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11

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF ALAMEDA**

14  
15 DANA CURLEY and WILLIAM O'BRIEN,  
as individuals and on behalf of all others  
16 similarly situated,

17 Plaintiff,

18 v.

19 SAVE MART SUPERMARKETS and DOES  
1 through 50 inclusive,

20 Defendant.  
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Case No. RG13685740

**STIPULATION AND SETTLEMENT  
AGREEMENT**

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

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

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DANA CURLEY and WILLIAM O'BRIEN

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

11 **I.       DEFINITIONS**

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

14               **A.       “Action.”**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 **J. “Class Settlement Amount.”**

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

13 **K. “Preliminary Approval Order”**

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

15 **L. “Final Approval Order”**

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

18 **M. “Effective Date.”**

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

3 **N. “Individual Settlement Payment.”**

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

9 **O. “Net Settlement Amount.”**

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

13 **P. “Notice of Class Action Settlement.”**

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

17 **Q. “Notice of Objection.”**

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

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

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

11 **R. “Notice Packet.”**

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

14 **S. “Plaintiffs.”**

15 Plaintiffs Dana Curley and William O’Brien.

16 **T. “Preliminary Approval.”**

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

18 **U. “Qualified Settlement Account.”**

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

21 **V. “Class Members’ Released Claims.”**

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



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

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

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

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

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

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

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

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

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

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

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

23 **II. RECITALS**

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

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

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

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

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

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

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

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

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

15           **D. Plaintiffs’ Claims**

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

21 **III. STIPULATION AND AGREEMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **B. Claims Administration Costs.**

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

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

20 **C. Net Settlement Amount.**

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

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

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

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

21 **V. CLAIMS ADMINISTRATION PROCESS**

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

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

Class List. Within fourteen (14) calendar days of Preliminary Approval, Defendant will provide the Class List to the Claims Administrator and Class Counsel.

Notice Packet Mailing. Within five (5) calendar days after receiving the Class List from Defendant, the Claims Administrator will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail, using the last known mailing addresses identified in the Class List.



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

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

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

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

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

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

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

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

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

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1 **VII. CERTIFICATION REPORTS**

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

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

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

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

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

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

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

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

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

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

12 **X. RELEASE BY CLASS MEMBERS**

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

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

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1 **XI. PRELIMINARY APPROVAL HEARING**

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

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

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

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

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

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

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

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

11 **XIII. JUDGMENT AND CONTINUED JURISDICTION**

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

18 **XIV. OTHER PROVISIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

26           Waiver. No waiver of any condition or covenant contained in this Settlement  
27 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered  
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1 to imply or constitute a further waiver by such party of the same or any other condition, covenant,  
2 right or remedy.

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

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

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

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

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

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

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

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

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

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

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

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

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Dated: \_\_\_\_\_

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Plaintiff DANA CURLEY

Dated: \_\_\_\_\_

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Plaintiff WILLIAM O'BRIEN

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**SAVE MART SUPERMARKETS**

Dated: \_\_\_\_\_

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Please Print Name of Authorized Signatory

**APPROVED AS TO FORM**

**JONES LAW FIRM**

Dated: \_\_\_\_\_

\_\_\_\_\_

CHARLES A. JONES  
Attorneys for Plaintiffs and the Class

**RIGHETTI & GLUGOSKI PC**

Dated: \_\_\_\_\_

\_\_\_\_\_

MATTHEW RIGHETTI  
MICHAEL RIGHETTI  
Attorneys for Plaintiffs and the Class

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

Dated: \_\_\_\_\_

\_\_\_\_\_

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