

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement” or “Settlement”) is reached by and between Plaintiffs Kevin Pearson, Damontae Levingston, Paul Rodriguez, and Mark Gutierrez on the one hand (hereinafter, collectively, “Plaintiffs”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendants Smart & Final Logistics, LLC, Smart & Final Stores, LLC, and Commerce Distribution Company, LLC (“Defendants”), on the other hand. Plaintiffs and Defendants are referred to herein collectively as the “Parties.” The Parties agree to the designation of Haines Law Group, APC, Diversity Law Group, P.C., Polaris Law Group, Law Offices of Choi & Associates, JCL Law Firm, Zakay Law Group, APLC, and Blumenthal Nordrehaug Bhowmik De Blouw LLP, as Class Counsel.

On February 2, 2022, Plaintiff Pearson filed a Class Action Complaint against Defendant Smart & Final Logistics, LLC alleging various wage and hour violations and on April 11, 2022, amended his complaint to add a claim for civil penalties for wage and hour violations under the Private Attorneys General Act (“PAGA”). On May 20, 2022, Plaintiff Pearson filed the operative Second Amended Complaint in the *Pearson* lawsuit, which rectified Defendant’s perceived deficiencies within Plaintiff Pearson’s First Amended Complaint. Defendant denied these allegations.

On February 15, 2022, Plaintiff Levingston filed a Class Action Complaint against Defendant Commerce Distribution Company, LLC alleging one Labor Code violation and on May 5, 2022, amended his complaint to dismiss his class claims and add a claim for civil penalties for one Labor Code violation under PAGA. Defendant denied these allegations.

On March 30, 2022, Plaintiff Rodriguez filed a Class Action Complaint against Defendant Commerce Distribution Company, LLC, Smart & Final Stores LLC and Smart & Final LLC (the “Rodriguez Lawsuit”) alleging various wage and hour violations and on June 3, 2022, filed a second lawsuit against these same defendants claiming civil penalties for wage and hour violations under PAGA. Defendants denied these allegations.

On August 4, 2022, Plaintiff Gutierrez filed a Class Action Complaint against Defendant Smart & Final Stores, LLC alleging various wage and hour violations and on October 12, 2022, filed a second lawsuit claiming civil penalties for wage and hour violations under PAGA. Defendants denied these allegations.

On or about January 31, 2023, the Plaintiffs filed a consolidated Second Amended Complaint (SAC) in the *Levingston* matter against Smart & Final Logistics, LLC, Commerce Distribution Company, LLC and Smart & Final Stores, LLC, naming all Plaintiffs as named parties in the action, consolidated all legal and factual allegations in the various actions, and alleging that Defendants: (i) failed to pay wages for all hours worked, including overtime; (ii) failed to provide meal periods, or premium pay for non-compliant meal periods; (iii) failed to authorize and permit all rest periods, or pay premium pay for non-complaint rest periods; (iv) failed to furnish accurate itemized wage statements; (v) failed to pay all wages owed upon termination; (vi) failed to reimburse reasonable and necessary business expenses; (vi) failed to provide accrued sick leave; and derivative claims for (vii) PAGA and (viii) violations of California Business and Professions Code §§ 17200 *et seq.* (the “Action”). Defendants deny Plaintiffs’ claims.

Plaintiffs and Defendants wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiffs and Defendants agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiffs and Defendants stipulate to the certification of the following Settlement Class:

All current and former non-exempt employees of Defendants Smart & Final Logistics, LLC, Commerce Distribution Company, LLC, and Smart & Final Stores, LLC who worked for Defendants in California at any time from February 2, 2018, through February 7, 2023.

The time period of February 2, 2018 through February 7, 2023 shall be referred to herein as the “Class Period.”

Further, the Parties understand and agree that the workweeks to be included in this Settlement Class and the release below are for employees of Defendants in California during the Class Period and shall not include any other workweeks.

