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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

SOMALIA GOODWIN, JUAN CARLOS
QUEVEDO, DUSTIN JOHNSON and JOHN
A. MCGEHEE, as individuals on behalf of
themselves and on behalf of all others
similarly situated,

Plaintiffs,

v.

SAVE MART SUPERMARKETS, LLC, a
California Limited Liability Company; and
DOES 1-100, inclusive,
Defendants.

Case No.: (Lead) STK-CV-UOE-2023-2062;
SCV-273343 (MCGEHEE class action) filed
in Sonoma County; SCV-273793
(MCGEHEE PAGA action) filed in Sonoma
County

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: March 25, 26, 27, April 1, 2
Time: 9:00AM
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I. INTRODUCTION

Plaintiffs Somalia Goodwin, John A. McGehee, Dustin Johnson, and Juan Carlos Quevedo hereby move the Court for an order granting preliminary approval to a proposed non-reversionary class action settlement to resolve wage and hour claims on behalf of approximately 25,288 individuals employed by Defendant Save Mart Supermarkets LLC (“Save Mart” or “Defendant”) as non-exempt employees during the period of July 1, 2021 through the earlier of the date of preliminary approval, or the date the number of workweeks during the Class Period is 10 percent more than 1,600,000 work weeks. The proposed \$5,600,000 settlement will provide at least \$3,333,343.33 in estimated combined cash payments to the settlement class and aggrieved employees, with an average net payment of \$131.81 for class members and \$1.98 for aggrieved employees. The balance of approximately \$2,266,656.67, subject to Court approval, will cover modest enhancement awards to the named Plaintiffs, reasonable attorney’s fees and actual litigation costs, settlement administration costs, and payment of civil penalties to the State and PAGA Members. The settlement is the product of Plaintiffs’ pre- and post-filing investigation, extensive formal and informal discovery, and arms-length and adversarial negotiations overseen by experienced and well-regarded mediator Steve Mehta, Esq.

As demonstrated below, the settlement is within the “range of reasonableness” for preliminary approval, and is fair, reasonable and adequate. Plaintiffs’ counsel believe the settlement is a significant result for the class given the substantial risks inherent in this matter. Accordingly, Plaintiffs request the Court enter an order: (1) granting preliminary approval to the proposed class action settlement; (2) conditionally certifying the settlement class as defined below; (3) appointing Crosner Legal, PC, James Hawkins, APLC, Blumenthal Nordehaug Bhowmik De Blouw LLP, and Haynes Law Group, APC as Class Counsel; (4) appointing plaintiffs Somalia Goodwin, John A. McGehee, Dustin Johnson, and Juan Carlos Quevedo as the Class Representatives; (5) appointing APEX Class Action Administration as the Settlement Administrator; (6) approving the form of notice to the class and the procedure for providing such notice; and (7) scheduling a final fairness hearing.

1 **II. BACKGROUND/LITIGATION HISTORY**

2 Defendant Save Mart operates around 194 Save Mart, Lucky, and FoodMaxx stores in
3 neighborhoods throughout California and Western Nevada, and is California’s largest regional,
4 full-service grocery chain. Plaintiffs all worked for Save Mart as non-exempt, hourly-paid
5 employees during the relevant time period. [Declaration of Brandon Brouillette (“Brouillette
6 Decl.”), ¶ 4.]

7 Plaintiffs allege Save Mart violated California wage and hour law in several respects. First,
8 they alleges a failure to pay all minimum and overtime wages, and claim class members regularly
9 performed “off the clock” work, both before and after the start of their shifts, for tasks such as
10 donning and doffing gear, finishing up daily tasks, etc. Next, Plaintiffs allege Save Mart also failed
11 to provide compliant meal periods as meal periods frequently were not fully compliant due to job
12 demands. Plaintiffs also allege Defendant failed to provide legally compliant rest periods, and
13 allege rest periods were oftentimes interrupted or late. They further claim Defendant did not
14 reimburse business expenses incurred by Class Members for the use of their personal cellular
15 phones. Lastly, they allege Defendant failed to provide accurate, itemized wage statements and
16 failed to pay all wages owed upon the separation of employment. [Brouillette Decl., ¶ 5.]

