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17 (Additional Counsel on next page)

18 SUPERIOR COURT OF CALIFORNIA

19 COUNTY OF SAN BERNARDINO

20 HOLLY McCARTHY, LETICIA  
21 RODARTE, and RACHEL MENDOZA,  
on behalf of themselves and all others  
22 similarly situated and as private attorneys  
general,

23 Plaintiff,

24 v.

25 THE VONS COMPANIES, INC., a  
26 Michigan corporation, and DOES 1  
through 50, inclusive,

27 Defendants.  
28

Case No. CIVDS2021085

**STIPULATION OF CLASS ACTION  
SETTLEMENT AND SETTLEMENT  
AGREEMENT**

**ASSIGNED FOR ALL PURPOSES TO  
JUDGE DAVID COHN, DEPARTMENT  
C-26**

**COMPLEX CASE**

Complaint filed: September 28, 2020

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21 the Class, and Aggrieved Employees

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1 Subject to its terms and conditions and the approval of the Court, this Amended Joint  
2 Stipulation of Class Action Settlement and Class Action Settlement Agreement and Release (the  
3 “Settlement” or “Agreement”) is made and entered into by and between Plaintiffs HOLLY  
4 McCARTHY, RACHEL MENDOZA and LETICIA RODARTE, individually and on behalf of the  
5 putative class (“Plaintiffs”), and Defendant THE VONS COMPANIES, INC. (herein “Vons” or  
6 “Defendant”). Plaintiffs and Defendant are collectively referred to in this Settlement as the  
7 “Parties.”

8 **I. DEFINITIONS**

9 1. In addition to terms defined elsewhere in the Settlement, as used in this  
10 Settlement the following terms have the meanings indicated below:

11 a. “Claims Administrator” means CPT Group, Inc., or an administrator mutually  
12 agreed to by the Parties and approved by the Court that will perform the  
13 customary duties of a claims administrator including but not limited to, the  
14 duties enumerated in this Agreement.

15 b. “Class” shall include all current and former non-exempt employees of The  
16 Vons Companies, Inc. in the State of California during the Covered Period  
17 excluding employees who worked at the distribution centers and plants,  
18 drivers, pharmacists and, through August 7, 2020, non-union employees.  
19 Employees covered by the following settled actions are also excluded from  
20 the class definition: *Fimbres v. The Vons Companies, Inc.*, Case No. RIC1  
21 904892, filed on September 24, 2019, in Riverside County Superior Court  
22 (class settlement period ending September 7, 2020); *Monica Luna, et al. v.*  
23 *Albertsons Companies, Inc. et al.*, Case No. BC605621, filed on December 31,  
24 2015, in Los Angeles County Superior Court (class settlement period ending  
25 January 11, 2018). There are approximately 67,746 class members.

26 c. “Class Counsel” shall refer to Larry W. Lee and Simon L. Yang of Diversity  
27 Law Group, P.C., William L. Marder of Polaris Law Group LLP, James De  
28 Sario and Michael Nourmand of The Nourmand Law Firm, APC, and Carolyn

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- H. Cottrell and Esther L. Bylsma of Schneider Wallace Cottrell Konecky LLP.
- d. “Class Member” shall refer to a current or former employee of Defendant who falls within the definition of the Class.
  - e. “Class Notice” means the Notice which the Claims Administrator will mail to each Class Member explaining the terms of the settlement contemplated by this Agreement, in a format that is mutually acceptable to the parties. The form of the Class Notice to be used is attached hereto as **Exhibit A**.
  - f. “Class Representatives” shall refer to Plaintiffs Holly McCarthy, Rachel Mendoza and Leticia Rodarte.
  - g. “Class Representative Payments” means the Court-approved service payments to Plaintiffs Holly McCarthy, Rachel Mendoza and Leticia Rodarte for their services as Class Representatives and for their execution of a general release of claims known and unknown.
  - h. “Consolidated Action” means the McCarthy Action amended to add Leticia Rodarte and Rachel Mendoza as plaintiffs and class representatives and to include the claims from the Rodarte Action and the Mendoza Action.
  - i. “Counsel for Defendant” or “Defense Counsel” means R. Brian Dixon, Laura E. Hayward, and Adam J. Fiss of Littler Mendelson, A Professional Corporation.
  - j. “Covered Period” shall be from February 13, 2016, through April 30, 2022.
  - k. “Defendant” means The Vons Companies, Inc.
  - l. “Employer Payroll Taxes” refers to the amount of FICA, FUTA, and all other state and federal payroll taxes on the Settlement payments Defendant is required to pay by law when paying wages to employees.
  - m. “Final Approval Hearing” means the hearing contemplated by the Parties, at which the Court will approve, in final, the Settlement and make such other final rulings as are contemplated by this Settlement Agreement.
  - n. “Final Approval Order” means the Court’s order granting final approval of the

1 Settlement, which will constitute a “judgment” within the meaning of Code of  
2 Civil Procedure section 577.

3 o. “Final Effective Date” shall be the first date after all of the following events or  
4 conditions have been met or have occurred:

5 (1) the Court has, by entry of a Preliminary Approval Order:

6 (a) Approved the certification of the Class for settlement  
7 purposes;

8 (b) Preliminarily approved the Settlement set forth in this  
9 Settlement Agreement, and the method of providing the Court-  
10 approved Class Notice to the certified class;

11 (2) The Court has entered a Final Approval Order approving this  
12 Settlement and the Court has entered the Final Judgment as provided  
13 in Paragraph 1.p. below;

14 (3) No valid rescission of the Settlement Agreement has occurred  
15 pursuant to Paragraph 71, below;

16 (4) The time to appeal from the Final Approval Order has expired,  
17 i.e., 65 days from the date the Court enters a Final Approval Order,  
18 and no notice of appeal has been filed; and

19 (5) In the event that an appeal is actually filed, the latest of the  
20 following, if applicable, has occurred:

21 (a) Any appeal from the Final Approval Order has been  
22 finally dismissed;

23 (b) The Final Approval Order has been affirmed on appeal  
24 in a form substantially identical to the form of the Final  
25 Approval Order entered by the Court;

26 (c) The time to petition for review with respect to any  
27 appellate decision affirming the Final Approval Order has  
28 expired; or

1 (d) If a petition for review of an appellate decision is filed,  
2 the petition has been denied or dismissed, or, if granted, has  
3 resulted in affirmance of the Final Approval Order in a form  
4 substantially identical to the form of the Final Approval Order  
5 entered by the Court.

