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**Superior Court of California, County of Alameda**  
**Rene C. Davidson Alameda County Courthouse**

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Curley  <p style="text-align: right;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> Save Mart Supermarkets  <p style="text-align: right;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG13685740</u>  Order  Motion for Final Approval of Class Settlement Granted
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The Motion for Final Approval of Class Settlement was set for hearing on 11/02/2020 at 03:00 PM in Department 19 before the Honorable Stephen Kaus. The Tentative Ruling was published and has not been contested.

**IT IS HEREBY ORDERED THAT:**

The tentative ruling is affirmed as follows: Plaintiffs Dana Curley and William O'Brien ("Plaintiffs") unopposed Motion for Final Approval of Class Action Settlement and Approving Proposed Notice to Class (the "Motion") is GRANTED. Plaintiffs' unopposed motion for awards of attorneys' fees, costs of suit, class representative enhancement awards and for administration costs are GRANTED as requested.

Plaintiff's Complaint alleges claims for Bus. & Prof. Code § 17200 unfair business practices and various Labor Code violations primarily regarding alleged unpaid meal and rest periods.

The case settled for \$5,000,000, pending final approval. The size of the class is 447. (Moving Lee Dec. ¶ 8.) 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 of \$8,000. Thus, after expenses of approximately \$2,398,000, the class would receive approximately \$2,602,000. The average payout to class members is \$5,821.03. The Moving MPA states that approximately 130 class members will receive at least \$7,500; approximately 85 class members will receive at least \$10,000; approximately 54 class members will receive at least \$12,500, and that the highest single recovery by a class member is estimated to be \$17,147.41. (Lee Dec. ¶¶ 14-15.)

Settlement negotiations involved, inter alia, one day of mediation with mediator Anthony Piazza that resulted in a settlement. The court gives "considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in [concluding] that [the] settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129.) (See also In re Sutter Health Uninsured Pricing Cases (2009) 171 Cal.App.4th 495, 504.)

The proposed class notice form and procedure, as revised, were previously deemed acceptable to the Court. A 45 day period to submit a Request for Exclusion or to submit a written Notice of Objection has also previously been deemed acceptable. (See Settlement Agreement ¶ I.Y.) Further, the Settlement Agreement and proposed notice to class members has been revised to more clearly state that a failure to

submit a written objection does not waive a class member's right to appear and orally object at the final approval hearing, as this Court requires.

The Administrator's declaration states that three Notice Packets were ultimately determined to be undeliverable. (Lee Dec. ¶ 10.) The Administrator received no Requests for Exclusion from the settlement and no Notices of Objection as of the 7/13/2020 due date for the 444 Notice Packets believed to have been successfully delivered to class members. (Id. at ¶¶ 11-12.)

The proposed definition of "Class Members" at ¶ I.G of the Settlement Agreement ("All persons who, at any time during the period June 28, 2009 until the date of Preliminary Approval of the settlement, are or were employed as exempt Assistant Store Managers, Assistant Store Manager - Customer Experience, Assistant Store Manager - Customer Solutions, or Grocery Managers at any of Save Mart's corporately owned grocery stores located in the State of California including, without limitation Save Mart, S-Mart Foods, Lucky, FoodMaxx, or Value Maxx, who (a) did not previously exclude themselves from this action by submitting a valid Exclusion Request following the Court Approved Notice of Class Action on July 27, 2017 or (b) do not timely submit a valid Request for Exclusion from this Settlement") is adequate for settlement purposes. "[A] class [is] ascertainable when it is defined in terms of objective characteristics and common transactional facts" that make "the ultimate identification of class members possible when that identification becomes necessary," and it is "sufficient to allow a member of the class to identify himself or herself as having a right to recover based on the class description." (Noel v. Thrifty Payless, Inc. (2019) 7 Cal.5th 955, 980.)

The Motion for Preliminary Approval of Class Settlement has already made an adequate analysis required by Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, because it provide a reasonable estimate of the number of Class members, the total estimated possible recovery and some explanation why the settlement was reasonable in light thereof. (See Moving Grover Dec. at ¶¶ 13-17, 22, 25-27.)

