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SAVE MART SUPERMARKETS
15 THE SAVE MART COMPANIES, INC.
YOSEMITE EXPRESS dba SMART REFRIGERATED TRANSPORT
16 (erroneously named and served as YOSEMITE EXPRESS CO.
and SMART REFRIGERATED TRANSPORT)
17

18 *ADDITIONAL COUNSEL ON NEXT PAGE*

19
20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 COUNTY OF SACRAMENTO
22

23 SHAUN ROONEY, individually and on
behalf of others similarly situated,

24 Plaintiff,

25 vs.

26 SAVE MART SUPERMARKETS; DOES 1-
27 20, inclusive,

28 Defendants.

Case No.: 34-2020-00274973

**STIPULATION AND SETTLEMENT
OF CLASS ACTION CLAIMS**

Action Filed: February 6, 2020
Trial Date: None Set

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1 Subject to final approval by the Court, which counsel and parties agree to pursue and
2 recommend in good faith, Plaintiffs Shaun Rooney (“Rooney”), Teresa Aguilera (“Aguilera”),
3 and Fred Zepeda (“Zepeda”), individually and on behalf of all employees similarly situated, on
4 the one hand, and Defendants Save Mart Supermarkets, The Save Mart Companies, Inc.,
5 Yosemite Express Co., and Smart Refrigerated Transport (“Defendants” or “Save Mart”), on the
6 other, hereby agree to the following binding settlement of the following case: Shaun Rooney v.
7 Save Mart Supermarkets, Sacramento County Superior Court Case No. 2020-00274973.

8 **I. DEFINED TERMS**

9 As used herein, the following terms are defined as:

10 “Action” means the action of Shaun Rooney v. Save Mart Supermarkets, Sacramento
11 County Superior Court Case No. 2020-00274973, as amended.

12 “Agreement,” “Settlement,” or “Stipulation” means this Stipulation and Settlement
13 Agreement of Class Action Claims.

14 “Amended Complaint” means the amended complaint that Plaintiffs will file, upon
15 seeking and receiving Court approval, to broaden the proposed class and group of allegedly
16 aggrieved employees to include all non-exempt employees working for Defendants in California
17 during the statutory period, to add all named Defendants, as well as to add Teresa Aguilera and
18 Fred Zepeda as a named plaintiffs/class representatives, and add any and all claims and causes of
19 action that were asserted in the civil actions entitled Teresa Aguilera v. The Save Mart
20 Companies, Inc. et al., Monterey County Superior Court Case No. 20CV000609, and Fred
21 Zepeda v. Save Mart Supermarkets, et al., San Joaquin Superior Court Case No. STK-CV-40E-
22 2020-2945. Defendants agree not to seek removal of the Action.

23 “Attorney’s Fees and Cost Award” means the amount authorized by the Court to be paid
24 to Class Counsel for the services they have rendered and expenses they have incurred in
25 prosecuting the Action. Class Counsel shall request, and Defendants will not oppose, an award
26 of Attorneys’ Fees of up to Thirty-Five percent (35%) or \$2,618,000.00 of the Gross Settlement
27 Amount, and of costs of up to \$40,000.00 of the Gross Settlement Amount. The Attorney’s
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1 Fees and Cost Award shall be paid from the Qualified Settlement Fund. Class Counsel will be
2 issued IRS Form 1099 for the Fees and Cost Award.

3 “Claims” means all claims which were asserted, or could have been asserted, based on
4 the factual allegations in the Action.

5 “Class” and “Class Members” mean and refer to all individuals employed by Defendants
6 as non-exempt, hourly employees within the State of California during the Class Period. As of
7 the February 18, 2021 mediation, Defendants represented that the class includes approximately
8 34,396 Settlement Class members through January 15, 2021, and that there were approximately
9 2,808,769 weeks worked by Class Members through October 4, 2020. Defendants shall verify
10 these numbers, and in the event that the total number of weeks through October 4, 2020 increases
11 more than 10% from 2,808,769, then the Gross Settlement Amount will increase proportionately
12 over the 10% grace (*i.e.* meaning if the total number of weeks worked through October 4, 2020
13 increases by 11%, the Gross Settlement Amount will increase by 1%).

14 “Class Counsel” and “Plaintiffs’ Counsel” mean Timothy B. Del Castillo and Kent L.
15 Bradbury of Castle Law: California Employment Counsel, PC;; Larry Lee and Max Gavron of
16 Diversity Law Group PC; William L. Marder of Polaris Law Group; and David Yeremian and
17 Roman Shkodnik of David Yeremian & Associates, Inc., who shall be appointed Class Counsel
18 upon approval by the Court.

19 “Class List and Data Report” means a list of the names, most current mailing address and
20 telephone number, social security number, and the number of Weeks Worked by each Class
21 Member during the applicable Class Period. Defendants will diligently and in good faith
22 compile the Class List and Data Report and provide the Class List and Data Report to the
23 Settlement Administrator and Class Counsel within twenty (20) calendar days of Preliminary
24 Approval of the Settlement. The Class List and Data Report shall be provided in a computer-
25 readable format. Social security numbers shall be redacted from the Class List and Data Report
26 provided to Class Counsel.

27 “Class Period” means the period from February 6, 2016 through and including the date of
28 Preliminary Approval or June 30, 2021, whichever date occurs first.

1 “Court” means the Superior Court for the State of California, for the County Sacramento.

2 “Defendants” means and refers to Defendants Save Mart Supermarkets, The Save Mart
3 Companies, Inc., Yosemite Express Co., and Smart Refrigerated Transport.

4 “Defendants’ Counsel” means Derek R. Havel, Nora K. Stilestein, and Allison E. Cheffer
5 of Sheppard, Mullin, Richter, and Hampton, LLP.

6 “Effective Date” means the date by which the Settlement is finally approved, and the
7 Superior Court’s Final Judgment becomes final. For purposes of this paragraph, the Superior
8 Court’s Final Judgment “becomes final” upon the latter of: (i) if no objections are filed, then the
9 date that Notice of Entry of Judgment is served; (ii) if an objection is filed, the expiration date
10 of the time for the filing or noticing of any appeal from the Superior Court’s Judgment, assuming
11 no appeal is filed during that time; (iii) the date affirmance of an appeal of the Judgment
12 becomes final under the California Rules of Court; or (iv) the date of final dismissal of any
13 appeal from the Judgment or the final dismissal of any proceeding on review of any court of
14 appeal decision relating to the Judgment. In this regard, it is the intention of the Parties that the
15 Settlement shall not become final until the Court’s order approving the Settlement is completely
16 final, the Court has entered an appropriate judgment, and there is no further recourse by an
17 appellant or objector—if any—who seeks to contest the Settlement.

18 “Final Approval Hearing/Settlement Fairness Hearing” means the hearing at which the
19 Court considers whether to approve the Settlement and to enter the Final Judgment.

20 “Final Approval Order” means the order from this Court granting final approval of this
21 Settlement.

22 “Final Judgment” means the Court’s Final Judgment.

23 “General Release” means that Plaintiffs, in their individual capacity and with respect to
24 their individual claims only, agree to release the Released Parties from all claims, demands,
25 rights, liabilities and causes of action of every nature and description whatsoever, known or
26 unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of
27 any state or federal statute, rule or regulation arising out of, relating to, or in connection with any
28 act or omission by or on the part of any of the Released Parties committed or omitted prior to the

1 execution hereof, including a waiver of Civil Code §1542. All Plaintiffs will execute stand-alone
2 settlement agreements.