The Parties agree that certification for purposes of this Settlement Agreement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **Release by Settlement Class Members and Plaintiffs.** Plaintiffs and every member of the Settlement Class (except those who opt out) will fully and forever completely and irrevocably release and discharge Defendants, and all of their past and present officers, directors, shareholders, unit holders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, (collectively the “Released Parties”), as follows:

Upon entry of final judgment, Settlement Class members who do not timely request exclusion from the Settlement will release all claims, demands, rights, liabilities, and causes of action that were pled and/or alleged in the SAC filed in the Action, or which could have been pled in the SAC based on the factual allegations therein, that arose during the Class Period (“Released Claims”), including without limitation with respect to the following claims:

- A. (a) failure to pay all wages due for time worked, including overtime, in violation of Labor Code §§ 210, 221, 510, and 558; (b) failure provide meal periods, or premium pay for non-compliant meal periods in violation of Labor Code §§ 226.7, 512, 558, 1198 and the applicable IWC Wage Order; (c) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods in violation of Labor Code §§ 226.7, 512, 558, 1198 and the applicable IWC Wage Order; (d) failure to furnish accurate itemized wage statements in violation of Labor Code §§ 226, 226.3, and 226.6; (e) failure to pay all wages owed upon termination in violation of Labor Code §§ 201-203 and 227.3; (f) failure to provide accrued sick

leave in violation of Labor Code § 246; (g) failure to reimburse expenses pursuant to Labor Code Section 2802; (h) penalties pursuant to Labor Code §§ 2698, *et seq.* relating to the violations of the above and including but not limited to alleged violations of Labor Code §§ 201-204, 210, 218, 221, 226(a), 226.3, 226.6, 226.7, 227.3, 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, and all applicable Wage Orders; along with claims for a failure to provide reimbursements under Labor Code § 2802; and (j) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above.

- B. It is understood and acknowledged that all persons who are employed or have been employed by Defendants in California as non-exempt employees at any time during the time period from February 2, 2021 through the close of the Class Period (the “PAGA Period”), will be issued a check for their share of the PAGA penalties payable to aggrieved employees, regardless of whether they submit a timely Request for Exclusion from the Settlement. All PAGA aggrieved employees shall be deemed to have released all claims for civil penalties under the PAGA against the Released Parties with respect to the underlying claims pled in the operative SAC in the Action or Plaintiffs’ letters to the California Labor and Workforce Development Agency dated February 2, 2022, February 14, 2022, and July 20, 2022, or which could have been pled in the operative SAC in the Action based on the factual allegations therein, that arose during the PAGA Period (the “PAGA Released Claims”).

3. **Release by Named Plaintiffs Only.** In light of their Class Representative Service Awards and other consideration given, Plaintiffs have agreed to a general release, in addition to the Released Claims described above, of all claims, demands, rights, liabilities, and causes of action, whether known or unknown, under federal, state or local law against the Released Parties (“General Release”). However, this General Release by Plaintiff Rodriguez only, who is still employed with Commerce Distribution Company, LLC, shall not extend to any non-Released Claims described above which accrue after the execution of this Agreement. Nothing herein shall be deemed to change the effective time period of the Released Claims for Plaintiff Rodriguez or any other Named Plaintiff (which shall remain the same for all class members). The Parties understand and agree that Plaintiffs are not, by way of this release, releasing any workers’ compensation claims nor any other claims which cannot be released as a matter of law. Notwithstanding the foregoing, Plaintiffs understand that this release includes unknown claims and that they are, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which 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.

4. **Gross Settlement Amount.** As consideration, Defendants agree to pay a “Gross Settlement Amount” of Five Million Dollars and Zero Cents (\$5,000,000.00) in full and complete settlement of the Action, as follows:
- A. The Parties have agreed to engage ILYM Group, Inc. as the “Claims Administrator” to administer this Settlement.
 - B. With the exception of the Claims Administrator’s fees, if otherwise required by the Claims Administrator, the Gross Settlement Amount shall be deposited with the Claims Administrator within fourteen (14) calendar days of the Effective Date (which, for this purpose, shall be defined as the date on which the Court enters an Order granting Final Approval of the Settlement Agreement) or, solely in the event that there are any objections to the Settlement Agreement (the filing of an objection being a prerequisite to the filing of an appeal), the later of: (i) the last date on which any appeal might be filed or (ii) the final resolution of any appeal(s) – including expiration of any time to seek reconsideration or further review.
 - C. This is a non-reversionary settlement. The Gross Settlement Amount includes:
 - (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Claims Administrator and settlement administration, which are anticipated to be no greater than Ninety Thousand Dollars (\$90,000.00);
 - (3) Up to Ten Thousand Dollars and Zero Cents (\$10,000.00) each for Plaintiffs’ Class Representative Service Awards, in recognition of their contributions to the Action and their service to the Settlement Class. Even in the event that the Court reduces or does not approve the requested Class Representative Service Awards, Plaintiffs shall not have the right to revoke this Settlement Agreement, and it will remain binding;
 - (4) Up to one-third of the Gross Settlement Amount in Class Counsel’s attorneys’ fees (currently estimated to be no greater than One Million Six Hundred, Sixty-Six Thousand, Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents (\$1,666,666.67)), plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than \$75,000.00. In the event that the Court reduces or does not approve the requested Class Counsel attorneys’ fees or costs, Class Counsel shall not have the right to revoke this Settlement Agreement, and it will remain binding; and
 - (5) One Hundred Thousand Dollars (\$100,000.00) will be attributed to Plaintiffs’ Private Attorneys General Act (“PAGA”) claim, 75% of which will be paid to the Labor Workforce Development Agency (“LWDA”) pursuant to PAGA, and the remaining 25% will be payable to the PAGA aggrieved employees as the “PAGA Amount.”

