Distribution Company LLC*, Los Angeles County
9 Superior Court, Case No. 22STCV05730 (the “*Levingston Action*”).

10 3. On February 2, 2022, Kevin Pearson initiated a class action against Smart &
11 Final Logistics LLC, an entity related to Defendant, titled *Kevin Pearson v. Smart & Final*
12 *Logistics LLC*, Los Angeles County Superior Court, Case No. 22STCV04115, which was
13 subsequently removed to the United States District Court, Central District of California, Case
14 No. 2:22-cv-02513-FLA-E (the “*Pearson Action*”), alleging that Smart & Final Logistics LLC:
15 (1) failed to pay all overtime wages owed; (2) failed to provide all meal periods; (3) failed to
16 authorize and permit all rest periods; (4) failed to furnish accurate itemized wage statements;
17 (5) failed to pay all final wages upon separation of employment; (6) violated California’s unfair
18 competition law; and (7) was liable for civil penalties under the Private Attorneys General Act
19 (“PAGA”), Labor Code § 2698 *et seq.*

20 4. On March 30, 2022, Paul Rodriguez initiated a class action against Defendant
21 and its related entities Smart & Final Stores LLC and Smart & Final LLC, titled *Paul Rodriguez*
22 *v. Commerce Distribution Company LLC*, et al., Los Angeles County Superior Court, Case No.
23 22STCV11092, which was subsequently removed to the United States District Court, Central
24 District of California, Case No. 5:22-cv-00780 (the “*Rodriguez Class Action*”), alleging that
25 Defendant, Smart & Final Stores LLC, and Smart & Final LLC: (1) violated California’s unfair
26 competition law; (2) failed to pay all minimum wages (3) failed to pay all overtime wages
27 owed; (4) failed to provide all meal periods; (5) failed to authorize and permit all rest periods;
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(6) failed to furnish accurate itemized wage statements; (7) failed to pay all final wages upon separation of employment; (8) failed to reimburse all necessary business expenses; and (9) unlawful deductions.

5. On June 3, 2022, Paul Rodriguez filed a second lawsuit against Defendant and its related entities Smart & Final Stores LLC, and Smart & Final LLC, titled *Paul Rodriguez v. Commerce Distribution Company LLC, et al.*, Los Angeles County Superior Court, Case No. 22STCV18277, (the “*Rodriguez PAGA Action*”), alleging a single cause of action for civil penalties under PAGA premised upon the same underlying Labor Code violations as in the *Rodriguez Class Action*.

6. On August 4, 2022, Mark Gutierrez initiated a class action against Smart & Final Stores, LLC, an entity related to Defendant, titled *Mark Gutierrez v. Smart & Final Stores, LLC*, Los Angeles County Superior Court, Case No. 22STCV25180 (the “*Gutierrez Class Action*”), alleging causes of action for: (1) unfair competition; (2) minimum wage violations; (3) overtime wage violations; (4) meal period violations; (5) rest period violations; (6) wage statement violations; (7) failure to reimburse necessary business expenses; (8) waiting time penalties; and (9) sick pay violations.

7. On October 12, 2022, Mark Gutierrez initiated a representative action against Smart & Final Stores LLC, an entity related to Defendant, titled *Mark Gutierrez v. Smart & Final Stores LLC*, Los Angeles County Superior Court, Case No. 22STCV33312 (the “*Gutierrez PAGA Action*”), alleging a single cause of action for civil penalties under PAGA premised upon the same underlying Labor Code violations as in the *Gutierrez Class Action*;

8. On November 7, 2022, the parties in the *Pearson Action* attended mediation, and reached a global resolution of all claims alleged in the *Levingston Action*, the *Pearson Action*, the *Rodriguez Class Action*, the *Rodriguez PAGA Action*, the *Gutierrez Class Action*, and the *Gutierrez PAGA Action* (collectively, the “*Related Actions*”). Counsel for plaintiffs in the *Related Actions* met and conferred and agree that the *Related Actions* allege the same and/or similar causes of action based upon the same and/or similar operative facts as one another, and have therefore agreed to enter into a global resolution of the *Related Actions*.

1 9. For purposes of seeking settlement approval, counsel for the Parties have
2 agreed that Plaintiff DAMONTAE LEVINGSTON may file a Second Amended Complaint in
3 the instant action: (1) consolidating the factual allegations and all class and representative
4 causes of action alleged in the Related Actions; (2) naming all defendants in the Related Actions
5 as named defendants in the instant action; and (3) naming Kevin Pearson, Paul Rodriguez, and
6 Mark Gutierrez as additional named plaintiffs in the instant action. On January 31, 2023,
7 Plaintiff filed a Second Amended Class and Representative Action Complaint (“SAC”).

