

1 R. BRIAN DIXON, Bar No. 076247
bdixon@littler.com
2 LAURA HAYWARD, Bar No. 204014
lhayward@littler.com
3 LITTLER MENDELSON, P.C.
333 Bush Street--34th Floor
4 San Francisco, CA 94104
Telephone: 415.433.1940
5 *Attorneys for Defendant*
The Vons Companies, Inc.

6
7 ALAN HARRIS, Bar No. 146079
aharris@harrisandruble.com
8 DAVID GARRETT, Bar No. 160274
dgarrett@harrisandruble.com
HARRIS & RUBLE
9 655 North Central Avenue, 17th Floor
Glendale, CA 91203
10 Telephone: 323.962.3777
11 *Attorneys for Plaintiffs*

12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF RIVERSIDE

14 ADAM METHUS, individually and as a
15 proxy of the State of California, on behalf
of aggrieved employees,

16 Plaintiff,

17 vs.

18 THE VONS COMPANIES, INC., and
19 DOES 1 through 100, inclusive,

20 Defendant.

Case No. RIC 1600555

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

Assigned to the Hon. Craig Riemer, Dept. 5

21 J. MORENO, A. BALTAZAR, J. PEREZ
22 and J. COSTELLO, individually and on
behalf of all others similarly situated,

23 Plaintiff,

24 vs.

25 THE VONS COMPANIES, INC., and
26 DOES 1 through 100, inclusive,

27 Defendant.
28

Case No. RIC 1601315

1 Subject to its terms and conditions and the approval of the Court, this Joint
2 Stipulation of Class Action Settlement and Class Action Settlement Agreement and Release (the
3 “Settlement” or “Agreement”) is made and entered into by and between Plaintiffs ADAM
4 METHUS, J. PEREZ, JOE COSTELLO, JOHN MORENO, and AL BALTAZAR individually and
5 on behalf of the putative class (“Plaintiffs”), and Defendant THE VONS COMPANIES, INC.
6 (“Defendant”). Plaintiffs and Defendant are collectively referred to in this Settlement as the
7 “Parties.”

8 **I. DEFINITIONS**

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

11 a. “Actions” means the PAGA-based civil action initiated on January 15,
12 2016 in Riverside Superior Court styled as *Methus v. The Vons Companies, Inc.*, Case No.
13 RIC1600555 (the “Methus Action”) and the civil action initiated on January 15, 2016 in Riverside
14 Superior Court styled as *Moreno v. The Vons Companies, Inc.*, Case No. RIC1601315 (the “Moreno
15 Action”).

16 b. “Claims Administrator” means Simpluris, or an administrator mutually
17 agreed to by the Parties and approved by the Court that will perform the customary duties of a claims
18 administrator including but not limited to, the duties enumerated in this Agreement.

19 c. “Class” shall include all current and former non-exempt employees of
20 Defendant and/or the Released Parties who worked in the three Vons Distribution Centers (El
21 Monte, Santa Fe Springs and Mira Loma) and/or the Vons Milk and Bread Plants in the State of
22 California during the Covered Period excluding those employees covered by the settlement in *Peron*
23 *v. The Vons Companies*, Case No. 37-2014-00006965-CU-OE-CTL (which covered Truck Drivers),
24 or otherwise employed as a Truck Driver for the Vons Companies, Inc.

25 d. “Class Counsel” shall refer to Alan Harris and David Garrett of Harris
26 & Ruble.

27 e. “Class Member” shall refer to an employee of Defendant who falls
28 within the definition of the Class.

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

5 g. "Class Representative" shall refer to Plaintiffs Adam Methus, J.
6 Costello, and J. Perez.

7 h. "Class Representative Payment" means the Court-approved service
8 payment to Plaintiffs Adam Methus, J. Costello, and J. Perez for their services as Class
9 Representatives and for their execution of a general release of claims known and unknown as
10 described herein.

11 i. "Compensable Weeks Employed" means the number of weeks of
12 employment as a Class Member during the appropriate Covered Period.

13 j. "Counsel for Defendant" or "Defense Counsel" means R. Brian Dixon
14 and Laura E. Hayward of Littler Mendelson, A Professional Corporation.

15 k. "Covered Period" shall be from October 25, 2015 through the later of
16 December 31, 2017, or the date of closure of the Distribution Centers, for Distribution Center
17 Employees. The Covered Period shall be from October 25, 2015 through the later of June 30, 2018,
18 or the date of closure of the Plants, for Plant Employees.

19 l. "Defendant" means Defendant The Vons Companies, Inc.

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

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

26 o. "Final Approval Order" means the Court's order granting final
27 approval of the Settlement, which will constitute a "judgment" within the meaning of Code of Civil
28 Procedure section 577. The form of Final Approval Order to be submitted is attached hereto as

Exhibit C.

p. “Final Effective Date” shall be the first date after all of the following events or conditions have been met or have occurred:

- (1) the Court has, by entry of a Preliminary Approval Order:
 - (a) Approved the certification of the Class for settlement purposes;
 - (b) Preliminarily approved the settlement set forth in this Settlement Agreement, and the method of providing the Court-approved Class Notice to the certified class;
- (2) The Court has entered a Final Approval Order approving this settlement and the Court has entered the Final Judgment as provided in Paragraph 1.q. below;
- (3) No valid rescission of the Settlement Agreement has occurred pursuant to Paragraph 64, below;
- (4) The time to appeal from the Final Approval Order has expired and no notice of appeal has been filed; and
- (5) In the event that an appeal is actually filed, the latest of the following, if applicable, has occurred:
 - (a) Any appeal from the Final Approval Order has been finally dismissed;
 - (b) The Final Approval Order has been affirmed on appeal in a form substantially identical to the form of the Final Approval Order entered by the Court;
 - (c) The time to petition for review with respect to any appellate decision affirming the Final Approval Order has expired; or
 - (d) If a petition for review of an appellate decision is filed, the petition has been denied or dismissed, or, if granted, has resulted in affirmance of the Final Approval Order in a form

1 substantially identical to the form of the Final Approval Order
2 entered by the Court.

3 q. “Final Judgment” means the judgment entered by the Court in
4 conjunction with the Final Approval Order. The Parties shall submit an order of Final Judgment
5 setting forth the terms of this Settlement Agreement, by incorporation or otherwise, for execution
6 and entry by the Court at the time of the Final Approval Hearing or at such other time as the Court
7 deems appropriate. The form of Final Judgment to be submitted is attached hereto as **Exhibit D**.

8 r. “Gross Individual Settlement Payment” means the gross amount of the
9 Net Settlement Distribution Amount each Class Member will be paid. The sum of these Gross
10 Individual Settlement Payments to individual Class Members shall constitute the “Class Settlement
11 Payment.”