17 Based on these general allegations, Plaintiffs filed several class action and PAGA
18 complaints against Save Mart. Plaintiff Goodwin filed the first complaint in this Court on March
19 2, 2023, alleging: (1) recovery of unpaid minimum wages and liquidated damages (Labor Code §§
20 1194, 1197, 1197.1); (2) recovery of unpaid overtime wages (Labor Code § 510); (3) failure to
21 provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 512); (4) failure to
22 provide rest periods or compensation in lieu thereof (Labor Code §§ 226.7, 512); (5) failure to
23 furnish accurate itemized wage statements; (6) failure to timely pay all wages due upon separation
24 of employment (Labor Code § 203); (7) failure to pay reporting time wages; (8) failure to
25 reimburse business expenses (Labor Code § 2802); (9) unfair competition; and (10) violation of
26 the California Private Attorneys General Act of 2004 (“PAGA”). *Goodwin* was filed on behalf of
27 “[a]ll current and former non-exempt employees that worked . . . for [Save Mart] at any location
28 in California within the four years prior to the filing of the initial Complaint.” Subsequently, on

1 March 3, 2023, Ms. Goodwin submitted a notice to the Labor and Workforce Development Agency
2 (“LWDA”) alleging various Labor Code violations under the Private Attorneys General Act of
3 2004 (“PAGA”). Soon thereafter, on May 22, 2023, July 10, 2023, and November 27, 2023, Mr.
4 McGehee, Mr. Johnson, and Mr. Quevedo filed their complaints in Sonoma County Superior Court
5 and Contra Costa Superior Court, respectively, alleging the same causes of action that Goodwin
6 has asserted. [Brouillette Decl., ¶¶ 6-7.]

7 Save Mart has at all times denied Plaintiffs’ collective allegations and maintained its meal
8 and rest break and payroll policies and procedures comply with California law, and that it provided
9 the class members with the opportunity to take all required meal and rest breaks. Additionally,
10 Save Mart contends its timekeeping and payroll policies accurately track and pay for all hours
11 worked by its employees and at the correct rates of pay. It also strongly contends the case cannot
12 be maintained as any kind of class or representative action, arguing for example that to the extent
13 class members missed meal and/or rest breaks, or that such breaks were non-compliant, it was
14 intermittent and infrequent and evidence of such missed breaks would be purely anecdotal, and
15 therefore individualized issues predominate and trial on a representative basis would be
16 unmanageable. [Brouillette Decl., ¶ 8.]

17 Since Plaintiffs filed their respective complaints, the Parties engaged in formal discovery,
18 and after various meet and confer discussions regarding discovery, law and motion and case
19 management, ultimately agreed to attempt a global mediation. The Parties further agreed to
20 extensive informal discovery to facilitate an exchange of information necessary to engage in a
21 meaningful mediation. Consequently, Plaintiffs’ counsel reviewed payroll records, personnel
22 policies/handbooks, meal and rest break policies, personnel files, and a random of sampling
23 paystubs and time records for more than 500 class members. Defendant also provided documents
24 reflecting its wage and hour policies and practices, and data regarding the total number of current
25 and former employees, the estimated total amount of workweeks and pay periods they worked,
26 and average hourly pay rates, among other relevant data. Plaintiffs had that information reviewed
27 and analyzed by Berger Consulting Group to assist with evaluating things such as time allegedly
28

lost to due rounding, meal period violation rates, etc., and to prepare a damages model. [Brouillette Decl., ¶ 9.]

The Parties then engaged Steve Mehta, Esq., a highly respected mediator with extensive wage and hour class action experience and, in April 2024, participated in a full day global mediation with Mr. Mehta. Throughout the day, the arms-length negotiations were hard-fought and adversarial as the Parties exchanged extensive information on their legal and factual positions, and made numerous offers and counter-offers. After a full day of negotiations, the Parties still were unable to reach agreement. Nevertheless, the Parties continued to negotiate with Mr. Mehta's assistance, and ultimately all Parties accepted a mediator's proposal in May 2024. The Parties thereafter jointly prepared the Settlement Agreement now before the Court for approval. [Brouillette Decl., ¶ 10.]

Finally, in order to effectuate the settlement of all pending matters on a global basis, the Parties agreed to stipulate the filing of a Third Amended Complaint in this matter, which TAC incorporates all Plaintiffs and claims alleged in the matters identified above, and Plaintiffs Johnson and Quevedo will dismiss their respective actions. [Brouillette Decl., ¶ 11.]