3 “Gross Settlement Amount” equals \$7,480,000. All payments associated with the
4 Settlement shall be paid from the Gross Settlement Amount, including all payments to
5 Participating Class Members, Plaintiffs, Class Counsel, the Labor and Workforce Development
6 Agency (“LWDA”), and the Settlement Administrator. Employer-owed taxes on the wage
7 portion of the Settlement shall be funded by Defendants separately from the Gross Settlement
8 Amount, and calculated and distributed by the Settlement Administrator.

9 “Individual Settlement Payment” means the settlement amount for each individual
10 Participating Settlement Class Member resulting from the calculations set forth in paragraph
11 III.12.

12 “Net Class Settlement Fund” refers to the funds that will be distributed to Participating
13 Settlement Class Members under this Stipulation after payment of any Attorneys’ Fees and Cost
14 Award, Incentive Awards, and Claims Administration Costs, and the \$210,000.00 payment to the
15 California Labor and Workforce Development Agency (“LWDA”) pursuant to the Private
16 Attorneys’ General Act (“PAGA”) allocation, which represents 75% of the \$280,000.00 PAGA
17 settlement portion from the Gross Settlement Amount. No portion of the “Net Class Settlement
18 Fund” shall revert to Defendants, and the entire “Net Class Settlement Fund,” after the
19 deductions authorized herein, shall be paid out to the Class Members who do not exclude
20 themselves from the Settlement.

21 “Notice” and “Notice to Class Members” means the Notice of Pendency of Class Action
22 Settlement to be sent to all Class Members which describes the Settlement, the procedure and
23 time period to submit an opt-out form or to object to the Settlement, and the date set for the Final
24 Approval Hearing. (See Attached Notice to Class Members as Exhibit A).

25 “Opt-Out/Objection Deadline Date” means the date forty-five (45) calendar days after the
26 date the Notice is mailed, on or before which a Class Member’s written objection or opt-out must
27 be submitted in order to object or exclude themselves from the Settlement.

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1 “PAGA Members” means all individuals employed by Defendants as non-exempt, hourly
2 employees within the State of California during the period of November 27, 2018 through and
3 including the date of Preliminary Approval, or June 30, 2021, whichever date occurs first.

4 “PAGA Payment” means Defendants’ payment of \$210,000.00 to the LWDA, to be paid
5 from the Gross Settlement Amount. This LWDA payment represents 75% of the \$280,000.00
6 PAGA portion of the settlement. This PAGA Payment is made pursuant to California Labor
7 Code §2699(i).

8 “Participating Settlement Class Member” means a Class Member who has not opted out
9 of the Settlement.

10 “Parties” means Defendants, Plaintiffs, and the Participating Settlement Class Members.

11 “Plaintiffs” means Plaintiffs Shaun Rooney, Teresa Aguilera, and Fred Zepeda.

12 “Preliminary Approval Order” means the Order issued by the Court preliminarily
13 approving the terms of the Settlement set forth in this Stipulation.

14 “Qualified Settlement Fund” shall be the fund established by the Settlement
15 Administrator pursuant to Internal Revenue Code Section 1.468B-1, and funded by Defendants
16 within thirty (30) calendar days after the Effective Date. This amount equals \$7,480,000.00, and
17 includes all settlement payments, costs, attorneys’ fees, claims administration costs, PAGA
18 payments, and incentive awards.

19 “Released Parties” means Defendants Save Mart Supermarkets, The Save Mart
20 Companies, Inc., Yosemite Express, and their past, present, or future parents, subsidiaries and
21 affiliated companies, and their past, present, or future officers, directors, employees, partners,
22 joint employers, co-employers, dual employers, alleged joint employers, alleged co-employers,
23 alleged dual employers, members, shareholders and agents, and any other successors, assigns or
24 legal representatives.

25 “Released Claims” is defined as follows: Upon the full funding of the Qualified
26 Settlement Fund, the Participating Settlement Class Members shall fully and finally release and
27 discharge the Released Parties, during the Class Period, of all applicable California wage and
28 hour claims, rights, demands, liabilities and causes of action which were brought or could have

1 been brought in the Action against Defendants based on the factual allegations of the Action,
2 including all claims for unpaid wages, including minimum wages, overtime compensation,
3 double-time compensation, and interest; the calculation of the regular rate of pay; missed meal
4 period and rest period premiums, including failure to pay premiums at the regular rate of
5 compensation; payment for all hours worked, including off-the-clock work; wage statements;
6 failure to keep accurate records; failure to reimburse business expenses; unlawful deductions;
7 failure to timely pay wages; premium payments for work completed on the seventh consecutive
8 day of work; unfair business practices related to the Released Claims; penalties, including civil
9 penalties, statutory penalties, recordkeeping penalties, wage statement penalties, minimum-wage
10 penalties, and waiting-time penalties; and attorneys' fees and costs; all claims related to the Class
11 Released Claims arising under: the California Labor Code, including, but not limited to, sections
12 90.5, 201, 202, 203, 204, 210, 213, 218.5, 221, 223, 226, 226.3, 226.7, 510, 512, 558, 558.1,
13 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1199, 1670.5, 2698 *et seq.*, 2699 *et seq.*, 2699.3, 2802;
14 the Wage Orders of the California Industrial Welfare Commission; the California Private
15 Attorneys General Act of 2004 ("PAGA"); California Business and Professions Code section
16 17200, *et seq.*; and California Code of Civil Procedure section 1021.5. This release excludes the
17 release of claims not permitted by law.

18 "Service Award" means the amount that the Court authorizes to be paid to the Plaintiffs
19 over and above their Individual Settlement Payment, in recognition of their efforts in assisting
20 with the prosecution of the Action on behalf of the Class Members and in return for executing a
21 General Release of all Claims against Defendant. Plaintiffs will request a Service Award of
22 \$10,000.00 paid to each individual representative Plaintiff. Plaintiffs will be issued an IRS Form
23 1099 in connection with their Service Awards.

24 "Settlement Administrator" means Phoenix Settlement Administrators.

25 "Settlement Administration Costs" means all costs incurred in administering the
26 Settlement.

27 "Weeks Worked" means any week when a Class Member was engaged in any productive
28 work activity for which they were paid, not including leaves of absence or paid time off.

1 **II. RECITALS**

2 This Stipulation is made by the Plaintiffs on behalf of themselves and each of the other
3 Class Members, on the one hand, and Defendants, on the other hand, in this Action, and is
4 subject to the approval of the Court.

5 **A. INVESTIGATION IN THE CLASS ACTION**

6 The Parties have conducted significant investigation of the facts and law during the
7 prosecution of the Action. Such discovery and investigation includes: propounding and
8 responding to written discovery, production of documents, detailed information and payroll data
9 relevant to Plaintiffs' claims; and, the analysis by the Parties of the class-wide data to investigate
10 the merits of Plaintiffs' claims and the potential liability. Furthermore, there have been
11 numerous conferences between representatives of the Parties. Counsel for the Parties have
12 investigated the law as applied to the facts discovered regarding the alleged claims of Plaintiffs
13 and potential defenses thereto, and the potential damages claimed by Plaintiffs including the
14 review of hundreds of pages of payroll, time records, and other records produced by Defendants
15 to Class Counsel for the purposes of litigation and mediation.

16 Counsel for the Parties engaged in extensive discussions about the strengths and
17 weaknesses of the claims and defenses. The Parties attended a full-day mediation before an
18 experienced and well-regarded mediator, Gig Kyriacou, on February 18, 2021. The mediation
19 was not successful, but thereafter, the Parties continued to negotiate and ultimately reached a
20 negotiated resolution through Mr. Kyriacou.

