

Brandon Brouillette (SBN 289601)  
bbrouillette@crosnerlegal.com  
Zachary M. Crosner (SBN 272295)  
zach@crosnerlegal.com  
**CROSNER LEGAL, PC**  
9440 Santa Monica Blvd, Suite 301  
Beverly Hills, California 90210  
Tel: (866) 276-7637  
Fax: (310) 510-6429

Attorneys for Plaintiffs  
(Additional Attorneys Listed on Next Page)

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

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

Plaintiffs,

v.

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

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

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

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

1 JAMES HAWKINS APLC  
James R. Hawkins (#192925)  
2 Gregory Mauro (#222239)  
Michael Calvo (#314986)  
3 Lauren Falk (#316893)  
Ava Issary (#342252)  
4 9880 Research Drive, Suite 200  
Irvine, CA 92618  
5 Tel.: (949) 387-7200  
Fax: (949) 387-6676  
6 Email: James@jameshawkinsaplc.com  
7 Email: Greg@jameshawkinsaplc.com  
Email: Michael@jameshawkinsaplc.com  
8 Email: Lauren@jameshawkinsaplc.com  
Email: Ava@jameshawkinsaplc.com  
9  
Attorneys for Plaintiff JOHN A. MCGEHEE,  
10  
11  
12  
13  
14  
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**I. INTRODUCTION**

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

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

1     **II.     BACKGROUND/LITIGATION HISTORY**

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

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

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

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

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

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

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

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

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

### **III. THE PROPOSED SETTLEMENT TERMS**

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

#### **A. Certification of the Settlement Class**

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

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

**B. The Benefit Conferred on the Settlement Class**

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

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

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

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

3 **C. Settlement Administration**

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

10 **D. The Class Notice**

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

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

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

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1           **F.     Release of Claims**

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

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

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

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

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

28       ///

1 **IV. ARGUMENT**

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

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

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

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

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

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

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

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

15 In the present matter, conditional certification is proper since this matter satisfies all  
16 requirements for class certification under Code of Civil Procedure section 382. First, the class is  
17 both sufficiently numerous, consisting of approximately 25,288 individuals, and ascertainable by  
18 reference to Defendant’s personnel and payroll records. [Brouillette Decl., ¶ 22.] Next, Plaintiffs  
19 all are adequate class representatives, as their claims do not conflict with and are not antagonistic  
20 to the claims of other class members. Further, their claims are typical given each is a member of  
21 the class and their claims arise from the same employment practices and course of conduct giving  
22 rise to the claims of the other class members. [Declaration of Somalia Goodwin, ¶¶ 2-9;  
23 Declaration of John A. McGehee, ¶¶ 2-13; Declaration of Dustin Johnson, ¶¶ [REDACTED]; Declaration of  
24 Juan Carlos Quevedo, ¶¶ 2-6; Brouillette Decl., ¶ 23.] Lastly, Plaintiffs’ counsel all are  
25 experienced and adequate class counsel. [Brouillette Decl., ¶¶ 39-49; Declaration of Paul K.  
26 Haines (“Haines Decl.”, ¶¶ 9-12; Declaration of Kyle Nordrehaug (“Nordrehaug Decl.”), ¶¶ 10-  
27 11.]  
28

1           Next, common questions of law and fact predominate – particularly for purposes of a  
2 settlement class – as the Class Members all were subject to the same alleged meal and rest break  
3 policy, and likewise were subject to the same alleged time rounding policies. Since the focus of  
4 the claims against Save Mart concerns the legality of common policies applied uniformly to the  
5 entire class, common issues predominate over individualized inquiries concerning liability. For  
6 instance, Save Mart’s meal and rest break policy (as alleged by Plaintiffs) is a company-wide  
7 policy applied equally and consistently to all class members, and this policy is either compliant  
8 with California law or it is not. Regardless of that determination, it will decide liability for all  
9 class members one way or another. Similarly, whether Save Mart’s wage statements violated Labor  
10 Code § 226 by allegedly failing to list total hours worked in the wage statements raises another  
11 question common to the whole class. [Brouillette Decl., ¶ 24.]