III. THE PROPOSED SETTLEMENT TERMS

Under the settlement, Save Mart will pay the Gross Settlement Amount of \$5,600,000 into a common fund,. Reasonable attorney's fees of up to \$1,866,666.67 (1/3 of the GSA), litigation costs of up to \$50,000, modest enhancement awards to Plaintiffs of up to \$10,000 each (\$40,000 in total), settlement administration costs of no more than \$109,990, and \$200,000 for civil penalties under PAGA (of which 75%, or \$150,000, will go to the Labor & Workforce Development Agency, and 25%, or \$50,000 will go to the PAGA Members) all will be paid from the Gross Settlement Amount. The remainder of approximately \$3,333,343.33 will be allocated among the Participating Class Members based on their total pay periods worked during the Class Period. No portion of the Gross Settlement Amount will revert to Save Mart. [Brouillette Decl., ¶ 12.]

A. Certification of the Settlement Class

The settlement provides for conditional certification of a settlement class including all current or former hourly-paid or non-exempt employees employed by the Defendant in the State

of California during the Class Period of July 1, 2021 through the earlier of of the date of preliminary approval, or the date the number of workweeks during the Class Period is 10 percent more than 1,600,000 work weeks. The Settlement Class consists of at least 25,288 individuals.¹ [Brouillette Decl., ¶ 13.]

B. The Benefit Conferred on the Settlement Class

This is a cash settlement that does not require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining eighty percent will be allocated to expenses reimbursement, penalties and interest. Save Mart will pay any and all applicable employer-side payroll taxes separately and in addition to the Gross Settlement Amount. Subject to the Court's approval, any amounts not claimed (because a class member does not cash his or her settlement check) will be forwarded to the State Controller's Unclaimed Property Fund. [Brouillette Decl., ¶ 14.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked for Save Mart during the Class Period while employed in a non-exempt position. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of alleged unpaid wages, unpaid premium wages for missed meal and rest breaks, unreimbursed expenses, and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives a portion of the available settlement funds corresponding to the relative value of his or her potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for Save Mart and the number of instances they missed a meal break and/or rest break, were not provided compensation in lieu of such missed breaks, or lost pay

¹ The "PAGA Members" for purposes of PAGA include all persons who are or were previously employed by Defendant in California and classified as a non-exempt or hourly employee at any time from March 2, 2022 through the earlier of the date the Court preliminarily approves the Settlement Agreement, or the date the number of workweeks during the Class Period is 10 percent more than 1,600,000 work weeks. There are approximately 20,210 PAGA Members. [Brouillette Decl., ¶ 11.]

1 due to the alleged off the clock work. The average class settlement award will be approximately
2 \$132, and the average PAGA award will be about \$1.98. [Brouillette Decl., ¶ 15.]

3 **C. Settlement Administration**

4 Subject to the Court’s approval the Parties agreed on APEX Class Action Administration
5 (“APEX”) as the Settlement Administrator. [Brouillette Decl., ¶ 16.] APEX is qualified and has
6 significant experience administering class action settlements, including numerous wage and hour
7 matters. APEX has agreed to cap its fees and costs at \$109,990.00. If the Court approves less than
8 the above amount, the difference will remain in the Net Settlement Amount for distribution to the
9 Participating Class Members. [Declaration of Sean Hartranft, ¶¶ 2-7; Exhs. A-B.]

10 **D. The Class Notice**

11 The proposed Notice (Exhibit 2 to the Brouillette Declaration) sets out information about
12 this case and explains the basic settlement terms in plain language, and meets all requirements
13 under California Rules of Court 3.769(f) and 3.766(d). The Notice also sets forth the individualized
14 information used to calculate Individual Settlement Payments and each Class Member’s estimated
15 settlement award. The Notice likewise details the procedures for Class Members to dispute their
16 individual information, for submitting an objection to the Settlement, and to request exclusion. In
17 sum, the Notice provides the Class Members with the information necessary to evaluate the
18 Settlement and provides fair opportunity to participate in, opt out of, or object to the proposed
19 Settlement. Coupled with the notice procedure, the proposed Notice provides the Class with the
20 best notice practicable. [Brouillette Decl., ¶ 17.]

