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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

**DECLARATION OF BRANDON
BROUILLETTE IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: March 25, 26, 27, April 1, 2
Time: 9:00AM
Dept.: 10D

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I, BRANDON BROUILLETTE, declare:

2. I am unaware of any other pending lawsuits that overlap with this matter in any way, including the claims alleged or the time period and aggrieved employees covered, except for the other 3 matters filed by Plaintiffs McGehee, Johnson, and Quevedo, which are being resolved as part of this settlement.

BACKGROUND/LITIGATION HISTORY

5. Plaintiffs allege Save Mart violated California wage and hour law in several respects. First, they allege a failure to pay all minimum and overtime wages as Plaintiffs claim class members regularly performed “off the clock” work, both before and after the start of their shifts, in donning and doffing gear, finishing up their daily tasks, etc. Next, Plaintiffs allege Save

1 Mart also failed to provide compliant meal periods as meal periods frequently were not fully
2 compliant due to job demands. Plaintiffs also allege Defendant failed to provide legally compliant
3 rest periods, as rest periods were oftentimes interrupted or late. They further claim Defendant did
4 not reimburse business expenses incurred by Class Members for the use of their personal cellular
5 phones. Lastly, they allege Defendant failed to provide accurate, itemized wage statements and
6 failed to pay all wages owed upon the separation of employment.

7 6. Based on these general allegations, Plaintiffs filed several class action and PAGA
8 complaints against Defendant. Plaintiff Goodwin filed the first complaint on March 2, 2023,
9 alleging: (1) recovery of unpaid minimum wages and liquidated damages (Labor Code §§ 1194,
10 1197, 1197.1); (2) recovery of unpaid overtime wages (Labor Code § 510); (3) failure to provide
11 meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 512); (4) failure to provide
12 rest periods or compensation in lieu thereof (Labor Code §§ 226.7, 512); (5) failure to furnish
13 accurate itemized wage statements; (6) failure to timely pay all wages due upon separation of
14 employment (Labor Code § 203); (7) failure to pay reporting time wages; (8) failure to reimburse
15 business expenses (Labor Code § 2802); (9) unfair competition; and (10) violation of the California
16 Private Attorneys General Act of 2004 (“PAGA”).

17 7. Thereafter, on May 22, July 10, 2023, and November 27, 2023, Mr. McGehee, Mr.
18 Johnson, and Mr. Quevedo filed their complaints in Sonoma County Superior Court and Contra
19 Costa Superior Court, respectively, alleging substantially the same causes of action that Goodwin
20 has asserted.

21 8. Save Mart has at all times denied Plaintiffs’ collective allegations and maintained
22 its meal and rest break and payroll policies and procedures comply with California law, and that it
23 provided the class members with the opportunity to take all required meal and rest breaks.
24 Additionally, Save Mart contends its timekeeping and payroll policies accurately track and pay for
25 all hours worked by its employees and at the correct rates of pay. It also strongly contends the case
26 cannot be maintained as any kind of class or representative action, arguing for example that to the
27 extent class members missed meal and/or rest breaks, or that such breaks were non-compliant, it
28 was intermittent and infrequent and evidence of such missed breaks would be purely anecdotal,

1 and therefore individualized issues predominate and trial on a representative basis would be
2 unmanageable.

3 9. Since Plaintiffs filed their respective complaints, the Parties engaged in formal
4 discovery, and after various meet and confer discussions regarding discovery, law and motion and
5 case management, ultimately agreed to attempt a global mediation. The Parties further agreed to
6 extensive informal discovery to facilitate an exchange of information necessary to engage in a
7 meaningful mediation. Consequently, Plaintiffs' counsel reviewed payroll records, personnel
8 policies/handbooks, meal and rest break policies, personnel files, and a random of sampling
9 paystubs and time records for more than 500 class members. Defendant also provided documents
10 reflecting its wage and hour policies and practices, and data regarding the total number of current
11 and former employees, the estimated total amount of workweeks and pay periods they worked,
12 and average hourly pay rates, among other relevant data. Plaintiffs had that information reviewed
13 and analyzed by Berger Consulting Group to assist with evaluating things such as time allegedly
14 lost to due rounding, meal period violation rates, etc., and to prepare a damages model.

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

23 11. Finally, in order to effectuate the settlement of all pending matters on a global basis,
24 the Parties agreed to stipulate the filing of a Third Amended Complaint in this matter, which TAC
25 incorporates all Plaintiffs and claims alleged in the matters identified above, and Plaintiffs Johnson
26 and Quevedo will dismiss their respective actions. The TAC was filed on January 16, 2025.

27 **THE PROPOSED SETTLEMENT TERMS**
28

1 12. Under the settlement, Save Mart will pay \$5,600,000 into a common fund, the
2 Gross Settlement Amount. Reasonable attorney's fees of up to \$1,866,666.67 (1/3 of the GSA),
3 litigation costs of up to \$20,000, modest enhancement awards to Plaintiffs of up to \$10,000 each
4 (\$40,000 in total), settlement administration costs of no more than \$109,990, and \$200,000 for
5 civil penalties under PAGA (of which 75%, or \$150,000, will go to the Labor & Workforce
6 Development Agency, and 25%, or \$50,000 will go to the PAGA Members) all will be paid from
7 the Gross Settlement Amount. The remainder of approximately \$3,333,343.33 will be allocated
8 among the Participating Class Members based on their total pay periods worked during the Class
9 Period. No portion of the Gross Settlement Amount will revert to Save Mart.

10 13. The settlement provides for conditional certification of a settlement class including
11 all current or former hourly-paid or non-exempt employees employed by the Defendant in the State
12 of California during the Class Period of July 1, 2021 through the earlier of of the date of
13 preliminary approval, or the date the number of workweeks during the Class Period is 10 percent
14 more than 1,600,000 work weeks. The Settlement Class consists of at least 25,288 individuals.¹

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

23 15. Each Participating Class Member will receive a share of the Net Settlement Amount
24 based on his or her total weeks worked for Save Mart during the Class Period while employed in
25

26
27 ¹ The "PAGA Members" for purposes of PAGA include all persons who are or were previously employed
28 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 a non-exempt position. Thus, each Class Member's Individual Settlement Payment will be
2 calculated using criteria typically used in determining appropriate amounts of alleged unpaid
3 wages, unpaid premium wages for missed meal and rest breaks, unreimbursed expenses, and
4 potential statutory penalties under applicable law. These methods are intended to ensure each Class
5 Member receives a portion of the available settlement funds corresponding to the relative value of
6 his or her potential claims. The proposed allocation provides a reasonable way to compensate Class
7 Members based on the amount of time they worked for Save Mart and the number of instances
8 they missed a meal break and/or rest break, were not provided compensation in lieu of such missed
9 breaks, or lost pay due to the alleged off the clock work. I estimate the average net class settlement
10 award will be approximately \$131.81, and the average net PAGA award will be about \$1.98.

11 16. Subject to the Court's approval the Parties agreed on APEX Class Action
12 Administration as the Settlement Administrator ("APEX"). APEX is qualified and has significant
13 experience administering class action settlements, including numerous wage and hour matters.
14 APEX has agreed to cap its fees and costs at \$109,900.00. If the Court approves less than the
15 above amount, the difference will remain in the Net Settlement Amount for distribution to the
16 Participating Class Members.

17 17. The proposed Notice sets out information about this case and explains the basic
18 settlement terms in plain language, and meets all requirements under California Rules of Court
19 3.769(f) and 3.766(d). The Notice also sets forth the individualized information used to calculate
20 Individual Settlement Payments and each Class Member's estimated settlement award. The Notice
21 likewise details the procedures for Class Members to dispute their individual information, for
22 submitting an objection to the Settlement, and to request exclusion. In sum, the Notice provides
23 the Class Members with the information necessary to evaluate the Settlement and provides fair
24 opportunity to participate in, opt out of, or object to the proposed Settlement. Coupled with the
25 notice procedure, the proposed Notice provides the Class with the best notice practicable.

26 18. Class Members will have 45 days to dispute the information in their Notice used to
27 calculate their settlement award, and also have 45 days to submit any objections to the settlement
28 or to request exclusion. In the event a Class Member disputes their individual information, the

1 Settlement Administrator will review the Class Member's records as well as any additional
2 information submitted, and make a final determination.

3 19. All Participating Class Members will release Save Mart from all claims alleged in
4 the operative complaint, or that could have been brought based on the factual allegations in the
5 operative complaint during the Class Period. Plaintiffs and the LWDA will release those PAGA
6 claims alleged in the PAGA notice to the extent alleged in the operative complaint. The Class and
7 PAGA releases are limited to the claims that were actually pleaded or could have been pleaded
8 based on the alleged facts in the operative complaint, and PAGA notice for the PAGA claims.
9 Only Plaintiffs are entering into a full general release of all claims and waiver of Civil Code section
10 1542.

11 20. The settlement provides Defendant will not oppose a request for attorney's fees not
12 to 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 \$50,000. Defendant also will not oppose a
14 request for an enhancement award to Plaintiffs of not more than \$10,000.00 each (\$40,000 total)
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 claims, as
17 set forth in their respective declarations filed herewith. Plaintiffs' counsel will provide the Court
18 with appropriate summaries and evidence of their efforts and time records in anticipation of the
19 Final Approval Hearing, and Plaintiffs have submitted their respective declarations herewith. If
20 the Court approves less than the above amounts, the difference will remain in the Net Settlement
21 Amount for distribution to the Participating Class Members.

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

27 **The Proposed Settlement Class Should Be Conditionally Certified**
28

1 22. In the present matter, conditional certification is proper since this matter satisfies
2 all requirements for class certification under Code of Civil Procedure section 382. First, the class
3 is both sufficiently numerous, consisting of approximately 25,288 individuals, and ascertainable
4 by reference to Defendant's personnel and payroll records.

5 23. Plaintiffs all are adequate class representatives, as their claims do not conflict with
6 and are not antagonistic to the claims of other class members. Further, their claims are typical
7 given each is a member of the class and their claims arise from the same employment practices
8 and course of conduct giving rise to the claims of the other class members.

9 24. Common questions of law and fact predominate – particularly for purposes of a
10 settlement class – as the Class Members all were subject to the same meal and rest break policy,
11 and likewise were subject to the same time rounding policies. Since the focus of the claims against
12 Save Mart concerns the legality of common policies applied uniformly to the entire class, common
13 issues predominate over individualized inquiries concerning liability. For instance, Save Mart's
14 meal and rest break policy is company-wide policy applied equally and consistently to all class
15 members, and this policy is either compliant with California law or it is not. Regardless of that
16 determination, it will decide liability for all class members one way or another. Similarly, whether
17 Save Mart's wage statements violated Labor Code § 226 by failing to list total hours worked in
18 the wage statements raises another question common to the whole class.

19 25. Resolving this matter as a class action is superior to other available means for the
20 fair and efficient adjudication of this controversy for multiple reasons, including inter alia: (a)
21 individual joinder of all members of the class is impractical, (b) class action treatment will
22 permit a large number of similarly situated persons to resolve their common claims in a single
23 forum simultaneously, efficiently, and without unnecessary duplication of effort and expense;
24 and (c) the damages suffered by many of the individual class members are relatively small and
25 the expenses and burden of individual litigation would make it difficult or impossible for them to
26 seek redress on their own.
27
28

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

10 27. Using the data obtained from Defendant and with their experts' assistance,
11 Plaintiffs ran various calculations and estimated Save Mart's likely maximum exposure on the
12 class claims at approximately **\$238** million, including about \$7,562,800 on the unpaid wage/off
13 the clock claim, \$13,325,510 on the meal break claims, \$34,542,533 on the rest break claims,
14 \$3,576,900 on the unreimbursed expense claim, \$86,527,000 on the wage statement claims, and
15 \$92,342,664 on the waiting time penalty claims.