- (6) Defendants will separately pay their share of payroll taxes separately from the Gross Settlement Amount.
 - D. Defendants will not oppose the reasonableness of these requests. Any reduction by the Court of these requests will revert to the Net Settlement Amount for distribution to the Settlement Class members who do not opt-out.
 - E. **Material Representation as to Workweeks:** Defendants represent that there are approximately 2,750,000 aggregate workweeks worked by the Settlement Class members during the Class Period. The Parties expressly agree and acknowledge that the accuracy of this number is of the essence, that Plaintiffs have reasonably relied on this representation in reaching this settlement, and that this representation constitutes a material term of this Settlement Agreement.
5. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment (“Individual Settlement Award”) from the Settlement. Individual Settlement Awards will be determined and paid as follows:
- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, Plaintiffs’ Class Representative Service Awards, the amount designated for PAGA civil penalties to the LWDA and aggrieved employees, and the Claims Administrator’s fees and expenses for administration. The remaining amount shall be known as the “Net Settlement Amount.”
 - (1) From the Net Settlement Amount, the Claims Administrator will calculate each Settlement Class member’s Individual Settlement Award based on the following formula: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of workweeks worked during the Class Period by multiplying the Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member’s total workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all participating Settlement Class members who worked during the Class Period.
 - (2) PAGA Amount: The \$25,000.00 payable to the PAGA aggrieved employees as their 25% portion of the PAGA civil penalties shall be designated as the “PAGA Amount.” All Class Members who were employed by Defendants in California at any time during the PAGA Period, regardless of whether they timely submit a Request for Exclusion, shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the PAGA Period compared to the aggregate number of workweeks worked by all aggrieved employees during the PAGA Period.
 - B. Within ten (10) business days following the deposit by Defendants of the Gross Settlement Amount with the Claims Administrator, the Claims Administrator will

calculate Individual Settlement Award amounts and provide the same to the Parties' counsel for review and approval. Within seven (7) calendar days of approval by the Parties' counsel, the Claims Administrator will prepare and mail Individual Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members. The Claims Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to counsel for Defendants.

- C. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: Eighty Percent (80%) as penalties and interest; and Twenty Percent (20%) as wages. The Claims Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Each Settlement Class member who receives a Settlement Award will be responsible for correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- D. Defendants shall fully discharge its obligations to those Settlement Class members who get paid, through the Settlement Administrator, Individual Settlement Awards through the mailing of a Settlement check, regardless of whether such checks are actually received and/or negotiated by Settlement Class members. Each member of the Settlement Class who receives an Individual Settlement Award must cash the check(s) within 180 days from the date the Settlement Administrator mails it/them. Any funds payable to Settlement Class members whose checks were not cashed or otherwise negotiated within 180 days after mailing will be transferred to the State Controller's Office in the name of the Settlement Class member under the unclaimed Property Laws.
- E. Neither Plaintiffs nor Defendants shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Claims Administrator.