21 **E. Right to Correct Information, Opt Out, or Object**

22 Class Members will have 45 days to dispute the information in their Notice used to
23 calculate their settlement award, and also have 45 days to submit any objections to the settlement
24 or to request exclusion. In the event a Class Member disputes their individual information, the
25 Settlement Administrator will review the Class Member’s records as well as any additional
26 information submitted, and make a final determination. [Brouillette Decl., ¶ 18.]

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1 **F. Release of Claims**

2 All Participating Class Members will release Save Mart from all claims alleged in the
3 operative complaint, or that could have been brought based on the factual allegations in the
4 operative complaint during the Class Period. Plaintiffs and the LWDA will release those PAGA
5 claims alleged in the PAGA notice to the extent alleged in the operative complaint. The Class and
6 PAGA releases are limited to the claims that were actually pleaded or could have been pleaded
7 based on the alleged facts in the operative complaint, and PAGA notice for the PAGA claims.
8 Only Plaintiffs are entering into a full general release of all claims and waiver of Civil Code section
9 1542. [Brouillette Decl., ¶ 19.]

10 **G. Attorney's Fees and Costs, and Plaintiffs' Enhancement Awards**

11 The settlement provides Defendant will not oppose a request for attorney's fees not to
12 exceed 1/3 of the Gross Settlement Amount, or \$1,866,666.67, nor will it oppose a request for
13 reimbursement of litigation costs and expenses of up to \$20,000. Defendant also will not oppose a
14 request for an enhancement award to Plaintiffs of not more than \$10,000.00 each (totaling \$40,000)
15 in recognition of their time spent on this matter, the risks they undertook on behalf of the class, the
16 benefit conferred to the class, and their agreement to provide a broad general release of all claims
17 against Defendant, as set forth in their respective declarations filed herewith. Plaintiffs' counsel
18 will provide the Court with appropriate summaries and evidence of their efforts and time records
19 in anticipation of the Final Approval Hearing. If the Court approves less than the above amounts,
20 the difference will remain in the Net Settlement Amount for distribution to the Participating Class
21 Members. [Brouillette Decl., ¶ 20.]

22 **H. PAGA Penalties and Notice to the LWDA**

23 As noted, the Parties allocated \$200,000 from the GSA to resolution of Plaintiffs' alleged
24 claims for PAGA civil penalties, and Plaintiffs submit that amount is fair, reasonable and
25 adequate, and furthers PAGA's underlying purposes. As required by Labor Code section
26 2699(l)(2), Plaintiffs gave notice of the settlement and the preliminary approval hearing to the
27 LWDA via its online portal. [Brouillette Decl., ¶ 21; Exh. 6.]

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1 **IV. ARGUMENT**

2 **A. Standard of Review for a Class Action Settlement**

3 The law favors settlement, particularly in class actions where substantial resources can be
4 conserved by avoiding the time, costs and rigors of formal litigation. H. Newberg & A. Conte, 4
5 Newberg on Class Actions (4th ed. 2002) § 11.41; Class Plaintiffs v. City of Seattle (9th Cir. 1992)
6 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Potter v. Pacific Coast Lumber Co. (1951) 37
7 Cal.2d 592, 602. Nevertheless, to ensure the rights of absent class members are not unjustly
8 compromised, settlement of a class action requires court approval. Cal. Rule of Court. 3.769;
9 Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245; Dunk v. Ford Motor Co. (1996) 48
10 Cal.App.4th 1794, 1801. This judicial review protects against fraud or collusion, and ensures
11 fairness to the absent class members. Dunk, 48 Cal.App.4th at 1800-01. Judicial review occurs
12 via a two-step process to determine, under all the circumstances, if the proposed settlement is fair,
13 reasonable and adequate. Id. at 1801; Wershba, 91 Cal.App.4th at 245.

14 The first step is a motion for preliminary approval, through which the parties present the
15 court with the proposed settlement and seek a determination that it is sufficiently fair and
16 reasonable to warrant notice to the class and further proceedings as to its fairness and adequacy.
17 Cal. Rule of Court 3.769(c). This preliminary evaluation determines if the proposed settlement is
18 within the “range of reasonableness” and if notice should be provided to the class regarding the
19 settlement’s proposed terms and conditions, and whether a final fairness hearing should be
20 scheduled. Wershba, 91 Cal.App.4th at 234-35; North County Contractors Ass’n, Inc. v.
21 Touchstone Ins. Servs. (1994) 27 Cal.App.4th 1085, 1089-90. Considering the strong judicial
22 policy favoring settlement of class actions, courts apply a presumption of fairness to class action
23 settlements when (1) the settlement results from arms-length bargaining, (2) investigation and
24 discovery are sufficient to allow counsel and the court to act intelligently, (3) counsel is
25 experienced in similar litigation, and (4) the percentage of objectors is small. Dunk, 48
26 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

27 If the court grants preliminary approval, it then orders the class be given notice in an
28 appropriate manner, establishes a schedule and procedures for class members to request exclusion

1 or object, and sets the matter for a final fairness hearing. Typically, any motion for attorney’s fees
2 and costs, and any enhancement for the class representative(s), is filed subsequent to preliminary
3 approval and heard with the motion for final approval, as part of the second step of the two-step
4 approval process. Dunk, 48 Cal.App.4th at 1800; Wershba, 91 Cal.App.4th at 232.

5 The proposed settlement in this matter warrants preliminary approval under the liberal
6 standard discussed above, as it is fair, reasonable and adequate under all the circumstances, and
7 represents a favorable result for the class.

8 **B. The Proposed Settlement Class Should Be Conditionally Certified**

9 The purpose of conditional class certification for purposes of settlement is to facilitate
10 provision of notice of the proposed settlement’s terms, and the date and time of the final fairness
11 hearing. In this context, courts apply lesser scrutiny than they would otherwise in the context of
12 certifying a class. Dunk, 48 Cal.App.4th at 1807, n.19; Global Minerals & Metals Corp. v. Superior
13 Court (2003) 113 Cal.App.4th 836, 839 (“[I]t is well established that trial courts should use
14 different standards to determine the propriety of a settlement class.”)

15 In the present matter, conditional certification is proper since this matter satisfies all
16 requirements for class certification under Code of Civil Procedure section 382. First, the class is
17 both sufficiently numerous, consisting of approximately 25,288 individuals, and ascertainable by
18 reference to Defendant’s personnel and payroll records. [Brouillette Decl., ¶ 22.] Next, Plaintiffs
19 all are adequate class representatives, as their claims do not conflict with and are not antagonistic
20 to the claims of other class members. Further, their claims are typical given each is a member of
21 the class and their claims arise from the same employment practices and course of conduct giving
22 rise to the claims of the other class members. [Declaration of Somalia Goodwin, ¶¶ 2-9;
23 Declaration of John A. McGehee, ¶¶ 2-13; Declaration of Dustin Johnson, ¶¶ [REDACTED]; Declaration of
24 Juan Carlos Quevedo, ¶¶ 2-6; Brouillette Decl., ¶ 23.] Lastly, Plaintiffs’ counsel all are
25 experienced and adequate class counsel. [Brouillette Decl., ¶¶ 39-49; Declaration of Paul K.
26 Haines (“Haines Decl.”), ¶¶ 9-12; Declaration of Kyle Nordrehaug (“Nordrehaug Decl.”), ¶¶ 10-
27 11.]
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1 Next, common questions of law and fact predominate – particularly for purposes of a
2 settlement class – as the Class Members all were subject to the same alleged meal and rest break
3 policy, and likewise were subject to the same alleged time rounding policies. Since the focus of
4 the claims against Save Mart concerns the legality of common policies applied uniformly to the
5 entire class, common issues predominate over individualized inquiries concerning liability. For
6 instance, Save Mart’s meal and rest break policy (as alleged by Plaintiffs) is a company-wide
7 policy applied equally and consistently to all class members, and this policy is either compliant
8 with California law or it is not. Regardless of that determination, it will decide liability for all
9 class members one way or another. Similarly, whether Save Mart’s wage statements violated Labor
10 Code § 226 by allegedly failing to list total hours worked in the wage statements raises another
11 question common to the whole class. [Brouillette Decl., ¶ 24.]

12
13 By now it is well-settled a theory of recovery asserting the existence of a uniform policy
14 violating California law is sufficient to satisfy the requirements for class certification. Jones v.
15 Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy
16 consistently applied to a group of employees is in violation of the wage and hour laws are of the
17 sort routinely, and properly, found suitable for class treatment”); Williams v. Superior Court
18 (2013) 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question of fact
19 or law that supports commonality for class certification”). Lastly, a class action is superior to
20 other means for the fair and efficient adjudication of this controversy. [Brouillette Decl., ¶ 25.]

21 **C. The Proposed Settlement Meets the Kullar Factors and is within the Range of**
22 **Reasonableness**

23 The proposed settlement resulted from serious, arms-length negotiations facilitated by
24 respected mediator, Steve Mehta, who has extensive experience mediating wage and hour class
25 actions. [Brouillette Decl., ¶ 8.] Plaintiffs’ counsel at Crosner Legal, James Hawkins APLC,
26 Blumenthal Nordrehaug Bhowmik De Blouw LLP, and Haynes Law Firm, all have years of
27 experience litigating wage and hour class actions. Plaintiffs’ counsel are well-qualified to evaluate
28 the risks and benefits of pursuing further litigation or settling the matter. [Brouillette Decl., ¶¶ 39-

49; Haines Decl., ¶¶ 2-8; Declaration of James Hawkins (“Hawkins Decl.”), ¶¶ 2-3; Nordrehaug Decl., ¶¶ 3-5, Exh. 1.]

Next, California law recognizes several factors bearing on the fairness, adequacy, and reasonableness of a proposed class settlement. Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 128. In relevant part, these factors include: 1) the amount offered in settlement 2) the strength of plaintiff’s case; 3) the risk, expense, complexity, and likely duration of further litigation; 4) the risk of maintaining class action status throughout trial; 5) the experience and views of counsel; and 6) the reaction of the class members to the proposed settlement. Id. As demonstrated below, the proposed settlement satisfies these requirements.

Prior to mediation, the parties engaged in both formal and informal discovery to facilitate settlement discussions. As a result, Plaintiffs reviewed documents and information regarding Save Mart’s payroll practices, a representative sampling of pay stubs and time records for five hundred class members, applicable compensation plans, meal and rest break policies, etc., and information from Defendant regarding class size and breakdown, number of work weeks/pay periods, average rates of pay, and other information used to formulate a damages model. Plaintiffs then had that information reviewed with the assistance of a consulting expert. Plaintiffs’ counsel are confident they obtained sufficient information to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is fair and reasonable. [Brouillette Decl., ¶¶ 9, 26.]

Next, the proposed settlement falls within the range of reasonableness warranting preliminary approval. The proposed settlement involves a significant sum that, when distributed, will confer direct monetary benefits on the class members. As described above, each class member will be entitled to a monetary payment without having to file a claim and each payment will be relative to the value of his or her potential claims. Through the information exchanged and analysis undertaken, Plaintiffs and counsel weighed the risks of continued litigation against the benefits of the proposed settlement and determined settlement to be the most reasonable option.

1 Using the data obtained from Defendant and with their experts' assistance, Plaintiffs ran
2 various calculations and estimated Save Mart's likely maximum exposure on the class claims at
3 approximately **\$238** million, including about \$7,562,800 on the unpaid wage/off the clock claim,
4 \$13,325,510 on the meal break claims, \$34,542,533 on the rest break claims, \$3,576,900 on the
5 unreimbursed expense claim, \$86,527,000 on the wage statement claims, and \$92,342,664 on the
6 waiting time penalty claims. [Brouillette Decl., ¶¶ 27-28.] Plaintiffs and their counsel, however,
7 substantially discounted these claims in light of the complexities and delays of class action
8 litigation, and in light of Defendant's multi-layered procedural and merits defenses, of which there
9 are many.