16 28. We calculated these amounts as follows:

17
18 **Unpaid Wages – Off the Clock**

19 $6,368,675 \text{ shifts} * 5 \text{ min. OTC/shift} * \$14.25/\text{avg. min. wage} = \$7,562,800$

20 **Meal Break Violations**

21 $642,900 \text{ unique violations} * \$21.90/\text{avg. regular rate of pay} = \$14,079,570 - \$754,000 \text{ premiums}$
22 $\text{paid} = \$13,325,510$

23 **Rest Break Violations**

24 $1,538,723 \text{ unique violations (est. 25\% violation rate)} * \$21.90/\text{avg. regular rate of pay} =$
25 $\$34,683,533 - \$141,000 \text{ premiums paid} = \$34,542,533$

26 **Expense Reimbursement**

27 $1,430,760 \text{ work weeks} * 50\% \text{ violation rate (est.)} * \$5/\text{week} = \$3,576,900$

28 **Wage Statement Violations**

21,643 employees * \$4,000 per employee cap = \$86,527,000

Waiting Time Penalties

17,569 former employees * (240 hours * \$21.90/avg. regular rate of pay) = \$92,342,664

29. First, on their unpaid wage claims, Plaintiffs alleges employees frequently had to work off the clock, including working while purportedly clock out on meal breaks and performing pre- and post-shift work before clocking in or after clocking out. As a result, Plaintiffs allege they and the class members lost as much as 60 minutes of compensable time each week due to this off the clock work. In response, Defendant argued its timekeeping and payroll policies accurately tracked and paid for all employee time. It also argued that its policies forbade any “off the clock” work and that employees were trained and reminded that they should not be working off the clock. Accordingly, per Defendant, if any off the clock work occurred, it was intermittent and infrequent, against company policy, and done without the employer’s knowledge or consent. For these reasons, per Save Mart, class certification of this issue would be impossible because innumerable individual inquires would be required to determine whether any compensable “off the clock” work occurred.

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

31. In response, Defendant argued its break policies were fully compliant with California law, and that it provided all required meal periods and thereby met its obligations under the Labor Code and applicable Wage Orders and under Brinker Restaurant Corp. v. Superior Court

(2012) 53 Cal.4th 1004, 1017. Further, Defendant argued to the extent employees missed a break or took a non-compliant break, any such discrepancies were aberrational and against company policy and a myriad of individual issues would be required to determine whether the potential violation resulted from employee choice or some other reason. Consequently, per Defendant, individualized inquiries would dominate on this issue and render class certification inappropriate. Defendant also emphasized it paid thousands of dollars in meal premiums for documented alleged violations in its good faith efforts to comply.

32. For the rest break claim, Plaintiffs similarly argued that Defendant frequently provided non-compliant rest breaks, as the Class Members often had to skip rest breaks or received shortened rest breaks due to the hectic nature of the work. As with meal breaks, Defendant argued its rest break policies complied with California law and that it authorized and permitted employees to take all required rest breaks, and again that individualized issues would predominate in determining why a rest break allegedly was missed or non-compliant.

33. On the expense reimbursement claim, Plaintiffs allege that use of personal cellular phones was necessary and consequential to their employment with Defendant, and that Defendant did not reimburse employees for the cost associated with the use of the personal cellular phones for Defendant's benefit. In response, Save Mart argued it provided employees with cell phones to the extent those employees needed one to perform their job duties. Otherwise, per Save Mart to the extent employees used their own phones, it was purely for personal convenience, was not necessary to their employment, and therefore was not reimbursable. Defendant also emphasized resolution of the underlying liability issues relating to the reimbursement claim would also require a slew of individualized inquiries. It would require the Court to determine, inter alia, whether business expenses were incurred; whether the expenses were "reasonable" and "necessary," whether Save Mart had actual or constructive knowledge of any unreimbursed business expenses, and so on.

34. Plaintiffs also alleged their wage statements did not have a separate line item for the "total wages" for the pay period, resulting in "facial" violations of Labor Code § 226. In

1 response, Save Mart argued employees are easily able to use simple math to add up the hours
2 reflected on the wage statements to determine the total number of hours they worked during the
3 pay period, thus precluding liability. Save Mart also noted it fixed this technical issue no later than
4 May 2023 and, notwithstanding these alleged violations, had a good faith belief an employer's
5 good faith belief that it wasn't violating section 226. If so, this would preclude a finding of a
6 knowing and intentional violation" and thus the imposition of penalties for inaccurate wage
7 statements.

8 35. Finally, Plaintiffs also alleged derivative claims under Labor Code § 226 (alleged
9 inaccurate wage statement violations) and §§ 201-203 (waiting time penalties). These claims are
10 based on the unpaid wage claims and break violations, and will rise or fall along with those primary
11 claims, in addition to being subject to "good faith" and other defenses available to Defendant.
12 Defendant argued further that the wage statements accurately contained all required information,
13 and that acted in good faith all times with respect to payment of wages. Accordingly, Plaintiffs
14 discounted the derivative claims significantly in light of these multiple potential defenses.

15 36. As far as potential PAGA liability, the alleged aggrieved employees theoretically
16 are entitled to civil penalties totaling over \$360 million should Plaintiffs prevail on all claims,
17 establish violations of the multiple Labor Code sections at issue, and secure the maximum penalty
18 on all issues as to each and every pay period. As with the class claims, Plaintiffs discounted the
19 potential PAGA penalties based on Defendant's various defenses on the merits and also accounted
20 for the Court's wide discretion to reduce such penalties, or to decline to award penalties at all.
21 Accordingly, the Parties allocated \$200,000 to PAGA penalties. Plaintiffs submit this amount is
22 reasonable under the circumstances and in line with comparable settlements in other wage and
23 hour class actions in California. Additionally, the LWDA has been informed of the terms of the
24 PAGA portion of the settlement, and will be able to weigh in as necessary.

25 37. The settlement obviates the significant risk that this Court may find any kind of
26 class resolution unachievable or might deny certification of all or some of Plaintiffs' claims.
27 Furthermore, even if Plaintiffs obtained certification of all or some of the claims, continued
28

1 litigation would be expensive as the parties pursued merits discovery, a probable motion to
2 decertify, as well as trial and possible appeals, and would substantially delay any recovery by the
3 class with no assurance of recovering significantly more than the proposed settlement. Overall,
4 while Plaintiffs are confident in the merits of their claims, a legitimate controversy exists as to
5 each cause of action. Plaintiffs also recognize proving the amount of wages and penalties due each
6 Class Member would be an expensive and uncertain proposition.

7 38. Plaintiffs and counsel discounted the value of the class claims consistent with the
8 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
9 greater benefit if the litigation continued. Plaintiffs and counsel concluded – in light of these
10 very real and substantial risks – settlement on the proposed terms and without prolonged and
11 costly litigation was in the best interests of the class. The overall \$5,600,000 recovery represents
12 a significant percentage of Defendant’s potential exposure and, given the risks addressed above,
13 a total recovery for the class of \$5,600,000, which will result in average award of some \$131.81
14 per class member, is a significant result well within the range of reasonableness considering all
15 potential outcomes, and it will provide direct monetary awards to all Class Members without
16 further delay.

17
18 39. I am a graduate of Loyola Law School, Los Angeles, from which I received a
19 *juris doctorate* degree in 2009. Prior to attending law school, I attended the University of
20 Southern California, from which I received a *bachelors of science* in Business Administration in
21 2006.

22 40. I have been a Partner at Crosner Legal since February 1, 2023. Prior to joining
23 Crosner Legal, I was a Senior Associate and Team Director of a Wage and Hour Litigation Team
24 at Capstone Law APC, which I originally joined as an associate attorney in May 2016.

25 41. Since being admitted to the California State Bar in 2010, my entire legal career
26 has been dedicated to protecting employee and consumer rights through the prosecution of class
27 action and representative actions filed on behalf of plaintiffs in class actions and statewide
28 representative actions. Throughout my career I have managed or co-managed more than 100

1 class action and PAGA representative cases, from initial filing of the complaint through final
2 resolution.

3 42. In particular, I have served as class counsel in several certified class action cases,
4 including:

- 5 a. *Party City Wage and Hour Cases*, JCCP4781 (class counsel for certified class of non-
6 exempt hourly employees who worked for Defendants in California)
- 7 b. *Lewis v. Express Messenger Systems*, Los Angeles Superior Court Case No.
8 BC501521 (class counsel for certified class of last-mile delivery drivers who were
9 alleged to be misclassified as independent contractors)
- 10 c. *Ramirez-Vivar v. Grifols Diagnostic Solutions, Inc., et al.*, Alameda County Superior
11 Court, Case No. RG21099519 (class counsel for certified classes of non-exempt
12 hourly employees who worked for Defendants in California)
- 13 d. *Jones v. LA Live*, Los Angeles County Case No. BC687908 (class counsel for
14 certified issue classes consisting of hourly employees who worked at Staples Center
15 and Nokia Theater)

16
17 43. The following is a representative sample of settlements in wage and hour class
18 action and PAGA representative cases in which I was listed as an attorney of record and either
19 managed, or co-managed with attorneys at my firm and other co-counsel:

- 20 e. *Cruz v. Walmart*, Los Angeles County Super. Ct. Case No. 18STCV03128 (\$15
21 million global PAGA settlement on behalf of hourly employees statewide for alleged
22 Labor Code violations.)
- 23 f. *Vorise v. 24 Hour Fitness USA, Inc.*, Contra Costa County Super. Ct., Case No. C 15-
24 02051 (\$11 million global PAGA settlement on behalf of over 36,000 employees for
25 Labor Code violations.)
- 26 g. *Gross v. Sodexo*, Kern County Super Ct., Case No. BCV-18-101746 Capstone (\$4.75
27 million class and PAGA settlement on behalf of class of non-hourly employees for
28 Labor Code violations.)

- 1 h. *Campbell v. AEG* (\$1.8M class and PAGA settlement on behalf of group of hourly
2 employees who worked at concert venues in California for alleged Labor Code
3 violations)
- 4 i. *Fiebelkorn v. AEG, et al.* Los Angeles Superior Court Case No. BC717337 (\$1.75M
5 class settlement on behalf of group of hourly employees who worked at Oakland
6 Coliseum for alleged Labor Code violations)
- 7 j. *Amaro v. Anaheim Arena Management*, Orange County Superior Court Case No. 30-
8 2017-00917542 (\$2,212,500 class and PAGA settlement on behalf of group of hourly
9 employees who worked at Honda center in Anaheim California for alleged Labor
10 Code violations)
- 11 k. *Espindola v. Panda Express*, San Bernardino Superior Court Case No.
12 CIVDS1931455 (\$3.125M class and PAGA settlement on behalf of hourly employees
13 statewide for alleged Labor Code violations)
- 14 l. *Gold v. Benihana*, San Diego Court Superior Court Case No. 37-2016-00022320-CU-
15 OE-NC (\$2.25M class and PAGA settlement on behalf of hourly employees statewide
16 for alleged Labor Code violations)
- 17 m. *Party City Wage and Hour Cases*, JCCP4781 (\$6.5M class and PAGA settlement on
18 behalf of hourly employees statewide for alleged Labor Code violations)
- 19 n. *Lewis v. Express Messenger Systems*, Los Angeles County Super Court Case No.
20 BC501521 (\$10.5M class and PAGA settlement on behalf of a statewide group of
21 independent contractor last-mile delivery drivers alleged to be misclassified)
- 22 o. *Flores v. Tesla*, Alameda County Superior Court Case No. RG18907072 (\$4M class
23 and PAGA settlement on behalf of statewide group of hourly employees for alleged
24 Labor Code violations)
- 25 p. *Ruiz v. Disney Stores*, San Bernardino Superior Court Case No. CIVDS2016983
26 (\$2M class and PAGA settlement on behalf of statewide group of hourly employees
27 who worked at retail stores in California for alleged Labor Code violations)
28

- 1 q. *Ramirez v. Yin Management*, Sacramento County Superior Court Case No. 34-2021-
2 00301530 (\$1.8M class and PAGA settlement on behalf of statewide group of hourly
3 employees who worked at Defendant's McDonald's franchises in California for
4 alleged Labor Code violations).
- 5 r. *Suhartono v. RRG Besh*, Los Angeles County Superior Court Case No.
6 19STCV22184 (\$2.25 class and PAGA settlement on behalf of statewide group of
7 hourly employees who worked at Defendant's McDonald's franchises in California
8 for alleged Labor Code violations).
- 9 s. *Gomes v. Kura Sushi*, Los Angeles County Superior Court Case No. 19STCV18977
10 (\$1.75M class and PAGA settlement on behalf of statewide group of hourly
11 employees who worked at Defendant's restaurants in California for alleged Labor
12 Code violations)
- 13 t. *Saldana v. Hydrochem*, Contra Costa Superior Court Case No. CIVMSC19-02624
14 (\$1.38M class and PAGA settlement on behalf of statewide group of hourly
15 employees for alleged Labor Code violations).
- 16
- 17 44. In addition, below are settlements in consumer class action cases in which I was
18 listed as an attorney of record and either managed, or co-managed with attorneys at my firm:
- 19 u. *Lopez v. Seterus, et al.*, Los Angeles Superior Court Case No. BC484297 (\$3M Class
20 settlement on half of thousands of borrowers in California, Florida, and Texas for
21 UCL violations premised on improper late fee collections)
- 22 v. *McGill v. Citibank*, Riverside County Superior Court Case No. RIC 1109398 (in
23 landmark case that established the 'McGill rule' precluding the waiver of public
24 injunctive relief in pre-dispute arbitration agreements, negotiated confidential
25 settlement on behalf of consumer who sued for damages and class injunctive relief
26 stemming from marketing of credit protector plan)
- 27
- 28 45. Finally, I have been selected by my peers as a Super Lawyers 'Rising Star' every
year since 2016 through 2022, which is a recognition that is provided to only 2.5% of active

1 lawyers practicing within the State of California

2 46. Zachary Crosner is a 2010 graduate of University of San Diego School of Law. He
3 has some thirteen years of experience as a practicing attorney, all of which have focused on
4 litigation of employment, labor law, consumer, and class action claims. Following graduation, he
5 immediately began working for a nationally recognized plaintiff-side complex litigation firm,
6 CaseyGerry, where he had the fortune of working directly with past presidents of the consumer
7 attorneys and recipients of trial attorneys of the year awards. He also worked for former CAALA
8 and CLAY trial attorney of the year recipient, attorney Conal Doyle, as his sole associate attorney.
9 During his tenure at these firms, he focused on advocating for the rights of consumers and
10 employees in class action litigation, civil rights and employment litigation, catastrophic injuries,
11 insurance bad faith, and appellate litigation.