21 **B. BENEFITS OF SETTLEMENT TO PARTICIPATING CLASS MEMBERS**

22 Plaintiffs and Plaintiffs' Counsel recognize the expense and length of continued
23 proceedings necessary to litigate their disputes through trial and through any possible appeals.
24 Plaintiffs have also taken into account the uncertainty and risk of the outcome of further
25 litigation, and the difficulties and delays inherent in such litigation. Plaintiffs and Plaintiffs'
26 Counsel are also aware of the burdens of proof necessary to establish liability for the claims
27 asserted in the Action, both generally and in response to Defendants' defenses thereto. Plaintiffs
28 and Plaintiffs' Counsel have also taken into account the extensive settlement negotiations

1 conducted. Plaintiffs and Plaintiffs' Counsel have also taken into account Defendants'
2 agreement to enter into a settlement that confers substantial relief upon the Participating
3 Settlement Class Members. Based on the foregoing, Plaintiffs and Plaintiffs' Counsel have
4 determined that the Gross Settlement Amount set forth in this Agreement is a fair, adequate and
5 a reasonable settlement, and is in the best interests of the Class.

6 **C. DEFENDANTS' REASONS FOR SETTLEMENT**

7 Defendants have concluded that any further defense of this litigation would be protracted
8 and expensive for all Parties. Substantial amounts of time, energy and resources of Defendants
9 have been spent and, unless this Settlement is made, will continue to be devoted to the defense of
10 the Claims asserted. Defendants have also taken into account the risks of further litigation in
11 reaching its decision to enter into this Settlement. Defendants have, therefore, agreed to settle in
12 the manner and upon the terms set forth in this Agreement to put to rest the Claims as set forth in
13 the Action.

14 Defendants deny and continue to deny each of the claims in Plaintiffs' Complaint and
15 contentions alleged by Plaintiffs in the Action. Defendants have repeatedly asserted and
16 continue to assert defenses thereto, and have expressly denied and continue to deny any
17 wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action.

18 **D. PLAINTIFFS' CLAIMS**

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

24 **III. STIPULATION AND AGREEMENT**

25 ***NOW, THEREFORE, IT IS HEREBY STIPULATED***, by and among the Plaintiffs on
26 behalf of the Class Members on the one hand, and Defendants, on the other hand, and subject to
27 the approval of the Court, that the Action is hereby being compromised and settled subject to the
28 following terms and conditions:

1 1. Full Investigation. Plaintiffs and Plaintiffs' Counsel have fully investigated the
2 factual and legal bases for the causes of action asserted in the Action.

3 2. Release As To All Participating Settlement Class Members. As of the date of the
4 Final Approval Order in this Action, the Participating Settlement Class Members, including the
5 Plaintiffs, release the Released Parties from the Released Claims.

6 3. General Release By Plaintiffs Only. In addition to the releases made by the
7 Participating Settlement Class Members as set forth in Paragraph 2 hereof, Plaintiffs, in their
8 individual capacity and with respect to their individual claims only, agrees to release the
9 Released Parties from all claims, demands, rights, liabilities and causes of action of every nature
10 and description whatsoever, known or unknown, asserted or that might have been asserted,
11 whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising
12 out of, relating to, or in connection with any act or omission by or on the part of any of the
13 Released Parties committed or omitted prior to the execution hereof including a waiver of Civil
14 Code §1542.

15 The General Release includes any unknown Claims that Plaintiffs do not know or suspect
16 to exist in their favor at the time of the General Release, which, if known by them, might have
17 affected their settlement with, and release of, the Released Parties or might have affected their
18 decision not to object to this Settlement or the General Release.

19 With respect to the General Release, Plaintiffs stipulate and agree that, upon the
20 execution of this Agreement, Plaintiffs shall be deemed to have expressly waived and
21 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section
22 1542 of the California Civil Code, or any other similar provision under federal or state law as to
23 the generally released claims, which provides:

24 **A general release does not extend to claims that the creditor or**
25 **releasing party does not know or suspect to exist in his or her**
26 **favor at the time of executing the release and that, if known by**
27 **him or her, would have materially affected his or her**
28 **settlement with the debtor or released party.**

 Plaintiffs may hereafter discover facts in addition to or different from those they now
know or believe to be true with respect to the subject matter of the General Release.

1 Nonetheless, Plaintiffs have, fully, finally, and forever settled and released any and all of the
2 claims released pursuant to the General Release whether known or unknown, suspected or
3 unsuspected, contingent or non-contingent, which now exist, or heretofore have existed upon any
4 theory of law or equity now existing or coming into existence in the future, including, but not
5 limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty,
6 law or rule, without regard to the subsequent discovery or existence of such different or
7 additional facts.

8
9 However, this General Release by Plaintiffs shall specifically exclude Plaintiff Aguilera's
10 Fifth through Eleventh Causes of Action as alleged in Teresa Aguilera v. The Save Mart
11 Companies, Inc. et al., Monterey County Superior Court Case No. 20CV000609, which shall be
12 settled and released through a separate agreement.

13 4. Service Award. Subject to Court approval, in exchange for the release of all
14 Released Claims and for their time and effort in bringing and prosecuting this matter, Plaintiffs
15 shall each be paid up to a maximum total of \$10,000.00. This payment is expressly made for
16 their time and effort in service as class representatives and in return for a General Release of all
17 employment claims of Plaintiffs against Defendants. This time and effort payment shall be paid
18 to the Plaintiffs by the Claims Administrator no later than forty (40) calendar days after the
19 Effective Date. The Service Award shall be made solely from the Qualified Settlement Fund.
20 The Parties agree that a decision by the Court to award Plaintiffs an amount less than the amount
21 stated above shall not be a basis for the Plaintiffs or Plaintiffs' Counsel to void this Stipulation.
22 The Settlement Administrator shall issue a Form 1099 – MISC, Box 3 for the incentive payment.
23 Any amount awarded for service payments to the Plaintiffs less than the amounts stated above
24 will result in the non-awarded funds being part of the Net Class Settlement Fund available for
25 distribution to the Participating Settlement Class Members. The Plaintiffs shall be solely and
26 legally responsible to pay any and all applicable taxes on this payment and shall hold harmless
27 Defendants from any claim or liability for taxes, penalties, or interest arising as a result of the
28 Service Award. The Service Award shall be in addition to the Plaintiffs' share of the Net Class
Settlement Fund as a Participating Settlement Class Member.

1 5. Tax Liability. Defendants make no representations as to the tax treatment or legal
2 effect of the payments called for hereunder, and Plaintiffs are not relying on any statement or
3 representation by Defendants in this regard. Plaintiffs understand and agree that Plaintiffs will
4 be solely responsible for the payment of any taxes and penalties assessed on their individual
5 enhancement and general release payment described herein.

6 6. CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT
7 (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH
8 PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN
9 “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
10 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
11 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
12 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
13 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
14 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
15 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
16 EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
17 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
18 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
19 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
20 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
21 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
22 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
23 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
24 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
25 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF
26 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
27 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
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1 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
2 AGREEMENT.

3 7. Creation of the Qualified Settlement Fund and Administration of the Settlement.