12 s. “Maximum Gross Settlement Amount” shall mean the maximum
13 amount that Defendant shall cause to be paid pursuant to this Settlement, which is Five Hundred
14 Thousand Dollars and No Cents (\$500,000.00). That sum is and shall be inclusive of the following:
15 (a) the Class Representative Payments to Plaintiffs Adam Methus, J. Costello, and J. Perez in the
16 amount of up to Four Thousand Five Hundred Dollars and Zero Cents (\$4,000.00) each; (b) Class
17 Counsel’s attorneys’ fees in an amount up to Two Hundred Thousand Dollars and Zero Cents
18 (\$200,000.00), incurred or to be incurred in this Action, including any appeals; (c) costs and
19 expenses associated with the Action in an amount of up to Twenty Thousand Dollars and Zero Cents
20 (\$20,000.00), incurred or to be incurred in this Action, including any appeals; (d) the fees and
21 expenses of the Claims Administrator estimated at Twenty Five Thousand Dollars and Zero Cents
22 (\$25,000.00) and subject to reduction or increase to correspond with the actual fees and expenses
23 incurred, as further described in Paragraph 26 below; (e) the employee portion of all applicable tax
24 withholdings including, but not limited to, FICA, SDI, and other employment- related taxes and
25 withholding of federal, state and local income taxes; (f) the Employer Payroll Taxes estimated at
26 Thirteen Thousand Dollars and Zero Cents (\$13,000.00) which is approximately 12% of the amount
27 of the wages to be paid to Class Members; (g) Twenty Thousand Dollars (\$20,000.00) to the State of
28 California in recognition of the release of claims pursuant to the Private Attorney Generals Act

1 (“PAGA”) and (h) the remainder of approximately Two Hundred Thousand and Ten Dollars and
2 Zero Cents (**\$210,000.00**) which is the estimated Net Settlement Distribution Amount to all Class
3 Members.

4 t. “PAGA Payment” means the amount of Twenty Thousand Dollars and
5 No Cents (\$20,000.00) which shall be remitted to the California Labor and Workforce Development
6 Agency for the resolution of all Class Members’ claims under the PAGA, California Labor Code
7 Section 2698, *et. seq.*

8 u. “Participating Class Members” means those members of the Class who
9 have not requested to be excluded from the class or opted out of the class.

10 v. “Preliminary Approval Order” means the order of the Court granting
11 preliminary approval of this Settlement Agreement on the terms provided herein or as the same may
12 be modified by subsequent mutual agreement of the Parties with, as appropriate, approval of the
13 Court. The form of Preliminary Approval Order to be submitted is attached hereto as **Exhibit B**.

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

15 2. On January 15, 2016, Plaintiff Adam Methus filed a Complaint in the Superior
16 Court of the State of California, County of Riverside, entitled *Methus v. The Vons Companies, Inc.*,
17 Case No. RIC1600555, on behalf of himself and other non-exempt employees who worked for
18 Defendant in California alleging a single cause of action for violation of California’s Private
19 Attorneys General Act (“PAGA”). On the same day that he filed his Complaint, January 15, 2016,
20 Plaintiff sent by certified mail a letter to the California Labor and Workforce Development Agency
21 (“LWDA”) notifying the agency of his allegations that Defendant violated the California Labor
22 Code. On March 14, 2016 Defendant filed a Demurrer to Plaintiff’s Complaint. In response to
23 Defendant’s Demurrer, Plaintiff submitted a First Amended Complaint (“FAC”), on April 19, 2016,
24 alleging claims for: 1) failure to pay minimum wage and overtime compensation in violation of
25 Labor Code sections 510, 1194, 1198 and IWC Wage Order 7; (2) failure to pay all earned wages
26 and compensation upon termination in violation of Labor Code sections 201, 201 and 203; (3) failure
27 to provide lawful wage statements in violation of Labor Code section 226; (4) unfair business
28 practices in violation of California Business and Professions Code section 17200; (5) improper

1 deductions from wages in violation of Labor Code section 221; (7) failure to timely pay all earned
2 wages and compensation in violation of Labor Code sections 204, 206, 218.5 and 218.6, and (8)
3 Violation of PAGA. The Lawsuit seeks civil penalties and attorneys' fees and expenses. Defendant
4 denies all of the allegations in Plaintiffs' Complaint and maintains that the Court should not certify
5 the representative action proposed by Plaintiff, other than for the sole purpose of this Settlement, as
6 set forth in its Answer and Affirmative Defenses filed on May 18, 2016.

7 3. On February 2, 2016, Plaintiffs Moreno, Baltazar and Costello filed a
8 Complaint in the Superior Court of the State of California, County of Riverside, on behalf of
9 themselves and other non-exempt employees who worked for Defendant in California, entitled *J.*
10 *Moreno, A. Baltazar, and J. Costello v. The Vons Companies, Inc.*, bearing Case No. RIC1601315.
11 The Complaint asserted the following claims for relief: (1) of the California Labor Code §§ 510 and
12 1194 and IWC Wage Order 7, Failure to Pay Minimum Wage and Overtime Compensation; (2)
13 Failure to Provide Meal Breaks, California Labor Code §§ 226.7, 512 and IWC Wage Order 7; (3)
14 Section 203 of the California Labor Code, Continuing Wages; (4) California Labor Code § 226,
15 Failure to Provide Accurate Wage Statements; (5) California Labor Code § 1174 and IWC Wage
16 Order 7, Failure to Maintain Accurate Payroll Records; (6) Cal. Bus & Prof. Code §§ 17200 *et seq.* –
17 Restitution; (7) California Labor Code § 221, Improper Deductions From Wages; and, (8) Fair Labor
18 Standards Act, 29 U.S.C. § 201 *et seq.*, Overtime and Liquidated Damages. On February 18, 2016,
19 Plaintiffs filed a First Amended Complaint. In their First Amended Complaint, Plaintiffs added an
20 additional named Plaintiff, J. Perez, and a Ninth Cause of Action for alleged Failure to Provide
21 Employment Records Upon Request. On February 24, 2016, Defendant filed its Answer to the First
22 Amended Complaint in the Riverside Superior Court. Defendant then timely removed the case to
23 United States District Court based on Plaintiffs' FLSA claim. The case was later remanded to the
24 Superior Court for the State of California, County of Riverside to the Honorable Craig Riemer, Case
25 No. RIC 1601315 upon the Parties' request and after the filing of a Second Amended Complaint
26 ("SAC"), refining the class and dismissing the FLSA claim. The SAC asserts claims for: (1) failure
27 to pay minimum wage and overtime compensation in violation of Labor Code sections 510 and 1194
28 and IWC Wage Order 7; (2) failure to provide meal periods in violation of Labor Code section

226.7, 512 and IWC Wage Order 7; (3) failure to pay all earned wages and compensation upon termination in violation of Labor Code sections 201, 201 and 203; (4) failure to provide lawful wage statements in violation of Labor Code section 226; (5) failure to maintain accurate payroll records in violation of Labor Code section 1174; (6) unfair business practices in violation of California Business and Professions Code section 17200; (7) improper deductions from wages in violation of Labor Code section 221; (8) failure to provide employment records upon request in violation of Labor Code section 226(b); and (9) failure to timely pay all earned wages and compensation in violation of Labor Code sections 204, 206, 218.5 and 218.6. The Lawsuit seeks damages and restitution for lost wages, interest, penalties, injunctive relief, attorneys' fees and expenses. Defendant intended to file a Demurrer to the SAC, but the Parties stipulated and requested that Plaintiffs be granted leave to file a Third Amended Complaint to address the issues raised, and that Defendant need not answer the SAC. The case was then stayed pending settlement discussions. Defendant denies all of the allegations in Plaintiffs' Complaints and maintains that the Court should not certify the class action proposed by Plaintiffs, other than for the sole purpose of this Settlement.

