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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE 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

*[Case assigned for all purposes to the Hon.
Randolph M. Hammock, Dept. 49]*

**DECLARATION OF MARK GUTIERREZ IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

Date: April 5, 2023
Time: 8:30 a.m.
Dept.: 49

Action Filed: February 15, 2022
Trial Date: None Set

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Attorneys for Plaintiffs

1 I, Mark Gutierrez, declare as follows:

2 1. I am over the age of eighteen, a Plaintiff and a proposed Class Representative in the
3 above-entitled matter. I submit this declaration in support of the Motion for Preliminary Approval
4 of Class Settlement and in support of my application for a Class Representative Service Award.

5 2. I have personal knowledge of all the facts stated herein. I could and would competently
6 testify under oath to these facts in court if requested to do so.

7
8 3. I worked for the defendants (“Smart & Final”) in California from December of 2019 to
9 March 28, 2022 and was classified by Smart & Final as a non-exempt employee during that time
10 period.

11 4. I retained my attorneys who are experienced in both class action & PAGA representative
12 action litigation and claims against employers for violations of the California Labor Code. I have
13 no personal relationship or family ties to my attorneys or any officer of the Court. I am not aware
14 of having any actual or potential conflicts of interest with another member of the class in this
15 case nor am I aware of having any actual or potential conflicts of interest with ILYM, the
16 settlement administrator. I am not aware of any other pending matter or action asserting claims
17 that will be extinguished or adversely affected by this settlement.
18

19 5. I decided to pursue this lawsuit for the benefit of myself and other current and former
20 non-exempt employees who worked for Smart & Final and be a class representative because I
21 felt that my legal rights as an employee and others like me were violated. For example, numerous
22 times throughout my employment with Smart & Final, I was required to clock out and continue
23 to work during what should have been my off-duty meal period. As such, I was not paid
24 minimum or overtime wages for this work done off the clock during my meal periods. I also had
25 to use my personal cell phone for work-related issues but Smart & Final did not reimburse me
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1 for the cost associated with using my personal cell phone work-related purposes. In addition, my
2 wage statements were inaccurate because, for example, they did not accurately identify the total
3 hours I worked in each pay period.

4 6. This class action case was filed on February 15, 2022. I originally filed a separate class
5 action case in this Court on August 4, 2022 which was later consolidated with this action. Before
6 my original complaint was filed I spoke to my attorneys several times and discussed how Smart &
7 Final implemented its company policies and procedures. I also assisted my attorneys in their
8 investigation into my claims by providing them documents and answering their questions. I
9 reviewed the complaint before it was filed and after it was filed I was given access to an electronic
10 file sharing program that alerted me via email when important documents were filed so that I could
11 review them and keep up with the developments in the case which I understood was one of my
12 duties as a class representative. I would also contact my attorneys from time to time if I had any
13 questions about the case.

14 7. Even though this action is in the process of settling, I was and remain prepared to
15 perform all the duties of a class representative. I understand that as a class representative I have
16 assumed a fiduciary responsibility to prosecute this class action on behalf of the absent non-
17 exempt employees who worked for Smart & Final during the class period. I have understood
18 that as a fiduciary, I have a duty to prosecute this action for the benefit of the members of the
19 class and surrender any right to compromise the group action for an individual gain.

20 8. I understood that being a plaintiff/class representative in this case meant that I was
21 seeking damages not only for myself but also other current and/or former non-exempt employees
22 working for Smart & Final in California. I felt that this group of employees were not aware of
23 their labor law rights and even if they were they would probably be apprehensive about speaking
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up or even simply because of the time, effort and risk involved in filing a class action lawsuit.

9. I understood that being a part of this lawsuit involved risks. For example, my attorneys explained to me that if the case went to trial and we lost, I could be held responsible to pay for all or part of the attorney fees and costs paid by Smart & Final to defend this lawsuit. Also, I knew there was a risk that future employers, if they ever found out about this lawsuit, could hold it against me or downgrade me as a potential hire. As one of the named Plaintiffs in this case it would not be difficult for a future employer to become aware I sued a former employer for labor law violations. Ultimately I decided these risks were worth it and decided to fight for my rights and the rights of others regardless of the risks, time and effort I spent on this case.

10. During the lawsuit I stayed in touch with my attorneys by phone and email. I also kept up to date on important developments by reviewing court filings that were made available to me electronically as I described above.

11. I have been actively involved with this class action lawsuit performing the duties described above. Although I did not keep time records, I was in regular contact with my attorneys, reviewed court filings and spent a significant amount of time on the issues presented during the lawsuit and in the settlement process. I estimate that I spent approximately 30-40 hours working on this case up until this point. I believe I have been diligent and have done what is expected of a named plaintiff and proposed class representative to date, and will continue to do so. I have and always will maintain the best interest of the class.

12. My attorneys explained to me that the settlement process involves a two-step review by the Court to determine whether the settlement is fair before approving the settlement. I know this process also involves notifying all class members of the settlement terms and of their rights to make a claim for their settlement share, to opt out of the settlement or to object to the

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1 settlement.

2 13. I believe I did the right thing by filing this case on behalf of the class who are in
3 line to receive monetary payments as a result of this case and settlement. I also believe that the
4 requested Class Representative Service Award of \$10,000 from the settlement is fair compensation
5 for the work I performed and the risks I undertook.
6

7 14. As part of the settlement it was necessary for me to sign a general release of all
8 claims I may have against Smart & Final. I believe the Class Representative Service Award I have
9 requested provides me with some compensation for this agreed release.

10 15. I have not entered into any undisclosed agreements nor have I received any
11 undisclosed compensation in this case. The only compensation I will receive is whatever amount
12 the Court awards as a Service Award, as well as my share as a class member of the settlement
13 fund.
14

15 16. In light of all the time and effort I have spent on this case, the risk I undertook by
16 suing a former employer, the exposure to being responsible for paying Smart & Final's costs in
17 the event we did not win the case, the reputational risk that future employers may hold this lawsuit
18 against me, the general release, and in light of the size of the settlement, I believe the request for
19 \$10,000 as a Class Representative Service Award is fair and reasonable.
20

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

23 Executed on Mar 3, 2023, at San Marcos, CA
24 (city, state)

25 Mark Gutierrez

26 Mark Gutierrez (Mar 3, 2023 10:36 PST)

27 Mark Gutierrez
28

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