4 Within thirty (30) calendar days after the Effective Date, Defendants shall deliver the Gross
5 Settlement Amount as required by this Stipulation, into the Qualified Settlement Fund created by
6 the Settlement Administrator. All payments that Defendants are required to make pursuant to the
7 Settlement Agreement shall be made from this Fund. Payments from the Qualified Settlement
8 Fund shall be made for: (1) Service Award to the Plaintiffs, as specified in this Agreement and
9 approved by the Court; (2) Attorneys' Fees and Cost Award paid to Class Counsel, as specified
10 in this Agreement and approved by the Court; (3) the Settlement Administration Costs; and (4)
11 the amount allocated to be paid to the LWDA as PAGA penalties. The balance remaining shall
12 constitute the Net Class Settlement Fund from which Individual Settlement Payments shall be
13 made to the Participating Settlement Class Members. The Administrator shall calculate and
14 make all payments on Defendants' behalf and shall be responsible for any reporting obligations
15 on the same. The Administrator shall calculate the employer-owed taxes on the wage portion of
16 the settlement, which shall be funded by Defendants separately from the Gross Settlement
17 Amount, and distributed by the Administrator. In the event this Settlement does not become
18 final for any reason, as set forth at Section III, Paragraph 19 of the Agreement (Nullification of
19 Settlement Agreement), then the Gross Settlement Amount, along with any interest accrued,
20 shall be returned to Defendants immediately within seven (7) calendar days, except that any fees
21 already incurred by the Settlement Administrator shall be paid in equal parts by Plaintiffs and
22 Defendants.

23 8. Attorneys' Fees and Cost Award. Defendants agree not to oppose or impede any
24 application or motion by Class Counsel for attorneys' fees not in excess of 35% percent or
25 \$2,618,000.00 of the Gross Settlement Amount and costs not to exceed \$40,000.00. Any amount
26 awarded for attorneys' fees and costs to Class Counsel less than the requested amounts will
27 result in the non-awarded amounts to be part of the Net Settlement Fund, available for
28 distribution to Participating Settlement Class Members. So long as there are no objections, Class

1 Counsel shall be paid any Court-approved fees and costs no later than forty (40) calendar days
2 after the Effective Date. Class Counsel shall be solely and legally responsible to pay all
3 applicable taxes on the payment made pursuant to this Paragraph. Forms 1099 – MISC, Box 14
4 shall be provided to Class Counsel for the payments made pursuant to this Paragraph.

5 9. Settlement Administrator. The Settlement Administrator shall be paid for the
6 costs of administration of the settlement from the Gross Settlement Amount. The estimate of
7 such costs of administration for the disbursement of the Gross Settlement Amount is \$94,000.00.
8 Any amount awarded for costs of administration to the Settlement Administrator less than
9 \$94,000.00 will result in the non-awarded amount to be part of the Net Settlement Fund,
10 available for distribution to Participating Class Members. This estimate includes the required tax
11 reporting on the settlement amounts, including the issuing of 1099 forms. The Administrator
12 shall be responsible for all tax reporting requirements. Sixteen (16) court days prior to the Final
13 Approval Hearing, the Settlement Administrator shall provide the Court and all counsel for the
14 Parties with a statement detailing the costs of administration of the Gross Settlement Amount. A
15 Form 1099 – MISC, Box 7 shall be issued to the Settlement Administrator. The Settlement
16 Administrator will also cooperate with Class Counsel’s requests for data relating to information
17 relating to the Settlement benefits payable to class members, opt-outs, objections, or other data
18 necessary to support Final Settlement Approval. This shall include declaration testimony by a
19 representative of the Settlement Administrator.

20 10. Preliminary Approval Hearing. As part of this Settlement, the Parties agree to the
21 following procedures for obtaining preliminary Court approval of the Settlement, notifying Class
22 Members, obtaining final Court approval of the Settlement, and processing the Individual
23 Settlement Payments:

24 a. The Parties stipulate to class certification of the Class for purposes
25 of settlement only. If the Court does not grant either preliminary or final approval of this
26 Settlement, the Parties stipulate that class certification will be revoked.

27 b. Plaintiffs shall request a hearing before the Court to request
28 preliminary approval of the Settlement and to request the entry of the Preliminary

1 Approval Order.

2 c. In conjunction with this hearing, Plaintiffs will submit this
3 Stipulation and Settlement of Class Action Agreement, which sets forth the terms of this
4 Settlement Agreement, and will include proposed forms of all notices and other
5 documents as attached hereto necessary to implement the Settlement. The Order shall
6 provide for Notice of the Settlement and related matters to be sent to Class Members as
7 specified herein.

8 11. Settlement Administration/Management. The Individual Settlement Payments
9 shall be managed and administered as follows:

10 a. Defendants shall have no obligation to segregate the funds to be
11 used for the Gross Settlement Amount from its other assets. Defendants will retain
12 exclusive authority over, and responsibility for, the funds comprising the Gross
13 Settlement Amount until such time as payment is due (30 calendar Days after the
14 Effective Date).

15 b. Phoenix Settlement Administrators, or such other entity upon
16 whom the Parties mutually agree, shall be retained to serve as Settlement Administrator.
17 The parties each represent they do not have any financial interest in the Settlement
18 Administrator or otherwise have a relationship with the Settlement Administrator that
19 could create a conflict of interest.

20 c. Defendants shall provide the Settlement Administrator and Class
21 Counsel only, the Class List and Data Report, as described in paragraph I *supra*, within
22 twenty (20) business days of Preliminary Approval of the settlement. Social Security
23 Numbers shall be redacted from the Class List and Data Report provided to Class
24 Counsel.

25 d. Within ten (10) days of receipt of the Class List and Data Report,
26 the Settlement Administrator shall mail the Notices, to each Class Member in accordance
27 with paragraph 12 *infra*.
28

1 e. No later than Sixteen (16) court days prior to the Final Approval
2 Hearing the Settlement Administrator shall provide Defendants and Class Counsel a
3 report showing: (i) the names and number of Class Members who have objected to the
4 Settlement; (ii) the names and number of the Class Members who have not timely filed
5 valid requests for exclusion; (iii) the names and number of Class Members who filed
6 valid and timely requests for exclusion from the settlement; and (iv) the names of,
7 number of, and amount owed to each Participating Settlement Class Member.

8 f. The Parties agree to cooperate in the settlement administration
9 process and to make all reasonable efforts to control and minimize the costs and expenses
10 incurred in administration of the Settlement.

11 g. The Settlement Administrator shall be responsible for: printing
12 and mailing the Notices to Class Members as directed by the Court; receiving and
13 reporting the opt-outs and objections submitted by Class Members; mailing Individual
14 Settlement Payments to Participating Settlement Class Members; and other tasks as the
15 Parties mutually agree or the Court orders the Settlement Administrator to perform. The
16 Settlement Administrator shall keep Defendants, Defendants' Counsel and Class Counsel
17 timely apprised of the performance of all Settlement Administrator responsibilities.

18 h. The Settlement Administrator, on Defendants' behalf, shall have
19 the authority and obligation to make payments, credits and disbursements, including
20 payments and credits in the manner set forth herein, to Participating Settlement Class
21 Members calculated in accordance with the methodology set out in this Agreement and
22 orders of the Court, and the Settlement Administrator shall furnish counsel with the
23 procedures it has in place to ensure that all payments to be made shall be made to the
24 parties entitled to said payments.

25 i. Any tax return filing required by this Agreement shall be made by
26 the Settlement Administrator. Any expenses incurred in connection with such filing shall
27 be a cost of administration of the Settlement.
28

1 j. No person shall have any claim against Defendants or Defendants'
2 Counsel, Plaintiffs, Participating Settlement Class Members, the Class, Class Counsel or
3 the Settlement Administrator based on distributions and payments made in accordance
4 with this Agreement.