4. Defendant has asserted that the allegations in the Actions primarily stem from the Defendant's upgrade of payroll software in October of 2015. According to Defendant, despite extensive testing and the use of outside consultants to ensure an effective transition to the new version of the software some problems were detected in the implementation of the payroll upgrade. Vons' Labor Relations, Human Resources and Employee Service Center (Vons payroll processing organization), worked to remediate the issues and employees who believed that they had not been paid accurately were given multiple avenues to address any payroll issues. The alleged underpayments were idiosyncratic in the sense that they did not affect all employees and in all but a small number of cases affected only a small portion of the wages claimed to be due. Vons asserts that it has verified that many employees in the class were not underpaid at all. Vons promptly paid all wages which were claimed to have not been paid in full and contends that no wages are due any class members. Vons contends that it received diminishing claims from individual employees that they were not being completely and accurately paid in 2016 and that by mid-2016 there were no underpayments.

1 5. In fact Vons asserts that the above-referenced payroll upgrade resulted in the
2 overpayment of many employees in the putative class, in some cases by thousands of dollars.
3 Defendant had intended to affirmatively seek repayment of the overpayments through a cross-
4 complaint in the *Moreno* matter. However, as part of the Settlement Defendant has agreed to waive
5 and release \$866,451.14 in overpayments previously made and taxed to the settlement class
6 members.

7 6. The parties agreed to attempt to resolve the matters through mediation and
8 agreed to engage in informal discovery leading up to that mediation. To facilitate mediation in this
9 case, Defendant retained an expert, ERS Group (“ERS”), a nationally-recognized consultant
10 providing economic, data and statistical analysis, to analyze the relevant Vons payroll records. ERS
11 completed a multi-month-long audit of the payroll records, comparing the issued wage statements
12 with the raw data from the corresponding time cards for 128,734 pay cycles. This process required
13 ERS to replicate the sophisticated software in Vons payroll system and re-process millions of dollars
14 in wage payments.

15 7. Using the data analysis, the parties engaged in mediation under the guidance
16 of an experienced wage and hour neutral, Judge Richard Kramer (Ret.) at JAMS in San Francisco
17 (the “Mediation”). Mediation sessions were held on August 25, 2016, and the second on September
18 29, 2017. No settlement was reached.

19 8. In a further attempt to resolve the Actions, counsel for Defendant and counsel
20 for Plaintiffs met in person for an informal three-quarter day mediation session on June 7, 2018 at
21 Defendant’s Los Angeles offices and were able to reach a tentative agreement to resolve the case.
22 Over the course of the next several weeks, the Parties continue to negotiate the details and were able
23 to sign a Memorandum of Understanding in October 2018.

24 9. Class Counsel represent that they have conducted a thorough investigation
25 into the facts of this case, and have diligently pursued an investigation of the Class Members’ claims
26 against Defendant, including (1) interviewing Class Members and analyzing the results of Class
27 Member interviews; (2) reviewing relevant policy documents; (3) researching the applicable law and
28 the potential defenses; and (4) reviewing relevant data including time records and pay data, provided

1 by ERS Group (“ERS”), a nationally-recognized consultant providing economic, data and statistical
2 analysis, hired to analyze the relevant Vons payroll records. Class Counsel reviewed the
3 overpayment report prepared by Vons, which contained information for every class members. Class
4 Counsel utilized payroll records for the named plaintiffs and other class members, preparing
5 spreadsheets detailing their hours works and breaks. Class Counsel reviewed the payroll records of
6 dozens of class members during the relevant period. Class Counsel prepared a detailed damage
7 analysis with input from their expert. Based on their own independent investigation and evaluation,
8 Class Counsel are of the opinion that the Settlement is fair, reasonable and adequate and is in the
9 best interest of the Class in light of all known facts and circumstances, including the risk of
10 significant delay, defenses asserted by Defendant, and potential appellate issues. Defendant agrees
11 that the Settlement is fair, reasonable and adequate.

12 10. It is the mutual desire of the Parties to fully, finally, and forever settle,
13 compromise, and discharge all disputes and claims raised in or related in any way to the Action.
14 Thus, the entry of the Final Approval Order in this Action shall dismiss with prejudice all class
15 claims which were or which could have been alleged in Plaintiffs’ Complaint. The Parties agree to
16 cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of
17 this Settlement, to effectuate its terms, and to dismiss these claims with prejudice.

18 **III. NO ADMISSION**

19 11. Nothing contained in this Joint Stipulation and the Settlement contemplated in
20 the Joint Stipulation shall be construed or deemed an admission of liability, culpability, negligence,
21 or wrongdoing on the part of Defendant and Defendant denies liability therefor. While Defendant
22 believes that this Action meets the prerequisites for certification of a settlement class, the fact that
23 Defendant seeks approval of this Settlement in the form of a class action shall not be construed as an
24 admission that the underlying action was properly brought as a class action or a representative action
25 under California Business and Professions Code section 17200 or California Labor Code 2699 for
26 purposes other than settlement. Each of the Parties has entered into this Settlement with the
27 intention to avoid further disputes and litigation with the attendant inconvenience and expenses.
28 Settlement of the Action, the negotiation and execution of this Joint Stipulation, and all acts

1 performed or documents executed pursuant to or in furtherance of this Joint Stipulation or the
2 Settlement: (1) are not, shall not be deemed to be, and may not be used as, an admission or evidence
3 of any wrongdoing or liability on the part of Defendant, and each of them; (2) are not, shall not be
4 deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part
5 of Defendant in any civil, criminal, administrative or arbitral proceeding in any court, administrative
6 agency or other tribunal; and (3) are not, shall not be deemed to be, and may not be used as, an
7 admission or evidence of the appropriateness of these or similar claims for class certification or
8 administration other than for purposes of administering this Joint Stipulation. This Joint Stipulation
9 is a settlement document and shall be inadmissible in evidence in any proceeding, except an action
10 or proceeding to approve, interpret, or enforce the terms of the Joint Stipulation.

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

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

15 All current and former non-exempt employees of Defendant and/or the
16 Released Parties who worked in the three Vons Distribution Centers
17 (El Monte, Santa Fe Springs and Mira Loma) and/or the Vons Milk
18 and Bread Plants in the State of California during the Covered Period,
19 excluding those employees covered by the settlement in Peron v. The
20 Vons Companies, Case No. 37-2014-00006965-CU-OE-CTL (which
21 covered Truck Drivers), or otherwise employed as a Truck Driver for
22 the Vons Companies, Inc. The Covered Period shall be from October
23 25, 2015 through the later of December 31, 2017, or the date of closure
24 of the Distribution Centers, for Distribution Center Employees. The
25 Covered Period shall be from October 25, 2015 through the later of
26 June 30, 2018, or the date of closure of the Plants, for Plant
27 Employees.