12 47. In 2013, he founded the law firm of Crosner Legal, P.C., which since its inception
13 has focused almost exclusively on wage and hour class actions and other labor and employment
14 law cases representing plaintiffs. Currently, over ninety percent (90%) of the firm's practice is
15 dedicated exclusively to the prosecution of wage and hour class actions, and the law firm is
16 currently responsible as lead counsel or co-lead counsel for prosecuting well over fifty (50) wage
17 and hour class actions and/or PAGA representative actions in both federal and state courts
18 throughout California.

19 48. Mr. Crosner currently is an executive board member of the Wage and Hour
20 Committee and the Legislative Committee for the California Employment Lawyers Association; a
21 member of the Grassroots Advocacy Team for the National Employment Lawyers Association;
22 Wage and Hour Committee member and Class Action Committee member for the National Trial
23 Lawyers; a member of the American Association for Justice; and a member of the Pound Civil
24 Justice Institute. He also was selected by Super Lawyers as a "Southern California Rising Star"
25 for employment and labor law for 2018-2020.

26 49. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class
27 action settlements while serving as lead class counsel in recent years, including but not limited to
28

1 a \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America,*
2 *Inc.*, Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action
3 settlement in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252
4 (Sacramento Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017
5 (*Montelone v. Ocean Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a
6 \$1.8 million wage and hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc.*
7 *dba American Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and
8 hour class action settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160
9 JGB (C.D. Cal.)), a \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham*
10 *Vacation Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15 million
11 wage and hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-
12 CV-04864-YGR (N.D.Cal.)); a \$2.2 million wage and hour class action settlement in 2021
13 (*Ghorchian, et al. v. West Hills Hospital, et al.*, Case No. LS029737 (Los Angeles Cty. Super.
14 Ct.)); a \$2.85 million dollar wage and hour settlement in 2021 (*Valencia v. The Original*
15 *Mowbray's Tree Service, Inc.*, Case No. CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1
16 million wage and hour class action settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No.
17 21CV382467 (Santa Clara Cty. Super. Ct.)), a \$1.4 million wage and hour class action settlement
18 in 2023 in *Correa, et al. v. FedEx Supply Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino
19 Cty. Super. Ct.), a \$2.38 million wage and hour class action settlement in 2023 in *Michel, et al. v.*
20 *Valley Thrift Store, Inc.*, Case No. 21STCV00925 (Los Angeles Cty. Super. Ct.); and a \$2.5 million
21 wage and hour class action settlement in 2023 in *Jajuga v. Pilot Travel Centers*, Case No.
22 CIVDS1931464 (San Bernardino Cty. Super. Ct.).
23

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1 50. For all the foregoing reasons, I respectfully request the Court grant preliminary
2 approval to the proposed settlement in all particulars.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing is
4 true and correct. Executed this 30th day of January, at Los Angeles, California.

5
6 
7 _____
Declarant

EXHIBIT

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

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

Plaintiff,

vs.

SAVE MART SUPERMARKETS, LLC, and
DOES 1 through 100, inclusive,

Defendants.

Case No.: STK-CV-UOE-2023-2062

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

1 although Class Counsel reserve the right to appeal an award of attorneys' fees that is less than one-third
2 of the Gross Settlement Amount.

3 3. "Class Counsel" means Crosner Legal, PC, James Hawkins, APLC, Blumenthal
4 Nordehaug Bhowmik De Blouw LLP, and Haines Law Group, APC.

5 4. "Class List" means a complete list of all Class Members that Defendant will diligently
6 and in good faith compile from its records and provide to the Settlement Administrator within twenty
7 (20) calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in
8 Microsoft Office Excel and will include each Class Member's full name; most recent mailing address
9 and telephone number; Social Security number; dates of employment; the respective number of
10 Workweeks that each Class Member worked during the Class Period and PAGA Period; and any other
11 relevant information needed to calculate settlement payments.

12 5. "Class Member(s)" or "Settlement Class" means all current or former hourly-paid or
13 non-exempt employees employed by the Defendant in the State of California during the Class Period.

14 6. "Class Period" means the period from July 1, 2021 through the earlier of of the date the
15 Court preliminarily approves the Settlement Agreement, or the date the number of workweeks during the
16 Class Period is 10 percent more than 1,600,000 work weeks.

17 7. "Class Representative Enhancement Payment" means the amount to be paid to Plaintiffs
18 in recognition of their effort and work in prosecuting the Action on behalf of Class Members, and for
19 their general release of any and all claims. Subject to the Court granting final approval of this Settlement
20 Agreement and subject to the exhaustion of any and all appeals, Plaintiffs will request Court approval of
21 a Class Representative Enhancement Payment of up to Ten Thousand Dollars (\$10,000) to be paid out of
22 the Gross Settlement Amount for each Plaintiff. An award of less than the requested amount will not
23 give rise to a basis to abrogate the Settlement Agreement. Further, an award of less than the requested
24 amount will not give rise to a basis to abrogate the general release executed by Plaintiff.

25 8. "Court" means the San Joaquin County Superior Court.

26 9. "Defendant" means Defendant Save Mart Supermarkets LLC.

27 10. "Effective Date" means the later of the following have occurred: (a) approval of the
28 Settlement is granted by the Court, or other court assuming jurisdiction of the Action, and (b) the Court's

Judgment approving the Settlement becomes Final. “Final” means the latest of: (a) if there is an appeal of the Court’s Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for review to the California Supreme Court, or, (b) if a petition for review is filed, the date of the California Supreme Court denies the petition for review or decides not to respond and take no action, or the date the Judgment is affirmed pursuant to such petition; or (c) if no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Judgment.

11. “Final Approval” means the date on which the Court enters an order granting final approval of the Settlement Agreement.

12. “Gross Settlement Amount” means the maximum Gross Settlement Amount of Five Million Six Hundred Thousand Dollars (\$5,600,000.00) that Defendant may be obligated to make in connection with the Settlement Agreement, except as provided for herein, and will be paid by Defendant in full satisfaction of all Released Class Claims and Released PAGA Claims, which includes all Individual Settlement Payments, Attorneys’ Fees and Costs, the Class Representative Enhancement Payment, the PAGA Settlement Amount, and Settlement Administration Costs. This Gross Settlement Amount has been agreed to by Plaintiff and Defendant based on the aggregation of the agreed-upon settlement value of individual claims. In no event will Defendant be liable for more than the Gross Settlement Amount except as otherwise explicitly set forth herein. There will be no reversion of the Gross Settlement Amount to Defendant. Defendant will pay any employer-side payroll taxes owing on the portion of the Gross Settlement Amount allocated toward wages on top of and in addition to the Gross Settlement Amount.

13. “Individual Settlement Payment” means each Participating Class Member’s and PAGA Member’s respective shares of the Net Settlement Fund and PAGA Fund.

14. “Net Settlement Fund” means the portion of the Gross Settlement Amount remaining after deducting the Attorneys’ Fees and Costs, the Class Representative Enhancement Payment[s], the PAGA Settlement Amount, and Settlement Administration Costs. The Net Settlement Fund will be distributed to Participating Class Members.

15. “Notice of Objection” means a Class Member’s valid and timely written objection to the

1 Settlement Agreement. For the Notice of Objection to be valid, it must include: (a) the objector's full
2 name, signature, address, and telephone number, (b) a written statement of all grounds for the objection
3 accompanied by any legal support for such objection; (c) copies of any papers, briefs, or other
4 documents upon which the objection is based; and (d) a statement whether the objector intends to appear
5 at the final fairness hearing.

6 16. "Notice Packet" means the Notice of Class Action Settlement, substantially in the form
7 attached as Exhibit A.

8 17. "PAGA Members" means all current or former hourly-paid or non-exempt employees
9 employed by the Defendant in the State of California during the PAGA Period.

10 18. "PAGA Period" means the period from March 2, 2022 through the earlier of the date the
11 Court preliminarily approves the Settlement Agreement, or the date the number of workweeks during the
12 Class Period is 10 percent more than 1,600,000 work weeks.

13 19. "PAGA Settlement Amount" means the amount that the Parties have agreed to pay to
14 the Labor and Workforce Development Agency ("LWDA") and PAGA Members in connection with
15 Plaintiff's claim under the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698,
16 *et seq.*, "PAGA") ("PAGA Settlement"). The Parties have agreed that Two Hundred Thousand Dollars
17 (\$200,000) of the Gross Settlement Amount will be allocated to the PAGA Settlement Amount. Pursuant
18 to PAGA, Seventy-Five Percent (75%), or One Hundred Fifty Thousand Dollars (\$150,000), of the
19 PAGA Settlement Amount will be paid to the California Labor and Workforce Development Agency
20 ("Labor and Workforce Development Agency Payment"), and Twenty-Five Percent (25%), or Fifty
21 Thousand Dollars (\$50,000), of the PAGA Settlement will be disbursed to PAGA Members, and
22 regardless whether they request to be excluded from the Settlement Class.

23 20. "Parties" means Plaintiffs and Defendant collectively.

24 21. "Participating Class Members" means all Class Members who do not submit timely and
25 valid Requests for Exclusion.

26 22. "Plaintiffs" means Plaintiffs Somalia Goodwin, John A. McGehee, Dustin Johnson, and
27 Juan Carlos Quevedo.

28 23. "Preliminary Approval" means the date on which the Court enters an order granting

1 preliminary approval of the Settlement Agreement.

2 24. “Released Class Claims” means all claims, rights, demands, liabilities, and causes of
3 action that were alleged or reasonably could have been raised based on the facts alleged in the operative
4 Complaint during the Class Period, regardless of the theory of recovery, including: (a) all claims for
5 unpaid overtime; (b) all claims for meal or rest break violations; (c) all claims for unpaid wages,
6 including unpaid minimum wages; (d) all claims for the failure to reimburse for necessary business
7 expenses; (e) all claims for unpaid vacation, sick pay, or other paid time off; (f) all claims for unpaid
8 reporting time pay; (g) failure to properly calculate rates of pay for overtime, meal and rest period
9 premiums, paid sick pay or other time off, reporting time pay, or any other pay rate, (h) all claims for the
10 failure to timely pay wages upon termination; (i) all claims for the failure to timely pay wages during
11 employment; (j) all claims for wage statement violations and record-keeping violations; (k) all claims
12 asserted through California Business & Professions Code §§ 17200, et seq. for any of the foregoing
13 alleged violations (l) all claims asserted under the applicable California Industrial Welfare Commission
14 Wage Order, and (m) all penalties, including PAGA penalties, liquidated damages, or interest allegedly
15 due to any of the foregoing alleged violations. Settlement Class Members shall further agree to waive
16 their right to pursue individual lawsuits or arbitrations as to any of the Released Class Claims against the
17 Releasees to the extent such Released Class Claims accrued during the Class Period.