6 p. "Final Judgment" means the judgment entered by the Court in conjunction  
7 with the Final Approval Order. The Parties shall submit an order of Final  
8 Judgment setting forth the terms of this Settlement Agreement, by  
9 incorporation or otherwise, for execution and entry by the Court at the time of  
10 the Final Approval Hearing or at such other time as the Court deems  
11 appropriate.

12 q. "Gross Individual Settlement Payment" means the gross amount of the Net  
13 Settlement Distribution Amount each Participating Class Member will be  
14 paid.

15 r. "Maximum Gross Settlement Amount" shall mean the maximum amount that  
16 Defendant shall cause to be paid pursuant to this Settlement, which is Three  
17 Million Eight Hundred Twelve Thousand Five Hundred Dollars and No Cents  
18 (\$3,812,500.00), with the exception of any increase to the Net Settlement  
19 Distribution Amount pursuant to the Escalator Clause discussed in Paragraph  
20 25. That sum is and shall be inclusive of the following: (a) the Class  
21 Representative Payments to Plaintiffs Holly McCarthy, Rachel Mendoza and  
22 Leticia Rodarte in the amount of up to Ten Thousand Dollars and Zero Cents  
23 (\$10,000.00) each; (b) Class Counsel's attorneys' fees in an amount up to  
24 35.00% of \$3,775,000.00 (\$1,321,250.00), incurred or to be incurred in this  
25 Consolidated Action; (c) costs and expenses associated with the Consolidated  
26 Action in an amount of up to Forty Thousand Dollars and Zero Cents  
27 (\$40,000.00), incurred or to be incurred in this Consolidated Action, including  
28 any appeals, according to proof and approval by the Court; (d) the fees and

1 expenses of the third-party Claims Administrator estimated at \$180,750.00  
2 and subject to reduction or increase to correspond with the actual fees and  
3 expenses incurred; (e) the Private Attorney Generals Act (“PAGA”) Payment  
4 of One Hundred Thousand Dollars and Zero Cents (\$100,000.00), 75% (or  
5 \$75,000.00) of which shall be remitted to the California Labor and Workforce  
6 Development Agency and 25% (or \$25,000.00) to the PAGA Group Members  
7 as consideration for the PAGA Release set forth in Paragraph 79; (f) the  
8 employee portion of all applicable tax withholdings including, but not limited  
9 to, FICA, SDI, and other employment- related taxes and withholding of  
10 federal, state and local income taxes; (g) the Employer Payroll Taxes  
11 estimated at 20% of the amount of the wages to be paid to Class Members;  
12 and (h) the remainder which is the Net Settlement Distribution Amount to all  
13 Participating Class Members. To the extent that the Court does not award any  
14 amounts specified in sections (a)-(f) of this paragraph, the difference shall  
15 become part of the Net Settlement Distribution Amount. This Settlement is  
16 non-reversionary, and no amount shall revert to Defendant.

17 s. “McCarthy Action” means the civil action initiated on September 28, 2020, in  
18 San Bernardino Superior Court styled as *Holly McCarthy v. The Vons*  
19 *Companies, Inc., et al.*, Case No. CIVDS2021085, and includes any amended  
20 complaints filed therein.

21 t. “Mendoza Action” means the civil action initiated on May 24, 2021, in  
22 Alameda County Superior Court styled as *Rachel Mendoza v. The Vons*  
23 *Companies, Inc.*, Case No. RG21100503, and includes any amended  
24 complaints filed therein, in addition to the previously filed federal court matter  
25 entitled *Rachel Mendoza v. Pavilions Market, The Vons Companies, Inc.,*  
26 *Albertson’s Companies, Inc.*, Case No. 2:21-cv-03353-JVS-JPR, which was  
27 dismissed.

28 u. “PAGA Group Members” shall include all current and former non-exempt

1 employees of The Vons Companies, Inc. in the State of California during the  
2 PAGA Period excluding employees who worked at the distribution centers  
3 and plants, drivers, pharmacists and, through August 7, 2020, non-union  
4 employees. Employees covered by the following settled actions are also  
5 excluded from the definition: *Fimbres v. The Vons Companies, Inc.*, Case No.  
6 RIC1 904892, filed on September 24, 2019, in Riverside County Superior  
7 Court (class settlement period ending September 7, 2020); *Monica Luna, et al.*  
8 *v. Albertsons Companies, Inc. et al.*, Case No. BC605621, filed on December  
9 31, 2015, in Los Angeles County Superior Court (class settlement period  
10 ending January 11, 2018).

11 v. “PAGA Payment” means the amount of One Hundred Thousand Dollars and  
12 Zero Cents (\$100,000.00), 75% (or \$75,000.00) of which shall be remitted to  
13 the California Labor and Workforce Development Agency and 25% (or  
14 \$25,000.00) distributed to the PAGA Group Members as consideration for the  
15 PAGA Release.

16 w. “PAGA Period” shall be from February 13, 2019, through April 30, 2022.

17 x. “Participating Class Members” means those members of the Class who do not  
18 opt out of the Settlement in response to the Class Notice.

19 y. “Preliminary Approval Order” means the order of the Court granting  
20 preliminary approval of this Settlement Agreement on the terms provided  
21 herein or as the same may be modified by subsequent mutual agreement of the  
22 Parties with, as appropriate, approval of the Court.

23 z. “Rodarte Action” means the civil action initiated on February 13, 2020, in Los  
24 Angeles Superior Court styled as *Leticia Rodarte v. The Vons Companies,*  
25 *Inc., et al.* Los Angeles County Superior Court Case No. 20STCV05641 and  
26 includes any amended complaints filed therein.

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1 **II. BACKGROUND AND REASONS FOR SETTLEMENT**

2 2. On or around September 24, 2020, Plaintiff McCarthy sent by certified mail a  
3 letter to the California Labor and Workforce Development Agency (“LWDA”) notifying the agency  
4 of her allegations that Defendant violated the California Labor Code §§201-204 and 246 by failing  
5 to pay sick pay at the regular rate of pay. On September 28, 2020, Plaintiff McCarthy amended her  
6 PAGA letter to add claims for violation of California Labor Code §§201-204, 226(a), 510, 558 and  
7 1194 based on a failure to pay overtime at one- and one-half times the regular rate of pay resulting  
8 in unpaid overtime, wages being untimely paid during employment and after termination, and  
9 inaccurate wage statements.