6. **Attorneys' Fees and Costs.** Defendants will not object to Class Counsel's request for a total award of attorneys' fees of one-third of the Gross Settlement Amount, which is currently estimated to be \$1,666,666.67. Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00) from the Gross Settlement Amount. The attorneys' fees awarded by the Court will be divided as follows: Haines Law Group, APC: 50%; Blumenthal Nordrehaug Bhowmik De Blouw LLP: 25%; Diversity Law Group, P.C.: 4.0625%; Polaris Law Group: 4.375%; Law Offices of Choi & Associates: 4.0625%; JCL Law Firm, APC: 6.25%; and, Zakay Law Group, APLC: 6.25%. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work

performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court.

7. **Class Representatives Service Award.** Defendants will not object to a request for a Class Representative Service Award of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to each of the Plaintiffs for their time and risk in prosecuting this case, and their service to the Settlement Class. This award will be in addition to Plaintiffs' Settlement Award as Settlement Class members and shall be reported on an IRS Form 1099 issued by the Settlement Administrator. Even in the event that the Court reduces or does not approve the requested Service Awards, Plaintiffs shall not have the right to revoke this Settlement, and it will remain binding.

8. **Claims Administrator.** Defendants will not object to the appointment of ILYM Group, Inc. as Claims Administrator. Defendants will not object to Plaintiffs' seeking permission to pay up to Ninety Thousand Dollars (\$90,000.00) for its services from the Gross Settlement Amount. The Claims Administrator shall be responsible for sending notices and for calculating Individual Settlement Awards and preparing all checks and mailings and other duties as described in this Settlement Agreement. The Claims Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Individual Settlement Awards have been mailed to all participating Settlement Class members.

9. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiffs shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Haines Law Group, APC, Diversity Law Group, P.C., Polaris Law Group, Law Offices of Choi & Associates, JCL Law Firm, Zakay Law Group, APLC, and Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel;
- C. Appointing Plaintiffs as Class Representatives for the Settlement Class;
- D. Approving ILYM Group, Inc., as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Settlement Award, drafts of which are attached hereto as Exhibits A and B, respectively), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

10. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within thirty (30) days after entry of an order preliminarily approving this Settlement, Defendants will provide the Claims Administrator with the names, last known addresses, phone numbers, social security numbers, the dates of employment and the number of Workweeks worked by each Settlement Class member while employed during the Class Period (the "Class Data"). The Class Data shall be provided to the Claims Administrator in an electronic format satisfactory to the Claims Administrator.
- B. Within ten (10) business days from receipt of this information, the Claims Administrator shall (i) run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within forty five (45) calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
 - i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Class Member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.
 - ii. Before the Court enters Final Approval of this Settlement, if five percent (5%) or more of the Settlement Class members timely and properly Request Exclusion from this Settlement, then Defendants has the sole and exclusive right to withdraw from and void this Settlement and the Parties' previously-executed memorandum of understanding, and the Parties will revert to their

positions prior to provisional class certification under the terms of this Settlement. If Defendants exercises this option, it must provide written notice to Class Counsel and the Settlement Administrator within thirty (30) days of learning that 5% or more of the Settlement Class members timely and properly requested exclusion from the Settlement. Furthermore, if Defendants exercises its option to withdraw from and void this Settlement pursuant to this paragraph, Defendants shall be solely responsible for the payment to the Settlement Administrator of all costs of the Settlement Administrator, including any re-notice to the Class Members as ordered by the Court.

- D. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendants' counsel, as well as file all such objections with the Court). Defendants' counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any written objection must: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline. Members of the Settlement Class who do not request exclusion may also object to the Settlement by appearing at the Final Approval Hearing without first serving a written objection.
- E. Notice of Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Individual Settlement Award as well as all of the information that was used from Defendants' records in order to calculate the Individual Settlement Award, including the Settlement Class member's number of Workweeks worked during the Class Period. Settlement Class members will have the opportunity, should they disagree with Defendants' records regarding the information stated in the Notice of Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Claims Administrator and postmarked by the Response Deadline. If there is a dispute, the Claims Administrator will consult with the Parties to determine whether an adjustment is warranted. The Claims Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Awards under the terms of this Settlement Agreement. The Claims Administrator's determination of the eligibility for and amount of any Individual Settlement Award shall be binding upon the Settlement Class member and the Parties.
- F. Any Notice Packets returned to the Claims Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Claims Administrator shall make

reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Claims Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Claims Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. It will be conclusively presumed that, if an envelope so mailed has not been returned within thirty (30) days of the mailing, the Settlement Class member received the Notice Packet. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Claims Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member’s Notice Packet is returned to the Claims Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendants’ Counsel to provide notice of the proposed settlement.

