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FILED
ALAMEDA COUNTY

MAY 21 2020

CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

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SAVE MART SUPERMARKETS

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA
13

14 DANA CURLEY and WILLIAM
15 O'BRIEN, as individuals and on behalf of
all others similarly situated,

16 Plaintiffs,

17 v.

18 SAVE MART SUPERMARKETS and
19 DOES 1 through 50 inclusive,

20 Defendants.
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Case No. RG13685740

ASSIGNED FOR ALL PURPOSES TO
JUDGE STEPHEN KAUS DEPT. 19

STIPULATION AND ^{SLX} [PROPOSED]
ORDER CLARIFYING ORDER
GRANTING PRELIMINARY
APPROVAL

Complaint Filed: June 28, 2013
Trial Date: June 12, 2019

(RECEIVED)
MAY 13 2020

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MAY 13 REC'D

FAXED

STIPULATION

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Plaintiffs DANA CURLEY and WILLIAM O'BRIEN ("Plaintiffs") and Defendant SAVE MART SUPERMARKETS ("Defendant") (collectively, the "Parties") through their counsel of record, hereby stipulate as follows:

WHEREAS, due to the California Stay At Home Order and the Alameda County Shelter In Place Order and the resulting impact on Court operations, Plaintiffs were unable to file and have their Motion for Preliminary Approval ("Motion") of the settlement heard by a regularly noticed motion;

WHEREAS, Plaintiffs consulted with the Court regarding options for having the Motion decided during this period of limited Court operations and it was determined that the Motion could be decided on May 8, 2020 on an *ex parte* basis subject to a stipulation by the Parties;

WHEREAS, the Parties negotiated and agreed to the terms of a stipulated *ex parte* application for approval of the settlement of this matter (the "Stipulation");

WHEREAS, a material term of the Stipulation is that the date of preliminary approval be May 8, 2020;

WHEREAS, on April 24, 2020, Plaintiffs submitted the Stipulation and Proposed Order to the Court with the understanding that the date of preliminary approval would be May 8, 2020;

WHEREAS, on April 24, 2020, the Court signed an Order Granting Preliminary Approval (the "Order") approving the settlement;

WHEREAS, the Order was entered on April 27, 2020;

1 WHEREAS, the Notice of Entry of the Order was served on May 8, 2020;

2

3 WHEREAS, the Order expressly states that the Court preliminarily approved the
4 settlement pursuant to the terms of the Stipulation and as such, the Parties understand that the date
5 of preliminary approval is the stipulated date of May 8, 2020;

6

7 WHEREAS, despite approving the settlement pursuant to the terms of the Stipulation, the
8 Order does not expressly state that May 8, 2020 is the date of preliminary approval;

9

10 WHEREAS, because the Order was signed on April 24, 2020, entered on April 27, 2020
11 but the stipulated date of preliminary approval (May 8, 2020) is not stated in the Order, this could
12 create confusion in future proceedings regarding the scope of the release, res judicata, or other
13 decisions made by future courts that are based on the date of preliminary approval; and

14

15 WHEREAS, the Parties believe that clarifying the Order to expressly state that the date of
16 preliminary approval is May 8, 2020, will prevent confusion, conflict and avoid unnecessary
17 disputes should it become necessary to interpret the date of preliminary approval and/or the
18 temporal scope of this settlement and the release therein.

19

20 **IN LIGHT OF THE FORGOING, THE PARTIES STIPULATE AS FOLLOWS:**

21

22 The Order Granting Preliminary Approval be revised to add the following statement in
23 Paragraph 1:

24 The date of preliminary approval is May 8, 2020.

25 The Order will otherwise remain unchanged.

26

27 **IT IS SO STIPULATED.**

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1 Dated: May 13, 2020

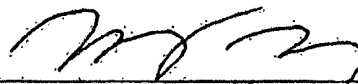
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SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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By



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MORGAN P. FORSEY
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PATRICIA M. JENG

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Attorneys for Defendant
SAVE MART SUPERMARKETS

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DATED: May 13, 2020

RIGHETTI GLUGOSKI, P.C.