28 13. The Parties stipulate that Plaintiffs Adam Methus, J. Costello, and J. Perez
shall be appointed as the Class Representatives for the Settlement Class.

14. The Parties agree that the claims of Plaintiffs J. Moreno and A. Baltazar shall
be addressed through separate settlement negotiations and, that they shall be dismissed without
prejudice as they are not Class Members.

15. The Parties stipulate that Harris & Ruble shall be appointed Class Counsel for
the Settlement Class.

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

7 **V. TERMS OF THE SETTLEMENT**

8 **A. Maximum Gross Settlement Amount**

9 17. The Maximum Gross Settlement Amount under this Settlement as defined
10 above is Five Hundred Thousand Dollars and Zero Cents (\$500,000.00). The Settlement will be non-
11 reversionary and will not require Class Members to submit claim forms. Class members not
12 requesting to be excluded will still be bound by the Settlement.

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

25 19. In conjunction with this Settlement, Defendant has agreed to waive and
26 release \$866,451.14 in overpayments previously made and taxed to the settlement class members as
27 discussed above. These overpayments have already been made and in will not result in any
28 additional payment being made by Defendant.

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

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

5 21. Defendant understands that Class Counsel will apply to the Court for an award
6 of attorneys' fees and costs, which will be scheduled for determination at the final fairness and
7 approval hearing described below. Class Counsel will apply for, and Defendant will not oppose, an
8 award of attorneys' fees in an amount up to, but not to exceed, forty (40) percent of the Maximum
9 Gross Settlement Amount (which is equal to Two Hundred Thousand Dollars and Zero Cents
10 (\$200,000.00), and litigation costs and expenses in the maximum amount of Twenty Thousand
11 Dollars and Zero Cents (\$20,000.00), all of which shall be paid exclusively from the Maximum
12 Gross Settlement Amount, and will compensate Class Counsel for all of the work already performed
13 in the Action and all work remaining to be performed in documenting the Settlement, securing Court
14 approval of the Settlement, administering the Settlement, ensuring that the Settlement is fairly
15 administered and implemented, obtaining dismissal of the Action with prejudice, and defending
16 against any appeals, as well as all associated expenses. The litigation costs and expenses shall be
17 those costs and expenses incurred by Plaintiffs as set forth on Class Counsel's billing statement,
18 including but not limited to mediation fees, expert and consultant fees, filing fees, attorney service
19 charges, online research charges, travel expenses, copying expenses, deposition expenses and
20 delivery charges. Neither the Class Representatives, Class Counsel, nor any other Class Member
21 shall seek payment of attorneys' fees or reimbursement of costs or expenses from Defendant except
22 as expressly set forth in this Joint Stipulation.

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

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

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

14 24. No later than fifteen (15) calendar days after the Final Effective Date,
15 Defendant shall mail or wire transfer the Maximum Gross Settlement Amount to the Claims
16 Administrator. Assuming the conditions in Paragraph 23 have been met, no later than seven (7)
17 calendar days after the receipt of the Maximum Gross Settlement Amount from Defendant, the
18 Claims Administrator shall issue a payment to Class Counsel for the amount of attorneys' fees and
19 costs approved by the Court and in accordance with the instructions provided by Class Counsel.

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

22 **C. Payment to Claims Administrator**

23 26. The fees and expenses of the Claims Administrator are estimated at Twenty
24 Five Thousand Dollars (\$25,000.00). To the extent that the costs of administration exceed
25 \$25,000.00, the shortfall will be taken from the Net Settlement Distribution Amount and thereby
26 reduce the amount of wages and penalties payable to the Participating Class Members. To the extent
27 the cost of administration is less than \$25,000.00, the excess shall become part of the Net Settlement
28

1 Distribution Amount and shall increase the amount of wages and penalties payable to the
2 Participating Class Members.

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

5 28. No later than fifteen (15) calendar days after the Final Effective Date,
6 Defendant shall mail or wire transfer the Maximum Gross Settlement Amount to the Claims
7 Administrator. At the time it receives the Maximum Gross Settlement, the Claims Administrator
8 may issue a payment to itself for the amount of fees approved by the Court.

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

11 **D. Class Representative Payment to Class Representatives**

12 30. Defendant understands that Plaintiffs and Class Counsel will apply to the
13 Court for Class Representative Payments, which will be scheduled for determination at the final
14 fairness and approval hearing. Plaintiffs and Class Counsel will apply for Class Representatives
15 Payment in an amount up to, but not to exceed, Four Thousand Five Hundred Dollars and No Cents
16 (\$4,000.00) to each of the Class Representatives, which shall be paid exclusively from the Maximum
17 Gross Settlement Amount, and will compensate Plaintiffs for their services as the Class
18 Representatives. Defendant will not oppose Plaintiffs' application for the Class Representative
19 Payment up to the stated amount. The amount, if any, by which the Class Representative Payments
20 are less than the maximum amount which can be sought pursuant to this Agreement shall be part of
21 the Net Settlement Distribution Amount.

22 31. As condition precedent to the payment of this Class Representative Payment,
23 Plaintiffs release any and all claims against Defendant as set forth in the Class Representative
24 Release in Paragraph 73.

25 32. Any Class Representative Payment awarded by the Court shall be in addition
26 to the payment, if any, Plaintiffs may otherwise receive as a Participating Class Member and shall
27 not be subject to payroll tax withholding and deductions.
28

1 33. No later than seven (7) calendar days after the receipt of the Maximum Gross
2 Settlement Amount from Defendant, the Claims Administrator shall issue the Class Representative
3 Payments to Class Counsel on behalf of Plaintiffs in the amount approved by the Court, subject to all
4 authorized and required deductions.

5 34. The Claims Administrator will issue IRS Form 1099-MISC to Plaintiffs for
6 the amount of the Class Representative Payment.

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

8 35. The Gross Individual Settlement Payment to Participating Class Members will
9 be calculated and paid as follows: the total Net Settlement Distribution Amount, estimated at Two
10 Hundred Ten Thousand Dollars and Zero Cents (**\$210,000.00**), will be distributed in two equal parts.
11 The first part is a per-workweek worked distribution. The second part is a per capita distribution
12 with an adjustment for overpayments previously made and taxed.

13 50% of the Net Settlement Distribution Amount shall be distributed on a per-workweek basis as
14 follows:

- 15 • Every class member will receive \$X for every workweek worked in the period from
16 October 25, 2015 through September 18, 2016.
- 17 • Every class member who worked in a plant will receive .25 times \$X for every
18 workweek worked from September 19, 2016 through June 30, 2018.
- 19 • Every class member who worked in a distribution center will receive .25 times \$X for
20 every workweek worked from September 19, 2016 through December 31, 2017.
- 21 • The workweeks will be calculated on workweeks worked for Vons, i.e., before
22 distribution center employees went to Albertsons.
- 23 • The amount “\$X” will be calculated so as to ensure that 50% of the Net Settlement
24 Amount is distributed.
- 25 • The per-workweek distribution will be consideration for the release of non-taxable
26 claims including civil and statutory penalties, liquidated damages and interest. The
27 amounts paid as consideration for the release of liquidated damages, penalties and
28 interest shall be subject to all authorized and required withholdings other than the tax
29 withholdings customarily made from employees’ wages and shall be reported by
30 1099 forms.

31 50% of the Net Settlement Distribution Amount shall be distributed on a per capita basis as follows:

- 32 • Every class member shall receive \$Y per employee, with each individual share
33 reduced by the amount of any overpayment received by an employee.
- 34 • The reduction for overpayments shall be at the rate of \$0.05 for each dollar of

overpayment received, but the per-capita distribution shall not be reduced below \$25.00 for any employee.

- The amount “\$Y” will be calculated so as to ensure that, after the adjustments for overpayments, 50% of the Net Settlement Amount is distributed.
- The amount distributed as “\$Y” shall comprise consideration for the release of the wage-related claims. The amounts paid as consideration for the release of wage-related claims shall be subject to all tax withholdings customarily made from employee’s wages and all other authorized and required withholdings and shall be reported by W-2 forms. The employees’ share of payroll taxes is part of and shall be paid from the Net Settlement Distribution Amount.

36. Work Weeks are appropriately used in part to calculate payments in this instance due to the impracticality of calculating individualized alleged damages with respect to each individual Class Member. The per capita distribution is made to acknowledge that certain employees received larger overpayments than others.

37. All Gross Individual Settlement Payments shall be allocated between wages and non-wage income as follows: Fifty Percent (50%) of such consideration shall be allocated to the payment of taxable wages and wage-related payments and Fifty Percent (50%) of such consideration shall be allocated to the payment of non-wage income consisting of interest, penalties, liquidated damages, and related aspects of the settlement. From the portion which is allocated as wages shall be withheld the employee’s share of payroll and income taxes and all other applicable deductions or withholding required by law or expressly authorized by the Class Member, including payments of any garnishments and liens. The amount remaining for payment to an individual Participating Class Member shall be the Net Wage Settlement Payment. From the portion which is allocated as non-wage income all applicable deductions or withholding required by law or expressly authorized by the Class Member, including payments of any garnishments and liens will be withheld. The portion of the Gross Individual Settlement Payment to an individual Participating Class Member which is allocated to interest, penalties and other amounts shall be the Non-Wage Income Settlement Payment.

38. Class Members may dispute the number of qualifying work weeks identified in the Class Notice by way of proof that the Class Member worked more work weeks during the Covered Period. Any dispute must be in writing and received by the Claims Administrator no later

1 than sixty (60) days after the initial mailing of the Class Notice. If there is a dispute related to the
2 number of qualifying workweeks, the Claims Administrator will consult with Class Counsel and
3 Defendant's Counsel to determine whether an adjustment is warranted. Upon a dispute being made,
4 Defendant shall provide the Claims Administrator within seven (7) days the records that Defendant
5 used to compute the number of eligible qualifying work weeks for the disputing Class Member, and
6 any other available evidence reasonably necessary to evaluate the dispute. The Claims Administrator
7 will make the final decision as to the number of eligible qualifying work weeks.

8 39. The Participating Class Members shall be paid their respective Individual
9 Settlement Payments as provided in this Agreement pursuant to section IX below.

10 **F. PAGA Payment**

11 40. The Parties have agreed to allocate Twenty Five Thousand Dollars and Zero
12 Cents (\$25,000.00) for the resolution of all Class Members' claims under the California Private
13 Attorney General Act, California Labor Code Section 2698, et. seq. The PAGA Payment will be
14 remitted to the California Labor and Workforce Development Agency.

15 41. This amount is subject to review and approval by the Court as part of the
16 settlement process pursuant to Labor Code section 2699(1)(2). This Settlement is contingent on the
17 Court approving the PAGA release and payment. Plaintiffs' counsel will submit a copy of the
18 Settlement to the LWDA at the same time the Settlement is submitted to the Court in accordance
19 with Labor Code section 2699 (1)(2).

20 42. Within ten (10) calendar days after the receipt of the Maximum Gross
21 Settlement Amount from Defendant, the Claims Administrator will remit the PAGA Payment to the
22 California Labor and Workforce Development Agency.

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

24 43. The Claims Administrator shall perform the following duties in connection
25 with administration of the Settlement: (1) using the data provided by Defendant to prepare the Class
26 Notice for each Class Member, as described in section VII.A of this Settlement; (2) mailing the
27 Class Notice to Class Members; (3) tracking non-delivered Class Notices and taking reasonable
28 steps to re-send them to Class Members' current addresses; (4) sending out reminder postcards to

1 Class Members; (5) setting up a settlement website which contains copies of all papers and orders
2 filed in connection with preliminary and final approval, including the final Settlement Agreement,
3 Complaint, and Final Judgment; (6) tracking and timely reporting to Class Counsel and Counsel for
4 Defendant about the received requests for exclusion; (7) calculating and paying the amounts due to
5 each Participating Class Member pursuant to the Settlement; (8) calculating the amount of employee
6 and Employer Payroll Taxes and paying the applicable employee and Employer Payroll Taxes and
7 deductions; (9) resolving disputes (if any) by Class Members regarding the number of Compensable
8 Weeks Employed or other matters, after timely notice to and consultation with Class Counsel and
9 counsel for Defendant; (10) transmitting funds as required by applicable garnishments and liens;
10 (11) contacting all Participating Class Members who have not cashed their Settlement Checks to
11 remind them to do so before the six-month deadline for doing so expires; (12) transmitting funds to
12 resolve the PAGA claim to the State of California as designated; (13) issuing payments to Class
13 Counsel and Class Representative and associated tax forms; (14) escheating the funds to the
14 Department of Industrial Relations Unpaid Wage Fund of the State of California, or other *cy pres*
15 recipient.

16 44. All disputes relating to the Claims Administrator's performance of its duties
17 will be referred to the Court, if necessary, which will have continuing jurisdiction over this
18 Settlement until all payments and obligations contemplated by this Settlement have been fully
19 carried out.

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

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

22 45. Within fifteen (15) calendar days after the Court enters its Preliminary
23 Approval Order, Defendant will provide to the Claims Administrator a database that lists, for each
24 Class Member, the individual's name, Social Security Number, last known address and telephone
25 number; and dates of employment with Defendant during the Covered Period. This database will be
26 drawn from Defendant's payroll and other business records and will be in a format acceptable to the
27 Claims Administrator and Defendant. Defendant will consult with the Claims Administrator prior to
28 the date for providing this information to ensure that the format will be acceptable to the Claims

1 Administrator. The data provided to the Claims Administrator and Class Counsel will remain
2 confidential and will not be disclosed to anyone, except as required to applicable tax authorities,
3 pursuant to Defendant's express written consent, or by order of the Court.

