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11

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF ALAMEDA**
14

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

17 Plaintiff,

18 v.

19 SAVE MART SUPERMARKETS and DOES
20 1 through 50 inclusive,

21 Defendant.
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Case No. RG13685740

**STIPULATION AND SETTLEMENT
AGREEMENT**

Trial Date: October 9, 2020
Complaint Filed: June 28, 2013

Assigned For All Purposes To The Hon.
Steven Kaus. Dept. 19

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1 Subject to final approval by the Court, which counsel and the Parties agree to
2 diligently pursue and recommend in good faith, Plaintiffs Dana Curley (“Curley”) and William
3 O’Brien (“O’Brien”) (collectively, “Plaintiffs”), individually and on behalf of all others similarly
4 situated, on the one hand, and Defendant Save Mart Supermarkets (“Save Mart” or “Defendant”),
5 on the other hand (collectively, the “Parties” and individually, a “Party”), hereby agree to the
6 following binding settlement of the class action designated Dana Curley, et al., v. Save Mart
7 Supermarkets, Alameda County Superior Court Case No. RG13685740 (the “Action”), pursuant to
8 the terms and conditions set forth below (the “Settlement,” “Settlement Agreement” or
9 “Agreement”). Upon the Effective Date, and the payment by Defendant of all monies due under
10 the Agreement, the Parties shall file a Satisfaction of Judgment with the Court.

11 **I. DEFINITIONS**

12 The following definitions are applicable to this Settlement Agreement. Definitions
13 contained elsewhere in this Settlement Agreement will also be effective:

14 **A. “Action.”**

15 The case entitled Dana Curley, et al., v. Save Mart Supermarkets, Alameda County
16 Superior Court Case No. RG13685740.

17 **B. “Attorneys’ Fees and Costs.”**

18 The attorneys’ fees agreed upon by the Parties and approved by the Court for Class
19 Counsel’s litigation and resolution of the Action, and all costs incurred and to be incurred by Class
20 Counsel in the Action, including, but not limited to, costs associated with documenting the
21 Settlement, providing any notices required as part of the Settlement or Court’s Order, securing the
22 Court’s approval of the Settlement, administering the Settlement, any expert expenses, and
23 securing dismissal of the Action. Class Counsel will request attorneys’ fees not to exceed forty
24 percent (40%) of the non-reversionary Class Settlement Amount of \$5,000,000, which is a total of
25 \$2,000,000, to be allocated amongst counsel for Curley and O’Brien at their discretion. The costs
26 requested to be reimbursed will not exceed \$350,000. The attorneys’ fees and costs awarded are
27 subject to the Court’s approval. Defendant has agreed not to oppose Class Counsel’s request for
28 attorneys’ fees and reimbursement of costs and expenses as set forth above. Such Attorneys’ Fees

1 and Costs shall be paid from the Class Settlement Amount. Class Counsel will be issued an IRS
2 Form 1099 for the Attorneys' Fees and Costs detailed in this Section and shall be solely and
3 legally responsible for paying all applicable taxes on the payment made pursuant to this Section.

4 **C. "Claims Administrator."**

5 Phoenix Settlement Administrators shall be the third-party class action settlement
6 claims administrator as agreed to by the Parties and provided approved by the Court for the
7 purposes of administering this Settlement. The Parties each represent that they do not have any
8 financial interest in the Claims Administrator or otherwise have a relationship with the Claims
9 Administrator that could create a conflict of interest.

10 **D. "Claims Administration Costs."**

11 The costs payable from the Class Settlement Amount to the Claims Administrator
12 for administering this Settlement, including, but not limited to, printing, distributing, and tracking
13 documents for this Settlement, calculating estimated amounts per Class Member, tax reporting,
14 distributing the Class Settlement Amount, and providing necessary reports and declarations, and
15 other duties and responsibilities set forth herein to process this Settlement Agreement, and as
16 requested by the Parties. The Claims Administration Costs will be paid from the Class Settlement
17 Amount, including, if necessary, any such costs in excess of the amount represented by the Claims
18 Administrator as being the maximum costs necessary to administer the Settlement. The Claims
19 Administration Costs are currently estimated to be \$8,000. To the extent actual Claims
20 Administration Costs are greater than \$8,000, such excess amount will be deducted from the Class
21 Settlement Amount, subject to the Court's approval. The Claims Administration Costs will be
22 paid no sooner than fifteen (15) calendar days following the Effective Date.

23 **E. "Class Counsel."**

24 Charles A. Jones of Jones Law Firm LLC and Matthew Righetti and Michael
25 Righetti of Righetti & Glugoski PC are Class Counsel.

26 **F. "Class List."**

27 A complete list of all Class Members that Defendant will diligently and in good
28 faith compile from its records and provide to the Claims Administrator within fourteen (14)

1 calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in a
2 readable Microsoft Office Excel spreadsheet or other suitable format and will include each Class
3 Member's full name, most recent mailing address, telephone number, Social Security number,
4 dates of employment (*i.e.*, hire date and termination date, if applicable), approximate number of
5 workweeks, and any other relevant information needed to calculate settlement payments.

6 **G. "Class Member(s)" or "Settlement Class."**

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

15 **H. "Class Period."**

16 The period from June 28, 2009 through the date of Preliminary Approval.

17 **I. "Class Representative Enhancement Payments."**

18 The amount to be paid to Plaintiffs in recognition of their effort and work in
19 prosecuting the Action on behalf of Class Members and for their general release of claims.
20 Subject to the Court granting Final Approval of this Settlement Agreement, Plaintiffs will request
21 Court approval of Class Representative Enhancement Payments of up to \$20,000.00 for Curley
22 and up to \$20,000.00 for O'Brien. Plaintiffs will be issued an IRS Form 1099 in connection with
23 their Class Representative Enhancement Payments. Plaintiffs shall be solely and legally
24 responsible for paying any and all applicable taxes on this payment and shall hold Defendant
25 harmless from any claim or liability for taxes, penalties or interest arising as a result of the
26 payment. The Class Representative Enhancement Payments will be paid from the Class
27 Settlement Amount and will be in addition to Plaintiffs' Individual Settlement Payments paid
28 pursuant to the Settlement, and are conditioned on the execution of a stand-alone settlement

1 agreement and general release of claims. Defendant makes no representations as to the tax
2 treatment or legal effect of the payments called for herein, and Plaintiffs are not relying on any
3 statement or representation by Defendant or their counsel in this regard.

4 **J. "Class Settlement Amount."**

5 The sum of no more than \$5,000,000 to be paid by Defendant in full satisfaction of
6 all claims arising from the Action. As this settlement is non-reversionary, none of the \$5,000,000
7 shall revert to Defendant. The Class Settlement Amount includes all Individual Settlement
8 Payments to Class Members, the Class Representative Enhancement Payments to Plaintiffs,
9 Claims Administration Costs to the Claims Administrator, and the Attorneys' Fees and Costs.
10 Defendant will also be responsible for any employer payroll taxes required by law, separate and in
11 addition to the Class Settlement Amount, including the employer FICA, FUTA, and SDI
12 contributions on the wage portion of the Individual Settlement Payments.

13 **K. "Preliminary Approval Order"**

14 The order of the Court that grants preliminary approval of the Settlement.

15 **L. "Final Approval Order"**

16 The order of the Court that grants final approval of the Settlement and dismisses
17 the Litigation in its entirety with prejudice.

18 **M. "Effective Date."**

19 The date on which the Final Award becomes final. For purposes of this Section,
20 the Final Award "becomes final" only after the Court grants the Motion for Final Approval and
21 upon the latter of: (i) if no objections are filed to the Settlement, then thirty-one (31) days after the
22 date of the entry of the Final Judgment and Order of Dismissal; or (ii) if objections to the
23 Settlement are filed and overruled and the time to appeal or seek permission to appeal or seek
24 other judicial review of the entry of the Final Judgment and Order of Dismissal has expired with
25 no appeal or other judicial review having been taken or sought, then sixty-five (65) days after
26 Final Judgment and Order of Dismissal; or; (iii) if an appeal or other judicial review has been
27 taken or sought from the Final Judgment and Order of Dismissal, then twenty (20) days after any
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1 such appeal is withdrawn or an appellate decision affirming the final approval order becomes final
2 with no further rights to appeal.

3 **N. "Individual Settlement Payment."**

4 Each Class Member's share of the Net Settlement Amount, which shall be
5 distributed to the Class Members, less employee portions of state and federal withholding taxes,
6 including the employee FICA, FUTA and SDI contributions and any other applicable payroll
7 deductions required by law as a result of the payment of the amount allocated to such Class
8 Member as set forth herein.

9 **O. "Net Settlement Amount."**

10 The portion of the Class Settlement Amount remaining after deduction of the
11 approved Class Representative Enhancement Payments, Claims Administration Costs, and the
12 Attorneys' Fees and Costs.

13 **P. "Notice of Class Action Settlement."**

14 The document substantially in the form attached as Exhibit 1 that will be mailed to
15 Class Members' last known addresses and which will provide Class Members with information
16 regarding the Action and information regarding the Settlement of the Action.