10 First, on their unpaid wage claims, Plaintiffs alleges employees frequently had to work off
11 the clock, including working while purportedly clock out on meal breaks and performing re- and
12 post-shift work before clocking in or after clocking out. As a result, Plaintiffs contends they and
13 the class members lost as much as 60 minutes of compensable time each week due to this off the
14 clock work. In response, Defendant argued its timekeeping and payroll policies accurately tracked
15 and paid for all employee time. It also argued that its policies forbade any "off the clock" work
16 and that employees were trained and reminded that they should not be working off the clock.
17 Accordingly, per Save Mart, if any off the clock work occurred, it was intermittent and infrequent,
18 against company policy, and done without the employer's knowledge or consent. White v.
19 Starbucks Corp. (N.D. Cal. 2007) 497 F. Supp. 2d 1080, 1083 ("To prevail on his off the clock
20 claim, White must prove that Starbucks had actual or constructive knowledge of his alleged off-
21 the-clock work.) For these reasons, per Save Mart, class certification of this issue would be
22 impossible because innumerable individual inquires would be required to determine whether any
23 compensable "off the clock" work occurred. [Brouillette Decl., ¶ 29.]

24
25 On the meal period claims, Plaintiffs collectively alleged several violations. First, they
26 argued that, regardless of whether Save Mart's written policies were compliant, there were
27 significant "de facto" violations for missed, late, and short meal periods. Per Plaintiffs, their
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1 expert's review of the sampling of time records produced suggested tens of thousands of meal
2 period violations during the class period, primarily for untimely meal periods and missing second
3 meal periods of shifts over 10 hours. Plaintiffs further emphasized that those same records show
4 the substantial majority of the alleged violations were not compensated with the required one hour
5 pay, although admittedly Defendant did pay at least some meal break premiums during the class
6 period. [Brouillette Decl., ¶ 30.]

7 In response, Defendant argued its break policies were fully compliant with California law,
8 and that it provided all required meal periods and thereby met its obligations under the Labor Code
9 and applicable Wage Orders and under Brinker Restaurant Corp. v. Superior Court (2012) 53
10 Cal.4th 1004, 1017, where the California Supreme Court held an employer's obligation with
11 respect to meal periods is to "relieve its employee of all duty, with the employee thereafter at
12 liberty to use the meal period for whatever purpose he or she desires." But, the court went on, "the
13 employer need not ensure that no work is done." Id. Further, Defendant argued to the extent
14 employees missed a break or took a non-compliant break, any such discrepancies were aberrational
15 and against company policy and a myriad of individual issues would be required to determine
16 whether the potential violation resulted from employee choice or some other reason.
17 Consequently, per Defendant, individualized inquiries would dominate on this issue and render
18 class certification inappropriate. Defendant also emphasized it paid thousands of dollars in meal
19 period premiums for documented alleged violations in its good faith efforts to comply. [Brouillette
20 Decl., ¶ 31.]

22 For the rest break claim, Plaintiffs similarly argued that Defendant frequently provided
23 non-compliant rest breaks, as the Class Members often had to skip rest breaks or received
24 shortened rest breaks due to the hectic nature of the work. As with meal breaks, Defendant argued
25 its rest break policies complied with California law and that it authorized and permitted employees
26 to take all required rest breaks, and again that individualized issues would predominate in
27 determining why a rest break allegedly was missed or non-compliant. [Brouillette Decl., ¶ 32.]
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1 On the expense reimbursement claim, Plaintiffs allege that use of personal cellular phones
2 was necessary and consequential to employment with Defendant, and that Defendant did not
3 reimburse employees for the cost associated with the use of the personal cellular phones for
4 Defendant's benefit. Cochran v. Schwan's Home Serv. (2014) 228 Cal.App.4th 1137, 1144. In
5 response, Save Mart argued it provided employees with cell phones to the extent those employees
6 needed one to perform their job duties. Otherwise, per Save Mart, to the extent employees used
7 their own phones, it was purely for personal convenience, was not necessary to their employment,
8 and therefore was not reimbursable. Defendant also emphasized resolution of the underlying
9 liability issues relating to the reimbursement claim would also require a slew of individualized
10 inquiries. It would require the Court to determine, inter alia, whether business expenses were
11 incurred, whether the expenses were "reasonable" and "necessary," whether Save Mart had actual
12 or constructive knowledge of any unreimbursed business expenses, and so on. [Brouillette Decl.,
13 ¶ 33.]

14
15 Plaintiffs also alleged their wage statements did not have a separate line item for the "total
16 wages" for the pay period, resulting in "facial" violations of Labor Code § 226, through the date
17 on which the issue Save Mart remedied the issue in May 2023. In response, Save Mart argued
18 employees were easily able to use simple math to add up the hours reflected on the wage statements
19 to determine the total number of hours they worked during the pay period, thus precluding liability.
20 *See, e.g., Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2018) 319 F.Supp.3d 1180, 1190 ("a wage
21 statement does not violate § 226(a) if a plaintiff employee can ascertain the required information
22 by performing simple math, using figures on the face of the wage statement") (internal quotation
23 omitted), *rev'd on other grounds*. Save Mart also argued it fixed this technical issue no later than
24 May 2023 and, notwithstanding these alleged violations, had a good faith belief that it was not
25 violating section 226. Per Save Mart, this would preclude a finding of a knowing and intentional
26 violation" and thus the imposition of penalties for inaccurate wage statements. Naranjo v.
27 Spectrum Sec. Servs., Inc., (2023) 88 Cal App.5th 937. [Brouillette Decl., ¶ 34.]
28

1 Finally, Plaintiffs also alleged derivative claims under Labor Code § 226 (alleged
2 inaccurate wage statement violations) and §§ 201-203 (waiting time penalties). These claims are
3 based on the unpaid wage claims and break violations, and will rise or fall along with those primary
4 claims, in addition to being subject to “good faith” and other defenses available to Defendant. E.g.,
5 Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not
6 willfully fail to pay wages under Labor Code § 203 even though the class prevailed on the merits
7 on the underlying claim for failing to pay living wages). Defendant argued further that the wage
8 statements accurately contained all required information, and that acted in good faith all times with
9 respect to payment of wages. Accordingly, Plaintiffs discounted the derivative claims significantly
10 in light of these multiple potential defenses. [Brouillette Decl., ¶ 35.]

11 As far as potential PAGA liability, the alleged aggrieved employees theoretically are
12 entitled to penalties totaling over \$360 million should Plaintiffs prevail on all claims, establish
13 violations of the multiple Labor Code sections at issue, and secure the maximum penalty on all
14 issues as to each and every pay period. [Brouillette Decl., ¶ 36.] As with the class claims, Plaintiffs
15 discounted the potential PAGA penalties based on Defendant’s various defenses on the merits and
16 also accounted for the Court’s wide discretion to reduce such penalties, or to decline to award
17 penalties at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th
18 504 (trial court awarded penalties of \$5 per pay period after a bench trial, which decision was
19 upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S.
20 Dist. LEXIS 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated
21 \$200,000 to PAGA penalties.

22 Plaintiffs submit this amount is reasonable under the circumstances and in line with
23 comparable settlements in other wage and hour class actions in California. E.g., Van Kempen v.
24 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
25 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
26 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
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(finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement.

Thus, Defendant raised various defenses to each of Plaintiffs' claims, any one of which, if successful, could have decimated Plaintiffs' case. Accordingly, Plaintiffs faced risky issues going forward with this litigation, and given the need to secure class certification, try the case, and deal with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiffs and counsel discounted the value of the class claims consistent with the risks discussed above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued. Plaintiffs and counsel concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class. The overall \$5,600,000 recovery represents a significant percentage of Defendant's potential exposure, and given these risks discussed above a total recovery for the class of \$5,600,000, with an average award of some \$132 per class member, is a fair result within the range of reasonableness considering all potential outcomes. [Brouillette Decl., ¶¶ 37-38.]

Importantly, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement process...even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"); 7-Eleven Owners for Fair Franchising v.

1 Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that a proposed settlement may
2 amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed
3 settlement is grossly inadequate and should be disapproved”); White v. Experian Information
4 Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was
5 not fair and reasonable even though it represented 99% discount off the maximum value of the
6 claims); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a
7 settlement is fundamentally fair . . . is different from the question whether the settlement is perfect
8 in the estimation of the reviewing court”). Importantly as well, the proposed settlement is non-
9 reversionary and will provide immediate benefits to the Class Members without a claims process.
10 White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A
11 Pocket Guide for Judges (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
12 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
13 claims process may indicate lack of fairness). Plaintiffs and their counsel submit the settlement is
14 within the “range of reasonableness,” and is fair and adequate for the Class.

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1 **V. CONCLUSION**

2 For all the foregoing reasons, Plaintiffs respectfully request that the Court grant this
3 motion, conditionally certify the settlement class, grant preliminary approval to the proposed class
4 action settlement, and enter the [Proposed] Order filed herewith.
5

6 Dated: January 29, 2025

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