5 12. Calculation of Individual Settlement Amount. To determine the Individual
6 Settlement Payment for each Participating Settlement Class Member, the Settlement
7 Administrator will:

- 8 a) Divide the number of Weeks Worked by the Participating Settlement Class Member
9 by the total number of Weeks Worked by all Participating Settlement Class Members
10 during the Class Period. The resulting percentage shall be applied to the Net
11 Settlement Fund to determine the Individual Settlement Payment for that Participating
12 Settlement Class Member.
- 13 b) For taxation purposes, the Individual Settlement Payment to each Participating
14 Settlement Class Member shall be allocated eighty percent (80%) to penalties and
15 interest to be paid as one check and reported on a 1099 Form; and twenty percent
16 (20%) to wages to be paid as another check and reported on a W-2 Form.
- 17 c) The Settlement Administrator shall determine the eligibility for, and the amounts of,
18 any Individual Settlement Payments under the terms of this Settlement Agreement.
- 19 d) Only Participating Settlement Class Members shall be entitled to Individual
20 Settlement Payments.
- 21 e) The Settlement Administrator shall be responsible for issuing the payments and for
22 federal and state tax reporting obligations.

23 13. Notice to Class Members. Notice of the Settlement shall be provided to all Class
24 Members using the following procedures:

- 25 a. Notice By First-Class Mail. Within ten (10) days after receipt of
26 the Class List and Data, the Settlement Administrator shall mail the Notices to the Class
27 Members via first-class regular U.S. mail. Prior to mailing, the Settlement Administrator
28 will perform a search based on the National Change of Address Database information to

1 update and correct for any known or identifiable address changes. If a new address is
2 obtained by way of a returned Notice Packet, then the Settlement Administrator shall
3 promptly forward the original Notice Packet to the updated address via first-class regular
4 U.S. mail indicating on the original Notice Packet the date of such re-mailing.

5 b. Opt-Out/Objection Deadline Date. Class Members will have forty-
6 five (45) days from the mailing of the Notices to opt-out, or object to the settlement.

7 c. Procedure For Undeliverable Notices. Any Notices returned to the
8 Settlement Administrator as non-delivered on or before the Opt-Out/Objection Deadline
9 Date shall be sent to the forwarding address affixed thereto within five (5) court days. If
10 no forwarding address is provided, then the Settlement Administrator shall promptly
11 attempt to determine a correct address using a single skip-trace, computer or other search
12 using the name, address and/or Social Security number of the individual involved, and
13 shall then perform a single re-mailing within five (5) court days. In the event the
14 procedures in this paragraph are followed and the intended recipient of a Notice still does
15 not receive the Notice, the Class Member shall be bound by all terms of the Settlement
16 and any Final Judgment entered by the Court if the Settlement is approved by the Court.

17 d. At least Sixteen (16) court days prior to the Final Approval
18 Hearing the Settlement Administrator shall provide Defendants and Class Counsel a
19 report showing: (i) the names and number of Class Members objecting to the settlement;
20 (ii) the names and number of the Participating Settlement Class Members; (iii) the names
21 and number of Class Members opting out of the settlement; and (iv) the amount owed to
22 each Participating Settlement Class Member.

23 14. Procedure for Objecting To or Opting Out Of The Class Action Settlement. The
24 Class Members shall submit objections to and opt-out of the Settlement, using the following
25 procedures:

26 a. Procedure for Objecting. The Notices shall provide that those
27 Class Members who wish to object to the Settlement must mail a written statement of
28 objection (“Notice of Objection”) to the Settlement Administrator, Class Counsel and

1 Defendants' Counsel no later than the Opt-Out/Objection Deadline Date. The postmark
2 date of the mailing shall be deemed the exclusive means for determining that a Notice of
3 Objection is timely. The Notice of Objection must contain a statement of the Class
4 Member's objections, and any legal briefs, papers or memoranda the objecting Class
5 Member proposes to submit to the Court. Class Members who fail to make written
6 objections in the manner specified above shall be deemed to have waived any objections
7 and shall be foreclosed from making any objection (whether by appeal or otherwise) to
8 the Settlement Agreement. No later than sixteen (16) court days before the Settlement
9 Fairness Hearing, the Settlement Administrator shall provide counsel for the Parties with
10 complete copies of all objections received, including the postmark dates for each
11 objection.

12 b. Procedure for Opting Out. The Notices to Class Members shall
13 provide that those Class Members who wish to opt-out of the Settlement must mail a
14 written signed request for exclusion expressing his or her desire to opt-out from the
15 settlement, and any such statement shall include the name (and former names, if any),
16 current address, telephone number, and the last four (4) digits of Social Security number
17 of the Class Member and state that "I wish to opt-out from this Settlement." Any Class
18 Member who wishes to request exclusion from the Settlement must submit a request to be
19 excluded from the Settlement to the Settlement Administrator postmarked no later than
20 the Opt-Out/Objection Deadline Date. Any Class Member who submits a valid and
21 timely request for exclusion form shall no longer be a member of the Class, shall be
22 barred from participating in this Settlement, shall be barred from objecting to this
23 Settlement, and shall receive no benefit from this Settlement. Eligible PAGA Members
24 will receive their share of the employee portion of the PAGA Payment and will be
25 deemed to have released any claims arising out of the PAGA, regardless of whether they
26 submit a Request for Exclusion.

27 c. No Solicitation of Settlement Objections or Opt-Outs. The Parties
28 agree to use their best efforts to carry out the terms of this Settlement. At no time shall

1 any of the Parties or their counsel seek to solicit or otherwise encourage or influence
2 Class Members to submit written objections to the Settlement, submit written objections
3 to or requests for exclusion from of the Settlement, or to appeal from the Order and Final
4 Judgment.

5 15. Procedure for Dispute of Weeks Worked.

6 a. If a Class Member disputes the number of Weeks Worked that is
7 the basis for their settlement figure provided in the notice, then the Class Member must
8 submit supporting documentation. The Settlement Administrator will forward the dispute
9 to counsel for Plaintiffs and Defendants, and Defendants will investigate the dispute. The
10 Settlement Administrator will decide the dispute, and will provide the Class Member
11 with the results of the investigation. Failure of the Class Member to submit
12 documentation to support his/her dispute, will result in the Class Member being paid
13 pursuant to Defendants' records.

14 16. Procedure for Payment of Individual Settlement Payments:

15 a. All Participating Settlement Class Members will receive an
16 Individual Settlement Payment distributed through the Settlement Administrator from the
17 Qualified Settlement Fund.

18 b. Individual Settlement Payments for Participating Settlement Class
19 Members shall be paid pursuant to the settlement formula set forth herein, and shall be
20 mailed within forty (40) calendar days after the Effective Date.

21 c. Should any question arise regarding the determination of eligibility
22 for, or the amounts of, any Individual Settlement Payment under the terms of this
23 Agreement, Class Counsel and Defendants' Counsel shall meet and confer in an attempt
24 to reach agreement. If they cannot agree, the Settlement Administrator shall make the
25 final determination, and that determination shall be conclusive, final and binding on all
26 Parties, including all Participating Settlement Class Members.

27 d. If a check sent to a valid and timely Participating Settlement Class
28 Member is returned with a forwarding address provided by the Postal Service, it shall be

1 re-mailed to the forwarding address provided. If a check is returned as undeliverable by
2 the Postal Service or is otherwise designated by the Postal Service as having been sent to
3 an invalid address, and the Participating Settlement Class Member did not provide the
4 Settlement Administrator with additional address information after the mailing of the
5 check, the Settlement Administrator shall have no further obligation to mail the check to
6 the Participating Settlement Class Member.

7 e. To the extent any Participating Settlement Class Member fails to
8 cash a settlement check within 180 days of issuance, the uncashed funds, including
9 interest accrued in the QSF, will escheat to the State Controller to be deposited in the
10 Unclaimed Property Fund, in the name of the Participating Settlement Class Member.

11 17. Certification By Settlement Administrator. Upon completion of administration of
12 the distributions, the Settlement Administrator shall provide written certification of such
13 completion to the Court and counsel for all Parties.