17 **Q. "Notice of Objection."**

18 For a Class Members' Notice of Objection to the Settlement to be valid, it must
19 include the objector's full name, signature, address, telephone number and a written statement of
20 all grounds for the objection accompanied by legal support, if any, for such objection. The Notice
21 of Objection must be returned by mail or fax to the Claims Administrator at the specified address
22 or facsimile number and postmarked or faxed on or before the Response Deadline. The date of the
23 postmark or fax receipt confirmation will be the exclusive means to determine whether a Notice of
24 Objection has been timely submitted.

25 Absent good cause found by the Court, Class Members who fail to make objections
26 in the manner specified above shall be deemed to have waived any objections and shall be
27 foreclosed from making any objection (whether by appeal or otherwise) to the Settlement
28 Agreement or the Order Granting Final Approval of the Settlement Agreement. Neither the

1 Parties nor their counsel will solicit or otherwise encourage Class Members to submit written
2 objections to the Settlement Agreement or appeal from the Final Approval Order. Class Counsel
3 will not represent any Class Members with respect to any such objections to this Settlement. The
4 Claims Administrator shall provide counsel for the Parties with complete copies of all objections
5 received, including the date of postmark or fax receipt confirmation for each objection, within
6 three (3) business days of receipt. Class Counsel will provide copies of any objections and
7 supporting documents to the Court at least ten (10) calendar days before the Final Approval
8 Hearing, unless otherwise directed by the Court. Notwithstanding the above, Class Members shall
9 be permitted to appear at the Final Approval Hearing to voice any concerns or objections they may
10 have to the Settlement.

11 **R. "Notice Packet."**

12 The Notice of Class Action Settlement and Individual Settlement Payment
13 calculations, and workweek information.

14 **S. "Plaintiffs."**

15 Plaintiffs Dana Curley and William O'Brien.

16 **T. "Preliminary Approval."**

17 The Court's order granting preliminary approval of the Settlement Agreement.

18 **U. "Qualified Settlement Account."**

19 The fund established by the Claims Administrator pursuant to Internal Revenue
20 Code Section 1.468B-1.

21 **V. "Class Members' Released Claims."**

22 As of the date of the Order Granting Final Approval, all Class Members shall fully
23 and finally release Released Parties of the Released Claims. The Released Claims include any and
24 all claims, wage and hour claims, rights, demands, liabilities and causes of action of any nature or
25 description as alleged or could have been alleged based on the facts asserted in the
26 Complaint/Action arising during the Class Period, or that could have been alleged in the Action
27 based on the facts and claims alleged in the Complaint. The Released Claims include all claims
28 that Class Members were misclassified as exempt employees and any and all claims based on such

1 misclassification, claims for unpaid overtime, double-time, and interest; the calculation of the
2 regular rate of pay; wages, premiums and any and all statutory remedies for missed, short and/or
3 late meal periods; wage statements (pay stubs); failure to keep accurate records; unfair business
4 practices; penalties, including recordkeeping penalties, wage statement penalties, minimum wage
5 penalties, liquidated damages, and waiting-time penalties; and attorneys' fees and costs. The
6 Released Claims include all such claims arising under: the California Labor Code, including, but
7 not limited to, sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, and 1198 all claims
8 relating to the Released Claims under the Wage Orders of the California Industrial Welfare
9 Commission, California Business and Professions Code section 17200, *et seq.*; and the California
10 common law of contract. This release excludes the release of claims not permitted by law

11 **W. "Released Parties."**

12 Save Mart Supermarkets Corporation and each of its past, present and future agents,
13 employees, servants, officers, directors, partners, trustees, representatives, shareholders,
14 stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations
15 and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint
16 venturers, joint employers, affiliates, alter-egos, and affiliated organizations, and all of their
17 respective past, present and future employees, directors, officers, agents, attorneys, stockholders,
18 fiduciaries, parents, subsidiaries, and assigns.

19 **X. "Request for Exclusion or Opt Out."**

20 A notice submitted by a Class Member requesting to be excluded from the
21 Settlement. For the Request for Exclusion to be valid, it must include the Class Member's full
22 name, signature, address, telephone number and a written statement requesting to be excluded
23 from this Settlement. The Request for Exclusion must be returned by mail or fax to the Claims
24 Administrator at the specified address or facsimile number and postmarked or faxed on or before
25 the Response Deadline. The date of the postmark or fax receipt confirmation will be the exclusive
26 means to determine whether a Request for Exclusion has been timely submitted. A Class Member
27 who does not submit a timely and valid Request for Exclusion from the Settlement will be deemed
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1 a Class Member and will be bound by all terms of the Settlement Agreement if the Settlement is
2 granted Final Approval by the Court.

3 **Y. "Response Deadline."**

4 The deadline by which Class Members must mail or fax to the Claims
5 Administrator valid Requests for Exclusion, Notices of Objection to the Settlement, or workweek
6 disputes. The Response Deadline will be forty-five (45) calendar days from the initial mailing of
7 the Notice Packet by the Claims Administrator, unless the 45th day falls on a Sunday or Federal
8 holiday, in which case the Response Deadline will be extended to the next day on which the U.S.
9 Postal Service is open. The Response Deadline for Requests for Exclusion, Notices of Objection,
10 or workweek disputes will be extended fifteen (15) calendar days for any Class Member who is re-
11 mailed a Notice Packet by the Claims Administrator, unless the 15th day falls on a Sunday or
12 Federal holiday, in which case the Response Deadline will be extended to the next day on which
13 the U.S. Postal Service is open. The Response Deadline may also be extended by express
14 agreement between Class Counsel and Defendant. Under no circumstances, however, will the
15 Claims Administrator have the authority to unilaterally extend the deadline for Class Members to
16 submit a Request for Exclusion, Notice of Objection to the Settlement, or workweek disputes.

17 **Z. "Satisfaction of Judgment."**

18 After the Effective Date and payment by Defendant of all monies due under the
19 Settlement Agreement, the Parties shall file a Satisfaction of Judgment with the Court.

20 **AA. "Settlement Payment Check."**

21 The payment to Class Members who do not exclude themselves from the
22 Settlement.

23 **II. RECITALS**

24 This Stipulation is made by Plaintiffs on behalf of themselves and each Class
25 Member, on the one hand, and Defendant, on the other hand, and is subject to the approval of the
26 Court.

1 **A. Investigation In The Class Action**

2 The Parties have conducted significant investigation of the facts and law during the
3 prosecution of the Actions. Such discovery and investigation includes: several sets of written
4 discovery, production of thousands of pages of documents, detailed information and data relevant
5 to Plaintiffs' claims and the analysis by the Parties of the data to investigate the merits of
6 Plaintiffs' claims and potential liability, consultation with and retention of expert witnesses,
7 dozens of depositions of Class Members and Defendant's corporate employees, extensive motion
8 practice including protracted briefing regarding class certification and trial plan, and extensive
9 investigation by Class Counsel through direct communication with Class Members. Furthermore,
10 counsel for the Parties have investigated the law as applied to the facts discovered regarding the
11 alleged claims of Plaintiffs and potential defenses thereto, and the potential damages claimed by
12 Plaintiffs.

13 Counsel for the Parties engaged in extensive discussions about the strengths and
14 weaknesses of the claims and defenses. The Parties attended a full-day mediation before an
15 experienced and well-regarded mediator, Anthony Piazza, Esq., on January 17, 2020.

16 **B. Benefits Of Settlement To Class Members**

17 Plaintiffs and Class Counsel recognize the expense and length of continued
18 proceedings necessary to litigate the disputes through trial and through any possible appeals.
19 Plaintiffs have also taken into account the uncertainty and risk of the outcome of further litigation,
20 the uncertain merits of the claims, and the difficulties and delays inherent in such litigation.
21 Plaintiffs and Class Counsel are also aware of the burdens of proof necessary to establish liability
22 for the claims asserted in the Actions, both generally and in response to Defendant's defenses
23 thereto. Plaintiffs and Class Counsel have also taken into account the extensive Settlement
24 negotiations conducted. Plaintiffs and Class Counsel have also taken into account Defendant's
25 agreement to enter into a Settlement that confers substantial relief upon the Class Members.
26 Based on the foregoing, Plaintiffs and Class Counsel have determined that the Settlement set forth
27 in this Agreement is a fair, adequate and a reasonable Settlement, and is in the best interests of the
28 Class.

1 **C. Defendant's Reasons For Settlement**

2 Defendant has concluded that any further defense of this litigation would be
3 protracted and expensive for all Parties. Since the inception of this lawsuit, Defendant has spent
4 substantial amounts of time, energy and resources and, unless this Settlement is made, will
5 continue to be devoted to the defense of the Claims asserted by the Class. Defendant has also
6 taken into account the risks of further litigation in reaching its decision to enter into this
7 Settlement. Defendant has, therefore, agreed to settle in the manner and upon the terms set forth
8 in this Agreement to put to rest the Claims as set forth in the Actions.

9 As to the Released Claims, Defendant denies and continues to deny each of those
10 claims. Defendant has repeatedly asserted and continues to assert defenses thereto, and has
11 expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the
12 facts or conduct alleged in the Actions. Nothing contained in this Agreement and no documents
13 referred to herein and no action taken to carry out this Agreement may be construed or used as an
14 admission by or against Defendant as to the Claims asserted.