18 25. “Released PAGA Claims” means any and all PAGA claims or causes of action of
19 whatever kind or nature which occurred during the PAGA Period that were alleged, or that reasonably
20 could have been alleged, based on the facts alleged in the Action and Plaintiff’s LWDA letter, regardless
21 of theory of recovery, including but not limited to alleged: (a) unpaid overtime; (b) meal or rest break
22 violations; (c) unpaid wages, including unpaid minimum wages; (d) failure to reimburse for necessary
23 business expenses; (e) unpaid vacation, sick pay, or other paid time off; (f) unpaid reporting time pay; (g)
24 failure to properly calculate rates of pay for overtime, meal and rest period premiums, paid sick pay or
25 other time off, reporting time pay, or any other pay rate, (h) failure to timely pay wages upon
26 termination; (i) failure to timely pay wages during employment; (j) wage statement violations and
27 record-keeping violations; and (k) all claims asserted under a the applicable California Industrial Welfare
28 Commission Wage Orders.

1 26. “Released Parties” means Defendant, its present or former officers, directors, trustees,
2 owners, investors, shareholders, agents, servants, principals, heirs, representatives, accountants, auditors,
3 consultants, insurers, reinsurers, employees, registered representatives, attorneys, and its respective
4 successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, if any.

5 27. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a
6 request to be excluded from the Settlement Class. The Request for Exclusion must: (a) set forth the
7 name, address, telephone number and last four digits of the Social Security Number of the Class
8 Member requesting exclusion; (b) be signed by the Class Member; (c) be returned to the Settlement
9 Administrator; (d) clearly state that the Class Member does not wish to be included in the Settlement;
10 and (e) be postmarked on or before the Response Deadline.

11 28. “Response Deadline” means the deadline by which Class Members must postmark to
12 the Settlement Administrator Requests for Exclusion, postmark disputes concerning the calculation of
13 Individual Settlement Payments, or postmark Notices of Objection to the Settlement Administrator. The
14 Response Deadline will be forty-five (45) calendar days from the initial mailing of the Notice Packet by
15 the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a Sunday or State
16 holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal
17 Service is open.

18 29. “Settlement Administration Costs” means the costs payable from the Gross Settlement
19 Amount to the Settlement Administrator for administering this Settlement, including, but not limited to,
20 printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Gross
21 Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The
22 Settlement Administration Costs will be paid from the Gross Settlement Amount, including, if necessary,
23 any such costs in excess of the amount represented by the Settlement Administrator as being the
24 maximum costs necessary to administer the Settlement. Based on an estimated Settlement Class of
25 approximately 25,288 employees Class Members, the Settlement Administration Costs are currently
26 estimated to be One Hundred Nine Thousand Nine Hundred and Ninety Dollars (\$109,990.00).

27 30. “Settlement Administrator” means APEX Class Action Administration, or any other
28 third-party class action settlement administrator agreed to by the Parties and approved by the Court for

1 the purposes of administering this Settlement. The Parties each represent that they do not have any
2 financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement
3 Administrator that could create a conflict of interest.

4 31. “Workweeks” means the number of workweeks for each Class Member during the
5 Class Period based on Defendant’s payroll records, exclusive of any leave of absence (if any) and any
6 other week in which work was not performed. All Class Members will be credited with at least one
7 Workweek during the Class Period, and all PAGA Members will be credited with at least one
8 Workweek during the PAGA Period.

9 **TERMS OF AGREEMENT**

10 Plaintiffs, on behalf of themselves and the Settlement Class, PAGA Group, and State of
11 California, and Defendant agree as follows:

12 32. Johnson and Quevedo Actions. Plaintiffs Dustin Johnson and Juan Carlos Quevedo have
13 filed separate actions against Defendant, entitled *Dustin Johnson v. Save Mart Supermarkets, LLC*, Case
14 No. SCV-273662, Superior Court for the State of California, County of Sonoma, and *Juan Carlos*
15 *Quevedo v. Save Mart Supermarkets, LLC*, et al., Case No. C23-02995, Superior Court for the State of
16 California, County of Contra Costa. For purposes of this Settlement, the Parties shall execute a
17 stipulation to add Plaintiffs Johnson and Quevedo as parties to the Goodwin Action. Plaintiff Quevedo
18 and Plaintiff Johnson will, within 30 calendar days of the filing of the Amended Complaint in the
19 Goodwin Action, take whatever actions are necessary to cause a dismissal of their above-referenced
20 respective actions without prejudice. Class Counsel shall file all papers required by the Court in support
21 of the requests for dismissal. Defendant’s obligations under this Agreement are contingent on Plaintiffs
22 Johnson and Quevedo dismissing their respective Actions with prejudice.

23 33. Funding of the Gross Settlement Amount. Defendant will make a one-time deposit of
24 the Gross Settlement Amount of Five Million Six Hundred Thousand Dollars (\$5,600,000.00) into a
25 Qualified Settlement Account to be established by the Settlement Administrator. Defendant will
26 separately pay the employer-side payroll taxes owing on the portion of the Gross Settlement Amount
27 allocated toward wages on top of and in addition to the Gross Settlement Amount. After the Effective
28 Date, the Gross Settlement Amount will be used for: (a) Individual Settlement Payments; (b) the Labor

1 and Workforce Development Agency Payment; (c) the Class Representative Enhancement Payment[s];
2 (d) Attorneys' Fees and Costs; and (e) Settlement Administration Costs. Defendant will deposit the
3 Gross Settlement Amount and the payment of employer-side payroll taxes within thirty (30) calendar
4 days after the Effective Date ("Funding Date").

5 34. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application or
6 motion by Class Counsel for Attorneys' Fees and Costs of not more than One Million Eight Hundred
7 Sixty Six Thousand Dollars and Sixty Six Cents (\$1,866,666.66), plus the reimbursement of all out-of-
8 pocket costs and expenses associated with Class Counsel's litigation and settlement of the Action
9 (including expert/consultant fees, investigations costs, etc.), not to exceed Fifty Thousand Dollars
10 (\$50,000), both of which will be paid from the Gross Settlement Amount. The total Attorneys' Fees
11 awarded will be divided among Class Counsel as follows: 46.75% to Crosner Legal, PC, 33.25% to
12 James Hawkins, APLC, 10% to Blumenthal Nordehaug Bhowmik De Blouw LLP, and 10% to Haines
13 Law Group, APC.

14 35. Class Representative Enhancement Payment. In exchange for a general release of all
15 known and unknown claims against Defendant and Released Parties under California Civil Code section
16 1542, and in recognition of his effort and work in prosecuting the Action on behalf of Class Members,
17 Defendant agrees not to oppose or impede any application or motion for a Class Representative
18 Enhancement Payments of up to Ten Thousand Dollars (\$10,000), to each Plaintiff. The Class
19 Representative Enhancement Payment[s] will be paid from the Gross Settlement Amount and will be in
20 addition to each Plaintiffs' Individual Settlement Payment paid pursuant to the Settlement. The Class
21 Representative Enhancement Payment will be designated as a non-wage payment and reported on an
22 IRS Form 1099-MISC. Plaintiffs will be solely and legally responsible to pay any and all applicable
23 taxes on the Class Representative Enhancement Payment. Plaintiffs understand and agree that this
24 Settlement Agreement shall remain in full force and effect even if the full amount of Class
25 Representative Enhancement Payment sought by Plaintiffs is not ultimately awarded by the Court.

26 36. Settlement Administration Costs. The Settlement Administrator will be paid for the
27 reasonable costs of administration of the Settlement and distribution of payments from the Gross
28 Settlement Amount, which is currently estimated to be One Hundred Nine Thousand Nine Hundred and

1 Ninety Dollars (\$109,990). These costs, which will be paid from the Gross Settlement Amount, will
2 include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the issuing of 1099
3 and W-2 IRS Forms, distributing Notice Packets, calculating and distributing the Gross Settlement
4 Amount, and providing necessary reports and declarations.

5 37. PAGA Settlement Amount. Subject to Court approval, the Parties agree that the amount
6 of Two Hundred Thousand Dollars (\$200,000) from the Gross Settlement Amount will be designated for
7 satisfaction of Plaintiff's PAGA claim. Pursuant to PAGA, Seventy-Five Percent (75%), or One
8 Hundred Fifty Thousand Dollars (\$150,000), of this sum will be paid to the LWDA and Twenty-Five
9 Percent (25%), or Fifty Thousand Dollars (\$50,000), will be paid to PAGA Members in proportion to
10 the number of Workweeks worked during the PAGA Period.

11 38. No Right to Exclusion or Objections to the PAGA Settlement. Because this settlement
12 resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a Private
13 Attorney General of, and for, the State of California and the LWDA, the Parties agree that no PAGA
14 Member has the right to exclude themselves from the release of the Released PAGA Claims, and all
15 PAGA Members will receive their shares of the PAGA Fund. The Parties also agree that no PAGA
16 Member has the right to object to the PAGA Settlement Amount.

17 39. Net Settlement Fund. The entire Net Settlement Fund will be distributed to Participating
18 Class Members. No portion of the Net Settlement Fund will revert to or be retained by Defendant.

19 40. PAGA Fund. The entire PAGA Fund will be distributed to all PAGA Members. No
20 portion of the PAGA Fund will revert to or be retained by Defendant.

21 41. Individual Settlement Payment Calculations. Individual Settlement Payments will be
22 calculated and apportioned from the Net Settlement Fund and PAGA Fund based on the number of
23 Workweeks a Class Member worked during the Class Period and PAGA Period, respectively. Specific
24 calculations of Individual Settlement Payments will be made as follows:

25 41(a) Payments from the Net Settlement Fund. Defendant will calculate the total
26 number of Workweeks worked by each Class Member during the Class
27 Period and the aggregate total number of Workweeks worked by all Class
28 Members during the Class Period. To determine each Class Member's

1 estimated "Individual Settlement Payment" from the Net Settlement Fund,
2 the Settlement Administrator will use the following formula: The Net
3 Settlement Fund will be divided by the aggregate total number of
4 Workweeks, resulting in the "Workweek Value." Each Class Member's
5 "Individual Settlement Payment" will be calculated by multiplying each
6 individual Class Member's total number of Workweeks by the Workweek
7 Value. The Individual Settlement Payment will be reduced by any required
8 deductions for each Participating Class Member as specifically set forth
9 herein, including employee-side tax withholdings or deductions. The entire
10 Net Settlement Fund will be disbursed to all Class Members who do not
11 submit timely and valid Requests for Exclusion. If there are any valid and
12 timely Requests for Exclusion, the Settlement Administrator shall
13 proportionately increase the Individual Settlement Payment for each
14 Participating Class Member according to the number of Workweeks
15 worked, so that the amount actually distributed to the Settlement Class
16 equals 100% of the Net Settlement Fund.

17 41(b) Payments from the PAGA Fund. Defendant will calculate the total number
18 of Workweeks worked by each PAGA Member during the PAGA Period
19 and the aggregate total number of Workweeks worked by all PAGA
20 Members during the PAGA Period. To determine each PAGA Member's
21 estimated "Individual Settlement Payment," the Settlement Administrator
22 will use the following formula: The PAGA Fund will be divided by the
23 aggregate total number of Workweeks, resulting in the "PAGA Workweek
24 Value." Each PAGA Member's "Individual Settlement Payment" will be
25 calculated by multiplying each individual PAGA Member's total number of
26 Workweeks by the PAGA Workweek Value. The entire PAGA Fund will
27 be disbursed to all PAGA Members.

28 42. No Credit Toward Benefit Plans. The Individual Settlement Payments made to

1 Participating Class Members and PAGA Members under this Settlement, as well as any other payments
2 made pursuant to this Settlement, will not be utilized to calculate any additional benefits under any
3 benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing
4 plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and
5 any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect
6 any rights, contributions, or amounts to which any Class Members or PAGA Members may be entitled
7 under any benefit plans.

8 43. Administration Process. The Parties agree to cooperate in the administration of the
9 settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in
10 administration of the Settlement.

11 44. Delivery of the Class List. Within twenty (20) calendar days of Preliminary Approval,
12 Defendant will provide the Class List to the Settlement Administrator.

13 45. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class
14 List from Defendant, the Settlement Administrator will mail a Notice Packet to all Class Members via
15 regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class
16 List.

17 46. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement
18 Administrator will perform a search based on the National Change of Address Database for information
19 to update and correct for any known or identifiable address changes. Any Notice Packets returned to the
20 Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly
21 via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
22 Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is
23 provided, the Settlement Administrator will promptly attempt to determine the correct address using a
24 skip-trace, or other search using the name, address and/or Social Security number of the Class Member
25 involved, and will then perform a single re-mailing. Those Class Members who receive a re-mailed
26 Notice Packet, whether by skip-trace or by request, will have either (a) an additional fifteen (15) calendar
27 days or (b) until the Response Deadline, whichever is later, to submit a Request for Exclusion or an
28 objection to the Settlement.