14 18. Final Settlement Approval Hearing and Entry of Final Judgment. Upon
15 expiration of the Opt-Out/Objection Deadline Date, with the Court's permission, a Final Fairness
16 Hearing shall be conducted to determine final approval of the Settlement along with the amount
17 properly payable for (i) reasonable attorneys' fees and costs, (ii) any Service Awards, and (iii)
18 cost of administration. The Final Fairness Hearing shall not be held earlier than fifteen (15)
19 calendar days from Opt-Out/Objection Deadline Date. Upon final approval of the Settlement by
20 the Court the Parties shall present the Final Judgment to the Court for its approval. After entry
21 of the Final Judgment, the Court shall have continuing jurisdiction solely for purposes of
22 addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement
23 administration matters, and (iii) such post-Final Judgment matters as may be appropriate under
24 court rules or as set forth in this Agreement.

25 19. Nullification of Settlement Agreement. In the event that five percent (5%) or
26 more Class Members opt-out of the Settlement, Defendants, in their sole discretion, may exercise
27 their option of nullifying the Agreement. In order to exercise this option, Defendants must notify
28 Class Counsel in writing within twenty (20) business days of learning from the Administrator

1 that the number of opt-outs equals five percent (5%) or more. If the option is exercised, this
2 Settlement Agreement shall be null and void, and any order or judgment entered by the Court in
3 furtherance of this Settlement shall be treated as void from the beginning, and the Stipulations
4 and Recitals contained herein shall be of no force or effect, and shall not be treated as an
5 admission by any parties or their Counsel. In such a case, the Parties and any funds to be
6 awarded under this Settlement shall be returned to their respective statuses as of the date and
7 time immediately prior to the execution of this Agreement (along with any accrued interest), and
8 the Parties shall proceed in all respects as if this Settlement Agreement had not been executed,
9 except that any fees already incurred by the Settlement Administrator shall be paid by
10 Defendants.

11 In addition, in the event: (i) the Court does not enter the Final Approval Order
12 specified herein; (ii) the Court does not finally approve the Settlement as provided herein; (iii)
13 the Court does not enter a Final Judgment as provided herein, which becomes final as a result of
14 the occurrence of the Effective Date; or (iv) the Settlement does not become final for any other
15 reason, this Settlement Agreement shall be null and void, and any order or judgment entered by
16 the Court in furtherance of this Settlement shall be treated as void from the beginning, and the
17 Stipulations and Recitals contained herein shall be of no force or effect, and shall not be treated
18 as an admission by any parties or their Counsel.

19 20. Publicity. Neither the Plaintiffs, nor Plaintiffs' Counsel shall issue any press
20 release related in any way to the Settlement. From and after preliminary approval of the
21 settlement, the Class Members (including the Plaintiffs and Class Counsel) may: (1) as required
22 by law; (2) as required under the terms of the Settlement; or (3) as required under counsel's
23 duties and responsibilities as Class Counsel, comment regarding the specific terms of the
24 Settlement. In response to inquiries from the press, Plaintiffs and Class Counsel agree to limit
25 their statements regarding the terms of the Settlement, whether oral, written or electronic
26 (including the world wide web), to say the Class Action has been resolved and that the Plaintiffs
27 and Class Counsel are satisfied with the settlement terms. Nothing herein is intended to interfere
28 with Class Counsel's duties and obligations to faithfully discharge their duties as Class Counsel,

1 including but not limited to answering questions from Class Members. Nothing herein shall
2 preclude Class Counsel from encouraging Class Members to participate in the settlement, and
3 Class Counsel shall be allowed to publicize the terms of the Settlement for this purpose,
4 including on Class Counsel's web site or a web site devoted to the Settlement, at Class Counsel's
5 expense.

6 21. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning
7 the interpretation, calculation or payment of settlement claims, or other disputes regarding
8 compliance with this Agreement shall be resolved as follows:

9 a. If Plaintiffs or Class Counsel, on behalf of Plaintiffs or any
10 Participating Settlement Class Member, or Defendants at any time believes that the other
11 Party has breached or acted contrary to the Agreement, that Party shall notify the other
12 Party in writing of the alleged violation.

13 b. Upon receiving notice of the alleged violation or dispute, the
14 responding Party shall have ten (10) calendar days to correct the alleged violation and/or
15 respond to the initiating Party with the reasons why the party disputes all or part of the
16 allegation.

17 c. If the response does not address the alleged violation to the
18 initiating Party's satisfaction, the Parties shall negotiate in good faith for up to ten (10)
19 calendar days to resolve their differences.

20 d. If Class Counsel and Defendants are unable to resolve their
21 differences after twenty (20) calendar days, either Party may file an appropriate motion
22 for enforcement with the Court. The briefing of such motion should be in letter brief
23 form and shall not exceed five (5) single-spaced pages (excluding exhibits).

24 e. Reasonable attorneys' fees and costs for work done in resolving
25 a dispute under this Section may be recovered by any party that prevails under the
26 standards set forth within the meaning of applicable law.

27 22. No Retaliation. Defendants shall not take any adverse action against any Class
28 Member, including Plaintiffs, because of the Action or because of the existence of, and/or

1 participation in, the Settlement, or because they choose to benefit from the Settlement or to
2 object to the Settlement. Defendants shall not take action to discourage Class Members from
3 participating in the Settlement. Notice to the Class Members will include a statement that
4 Defendants will not retaliate against Class Members for participating in the Settlement.

5 23. Exhibits and Headings. The terms of this Agreement include the terms set forth
6 in attached Exhibit A which is incorporated by this reference as though fully set forth herein.
7 Any exhibits to this Agreement are an integral part of the Settlement. The descriptive headings
8 of any paragraphs or sections of this Agreement are inserted for convenience of reference only
9 and do not constitute a part of this Agreement.

10 24. Interim Stay of Proceedings. The Parties agree to the Court staying and holding
11 all proceedings in the Action, except such proceedings necessary to implement and complete the
12 Settlement, in abeyance pending the Settlement Hearing to be conducted by the Court.

13 25. Amendment or Modification. This Agreement may be amended or modified only
14 by a written instrument signed by counsel for all Parties or their successors-in-interest.

15 26. Entire Agreement. This Agreement and any attached exhibits constitute the entire
16 agreement among these Parties, and no oral or written representations, warranties or inducements
17 have been made to any Party concerning this Agreement or its exhibits other than the
18 representations, warranties and covenants contained and memorialized in such documents.

19 27. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
20 warrant and represent they are expressly authorized by the Parties whom they represent to
21 negotiate this Agreement and to take all appropriate action required or permitted to be taken by
22 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
23 documents required to effectuate the terms of this Agreement. The Parties and their counsel will
24 cooperate with each other and use their best efforts to affect the implementation of the
25 Settlement. In the event the Parties are unable to reach agreement on the form or content of any
26 document needed to implement the Settlement, or on any supplemental provisions that may
27 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance
28 of the Court to resolve such disagreement. The persons signing this Agreement on behalf of

1 Defendants represent and warrant that they are authorized to sign this Agreement on behalf of
2 Defendants.

3 28. Binding on Successors and Assigns. This Agreement shall be binding upon, and
4 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

5 29. California Law Governs. All terms of this Agreement and the exhibits hereto
6 shall be governed by and interpreted according to the laws of the State of California.

7 30. Counterparts. This Agreement may be executed in one or more counterparts,
8 physically or electronically. All executed counterparts and each of them shall be deemed to be
9 one and the same instrument provided that counsel for the Parties to this Agreement shall
10 exchange among themselves original signed counterparts.

11 31. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this
12 Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this
13 Settlement after extensive arms-length negotiations, taking into account all relevant factors,
14 present and potential and the extensive investigation that has occurred.