The scope of the release is appropriately limited to the claims that were or could have been made arising out of claims, causes of action, legal theories, legal authorities or facts alleged in Plaintiff's operative Complaint. The release of claims by the class is limited by the "factual predicate rule." (Hesse v. Sprint Corp. (9th Cir. 2010) 598 F.3d 581, 590.) (See also Hendricks v. Starkist Co (N.D. Cal. 2016) 2016 WL 692739 at \* 2-4 [Denying motion for final approval of class settlement because scope of release overbroad].)

The court notes and approves of the plan to distribute the settlement funds with no claims process.

The Settlement Agreement at p. 19:22-27 provides that unclaimed funds will be re-distributed pro rate to the remaining Class Members who have negotiated their settlement checks using the same formula for the original distribution. The Court finds this provision to be an appropriate dispensation for unclaimed funds.

The Court AWARDS attorneys' fees to Plaintiffs' counsel in the amount of \$2,000,000, which is 40 % of the total fund and the amount requested by Plaintiffs' counsel.

When using the percentage of recovery approach, the court's benchmark for fees is 30% of a total fund. (Laffitte v. Robert Half Internat. Inc. (2016) 1 Cal.5th 480, 495; Schulz v. Jeppesen Sanderson, Inc. (2018) 27 Cal.App.5th 1167, 1175; Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 557 fn 13; Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 fn 11.)

When cross-checking with the lodestar/multiplier, the court will evaluate the lodestar based on reasonable fees that would have been charged at hourly rates and then apply a multiplier. The multiplier includes contingent fee risk and other factors.

Counsel declares they spent approximately 4,452.05 attorney hours on the case to date, plus approximately 620 paralegal hours. (Moving Righetti Dec. ¶ 20; Moving Jones Dec. ¶ 26.) The Court notes that the lawsuit was filed in 2013, was a particularly heavily litigated case, and was performed on a contingency basis, meaning Plaintiffs' counsel had to advance significant funds through seven years of litigation. The loadstar based on the hourly billing rates provided totals \$2,915,162.50 solely for attorney time and \$3,019,867.50. (Ibid.) The Court notes that the attorney hourly rates from \$900/hr to \$550/hr are a bit high. However, even assuming a lower rate of \$500/hr for all attorney time and excluding paralegal work would still result in a lodestar of approximately \$2,200,000, meaning that the

\$2,000,000 award requested would still involve a negative multiplier. The Court, therefore, finds that, based on the time invested in this litigation and the fierce opposition provided by Defendant, the upward deviation requested from the Court's benchmark is appropriate in this case.

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

The Court AWARDS Plaintiffs \$350,000 as costs of suit, based on the stipulation of the parties and evidence of actual costs incurred totaling \$361,540.18. (Righetti Dec. ¶ 23; Jones Dec. ¶ 39.)

The Court AWARDS each of Plaintiffs a class representative enhancement or service award in the amount of \$20,000. Plaintiff Curley submits a declaration declaring that he contributed more than 130 hours to the litigation, and Plaintiff O'Brien submits a declaration declaring that he contributed more than 100 hours to the litigation. In light of their substantial time commitments to the litigation, an award of \$20,000 to each of the class representatives is reasonable.

The Court APPROVES settlement administration costs of \$8,000, per the Moving Lee Dec. ¶ 16.


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

The Compliance Hearing is hereby set for Monday, May 10, 2020 at 3:00 p.m. in Dept. 19.

If the parties have questions or concerns regarding the contents of this Tentative Ruling, they are instructed to contest the Tentative Ruling by emailing Dept. 19 of the Court no later than Friday, October 30, 2020 at 4:00 p.m. and appear for hearing on November 2, 2020 at 3:00 p.m. as also described above.

If any class member wishes to contest any portion of the settlement at the hearing, he or she must email the Court at dept19@alameda.courts.ca.gov no later than 4:00 p.m. on Friday, October 30, 2020 and advise that he or she wishes to contest the settlement remotely. If any class member timely so advises the Court of his or her intent to appear and contest the settlement, the Court will so advise the parties' respective counsel, and any requested hearing will most likely be conducted using the Blue Jeans Network, password # 5102676935. If a hearing is requested, the Court will advise all interested parties and any requesting class members of the manner in which the hearing will be conducted in advance of the hearing.

Dated: 11/02/2020

 Facsimile

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Judge Stephen Kaus

SHORT TITLE:

Curley VS Save Mart Supermarkets

CASE NUMBER:

RG13685740

ADDITIONAL ADDRESSEES

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JONES LAW FIRM

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