10 3. On September 28, 2020, Plaintiff McCarthy filed a Complaint in the Superior  
11 Court of the State of California, County of San Bernardino, entitled *Holly McCarthy v. The Vons*  
12 *Companies, Inc., et al.*, Case No. CIVDS2021085, on behalf of herself and other non-exempt  
13 employees who worked for Defendant in California alleging claims for: failure to pay for paid sick  
14 leave in full and at the correct rate of pay; failure to timely pay all wages during and/or at the  
15 conclusion of employment, including all penalties for failing to do so; failure to pay overtime wages  
16 in full and based on the regular rate of pay; failure to provide accurate wage statements or maintain  
17 accurate records; Unfair Competition (Bus. & Prof. Code §§ 17200 et seq.) based on the Labor  
18 Code sections alleged; penalties pursuant to PAGA (Lab. Code §§ 2698 et seq.). Plaintiff  
19 McCarthy seeks lost wages, interest, penalties, injunctive relief, attorneys’ fees and expenses.  
20 Defendant denies all of the allegations in Plaintiff McCarthy’s Complaint and maintains that the  
21 Court should not certify the class or representative action proposed by Plaintiff, other than for the  
22 sole purpose of this Settlement, as set forth in its Answer and Affirmative Defenses to Plaintiff  
23 McCarthy’s Class Action Complaint filed November 20, 2020.

24 4. On or about February 11, 2020, Plaintiff Rodarte sent by certified mail a letter  
25 to the LWDA notifying the agency of her allegations that Defendant had violated the California  
26 Labor Code by rounding and time shaving leading to minimum wage and overtime violations, rest  
27 period violations, inaccurate pay wage statements, failure to timely pay wages at termination, and  
28 seeking PAGA penalties based thereon.

1           5.       On February 13, 2020, Plaintiff Rodarte filed a Complaint in the Superior  
2 Court of the State of California, County of Los Angeles, entitled *Leticia Rodarte v. The Vons*  
3 *Companies, Inc., et al.*, Case No. 20STCV05641 on behalf of herself and other non-exempt  
4 employees who worked for Defendant in California alleging claims for: failure to pay overtime  
5 wages, failure to pay minimum wages, failure to provide rest periods, failure to pay all wages upon  
6 termination, failure to provide accurate wage statements and unfair competition. On September 8,  
7 2020, Plaintiff Rodarte filed a First Amended Complaint to add a claim for penalties pursuant to  
8 PAGA (Lab. Code §§ 2698 et seq.)

9           6.       On June 28, 2021, Plaintiff Rodarte submitted an amended PAGA letter  
10 alleging failure to pay overtime based on miscalculation of the regular rate of pay and meal period  
11 violations and seeking PAGA penalties including Labor Code §558 penalties based thereon. On  
12 July 20, 2021, Plaintiff Rodarte and Defendant stipulated to the filing of a Second Amended  
13 Complaint which added a claim for failure to provide meal periods and adding further factual  
14 allegations for unpaid overtime wages.

15           7.       On or about March 15, 2021, Plaintiff Mendoza sent by certified mail a letter  
16 to the LWDA notifying the agency of her allegations that Defendant had violated the California  
17 Labor Code by failing to compensate for all hours worked, rounding and time shaving leading to  
18 minimum wage and overtime violations, failing to provide meal and rest periods, providing  
19 inaccurate pay wage statements, failing to timely pay wages at termination, engaging in unfair  
20 business practices, and seeking PAGA penalties based thereon.

21           8.       On April 19, 2021, Plaintiff Mendoza filed a Complaint in the U.S. District  
22 Court, Central District of California, entitled *Rachel Mendoza v. Pavilions Market, The Vons*  
23 *Companies, Inc., Albertson's Companies, Inc.*, Case No. 2:21-cv-03353-JVS-JPR on behalf of  
24 herself and other non-exempt employees who worked for Defendant in California alleging claims  
25 for: failure to pay for all hours worked, failure to pay minimum wages, failure to provide meal  
26 periods, failure to provide rest periods, failure to pay all wages upon termination, failure to provide  
27 accurate wage statements and unfair competition. On August 25, 2021, the District Court issued an  
28 Order dismissing this case without prejudice in its entirety.

1           9.     On May 24, 2021, Plaintiff Mendoza filed a Complaint in the Superior Court  
2 of the State of California, County of Alameda, entitled *Rachel Mendoza v. The Vons Companies,*  
3 *Inc.*, Case No. RG21100503 on behalf of herself and other non-exempt employees who worked for  
4 Defendant in California alleging claims for penalties pursuant to PAGA (Lab. Code §§ 2698 et  
5 seq.) in accordance with the allegations made in her March 15, 2021, PAGA letter.

6           10.    On August 20, 2021, Plaintiff Mendoza filed a First Amended Complaint in  
7 Case No. 20STCV05641 to add class claims on behalf of herself and other non-exempt employees  
8 who worked for Defendant in California for the past four years for: failure to pay for all hours  
9 worked, failure to pay minimum wages, failure to provide meal periods, failure to provide rest  
10 periods, failure to reimburse for necessary business expenses, failure to pay all wages upon  
11 termination, failure to provide accurate wage statements and unfair competition.

12           11.    On January 28, 2022, pursuant to a joint stipulation, Plaintiff Mendoza filed a  
13 Second Amended Complaint in Case No. 20STCV05641 to clarify one of her minimum wage and  
14 overtime factual allegations and the Labor Code sections she was seeking penalties for pursuant to  
15 PAGA.

16           12.    In conjunction with this Settlement, Plaintiffs will submit a Second Amended  
17 PAGA letter in the McCarthy Action which shall add allegations under Labor Code §§225.5, 226.3,  
18 1174, 1174.5, and 1182.12. Plaintiffs will also file an Amended Complaint in the McCarthy  
19 Action, which will add Plaintiffs Rachel Mendoza and Leticia Rodarte as Plaintiffs and class  
20 representatives and add the claims alleged in the Rodarte Action and the Mendoza Action, (the  
21 “Amended McCarthy Complaint”). Both the Amended PAGA letter and the Amended McCarthy  
22 Complaint will be subject to the approval of both Plaintiffs’ and Defendant’s counsel. The  
23 allegations in the Amended McCarthy Complaint shall be deemed denied without further answer.

24           13.    Upon the filing of the Amended McCarthy Complaint, Plaintiffs’ counsel will  
25 request that the Rodarte Action and Mendoza Action be dismissed without prejudice. The  
26 allegations in the Rodarte Action and the Mendoza Action will be deemed resolved upon final  
27 approval of this Settlement.

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1           14. Plaintiffs' case is largely premised on the method that Vons used to calculate  
2 its non-exempt employees' overtime rate of pay for overtime purposes. Under California law and  
3 the FLSA, overtime is paid at an additional one-half an employee's "regular rate of pay." The  
4 regular rate of pay calculation includes both cash wages and certain additional categories of  
5 remuneration. Defendant argued that any amounts allegedly owed to Plaintiffs and the putative  
6 class due to any alleged miscalculation of the regular rate are de minimis at best. Furthermore,  
7 Defendant argued that under Labor Code section 514, any employee who works under a bona fide  
8 collective bargaining agreement and is paid 130% or more of the state minimum wage is exempt  
9 California's overtime requirements, including the requirement for daily overtime, greatly reducing  
10 the number of pay periods at issue. Moreover, Vons argued that because it voluntarily pays  
11 numerous premiums not required by law which serve as credits against any overtime, many  
12 employees, including Plaintiffs, were paid much more than what was required under the law.

13           15. The parties agreed to attempt to resolve the matters through mediation and  
14 agreed to engage in informal discovery leading up to that mediation. To prepare for mediation in  
15 this case, data points based on a sample of 395 employees were analyzed and an extrapolation  
16 factor was applied to the class population, including the number of employees who earned non-  
17 discretionary incentives, shift differentials or premium payments in weeks in which employees  
18 were paid sick pay, overtime and, sick pay or overtime, the average current and final hourly rate of  
19 pay for those employees, the number of employees separated or furloughed during the data period,  
20 the number of employees who worked such workweeks and the number of pay periods that  
21 included such workweeks. Defendant also provided the total number and dollar amount of hours of  
22 sick pay paid, number of regular hours paid, and number of overtime hours paid. Data was also  
23 analyzed to determine the number of employees who were always paid at an hourly rate of at least  
24 130% minimum wage and those who ever fell below this threshold in any pay period during the  
25 class period, the number of pay periods with potential overtime violations before accounting for any  
26 overtime credits, whether and to what extent that employee would have overtime credits within the  
27 same pay period and/or on a cumulative basis, and the number of pay periods with alleged  
28 violations accounting for overtime credits, the number of employees with potential sick pay

1 underpayments who were ever underpaid sick pay, who were ever underpaid sick pay and net  
2 underpaid at the time of termination, the number of employees who were overpaid sick pay and  
3 who were net overpaid sick pay at the time of termination (as well as the employees with a neutral  
4 impact). In addition, Defendant provided relevant policy documents and personnel documents and  
5 pay and time data for the Plaintiffs.

6 16. On December 6, 2021, the parties engaged in a mediation session with Jill R.  
7 Sperber but were not able to reach a settlement. On February 24, 2022, the parties engaged in a  
8 second mediation session under the guidance of an experienced wage and hour neutral, Gig  
9 Kyriacou. While no settlement of was reached during the two sessions of mediation, over the course  
10 of the next several months, the Parties continued to negotiate and were ultimately able to sign a  
11 Memorandum of Understanding in July 2022.

12 17. Class Counsel represent that they have conducted a thorough investigation  
13 into the facts of this case and have diligently pursued an investigation of the Class Members' claims  
14 against Defendant, including (1) interviewing Class Members and analyzing the results of Class  
15 Member interviews; (2) reviewing relevant policy documents; (3) researching the applicable law and  
16 the potential defenses; and (4) reviewing relevant data including sample pay data and key statistics.  
17 Class Counsel reviewed payroll records for the named Plaintiffs and other class members and  
18 prepared a detailed damage analysis with input from their expert. Based on their own independent  
19 investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable  
20 and adequate and is in the best interest of the Class in light of all known facts and circumstances,  
21 including the risk of significant delay, defenses asserted by Defendant, and potential appellate issues.  
22 Defendant agrees that the Settlement is fair, reasonable and adequate.

23 18. It is the mutual desire of the Parties to fully, finally, and forever settle,  
24 compromise, and discharge all disputes and claims raised in or related in any way to the  
25 Consolidated Action. Thus, the entry of the Final Approval Order in this Consolidated Action shall  
26 resolve all class claims which were, or which could have been alleged in the McCarthy, Rodarte and  
27 Mendoza Actions except for the Labor Code section 2802 class claim in the Mendoza Action that is  
28 being dismissed on a class basis without prejudice. The Parties agree to cooperate and take all steps

1 necessary and appropriate to obtain preliminary and final approval of this Settlement, and to  
2 effectuate its terms. The Parties will mutually stipulate and agree to extend all deadlines for  
3 responses to discovery and depositions indefinitely. The parties will amend the McCarthy Action to  
4 include Rodarte and Mendoza as plaintiffs/class representatives and include the claims from the  
5 Rodarte Action and Mendoza Action in the Consolidated Action. The complaint and PAGA letter in  
6 the Consolidated Action shall add allegations for 225.5, 226.3, 1174, 1174.5, and 1182.12. The  
7 complaint and PAGA letter in the Consolidated Action, as contemplated herein, shall be subject to  
8 approval of both Plaintiffs' and Defendant's counsel. The Rodarte and Mendoza Actions will be  
9 dismissed without prejudice when the complaint in the Consolidated Action is filed. The allegations  
10 in the complaint in the Consolidated Action shall be deemed denied without further answer. The  
11 allegations in the Rodarte Action and Mendoza Action will be deemed resolved upon final approval  
12 in the Consolidated Action.

### 13 **III. NO ADMISSION**

14 19. Nothing contained in this Agreement and the Settlement contemplated in the  
15 Agreement shall be construed or deemed an admission of liability, culpability, negligence, or  
16 wrongdoing on the part of Defendant and Defendant denies liability therefor. While Defendant  
17 believes that this Consolidated Action meets the prerequisites for certification of a settlement class,  
18 the fact that Defendant seeks approval of this Settlement in the form of a class action shall not be  
19 construed as an admission that the underlying action was properly brought as a class action or a  
20 representative action under California Business and Professions Code section 17200 or California  
21 Labor Code 2699 for purposes other than settlement. Each of the Parties has entered into this  
22 Settlement with the intention to avoid further disputes and litigation with the attendant  
23 inconvenience and expenses. Settlement of the Consolidated Action, the negotiation and execution  
24 of this Agreement , and all acts performed or documents executed pursuant to or in furtherance of  
25 this Agreement or the Settlement: (1) are not, shall not be deemed to be, and may not be used as, an  
26 admission or evidence of any wrongdoing or liability on the part of Defendant, and each of them; (2)  
27 are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or  
28 omission on the part of Defendant in any civil, criminal, administrative or arbitral proceeding in any

1 court, administrative agency or other tribunal; and (3) are not, shall not be deemed to be, and may  
2 not be used as, an admission or evidence of the appropriateness of these or similar claims for class  
3 certification or administration other than for purposes of administering this Agreement. This  
4 Agreement is a settlement document and shall be inadmissible in evidence in any proceeding, except  
5 an action or proceeding to approve, interpret, or enforce the terms of the Agreement.

6 **IV. CERTIFICATION OF A CODE OF CIVIL PROCEDURE SECTION 382 CLASS**

7 20. For Settlement purposes only, the Parties stipulate to conditional certification  
8 of the Settlement Class ("Class"), an opt-out class under California Code of Civil Procedure 382,  
9 that is defined as follows:

10 All current and former non-exempt employees of The Vons Companies,  
11 Inc. in the State of California during the Covered Period excluding  
12 employees who worked at the distribution centers and plants, drivers,  
13 pharmacists and, through August 7, 2020, non-union employees.  
14 Employees covered by the following settled actions are also excluded  
15 from the class definition: *Fimbres v. The Vons Companies, Inc.*, Case  
16 No. RIC1 904892, filed on September 24, 2019, in Riverside County  
17 Superior Court (class settlement period ending September 7, 2020);  
18 *Monica Luna, et al. v. Albertsons Companies, Inc. et al.*, Case No.  
19 BC605621, filed on December 31, 2015, in Los Angeles County  
20 Superior Court (class settlement period ending January 11, 2018).

21 21. The Parties stipulate that Plaintiffs Holly McCarthy, Rachel Mendoza and  
22 Leticia Rodarte shall be appointed as the Class Representatives for the Settlement Class.

23 22. The Parties stipulate that Diversity Law Group, P.C., Polaris Law Group LLP  
24 and The Nourmand Law Firm, APC and Schneider Wallace Cottrell Konecky LLP shall be  
25 appointed Class Counsel for the Settlement Class.

26 23. The stipulations to certify the Settlement Class are completely contingent  
27 upon final approval of this Agreement by the Court and are made for settlement purposes only. If  
28 the Settlement is not approved by the Court, is overturned on appeal, or does not become final for  
any other reason, the Parties agree that the certification of the Settlement Class is void ab initio and  
that, if necessary, they shall stipulate to decertification of the Settlement Class without prejudice to  
the propriety of class certification being adjudicated on the merits.

1 **V. TERMS OF THE SETTLEMENT**

2 **A. Maximum Gross Settlement Amount**

3 24. The Maximum Gross Settlement Amount under this Settlement is Three  
4 Million Eight Hundred Twelve Thousand Five Hundred Dollars and No Cents (\$3,812,500.00), with  
5 the exception of any pro rata increase triggered pursuant to the Escalator Clause discussed below in  
6 Paragraph 25. Class Members do not need to submit claims forms to receive their payments. Class  
7 Members will be bound by the settlement unless they opt out.

8 25. There are approximately 67,746 class members and 5,649,451 workweeks  
9 from February 13, 2016, up to December 12, 2021. It is projected that there will be 6,020,951  
10 workweeks by April 30, 2022, the end of the Covered Period. In the event the total workweeks  
11 increase by the end of the Covered Period by more than 2.5%, *i.e.*, by more than 150,524, Defendant  
12 shall increase the Net Settlement Distribution Amount by determining the additional workweeks in  
13 excess of 6,171,475 (the “Escalator Clause”). For example, if the total workweeks are 6,181,475 and  
14 if the workweek value is \$2.00, Defendant would have to increase the Net Settlement Distribution  
15 Amount by \$20,000 (6,181,475 - 6,171,475 = 10,000 x \$2.00). The actual workweek value will be  
16 determined by the allocation of the Gross Settlement Amount as provided above.

17 26. This Settlement does not establish a fund for the payment of claims except as  
18 expressly provided for herein. The Maximum Gross Settlement Amount shall remain in the  
19 possession, custody, and control of Defendant until the funding of the Maximum Gross Settlement  
20 Amount to the Claims Administrator. The Maximum Gross Settlement Amount shall not be  
21 segregated but shall remain in Defendant’s general funds until provided to the Claims Administrator  
22 for distribution sufficiently in advance for the Claims Administrator to meet its obligations under the  
23 Settlement Agreement. In the event that this Settlement Agreement is canceled, rescinded,  
24 terminated, voided, or nullified, however that may occur, or the settlement of the Consolidated  
25 Action is barred by operation of law, is invalidated, is not approved or otherwise is ordered not to be  
26 carried out by the Court or any court of competent jurisdiction, Defendant will cease to have any  
27 obligation to pay or provide any portion of the Maximum Gross Settlement Amount to anyone under  
28 the terms of this Settlement Agreement.



1           **B. Attorneys' Fees and Costs**

2           27. The Consolidated Action alleges a potential claim for attorneys' fees and costs  
3 pursuant to, *inter alia*, the California Labor Code. The Parties agree that any and all such claims for  
4 attorneys' fees and costs have been settled in this Agreement subject only to approval by the Court.

5           28. Defendant understands that Class Counsel will apply to the Court for an award  
6 of attorneys' fees and costs, which will be scheduled for determination at the Final Approval  
7 Hearing described below. Class Counsel will apply for, and Defendant will not oppose, an award of  
8 attorneys' fees in an amount up to, but not to exceed, 35% of the Maximum Gross Settlement  
9 Amount (which is equal to One Million Three Hundred Thirty-Four Thousand Three Hundred  
10 Seventy Five Dollars and Zero Cents (\$1,334,375.00)), and litigation costs and expenses in the  
11 maximum amount of Forty Thousand Dollars and Zero Cents (\$40,000.00), according to proof and  
12 approval by the Court, all of which shall be paid exclusively from the Maximum Gross Settlement  
13 Amount, and will compensate Class Counsel for all of the work already performed in the  
14 Consolidated Action and all work remaining to be performed in documenting the Settlement,  
15 securing Court approval of the Settlement, administering the Settlement, ensuring that the Settlement  
16 is fairly administered and implemented, obtaining a Judgment as well as all associated expenses.  
17 The litigation costs and expenses shall be those costs and expenses incurred by Plaintiffs as set forth  
18 on Class Counsel's billing statement, including but not limited to mediation fees, expert and  
19 consultant fees, filing fees, attorney service charges, online research charges, travel expenses,  
20 copying expenses, deposition expenses and delivery charges. Neither the Class Representatives,  
21 Class Counsel, nor any other Participating Class Member shall seek payment of attorneys' fees or  
22 reimbursement of costs or expenses from Defendant except as expressly set forth in this Agreement.

23           29. The substance of Class Counsel's application for attorneys' fees and costs is  
24 not a material part of this Agreement and is to be considered separately from the consideration of the  
25 fairness, reasonableness, adequacy, and good faith of the settlement of the Consolidated Action.  
26 However, all claims for attorneys' fees and costs or expenses that the Settlement Class may possess  
27 against Defendant have been compromised and resolved in this Agreement. Any proceedings related  
28 to Class Counsel's application for attorneys' fees and costs shall not terminate or cancel this

1 Agreement. If Class Counsel appeals an adverse ruling of the Court regarding its fee and cost  
2 application, the ruling of the appellate court (regardless of its substance) shall not constitute a  
3 material alteration of a term of this Agreement. Class Counsel waives and releases any claim for  
4 fees and costs in excess of that which are allowed by the Court or on appellate review of the Court's  
5 fees and costs decision or otherwise. The amount, if any, by which the finally approved fees and  
6 costs are less than the maximum amount which can be sought pursuant to this Agreement shall be a  
7 part of the wages and non-wage income provided Class Members in equal proportions.

8           30. No later than fifteen (15) calendar days after the Court's approval of Class  
9 Counsel's application for attorneys' fees and costs, Class Counsel shall deliver to the Claims  
10 Administrator written instructions that describe the manner and mode of payment of such attorneys'  
11 fees and costs (and, in the absence of such instructions, such attorneys' fees and costs shall be sent  
12 by U.S. mail as set forth below), and fully-executed Form W-9s with respect to all persons or entities  
13 to whom some or all of the attorneys' fees and costs shall be paid.

14           31. No later than fifteen (15) calendar days after the Final Effective Date,  
15 Defendant shall mail, or wire transfer the Maximum Gross Settlement Amount to the Claims  
16 Administrator. No later than seven (7) calendar days after the receipt of the Maximum Gross  
17 Settlement Amount from Defendant, the Claims Administrator shall issue a payment to Class  
18 Counsel for the amount of attorneys' fees and costs approved by the Court and in accordance with  
19 the instructions provided by Class Counsel.

20           32. The Claims Administrator will issue to Class Counsel IRS Form 1099s for the  
21 amounts paid for attorneys' fees and costs under this Settlement.

22           **C. Payment to Claims Administrator**

23           33. The fees and expenses of the Claims Administrator are estimated at  
24 \$180,750.00. To the extent that the costs of administration exceed \$180,750.00, the shortfall will be  
25 taken from the Net Settlement Distribution Amount and thereby reduce the amount payable to the  
26 Participating Class Members. To the extent the cost of administration is less than \$180,750.00, the  
27 excess shall become part of the Net Settlement Distribution Amount and shall increase the amount  
28 payable to the Participating Class Members.

1           34. On or before the date of the Final Approval Hearing, the Claims  
2 Administrator shall deliver to counsel for Defendant a fully executed Form W-9.

3           35. No later than fifteen (15) calendar days after the Final Effective Date,  
4 Defendant shall mail, or wire transfer the Maximum Gross Settlement Amount to the Claims  
5 Administrator. No later than seven (7) calendar days after the receipt of the Maximum Gross  
6 Settlement Amount from Defendant, the Claims Administrator shall issue a payment to itself for the  
7 amount of fees approved by the Court

8           36. Defendant will issue to the Claims Administrator an IRS Form 1099 for the  
9 sum paid to it under this Settlement.

10           **D. Class Representative Payments to Class Representatives**

11           37. Defendant understands that Plaintiffs and Class Counsel will apply to the  
12 Court for Class Representative Payments, which will be scheduled for determination at the Final  
13 Approval Hearing. Plaintiffs and Class Counsel will apply for Class Representative Payments in an  
14 amount up to, but not to exceed, Ten Thousand Dollars and No Cents (\$10,000.00) to each Class  
15 Representative, which shall be paid exclusively from the Maximum Gross Settlement Amount and  
16 will compensate Plaintiffs for their services as the Class Representatives. Defendant will not oppose  
17 Plaintiffs' application for the Class Representative Payments up to the stated amount. The amount,  
18 if any, by which the Class Representative Payments are less than the maximum amount which can be  
19 sought pursuant to this Agreement shall be part of the Net Settlement Distribution Amount.

20           38. As condition precedent to the payment of this Class Representative Payments,  
21 Plaintiffs release any and all claims against Defendant as set forth in the Class Representatives'  
22 Release in Paragraph 80.

23           39. Any Class Representative Payment awarded by the Court shall be in addition  
24 to the payment, if any, Plaintiffs may otherwise receive as Participating Class Members and/or  
25 PAGA Group Members and shall not be subject to payroll tax withholding and deductions.

26           40. No later than seven (7) calendar days after the receipt of the Maximum Gross  
27 Settlement Amount from Defendant, the Claims Administrator shall issue the Class Representative  
28

1 Payments to Class Counsel or as instructed by Class Counsel on behalf of Plaintiffs in the amount  
2 approved by the Court, subject to all authorized and required deductions.

