

## AMENDED SETTLEMENT AGREEMENT

This Settlement Agreement ( “Settlement” or “Agreement”) is made by and between Rafael Hernandez and Ivan Rodas (collectively, “Plaintiffs” or “Class Representatives”), on the one hand, and Gazzali’s Supermarket Corporation (“GSC”), and Mike Algazzali (collectively, “Defendants”), on the other hand, and is intended to be binding on Plaintiffs and Defendants (collectively, the “Parties”).

### I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meanings:

- A. “Action” means the civil action titled *Hernandez & Rodas v. Gazzali’s Supermarket Corporation, et al.* (Alameda County Superior Court Case No. RG19043094, pending in the Alameda County Superior Court.
- B. “Class” means all individuals who were employed by Gazzali’s Supermarket Corporation in California as non-exempt and/or hourly-paid employees at any time(s) during the applicable Class Period, as defined below. Individuals within the Class are referred to as “Class Members.”
- C. “Class Claims” means the First through Seventh Causes of Action (and the corresponding requests for relief) asserted by Plaintiffs on behalf of themselves and the Class against Defendants in the Complaint.
- D. “Class Counsel” means Marco A. Palau, Joseph D. Sutton, and Eric S. Trabucco of Advocates of Worker Rights LLP and Jessica Juarez.
- E. “Class Counsel Fees and Expenses Payment” means the amount awarded to Class Counsel by the Superior Court to compensate them for their attorneys’ fees and litigation expenses in connection with the Action, including their pre-filing investigation, their commencement of the Action and all related litigation activities, this Settlement, and all post-Settlement compliance procedures.
- F. “Class Notice” means the Court-approved Notice of Proposed Settlement, Conditional Certification of Settlement Class, Preliminary Approval of Settlement, and Hearing Date for Final Court Approval.
- G. “Class Notice Packet” means the Class Notice and the Individual Class Member Verification Form.
- H. “Class Period” means the time period from November 8, 2015, through the Date of Preliminary Approval of the Parties’ Settlement, inclusive.
- I. “Class Representative Service Payments” means the Court-approved payments to be paid to Plaintiffs, in addition to their respective Settlement Shares (as defined below), to compensate them for initiating and pursuing the Action, undertaking the risk of liability for attorneys’ fees and litigation costs in the event they were unsuccessful in the prosecution of the Action, and in consideration for their general releases under the Settlement.
- J. “Company Defendant” means Gazzali’s Supermarket Corporation (“GSC”).

- K. “Date of Preliminary Approval” means the date on which the Court enters an order granting preliminary approval of the Parties’ Settlement embodied in this Agreement.
- L. “Effective Date” means (a) if no Class Member files and serves any timely and valid objection to the Settlement, then the date upon which the Court grants final approval and issues a Judgment ; (b) if any Class Member files and serves a timely and valid objection but it is subsequently withdrawn, then the date upon which the Court grants final approval and issues a Judgment; or (c) if any Class Member files and serves a valid and timely objection, then the date which is sixty-five (65) days after (i) service of notice of entry of the Final Approval Order and Judgment on the Parties to the Action and all objectors to the Settlement, if any, without appeals or requests for review being taken, or (ii) an order affirming the Final Approval Order and Judgment or denying review after exhaustion of all appellate remedies, if appeals or requests for review have been taken.
- M. “Employer Payroll Contributions” shall mean those payroll taxes and other monetary contributions required by state and federal law to be made by an employer on wage payments, including but not limited to FICA, Medicare, FUTA, and SUTA, and any federal and state unemployment taxes, payable with respect to amounts treated as wages under this Agreement.
- N. “Final Approval Hearing” means the hearing to be conducted by the Superior Court to determine whether to finally approve and implement the terms of this Agreement.
- O. “Final Approval Order” means the order approving the terms of this Agreement.
- P. “Gross Settlement Amount” or “Gross Settlement Fund” means the maximum amount to be paid by Defendants as provided by this Agreement. The Gross Settlement Amount does not include Employer Payroll Contributions on the portion of Class Member Settlement Shares allocated to wages, which Defendants shall pay separately. This is a non-reversionary settlement and no portion of the Gross Settlement Amount shall revert or be paid to any Defendants.
- Q. “Individual Class Member Verification Form” means the form in the Class Notice Packet that details the estimated number of workweeks worked by each individual Class Member for the period from November 8, 2015, through the Date of Preliminary Approval, based on Company Defendant’s records, and contains an estimated individual Class Settlement Share for each Class Member.
- R. “Individual Defendant” means Mike Algazzali.
- S. “Judgment” means the Order Granting Final Approval of Class Action Settlement and Entering Final Judgment entered by the Superior Court.
- T. “Net Settlement Amount” means the amount remaining from the Gross Settlement Amount available for distribution to Participating Class Members (as defined below), which is the Gross Settlement Amount less the following (subject to and to the extent approved by the Superior Court): (1) the Class Representative Payments; (2) the Class Counsel Fees and Expenses Payment (which includes all attorneys’ fees and expenses incurred to date and to be incurred in documenting the Settlement, securing court approval of the Settlement, and attending to the administration of the Settlement); (3); the PAGA Payment; and (4) the Settlement Administrator’s reasonable fees and expenses incurred in administering the Settlement.