15 **D. Plaintiffs' Claims**

16 Plaintiffs have claimed and continue to claim that the Released Claims have merit
17 and give rise to liability on the part of Defendant. This Agreement is a compromise of disputed
18 claims. Nothing contained in this Agreement and no documents referred to herein and no action
19 taken to carry out this Agreement may be construed or used as an admission by or against
20 Plaintiffs or Class Counsel as to the merits or lack thereof of the Claims asserted.

21 **III. STIPULATION AND AGREEMENT**

22 **NOW, THEREFORE, IT IS HEREBY STIPULATED**, by Plaintiffs on behalf
23 of the Class Members on the one hand, and Defendant on the other hand, and subject to the
24 approval of the Court, that the Actions are hereby being compromised and settled pursuant to the
25 terms and conditions set forth in this Agreement and that upon the Effective Date, and the
26 payment by Defendant of all monies due under the Agreement, the Parties shall file a Satisfaction
27 of Judgment with the Court, subject to the continuing jurisdiction of the Superior Court as set forth
28 below, and subject to the following terms and conditions:

1 **A. Release as to All Settlement Class Members.**

2 As of the Effective Date, the Settlement Class Members, including Plaintiffs,
3 release the Released Parties from the Released Claims. The Settlement Class Members agree not
4 to sue or otherwise make a claim against any of the Released Parties for the Released Claims.

5 **B. General Release by Plaintiffs.**

6 In addition to the releases made by the Class Members as set forth herein,
7 Plaintiffs, in their individual capacity and with respect to their individual claims only, as of the
8 date of the Final Approval Order, agree to fully and finally release the Released Parties from any
9 and all claims, known and unknown, under federal, state and/or local law, statute, ordinance,
10 regulation, common law, or other source of law. This General Release by Plaintiffs includes, but
11 is not limited to, all claims arising from or related to the Actions, Plaintiffs' employment with
12 Defendant and/or their separation therefrom, and Plaintiffs' compensation while employees of
13 Defendant. This General Release by Plaintiffs includes all claims arising from or related to the
14 Actions. Parties from any and all claims, known and unknown, under federal, state and/or local
15 law, statute, ordinance, regulation, common law, or other source of law, including but not limited
16 to claims arising from or related to their employment with Defendant and their compensation
17 while employees of Defendant. Plaintiffs' Released Claims include, but are not limited to, all
18 claims arising from or related to the Action. Plaintiffs' Released Claims include all claims for
19 unpaid wages, including, but not limited to, failure to pay minimum wages, straight time
20 compensation, overtime compensation, double-time compensation, and interest; the calculation of
21 the regular rate of pay; wages related to alleged illegal time rounding; missed meal period and rest
22 period wages premiums; reimbursement for all necessary business expenses; payment for all hours
23 worked, including off-the-clock work; wage statements; deductions; failure to keep accurate
24 records; unfair business practices; penalties, including, but not limited to, recordkeeping penalties,
25 wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys'
26 fees and costs. Plaintiffs' Released Claims include all claims arising under the California Labor
27 Code (including, but not limited to, sections 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5,
28 206, 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.3, 226.7, 226.8,

1 227.3, 256, 450, 510, 511, 512, 516, 550, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2,
2 1197, 1197.1, 1197.2, 1198, 1199, 2698 *et seq.*, 2699 *et seq.*, and 2802); all claims arising under:
3 the Wage Orders of the California Industrial Welfare Commission; California Business and
4 Professions Code section 17200, *et seq.*; the California Civil Code, to include but not limited to
5 sections 3287, 3336 and 3294; 12 CCR § 11040; 8 CCR § 11060; California Code of Civil
6 Procedure § 1021.5; the California common law of contract; the FLSA, 29 U.S.C. § 201, *et seq.*;
7 federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et*
8 *seq.* ("ERISA"). Plaintiffs' Released Claims also include all claims for lost wages and benefits,
9 emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under
10 federal, state, or local laws for discrimination, harassment, retaliation, and wrongful termination,
11 such as, by way of example only, (as amended) 42 U.S.C. § 1981, Title VII of the Civil Rights Act
12 of 1964, the Americans with Disabilities Act ("ADA"), the Age Discrimination in Employment
13 Act ("ADEA"), and the California Fair Employment and Housing Act ("FEHA"); and the law of
14 contract and tort. This release excludes the release of claims not permitted by law.

15 Plaintiffs' Released Claims include all claims, whether known or unknown. Even
16 if Plaintiffs discover facts in addition to or different from those that they now know or believe to
17 be true with respect to the subject matter of Plaintiffs' Released Claims, those claims will remain
18 released and forever barred. Thus, Plaintiffs expressly waive and relinquish the provisions, rights
19 and benefits of section 1542 of the California Civil Code, which reads:

20 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
21 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
22 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
23 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
24 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
25 **DEBTOR OR RELEASED PARTY.**

26 Plaintiffs may hereafter discover facts in addition to or different from those they
27 now know or believe to be true with respect to the subject matter of the General Release, but upon
28 the Effective Date, they shall be deemed to have, and by operation of the Final Approval Order

1 shall have, fully, finally, and forever settled and released any and all of the claims released
2 pursuant to the General Release whether known or unknown, suspected or unsuspected, contingent
3 or non-contingent, which now exist, or heretofore have existed upon any theory of law or equity.

4 **C. Class Representative Enhancement Payments.**

5 In exchange for a general release and in recognition of their effort and work in
6 prosecuting the Action on behalf of Class Members, Defendant agrees not to oppose any
7 application or motion for Class Representative Enhancement Payments in the amount of up to
8 \$20,000 for Curley and up to \$20,000 for O'Brien. The Class Representative Enhancement
9 Payments will be paid from the Class Settlement Amount, and are conditioned on the execution of
10 a stand-alone settlement agreement and general release of claims. The Parties agree that a
11 decision by the Court to award Plaintiffs an amount less than the amount stated above shall not be
12 a basis for Class Counsel to void this Settlement, and shall not in any way affect the Plaintiffs'
13 General Releases. The Claims Administrator shall issue a Form 1099 – MISC, Box 3 for the Class
14 Representative Enhancement Payments. Any amounts awarded for Class Representative
15 Enhancement Payments to Plaintiffs less than the amount listed above will result in the non-
16 awarded funds being part of the Net Class Settlement Fund available for distribution to the
17 Settlement Class Members. Plaintiffs shall be solely and legally responsible to pay any and all
18 applicable taxes on the Class Representative Enhancement Payments and shall defend and hold
19 harmless Defendant from any claim or liability for taxes, penalties or interest arising as a result of
20 the payment. These Class Representative Enhancement Payments shall be in addition to
21 Plaintiffs' Individual Settlement Payments as Settlement Class Members.

22 **IV. FUNDING OF THE CLASS SETTLEMENT AMOUNT**

23 Within fifteen (15) calendar days after the Effective Date of the Settlement,
24 Defendant will make a one-time deposit of the Class Settlement Amount (and all required
25 employer payroll taxes) into a Qualified Settlement Account to be established by the Claims
26 Administrator. If the 15th day falls on a weekend or Federal holiday, in which case the Response
27 Deadline will be extended to the next day on which the U.S. Postal Service is open. Within fifteen
28 (15) calendar days of the funding of the Settlement, the Claims Administrator will issue payments

1 to: (a) Class Members; (b) Plaintiffs; and (c) Class Counsel. The Claims Administrator will also
2 issue a payment to itself for Court-approved services performed in connection with the Settlement.
3 Defendant has no obligation to deposit such funds prior to the deadline set forth herein.

4 **A. Attorneys' Fees and Costs.**

5 Defendant agrees not to oppose any application by Class Counsel for attorneys'
6 fees of not more than \$2,000,000 or the reimbursement of costs and expenses associated with
7 Class Counsel's litigation and settlement of the Action not to exceed \$350,000. Subject to Court
8 approval, Plaintiffs' counsel will decide the allocation of attorneys' fees and costs amongst
9 counsel for Curley and O'Brien. No counsel shall be entitled to attorneys' fees or costs for work
10 performed in the Action other than as provided in this Settlement Agreement. The instant
11 Settlement Agreement is the exclusive means for recovery of attorneys' fees and costs incurred in
12 the Action by any attorney, law firm and/or other legal services provider.

13 **B. Claims Administration Costs.**

14 1. The Claims Administrator will be paid for the reasonable costs of administration of the
15 Settlement and distribution of payments from the Class Settlement Amount, which are currently estimated
16 to be \$8,000.

17 2. The Parties hereby acknowledge that the Claims Administration Costs may increase above
18 the current estimate of \$8,000 and that any such additional Claims Administration Costs that are approved
19 by the Parties' counsel and the Court shall be taken out of the Class Settlement Amount.

20 **C. Net Settlement Amount.**

21 The Net Settlement Amount will be used to satisfy Individual Settlement Payments
22 to Class Members from the Settlement Class in accordance with the terms of this Settlement.