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DocuSigned by:



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Michael Righetti
RIGHETTI GLUGOSKI, P.C.
Attorneys for Plaintiffs and the Class

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~~PROPOSED~~ ORDER

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Pursuant to the stipulation of the parties, and good cause showing, the Court Orders as follows:

The following Order supersedes the Order Granting Preliminary Approval signed on April 24, 2020 and entered on April 27, 2020.

Dana Curley's and William O'Brien's ("Plaintiffs") Motion for Preliminary Approval of Stipulated Class Action Settlement ("Motion") came before this Court on the parties' Ex Parte Stipulation without hearing. The Court understands that the Stipulation and Settlement Agreement ("Stipulation"), together with other documents incorporated into the Stipulation, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice (the "Settlement"). The Court having considered the terms of the Settlement set forth in the Stipulation, the papers submitted in support of the Motion, and good cause appearing therefor:

IT IS HEREBY ORDERED:

1. The Court grants preliminary approval of the Settlement based upon the terms set forth in the Stipulation. The date of preliminary approval is May 8, 2020. The case preliminarily settled for \$5,000,000. The estimated size of the class is 441. The Settlement Agreement states that attorneys' fees will be up to 40% of the settlement amount, or \$2,000,000, plus costs of suit in an amount not to exceed \$350,000. The Settlement Agreement calls for \$20,000 class service awards to each of Plaintiffs and administration costs estimated to be \$8,000. Thus, after expenses of approximately \$2,398,000, the class would receive approximately \$2,602,000. The average payout to class members would be approximately \$5,900.00.

2. This Order incorporates by reference the definitions in the Stipulation, and all terms defined therein shall have the same meaning in this Order as set forth in the Stipulation.

3. It appears to the Court on a preliminary basis that the Settlement is fair, adequate and reasonable. Settlement negotiations involved, inter alia, one day of mediation with mediator

1 Anthony Piazza, which resulted in a settlement. The court gives “considerable weight to the
 2 competency and integrity of counsel and the involvement of a neutral mediator in [concluding] that
 3 [the] settlement agreement represents an arm’s length transaction entered without self-dealing or
 4 other potential misconduct.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129.)
 5 (*See also In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 504.)
 6 Additionally, Plaintiffs’ papers make an adequate analysis required by *Kullar v. Foot Locker Retail,*
 7 *Inc.* (2008) 168 Cal.App.4th 116, because they provide a reasonable estimate of the number of Class
 8 members, the total estimated possible recovery and some explanation why the settlement was
 9 reasonable in light thereof. (See Moving Grover Dec. at 13-17, 22, 25-27. [sic])

11 4. The Court hereby conditionally certifies the following Settlement Class as defined in
 12 the Stipulation for settlement proposes only:

13 All persons who, at any time during the period of June 28, 2009 until the
 14 date of Preliminary Approval of the settlement, are or were employed as
 15 exempt Assistant Store Managers, Assistant Store Manager -- Customer
 16 Experience, Assistant Store Manager -- Customer Solutions, or Grocery
 17 Managers at any of Save Mart’s corporately owned grocery stores located in
 18 the State of California including, without limitation Save Mart, S-Mart
 19 Foods, Lucky, FoodMaxx or Value Maxx who (a) did not previously exclude
 20 themselves from this action by submitting a valid Exclusion Request
 21 following the Court Approved Notice of Class Action on July 27, 2017 or (b)
 22 do not timely submit a valid Request for Exclusion from this Settlement.

23 5. Class Members shall have the opportunity to request exclusion from the Settlement.

24 6. The Court hereby designates and appoints Plaintiffs Dana Curley and William
 25 O’Brien to represent the Settlement Class also referred to as “Class Members.”

26 7. The Court hereby designates and appoints Righetti Glugoski P.C. and Jones Law
 27 Firm LLC as Class Counsel for the Settlement Class. Class Counsel are authorized to act on behalf
 28 of the Class Members with respect to all acts or consents required by, or which may be given
 pursuant to, the Settlement, and such other acts reasonably necessary to effectuate the terms of the
 Stipulation.

1 8. Class Members may enter an appearance through counsel of such individual's own
2 choosing and at such individual's own expense. Any Class Member who does not enter an
3 appearance or appear on his or her own with or without individual counsel will be represented by
4 Class Counsel.

5 9. The Court hereby preliminarily approves the definition and disposition of the Class
6 Settlement Amount and related matters provided for in the Stipulation. The proposed class notice
7 form and procedure, as revised, are acceptable to the Court.

8 10. The Court will not approve the amount of attorneys' fees and costs until final
9 approval hearing. The Court cannot award attorneys' fees without reviewing information about
10 counsel's hourly rate and the amount of time Plaintiffs' legal counsel spent on the case. This is the
11 law even if the parties have agreed that Defendants will not oppose the motion for fees. (*Robbins v.*
12 *Alibrandi* (2005) 127 Cal. App. 4th 438, 450-451.) The court notes that counsel seeks fees of
13 \$2,000,000, which is 40.00% of the total fund. The court sets out its standard analysis below.
14 Counsel may address that analysis in the fee application. When using the percentage of recovery
15 approach, the court's benchmark for fees is 30% of a total fund. (*Laffitte v. Robert Half Internat.*
16 *Inc.* (2016) 1 Cal.5th 480, 495; *Schulz v. Jeppesen Sanderson, Inc.* (2018) 27 Cal.App.5th 1167,
17 1175; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 fn 13; *Chavez v. Netflix, Inc.*
18 (2008) 162 Cal.App.4th 43, 66 fn 11.) When cross-checking with the lodestar/multiplier, the court
19 will evaluate the lodestar based on reasonable fees that would have been charged at hourly rates and
20 then apply a multiplier. The multiplier includes contingent fee risk and other factors.

21 11. The Court will not decide the amount of any service award until final approval
22 hearing. Each of Plaintiff must submit evidence regarding the nature of his or her participation in
23 the action, including a description of his or her specific actions and the amount of time he or she
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1 committed to the prosecution of the case. (*Clark v. American Residential Services LLC* (2009) 175
2 Cal.App.4th 785, 804-807.)

3 12. The Court ORDERS that 10% of any fee award to be kept in the administrator's trust
4 fund until the completion of the distribution process and Court approval of a final accounting.

5 13. The Court will set a compliance hearing after the completion of the distribution
6 process and the expiration of the time to cash checks for counsel for plaintiff and the Administrator
7 to comply with CCP 384 and to submit a summary accounting how the funds have been distributed
8 to the class members and the status of any unresolved issues. If the distribution is completed, the
9 Court will at that time release any hold-back of attorney fees.

11 14. The Court will conduct the Final Approval/Settlement Fairness Hearing on **Monday,**
12 **October 26, 2020 at 3:00 p.m. in Dept. 19** of the Alameda County Superior Court, located at 1221
13 Oak Street, 3rd Floor, Oakland, California, 04612, before the Honorable Stephen Kaus, to determine
14 all necessary matters concerning the Settlement, including: whether the proposed settlement of the
15 Action on the terms and conditions provided for in the Stipulation is fair, adequate and reasonable
16 and should be finally approved by the Court; whether the plan of allocation contained in the
17 Stipulation should be approved as fair, adequate and reasonable to the Class Members; and to finally
18 approve Class Counsel's requested Attorneys' Fees and Costs, Plaintiffs' Class Representative
19 Enhancement Payments, and the Claims Administration Costs.

21 15. The Court hereby appoints Phoenix Settlement Administrators as Claims
22 Administrator and hereby directs the Claims Administrator to mail or cause to be mailed to Class
23 Members the Notice by first class mail within five (5) days of receipt of the Class List from
24 Defendant Save Mart using the procedures set forth in the Stipulation.

26 16. Any Class Member may choose to be excluded from the Settlement as provided in
27 the Notice by following the instructions for requesting exclusion from the Settlement that are set
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1 forth in the Notice. Any such person who chooses to be excluded from the Settlement will not be
2 entitled to any recovery under the Settlement and will not be bound by the Release of Claims or any
3 other provision of the Settlement or have any right to object, appeal or comment thereon. Any
4 written request for exclusion must be signed by each such person opting out. Class Members who
5 have not requested exclusion shall be bound by all determinations of this Court, by the Settlement,
6 and by the Final Judgment.
7

8 17. Any Class Member may appear at the Final Approval/Settlement Fairness Hearing
9 and may object to or express their views regarding the Settlement. However, absent good cause
10 found by the Court, no papers or briefs submitted by a Class Member or any other person shall be
11 considered by the Court, unless on or before forty-five (45) days after the mailing of the Notice that
12 person has served by hand or by first class mail written objections and copies of any papers and
13 briefs in support of their position and verification of their membership in the Class upon: (1) Class
14 Counsel via Charles A. Jones, Jones Law Firm LLC, 9585 Prototype Court, Suite B, Reno, NV
15 89521; and (2) Paul Cowie of Sheppard Mullin, Four Embarcadero Center, 17th Floor, San
16 Francisco California 94111, and also filed the objections, papers and briefs with the Clerk of this
17 Court at least fourteen (14) days before the Final Approval Hearing.
18

19 18. All papers in support of the Settlement, including Plaintiffs' application for an award
20 of Attorney's Fees and Costs and Class Representative Enhancement Payments to Plaintiffs, shall
21 be filed with the Court and served no later than sixteen (16) court days before the Final
22 Approval/Settlement Fairness Hearing.
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24 19. Pending final determination as to whether the Settlement should be approved, Class
25 Members shall not, directly, representatively, or in any other capacity, institute or prosecute against
26 the Released Parties any claims released in the Settlement.
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20. The Settlement is not a concession or admission, and shall not be used against Save Mart or any of the Released Parties as an admission or indication with respect to any claim of any fault or omission by Save Mart or any of the Released Parties.

21. This Order shall continue and affirm a stay in the Action, including a stay on all dates and deadlines associated with the Action, other than those pertaining to the administration of the Settlement of the Action.

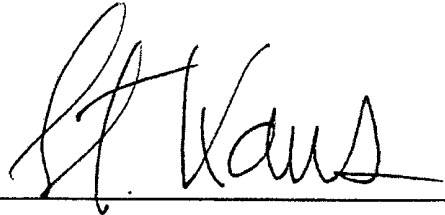
22. If the Settlement does not become effective in accordance with the terms of the Stipulation, or the Settlement is not finally approved, or is terminated, canceled or fails to become effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties shall revert to their respective positions as of before entering into the Stipulation.

23. The Court reserves the right to adjourn or continue the date of the Final Approval/Settlement Fairness Hearing and all dates provided for in the Stipulation without further notice to Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

24. As a condition for this Order to be entered on an Ex Parte basis, in light of the court's current Covid-19 related closure, the parties waive service of this Order by the court. A copy of this Order, when scanned by the Court, will be available on the Court's Domain website. The Court, instead, ORDERS Plaintiffs to serve a Notice of Entry of this Order on all interested parties, including without limitation the Claims Administrator, and to file an appropriate proof of service with the court.

IT IS SO ORDERED.

Dated: 5-20-2020



HONORABLE STEPHEN KAUS
ALAMEDA COUNTY SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number: RG13685740

Case name: CURLEY v. SAVE MART SUPERMARKETS

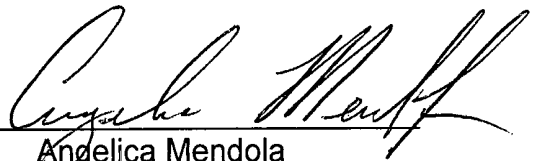
DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy **Granted Stipulation and Order Clarifying Order Granting Preliminary Approval** filed on May 21, 2020 was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1221 Oak Street, Oakland, California.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 22, 2020.

Chad Finke, Executive Officer/Clerk of the Superior Court

By: _____



Angelica Mendola
Deputy Clerk

Matthew Righetti
Righetti Glugoski, P.C.
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