1 47. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet
2 will provide: (a) information regarding the nature of the Action; (b) a summary of the Settlement's
3 principal terms; (c) the Settlement Class and PAGA Member definitions; (d) the total number of
4 Workweeks each respective Class Member and PAGA Member worked for Defendant during the Class
5 Period and PAGA Period; (e) each Class Member's and PAGA Member's estimated Individual
6 Settlement Payment and the formula for calculating Individual Settlement Payments; (f) the dates which
7 comprise the Class Period and PAGA Period; (g) instructions on how to submit Requests for Exclusion
8 or Notices of Objection; (h) the deadlines by which the Class Member must postmark Request for
9 Exclusions, or postmark Notices of Objection to the Settlement; and (i) the claims to be released.

10 48. Disputed Information on Notice Packets. Class Members will have an opportunity to
11 dispute the information provided in their Notice Packets. To the extent Class Members dispute their
12 employment dates or the number of Workweeks on record, Class Members may produce evidence to the
13 Settlement Administrator showing that such information is inaccurate. Defendant's records will be
14 presumed correct, but the Settlement Administrator shall contact the Parties regarding the dispute and the
15 Parties will work in good faith to resolve it. All disputes must be submitted by the Response Deadline,
16 and will be decided within ten (10) business days after the Response Deadline.

17 49. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the
18 requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The
19 Settlement Administrator will mail the Class Member a cure letter within three (3) business days of
20 receiving the defective submission to advise the Class Member that their submission is defective and that
21 the defect must be cured to render the Request for Exclusion valid. The Class Member will have until (a)
22 the Response Deadline or (b) fifteen (15) calendar days from the date of the cure letter, whichever date is
23 later, to postmark a revised Request for Exclusion. If the revised Request for Exclusion is not
24 postmarked within that period, it will be deemed untimely.

25 50. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
26 Settlement Agreement must sign and postmark a written Request for Exclusion to the Settlement
27 Administrator within the Response Deadline. In the case of Requests for Exclusion that are mailed to the
28 Settlement Administrator, the postmark date will be the exclusive means to determine whether a Request

1 for Exclusion has been timely submitted.

2 51. Escalator Clause. This Settlement is premised on the estimate that Class Members
3 would have worked a total of approximately One Million Six Hundred Thousand (1,600,000)
4 Workweeks during the Class Period. In the event it is determined that the actual number of workweeks
5 worked by the Class during the Class Period exceeds 1,600,000 by more than 10% (i.e., exceeds
6 1,760,000 workweeks), Defendant shall have the option to (1) cut off the release period as of the date
7 where the 10 percent overage is reached, or (2) proceed with the release through the Class Period
8 provided herein with a pro rata increase of the Gross Settlement Value, by increasing the Maximum
9 Settlement Amount by the same number of percentage points above 10% by which the actual number of
10 weeks worked exceeds 10%. For example, if the actual number of weeks worked is determined to be
11 11% higher than 1,600,000, then Defendant has the option to increase the Maximum Settlement Amount
12 by 1%. Alternatively, Defendant may elect to back up the end of the release date for the Settlement until
13 the number of workweeks does not exceed 1,760,000.

14 52. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member
15 who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid
16 Request for Exclusion will be bound by all of its terms, including those pertaining to the Released Class
17 Claims, as well as any Judgment that may be entered by the Court if it grants final approval to the
18 Settlement, and shall further agree to waive their right to pursue individual lawsuits or arbitrations as to
19 any of the Released Class Claims.

20 53. Releases by Participating Class Members. Upon the Effective Date, and except as to
21 such rights or claims as may be created by this Settlement Agreement, each Participating Class Member,
22 together and individually, on their behalf and on behalf of their respective heirs, executors,
23 administrators, agents, and attorneys, shall fully and forever release and discharge all of the Released
24 Parties, or any of them, from each of the Released Class Claims arising during the Class Period. In
25 addition, on the Effective Date, all Participating Class Members will be permanently enjoined and
26 forever barred from prosecuting any of the Participating Class Member's Release Class Claims against
27 any of the Released Parties or participating in any actions, lawsuits, proceedings, complaints, or charges
28 brought individually or by any other agency, persons, or entity in any court or before any administrative

body with regard to any of Participating Class Members' Released Class Claims. Nor will Participating Class Members contest or interfere with efforts by Defendant or a Released Party to oppose any attempt to bring or assert such Released Class Claims against Defendant or a Released Party.

54. Releases by PAGA Members. Upon the Effective Date, and except as to such rights or claims as may be created by this Settlement Agreement, each PAGA Member, together and individually, on their behalf and on behalf of their respective heirs, executors, administrators, agents, and attorneys, shall fully and forever release and discharge all of the Released Parties, or any of them, from each of the Released PAGA Claims during the PAGA Period. In addition, on the Effective Date, all PAGA Members will be permanently enjoined and forever barred from prosecuting any of the Released PAGA Claims against any of the Released Parties.

55. Defendant's Right to Rescind. Defendant will have, in its sole discretion, the right to void and withdraw from the Settlement if, at any time prior to Final Approval, Five Percent (5%) or more of Class Members opt out of the Settlement. Defendant must exercise this right of rescission in writing to Class Counsel within fifteen (15) business days after the Response Deadline. If the option to rescind is exercised, then the Parties shall revert to *status quo ante* prior to the mediation held on April 16, 2024 and Defendant will be solely responsible for all Settlement Administration Costs incurred to the date of rescission.

56. Objection Procedures. To object to the Settlement Agreement, a Class Member may either postmark a valid Notice of Objection to the Settlement Administrator on or before the Response Deadline, or appear in person at the Final Approval Hearing. Class Members who fail to object either by submitting a valid Notice of Objection or appearing in person at the Final Approval Hearing will be deemed to have waived all objections to the Settlement and will be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement Agreement. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement Agreement or appeal from the final approval order and judgment. Class Counsel will not represent any Class Members with respect to any such objections to this Settlement. If a Class Member timely submits both a Notice of Objection and a Request for Exclusion, the Request for Exclusion will be given effect and considered valid, the Notice of Objection shall be rejected, and the

1 Class Member shall not participate in or be bound by the Settlement.

2 57. Certification Reports Regarding Individual Settlement Payment Calculations. The
3 Settlement Administrator will provide Defendant's counsel and Class Counsel a weekly report that
4 certifies the number of Class Members who have submitted valid Requests for Exclusion or objections to
5 the Settlement, and whether any Class Member has submitted a challenge to any information contained
6 in their Notice Packet. Additionally, the Settlement Administrator will provide to counsel for both Parties
7 any updated reports regarding the administration of the Settlement Agreement as needed or requested.
8 However, the Settlement Administrator will not be authorized to share the Class List (or any portion
9 thereof) with Class Counsel, unless written authorization is provided by Defendant or its counsel.

10 58. Distribution Timing of Individual Settlement Payments. Within ten (10) calendar days
11 of the Funding Date, the Settlement Administrator will issue the Court-authorized payments to: (a)
12 Participating Class Members and PAGA Members; (b) the Labor and Workforce Development Agency;
13 (c) Plaintiff; and (d) Class Counsel. The Settlement Administrator will also issue a payment to itself for
14 Court-approved services performed in connection with the Settlement.

15 59. Un-cashed Settlement Checks. Funds represented by Individual Settlement Payment
16 checks returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for
17 more than one hundred and eighty (180) calendar days after issuance will be distributed to the Controller
18 of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code §
19 1500, et. seq. for the benefit of the Class Member(s) whose funds are undeliverable and/or who did not
20 cash their checks until such time that they claim their property, or the property is otherwise disposed of
21 pursuant to the Unclaimed Property Laws. The Settlement Administrator will send Defendant a list of
22 any such undeliverable funds and/or uncashed checks seven calendar days prior to distributing those
23 funds to the Controller.

24 60. Certification of Completion. Upon completion of administration of the Settlement, the
25 Settlement Administrator will provide a written declaration under oath to certify such completion to the
26 Court and counsel for all Parties.

27 61. Treatment of Individual Settlement Payments. All Individual Settlement Payments will
28 be allocated as follows: (a) Twenty Percent (20%) of each Individual Settlement Payment will be

1 allocated as wages for which IRS Forms W-2 will be issued; and (b) Eighty Percent (80%) will be
2 allocated as non-wages for which IRS Forms 1099-MISC will be issued.

3 62. Administration of Taxes by the Settlement Administrator. The Settlement Administrator
4 will be responsible for issuing to Plaintiffs, Participating Class Members, PAGA Members, and Class
5 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to
6 this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes
7 and penalties to the appropriate government authorities.

8 63. Tax Liability. The Parties make no representation as to the tax treatment or legal effect
9 of the payments called for hereunder, and Plaintiffs and Participating Class Members are not relying on
10 any statement, representation, or calculation by Defendant or by the Settlement Administrator in this
11 regard. Each Participating Class Member shall have sole responsibility for any and all tax consequences
12 applicable to any amounts they are paid pursuant to the Settlement. No opinion regarding the tax
13 consequences of this Settlement to any Participating Class Member is being given, or will be given, by
14 the Defendant, counsel for the Defendant, any other Released Party, or Class Counsel. Participating
15 Class Members must consult their own tax advisors regarding the tax consequences of this Settlement,
16 including but not limited to any payments provided or tax reporting obligations. The Defendant, the
17 Released Parties, counsel for the Defendant, and Class Counsel shall have no liability or responsibility
18 whatsoever for any tax consequences resulting from payments made pursuant to the Settlement.

19 64. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
20 OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS
21 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”)
22 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND
23 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES
24 OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
25 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED
26 OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
27 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
28 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS

1 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
2 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
3 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
4 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
5 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
6 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
7 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
8 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
9 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER
10 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
11 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
12 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
13 AGREEMENT.

14 65. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
15 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
16 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
17 action or right herein released and discharged.

18 66. Nullification of Settlement Agreement. In the event that: (a) the Court does not finally
19 approve the Settlement as provided herein; or (b) the Settlement does not become final for any other
20 reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null
21 and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will
22 likewise be treated as void from the beginning.

23 67. Preliminary Approval Hearing. Plaintiffs will obtain a hearing before the Court to
24 request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval
25 Order for: (a) conditional certification of the Settlement Class for settlement purposes only, (b)
26 preliminary approval of the proposed Settlement Agreement, (c) setting a date for a final fairness
27 hearing. The Preliminary Approval Order will provide for the Notice Packet to be sent to all Class
28 Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiffs will

1 submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the
2 proposed Notice of Class Action Settlement, attached as Exhibit A. Class Counsel will be responsible for
3 drafting all documents necessary to obtain preliminary approval. Class Counsel will provide Defendant
4 the Motion for Preliminary Approval at least seven (7) days prior to filing so that Defendant can review
5 and make comments on the motion. Plaintiffs will reasonably consider and incorporate the Defendant's
6 comments.

7 68. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
8 deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the
9 Court's permission, a final fairness hearing will be conducted to determine the Final Approval of the
10 Settlement Agreement along with the amounts properly payable for: (a) Attorneys' Fees and Costs; (b)
11 the Class Representative Enhancement Payment; (c) Individual Settlement Payments; (d) the Labor and
12 Workforce Development Agency Payment; (e) all Settlement Administration Costs. The final fairness
13 hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Class Counsel
14 will be responsible for drafting all documents necessary to obtain final approval. Class Counsel will also
15 be responsible for drafting the attorneys' fees and costs application to be heard at the final approval
16 hearing. Class Counsel will provide Defendant the Motion for Final Approval at least seven (7) days
17 prior to filing so that Defendant can review and make comments on the motion. Plaintiff will reasonably
18 consider and incorporate the Defendant's comments.

19 69. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the
20 Court or after the final fairness hearing, the Parties will present the Judgment to the Court for its
21 approval. After entry of the Judgment, the Court will have continuing jurisdiction to enforce the terms of
22 the Settlement Agreement pursuant to Code of Civil Procedure section 664.6.

23 70. Release by Plaintiffs. Upon the Funding Date, in addition to the claims being released by
24 all Participating Class Members, Plaintiffs will release and forever discharge the Released Parties, to the
25 fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and not
26 asserted, which Plaintiffs have or may have against the Released Parties as of the date of execution of
27 this Settlement Agreement. To the extent the foregoing release is a release to which Section 1542 of the
28 California Civil Code or similar provisions of other applicable law may apply, Plaintiffs expressly

1 waives any and all rights and benefits conferred upon him by the provisions of Section 1542 of the
2 California Civil Code or similar provisions of applicable law which are as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
4 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
5 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
6 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
7 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
8 PARTY.