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

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

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

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

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

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

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

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

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

25 On the meal period claims, Plaintiffs collectively alleged several violations. First, they  
26 argued that, regardless of whether Save Mart's written policies were compliant, there were  
27 significant "de facto" violations for missed, late, and short meal periods. Per Plaintiffs, their  
28

1 expert's review of the sampling of time records produced suggested tens of thousands of meal  
2 period violations during the class period, primarily for untimely meal periods and missing second  
3 meal periods of shifts over 10 hours. Plaintiffs further emphasized that those same records show  
4 the substantial majority of the alleged violations were not compensated with the required one hour  
5 pay, although admittedly Defendant did pay at least some meal break premiums during the class  
6 period. [Brouillette Decl., ¶ 30.]

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

22 For the rest break claim, Plaintiffs similarly argued that Defendant frequently provided  
23 non-compliant rest breaks, as the Class Members often had to skip rest breaks or received  
24 shortened rest breaks due to the hectic nature of the work. As with meal breaks, Defendant argued  
25 its rest break policies complied with California law and that it authorized and permitted employees  
26 to take all required rest breaks, and again that individualized issues would predominate in  
27 determining why a rest break allegedly was missed or non-compliant. [Brouillette Decl., ¶ 32.]  
28

1 On the expense reimbursement claim, Plaintiffs allege that use of personal cellular phones  
2 was necessary and consequential to employment with Defendant, and that Defendant did not  
3 reimburse employees for the cost associated with the use of the personal cellular phones for  
4 Defendant's benefit. Cochran v. Schwan's Home Serv. (2014) 228 Cal.App.4th 1137, 1144. In  
5 response, Save Mart argued it provided employees with cell phones to the extent those employees  
6 needed one to perform their job duties. Otherwise, per Save Mart, to the extent employees used  
7 their own phones, it was purely for personal convenience, was not necessary to their employment,  
8 and therefore was not reimbursable. Defendant also emphasized resolution of the underlying  
9 liability issues relating to the reimbursement claim would also require a slew of individualized  
10 inquiries. It would require the Court to determine, inter alia, whether business expenses were  
11 incurred, whether the expenses were "reasonable" and "necessary," whether Save Mart had actual  
12 or constructive knowledge of any unreimbursed business expenses, and so on. [Brouillette Decl.,  
13 ¶ 33.]

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

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

11  
12 As far as potential PAGA liability, the alleged aggrieved employees theoretically are  
13 entitled to penalties totaling over \$360 million should Plaintiffs prevail on all claims, establish  
14 violations of the multiple Labor Code sections at issue, and secure the maximum penalty on all  
15 issues as to each and every pay period. [Brouillette Decl., ¶ 36.] As with the class claims, Plaintiffs  
16 discounted the potential PAGA penalties based on Defendant’s various defenses on the merits and  
17 also accounted for the Court’s wide discretion to reduce such penalties, or to decline to award  
18 penalties at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th  
19 504 (trial court awarded penalties of \$5 per pay period after a bench trial, which decision was  
20 upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S.  
21 Dist. LEXIS 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated  
22 \$200,000 to PAGA penalties.

23 Plaintiffs submit this amount is reasonable under the circumstances and in line with  
24 comparable settlements in other wage and hour class actions in California. E.g., Van Kempen v.  
25 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final  
26 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);  
27 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303  
28

(finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at \*27 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement.

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

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

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

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1 **V. CONCLUSION**

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

6 Dated: January 30, 2025

**CROSNER LEGAL, PC**

8 By:   
9 BRANDON BROUILLETTE  
10 ZACHARY CROSNER  
11 SAMANTHA A. SMITH  
12 Attorneys for Plaintiff Somalia Goodwin  
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