4 46. Within fifteen (15) calendar days after Defendant provides the Claims
5 Administrator the information stated pursuant to Paragraph 45, above, the Claims Administrator will
6 mail, by first-class mail, the Class Notice to all Class Members at their last known address, unless
7 modified by any updated address information that the Claims Administrator obtains in the course of
8 administration of the Settlement.

9 47. The Claims Administrator will use standard devices, including the National
10 Change of Address database or equivalent, to obtain forwarding addresses prior to mailing and will
11 use appropriate skip tracing to take appropriate steps to maximize the probability that the Notice
12 Materials will be received by all Class Members. Class Members to whom the Class Notice is resent
13 after having been returned undeliverable to the Claims Administrator shall have ten (10) calendar
14 days thereafter, or until the response deadline has expired, whichever is later, to mail, fax or email
15 the request for exclusion, or an objection. Class Notices that are resent shall inform the recipient of
16 this adjusted deadline. If a Class Member's Class Notice is returned to the Claims Administrator
17 more than once as non-deliverable, no additional Class Notice shall be sent.

18 48. Within thirty (30) calendar days after the Claims Administrator mails out the
19 Class Notice, the Claim Administrator will mail out mutually acceptable reminder postcards to Class
20 Members reminding them of their right to exclude themselves from the settlement, object to the
21 settlement, or dispute the Defendant's employment records used to determine the Class Members'
22 Gross Individual Settlement Payment.

23 49. The Claims Administrator shall provide regular reports to Class Counsel and
24 Defendant's counsel as to the mailings of Class Notice, and the receipt of requests for exclusion and
25 objections prior to the close of the period in which claims can be made.

26 **B. Settlement Website**

27 50. The Claims Administrator will create a settlement website which contains
28 copies of all papers and orders filed in connection with preliminary and final approval, including the

1 final Settlement Agreement and Complaint. These documents will be posted not later than the
2 mailing of the Class Notice and will remain posted until the date of final approval. The Claim
3 Administrator will also post on its website Notice of Final Judgement.

4 **C. Challenges to Work Week Data Contained In Class Notice**

5 51. The Class Notice mailed to the Class Members will include the Class
6 Member's estimated Gross Individual Settlement Payment and the dates of his or her employment
7 during the Covered Period.

8 52. Class Members will have the opportunity to challenge the information pre-
9 printed on their individualized Class Notice, including the dates of employment during the Covered
10 Period, by submitting a written challenge in connection with the Class Notice within the time period
11 provided. All challenges must be received no later than sixty (60) calendar days after the initial date
12 of mailing of the Class Notice.

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

19 **E. Objections to Settlement**

20 54. The Class Members will have sixty (60) calendar days after the date on which
21 the Claims Administrator mails the Class Notice to object to the Settlement by serving on the Claims
22 Administrator, by the sixty (60)-day deadline, a written objection to the Settlement. Only
23 Participating Class Members may object to the Settlement.

24 55. Any Class Member who has elected not to participate in the Settlement
25 (pursuant to the procedure set forth in Paragraph 58, below) may not submit an objection to the
26 Settlement.

27 56. A Class Member who does not serve a written objection in the manner and by
28 the deadline specified above will be deemed to have waived any objection and will be foreclosed

1 from making any objections to the Settlement (whether by appeal or otherwise).

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

5 **F. Election Not to Participate in the Class Settlement**

6 58. In order for a Class Member to validly and effectively request exclusion from,
7 and opt out of, this Settlement, the Class Member must submit to the Claims Administrator a request
8 for exclusion from the Settlement according to the procedures set forth in the Class Notice.
9 Substantial compliance with the requirements set forth in the Class Notice will in most cases be
10 sufficient. To the extent additional information is required the Claims Administrator will
11 communicate with the Class Member. In order to be valid, the request for exclusion must be
12 postmarked for delivery to the Claims Administrator no later than sixty (60) calendar days after the
13 date of mailing of the Class Notice. No request for exclusion will be accepted if postmarked for
14 delivery to the Claims Administrator after the deadline indicated.

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

19 60. A Class Member who properly and timely submits a request for exclusion will
20 not be bound by the Settlement, and will remain free to contest any claim brought by Plaintiffs that
21 would have been barred by the Settlement, and nothing in this Settlement will constitute or be
22 construed as a waiver of any defense Defendant has or could assert against such a claim.

23 61. Plaintiffs may not opt-out of the Settlement Class.

24 **G. Reports and Declaration by Claims Administrator**

25 62. By not later than fifteen (15) calendar days after expiration of the 60-day
26 deadline for submission of written requests not to participate in the Class Settlement, the Claims
27 Administrator will submit to Class Counsel and Counsel for Defendant a report setting forth the
28 people (identified by name and the last four digits of their Social Security Number) who as of that

1 date have submitted (a) valid requests for exclusion, and (b) invalid requests to be excluded from the
2 Settlement (the “Opt-Out Report”). In the event that the Claims Administrator subsequently receives
3 a request not to participate in the Settlement, it will promptly distribute an updated Opt-Out Report.

4 63. By not later than the date when Plaintiffs files his motion for final approval of
5 the Settlement, the Claims Administrator will prepare and submit for filing in support of the motion
6 a declaration attesting to its mailing of the Class Notice, its receipt of requests for exclusion and
7 objections, and its inability to deliver the Class Notice to potential Class Members due to invalid
8 addresses. As applicable, the Claims Administrator will prepare and submit for filing in support of
9 the motion for final approval, any supplemental declaration.

10 **VIII. RIGHT TO RESCIND**

11 64. In the event that five percent (5%) or more of the Class Members submit valid
12 requests not to participate in the Settlement, Defendant will have the exclusive right in its sole
13 discretion to rescind the Settlement, and all actions taken in its furtherance will be null and void.
14 Defendant must exercise this right within fifteen (15) days after the date on which the Claims
15 Administrator first informs Defendant that at least five percent (5%) of the potential Class Members
16 have made valid requests to be excluded from the Settlement.

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

18 65. Defendant or Class Counsel shall serve the Claims Administrator with notice
19 of the Final Effective Date as soon as possible. No later than fifteen (15) calendar days after the
20 Final Effective Date, the Claims Administrator will provide counsel for Defendant and Class
21 Counsel with a list of those members of the Class who did not submit timely requests for exclusion
22 and the Gross Individual Settlement Payment for each Participating Class Member on that list. The
23 sum of the Gross Individual Settlement Payments due to the individuals on that list shall constitute
24 the “Class Settlement Payment.” The Class Administrator shall also calculate the amount of those
25 Employer Payroll Taxes and other deductions transmitted by Defendant to the Claims Administrator
26 based on the wage portion of the Gross Individual Settlement Payments for all of the individuals on
27 that list.

28 66. Defendant will cause the Maximum Gross Settlement Amount to be wired to

1 the Claims Administrator no later than fifteen (15) calendar days after the Final Effective Date.
2 Within the same fifteen (15) calendar days, Defendant also will provide the Claims Administrator a
3 list identifying all Participating Class Members who have garnishments and liens, the amounts of
4 each individual's garnishments and liens, and the name and address of the person or entity that is
5 entitled to receive payment of such garnishments and liens.

6 67. Within fifteen (15) calendar days after the receipt of the Maximum Gross
7 Settlement Amount from Defendant, the Claims Administrator will distribute to every Participating
8 Class Member his or her Net Wage Settlement Payment and Non-Wage Income Settlement Payment.
9 The Claims Administrator shall make appropriate tax reporting and withholdings in accordance with
10 this Agreement and applicable law and regulations.

11 68. The Claims Administrator will timely remit the employer's and employee's
12 portion of the payroll and other taxes associated with the settlement payments to the proper
13 authorities, as required by law. In addition, the Claims Administrator will timely issue IRS Form W-
14 2 to each Participating Class Member that reflects the wage portion of the settlement payment and an
15 IRS Form 1099-MISC to each Participating Class Member that reflects the non-wage income portion
16 of the settlement payment to the extent required by law.

17 69. By not later than ninety (90) days after the checks are mailed to the
18 Participating Class Member the Claims Administrator will contact each Participating Class Member
19 who has not cashed his or her settlement check and remind him or her to do so before the six-month
20 deadline. The Claims Administrator will inform those individuals that if they fail to cash their
21 settlement checks by the six-month deadline, the check will be sent to the DLSE unclaimed wage
22 fund for the benefit of the intended payee.

23 70. If any Participating Class Member does not cash his or her settlement check(s)
24 within six (6) months after issuance, fifteen (15) calendar days after the check-cashing deadline the
25 Claims Administrator shall escheat the funds to the Department of Industrial Relations Unpaid Wage
26 Fund of the State of California. The Parties agree that this obligation shall satisfy and fully
27 discharge Defendant's obligations under California Code of Civil Procedure Section 384 and the
28 doctrines of *Cy Pres* and *escheat*. Should the Court not approve payment to the DLSE as set forth in

1 this Paragraph, the parties shall propose the Justice Fund of the California State Bar as the recipient
2 of the amounts of any uncashed checks.

3 **X. RELEASE OF CLAIMS**

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

5 71. As of the date the Final Approval Order is entered by the Court and except as
6 to such rights or claims as may be created by this Settlement, to the maximum extent allowed by
7 law, each Class Member who has not timely and effectively opted out will be deemed to have
8 released claims as both a matter of contract and judicial procedure as follows, which release shall be
9 incorporated into the Class Notice:

10 The settlement shall resolve and the class shall release all claims for wages,
11 statutory and civil penalties, damages and liquidated damages, interest, fees and
12 costs that were stated in the Complaints and any Amended Complaints in the
13 Moreno and Methus Actions and/or those based upon the factual allegations in the
14 operative Complaints in the Moreno and Methus Actions whether known or
15 unknown under the Fair Labor Standards Act and California law, during the
16 Covered Period, including, but not limited to, all claims asserted in the Moreno
17 Action: (1) failure to pay minimum wage; (2) failure to pay all earned overtime
18 wages; (3) failure to permit meal periods in violation of Labor Code section
19 226.7, 512 and IWC Wage Order 7; (4) failure to timely pay all earned wages and
20 compensation in violation of Labor Code sections 204, 206, 218.5 and 218.6; (5)
21 failure to pay all earned wages and compensation upon termination in violation of
22 Labor Code sections 201, 201 and 203; (6) failure to provide lawful wage
23 statements in violation of Labor Code section 226; (7) failure to maintain accurate
24 payroll records in violation of Labor Code section 1174; (8) improper deductions
25 from wages in violation of Labor Code section 221; (9) failure to provide
26 employment records upon request in violation of Labor Code section 226(b); (10)
27 unfair business practices in violation of California Business and Professions Code
28 section 17200; and the Methus Action (11) violations of Private Attorney General

Act, Labor Code section 2698, et seq.; (“Released Claims”) against the Vons Companies, Inc. and each and all of its past and present officers, directors, employees and agents, together with its parents and affiliated companies Safeway Inc., the Albertsons Companies, LLC, Albertson’s LLC, AB Acquisition LLC, Cerberus Holdings, and Cerberus Capital Management and their officers, directors, employees and agents. (collectively, “Released Parties”).

With respect to the Released Claims only, the Parties stipulate and agree that, upon the Effective Date, the Class Members who has not timely and effectively opted out shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights and benefits of California Civil Code section 1542, which provides:

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

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

B. Released Claims by the Class Representative

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

The Class Representative hereby fully and finally releases and discharges the Released Parties (defined in Paragraph 71, above) from any and all of the Released Claims (defined in Paragraph 71, above) and from any and all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, known or unknown, suspected or unsuspected, that the Class Representative had, now has, or may hereafter claim to have against the Released Parties arising out of, or relating in any way to, the Class Representative’s hiring by, employment with, separation of

1 employment with, or otherwise relating to the Released Parties (“Class Representatives’ Released
2 Claims”), arising or accruing from the beginning of time up through the date of the Final Approval
3 Hearing (“Class Representatives’ Released Period”). The Class Representatives’ Released Claims
4 include, but are not limited to, claims arising from or dependent on the California Labor Code, the
5 Wage Orders of the California Industrial Welfare Commission, California Business and Professions
6 Code Section 17200, *et. seq.*, California Labor Code Private Attorneys General Act of 2004, Labor
7 Code § 2699, *et seq.*, the California Fair Employment and Housing Act, Cal. Gov’t Code Section
8 12900 *et seq.*, the California common law of contract and tort, Title VII of the Civil Rights Act of
9 1964, the Americans with Disabilities Act, 42 U.S.C. Section 12101 *et seq.*, the Employee
10 Retirement Income Security Act of 1974, 29 U.S.C. Section 1001 *et seq.*, the Fair Labor Standards
11 Act, 29 U.S.C. Section 201 *et seq.* and the Portal to Portal Act, 29 U.S.C. Section 251, *et seq.* except
12 for such claims that cannot be released by law.

13 Unknown Claims includes any claims about which the Class Representative is aware
14 of and which, if they later learn of, they will not be able to obtain any remedy. In this regard, the
15 Class Representative waives California Civil Code Section 1542, which provides:

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

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

20 74. The Parties shall submit this Joint Stipulation to the Court in support of
21 Plaintiffs’ Motion for Preliminary Approval and determination by the Court as to its fairness,
22 adequacy, and reasonableness. As soon as reasonably possible upon execution of this Joint
23 Stipulation, the Parties shall apply to the Court for the entry of an Order Granting Preliminary
24 Approval of the Settlement and Notice which shall provide for, among other things, the following:

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

28 b. Approving as to form and content the proposed Class Notice described

1 herein;

2 c. Directing the mailing of the Class Notice by first class mail to the
3 Class Members;

4 d. Preliminarily approving the Settlement;

5 e. Preliminary certifying the Class for settlement purposes only; and

6 f. Approving Alan Harris and David Garrett of Harris & Ruble as Class
7 Counsel, Plaintiffs Adam Methus, J. Costello, and J. Perez as Class Representative, and Simpluris,
8 or an administrator mutually agreed to by the Parties, as Claims Administrator.