9 71. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the
10 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
11 herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

12 72. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the
13 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements
14 may be deemed binding on the Parties. The Parties expressly recognize California Civil Code Section
15 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is
16 to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and
17 the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or
18 contradict the terms of this Settlement Agreement.

19 73. Amendment or Modification. No amendment, change, or modification to this Settlement
20 Agreement will be valid unless in writing and signed, either by the Parties or their counsel, and approved
21 by the Court.

22 74. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
23 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
24 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
25 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
26 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each
27 other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to
28 reach agreement on the form or content of any document needed to implement the Settlement, or on any

1 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties
2 may seek the assistance of the Court to resolve such disagreement.

3 75. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
4 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

5 76. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto
6 will be governed by and interpreted according to the laws of the State of California.

7 77. Execution and Counterparts. This Settlement Agreement is subject only to the execution
8 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
9 executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned
10 copies of the signature page, will be deemed to be one and the same instrument.

11 78. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
12 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
13 Settlement after arm's-length negotiations with a respected mediator and in the context of adversarial
14 litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge
15 that they are each represented by competent counsel and that they have had an opportunity to consult
16 with their counsel regarding the fairness and reasonableness of this Settlement.

17 79. Invalidity of Any Provision. Before declaring any provision of this Settlement
18 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
19 possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement
20 valid and enforceable.

21 80. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
22 certification for purposes of this Settlement only; except, however, that Plaintiff or Class Counsel may
23 appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court.

24 81. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to
25 class action certification for purposes of the Settlement only. If, for any reason, the Settlement is not
26 approved, the stipulation to certification will be void. The Parties further agree that certification for
27 purposes of the Settlement is not an admission that class action certification is proper under the standards
28 applied to contested certification motions and that this Settlement Agreement will not be admissible in

1 this or any other proceeding as evidence that either (a) a class action should be certified or (b) Defendant
2 is liable to Plaintiff or any Class Member, other than according to the Settlement's terms.

3 82. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute
4 that has arisen between them and to avoid the burden, expense and risk of continued litigation. In
5 entering into this Settlement, Defendant does not admit, and specifically denies, that it violated any
6 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or
7 any other applicable laws, regulations or legal requirements; breached any contract; violated or breached
8 any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with
9 respect to its employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any
10 of the negotiations connected with it, will be construed as an admission or concession by Defendant of
11 any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to
12 enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be
13 offered or received as evidence in any action or proceeding to establish any liability or admission on the
14 part of Defendant or to establish the existence of any condition constituting a violation of, or a non-
15 compliance with, federal, state, local or other applicable law.

16 83. No Public Comment or Undue Publicity: Neither Plaintiffs nor Class Counsel will cause
17 to be publicized, directly or indirectly, any discussion resulting in or the existence of this Settlement or its
18 terms in any type of media, including, but not limited to, speeches, press conferences, press releases,
19 interviews, television or radio broadcasts, newspapers, website postings, messages on the Internet,
20 Facebook, Twitter, Instagram, or any other social media. Plaintiff and Class Counsel agree that they will
21 not contact the media or press regarding the claims in the Action and further, that if they are contacted by
22 the media or press, Plaintiff or Class Counsel shall respond only that the matter has settled. Defendant
23 may enforce this provision through an action for injunctive relief. This provision does not apply to any
24 publications ordered by the Court.

25 84. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement
26 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
27 constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

28 85. Enforcement Actions. In the event that one or more of the Parties institutes any legal

1 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
2 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
3 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including
4 expert witness fees incurred in connection with any enforcement actions.

5 86. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
6 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
7 more strictly against one party than another merely by virtue of the fact that it may have been prepared
8 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
9 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

10 87. Representation By Counsel. The Parties acknowledge that they have been represented
11 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
12 that this Settlement Agreement has been executed with the consent and advice of counsel. Further,
13 Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

14 88. All Terms Subject to Final Court Approval. All amounts and procedures described in
15 this Settlement Agreement herein will be subject to final Court approval.

16 89. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
17 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
18 Settlement Agreement.

19 90. Binding Agreement. The Parties warrant that they understand and have full authority to
20 enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully
21 enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in
22 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that
23 otherwise might apply under federal or state law.

1 **READ CAREFULLY BEFORE SIGNING**

2 **PLAINTIFF**

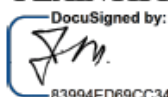
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4 Dated: 12/24/2024



Somalia Goodwin

6 **PLAINTIFF**

7 Dated: 12/30/2024

DocuSigned by:

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John A. McGehee

9 **PLAINTIFF**

10 Dated: 01/03/2025

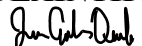


[D.J. Johnson \(Jan 3, 2025 08:23 PST\)](#)

Dustin Johnson

12 **PLAINTIFF**

13 Dated: Jan 1, 2025



[Juan Carlos Quevedo Jr. \(Jan 1, 2025 10:39 PST\)](#)

Juan Carlos Quevedo

15 **DEFENDANT**

16
17 Dated: _____

Stephanie Wu

Save Mart Supermarkets LLC

20 **APPROVED AS TO FORM**

22 **CROSNER LEGAL, PC**

23 Dated: December 26, 2024

24 By: 

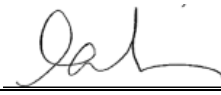
Brandon Brouillette

Attorneys for Plaintiff Somalia Goodwin

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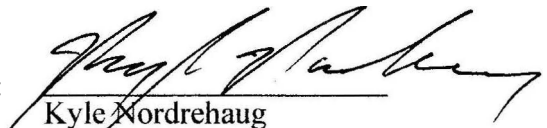
JAMES HAWKINS, APLC

Dated: 12/30/2024

By: 
Greg Mauro
Attorneys for Plaintiff John A. McGehee

**BLUMENTHAL NORDEHAUG BHOWMIK
DE BLOUW LLP**

Dated: 1/3/25

By: 
Kyle Nordrehaug
Attorneys for Plaintiff Dustin Johnson

HAYNES LAW GROUP, APC

Dated: 1/2/2025

By: 
Paul Haines
Attorneys for Plaintiff Juan Carlos Quevedo

SEYFARTH SHAW LLP

Dated: _____

By: _____
Ryan McCoy
Attorneys for Defendant Save Mart Supermarkets
LLC

EXHIBIT

2

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

Somalia Goodwin, et al. v. Save Mart Supermarkets, LLC
San Joaquin County Superior Court, Case No. Case No.: STK-CV-UOE-2023-2062

The Superior Court for the State of California authorized this Notice. Read it carefully! It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee lawsuit brought against Save Mart Supermarkets LLC ("Save Mart" is used herein as a placeholder) for alleged wage and hour violations ("Action").

The Action was filed by former Save Mart employees Somalia Goodwin, John A. Mcgehee, Dustin Johnson, and Juan Carlos Quevedo ("Plaintiffs") who seek payment of (1) back wages and other relief for a class of hourly-paid employees ("Class Members") who worked for Save Mart during the Class Period (July 1, 2021 through [DATE = 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], 2025); and (2) civil penalties under the Private Attorneys General Act of 2004 ("PAGA") for a group of hourly-paid employees ("Aggrieved Employees") who worked during the PAGA Period (March 2, 2022 through [DATE = same as above], 2025).

The proposed settlement ("proposed Settlement" or "Settlement") is a global settlement of the Action, requiring Save Mart to fund Individual Class Payments to Participating Class Members for the class portion of the Settlement ("Class Settlement") and Individual PAGA Payments to Aggrieved Employees for the PAGA portion of the Settlement ("PAGA Settlement").

Save Mart has denied and continues to deny the factual and legal allegations in the case and believes that it has valid defenses to Plaintiffs' claims and that class certification would be inappropriate. By agreeing to settle, Save Mart is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Save Mart has agreed to settle the case as part of a compromise with Plaintiffs.

Based on Save Mart's records, and the Parties' current assumptions, **your Individual Class Payment is estimated to be \$ _____ (less withholding) and your Individual PAGA Payment is estimated to be \$ _____ (subject to a 1099).** The actual amount(s) you may receive likely will be different and will depend on a number of factors.

The above estimates are based on Save Mart's records showing that **you worked _____ workweeks during the Class Period and worked _____ pay periods during the PAGA Period.** If you believe that you worked more workweeks and/or pay periods during these periods, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully, as you will be deemed to have

carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the proposed Settlement and how much of the proposed Settlement will be paid to Plaintiffs and Plaintiffs' attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Save Mart to make payments under the proposed Settlement and requires Class Members to give up their rights to assert certain claims against Save Mart.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

1. You Don't Have to Do Anything to Participate in the Class Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment. In exchange, you will give up your right to assert the wage claims against Save Mart that are covered by this Settlement (Class Member's Release).
2. You Can Opt-out of the Class Settlement The Opt-out Deadline Is	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. <u>If you are an Aggrieved Employee, you will receive your Individual PAGA Payment, even if you opt out of the Class Settlement.</u>
3. Participating Class Members Can Object to the Class Settlement Written Objections Must be Submitted by	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the Class Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 7 of this Notice.

4. You Can Participate in the Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on . You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Class Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks Written Challenges Must be Submitted by	The amount of your Individual Class Payment depends on how many workweeks you worked at least one day during the Class Period. Similarly, the amount of your Individual PAGA Payment depends on how many pay periods you worked at least one day during the pay period. The number of workweeks and pay periods you worked according to Save Mart’s records is stated on the first page of this Notice. If you disagree with this number, you must challenge it by . See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former Save Mart employees. The Action accuses Save Mart of violating California labor laws by failing to pay minimum wages, overtime wages, vested vacation and/or paid time off, and timely wages due upon termination and during employment; failing to provide meal periods, rest periods, sick time, accurate itemized wage statements, one day’s rest, and suitable seating; failing to produce employment records; failing to maintain accurate and complete payroll and related employment records; failing to reimburse necessary business expenses; and conducting unlawful inquiries into criminal history and unlawful employment agreements. Plaintiffs are represented by attorneys in the Action: Crosner Legal, PC, James Hawkins APLC, Haines Law APC, and Blumenthal Nordrehaug Bhowmik De Blouw LLP (“Class Counsel.”)

Save Mart strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Save Mart or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Save Mart hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an end to the case by agreeing to settle the case rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and Save Mart have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims.

By agreeing to settle, Save Mart does not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the proposed Settlement is a good deal for you because they believe that: (1) Save Mart has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) settlement is in the best interests of the Class Members. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Save Mart Will Pay \$5,600,000.00 as the Gross Settlement Amount (“Gross Settlement”). Save Mart has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the proposed Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, and the Administrator’s expenses. Assuming the Court grants Final Approval, Save Mart will fund the Gross Settlement not more than 30 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$1,866,666.66, (33.33% of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$50,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$10,000 to each Plaintiff as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class, and providing a broad general release of all claims. A Class Representative Award will be the only monies Plaintiffs will receive other than Plaintiffs’ Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$200,000 in PAGA Penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$50,000) and 75% to the Labor Workforce and Development Agency (\$150,000).
 - D. Up to \$109,990.00 to the Administrator for services administering the Settlement.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections, with the exception of the PAGA Penalties amount.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross

Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period workweeks.

4. Taxes Owed on Payments to Class Members and Aggrieved Employees. Plaintiffs and Save Mart are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages (“Wage Portion”) and 80% to payments not attributable to wages (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. (Save Mart will separately pay employer payroll taxes it owes on the Wage Portion.) The Administrator will report the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

100% of the PAGA Penalties to Aggrieved Employees will be allocated as penalties and reported on IRS Form 1099.

Although Plaintiffs and Save Mart have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and/or Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check(s) will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check(s) are sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter form setting forth your name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Save Mart.
7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Save Mart have agreed that, in either case, the Settlement will be void: Save Mart will not pay any money and Class Members will not release any claims against Save Mart.