23 **D. Individual Settlement Payment Calculations.**

24 Individual Settlement Payments will be calculated and apportioned from the Net
25 Settlement Amount based on the number of workweeks a Class Member worked for Defendant in
26 California during the Class Period. Specific calculations of Individual Settlement Payments will
27 be made as follows:
28

- 1 a. The Claims Administrator will calculate the total number of weeks worked by each Class
2 Member who does not timely exclude themselves from this settlement ("Individual
3 Workweeks") and the total number of weeks worked by all Class Members ("Class
4 Workweeks") during the Class Period.
- 5 b. To determine each Class Member's Individual Settlement Payment, the Claims
6 Administrator will use the following formula: Individual Settlement Payment = (Individual
7 Workweeks ÷ Class Workweeks) × Net Settlement Amount.
- 8 c. The Individual Settlement Payment will be reduced by any required deductions for each
9 Class Member as set forth herein, including employee-side tax withholdings or deductions.
- 10 d. Any monies of the Net Settlement Amount that remain unclaimed after the date to cash
11 settlement checks has expired shall be re-distributed to the Class Members who did not
12 timely exclude themselves from this settlement and who timely cashed their settlement
13 checks on a pro-rata basis using the same calculation as provided above.

14 The Individual Settlement Payments made to Class Members under this Settlement,
15 and any other payments made pursuant to this Settlement, will not be utilized to calculate any
16 additional benefits under any benefit plans to which any Class Members may be eligible,
17 including, but not limited to, profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans,
18 vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
19 intention that this Settlement Agreement will not affect any rights, contributions, or amounts to
20 which any Class Members may be entitled under any benefit plans.

21 **V. CLAIMS ADMINISTRATION PROCESS**

22 The Parties agree to cooperate in the administration of the Settlement and to make
23 all reasonable efforts to control and minimize the costs and expenses incurred in administration of
24 the Settlement. The Claims Administrator will provide the following services:

- 25 a. Establish and maintain a Qualified Settlement Account.
- 26 b. Calculate the Individual Settlement Payment each Class Member is eligible to
27 receive.
- 28

- 1 c. Print and mail the Notice Packet.
- 2 d. Establish and maintain a toll-free information telephone support line to assist Class
- 3 Members who have questions regarding the Notice Packet.
- 4 e. Establish and maintain a website with information to assist Class Members.
- 5 f. Conduct additional address searches for mailed Notice Packets that are returned as
- 6 undeliverable.
- 7 g. Process Requests for Exclusion, calculate Class Members' Individual Settlement
- 8 Payment, field inquiries from Class Members, administer any Requests for
- 9 Exclusion and Objections, calculate the distribution of any funds remaining in the
- 10 Net Settlement Account due to uncashed Individual Settlement Payment checks,
- 11 and issue Supplemental Individual Settlement Payments. This service will include
- 12 settlement proceed calculation, printing and issuance of Settlement Payment
- 13 Checks, and preparation of IRS W-2 and 1099 Tax Forms. Basic accounting for
- 14 and payment of employee tax withholdings and forwarding all payroll taxes and
- 15 penalties to the appropriate government authorities will also be included as part of
- 16 this service.
- 17 h. Issuing to Plaintiffs, Class Members, and Plaintiffs' Counsel any W-2, 1099, or
- 18 other tax forms as may be required by law for all amounts paid pursuant to this
- 19 Settlement.
- 20 i. Provide declarations and/or other information to the Court as requested by the
- 21 Parties and/or the Court.
- 22 j. Provide weekly status reports to counsel for the Parties.

23 Class List. Within fourteen (14) calendar days of Preliminary Approval,

24 Defendant will provide the Class List to the Claims Administrator and Class Counsel.

25 Notice Packet Mailing. Within five (5) calendar days after receiving the Class List

26 from Defendant, the Claims Administrator will mail a Notice Packet to all Class Members via

27 regular First-Class U.S. Mail, using the last known mailing addresses identified in the Class List.

28

1 Address Search and Updating. Prior to mailing, the Claims Administrator will
2 perform a search based on the National Change of Address Database for information to update and
3 correct any known or identifiable address changes. Any Notice Packets returned to the Claims
4 Administrator as non-deliverable on or before the Response Deadline will be sent promptly via
5 regular First-Class U.S. Mail to the forwarding address affixed thereto and the Claims
6 Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding
7 address is provided, the Claims Administrator will promptly attempt to determine the correct
8 address using a skip-trace, or other search using the name, address and/or Social Security number
9 of the Class Member involved, and will then perform a single re-mailing. Those Class Members
10 who receive a re-mailed Notice Packet, whether by skip-trace or by request, will have an
11 additional fifteen (15) calendar days from the Response Deadline to postmark or fax a Request for
12 Exclusion or Notice of Objection to the Settlement. .

13 Notice Packet. All Class Members will be mailed a Notice Packet containing the
14 forms attached as **Exhibit 1** as approved by the Court.

15 Notice Packet Dispute Process. Class Members will have an opportunity to dispute
16 the information provided in their Notice Packets. To the extent Class Members dispute the
17 number of workweeks to which they have been credited or the amount of their Individual
18 Settlement Payment, Class Members may produce documentary evidence to the Claims
19 Administrator showing that such information is inaccurate. Absent documentary evidence
20 rebutting Defendant's records, Defendant's records will be presumed determinative. However, if
21 a Class Member produces documentary evidence to the contrary, the Claims Administrator will
22 evaluate the evidence submitted by the Class Member and will make the final decision as to the
23 number of eligible workweeks that should be applied and/or the Individual Settlement Payment to
24 which the Class Member may be entitled. The workweek dispute must be returned by mail or fax
25 to the Claims Administrator at the specified address or facsimile number and postmarked or faxed
26 on or before the Response Deadline. The date of the postmark or fax receipt confirmation will be
27 the exclusive means to determine whether a workweek dispute has been timely submitted. All
28

1 such disputes are to be resolved not later than fourteen (14) calendar days after the Response
2 Deadline.

3 Defective Submissions. If a Class Member's Request for Exclusion is defective as
4 to the requirements listed herein, that Class Member will be given an opportunity to cure the
5 defect(s). The Claims Administrator will mail the Class Member a cure letter within three (3)
6 business days of receiving the defective submission to advise the Class Member that his or her
7 submission is defective and that the defect must be cured to render the Request for Exclusion
8 valid. The Class Member will have until the later of (a) the Response Deadline or (b) fifteen (15)
9 calendar days from the date of the cure letter, whichever date is later, to postmark or fax a revised
10 Request for Exclusion.

11 Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
12 Settlement Agreement must sign and postmark or fax a written Request for Exclusion to the
13 Claims Administrator within the Response Deadline. The date of the postmark on the return
14 mailing envelope or the fax receipt confirmation will be the exclusive means to determine whether
15 a Request for Exclusion has been timely submitted. All Requests for Exclusion will be submitted
16 to the Claims Administrator, who will certify jointly to Class Counsel and Defendant's Counsel
17 the Requests for Exclusion that were timely and validly submitted. Any Class Member who does
18 not timely and validly seek exclusion will be bound by the terms of this Settlement Agreement.

19 No Claim Form Submission. Settlement Class members do not need to submit a
20 claim form to receive their Individual Settlement Payment. All Class Members who do not
21 exclude themselves from the Settlement will receive a Settlement Payment.

22 Supplemental Individual Settlement Payment. Any checks issued by the Claims
23 Administrator to Class Members will be negotiable for one-hundred eighty (180) calendar days.
24 After one-hundred eighty (180) calendar days from the date of mailing, the checks shall become
25 null and void, and any monies remaining in the distribution account shall be distributed to
26 participating Settlement Class Members on a pro rata basis under the formula used to calculate the
27 Individual Settlement Payment.

1 **VI. NULLIFICATION OF THE SETTLEMENT AGREEMENT**

2 Defendant's Option to Nullify the Settlement Agreement. If five percent (5%) or
3 more of the Class Members submit a timely and valid Request for Exclusion from this Settlement,
4 Defendant, in its sole discretion, shall have the option of nullifying the Settlement Agreement. To
5 exercise this Option, Defendant must inform Class Counsel in writing that it is exercising its
6 Option to nullify the agreement within fourteen (14) days after the Response Deadline. In such a
7 case, the Parties and any funds to be awarded under this Settlement Agreement shall be returned to
8 their respective statuses as of the date and time immediately prior to the execution of this
9 Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not
10 been executed, except that any fees and costs already incurred by the Claims Administrator shall
11 be paid by Defendant.

12 Nullification of the Settlement Agreement. In the event: (i) the Court does not
13 enter the Preliminary Approval Order and approve the Released Claims specified herein; (ii) the
14 Court does not finally approve the Settlement as provided herein; or (iii) Defendant exercises its
15 option to nullify the Settlement Agreement based on an excessive number of opt-outs, as described
16 in the above Section, this Settlement Agreement shall be null and void ab initio. Any order or
17 judgment entered by the Court in furtherance of this Settlement Agreement shall be treated as void
18 from the beginning, and the Stipulations and Recitals contained herein shall be of no force or
19 effect, and shall not be treated as an admission by the Parties or their counsel. In such a case, the
20 Parties and any funds to be awarded under this Settlement Agreement shall be returned to their
21 respective statuses as of the date and time immediately prior to the execution of this Settlement
22 Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not
23 been executed, except that any fees already incurred by the Claims Administrator shall be paid
24 equally by both Parties.

25 Settlement Terms Bind All Class Members Who Do Not Opt Out. Any Class
26 Member who does not timely submit a valid Request for Exclusion from the Settlement, will be
27 bound by all its terms, including those pertaining to the Released Claims.
28

1 **VII. CERTIFICATION REPORTS**

2 Weekly Report. The Claims Administrator will provide Defendant's counsel and
3 Class Counsel a weekly report which certifies: (a) the number of Class Members who have
4 submitted valid Requests for Exclusion along with a copy of any such request; (b) any objections
5 submitted to the Settlement along with a copy of any such objection; and (c) whether any Class
6 Member has submitted a challenge to any information contained in his/her Notice Packet.
7 Additionally, the Claims Administrator will provide to counsel for both Parties any updated
8 reports regarding the administration of the Settlement Agreement as needed or requested.

9 Uncashed Settlement Checks. Any checks issued by the Claims Administrator to
10 Class Members will be negotiable for one-hundred eighty (180) calendar days. After one-hundred
11 eighty (180) calendar days from the date of mailing, the checks shall become null and void, and
12 any monies remaining in the distribution account shall be distributed to Settlement Class Members
13 pursuant to the workweek calculations used to determine the Individual Settlement Payment.

14 Certification of Completion. Upon completion of administration of the Settlement,
15 the Claims Administrator will provide a written declaration under oath to certify such completion
16 to the Court and counsel for all Parties.

17 **VIII. TAX TREATMENT OF INDIVIDUAL SETTLEMENT PAYMENTS**

18 All Individual Settlement Payments will be allocated as follows: one-third (1/3) of
19 each Individual Settlement Payment will be allocated as wages and two-thirds (2/3) will be
20 allocated as non-wages. The portion allocated to wages will be reported on an IRS Form W-2 and
21 the portions allocated to non-wages will be reported on an IRS Form-1099 by the Claims
22 Administrator. The Gross Individual Settlement Payments will be reduced by any required legal
23 deductions for each Class Member. All standard employee payroll deductions will be made for
24 state and federal withholding taxes, including any other applicable payroll deductions owed by the
25 Class Members as a result of the Wage Component, resulting in a net wage component. The
26 Claims Administrator will issue a check and W-2 Form to each Class Member for the wage
27 component. No withholding shall be made on the penalty portions of the Gross Individual
28 Settlement Payment. The Claims Administrator will issue a second check and IRS Form-1099 for

1 the remaining penalty component. The Claims Administrator shall be responsible for issuing the
2 payments and calculating and withholding all required state and federal taxes. The Claims
3 Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement
4 Payments under the terms of this Settlement Agreement. Any disputes not resolved by the Claims
5 Administrator concerning the administration of the Settlement will be resolved by the Court, under
6 the laws of the State of California. Prior to any such involvement of the Court, counsel for the
7 Parties will confer in good faith to resolve the dispute without the necessity of involving the Court.

8 **IX. ADMINISTRATION OF TAXES BY THE CLAIMS ADMINISTRATOR**

9 Tax Liability. Defendant makes no representation as to the tax treatment or legal
10 effect of the payments called for hereunder, and Plaintiffs and Class Members are not relying on
11 any statement, representation, or calculation by Defendant, any of the Released Parties, or by the
12 Claims Administrator in this regard. Plaintiffs, Plaintiffs' Counsel, and Class Members
13 understand and agree they will be solely responsible for the payment of their share of any taxes
14 and penalties assessed on the payments described herein.

15 Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT
16 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY"
17 AND EACH PARTY TO THIS SETTLEMENT AGREEMENT OTHER THAN THE
18 ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES
19 THAT (1) NO PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN
20 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
21 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY
22 SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
23 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
24 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
25 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
26 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
27 ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT
28 ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE

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

12 **X. RELEASE BY CLASS MEMBERS**

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

17 It is the desire of Plaintiffs, Class Members (except those who exclude themselves
18 from the Settlement), and Defendant to fully, finally, and forever settle, compromise, and
19 discharge the Released Claims. Upon the Final Approval by the Court of this Settlement
20 Agreement, and except as to such rights or claims as may be created by this Settlement
21 Agreement, the Class Members shall fully release and discharge the Released Parties from any and
22 all Released Claims for the entire Class Period. This release shall be binding on all Class
23 Members who have not timely submitted a valid and complete Request for Exclusion, including
24 each of their respective attorneys, agents, spouses, executors, representatives, guardians ad litem,
25 heirs, successors, and assigns, and shall inure to the benefit of the Released Parties, who shall have
26 no further or other liability or obligation to any Class Member with respect to the Released
27 Claims, except as expressly provided herein.

1 **XI. PRELIMINARY APPROVAL HEARING**

2 Plaintiffs will obtain a hearing before the Court to request Preliminary Approval of
3 the Settlement Agreement and the entry of a Preliminary Approval Order for: (a) Preliminary
4 Approval of the proposed Settlement Agreement, and (b) setting a date for a Final
5 Approval/Settlement Fairness Hearing.

6 The Preliminary Approval Order will provide for the Notice Packet to be sent to all
7 Class Members as specified herein. In conjunction with the Preliminary Approval Hearing,
8 Plaintiffs will submit this Settlement Agreement and will include the proposed Notice Packet.

9 Class Counsel will be responsible for drafting all documents necessary to obtain
10 Preliminary Approval, subject to review by Defendant's counsel prior to filing with the Court.
11 Plaintiffs will file there motion for preliminary approval within two (2) weeks of the execution of
12 the settlement agreement and provide Save Mart at least three (3) business days to review before
13 the motion must be filed. Any failure by the Court to fully and completely approve the Settlement
14 Agreement which has the effect of preventing the full and complete approval of the Settlement
15 Agreement as written and agreed to by the Parties will result in this Settlement Agreement, and all
16 obligations under this Settlement Agreement, being nullified and voided.

17 **XII. FINAL SETTLEMENT APPROVAL HEARING AND ENTRY OF JUDGMENT**

18 Upon expiration of the Response Deadline, and with the Court's permission, a
19 Final Approval/Settlement Fairness Hearing will be conducted to determine the Final Approval of
20 the Settlement Agreement along with the amounts properly payable for: (a) Individual Settlement
21 Payments; (b) the Attorneys' Fees and Costs; (c) the Class Representative Enhancement
22 Payments; and (d) all Claims Administration Costs.

23 The Final Approval/Settlement Fairness Hearing will be held no later than sixty
24 (60) calendar days after the Response Deadline.

25 As stated, Class Counsel will be responsible for drafting all documents necessary to
26 obtain Final Approval, subject to review by Defendant's counsel. Class Counsel will also be
27 responsible for drafting the Attorneys' Fees and Costs application to be heard at the Final
28 Approval/Settlement Fairness Hearing. Any failure by the Court to fully and completely approve

1 the Settlement Agreement will result in this Settlement Agreement entered into by the Parties, and
2 all obligations under this Settlement Agreement, being nullified and voided. Upon such failure,
3 any order or judgment entered by the Court in furtherance of this Settlement Agreement shall be
4 treated as void from the beginning, and the Stipulations and Recitals contained herein shall be of
5 no force or effect and shall not be treated as an admission by the Parties or their counsel. In such a
6 case, the Parties and any funds to be awarded under this Settlement Agreement shall be returned to
7 their respective statuses as of the date and time immediately prior to the execution of this
8 Settlement Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement
9 had not been executed, except that any fees already incurred by the Claims Administrator shall be
10 paid equally by both Parties.

11 **XIII. JUDGMENT AND CONTINUED JURISDICTION**

12 The Court shall retain jurisdiction with respect to the interpretation,
13 implementation, and enforcement of the terms of this Settlement Agreement and all orders and
14 judgments entered in connection therewith, and the Parties and their counsel hereto submit to the
15 jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement
16 embodied in this Settlement Agreement and all orders and judgments entered in connection
17 therewith.

18 **XIV. OTHER PROVISIONS**

19 Exhibits Incorporated by Reference. The terms of this Settlement include the terms
20 set forth in any attached Exhibits, which are incorporated by this reference as though fully set
21 forth herein. Any Exhibits to this Settlement are an integral part of the Settlement.

22 Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
23 the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
24 agreements may be deemed binding on the Parties.

25 Amendment or Modification. This Settlement Agreement may be amended or
26 modified only by a written instrument signed by counsel for all Parties or their successors-in-
27 interest and approved by the Court.

28

1 Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
2 and represent they are expressly authorized by the Parties whom they represent to negotiate this
3 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
4 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
5 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
6 counsel will cooperate with each other and use their best efforts to effect the implementation of the
7 Settlement. If the Parties are unable to reach agreement on the form or content of any document
8 needed to implement the Settlement, or on any supplemental provisions that may become
9 necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of Antonio
10 Piazza, Esq. (mediator) to resolve such disagreement.

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

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

16 Execution and Counterparts. This Settlement Agreement is subject only to the
17 execution of all Parties. However, the Settlement Agreement may be executed in one or more
18 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
19 of the signature page, will be deemed to be one and the same instrument.

20 Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
21 this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have
22 arrived at this Settlement after arm's-length negotiations and in the context of adversarial
23 litigation, taking into account all relevant factors, present and potential. The Parties further
24 acknowledge that they are each represented by competent counsel and that they have had an
25 opportunity to consult with their counsel regarding the fairness and reasonableness of this
26 Settlement.

27 Invalidity of Any Provision. Before declaring any provision of this Settlement
28 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest

1 extent possible consistent with applicable precedents so as to define all provisions of this
2 Settlement Agreement valid and enforceable.

3 Waiver of Certain Appeals. The Parties agree to waive appeals, and Defendant
4 agrees to stipulate to class certification for purposes of this Settlement only, notwithstanding the
5 fact that the Court previously certified the class and disseminated notice pursuant to CRC Rule
6 3.766. Either Party may appeal any Court order that materially alters the Settlement Agreement's
7 terms.

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

23 Captions. The captions and section numbers in this Settlement Agreement are
24 inserted for the reader's convenience, and in no way define, limit, construe or describe the scope
25 or intent of the provisions of this Settlement Agreement.

26 Waiver. No waiver of any condition or covenant contained in this Settlement
27 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
28

1 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
2 right or remedy.

3 Dispute Resolution. Except as otherwise set forth herein, all disputes concerning
4 the interpretation, calculation or payment of Individual Settlement Payments, or other disputes
5 regarding compliance with this Agreement shall be resolved as follows:

- 6 a. If Plaintiffs or Class Counsel, on behalf of Plaintiffs or any Class Member, or
7 Defendant or Defendant's Counsel, on behalf of Defendant, at any time believe
8 that the other Party has breached or acted contrary to the Agreement, that Party
9 shall notify the other Party in writing of the alleged violation.
- 10 b. Upon receiving notice of the alleged violation or dispute, the responding Party
11 shall have 10 calendar days to correct the alleged violation and/or respond to
12 the initiating Party with the reasons why the Party disputes all or part of the
13 allegation.
- 14 c. If the response does not address the alleged violation to the initiating Party's
15 satisfaction, the Parties shall negotiate in good faith for up to 10 calendar days
16 to resolve their differences.
- 17 d. If Class Counsel and Defendant's Counsel are unable to resolve their
18 differences after 20 calendar days (the two 10 day periods described in the two
19 preceding bullets), either Party may file an appropriate motion for enforcement
20 with the Court. The briefing of such motion should be in letter brief form and
21 shall not exceed five single-spaced pages (excluding exhibits).
- 22 e. Reasonable attorneys' fees and costs for work done in resolving a dispute under
23 this Section may be recovered by any Party that prevails under the standards set
24 forth within the meaning of applicable law.

25 No Retaliation. Defendant shall not take any adverse action against any Class
26 Member, including Plaintiffs, because of the Action or because of the existence of, and/or
27 participation in, the Settlement, or because they choose to benefit from the Settlement or to object
28 to the Settlement, or because they choose the request exclusion from the Settlement.

1 Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
2 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
3 construed more strictly against one Party than another merely by virtue of the fact that it may have
4 been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-
5 length negotiations between the Parties, all Parties have contributed to the preparation of this
6 Settlement Agreement.

7 Representation by Counsel. The Parties acknowledge that they have been
8 represented by counsel throughout all negotiations that preceded the execution of this Settlement
9 Agreement and that this Settlement Agreement has been executed with the consent and advice of
10 counsel and reviewed in full. Further, Plaintiffs and their counsel warrant and represent that there
11 are no liens on the Settlement Agreement.

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

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

17 Interim Stay of Proceedings. The Parties agree to the Court staying and holding all
18 proceedings in the Action, except such proceedings necessary to implement and complete the
19 Settlement, in abeyance pending the Settlement Hearing to be conducted by the Court. The Parties
20 agree not to conduct further discovery in the Action, and not to file any motions unrelated to the
21 Settlement, during this time. The trial date shall be vacated.

22 Nonpublication. Unless and to the extent agreed by Defendant in writing, neither
23 Plaintiffs nor Plaintiffs' Counsel shall issue any press release related in any way to the Settlement.
24 Plaintiffs and Plaintiffs' Counsel agree that, prior to Preliminary Approval of the Settlement, they
25 will refrain from discussing the Settlement except for purposes of communicating with Plaintiffs
26 and those Class Members who are currently represented by Class Counsel only. From and after
27 Preliminary Approval of the Settlement, Plaintiffs and Class Counsel may: (1) as required by law;
28 (2) as required under the terms of the Settlement; or (3) as required under counsel's duties and

responsibilities as Class Counsel, comment regarding the specific terms of the Settlement. In all other cases, Plaintiffs and Class Counsel agree to limit their statements regarding the terms of the Settlement, whether oral, written or electronic (including the internet/world wide web), to say the Class Action has been resolved and that Plaintiffs and Class Counsel are satisfied with the Settlement terms. The settlement amount or the names of any of the Released Parties may not be used for advertising purposes or published in any medium. Nothing in this Paragraph is intended to interfere with Class Counsel's duties and obligations to faithfully discharge their duties as Class Counsel, including but not limited to, answering questions from Class Members.

Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law. Plaintiffs, and not their respective representatives, must personally execute this Settlement Agreement.

Plaintiffs' Waiver of Right to be Excluded and Object. Plaintiffs agree to sign this Agreement, and by signing this Agreement are bound by the terms herein stated, and further agree not to file a Request for Exclusion or to object to any of the terms of this Agreement. Non-compliance by Plaintiffs with this paragraph shall be void and of no force or effect. Any such objection shall therefore be void and of no force or effect.

Dated: 3/9/2020

DocuSigned by:

Dana Curley

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Plaintiff DANA CURLEY

Dated: _____

Plaintiff WILLIAM O'BRIEN

responsibilities as Class Counsel, comment regarding the specific terms of the Settlement. In all other cases, Plaintiffs and Class Counsel agree to limit their statements regarding the terms of the Settlement, whether oral, written or electronic (including the internet/world wide web), to say the Class Action has been resolved and that Plaintiffs and Class Counsel are satisfied with the Settlement terms. The settlement amount or the names of any of the Released Parties may not be used for advertising purposes or published in any medium. Nothing in this Paragraph is intended to interfere with Class Counsel's duties and obligations to faithfully discharge their duties as Class Counsel, including but not limited to, answering questions from Class Members.

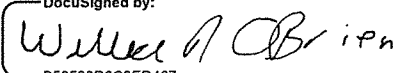
Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law. Plaintiffs, and not their respective representatives, must personally execute this Settlement Agreement.

Plaintiffs' Waiver of Right to be Excluded and Object. Plaintiffs agree to sign this Agreement, and by signing this Agreement are bound by the terms herein stated, and further agree not to file a Request for Exclusion or to object to any of the terms of this Agreement. Non-compliance by Plaintiffs with this paragraph shall be void and of no force or effect. Any such objection shall therefore be void and of no force or effect.

Dated: _____

Plaintiff DANA CURLEY

Dated: 3/10/2020

DocuSigned by:

856533D6C3ED407...
Plaintiff WILLIAM O'BRIEN

responsibilities as Class Counsel, comment regarding the specific terms of the Settlement. In all other cases, Plaintiffs and Class Counsel agree to limit their statements regarding the terms of the Settlement, whether oral, written or electronic (including the internet/world wide web), to say the Class Action has been resolved and that Plaintiffs and Class Counsel are satisfied with the Settlement terms. The settlement amount or the names of any of the Released Parties may not be used for advertising purposes or published in any medium. Nothing in this Paragraph is intended to interfere with Class Counsel's duties and obligations to faithfully discharge their duties as Class Counsel, including but not limited to, answering questions from Class Members.

Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law. Plaintiffs, and not their respective representatives, must personally execute this Settlement Agreement.

Plaintiffs' Waiver of Right to be Excluded and Object. Plaintiffs agree to sign this Agreement, and by signing this Agreement are bound by the terms herein stated, and further agree not to file a Request for Exclusion or to object to any of the terms of this Agreement. Non-compliance by Plaintiffs with this paragraph shall be void and of no force or effect. Any such objection shall therefore be void and of no force or effect.

Dated: 3/9/2020

DocuSigned by:

Dana Curley

6CCCEB0B09904D6

Plaintiff DANA CURLEY

Dated: _____

Plaintiff WILLIAM O'BRIEN

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SAVE MART SUPERMARKETS

Dated: _____

Please Print Name of Authorized Signatory

APPROVED AS TO FORM

Dated: 3/9/20

JONES LAW FIRM

CHARLES A. JONES
Attorneys for Plaintiffs and the Class

RIGHETTI & GLUGOSKI PC

Dated: 3/9/20

MATTHEW RIGHETTI
MICHAEL RIGHETTI
Attorneys for Plaintiffs and the Class

**SHEPPARD, MULLIN, RICHTER & HAMPTON
LLP**

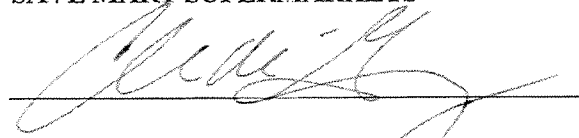
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PAUL S. COWIE
MORGAN P. FORSEY
Attorneys for Defendant SAVE MART
SUPERMARKETS

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SAVE MART SUPERMARKETS

Dated: 03/11/2020



Christopher W. McGarry - President & CAO
Please Print Name of Authorized Signatory

APPROVED AS TO FORM

JONES LAW FIRM

Dated: _____

CHARLES A. JONES
Attorneys for Plaintiffs and the Class


RIGHETTI & GLUGOSKI PC

Dated: _____

MATTHEW RIGHETTI
MICHAEL RIGHETTI
Attorneys for Plaintiffs and the Class

**SHEPPARD, MULLIN, RICHTER & HAMPTON
LLP**

Dated: _____



PAUL S. COWIE
MORGAN P. FORSEY
Attorneys for Defendant SAVE MART
SUPERMARKETS

EXHIBIT 1

EXHIBIT 1

*This is a court-authorized notice. This is not a solicitation from a lawyer.
Your rights may be affected, whether or not you take any action.*

This Notice May Affect Your Rights – Please Read It Carefully

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,

Defendant.

CASE NO. RG13685740

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FINAL APPROVAL HEARING

Final Settlement Approval Hearing

Date: xx

Time: xx

Dept.: 19

Location: 1221 Oak St.
Oakland, CA 94612

Judge: Stephen Kaus

TO: 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. (Referred to herein as "Class Members or Settlement Class.")

I. PURPOSE OF THIS NOTICE

You are receiving this Notice of Proposed Settlement and Final Approval Hearing ("Notice") because, according to Save Mart's records, you were or currently are employed by Save Mart as an Assistant Store Manager, Assistant Store Manager – Customer Experience, Assistant Store Manager – Customer Solutions, or Grocery Manager, and therefore you may have potential wage and hour claims relating to the allegation that Save Mart misclassified the assistant managerial position as exempt. As such, you may be a Class Member whose rights are affected by a proposed settlement reached by Plaintiffs Dana Curley and William O'Brien and Save Mart (collectively, the "Parties").

This Notice describes the lawsuit, informs you of the proposed settlement, and explains your rights in connection with the proposed settlement of this lawsuit. **You will receive a settlement check from the settlement unless you opt out of the Settlement Class. If you do not cash your check within one hundred and eighty (180) days the funds will be redistributed pro rata to Class Members who cashed their checks. Thus, it is important that you timely cash your check. No money will revert to Save Mart.**

THIS NOTICE IS NOT AN EXPRESSION BY THE COURT OF AN OPINION CONCERNING THE MERITS OF ANY CLAIM OR DEFENSE OR THE TRUTH OF ANY OF THE ALLEGATIONS MADE BY THE PARTIES. THE COURT HAS DETERMINED ONLY THAT THERE IS SUFFICIENT EVIDENCE TO SUGGEST THAT THE SETTLEMENT MIGHT BE FAIR, ADEQUATE AND REASONABLE. A FINAL DETERMINATION AS TO THE FAIRNESS OF THE SETTLEMENT WILL BE MADE AT THE FINAL APPROVAL HEARING ON _____, 2020.

II. BACKGROUND OF THE LAWSUIT

On June 28, 2013, Plaintiffs Dana Curley and William O'Brien filed a putative class action complaint against Defendant Save Mart in the Superior Court of California, County of Alameda, Case No. RG13685740, entitled *DANA CURLEY and WILLIAM O'BRIEN, as individuals and on behalf of all others similarly situated, Plaintiff, v. SAVE MART SUPERMARKETS and DOES 1 through 50 inclusive, Defendant* (the "Lawsuit").

The operative Complaint in the case alleges various wage and hour causes of action premised on alleged violations of the California Labor Code and applicable California Industrial Welfare Commission ("IWC") Wage Orders on behalf of Plaintiffs and the Class Members. Plaintiffs allege generally that Assistant Store Manager, Assistant Store Manager – Customer Experience, Assistant Store Manager – Customer Solutions, and Grocery Managers ("Assistant Managers") were misclassified as exempt employees and as such, Defendant failed to pay overtime wages and provide meal periods in compliance with the rules applicable to non-exempt employees. Plaintiffs also allege claims that are derivative of their overtime and meal period claims, such as a failure to timely pay all wages upon separation of employment, a failure to furnish accurate wage statements, violations of the Unfair Competition Law.

Defendant denies the allegations in the Lawsuit. Defendant contends and believes that it has at all relevant times properly classified its Assistant Managers and paid and treated its employees, including all of the Class Members, fairly and in compliance with all applicable laws and regulations. The Settlement is not an admission of any wrongdoing by Save Mart or an indication that any law was violated. The Court has not made any decisions about the merits of the Plaintiffs' claims or found that Save Mart has done anything wrong.

The Court did not decide in favor of Plaintiffs or Save Mart. Plaintiffs think they would have prevailed on their claims at trial. Save Mart does not think Plaintiffs would have prevailed on their claims at trial because it has asserted legal and factual defenses to them. However, rather than continue their dispute through trial, both sides agreed to a no-fault Settlement of the Lawsuit. That way, they avoid the cost of a trial, and the people affected will get compensation from the Settlement.

On _____, 2020, Judge Stephen Kaus, who is the judge presiding over the Lawsuit, preliminarily approved a settlement of the Lawsuit for the Class Members, as defined above.

The Court appointed Matthew Righetti and Michael C. Righetti of Righetti Glukoski, P.C. and Charles A. Jones of the Jones Law Firm LLC as class counsel (hereinafter "Class Counsel").

III. SUMMARY OF THE TERMS OF THE PROPOSED SETTLEMENT

This Notice provides a summary of the basic terms of the proposed settlement. If you would like a copy of the Settlement Agreement, please contact Class Counsel at the address indicated below.

A. Class Member

The Court certified, for settlement purposes only, the Settlement Class, as defined above.

B. Terms of the Proposed Settlement

The total settlement to be paid by Defendant will be Five Million Dollars (\$5,000,000.00) (the "Class Settlement Amount" or "CSA"). From the \$5,000,000.00 Class Settlement Amount, deductions will be made for 1) the payment of the Court approved Attorneys' Fees and Costs, 2) the Class Representative Enhancement Payments to be paid to the Plaintiffs who stepped forward to lead the Lawsuit, and 3) the Claims Administrations Costs of the Settlement Administrator to administer the Settlement. The amount that remains after these Court approved deductions is referred to as the Net Settlement Amount ("NSA").

Each Settlement Class Member will be entitled to a payment representing his or her proportionate share of the NSA. Each Settlement Class Member's actual share of the NSF will be based on pro rata work weeks (the total number of weeks you worked for Defendant during the Class Period as an Assistant Manager divided by the total number of all weeks worked by all Settlement Class Members during the Class Period). The pro rata work weeks shall be calculated from Defendant's records.

As stated above, the total settlement is \$5,000,000.00, all of which will be paid by Defendant, if the Court approves the settlement. In this case, the NSA is expected to be approximately \$2,602,000.00, based on preliminary estimates.

C. Your Estimated Settlement Payment

Based on preliminary estimates, the Individual Settlement Payment you would receive will be approximately \$_____, which represents your pro rata share of Net Settlement (i.e. the Total Settlement Amount after the deductions for the Attorneys' Fees and Costs, Class Representative Enhancement Payments and Claims Administration Costs, and the subtraction of employee payroll taxes, as mentioned above. According to Defendant's records, you **worked an aggregate of ___ weeks** as a Settlement Class Member for Defendant.

If you wish to dispute the determination of your number of work weeks as set forth above, you must notify the Settlement Administrator in writing and you must produce documentary evidence to the Claims Administrator showing that the number of work weeks is inaccurate. Absent documentary evidence rebutting Defendant's records, Defendant's records will be presumed determinative. However, if you produce documentary evidence to the contrary, the Claims Administrator will evaluate the evidence you submit and will make the final decision as to the number of eligible work weeks that should be applied and/or the Individual Settlement Payment to which you may be entitled. The workweek dispute must be returned by mail or fax to the Claims Administrator at the specified address or facsimile number and postmarked or faxed on or before the <<insert date>>. The date of the postmark or fax receipt confirmation will be the exclusive

means to determine whether a workweek dispute has been timely submitted. All such disputes are to be resolved not later than fourteen (14) calendar days after the Response Deadline.

D. Tax Treatment of Settlement Payments

The settlement payment made to each Settlement Class Member shall be apportioned as follows: (a) 1/3 for payment of any allegedly unpaid wages, inclusive of all related employee withholdings and deductions (the "Gross Wages Portion"), (b) 2/3 for payment of any allegedly owed non-wage damages, including liquidated and/or statutory damages, penalties of any type, and any allegedly owed interest of any type (the "Non-wage Portion"). Any amounts paid to Settlement Class Members in connection with the settlement shall not constitute wages with regard to Defendant's benefit plans or programs. The employer's shares of the payroll taxes on the Gross Wages Portion of the settlement payments to Settlement Class Members **will not** be paid from the NSA. Settlement Class Members acknowledge that Defendant, or its counsel, is not undertaking to advise them with respect to any tax consequences of this settlement. Class Counsel is also not advising the Settlement Class Members or the Plaintiffs as to any tax consequences.

E. Release

Each Class Member who does not timely exclude himself or herself from the Settlement (following the procedures specified in Section IV.C. below) will release Defendant, and each of the Released Parties as defined in the Settlement Agreement, from any and all claims, wage and hour claims, rights, demands, liabilities and causes of action of any nature or description as alleged or could have been alleged based on the facts asserted in the Complaint/Lawsuit arising during the Class Period, or that could have been alleged in the Lawsuit based on the facts and claims alleged in the Complaint, as described below in Section V.A, and in the Settlement Agreement.

F. Class Representatives

The Class Representatives are Dana Curley and William O'Brien. The Class Representatives will apply to the Court for a class representative enhancement in such an amount as the Court determines to be fair and reasonable, at the time of the Final Approval Hearing. The Parties' agreement proposes a payment of no more than \$20,000.00 to each Class Representative for the enhancement, in addition to the settlement payment to which they are entitled just like all of the other Class Members. Class Counsel considers this amount to be fair, reasonable and adequate given the time which the Class Representatives have expended while pursuing the case, the Class Representatives' agreements to release all claims against Defendant, the job-related risks that may be faced by the Class Representatives in an employment class action, and the Class Representatives' willingness to expose themselves to the legal system to pursue this case.