9 75. After the Preliminary Approval Order is entered by the Court, and prior to the
10 deadline for objections, Plaintiffs shall file the motion for an award of attorneys' fees and costs to be
11 heard on the same hearing date as set by the Court for the final fairness and approval hearing.

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

13 76. In connection with the final approval by the Court of the Settlement, the
14 Parties will submit a proposed Order Granting Final Approval of the Class Action Settlement and
15 Final Judgment in the form attached as **Exhibits C** and **D**, respectively, which shall provide, among
16 other things, as follows:

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

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

21 c. Approving the Class Representative's service payment;

22 d. Certifying the Settlement Class for purposes of this Settlement only;
23 and

24 e. Entering Judgment pursuant to California Rules of Court, rule 3.769(h)
25 which retains jurisdiction and permanently bars the Class Members who do not timely and validly
26 exclude themselves from the Settlement from prosecuting any and all Released Claims against the
27 Released Parties, and permanently bars the Class Representative from prosecuting any and all Class
28 Representative's Released Claims against the Released Parties. Notice of the Final Judgment shall

1 be given by Plaintiffs to Defendant as set forth in the Class Notice, which notice shall satisfy the
2 requirements of California Rules of Court, rule 3.771.

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

4 77. If this Agreement is not preliminarily or finally approved by the Court and/or
5 if a Final Approval Order is not entered or if Defendant exercise the option to rescind pursuant to
6 Paragraph 64, above (*e.g.*, because the Court does not approve the settlement, or the opt-outs from
7 the Class exceed ten percent and Defendant revokes the Agreement), this Agreement shall be null
8 and void. In such event, (1) nothing in this Agreement shall be construed as a determination,
9 admission, or concession of any issue in the Action, and nothing in this Joint Stipulation may be
10 offered into evidence in any trial on the merits of the claims asserted in the Complaint filed in the
11 Action or in any subsequent pleading; (2) the Parties expressly reserve their rights with respect to the
12 prosecution and defense of the Action as if this Agreement never existed; and (3) Defendant shall be
13 responsible for any costs for Notice or claims administration incurred by the Claims Administrator
14 through that date. If there is any reduction in the attorneys' fees or costs awards or the Class
15 Representative Payments, such reduction may be appealed but is not a basis for rendering this
16 Agreement void, voidable and/or unenforceable.

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

18 78. Except for disclosures authorized by Defendant or necessary to prepare the
19 motion for preliminary approval, the terms of this Settlement shall remain confidential until they are
20 presented to the superior court in connection with the motion for preliminary approval.

21 **XV. MUTUAL FULL COOPERATION**

22 79. The Parties will fully cooperate with each other and use their best efforts,
23 including all efforts contemplated by this Settlement and any other efforts that may become
24 necessary or ordered by the Court, or otherwise, to accomplish the terms of this Settlement in
25 accordance with the terms of the parties' memorandum of understanding, including but not limited
26 to, executing such documents and taking such other action as may reasonably be necessary to obtain
27 preliminary and final approval of this Settlement and to implement its terms.
28

1 **XVI. NO PRIOR ASSIGNMENTS**

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

6 **XVII. NOTICES**

7 81. Unless otherwise specifically provided by this Settlement, all notices,
8 demands or other communications given under this Settlement will be in writing and be deemed to
9 have been duly given as of the third business day after mailing by United States registered or
10 certified mail, return-receipt requested, addressed as follows:

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

12 ALAN HARRIS
13 DAVID GARRETT
14 HARRIS & RUBLE
655 North Central Avenue, 17th Floor
Glendale, CA 91203
Telephone: 323.962.3777

15 **To Defendant:**

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

19 **XVIII. CONSTRUCTION**

20 82. This Settlement is the result of lengthy, arms-length negotiations between the
21 Parties. This Settlement will not be construed in favor of or against any Party by reason of the extent
22 to which any Party or his or its counsel participated in the drafting of this Settlement.

23 **XIX. CAPTIONS AND INTERPRETATIONS**

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

1 **XX. MODIFICATION**

2 84. This Settlement may not be changed, altered, or modified, except in writing
3 and signed by the Parties and approved by the Court. This Settlement may not be discharged except
4 by performance in accordance with its terms or by a writing signed by the Parties.

5 **XXI. APPLICABLE LAW**

6 85. All terms and conditions of this Agreement will be governed by and
7 interpreted according to the laws of the State of California, without giving effect to any conflict of
8 law or choice of law principles.

9 **XXII. INTEGRATION CLAUSE**

10 86. This Settlement and all the attached Exhibits which by this reference are
11 incorporated into this Settlement constitutes the entire agreement between the Parties relating to the
12 Settlement and transactions contemplated by the Settlement. All prior or contemporaneous
13 agreements, understandings, representations, and statements, whether oral or written and whether by
14 a Party or a Party's counsel, are merged into this Settlement. No rights under this Settlement may be
15 waived except in writing.

16 **XXIII. BINDING ON ASSIGNS**

17 87. This Settlement will be binding upon and will inure to the benefit of the
18 Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

19 **XXIV. CLASS MEMBER SIGNATORIES**

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

25 **XXV. COUNTERPARTS**

26 89. This Settlement may be executed in counterparts, and when each Party has
27 signed and delivered at least one such counterpart, each counterpart will be deemed an original, and,
28

1 when taken together with other signed counterparts, will constitute one Settlement, which will be
2 binding upon and effective as to all Parties.

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

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

6 91. The signatories to this Settlement hereby represent that they are fully
7 authorized to enter into this Settlement on behalf of themselves or their respective principals.

8 **EXECUTION BY PARTIES AND COUNSEL**

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

11 Dated: _____, 2019
12

13 _____
14 ADAM METHUS
Plaintiff

15 Dated: _____, 2019
16

17 _____
18 J. MORENO
Plaintiff

19 Dated: _____, 2019
20

21 _____
22 A. BALTAZAR
Plaintiff

23 Dated: _____, 2019
24

25 _____
26 J. PEREZ
Plaintiff

1 Dated: 2/27/19, 2019

2
3 
4 J. COSTELLO
Plaintiff

5 Dated: _____, 2019

6
7 ALAN HARRIS
8 DAVID GARRETT
9 HARRIS & RUBLE
Attorneys for Plaintiffs and Settlement Class

10 Dated: _____, 2019

11
12 THE VONS COMPANIES, INC.
13 Defendant
By: _____

14 Dated: _____, 2019

15
16 R. BRIAN DIXON
17 LAURA E. HAYWARD
18 LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendant

19
20 FIRMWIDE:162594578.1 001153.1662