- U. “PAGA Aggrieved Employees” means all individuals who were employed by the Company Defendant in California as non-exempt and/or hourly-paid employees at any time(s) during the applicable PAGA Period.
- V. “PAGA Claim” means the Eighth Cause of Action (and corresponding requests for relief) asserted by Plaintiffs on behalf of themselves and the PAGA Aggrieved Employees against Defendants in the operative complaint.
- W. “PAGA Payment” means the Ten Thousand Dollar (\$10,000.00) amount from the Gross Settlement Amount allocated to civil penalties and interest stemming from Plaintiffs’ PAGA Claim, seventy-five percent (75%) of which shall be paid to the California Labor and Workforce Development Agency and the remaining twenty-five percent (25%) of which shall be paid to the PAGA Aggrieved Employees as PAGA Shares to settle claims pursuant to the Labor Code Private Attorneys General Act (“PAGA”), Cal. Lab. Code §§ 2698 *et seq.*
- X. “PAGA Aggrieved Employee Share” or “PAGA Share” means each PAGA Aggrieved Employee’s individual share of the 25% of the total PAGA Payment.
- Y. “PAGA Period” means the time period from November 8, 2018, through the Date of Preliminary Approval of the Parties’ Settlement, inclusive.
- Z. “Participating Class Members” mean Class Members who do not timely opt-out of the Parties’ Settlement before the Response Deadline.
- AA. “Request for Exclusion” means a timely written and signed request (e.g., letter) submitted by a Class Member to be excluded from the Parties’ Settlement, in accordance with the requirements set forth in Section II.H.3 below. To be valid, a Request for Exclusion must be returned by mail to the Settlement Administrator (as defined below) at the specified address in the Class Notice Packet and postmarked on or before the Response Deadline (as defined below). Any Class Member who does not timely request exclusion from the Settlement in accordance with the requirements set forth herein will be deemed a Participating Class Member and will be bound by all terms of the Settlement, if the Settlement is granted Final Approval by the Superior Court.
- BB. “Response Deadline” means the date, forty-five (45) days after the Settlement Administrator mails the Class Notice Packet, by which Class Members must submit either (1) an objection and/or a dispute to the number of workweeks detailed in the Individual Class Member Verification Form, or (2) a Request for Exclusion.
- CC. “Settlement” means the terms and conditions set forth in this Agreement meant to resolve the Action.
- DD. “Settlement Administrator” means Phoenix Class Action Administration Solutions (“Phoenix”).
- EE. “Settlement Share” means the total gross amount each Participating Class Member will receive as their respective portion of the Net Settlement Amount inclusive of their respective portion of the settlement of the Class Claims and the PAGA Claim.
- FF. “Superior Court” or “Court” means Department 23 of the Alameda County Superior Court or any other Department to which the case may be reassigned.