G. Attorneys' Fees and Costs

The attorneys for the class will ask the Court to award Plaintiffs' attorneys' fees, and the requested fees shall not exceed 40% of the Class Settlement Amount, or \$2,000,000.00. In addition, the attorneys for the class will ask the Court to approve that they be reimbursed for all appropriate costs and expenses incurred by Class Counsel in prosecuting this action, not to exceed \$350,000.00.

H. Costs of Settlement Administration

In addition, the attorneys for the class will seek the Court's approval to pay the costs of settlement administration out of the total settlement payment, which are presently estimated not to exceed \$8,000.00 to be paid to the third party settlement administrator, Phoenix Settlement Administrators.

I. Unclaimed Funds

Any monies of the Net Settlement Amount that remain unclaimed after the date to cash settlement checks has expired shall be re-distributed to the Class Members who did not timely exclude themselves from this settlement and who timely cashed their settlement checks on a pro-rata basis using the same calculation as provided above.

IV. WHAT ARE YOUR RIGHTS AS A SETTLEMENT CLASS MEMBER?

Your interests as a Class Member are represented by the Class Representatives and by the Court appointed Class Counsel. **You will receive a settlement check from the settlement unless you opt out of the Settlement Class**, and as a member of the Settlement Class, you will then be bound by the terms of the Settlement Agreement and any final judgment that may be entered by the Court, and you will be deemed to have released certain claims against Defendant as described below and in the Settlement Agreement. As a Settlement Class Member, you will not be individually responsible for the payment of attorneys' fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorneys' fees and costs.

A. Participating in the Settlement

If you wish to participate in the settlement and receive your payment, you are not required to take any action. There is nothing that you need to do. If the Court grants final approval of the settlement and you qualify as a Settlement Class Member, you will receive your settlement payment based on the number of weeks you worked as a Settlement Class Member during the Class Period (i.e. from June 28, 2009 through <<insert preliminary approval date>>). You will also be bound by the terms of the settlement and will release Defendant, and each of its subsidiaries and affiliates, from any and all claims that you may have based on the allegations in the Lawsuit as provided below in Section V.A, below, and in the Settlement Agreement.

B. Objecting to the Settlement

You can ask the Court to deny approval of the settlement by submitting a written Notice of Objection to the Settlement Administrator at the address below and/or you may appear at the Final Approval Hearing on [insert date] to voice your objection to the Court. For your written Notice of Objection to be valid, it must include your full name, signature, address, telephone number and a written statement of all grounds for your objection accompanied by legal support, if any, for such objection. **The Notice of Objection must be returned by mail or fax to the Claims Administrator at the address below and postmarked or faxed on or before <<insert date>>.** The date of the postmark or fax receipt confirmation will be the exclusive means to determine whether a Notice of Objection has been timely submitted.

Absent good cause found by the Court, Class Members who fail to make objections in the manner specified above, of who fail to appear and make oral objections at the Final Approval Hearing set forth above, shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement Agreement or the Order Granting Final Approval of the Settlement Agreement. However, even if no Notice of Objection is timely mailed, any Class Member may appear at the Final Approval Hearing to present to the Court orally any objections to or concerns regarding the Settlement Agreement he or she may have.

Curley et al. v. Save Mart Supermarkets Settlement Administration

PHOENIX SETTLEMENT ADMINISTRATORS

1411 N. BATAVIA ST., SUITE 105, ORANGE, CA 92867

<<insert fax number>>

C. Excluding Yourself from the Settlement

If you qualify to be part of the Settlement Class but do not wish to participate in the settlement, you may exclude yourself (in other words, you may “opt out”) by submitting a Request for Exclusion to the Settlement Administrator. For your Request for Exclusion to be valid, it must include your full name, signature, address, telephone number and a written statement requesting to be excluded from this Settlement. The Request for Exclusion must be returned by mail or fax to the Claims Administrator at the address below or facsimile number and postmarked or faxed on or before <<insert date>>. The date of the postmark or fax receipt confirmation will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. A Class Member who does not submit a timely and valid Request for Exclusion from the Settlement will be deemed a Class Member and will be bound by all terms of the Settlement Agreement if the Settlement is granted Final Approval by the Court.

Any Class Member who submits a timely Request for Exclusion shall no longer be a Settlement Class Member; shall be barred from participating in any portion of the settlement; may not object to the settlement; and shall receive no payment or benefits from the settlement. Any such person will not release any claims he or she may have against Defendant, and may pursue those claims so long as it is done in conformance with the applicable statute of limitations. You should consider consulting with an attorney of your own choosing, promptly, if you wish to pursue your own claims.

V. EFFECT OF THE SETTLEMENT

A. Released Rights and Claims

As provided in the Settlement Agreement (“Agreement”):

As of the date of the Order Granting Final Approval, all Class Members shall fully and finally release Save Mart Supermarkets Corporation and each of its past, present and future agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, and affiliated organizations, and all of their

respective past, present and future employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, and assigns (the "Released Parties") of the Released Claims. The Released Claims include any and all claims, wage and hour claims, rights, demands, liabilities and causes of action of any nature or description as alleged or could have been alleged based on the facts asserted in the Complaint/Lawsuit arising during the Class Period, or that could have been alleged in the Lawsuit based on the facts and claims alleged in the Complaint. The Released Claims include all claims that Class Members were misclassified as exempt employees and any and all claims based on such misclassification, claims for unpaid overtime, double-time, and interest; the calculation of the regular rate of pay; wages, premiums and any and all statutory remedies for missed, short and/or late meal periods; wage statements (pay stubs); failure to keep accurate records; unfair business practices; penalties, including recordkeeping penalties, wage statement penalties, minimum wage penalties, liquidated damages, and waiting-time penalties; and attorneys' fees and costs. The Released Claims include all such claims arising under: the California Labor Code, including, but not limited to, sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, and 1198 all claims relating to the Released Claims under the Wage Orders of the California Industrial Welfare Commission, California Business and Professions Code section 17200, *et seq.*; and the California common law of contract. This release excludes the release of claims not permitted by law.

The Class Representatives identified in Section III.F, above, are providing a broader general release of any and all claims they may have against Defendant and the other Released Parties through the date of final approval of the Settlement Agreement.

B. Payment to Settlement Class Members

Your share of the NSA will be paid as soon as practicable after the Settlement Administrator is in receipt of the settlement funds. This will only occur if the Settlement is granted final approval by the Court, and then becomes "final" as provided in the Settlement Agreement.

VI. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a final approval hearing on _____, 2020, in Department 19 of the Superior Court of California, County of Alameda, 1221 Oak Street, Oakland, CA 94612, to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and reimbursement of costs and expenses and the enhancement awards to be paid to the Class Representatives and the settlement administration costs. Class Counsel may file a written response to any objections to the Settlement Agreement, or to the application for attorneys' fees, reimbursement of expenses, and Class Representatives' enhancement awards. The hearing may be continued without further notice to the Settlement Class Members. It is not necessary for you to appear at this hearing unless you have timely filed an objection, and even then, only if you wish to be heard on your objection by the Court. No further notice will be provided or required of the entry of the orders and/or judgment granting or related to the final approval of the settlement.

VII. CONTACT INFORMATION FOR ATTORNEYS INVOLVED IN THE CASE

A. PLAINTIFFS' AND CLASS MEMBERS' COUNSEL

RIGHETTI GLUGOSKI, P.C.

Matthew Righetti, Esq.
Michael Righetti, Esq.
456 Montgomery Street, Suite 1400
San Francisco, CA 94104
Telephone: (415) 983-0900

JONES LAW FIRM

Charles A. Jones, Esq.
9585 Prototype Court, Suite B
Reno, NV 89521
Telephone: 775-853-6440

B. DEFENDANT'S COUNSEL

SHEPPARD MULLIN

Paul Cowie, Esq.
Morgan Forsey, Esq.
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111-4109
(415) 434-9100

VIII. ADDITIONAL INFORMATION

- A. Important documents, such as this Notice and the Settlement Agreement may be accessed online at the following web address: SaveMartOvertimeLitigation.com
- B. The pleadings and other records in this litigation may be examined online on the Alameda County Superior Court's website, known as 'DomainWeb,' at <https://publicrecords.alameda.courts.ca.gov/PRS/> After arriving at the website, click the 'Search By Case Number ' link, then enter RG13685740 as the case number and click 'SEARCH.' Images of every document filed in the case may be viewed through the 'Register of Actions' at a minimal charge. You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings.
- C. Class members are advised to contact Class Counsel or check the Court's docket to confirm that the date for hearing on final approval has not been changed.
- D. If you need more information or have any questions, you may also contact the Settlement Administrator, Phoenix Settlement Administrators, toll-free at (800) 523-5773 or Class Counsel. Please refer to the *Curley v. Save Mart Supermarkets* Class Action Settlement.
- E. It is your responsibility to provide the administrator with any updated contact information so you will continue to receive any communications and your payment check without delay.

**DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR
INFORMATION REGARDING THIS SETTLEMENT.**