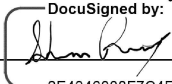
15 32. Jurisdiction of the Court. The Court shall retain jurisdiction with respect to the
16 interpretation, implementation and enforcement of the terms of this Agreement and all orders and
17 judgments entered in connection therewith, and the Parties and their counsel hereto submit to the
18 jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement
19 embodied in this Agreement and all orders and judgments entered in connection therewith. The
20 prevailing party to any such enforcement action shall be entitled to recover its reasonable
21 attorneys' fees and costs incurred in connection with such enforcement.

22 33. Cooperation and Drafting. Each of the Parties has cooperated in the drafting and
23 preparation of this Agreement. Hence, in any construction made to this Agreement, the same
24 shall not be construed against any of the Parties.

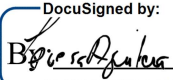
25 34. Invalidity of Any Provision. Before declaring any provision of this Agreement
26 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
27 consistent with applicable precedents so as to define all provisions of this Agreement valid and
28 enforceable.

35. Plaintiffs' Waiver of Right to Object. Plaintiffs waive any right to object to this Agreement, and by signing this Agreement are bound by the terms herein.

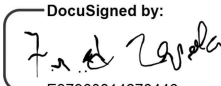
Dated: 5/26/2021

By: 
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Shaun Rooney


Dated: 5/26/2021

By: 
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Teresa Aguilera

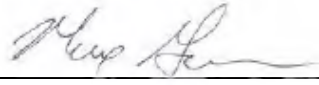
Dated: 6/4/2021

By: 
E37960814278446...
Fred Zepeda

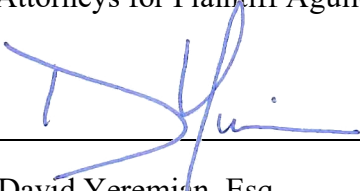
Dated: May 26, 2021

By: 
Timothy B. Del Castillo, Esq.
Kent L. Bradbury, Esq.
Attorneys for Plaintiff Rooney and Class

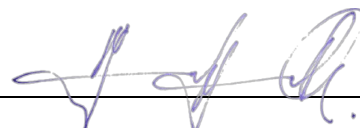
Dated: 6/4/2021

By: 
Larry W. Lee, Esq.
Howard L. Magee
Max W. Gravon
Attorneys for Plaintiff Aguilera and Class

Dated: 6/4/2021

By: 
David Yeremian, Esq.
Roman Shkodnik, Esq.
Emil Davtyan, Esq.
Attorneys for Plaintiff Zepeda and Class

Dated: 6/4/2021

By: 
Emil Davtyan, Esq.
Attorney for Plaintiff Zepeda and Class

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SHEPPARD MULLIN RICHTER & HAMPTON LLP

Dated: 6/23/2021

By: 

Derek R. Havel, Esq.
Nora K. Stilestein, Esq.
Allison E. Cheffer, Esq.
Attorney for Defendants

Dated: 6/2/2021

By: ^{DocuSigned by:} 
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Save Mart Supermarkets

EXHIBIT A

*SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO*

Shaun Rooney v. Save Mart Supermarkets, Case No. . 2020-00274973 (“the Action”)

**NOTICE OF PROPOSED CLASS ACTION
SETTLEMENT AND FAIRNESS HEARING**

Read this notice carefully. If you worked as an hourly non-exempt employee for Save Mart Supermarkets in the State of California at some point during the time period of February 6, 2016 through June 30, 2021, your legal rights may be affected.

A court authorized this notice. This is not a solicitation from a lawyer.

- Records indicate that you are a Class Member in the Action.
- The parties have reached a settlement of all issues in the Action to avoid the costs of litigation. As a Class Member, you now have a choice to make that could affect your legal rights.

YOUR LEGAL RIGHTS AND OPTIONS:

Do Nothing **You will receive settlement funds in exchange for giving up certain rights.**

If you do not opt out of the settlement, you will automatically receive a share of the settlement proceeds. If the settlement is granted final approval by the Court, you will be bound by the settlement and you will have released the claims set forth in the release.

Opt Out **You will not receive any portion of the settlement proceeds.**

You will no longer be a member of the Class and will be barred from participating in or objecting to the settlement. You will not release the claims as set forth in this Notice.

Object If you do not opt out, you also have the right to object to the settlement.

Your options are more fully explained in this notice. The deadline to submit an objection or to opt-out is **[45 days after mailing date]**.

1. Why did I receive this notice?

You are a Class Member in the above-mentioned class action and are entitled to share in the settlement funds. You are not being sued. However, your rights may be affected by the legal proceedings in this action. This Notice informs you of your right to share in the settlement and your ability to object to the settlement.

The Parties to the litigation signed a Stipulation and Settlement Agreement of Class Action Claims (the “Agreement”) that fully sets forth the details of the settlement, and you may obtain a copy of the Agreement from either the Court or Class Counsel (identified below). Details concerning where to get additional information, including a copy of the Agreement, are provided at the end of this Notice. The proposed Agreement has been submitted to the Court, and has received preliminary approval. You have received this Notice because records indicate that you are a Class Member in the above-mentioned class action. The Court must approve the terms of the settlement described below as fair and reasonable to the class. The settlement will affect all members of the class. You may get money from the class action settlement, but only if you do not opt-out as indicated below.

2. What is the case about?

On February 6, 2020, Shaun Rooney filed a class action lawsuit against Save Mart Supermarkets (hereinafter referred to as “Save Mart”) entitled Shaun Rooney v. Save Mart Supermarkets, Sacramento County Superior Court Case No. 2020-00274973 (the “Action”). Rooney alleges that Save Mart failed to properly pay wages, including minimum and overtime wages, failed to pay wages for all hours worked, made unlawful deductions from wages, failed to reimburse business expenses, violated meal period and rest break rules, issued improper wage statements, failed to keep accurate records, and owes waiting time penalties. Rooney also alleges that the above violations constitute unfair business practices pursuant to Business & Professions Code sections 17200 *et seq.*

On [REDACTED], Plaintiff amended his complaint to add Teresa Aguilera and Fred Zepeda as class representatives, and Yosemite Express Co. and Smart Refrigerated Transport as defendants to the Action.

Save Mart strongly denies all allegations in the Action and contends that it fully complied with the law. Save Mart has entered into this settlement to avoid the costs and expense of litigation.

The class for purposes of this settlement consists of all individuals employed by Save Mart as non-exempt, hourly employees within the State of California between February 6, 2016, and June 30, 2021.

You have received this Notice because records indicate that you are a Class Member fitting into the class definition.

3. **What Are My Options?**

You may do nothing or opt out. You also have a right to object to the settlement if you do not opt out. The option you choose affects whether you receive settlement monies and whether you give up certain rights.

a. What happens if I do nothing?

If you do nothing, you will receive a settlement payment and you will release all claims that are released pursuant to the terms of the Settlement Agreement.

b. How do I Opt-Out?

If you do not want to be a member of the Class or participate in this settlement, you must take the following steps:

(1) You must mail a written signed statement expressing your desire to opt-out from the settlement no later than **[45 days after mailing]** to the Save Mart Settlement Administrator, **[REDACTED]**.

(2) The written statement MUST include: (i) your name (and former names, if any); (ii) your current address and telephone number; (iii) the last four digits of your Social Security number; and (iv) the statement "I wish to opt out from this Settlement," or something substantially similar.

The written opt-out must be postmarked by **[45 days after mailing]**. If you have satisfied the requirements set forth above, you will no longer be a member of the Class, you will be barred from participating in the settlement or objecting to the settlement, and you will receive no benefit from this settlement, but will retain your own rights to assert against Save Mart.

d. How do I object to the settlement?