8 10. Prior the filing of the SAC, Plaintiff conducted discovery, including propounding
9 written discovery, engaging in an extensive meet and confer process and the production of
10 documents and class payroll data.

11 11. Although Plaintiff believes that a class can be certified, Plaintiff also believes in
12 the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
13 involved in not prevailing on one or more of the causes of action or theories alleged in the
14 operative Second Amended Complaint, the possibility of non-certification and potential for
15 appeals. Thus, based on my own independent investigation and evaluation, I believe that
16 settlement for the consideration and on the terms set forth in the Settlement Agreement is fair,
17 reasonable, and adequate and is in the best interests of the Class in light of all known facts and
18 circumstances and the expenses and risks inherent in litigation.

19 **ATTORNEY EXPERIENCE**

20 12. I am one of the primary attorneys on this matter. My qualifications are as
21 follows: I received my *Juris Doctorate* degree from UCLA Law School in 2000. Upon
22 graduation, I joined the law firm of Lee & Associates in Los Angeles, California as an associate.
23 I started my own practice in October 2004.

24 13. During the course of my practice, I have primarily represented consumers and
25 obtained millions of dollars in recovery for my clients. I have handled numerous wage and hour
26 cases during my career. I have been certified as class counsel and granted final approval in
27 *Choi, et al. v. Midway International Inc., et al.* LASC Case No. BC394495; *Lee v. The Men’s*
28 *Wearhouse, Inc., et al.* Alameda Superior Court Case No. RG09461973; *Garcia, et al. v. RGIS,*

1 *LLC, et al.* LASC Case No. BC 425624; *Choi v. Mazda, et al.* LASC Case No. BC 391638;
2 *Cabrera v. Frazee, et al.* LASC Case No. BC 440309; *Vo, et al. v. The Party Staff, et al.* OCSC
3 Case No. 30-2011-00444836-CU-OE-CXC; *Oh, et al. v. Best Coach Technologies, Inc., et al.*
4 LASC Case No. BC 462848; *Rawley v. Freedom Mortgage, Inc.* Orange County Superior Court
5 Case No. 30-2014-00724164-CU-OE-CXC; *Mendez v. Stevenson Restaurant, Inc.* LASC Case
6 No. BC536766; *Castro v. Continental Airlines*, USDC Central District Case No. 2:14-CV-
7 00169-SVW-AGR; *Barreras v. Michaels Stores, Inc.* USDC – Northern District Case No. C12-
8 04474 PJH, *Dynabursky v. AlliedBarton Security Services, LP, et al.*, SACV 12-02210 JST
9 (RNBx), *Brown v. CVS Caremark, et al.* United States District Court, Central District, Case
10 No.: 2:15-cv-07631-JFW-PJW; *Wu v. General Nutrition* Orange County Superior Court Case
11 No. 30-2012-00593759-CU-OE-CXC; *Hernandez v. Pei Wei Asian Diner, LLC*, United States
12 District Court, Case No.: 8:17-cv-00679 JLS (JCGx); 8:17-cv-00679 JLS (JCGx); *Bell v. SOS*
13 *Security LLC*, Alameda Superior Court Case No. RG17847734; *Son v. Phillips Steel*, Los
14 Angeles Superior Court, Case No. BC 675988 and *Lee v. Verity Wireless, Inc.*, Orange County
15 Superior Court, Case No. Case No. 30-2017-00950743-CU-OE-CXC.

16 14. Pursuant to Rules of Professional Conduct Rule 1.5.1., Plaintiffs previously
17 provided written authorization for the attorney’s fee to be split as follows: Haines Law Group,
18 APC - 50%; Blumenthal Nordrehaug Bhowmik De Blouw LLC - 25%; JCL Law Firm, APC -
19 6.25%; Zakay Law Group, APLC - 6.25%; Diversity Law Group, P.C. – 4.06%; Law Offices of
20 Choi & Associates, P.C. – 4.06%; and Polaris Law Group, P.C. – 4.38%.

21
22 I declare under penalty of perjury that the foregoing is true and correct. Executed on
23 March 7, 2023, at Los Angeles, California.

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26 Edward W. Choi
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