

8 NOV 30 2016

Sherri R. Carter, Executive Officer/Clerk
By [Signature], Deputy
Kelly Jameson

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8 Attorneys for Plaintiff and the Class

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

RECEIVED
Central Civil West
NOV 23 2016

11 JASON NORRIS FIGUEROA, as an
12 individual and on behalf of all others similarly
13 situated,

Case No.: BC538372

By: I. Arellanes

14 Plaintiff,

[Assigned for all purposes to the Hon. Elihu
M. Berle, Department 323]

15 vs.

16 **[AMENDED PROPOSED] ORDER**
17 **GRANTING FINAL APPROVAL OF**
18 **SETTLEMENT AND ENTRY OF ORDER**
19 **AND JUDGMENT**

20 SUPER KING MARKET, a business entity
21 form unknown; and DOES 1 through 100,
22 inclusive,

Date: November 22, 2016
Time: 10:00 a.m.
Dept.: 323

23 Defendants.

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1 Plaintiff Jason Norris Figueroa, and the settling Defendant Super King Market (together
2 the "Parties") have entered into an Amended Joint Stipulation of Class Action Settlement and
3 Release ("Settlement Agreement") to settle the above-captioned class action subject to the
4 Court's approval (the "Settlement").

5 **I. BACKGROUND**

6 **A. Procedural History**

7 On March 5, 2014, Plaintiff Jason Norris Figueroa ("Plaintiff"), on behalf of himself and
8 others similarly situated, filed suit against Defendant Super King Market ("Defendant") in the
9 Superior Court of California for the County of Los Angeles. The Complaint was subsequently
10 amended, with the Second Amended Complaint being the current operative complaint in this
11 action. The Second Amended Complaint asserted claims for (1) Failure to Pay Minimum
12 Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Breaks; (4) Failure to
13 Provide Rest Breaks; (5) Violation of Labor Code § 226; (6) Unfair Business Practices (Business
14 & Professions Code §17200 *et. seq.*); and (7) Penalties Pursuant to Labor Code § 2698 *et. seq.*
15 (Private Attorney General Act).

16 In accordance with the complex civil division procedure, the Court imposed a stay on all
17 discovery and motion practice prior to the Initial Case Management Conference. Thereafter, the
18 Parties agreed to attempt resolution of this matter through private mediation. In preparation
19 thereof, Defendant provided information/data for the entire putative class members to allow
20 Plaintiff to perform a damage analysis.

21 On August 4, 2015, the parties participated in a full-day mediation before experienced
22 employment mediator Mark S. Rudy, Esq. Subsequent to the mediation, the Parties engaged in
23 further negotiations with the assistance of the mediator, including a mediator's proposal, which
24 the Parties ultimately accepted.

25 **B. Investigation in the Class Action**

26 The Parties have conducted significant investigation of the facts and law during the
27 prosecution of this Action. Such discovery and investigations have included the exchange of
28 information pursuant to formal written discovery, meetings and conferences, and review of class

1 data. Counsel for the Parties have further investigated the applicable law as applied to the facts
2 discovered regarding the alleged claims of the Class Members and potential defenses thereto and
3 the damages claimed.

4 **C. Benefits of Settlement to Class Members**

5 Plaintiff recognizes the expense and length of continued proceedings necessary to
6 continue the litigation against Defendant through trial and through any possible appeals.
7 Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation,
8 and the difficulties and delays inherent in such litigation, including those involved in class
9 certification. Plaintiff is also aware of the burdens of proof necessary to establish liability for the
10 claims asserted in the Action, Defendant's defenses thereto, and the difficulties in establishing
11 damages for Class Members. Plaintiff has also considered the significant settlement negotiations
12 conducted by the Parties, and the advice of the neutral mediator. Based on the foregoing,
13 Plaintiff has determined that the Settlement set forth in the Settlement Agreement is a fair,
14 adequate and reasonable settlement, and is in the best interests of all Class Members.

15 **D. Class Members**

16 The "Class Members" are defined as "All non-exempt employees of Defendant in
17 California who were employed at any time between December 6, 2012 through March 25, 2016."

18 **E. Plaintiff and the Class Members' Claims**

19 Plaintiff and the Class Members claimed and continue to claim that the Released Claims
20 (as defined in the Settlement Agreement) have merit and give rise to liability on the part of
21 Defendant. Neither the Settlement Agreement nor any documents referred to herein, or any
22 action taken to carry out the Settlement Agreement is, or may be construed as or may be used as,
23 an admission by or against the Class Members or Class Counsel as to the merits or lack thereof
24 of the claims asserted, except as to the Released Claims of the Settlement Class Members.