If you are satisfied with the proposed settlement, you do not need to appear at the hearing at which the Court will consider final approval of the settlement. However, if you object to the proposed settlement you must take the following steps:

(1) You must mail a written statement of the objection stating the basis for the objection no later than **[45 days after mailing]** to the Save Mart Settlement Administrator, **[REDACTED]** Do not mail your objection or your notice of your intent to appear at the final approval hearing directly to the court.

(2) The written statement MUST include: (i) a statement advising if you plan to address the Court at the hearing; (ii) a statement of your objections; and (iii) any other papers which you propose to submit to the Court, including any legal briefs or memoranda. You may

appear personally at the final approval hearing, or through your own counsel, paid for at your expense.

The written statement must be postmarked by **[45 days after mailing]**. If you have satisfied the requirements set forth above, you have the right to address the Court at the Final Approval Hearing scheduled for **[REDACTED]**, 2021 before the Honorable David De Alba in Department 41 of the Sacramento County Superior Court, located at Gordon D. Schaber Courthouse, 720 9th Street, Sacramento, CA 95814.

Class Members who fail to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections to the Agreement, or any aspect of the proposed settlement, including, without limitation, the fairness, reasonableness or adequacy of the proposed settlement, or any award of attorneys' fees or reimbursement of costs and expenses.

4. How is my individual settlement amount calculated?

a. Summary of settlement

The maximum sum that Save Mart will pay in connection with the settlement is Seven Million, Four Hundred and Eighty Thousand Dollars (\$7,480,000.00) ("Gross Settlement Amount").

Your individual settlement award will be determined by dividing the number of weeks worked by you during the Class Period by the total number of weeks worked by all Participating Class Members during the Class Period. The Class Period is February 6, 2016 through June 30, 2021. Your estimated settlement amount is **[REDACTED]**.

Twenty percent (20%) of your portion of the Settlement Amount shall be considered wages, the remaining eighty percent (80%) shall be considered penalties and interest for purposes of taxation. The Settlement Administrator will make all lawful payroll deductions from any payments paid to you as set forth in the Agreement.

The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Settlement Agreement. Only those Class Members who do not opt out will participate in the Settlement.

b. Will the Named Plaintiffs receive any additional payment?

Yes. The Court will also be asked to award a service payment (also called an enhancement) to Plaintiffs Shaun Rooney, Teresa Aguilera, and Fred Zepeda in the amount of \$10,000.00. The service payment will be paid from the Gross Settlement Amount, which will reduce any payment made to you as a Participating Settlement Class Member. This service payment is sought to compensate the Named Plaintiffs for their efforts in assisting with the prosecution of the Action on behalf of the Class Members and in return for executing a General Release of all Claims against Released Parties. The actual amount awarded will be determined by the Court to ensure that the service payment amount is reasonable.

c. How will the attorneys for the class be paid?

You do not need to pay any portion of either Class Counsel or Save Mart's attorneys' fees and costs. All payments to Class Counsel for attorneys' fees and costs will be deducted from the Gross Settlement Amount, which will reduce any payment made to you as a Participating Settlement Class Member. Class Counsel will apply to the court for approval of their attorneys' fees and costs at the hearing scheduled for [REDACTED], 2021. Class Counsel will ask for attorneys' fees not in excess of \$2,618,000.00, or thirty-five percent (35%) and costs not to exceed \$40,000.00 of the Gross Settlement Amount. Further, the Settlement Administrator's costs are estimated to be \$94,000.00. The actual amount awarded will be determined by the Court to ensure that the amount of attorneys' fees and costs and administrator's costs are reasonable.

5. What are the rights at issue in this lawsuit?

The settlement relates to the time that you worked at Save Mart as an hourly non-exempt employee. If the proposed Settlement is approved, all Class Members will have released the "Released Parties" from the "Released Claims" as defined below and will be permanently barred from suing or otherwise making a claim against any of the Released Parties that is in any way related to the Released Claims. This is more completely set forth as follows:

Upon the full funding of the Qualified Settlement Fund, the Participating Settlement Class Members shall fully and finally release and discharge the Released Parties, during the Class Period, of all applicable California wage and hour claims, rights, demands, liabilities and causes of action which were brought or could have been brought in the Action against Defendants based on the factual allegations of the Action, including all claims for unpaid wages, including minimum wages, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; missed meal period and rest period premiums, including failure to pay premiums at the regular rate of compensation; payment for all hours worked, including off-the-clock work; wage statements; failure to keep accurate records; failure to reimburse business expenses; unlawful deductions; failure to timely pay wages; premium payments for work completed on the seventh consecutive day of work; unfair business practices related to the Released Claims; penalties, including civil penalties, statutory penalties, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs; all claims related to the Class Released Claims arising under: the California Labor Code, including, but not limited to, sections 90.5, 201, 202, 203, 204, 210, 213, 218.5, 221, 223, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1199, 1670.5, 2698 *et seq.*, 2699 *et seq.*, 2699.3, 2802; the Wage Orders of the California Industrial Welfare Commission; the California Private Attorneys General Act of 2004 ("PAGA"); California Business and Professions Code section 17200, *et seq.*; and California Code of Civil Procedure section 1021.5. This release excludes the release of claims not permitted by law.

6. Will I be subject to discipline based on whether I participate in the settlement?

No. Your decision as to whether or not to participate in the settlement will in no way affect your employment with Save Mart. Save Mart is prohibited from retaliating in any way based on your decision whether or not to participate in the settlement.

7. Where can I get additional information?

This Notice only summarizes this lawsuit, the Settlement, and related matters. For more information, you may inspect the Court files at the Clerk of the Court for the Sacramento Superior Court, located at Schaber Courthouse, 720 9th Street, Sacramento, CA 95814, from 9:00 a.m. to 4:00 p.m., Monday through Friday. If you have questions about the settlement, you may also contact Lead Class Counsel as follows:

Timothy B. Del Castillo (State Bar No. 277296)
Kent L. Bradbury (State Bar No. 279402)
Castle Law: California Employment Counsel, PC
2999 Douglas Blvd., Suite 180
Roseville, CA 95661
Tel: (916) 245-01221

Larry W. Lee (State Bar No. 228175)
Howard L. Magee (State Bar No. 185199)
Max W. Gavron (State Bar No. 291697)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555

DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
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DAVTYAN PROFESSIONAL LAW CORPORATION
Emil Davtyan (SBN 299363)
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880 E. Broadway
Glendale, California 91205

Telephone: (818) 875-2008

8. Payment of Settlement Share

The court must finally approve the settlement at the hearing on [REDACTED], before settlement checks will be mailed to participating class members. Assuming the court grants final approval of the class action settlement, and assuming there are no objectors or appeals, checks should be mailed to those who do not opt out, approximately 40 days after the final approval hearing. If you have moved, or your check is returned as undeliverable and/or the check you are mailed is not cashed after issuance, then the funds in the amount of your settlement share will escheat to the State Controller to be deposited in the Unclaimed Property Fund in your name. The class member can contact the California Department of Industrial Relations and make a claim to obtain your settlement amount. The California Department of Industrial Relations who works in conjunction with the State Controller's office and can be contacted through <http://www.sco.ca.gov/> or by calling: (213) 833-6010. "Escheat" essentially means that the funds will be turned over to the State of California through the State Controller's office, and will remain in the fund until the property is claimed by the individual.

You may also contact the Settlement Administrator as follows:

[REDACTED]
**DO NOT TELEPHONE OR CONTACT THE COURT FOR INFORMATION
REGARDING THIS SETTLEMENT.**