8. Administrator. The Court has appointed a neutral company, APEX Class Action Administration (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and Save Mart has fully funded the Gross Settlement (and separately paid all employer payroll taxes), Participating Class Members will be legally barred from asserting any of the claims released under the Class Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Save Mart or related entities for wages based on Class Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members shall release the Released Parties from all claims, rights, demands, liabilities, and causes of action that were alleged or reasonably could have been raised based on the facts alleged in the operative Complaint during the Class Period, regardless of the theory of recovery, including: (a) all claims for unpaid overtime; (b) all claims for meal or rest break violations; (c) all claims for unpaid wages, including unpaid minimum wages; (d) all claims for the failure to reimburse for necessary business expenses; (e) all claims for unpaid vacation, sick pay, or other paid time off; (f) all claims for unpaid reporting time pay; (g) failure to properly calculate rates of pay for overtime, meal and rest period premiums, paid sick pay or other time off, reporting time pay, or any other pay rate, (h) all claims for the failure to timely pay wages upon termination; (i) all claims for the failure to timely pay wages during employment; (j) all claims for wage statement violations and record-keeping violations; (k) all claims asserted through California Business & Professions Code §§ 17200, et seq. for any of the foregoing alleged violations (l) all claims asserted under the applicable California Industrial Welfare Commission Wage Order, and (m) all penalties, including PAGA penalties, liquidated damages, or interest allegedly due to any of the foregoing alleged violations. Participating Class Members shall further agree to waive their right to pursue individual lawsuits or arbitrations as to any of the Released Class Claims against the Releasees to the extent such Released Class Claims accrued during the Class Period (the “Released Class Claims”).

10. Release PAGA Claims. Plaintiffs, serving as proxies of the LWDA, will release the LWDA’s PAGA claims as to all Participating and Non-Participating Class Members who are Aggrieved Employees regardless of whether such Aggrieved Employees opt out of the class action, such that any Non-Participating Class Member who is an Aggrieved Employee would be precluded from serving as a proxy or agent of the LWDA for the same PAGA claims being released herein.

The PAGA Release will extend to any and all PAGA claims or causes of action of whatever kind or nature which occurred during the PAGA Period that were alleged, or that reasonably could have been alleged, based on the facts alleged in the Action and

Plaintiff's LWDA letter, regardless of theory of recovery, including but not limited to alleged: (a) unpaid overtime; (b) meal or rest break violations; (c) unpaid wages, including unpaid minimum wages; (d) failure to reimburse for necessary business expenses; (e) unpaid vacation, sick pay, or other paid time off; (f) unpaid reporting time pay; (g) failure to properly calculate rates of pay for overtime, meal and rest period premiums, paid sick pay or other time off, reporting time pay, or any other pay rate, (h) failure to timely pay wages upon termination; (i) failure to timely pay wages during employment; (j) wage statement violations and record-keeping violations; and (k) all claims asserted under the applicable California Industrial Welfare Commission Wage Orders.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing the 25% employee-portion of the PAGA Penalties by the total number of pay periods worked by all Aggrieved Employees, and (b) multiplying the result by the number of pay periods worked by each individual Aggrieved Employee.
3. Workweek and Pay Period Challenges. The number of Class workweeks and PAGA pay periods you worked during the Class Period and PAGA Period, as recorded in Save Mart's records, are stated in the first page of this Notice. You have until to challenge the number of workweeks and/or pay periods. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Save Mart's calculation of workweeks and/or pay periods based on Save Mart's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve workweek challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Save Mart's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

Participating Class Members. The Administrator will send, by U.S. mail, a check to every Participating Class Member (i.e., every Class Member who doesn't opt-out).

Aggrieved Employees. The Administrator will send, by U.S. mail, a check to every Aggrieved Employee, regardless of whether they opt out of the Class Settlement.

The Administrator may send a single check combining the Individual Class Payment and the Individual PAGA Payment. **Your check(s) will be sent to the same address as this Notice. If**

you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as *Somalia Goodwin et al. v. Save Mart Supermarkets, LLC*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

If you are an Aggrieved Employee, you are bound by the PAGA Release regardless of whether you opt out of the Class Settlement. Aggrieved Employees cannot opt out of the PAGA Settlement.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Class Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Save Mart are asking the Court to approve. At least 16 court days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website (url) or the Court's website (url)

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *Somalia Goodwin et al. v. Save Mart Supermarkets, LLC* and include your name, current address, telephone number, and approximate dates of employment for Save Mart and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at (time) in Department 10D of the San Joaquin County Superior Court, located at 180 E. Weber Avenue, Stockton, CA 95202. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually. Check the Court's website (<https://www.sjcourts.org/case-management-search/>) using the Case No. **STK-CV-UOE-2023-2062** for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Save Mart and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____'s website at _____.

You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<https://www.sjcourts.org/case-management-search/>) and entering the Case Number for the Action, Case No. **STK-CV-UOE-2023-2062**.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

CROSNER LEGAL, PC
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Zachary Crosner (zcrosner@crosnerlegal.com)
9440 Santa Monica Blvd., Suite 301,
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JAMES HAWKINS APLC
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BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (norm@bamlawca.com)

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Aparajit Bhowmik (aj@bamlawlj.com);

Nicholas J. De Blouw (DeBlouw@bamlawca.com)

2255 Calle Clara, La Jolla, CA 92037

Telephone: (858)551-1223

Settlement Administrator:

Name of Company:

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the California Controller's Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT

3



Los Angeles Office
9440 Santa Monica Blvd.
Beverly Hills, CA 90210

Kiara Bramasco, Esq.
kiara@crosnerlegal.com
direct: (424) 335-5236
office: (310) 496-5818
fax: (310) 510-6429

March 3, 2023

VIA PAGA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

Cogency Global Inc.
Agent for Service of Process for:
Save Mart Supermarkets LLC
122 E. 42nd St 18th Fl
New York, NY 10168

Save Mart Supermarkets LLC
Attn: CA Registered Corporate (1505) Agent Authorized
Employee(s): Erin Haggerty, Connie Mix, Phillip Morado,
Amber Smyth, Mai Yang, Rebekah D'Angelo, Alex
Gonzalez, and Christen Vinnola
1325 J St Ste 1550,
Sacramento, CA 95814

Save Mart Supermarkets LLC
Attn: Human Resources/ Legal Department
1800 Standiford Avenue
Modesto, CA 95350

Cogency Global Inc.
Agent For Service Of Process For:
Save Mart Supermarkets Disc
122 E. 42nd St 18th Fl
New York, NY 10168

Save Mart Supermarkets Disc
Attn: CA Registered Corporate
(1505) Agent Authorized
Employee(s): Erin Haggerty,
Connie Mix, Phillip Morado,
Amber Smyth, Mai Yang,
Rebekah D'Angelo, Alex
Gonzalez, and Christen Vinnola
1325 J St Ste 1550,
Sacramento, CA 95814

Save Mart Supermarkets Disc
Attn: Human Resources/ Legal
Department
1800 Standiford Avenue
Modesto, CA 95350

Cogency Global Inc.
Agent for Service of Process for:
The Save Mart Companies, LLC
122 E. 42nd St 18th Fl
New York, NY 10168

The Save Mart Companies, LLC
Attn: Human Resources/ Legal Department
1800 Standiford Avenue
Modesto, CA 95350

The Save Mart Companies, LLC
Attn: CA Registered Corporate
(1505) Agent Authorized
Employee(s): Erin Haggerty,
Connie Mix, Phillip Morado,
Amber Smyth, Mai Yang,
Rebekah D'Angelo, Alex
Gonzalez, and Christen Vinnola
1325 J St Ste 1550,
Sacramento, CA 95814

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Save Mart Supermarkets LLC; Save Mart Supermarkets Disc; and The Save Mart Companies, LLC;
Date: March 3, 2023
Subject: *Somalia Goodwin v. Save Mart Supermarkets LLC, et. al.*

Introduction

This office represents COMPLAINANT, Somalia Goodwin (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Save Mart Supermarkets LLC; Save Mart Supermarkets Disc; and The Save Mart Companies, LLC ; (hereinafter, these entities and their managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all current and former non-exempt employees employed by any one or more of the EMPLOYER entities at any location in California within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by any one or more of the EMPLOYER entities at any location in California within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via certified mail to its Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed,

EMPLOYER may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which COMPLAINANT will base COMPLAINANT's claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT's intent to seek civil penalties against EMPLOYER. Under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, a PAGA representative has authority to seek penalties for all known violations committed by the employer – regardless of whether the representative experienced all violations personally. *Id.* at 760-761. Moreover, under *Johnson v. Maxim Healthcare Servs., Inc.*, (2021) 66 Cal. App. 5th 924, 929, an employee may pursue a claim under PAGA even when that employee's individual claim is time-barred.

COMPLAINANT, on behalf of COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.6, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. By reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of employer(s) who violated COMPLAINANT’s and other NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ rights by violating various sections of the California Labor Code. The California Legislature defines “other person acting on behalf of an employer” as “a natural person who is an owner, director, officer, or managing agent of the employer.” The “managing agent” definition mirrors that found in California’s punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, “managing agents” are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California

law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

General Information

EMPLOYER owns, operates or otherwise manages a grocery store business. Based on information and belief, EMPLOYER owns, operates or otherwise manages stores operating under the names of Save Mart, Save Mart Supermarkets, Lucky, Lucky California, Food Maxx, S-Mart, Maxx Value, and/or Maxx Value Foods. EMPLOYER owns, operates and/or otherwise manages multiple stores, locations and/or facilities in California, including but not limited to, at least 191 facilities/stores located throughout California, including but not limited to, EMPLOYER's facilities/store located in Stockton, California, at which EMPLOYER regularly assigned COMPLAINANT to work during the relevant period.¹ Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as a multi-purpose clerk, deli clerk and/or similar title(s) from including but not limited to in or around October 2021 through on or around April 15, 2022, when EMPLOYER terminated COMPLAINANT's employment. COMPLAINANT worked for EMPLOYER out of a couple of EMPLOYER's locations including but not limited to EMPLOYER's facilities and/or stores located in Pleasanton, California and Stockton, California. COMPLAINANT regularly worked at least nine (9) hours per day, at least (5) days per week. COMPLAINANT's job duties included but were not limited to, assisting customers, preparing food, stocking-related tasks, among other assigned work tasks. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT

¹ See <https://www.thesavemartcompanies.com/company-profile/> (Last visited on March 3, 2023).

AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXPEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (14) failed and continues to fail to provide suitable seating; and (15) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

Based on information and belief, EMPLOYER failed, and continues to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of EMPLOYER's time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices.

EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER's failure to relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, EMPLOYER further failed, and continues to fail, to record the true start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods.

Based on further information and belief, EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES' work shifts.

Additionally, EMPLOYER failed, and continues to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES.

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

Section (b) of Labor Code section 226 further requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer." Section (c) of Labor Code section 226 provides that, "an employer who receives a written or oral request to inspect or receive a copy of records pursuant to

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee’s signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a “reasonable” amount of time, but “not later than 30 calendar days from the date the employer receives a written request.” An employer’s failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, EMPLOYER fails to timely produce or make available a current or former employee’s personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, COMPLAINANT, through counsel, sent a written request for payroll and personnel records to EMPLOYER. Yet, EMPLOYER failed to timely produce complete records within the time periods delineated by California labor law. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject EMPLOYER to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee’s total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee’s total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required

second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, COMPLAINANT did not sign a valid meal period waiver throughout COMPLAINANT's employment by EMPLOYER.

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), *and* (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more, entitling to at least one meal period.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, at times, COMPLAINANT's meal periods were interrupted and/or late at least once per week due to the need to assist customers, prepare food and/or complete other work tasks. Notably, wage statements issued by EMPLOYER to COMPLAINANT do not reflect the payment of a single meal period premium to COMPLAINANT during her employment. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were from time to time required to clock out but to continue working during unpaid meal periods and/or were required to take their meal periods late (i.e. after working more than five (5) hours) due to the need to assist customers and/or complete other work tasks but were not paid any and/or all owed meal period premiums at the proper rates.

Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, restricted to EMPLOYER's premises and/or otherwise on duty

due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet EMPLOYER's goals and expectations.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal periods.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to complete off-the-clock work prior to their scheduled shift time which EMPLOYER failed to take into account when scheduling meal periods for NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which were free of EMPLOYER's control owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Based on information and belief, per EMPLOYER's uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break.

Based on information and belief, despite EMPLOYER's failure to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of rounding the start and end times of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to EMPLOYER's premises), despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

Moreover, based on information and belief, EMPLOYER failed to keep accurate records of the true start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, to the extent meal period were recorded, EMPLOYER illegally rounded the start and end times of purported meal periods resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, EMPLOYER failed to instruct COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, EMPLOYER did not have a compliant written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the NON-EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law

and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT is further informed and believes and thereon alleges that EMPLOYER had actual and/or constructive knowledge that its time-rounding and/or auto-deduction policies and practices resulted in the denial of lawful meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³ EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

Moreover, under California law rest periods must be a "net" ten minutes in a suitable rest area. Id. at 268 (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what "net" ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). Id.; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the "onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to its employees.").

EMPLOYER did not properly authorize and provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have any sort of compliant rest period policy in practice. For example, COMPLAINANT often had to work through her rest periods due to lack of coverage, the need to assist customers and/or complete other work tasks. During many shifts, the store was simply too busy for COMPLAINANT to be able to take a full ten-minute rest period.