25 **F. Defendant's Denials of Wrongdoing**

26 Defendant has denied and continues to deny each of the claims and contentions alleged
27 by Plaintiff and the Class Members in the Action. Defendant denies any wrongdoing or legal
28 liability arising out of any of the facts or conduct alleged in the Action, and believes that it has

1 valid defenses to Plaintiff and the Class Members' claims. Neither the Settlement Agreement,
2 nor any document referred to or contemplated herein, nor any action taken to carry out the
3 Settlement, may be construed as, or may be used as an admission, concession or indication by or
4 against Defendant of any fault, wrongdoing or liability whatsoever, including any concession
5 that certification of a class would be appropriate in this or any other case.

6 **G. Operation of the Settlement.**

7 Pursuant to the Preliminary Approval Order dated August 5, 2016, this Court
8 conditionally certified the Class and granted preliminary approval to the Settlement. The
9 Preliminary Approval Order also approved of the proposed forms of notice and notice plan. The
10 Court entered the Preliminary Approval Order after review and consideration of all of the
11 pleadings filed in connection herewith, and the oral presentations made by counsel at the hearing.

12 In compliance with the Preliminary Approval Order, the Class Notices were sent to all
13 Class Members via first class mail. Furthermore, follow-up mailings were performed for
14 returned mail. The notice program was timely completed.

15 This matter is now before the Court on Plaintiff's Motion for Final Approval of the Class
16 Action Settlement, including approval of an Incentive Award for the Named Plaintiff and Class
17 Counsel's Application for a Fee and Expense Award. The Court has read, heard, and considered
18 all the pleadings and documents submitted, and the presentations made in connection with the
19 Motion and Application which came on for hearing on November 22, 2016.

20 This Court finds that the Settlement appears to be the product of serious, informed, non-
21 collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential
22 treatment to any individuals. The Court finds that the Settlement was entered into in good faith
23 pursuant to California *Code of Civil Procedure* section 877.6. The Court further finds that the
24 Settlement is fair, reasonable and adequate and that Plaintiff has satisfied the standards for final
25 approval of a class action settlement under California law. Under the provisions of California
26 *Code of Civil Procedure* section 382 and Federal Rule of Civil Procedure 23, as approved for use
27 by the California state court in *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971), the trial
28 court has discretion to certify a class where:

1 [Q]uestions of law or fact common to the members of the class
2 predominate over any questions affecting only individual
3 members, and that a class action is superior to the available
4 methods for the fair and efficient adjudication of the controversy
... Fed. R. Civ. Proc. 23.

5 Certification of a settlement class is the appropriate judicial device under these circumstances.

6 Based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS
7 FOLLOWS:

8 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the
9 Stipulation filed in this case.

10 2. The Court has jurisdiction over the subject matter of the Litigation, the Class
11 Representative, the other Members of the Settlement Class, and Defendant.

12 3. The Court finds that the dissemination of the Notice of Proposed Class Action
13 Settlement as provided for in the Order Granting Preliminary Approval for the Settlement and
14 Setting a Settlement Fairness Hearing, constituted the best notice practicable under the
15 circumstances to all Persons within the definition of the Class, and fully met the requirements of
16 California law and due process under the United States Constitution. Based on evidence and
17 other material submitted in conjunction with the Settlement Hearing, the actual notice to the
18 class was adequate.

19 4. The Court approves the settlement of the above-captioned action, as set forth in
20 the Stipulation, each of the releases and other terms, as fair, just, reasonable, and adequate as to
21 the Settling Parties. The Settling Parties are directed to perform in accordance with the terms set
22 forth in the Stipulation.

23 5. Except as to any individual claim of those Class Members who have validly and
24 timely requested exclusion from settlement, all of the Released Claims are hereby released upon
25 the Effective Date. Only the two following Class Members have been validly excluded from the
26 settlement: Emmanuel Ablan and Issac Cabrera.

27 6. Except as otherwise provided in the Stipulation, the Settling Parties are to bear
28 their own costs and attorneys' fees.

1 7. Solely for purposes of effectuating this settlement, this Court has certified a class
2 of all Members of the Settlement Class, as those terms are defined in and by the terms of the
3 Stipulation, and the Court deems this definition sufficient for purposes of California Rules of
4 Court 3.765(a) and 3.771.