- G. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt-out of the Settlement Class, or encourage any Settlement Class member to appeal from the final judgment.

11. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiffs shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiffs’ and Class Counsel’s application for attorneys’ fees and costs, Class Representative Service Awards, and settlement administration costs; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

12. **Circular 230 Disclaimer.** EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR

ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT

13. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. In particular, but without limiting the generality of the foregoing, nothing about this Settlement Agreement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever on the part of Defendants and/or the Released Parties, and it shall not be construed as or deemed to be evidence of, or an admission or concession that any Settling Class member has suffered any damage. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

14. **Non-disclosure and Non-publication.** Plaintiffs and Class Counsel agree not to disclose or publicize the Settlement Agreement contemplated herein, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other lawsuits, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Action, and a general description of the SAC, to a court in a declaration by Class Counsel. Class Counsel may also include a general description of the Settlement on their respective websites but may not include the name(s) of any of the Parties, or the case name or case number of the Action.

15. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

16. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendants: Laura Reathaford
Lathrop GPM LLP
2049 Century Park East, Suite 3500
Los Angeles, California 90067
Laura.reathaford@lathropgpm.com
(310) 789-4600

if to Plaintiffs: Paul Haines
Haines Law Group, APC
2155 Campus Drive, Suite 180
El Segundo, California 90245
phaines@haineslawgroup.com
(424) 292-2350

17. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

18. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the Action contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof. Further, all terms of this Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of California.

19. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

DATED: January ³¹____, 2023

Damontae Levingston

DocuSigned by:

By: 9C853F01DC864CA...
Plaintiff and Settlement Class Representative

DATED: January _____, 2023

Kevin Pearson

By: _____
Plaintiff and Settlement Class
Representative

if to Defendants: Laura Reathafor
Lathrop GPM LLP
2049 Century Park East, Suite 3500
Los Angeles, California 90067
Laura.reathafor@lathropgpm.com
(310) 789-4600

if to Plaintiffs: Paul Haines
Haines Law Group, APC
2155 Campus Drive, Suite 180
El Segundo, California 90245
phaines@haineslawgroup.com
(424) 292-2350

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19. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

DATED: January ____, 2023

Damontae Levingston

By: _____
Plaintiff and Settlement Class Representative

DATED: February ⁰³ ____, 2023

Kevin Pearson

By:  _____
[Kevin Pearson \(Feb 3, 2023 23:42 PST\)](#)
Plaintiff and Settlement Class
Representative

Feb 6, 2023

DATED:

Paul Rodriguez

By: 
Paul Rodriguez (Feb 6, 2023 13:27 PST)

Plaintiff and Settlement Class
Representative

DATED: January ____, 2023

Mark Gutierrez

By: _____
Plaintiff and Settlement Class
Representative

DATED: January ____, 2023

Smart & Final Logistics, LLC

By: _____
Joe Angulo
Its: General Consul

DATED: January ____, 2023

Commerce Distribution Company, LLC

By: _____
Joe Angulo
Its: General Consul

DATED: January ____, 2023

Smart & Final Stores, LLC

By: _____
Joe Angulo
Its: General Consul

DATED: January ____, 2023

Paul Rodriguez

By: _____
Plaintiff and Settlement Class
Representative

DATED: February 10, 2023

Mark Gutierrez

mark Gutierrez
mark Gutierrez (Feb 10, 2023 20:26 PST)
By: _____
Plaintiff and Settlement Class
Representative

DATED: January ____, 2023

Smart & Final Logistics, LLC

By: Joe Angulo
Its: General Consul

DATED: January ____, 2023

Commerce Distribution Company, LLC

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Its: General Consul

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Paul Rodriguez

By: _____
Plaintiff and Settlement Class
Representative

DATED: February 10, 2023

Mark Gutierrez

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mark Gutierrez (Feb 10, 2023 20:26 PST)
By: _____
Plaintiff and Settlement Class
Representative

DATED: ~~January~~ February 16, 2023

Smart & Final Logistics, LLC

Joe Angulo
By: Joe Angulo
Its: General Consul

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Its: General Consul

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Smart & Final Stores, LLC

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By: Joe Angulo
Its: General Consul