Moreover, on information and belief, EMPLOYER failed to authorize and permit rest periods that were a "net" ten minutes in a suitable rest area and instead, to the extent rest periods were provided at all, limited NON-EXEMPT AGGRIEVED EMPLOYEES to only ten-minute rest periods, requiring them to be back at their workstations within ten minutes of leaving, in violation of California rest period law. EMPLOYER's failure to communicate that the rest period is a net ten minutes deprived NON-EXEMPT AGGRIEVED EMPLOYEES of their rights to a full rest period, as such as policy only relieves NON-EXEMPT AGGRIEVED EMPLOYEES from their workstation for ten minutes to travel to and from a rest area and be back at the workstation by the end of that ten minutes.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES' rest periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature

and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to skip rest breaks completely or otherwise take non-compliant rest periods.

Moreover, based on information and belief, EMPLOYER failed to provide any form of a third rest period on shifts lasting longer than ten hours.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest periods.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted.

Furthermore, EMPLOYER failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. EMPLOYER either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Minimum Wage Violations: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.” Labor Code section 1194.

⁴ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); and All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

It is fundamental that an employer must pay its employees for all time worked. California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages. Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223 prohibits the pay of less than a statutory or contractual wage scale. Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful. Labor Code section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, "Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period..." The applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, "in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon..." *Cal. Lab. Code* § 1194.2.

EMPLOYER failed to compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER's automatic deduction and time rounding policies for shift start and shift end times and meal period start and end times, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods as explained above.

Based on information and belief, EMPLOYER implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to EMPLOYER's control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER's policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or

practices. For example, at times, EMPLOYER required COMPLAINANT to clock out for the end of her shift but to continue completing work duties she had not completed within the course of her scheduled shift, such as, but not limited to, stocking items and/or completing other work tasks, resulting in the underpayment of wages owed to COMPLAINANT. Based on information and belief, EMPLOYER required other NON-EXEMPT AGGRIEVED EMPLOYEES to assist customers and/or complete other work tasks after clocking out for a shift. This work time was completed off-the-clock/outside of the scheduled shift and was uncompensated resulting in unpaid minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for time spent donning and doffing personal protective equipment and/or uniforms/work clothing (e.g., rubber gloves, hairnets, aprons, hats, and/or face masks) during meal periods, rest periods, before the start of a scheduled shift, and after completing a scheduled shift.

Based on information and belief, at times, EMPLOYER's electronic time-keeping system / computer terminal malfunctioned such that NON-EXEMPT AGGRIEVED EMPLOYEES were required to either reinitiate and/or otherwise troubleshoot the system and/or wait for the system to boot prior to being able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES experienced the same issues when clocking out for shifts and/or back in for meal periods. This time spent under EMPLOYER's control was not recorded and not compensated and resulted in unpaid minimum wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to undergo security checks prior to clocking in for the start of their shifts, before clocking back in from meal periods and/or after clocking out for their shifts, resulting in uncompensated work time, and the underpayment of minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete other off-the-clock work tasks before clocking in for the start of their shifts, after clocking out for the end of their shifts and/or during uncompensated meal periods, resulting in significant off-the-clock work and the underpayment of minimum and overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, EMPLOYER failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by EMPLOYER, as well as pre- and post-shift duties that EMPLOYER required COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES

to conduct while off-the-clock. Based on information and belief, this work time was completed off-the-clock and was not compensated.

Based on further information and belief, EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, result in understating actual compensable work time. EMPLOYER's failure to pay for all time worked by virtue of its time-rounding practices resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

EMPLOYER's failure to pay for all time worked by virtue of its time rounding, auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work resulted in the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

⁵ See Lab. Code §1197.1(a) (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Based on information and belief, EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER's automatic deduction and time rounding policies and practices for meal periods and shift start times and shift end times, payment according to scheduled hours worked rather than actual time worked, off-the-clock/unpaid work completed during meal periods and/or time spent restricted to EMPLOYER's premises and/or subject to EMPLOYER's control during off-the-clock meal periods (described above), and/or other off-the-clock work resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §3(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and other NON-

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to work completed during unpaid meal periods and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, EMPLOYER further failed to provide notice of the correct sick leave amount balance available to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statement.

Based on information and belief, EMPLOYER failed to put NON-EXEMPT AGGRIEVED on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the NON-EXEMPT AGGRIEVED EMPLOYEE throughout the relevant time period.

Based on information and belief, throughout the relevant period, EMPLOYER failed to provide notice of sick leave amount balance left for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, EMPLOYER failed to maintain records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid but was not, as a result of EMPLOYER's failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Failure To Provide Supplemental Paid Sick Leave: Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based on information and belief, EMPLOYER violated Labor Code section 248.2 by not providing NON-EXEMPT AGGRIEVED EMPLOYEES with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information and belief, EMPLOYER failed to provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code section 216 by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁷

⁷ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

As EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements EMPLOYER issued to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Based on information and belief, wage statements issued by EMPLOYER failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE or EXEMPT AGGRIEVED EMPLOYEE is being paid. For example, EMPLOYER's wage statements provided to COMPLAINANT list a category for "Retro Pay" and/or "Retro-Regular" and/or "Retro-Overtime" without including the inclusive dates of the accurate pay period for that "Retro Pay" and/or "Retro-Regular" and/or "Retro-Overtime" further failing to list the total hours worked for the pay period, including but not limited to, the total hours worked for the pay period the retroactive pay corresponds with. As a result, the wage statements provided to

COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not accurate and do not include all of the statutorily required information, such as, but not limited to, the inclusive dates of the period for which the employee is paid.

EMPLOYER's failure to accurately list all hours worked on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to the NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, EMPLOYER has violated California Labor Code § 226 by willfully failing to furnish COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based on information and belief, EMPLOYER also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, wage statements issued by EMPLOYER failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9). For example, as described herein, based on information and belief, EMPLOYER failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, EMPLOYER issued wage statements to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer. For example, wage statements issued by EMPLOYER to COMPLAINANT identify "Save Mart Supermarkets" as the legal name of the employer. However, based on information and belief, no such entity exists. As such, EMPLOYER issued wage statements to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer, in violation of Labor Code section 226(a)(8).

As a result, the wage statements provided to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁸

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by, including but not limited to, failing to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute's provisions were violated.

Seating Violations: Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats and when they are not actively engaged in the work duties that would not permit them to be seated.

All applicable IWC Wage Orders, Section 14(A-B) provides:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Suitable seating is one of the worker protections covered by California's Wage Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

Based on information and belief, EMPLOYER failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that NON-EXEMPT AGGRIEVED EMPLOYEES were working. Lastly, based on information and belief, there were periods of time when NON-EXEMPT AGGRIEVED EMPLOYEES were not engaged in active duties of their employment, yet there

⁸ See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

EMPLOYER's NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions, including but not limited to, as cashiers, customer service associates, grocery store clerks, and/or other related positions. The nature of NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, EMPLOYER failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting EMPLOYER to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁹

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, EMPLOYER's violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, suitable seating, and business expenses, result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Unlawful Deductions: Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee." Based on information and belief EMPLOYER made unlawful deductions from NON-EXEMPT AGGRIEVED EMPLOYEES' and/or EXEMPT AGGRIEVED EMPLOYEES' paychecks during the relevant period, including but not limited to deducting costs of uniforms and/or other business costs and/or deducting wages for purported overpayments from previous pay periods and/or unlawfully deducting wages for negligently damaged property and/or deducting costs advanced by EMPLOYER from NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES' final paychecks. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects EMPLOYER to civil penalties under Labor Code Section 2699.

Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.[1] [1] See Lab. Code §225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee").

⁹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Failure to Pay Vested Vacation/Paid Time Off:

California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Based on information and belief, EMPLOYER had and continues to have a uniform policy and practice of failing to allow NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, EMPLOYER failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, EMPLOYER untimely provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates. For example, EMPLOYER terminated COMPLAINANT's employment on or around April 15, 2022, yet EMPLOYER did not furnish COMPLAINANT with her final paycheck until at least five (5) days after her termination, further requiring COMPLAINANT to use her personal vehicle to make a 50-mile roundtrip off-the-clock drive to a Fed Ex facility to pick up her final paycheck, and COMPLAINANT's late final paycheck was devoid of all wages owed, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates.

Moreover, EMPLOYER failed to timely provide all owed wages immediately upon discharge of employment. For example, at times, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES experienced breaks in their employment caused by EMPLOYER whereby COMPLAINANT and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES would not be called in for work for longer than a single pay period due to including but not limited to EMPLOYER's lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet, EMPLOYER failed to timely pay all owed wages at the end of such periods of employment, in violation of including but not limited to Labor Code section 201-202.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.¹⁰

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to,

¹⁰ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

attorneys' fees incurred by the employee enforcing the rights granted by this section."

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further, "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State." *See* Cal. Lab. Code § 2804.

Based on information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, EMPLOYER shifted its costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, uniforms/protective/safety equipment and/or the use of NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' personal mobile phone and data usage for work related purposes including but not limited to receiving and responding to work related messages and/or phone calls. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work related purposes and/or the cost of purchasing and/or maintaining work uniforms/clothing.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were/are at times required to use their personal vehicles for work purposes without receiving any reimbursement from EMPLOYER and /or full reimbursement from EMPLOYER, including but not limited to, reimbursement at the applicable legally mandated Internal Revenue Service (IRS) per mile compensation rate. For example, based on information and belief, at times NON-EXEMPT AGGRIEVED EMPLOYEES were required to drive between EMPLOYER's various stores, facilities and/or offices and/or use their personal vehicles for other work purposes without receiving any and/or full reimbursement from EMPLOYER for the vehicle-

related expenses incurred in connection therewith.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER.

As a pattern and practice, EMPLOYER regularly failed to reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out EMPLOYER's orders and/or carrying out the duties assigned by EMPLOYER.

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law." Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited, unlawful non-compete/non-solicitation agreements, and/or unlawful confidentiality/nondisclosure agreements and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

The California Labor Code places certain procedural and substantive limits on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting

requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA. For example, EMPLOYER required COMPLAINANT to submit and/or agree to submit in writing to an unlawful criminal background check as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA. For example, EMPLOYER's purported background check disclosures are laden with extraneous information, including but not limited to, irrelevant information concerning states other than California, e.g., Massachusetts, Minnesota, Oklahoma, New York, Maine, Washington and New Jersey and as such the purported disclosures were not clear and conspicuous in violation of the ICRAA and/or FCRA.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all), failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER violated Labor Code section 432.5.

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, EMPLOYER knew that requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES agree in writing to unlawful provisions as a condition of employment, EMPLOYER violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, EMPLOYER asked NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law.

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law.

By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, EMPLOYER violated California’s Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

Unlawful PAGA Waiver

Additionally, based on information and belief, EMPLOYER violated Labor Code section 432.5 by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to other unlawful agreements, including but not limited to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

An action pursuant to PAGA “...is a representative action on behalf of the state” *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law and unenforceable. *See Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384 (“We conclude that where, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

Moreover, the California Supreme Court has ruled that a court cannot compel arbitration of an aggrieved employee's individual PAGA claim because there is no such thing as an individual PAGA claim. *Kim v Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 ("There is no individual component to a PAGA action because 'every PAGA action ... is a representative action on behalf of the state.'")

Upon information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree, in writing, to an unlawful PAGA waiver, EMPLOYER required written agreement to an unlawful provision as a condition of employment which is a violation of labor code section 432.5.

As such, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Kiara Bramasco
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: kiara@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Kiara Bramasco". The signature is written in a cursive, flowing style.

Kiara Bramasco, Esq.
CROSNER LEGAL, PC



Manny Martinez <manny@crosnerlegal.com>

Thank you for submission of your PAGA Case.

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "zach@crosnerlegal.com" <zach@crosnerlegal.com>

Fri, Mar 3, 2023 at 1:13 PM

3/3/2023

LWDA Case No. LWDA-CM-939808-23
Law Firm : Crosner Legal, PC
Plaintiff Name : Somalia Goodwin
Employer: Save Mart Supermarkets LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT

4



Maria Monterrey <maria@crosnerlegal.com>

Thank you for your Proposed Settlement Submission

1 message

DIR PAGA Unit <no-reply@formassembly.com>
To: maria@crosnerlegal.com

Wed, Jan 29, 2025 at 2:13 PM

01/29/2025 02:11:51 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm