

1 CHARLES A. JONES, SBN 224915
2 KELLY MCINERNEY, SBN 200017
3 JONES LAW FIRM
4 9585 Prototype Court, Suite B
5 Reno, NV 89521
6 Telephone: (775) 853-6440
7 Facsimile: (775) 853-6445
8 Caj@cjoneslawfirm.com
9 Kelly@cjoneslawfirm.com

10 Co-Counsel for Plaintiffs
11 DANA CURLEY and WILLAIM O'BRIEN

12 MICHAEL RIGHETTI, Bar No. 258541
13 RIGHETTI GLUGOSKI, P.C.
14 456 Montgomery Street, Suite 1400
15 San Francisco, CA 94104
16 Telephone: (415) 983-0900
17 Facsimile: (415) 397-9005

18 Co-Counsel for Plaintiffs
19 DANA CURLEY and WILLIAM O'BRIEN

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 COUNTY OF ALAMEDA

22 DANA CURLEY and WILLIAM
23 O'BRIEN, as individuals and on behalf of
24 all others similarly situated,

25 Plaintiffs,

26 vs.

27 SAVE MART SUPERMARKETS and
28 DOES 1 through 50 inclusive,

Defendants.

CASE NO. RG13685740

ASSIGNED TO THE HON. STEPHEN KAUS.
DEPT. 19

**NOTICE OF ENTRY OF ORDER
GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

TO: All PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD and Phoenix Settlement
Administrators. Pursuant to California Code Of Civil Procedure §1019.5(a), please take notice that:

On April 24, 2020, the Honorable Jo-Lyne Lee, of the Superior Court of California, County of

1 Alameda, issued an Order Granting Preliminary Approval of Class Action Settlement. A true and
2 correct copy of the Court's April 24, 20220 Order is attached hereto as Exhibit A.
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5 DATED: May 8, 2020

Jones Law Firm LLC

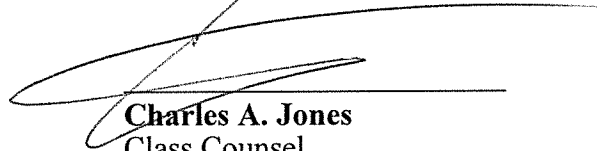
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8 **Charles A. Jones**
9 Class Counsel
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EXHIBIT A



22644818

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

FILED
ALAMEDA COUNTY

APR 27 2020

CLERK OF THE SUPERIOR COURT

By *C. Mendez* Deputy

Case No. RG13685740

**[PROPOSED] ORDER
GRANTING PRELIMINARY
APPROVAL**

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

Plaintiffs,

v.

SAVE MART SUPERMARKETS and DOES
1 through 50 inclusive,

Defendants.

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

9 IT IS HEREBY ORDERED:

10 1. The Court grants preliminary approval of the Settlement based upon the terms set
11 forth in the Stipulation. The case preliminarily settled for \$5,000,000. The estimated size of
12 the class is 441. The Settlement Agreement states that attorneys' fees will be up to 40% of the
13 settlement amount, or \$2,000,000, plus costs of suit in an amount not to exceed \$350,000. The
14 Settlement Agreement calls for \$20,000 class service awards to each of Plaintiffs and
15 administration costs estimated to be \$8,000. Thus, after expenses of approximately
16 \$2,398,000, the class would receive approximately \$2,602,000. The average payout to class
17 members would be approximately \$5,900.00.

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

20 3. It appears to the Court on a preliminary basis that the Settlement is fair, adequate
21 and reasonable. Settlement negotiations involved, inter alia, one day of mediation with
22 mediator Anthony Piazza, which resulted in a settlement. The court gives "considerable
23 weight to the competency and integrity of counsel and the involvement of a neutral mediator
24 in [concluding] that [the] settlement agreement represents an arm's length transaction entered
25 without self-dealing or other potential misconduct." (Kullar v. Foot Locker Retail, Inc. (2008)
26 168 Cal.App.4th 116, 129.) (See also In re Sutter Health Uninsured Pricing Cases (2009) 171
27 Cal.App.4th 495, 504.) Additionally, Plaintiffs' papers make an adequate analysis required by
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1 Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, because they provide a
2 reasonable estimate of the number of Class members, the total estimated possible recovery and
3 some explanation why the settlement was reasonable in light thereof. (See Moving Grover
4 Dec. at ¶¶ 13-17, 22, 25-27.

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

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

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

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

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

24 8. Class Members may enter an appearance through counsel of such individual’s
25 own choosing and at such individual’s own expense. Any Class Member who does not enter
26 an appearance or appear on his or her own with or without individual counsel will be
27 represented by Class Counsel.

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

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

15 11. The Court will not decide the amount of any service award until final approval
16 hearing. Each of Plaintiff must submit evidence regarding the nature of his or her participation
17 in the action, including a description of his or her specific actions and the amount to time he or
18 she committed to the prosecution of the case. (*Clark v. American Residential Services LLC*
19 (2009) 175 Cal.App.4th 785, 804-807.)

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

23 13. The Court will set a compliance hearing after the completion of the distribution
24 process and the expiration of the time to cash checks for counsel for plaintiff and the
25 Administrator to comply with CCP 384 and to submit a summary accounting how the funds
26 have been distributed to the class members and the status of any unresolved issues. If the
27 distribution is completed, the Court will at that time release any hold-back of attorney fees.
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14. The Court will conduct the Final Approval/Settlement Fairness Hearing on **Monday, October 26, 2020 at 3:00 p.m.** in Dept. 19 of the Alameda County Superior Court, located at 1221 Oak Street, 3rd Floor, Oakland, California, 04612, before the Honorable Stephen Kaus, to determine all necessary matters concerning the Settlement, including: whether the proposed settlement of the Action on the terms and conditions provided for in the Stipulation is fair, adequate and reasonable and should be finally approved by the Court; whether the plan of allocation contained in the Stipulation should be approved as fair, adequate and reasonable to the Class Members; and to finally approve Class Counsel's requested Attorneys' Fees and Costs, Plaintiffs' Class Representative Enhancement Payments, and the Claims Administration Costs.

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

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

17. Any Class Member may appear at the Final Approval/Settlement Fairness Hearing and may object to or express their views regarding the Settlement. However, absent good cause found by the Court, no papers or briefs submitted by a Class Member or any other person shall be considered by the Court, unless on or before forty-five (45) days after the mailing of the Notice that person has served by hand or by first class mail written objections

1 and copies of any papers and briefs in support of their position and verification of their
2 membership in the Class upon: (1) Class Counsel via Charles A. Jones, Jones Law Firm LLC,
3 9585 Prototype Court, Suite B, Reno, NV 89521; and (2) Paul Cowie of Sheppard Mullin,
4 Four Embarcadero Center, 17th Floor, San Francisco California 94111, and also filed the
5 objections, papers and briefs with the Clerk of this Court at least fourteen (14) days before the
6 Final Approval Hearing.

7 18. All papers in support of the Settlement, including Plaintiffs' application for an
8 award of Attorney's Fees and Costs and Class Representative Enhancement Payments to
9 Plaintiffs, shall be filed with the Court and served no later than sixteen (16) court days before
10 the Final Approval/Settlement Fairness Hearing.

11 19. Pending final determination as to whether the Settlement should be approved,
12 Class Members shall not, directly, representatively, or in any other capacity, institute or
13 prosecute against the Released Parties any claims released in the Settlement.

14 20. The Settlement is not a concession or admission, and shall not be used against
15 Save Mart or any of the Released Parties as an admission or indication with respect to any
16 claim of any fault or omission by Save Mart or any of the Released Parties.

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

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

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

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

9 **IT IS SO ORDERED.**

10 //

11 Dated: _____

12 7/24/2020

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14 JUDGE OF THE ALAMEDA COUNTY
15 SUPERIOR COURT
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1 **PROOF OF SERVICE**

2 I, the undersigned, declare as follows:

3 I am employed in the County of Washoe, State of Nevada.

4 I am over the age of eighteen (18) years and not a party to the within action; my business address is
5 9585 Prototype Court, Suite B, Reno Nevada, 89521.

6 On May 8, 2020, I caused the service of the foregoing document(s) described as:

- 7 1. Notice of Entry of Order Granting Preliminary Approval of Class Action Settlement

8 on all interested parties in this action addressed to the addressee as follows:

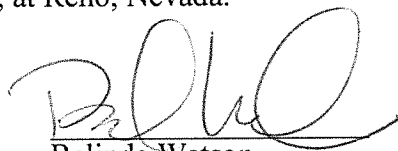
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10 Paul S. Cowie
11 Morgan Forsey
12 Sheppard, Mullin, Richter & Hampton, LLP
13 Four Embarcadero Center, 17th Floor
14 San Francisco, CA 94111
15 pcowie@sheppardmullin.com
16 mforsey@sheppardmullin.com

17
18 Melissa Meade
19 Phoenix Settlement Administrators
20 1411 N. Batavia St. Suite 105
21 Orange, CA 95867
22 melissa@phoenixclassaction.com

23 X **VIA ELECTRONIC MAIL:** Service by electronic mail was made either pursuant to a
24 Court Order, pursuant to an agreement between the parties permitting the same, or as a professional
25 courtesy in addition to other proper service. The electronic mail was sent to an electronic mail
26 address maintained by the person(s) on whom the document(s) is/are served as last given by
27 that/those person(s).

28 I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct.

Executed on May 8, 2020, at Reno, Nevada.


Belinda Watson