## II. SETTLEMENT TERMS AND CONDITIONS

### A. Gross Settlement Amount.

1. Defendants agree to pay a total Gross Settlement Amount of Three Hundred and Fifty Thousand Dollars (\$350,000) to resolve the Action and in exchange for the releases set forth herein by Participating Class Members and PAGA Aggrieved Employees. Defendants shall fund the Settlement Fund in the following timeline: (a) no later than thirty (30) days after the Effective Date, Defendants will transfer \$200,000 to a qualified settlement fund established by the Settlement Administrator; and (b) beginning thirty (30) days after the first payment, Defendants will make twelve (12) monthly and consecutive payments of \$12,500 for the remaining \$150,000. Defendants shall be responsible for all Employer Payroll Contributions, which shall be paid in addition to and on top of the Gross Settlement Amount.
2. The following amounts shall be paid from the Gross Settlement Amount: (a) all individual Settlement payments (i.e., Settlement Shares) to all Participating Class Members, and all employee-side share of employment/payroll taxes; (b) Class Representative Service Payments to each of the Class Representatives of up to \$10,000 each (i.e., a total of up to \$20,000, collectively); (c) the reasonable Court-approved costs of third-party settlement administration by Phoenix, currently estimated not to exceed \$10,750; (d) Court-approved attorneys' fees of up to 33 and 1/3% of the Gross Settlement Fund (i.e., up to \$116,655) plus reasonable litigation expenses, subject to approval by the Court, not to exceed \$7,000; (e) the LWDA Payment; and (f) the PAGA Aggrieved Employee Shares. No portion of the Gross Settlement Fund shall be used to satisfy Defendant's Employer Payroll Contributions. Once all fees, costs, and the PAGA Payment (i.e., the amounts set forth in (b)-(f) above) have been deducted from the Settlement Fund, the entire remaining Net Settlement Amount shall be distributed to Participating Class Members in the manner outlined herein. Any funds originally designated for a Class Member who subsequently opts out of the settlement will be distributed on a pro-rata basis to the Participating Class Members. If the Court approves less than the amounts requested in (b)-(f) above, the remainder will be retained in the Net Settlement Amount and distributed to Participating Class Members.
3. The Settlement Fund is based on Defendant's representation that there are 186 Class Members, including the named Plaintiffs. However, should the settlement process reveal that there are more than 186 Class Members by more than five percent (5%)—or more than 9 Class Members—then the Gross Settlement Amount shall be increased on a *pro rata* basis for each additional Class Member who worked during the Class Period (i.e. for each additional Class Member, the Gross Settlement Amount shall be increased by \$1,881.72 per additional Class Member.)

### B. PAGA Distribution. The PAGA Payment shall be dispensed as follows:

1. **LWDA Payment.** Seventy-five percent (75%) of the PAGA Payment shall be paid by the Settlement Administrator to the LWDA, pursuant to Labor Code § 2699(i).

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2. **PAGA Aggrieved Employee Shares.** The Settlement Administrator shall pay the entire amount remaining from the total PAGA Payment after the LWDA Payment has been deducted to the PAGA Aggrieved Employees, as required by Labor Code § 2699(i). Each PAGA Aggrieved Employee's PAGA Aggrieved Employee Share will equal the total amount remaining from the PAGA Payment after the LWDA Payment has been made multiplied by the ratio of the number of pay periods worked by each PAGA Aggrieved Employee during the PAGA Period to the total number of pay periods worked by all PAGA Aggrieved Employees during the PAGA Period.
  3. **Treatment of PAGA Aggrieved Employee Shares.** Each PAGA Aggrieved Employee's PAGA Aggrieved Employee Share shall be characterized as penalties and reported on an IRS Form 1099.
- C. **Settlement Shares.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will allocate Settlement Shares from the Net Settlement Amount to Participating Class Members as follows:
1. **Calculation.** A Participating Class Member's Settlement Share will equal the Net Settlement Amount times the ratio of the number of workweeks worked by the Class Member during the Class Period to the total number of workweeks worked by all Participating Class Members during the Class Period. Participating Class Members, who are also Aggrieved Employees, shall receive a share of the PAGA Payment based on each Aggrieved Employee's proportionate number of workweeks in the PAGA Period.
  2. **Tax Treatment of Settlement Payments Made to Participating Class Members.**
    - a. Seventy-five percent (75%) of each Settlement Share will be treated as a payment in settlement of the Participating Class Member's claims for alleged civil and statutory penalties, liquidated damages, and interest (the "Non-Wage Portion"). This Non-Wage Portion shall be reported on a Form 1099 by the Settlement Administrator and issued to each Participating Class Member.
    - b. Twenty-five percent (25%) of each Settlement Share will be treated as a payment in settlement of the Participating Class Member's claims for unpaid wages (the "Wage Portion). Accordingly, the Wage Portion will be reduced by applicable payroll tax withholding and deductions, and the Settlement Administrator will issue to the Class Member a Form W-2 with respect to the Wage Portion.
  3. **Class Members Are Not Required to Submit a Claim Form to Receive a Share of the Settlement.** Class Members will be provided with an Individual Class Member Verification Form during the class notice process that states the total number of workweeks during the Class Period attributed to that Class Member based on Defendants' records. If the Participating Class Member does not dispute the number of workweeks set forth on the Verification Form, then the Settlement Administrator will mail that Class Member's individual Settlement Share within forty-five days (45) days of the Effective Date.

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4. **Effect of Class Members Who Request to Be Excluded from the Settlement.** A Class Member who elects not to participate in the Settlement and who timely submits a Request for Exclusion in accordance with the requirements set forth in Section II.H.3 – entitled *Request for Exclusion* – below will not share in any Settlement proceeds or be bound by the Settlement but will still receive a PAGA Aggrieved Employee Share and be bound by the release of claims pursuant to the PAGA. That Class Member’s workweeks will not be included in the calculations of Settlement Shares for those Class Members who do not request exclusion; and the Settlement Share that otherwise would have been payable to such Class Member will be retained in the Net Settlement Amount for distribution to all other Participating Class Members who do not request to be excluded from the Settlement.

D. **Payments to Plaintiffs, Class Counsel, and Settlement Administrator.** Subject to the terms and conditions of this Agreement and approval by the Court, the Settlement Administrator will make the following payments out of the Gross Settlement Amount as follows:

1. **To Plaintiffs:** In addition their Settlement Shares, each named Plaintiff will apply to the Court for Class Representative Service Payment in the gross amount of not more than Ten Thousand Dollars (\$10,000). Defendants will not oppose each Plaintiffs’ request for a Class Representative Service Payment of up to \$10,000. The Settlement Administrator will pay the Class Representative Service Payments approved by the Court (but not more than \$20,000 total) out of the Gross Settlement Amount. If the Court approves Class Representative Service Payments of less than \$20,000 total (or, as to any individual Class Representative, an award of less than \$10,000), any remainder from the amount allocated to Class Representative Service Payments from the Gross Settlement Amount will become part of the Net Settlement Amount and distributed to Participating Class Members. Tax deductions and withholdings will not be taken from the Class Representative Payments, and instead the Settlement Administrator shall issue an IRS Form 1099 to each Plaintiff for these payments.
2. **To Class Counsel:** Class Counsel will apply to the Court for an award of attorneys’ fees of not more than thirty-three and 1/3 percent (33 & 1/3%) of the Gross Settlement Amount (or \$116,655) and (b) reasonable litigation costs not to exceed \$7,000 incurred in this action by Class Counsel. Defendants will not oppose Class Counsel’s request for a Class Counsel Fees and Expenses Payment of these amounts. However, if the Court awards a lesser amount, it shall not affect the terms of the Parties’ Settlement and any portion of the requested attorneys’ fees and/or costs not approved shall become part of the Net Settlement Amount. Approval of the Settlement by the Court shall not be contingent upon the approval of attorneys’ fees or costs requested by Class Counsel. The Settlement Administrator will pay the amount approved by the Court out of the Gross Settlement Amount. Tax deductions and withholdings will not be taken from the Class Counsel Fees and Expenses Payment, and instead the Settlement Administrator shall issue an IRS Form 1099 to Class Counsel for this payment.
3. **To the Settlement Administrator.** The Settlement Administrator will pay to itself out of the Gross Settlement Amount its reasonable fees and expenses, as approved by the Court, not to exceed \$10,750.

E. **Appointment of Settlement Administrator.** Class Counsel will ask the Court to approve Phoenix as the Settlement Administrators, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing to all Class Members the Class Notice Packet; translating the Class Notice Packet from English to Spanish; conducting a National Change of Address search and using Accurant and other reasonable and cost-effective skip trace methods to locate any Class Member whose Class Notice Packet was returned by the U.S. Postal Service as non-deliverable, and re-mailing the Class Notice Packet to the Class Member's new address; setting up a toll-free telephone number to field calls from Class Members in English and Spanish; receiving Requests for Exclusion from the Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of Requests for Exclusions; calculating Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator also will be responsible for issuing to Plaintiffs, Participating Class Members, PAGA Aggrieved Employees, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement, as well as forwarding all payroll taxes, contributions, and withholdings to the appropriate government authorities. The Settlement Administrator will have the final authority to resolve all disputes concerning the calculation of a Class Member's Settlement Share, subject to the dollar limitations set forth in this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount, as approved by the Court.