5 8. The Court hereby certifies the following Class for settlement purposes only: All
6 non-exempt employees of Defendant in California who were employed at any time between
7 December 6, 2012 through March 25, 2016.

8 9. With respect to the Settlement Class and for purposes of approving the settlement
9 only and for no other purpose, this Court finds and concludes that: (a) the Members of the
10 Settlement Class are ascertainable and so numerous that joinder of all members is impracticable;
11 (b) there are questions of law or fact common to the Settlement Class, and there is a well-defined
12 community of interest among Members of the Settlement Class with respect to the subject matter
13 of the non-exempt claims in the Litigation; (c) the claims of Class Representative is typical of the
14 claims of the Members of the Settlement Class; (d) the Class Representative has fairly and
15 adequately protected the interests of the Members of the Settlement Class; (e) a class action is
16 superior to other available methods for an efficient adjudication of this controversy; and (f) the
17 counsel of record for the Class Representative, i.e., Class Counsel, are qualified to serve as
18 counsel for the Plaintiff in his individual and representative capacity and for the Settlement
19 Class.

20 10. Defendant shall fund \$300,000.00 of the total Gross Settlement Sum pursuant to
21 the terms of the Stipulation.

22 11. The Court approves the Individual Settlement amounts, which shall be distributed
23 pursuant to the terms of the Stipulation.

24 12. Defendant shall pay (a) to Class Counsel attorneys' fees in the amount of
25 \$100,000.00 and reimbursement of costs in the amount of \$10,000.00; (b) service award to the
26 Class Representative Jason Norris Figueroa to reimburse him for his unique services in the
27 following amount: \$5,000; (c) the sum of \$7,500 to be paid to the LWDA for PAGA Penalties
28 (which represents the LWDA's 75% share of the \$10,000 in PAGA Penalties paid); and (d)

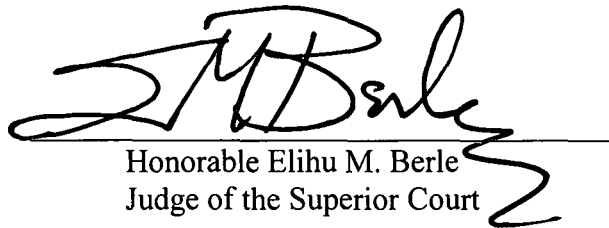
1 \$24,000 to the Claims Administrator, Phoenix Settlement Administrators, for its fees and costs
2 relating to the claims administration process. The Court finds that these amounts are fair and
3 reasonable. Defendant is directed to make such payments in accordance with the terms of the
4 Stipulation and must be paid pursuant to the terms of the Stipulation.

5 13. The Court reserves exclusive and continuing jurisdiction over the Litigation, the
6 Class Representative, the Settlement Class, and Defendant Super King Market for the purposes
7 of supervising the implementation, enforcement, construction, administration, and interpretation
8 of the Stipulation and this Judgment.

9 14. The Court hereby sets an Order to Show Cause Re: Distribution Compliance for
10 July 28, 2017 at 8:30 a.m. Class Counsel and the Claims Administrator shall submit a further
11 updated declaration regarding the status of the distribution of the settlement funds on or before
12 July 21, 2017.

13
14 IT IS SO ORDERED.

15
16 DATED: 11/30/16


Honorable Elihu M. Berle
Judge of the Superior Court

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PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]
COUNTY OF LOS ANGELES]

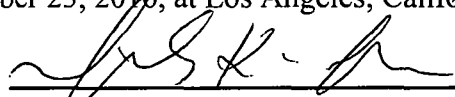
I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 South Figueroa Street, Suite 1250, Los Angeles, California 90071.

On November 23, 2016, I served the following document(s) described as:
[AMENDED PROPOSED] ORDER GRANTING FINAL APPROVAL OF SETTLEMENT AND ENTRY OF ORDER AND JUDGMENT on the interested parties in this action as follows:

Todd B. Scherwin, Esq.
Raul E. Zermeno, Esq.
Fisher & Phillips, LLP
444 South Flower Street, Suite 1590
Los Angeles, California 90071
Attorneys for Defendant Super King Market

 X BY ELECTRONIC SERVICE VIA CASE ANYWHERE: Based on a court order I caused the above-entitled document(s) to be served through Case Anywhere at the website www.caseanywhere.com, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the Case Anywhere Filing Receipt/Confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 23, 2016, at Los Angeles, California.



Linda Lee

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