F. **Procedure for Approving Settlement.**

1. **Motion for Preliminary Approval.**

- a. The Parties have reserved a preliminary approval hearing date of April 25, 2023, at 3:00 p.m. As such, Plaintiffs shall file a motion for preliminary approval of the Parties' settlement with the Court seeking an order granting preliminary approval of the Settlement, conditionally certifying the Class (for settlement purposes only), setting a date for the Final Approval Hearing, appointing Plaintiffs as Class Representatives and their counsel of record in the Action as Class Counsel, and approving the Class Notice prior to the hearing. The Parties will agree on the form of any proposed orders filed in conjunction with the motions for preliminary and final approval, and the Class Notice, and shall work in good faith reasonably and promptly to present the Settlement to the Court for preliminary approval.
- b. Except as expressly noted herein, should the Court decline to preliminarily approve all material aspects of the Settlement, or order material changes to the Settlement to which the Parties do not agree after a reasonable and good faith negotiation, the Settlement will be null and void and the Parties will have no further obligations under it.

2. **Motion for Final Approval.** Plaintiffs will also seek to obtain from the Court, as a condition of settlement, a final order and Judgment. The final order and Judgment will, among other things, approve the Settlement as fair, adequate and reasonable, and incorporate the terms of the release herein.

**G. Notice to Class Members.** After the Court enters its order granting preliminary approval of the Settlement, every Class Member will be provided with the Class Notice Packet (which will include the Class Notice completed to reflect the order granting preliminary approval of the Settlement and an Individual Class Member Verification Form stating the total number of work weeks attributed to that Class Member by Defendants' records and an estimated individual Settlement Share for each Class Member) in English and Spanish.

1. No later than fifteen (15) business days after the Court enters its order granting preliminary approval of the Settlement, Company Defendant will provide the Settlement Administrator with a Class List, in electronic format, containing, for each Class Member, the Class Member's full legal name, last known mailing address, social security number, telephone number and/or email address, and the dates of employment in California with Company Defendant in a non-exempt and/or hourly-paid position. At the time Company Defendant transmits the Class List(s) to the Settlement Administrator, it shall also provide to Class Counsel a signed verification confirming the accuracy of the number of Class Members.
2. Within seven (7) business days after receiving the Class Members' data, the Settlement Administrator will mail the Class Notice Packets (in English and Spanish) to all identified Class Members via first-class regular U.S. Mail. Prior to the mailing of Class Notice to Class Members, the Settlement Administrator shall perform an electronic address search/check.
3. Class Counsel will maintain a settlement website that shall contain copies of papers and orders filed in connection with preliminary and final approval, including the Settlement and Complaint. The URL to the website will be provided in the Class Notice. The website will be created no later than the mailing of the Class Notice. Class counsel will also post on its website the notice of final Judgment.
4. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than seven (7) business days from receipt of the returned packet, search for a more current address for the Class Member using Accurint and other reasonable and cost-effective skip trace methods, and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Members' data and otherwise work with Defendants to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. There shall be no obligation to re-mail a notice packet more than one time. If the Class Notice Packet is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.
5. Each week, the Settlement Administrator will provide to Class Counsel and Defendants' Counsel a report showing whether any Class Notice Packets have been returned and re-mailed and the receipt of any requests for exclusion.



6. Not later than twenty-one (21) court days prior to the Final Approval Hearing, the Settlement Administrator will serve on the Parties and cause to be filed with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

#### **H. Objections to Settlement; Disputing the Number of Workweeks; Requests for Exclusion.**

1. **Objection to Settlement.** A Class Member who wishes to object to any term of the Settlement must file with the Court and serve on counsel for the Parties a written objection to the Settlement setting forth the grounds for the objection no later than the Response Deadline. The objection must also indicate whether the Class Member intends to appear at the Final Approval Hearing. Absent good cause found by the Court, Class Members who do not file and serve written objections in the manner and by the deadlines specified in the Class Notice will be deemed to have waived any objections and will be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement or other related matters. Notwithstanding, in the discretion of the Court, any Class Members, or persons purporting to object on behalf of any Class Members, may be received or considered by the Court at the Final Approval Hearing, regardless of whether a written notice of objection is filed or delivered. Class Counsel and Defendants' counsel will file a response to any objection within seven (7) business days before the Final Approval Hearing. If a Class Member timely submits both a Request for Exclusion and an objection, the Class Member shall be deemed to have submitted only a valid objection, and the opt out shall be deemed null and void. The Settlement Administrator will share all submitted objections with the Parties, and Class Counsel will file a single packet with all objections with the Court.
2. **Class Member Verification Form.** A Class Member who wishes to dispute the number of workweeks they worked outlined in the Class Member Verification Form sent to the Class Member as part of the Class Notice Packet may do so by notifying the Settlement Administrator in writing by either FAX, email, or mail postmarked no later than five (5) business days before the Response Deadline. The Settlement Administrator will make the final determination as to the correct number of compensable workweeks for such a Class Member. In the event that any Class Member's workweeks are adjusted for purposes of their Settlement Share, any such adjustment shall be applied to the workweeks for which they are credited in relation to their potential PAGA Aggrieved Employee Share as well, if any.
3. **Requests for Exclusion.** A Class Member who wishes to exclude themselves from the Settlement must send the Settlement Administrator a written and signed Request for Exclusion which must be postmarked no later than the Response Deadline. To be valid, a Request for Exclusion must contain the name, address, and telephone number of the Class Member requesting exclusion from the Settlement. If a question is raised about the authenticity of any Request for Exclusion, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Class Member who submits a timely Request for Exclusion will not participate in or be bound by the Settlement and the Judgment (except as to claims pursuant to the PAGA) and will not receive a Settlement Share (but will, nonetheless, receive a PAGA Aggrieved Employee Share), and will retain the right, if any, they may have to pursue a claim against Defendants, except pursuant to the PAGA.

4. **Report.** Not later than five (5) business days after the deadline to contest the Class Member Verification Form and request to be excluded from the Settlement, the Settlement Administrator will provide the Parties with a complete and accurate list of all Class Members who have contested the information on their Class Member Verification Form or timely submitted a Request for Exclusion.
- I. **No Solicitation of Objection, Appeal, or Election Not to Participate in Settlement.** Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement.
  - J. **Right of Defendants to Reject Settlement.** If 10% or more total Class Members opt out of the Settlement, Defendants shall have the option to rescind/void the Settlement. If Defendants exercise this option, they will be responsible for paying the Settlement Administrator's fees incurred as of the date they notify Class Counsel of their decision to rescind. Defendants must provide notice of their intention to rescind/void the Settlement within five (5) business days of the deadline for all Class Members to opt out of the Settlement.
  - K. **Additional Briefing and Final Approval.**
    1. Not later than eighteen (18) court days before the Final Approval Hearing, Plaintiffs will file with the Court a motion for final approval of the Settlement, payment of the Settlement Administrator's reasonable fees and expenses, awards of the Class Representative Service Payments, the PAGA Payment, and the Class Counsel Fees and Expenses Payment pursuant to this Settlement.
    2. If the Court does not grant final approval of the Settlement, then either Party will have the right to void the Settlement; if that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendants to pay the Gross Settlement Amount, and the parties shall split the Settlement Administrator's reasonable fees and expenses incurred as of the date that either party exercised the right to void the Settlement under this paragraph. However, an award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the Class Representative Service Payments or the Class Counsel Fees and Expenses Payment will not constitute a material change to the Settlement within the meaning of this paragraph.
    3. Upon final approval of the Settlement by the Court, the Parties will present to the Court an Order for its approval and entry of Judgment. After entry of the Judgment, the Superior Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (1) enforcing this Agreement, (2) addressing settlement administration matters, and (3) addressing such post-judgment matters as may be appropriate under court rules or applicable law.
  - L. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the material terms of this Agreement (except as expressly addressed herein), Plaintiffs, Class Members who did not timely submit an objection to the Settlement, Company Defendant, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, and any extraordinary writ, and the Judgment therefore will become non-appealable at the time it is entered.

- M. Timing of Settlement Payments.** The Settlement Administrator will make three disbursements from the Gross Settlement Amount. The first disbursement of \$200,000 will be made no later (45) days after the Effective Date of the Settlement, as defined in this Agreement. In the first disbursement, the Settlement Administrator will meet any reporting obligations and pay individual Class and PAGA settlement awards to Class Members and Class Counsel's court-approved litigation expenses. The second payment shall be the Court-approved enhancement awards to the Class Representatives and shall be made at the earliest time following completion of the first payment. The third payment will be made no later than fifteen (15) days after Defendants make their 12<sup>th</sup> and final monthly payment. In the third disbursement, the Settlement Administrator will meet any reporting obligations and pay (1) \$7,500 to the LWDA for their portion of the PAGA settlement, (2) Court-approved Class Counsel's attorneys' fees (minus 10% of the total attorneys' fees award that will be maintained by the Settlement Administrator until the final compliance hearing), and (3) the Settlement Administrator's costs.
- N.** In accordance with the terms herein, the Administrator shall maintain a qualified settlement fund ("QSF") in which the payments constituting the Gross Settlement Fund will be deposited. The QSF shall be an interest-bearing escrow account established by the Administrator for the purpose of administering the payments required by this Settlement. Any interest generated by the QSF shall remain in the account and be drawn upon to make the payments required by this Settlement. If Defendants fail to timely make payments detailed herein, Class Counsel shall provide Defendants' counsel with written notice of the default. If the default is not cured within ten (10) business days of receipt of the written notice of default, then the Court shall enter judgment against Defendants for the full balance of the Gross Settlement Fund still owed. Within fifteen (15) days after receipt of the Gross Settlement Fund, the Settlement Administrator will pay to Class Members their individual Settlement Shares; to Plaintiffs, the Class Representative Service Payments; to Class Counsel, the Class Counsel Fees and Expenses Payment; and to the Settlement Administrator, its reasonable fees and expenses.
- O. Uncashed Settlement Share Checks.** A Class Member and/or PAGA Aggrieved Employee must cash their Settlement Share check within ninety (90) calendar days after it is mailed to them. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Class Member at his or her correct address. If any Class Member's Settlement Share check is not cashed within sixty (60) days after its last mailing to the Class Member, the Settlement Administrator will send the Class Member a letter or postcard informing them that unless the check is cashed in the next thirty (30) days, it will expire and become non-negotiable, and offering to replace the check if it was lost or misplaced but not cashed. If one or more Class Members fail to cash the check for their Settlement Shares within ninety (90) days after it is mailed to their last known address, and if the aggregate funds represented by the uncashed checks total \$10,000 or more, such remaining funds will be redistributed to each Participating Class Member who did cash their original check, applying the same pro rata formula for the original Settlement Shares. This distribution shall take place within fifteen (15) business days of the check-cashing deadline. If the aggregate funds represented by the uncashed checks total less than \$10,000, or any funds remain after a second disbursement, they will be donated to Centro Legal de la Raza as *cy pres*, with approval of the Court.

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**P. Class Members Who Appear After Distribution(s)**

- a. If a Class Member who either did not receive the Class Notice or who did not receive or cash their check after the initial disbursement appears before the redistribution, then the Settlement Administrator shall pay out their share before the redistribution, or any cy pres payment, occurs. This payment shall be calculated to approximate as best as possible, and as funds permit, what the Class Member should have received.
- b. If a Class Member who either did not receive the Class Notice or who did not receive or cash their check after the initial distribution and the redistribution, appears after the redistribution, and funds still remain, then the Settlement Administrator shall pay to the Class Member a share calculated to approximate as best as possible, and as funds permit, what the Class Member should have received.
- c. If more than one Class Member appears after the first distribution or redistribution, and funds still remain but are not sufficient to pay the entire Settlement Shares, then the Settlement Administrator shall pay out the remaining funds on a pro rata basis.
- d. For any redistribution that takes place, the Parties agree that the amounts shall be allocated as miscellaneous income, not subject to withholding, and will be reported on Form 1099 as needed.

**Q. Release and Waiver of Claims.**

1. **Class Members.** Upon final approval of the Settlement, all Class Members who do not timely opt-out of the Settlement (i.e., all Participating Class Members) shall release all claims pled or that could have been pled in the Complaint deriving from and/or based on the facts alleged, arising out of or related to services to or work performed for Defendants (or any of them) during the Class Period including claims for wages, penalties, interest, attorneys' fees and/or costs, including, without limitation, all claims, causes of action, and/or requests for relief pursuant to California Labor Code sections 200, 201-202, 203-204, 204b, 210, 223, 226, 226.3, 226.7, 256, 510, 511, 512, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, Business & Professions Code sections 17200 *et seq.*, and the applicable Wage Orders of the Industrial Welfare Commission. The release shall include the Individual Defendant, as well as the Company Defendant, as well as their officers, directors, investors, owners, shareholders, employees, partners, members, agents, and attorneys (collectively, the "Released Parties").
2. **PAGA Aggrieved Employees.** Upon the Court's approval of the Parties' settlement of Plaintiffs' PAGA Claim, all PAGA Aggrieved Employees shall release all claims pursuant to the PAGA (and any related interest, attorneys' fees, and/or costs) pled or that could have been pled in the Complaint deriving from and/or based on the facts alleged, arising out of or related to services to or work performed for Defendants (or any of them) during the PAGA Period. Settlement Class Members who are also PAGA Aggrieved employees and who otherwise submit valid opt out requests from the class action Settlement will nevertheless still be bound by the PAGA release and shall receive a PAGA Share.

**[THIS AREA INTENTIONALLY LEFT BLANK]**

3. **Plaintiffs Rafael Hernandez and Ivan Rodas.** In consideration of their Settlement Shares, and the other terms and conditions of the Settlement, these two Plaintiffs release any and all claims against Defendants, including but not limited to those raised in the Action; those released by Class Members as set forth above at Sections II.Q.1-2; and those arising from or related to their employment with Defendants (“Plaintiffs’ Released Claims”). Plaintiffs’ Released Claims include all claims, whether known or unknown. Thus, even if these two Plaintiffs discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of their claims, those claims will remain released and forever barred. The Release will not, however, include claims that cannot be waived or released as a matter of law. Therefore, because these Plaintiffs are granting general release, they expressly waive and relinquish the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASING PARTY.**

**R. Miscellaneous Terms.**

1. **Revert to Status Quo.** In the event that final approval of this Settlement does not occur for any reason, the Parties shall have all rights, claims, and defenses that they had as of the date of execution of the Settlement, and all litigation deadlines shall be deemed to have been tolled as of the date of execution of the Settlement.
2. **Support of Settlement Approval.** Plaintiffs and Class Counsel shall support the Settlement and its approval by the Court. Neither the Parties nor their counsel shall directly or indirectly encourage Class Members to opt out of or object to the Settlement.
3. **Neutral References.** If contacted by a third party for an employment reference about Plaintiffs, Defendants will provide only the dates of Plaintiffs’ employment, positions, and most recent wage rate(s).
4. **Settlement Shares Do Not Trigger Additional Benefits.** All payments made under the Settlement shall be deemed to be paid to the payee solely in the year in which such payments actually are issued to the payee. It is expressly understood and agreed that payments made under this Settlement shall not in any way entitle Plaintiffs, any Class Member or any PAGA Aggrieved Employee to additional compensation or benefits under any new or additional compensation or benefits, or any bonus, contest or other compensation or benefit plan or agreement in place during the Class or PAGA Periods, nor will it entitle Plaintiffs, any Class Member, or any PAGA Aggrieved Employee to any increased retirement, 401K benefits or matching benefits, or deferred compensation benefits (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the Class Period).
5. **Amendment of Complaint.** In advance of the Motion for Preliminary Approval, the Parties will stipulate to Plaintiffs amending the operative complaint to dismiss Gazzali’s Express Corporation and Gazzali’s Extra Corporation.

6. **No Admission of Fault.** Defendants make no admission of wrongdoing by entering into this Settlement.
7. **No Prior Assignments.** The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.
8. **Circular 230 Disclaimer.** EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.
9. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Settlement other than the representations, warranties, covenants, and inducements expressly stated in this Agreement.
10. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest. A waiver or amendment of any provision of this Agreement will not constitute a waiver of any other provision.
11. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

12. **Applicable Law.** All terms and conditions of this Agreement will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
13. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
14. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arm's length negotiations, taking into account all relevant factors, current and potential.
15. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
16. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and email and deemed to have been duly given as of the third (3<sup>rd</sup>) business day after mailing by U.S. Mail, addressed as follows:

#### **Class Counsel**

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Concord, California 94520-2264  
Tel: 925-609-7600  
Fax: 925-671-7800

17. **Spanish Translation.** Class Counsel represents that they have verbally translated this Agreement into Spanish before Plaintiffs execute this Agreement.

**18. Execution in Counterparts.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be accepted if the original signature is provided within seven (7) days. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

### III. EXECUTION BY PARTIES AND COUNSEL

The Parties hereto knowingly and voluntarily executed this Agreement as of the date set forth below:

#### Signatures



\_\_\_\_\_  
Rafael Hernandez

*Elix Ivan Rodas granja*

\_\_\_\_\_  
Ivan Rodas



rahiln11@gazzali (May 15, 2023 11:20 PDT)

\_\_\_\_\_  
Mike Gazzali  
Individually and on behalf of  
Gazzali's Supermarket Corporation

#### As to Form Only

*Joseph D. Sutton*

\_\_\_\_\_  
Joseph D. Sutton  
As Plaintiffs/Class Counsel

*Dustin Burton*

\_\_\_\_\_  
Dustin Burton  
As Counsel for Defendants

Dated: 05/17/2023

Dated: 05/15/2023

Dated: May 15, 2023

Dated: 05/15/2023

Dated: May 15, 2023