3 41. The Claims Administrator will issue IRS Forms 1099-MISC to Plaintiffs for  
4 the amount of the Class Representative Payments.

5 **E. Distribution to Participating Class Members**

6 42. The Gross Individual Settlement Payment to Participating Class Members will  
7 be calculated and paid as follows: the total Net Settlement Distribution Amount, estimated at Two  
8 Million Dollars and Zero Cents (\$2,000,000.00) will be distributed on a pro-rata basis based on the  
9 number of workweeks worked during the class period and on a further "weighted" basis as follows:

- 10 • Employees will receive 1 point for each workweek employed during the Covered Period.
- 11 • Employees who worked during the period of February 13, 2016, to September 30, 2019  
12 ("Regular Rate Period") and whose regular rate of pay was less than 130% of the then  
13 applicable minimum wage will get 3 additional points for each such workweek.
- 14 • Employees whose employment ended during the period of February 13, 2017, to the end of  
15 the Covered Period shall receive an additional 100 points (the "Waiting Time Penalty").
- 16 • Employees who worked during the period from September 30, 2019, to the end of the  
17 Covered Period will receive 1 point per workweek for each workweek in which an employee  
18 used Paid Sick Leave.

19 The total points and the number of points per employee will be calculated by Defendant's  
20 consultant as well as the number of employees in each category. The total points shall be divided  
21 into the amount to be distributed to the class and each Participating Class Member's payment shall  
22 be based on the product of the result times that Class Member's total points. The dollar value  
23 assigned to each point and to each Participating Class Member will be calculated by the Claims  
24 Administrator.

25 43. All Gross Individual Settlement Payments shall be allocated 20% as  
26 consideration for the release of wage claims and 80% for the release of non-taxable claims including  
27 statutory penalties, and interest. All payments to PAGA Group Members shall be allocated as 100%  
28 civil penalties. The amounts paid as consideration for the release of wage-related claims shall be

1 subject to all tax withholdings customarily made from employee's wages and all other authorized  
2 and required withholdings and shall be reported by W2 form. The amounts paid as consideration for  
3 the release of penalties and interest shall be subject to all authorized and required withholdings other  
4 than the tax withholdings customarily made from employees' wages and shall be reported by 1099  
5 form. The Gross Settlement Amount includes all payments to state and federal tax authorities for the  
6 employees' and employer's share of all payroll taxes and other applicable withholdings.

7 44. All Participating Class Members and the Class Representatives will be  
8 responsible for correctly characterizing the compensation they receive for tax purposes and for  
9 paying any taxes on the amounts received, except for the employer contributions, which will be  
10 handled as provided by this Agreement. Class Counsel and Defense Counsel do not intend this  
11 Agreement to constitute legal advice relating to the tax liability of any Participating Class Member  
12 and PAGA Group Members. To the extent that this Agreement is interpreted to contain or constitute  
13 advice regarding any federal, state or local tax issue, such advice is not intended or written to be  
14 used, and cannot be used, by any person for the purpose of avoiding any tax liability or penalties

15 45. Participating Class Members may dispute the number of workweeks as set  
16 forth in Paragraph 42 and will be given the opportunity to provide documentation to substantiate any  
17 such dispute. Any dispute must be in writing and received by the Claims Administrator no later than  
18 forty-five (45) calendar days after the initial mailing of the Class Notice. If there is a dispute related  
19 to the categorization, the Claims Administrator will consult with Class Counsel and Defense Counsel  
20 to determine whether an adjustment is warranted. Upon a dispute being made, Defendant shall  
21 provide the Claims Administrator within seven calendar (7) days any available evidence reasonably  
22 necessary to evaluate the dispute. The Claims Administrator will make the final decision as to the  
23 correct categorization.

24 46. Participating Class Members need not submit claims forms to participate.

25 47. Participating Class Members shall be paid their respective Individual  
26 Settlement Payments as provided in this Agreement pursuant to Section IX below.

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1           **F.     PAGA Payment**

2           48.     The Parties have agreed to allocate One Hundred Thousand Dollars and Zero  
3     Cents (\$100,000.00) as consideration for the PAGA Release. Seventy-five percent of the PAGA  
4     Payment (\$75,000.00) will be remitted to the California Labor and Workforce Development Agency.  
5     The remaining 25% (\$25,000) will be distributed to all PAGA Group Members on a pro rata basis  
6     based on the number of workweeks worked by each PAGA Group Member during the PAGA  
7     Period.

8           49.     This amount is subject to review and approval by the Court as part of the  
9     settlement process pursuant to Labor Code section 2699(1)(2). This Settlement is contingent on the  
10    Court approving the PAGA Release, set forth in Paragraph 79 and the PAGA Payment. Plaintiffs'  
11    counsel will submit a copy of the Settlement to the LWDA at the same time the Settlement is  
12    submitted to the Court in accordance with Labor Code section 2699 (1)(2).

13          50.     Within seven (7) calendar days after the receipt of the Maximum Gross  
14    Settlement Amount from Defendant, the Claims Administrator will remit the PAGA Payment to the  
15    California Labor and Workforce Development Agency.

16    **VI.    APPOINTMENT AND DUTIES OF CLAIMS ADMINISTRATOR**

17          51.     The Claims Administrator shall perform the following duties in connection  
18    with administration of the Settlement: (1) using the data provided by Defendant to prepare the Class  
19    Notice in English or each Class Member, as described in Section VII.A of this Settlement;  
20    (2) mailing the Class Notice to Class Members; (3) tracking non-delivered Class Notice and taking  
21    reasonable steps to re-send them to Class Members' current addresses;; (4) setting up a settlement  
22    website which contains copies of all papers and orders filed in connection with preliminary and final  
23    approval, including the final Settlement Agreement, Complaint, and Final Judgment; (5) tracking  
24    and providing weekly report to Class Counsel and Counsel for Defendant about any requests for  
25    exclusion; (6) calculating and paying the amounts due to each Participating Class Member and  
26    PAGA Group Member pursuant to the Settlement; (7) calculating the amount of employee and  
27    Employer Payroll Taxes and paying the applicable employee and Employer Payroll Taxes and  
28    deductions; (8) resolving disputes (if any) by Class Members regarding their categorization or other

1 matters, after timely notice to and consultation with Class Counsel and counsel for Defendant; (9)  
2 transmitting funds to resolve the PAGA claim to the State of California as designated; (10) issuing  
3 payments to Class Counsel and Class Representatives and associated tax forms; and (11) escheating  
4 funds from uncashed checks to the State of California Unclaimed Funds in the name of the Class  
5 Member and PAGA Group Member who did not cash his/her check within 180 days of issuance.

6           52. All disputes relating to the Claims Administrator's performance of its duties  
7 will be referred to the Court, if necessary, which will have continuing jurisdiction over this  
8 Settlement until all payments and obligations contemplated by this Settlement have been fully  
9 carried out.

## 10 **VII. NOTICE TO THE CLASS OF THE SETTLEMENT**

### 11 **A. Mailing the Notice Packets to the Class Members**

12           53. Within fourteen (14) calendar days after the Court enters its Preliminary  
13 Approval Order, Defendant will use its best efforts to provide to the Claims Administrator a database  
14 that lists, for each Class Member, the individual's name, Social Security Number, last-known  
15 address and telephone number; and workweeks within each category as set forth in Paragraph 42  
16 during the Covered Period. This database will be drawn from Defendant's payroll and other  
17 business records and will be in a format acceptable to the Claims Administrator and Defendant. The  
18 data provided to the Claims Administrator and Class Counsel will remain confidential and will not  
19 be disclosed to anyone, except as required to applicable tax authorities, pursuant to Defendant's  
20 express written consent, or by order of the Court.

21           54. Within fifteen (15) calendar days after Defendant provides the Claims  
22 Administrator the information stated pursuant to Paragraph 53, above, the Claims Administrator will  
23 mail, by first-class mail, the Class Notice to all Class Members at their last known address, unless  
24 modified by any updated address information that the Claims Administrator obtains in the course of  
25 administration of the Settlement.

26           55. The Claims Administrator will use standard devices, including the National  
27 Change of Address database or equivalent, to obtain forwarding addresses prior to mailing and will  
28 use appropriate skip tracing to take appropriate steps to maximize the probability that the Class

1 Notice will be received by all Class Members. Class Members to whom the Class Notice is resent  
2 after having been returned undeliverable to the Claims Administrator shall have ten (10) calendar  
3 days thereafter, or until the response deadline has expired, whichever is later, to mail, fax or email  
4 the request for exclusion, dispute workweeks or an objection. Class Notices that are resent shall  
5 inform the recipient of this adjusted deadline. If a Class Member's Class Notice is returned to the  
6 Claims Administrator more than once as non-deliverable, no additional Class Notice shall be sent.

7 56. The Claims Administrator shall provide weekly reports to Class Counsel and  
8 Defense Counsel as to the mailings of the Class Notice, and the receipt of requests for exclusion,  
9 dispute of workweeks and objections prior to the close of the period in which claims can be made.

10 **B. Challenges to Information Provided in Class Notice**

11 57. The Class Notice mailed to the Class Members will include the Class  
12 Member's estimated Gross Individual Settlement Payment and number of workweeks.

13 58. Class Members will have the opportunity to challenge the information pre-  
14 printed on their individualized Class Notice by submitting a written challenge in connection with the  
15 Class Notice within the time period provided. All challenges must be received no later than forty-  
16 five (45) calendar days after the initial date of mailing of the Class Notice.

17 59. Timely challenges will be resolved without hearing by the Claims  
18 Administrator after consultation with Class Counsel and Counsel for Defendant. Defendant's  
19 records will be presumed correct, but the Claims Administrator will evaluate the evidence submitted  
20 by the Class Member and will make a final determination based on its evaluation of all the evidence  
21 presented. All determinations will be made no later than fifteen (15) calendar days within receipt of  
22 the challenge.

23 **D. Objections to Settlement**

24 60. The Class Members will have forty-five (45) calendar days after the date on  
25 which the Claims Administrator mails the Class Notice to object to the Settlement by serving on the  
26 Claims Administrator, by the forty-five (45)-day deadline, a written objection to the Settlement. The  
27 Claims Administrator will email Class Counsel and defense counsel a copy of the objection  
28 forthwith. Class Counsel will lodge a copy of the objection with the Court.



1           61. Any Class Member who has elected to opt-out of the Settlement may not  
2 submit an objection to the Settlement.

3           62. Objections to the Settlement by any Class Member may be submitted in  
4 writing by the original 45-day deadline according to the procedures set forth in the Class Notice.  
5 Alternatively, or additionally, Class Members may make an oral objection directly to the Court by  
6 appearing in person or through counsel, at his/her own expense, at the Final Approval Hearing to do  
7 so.

8           63. The Claims Administrator shall provide the Parties a copy of any objections  
9 received within one (1) business day of receipt. Counsel for the Parties shall file any objections and  
10 any response thereto at least seven (7) calendar days before the Final Approval Hearing.

11           **E. Election Not to Participate in the Class Settlement**

12           64. In order for a Class Member to validly and effectively request exclusion from,  
13 and opt out of, this Settlement, the Class Member must submit to the Claims Administrator a request  
14 for exclusion from the Settlement according to the procedures set forth in the Class Notice.  
15 Substantial compliance with the requirements set forth in the Class Notice will in most cases be  
16 sufficient. To the extent additional information is required the Claims Administrator will  
17 communicate with the Class Member. In order to be valid, the request for exclusion must be  
18 postmarked for delivery to the Claims Administrator no later than forty-five (45) calendar days after  
19 the date of mailing of the Class Notice. No request for exclusion will be accepted if postmarked for  
20 delivery to the Claims Administrator after the deadline indicated. A Class Member who is also a  
21 PAGA Group Member who requests timely exclusion will not impact the scope of the PAGA  
22 Release and will receive his/her share of the PAGA penalties.

23           65. Any Class Member who does not properly and timely submit a request for  
24 exclusion will automatically be bound by all terms and conditions of the Settlement, including its  
25 release of claims, if the Settlement is approved by the Court, and be bound by the Final Approval  
26 Order, regardless of whether he or she has objected to the Settlement.

27           66. A Class Member who is also a PAGA Group Member who properly and  
28 timely submits a request for exclusion will not be bound by the Settlement with the exception of the

1 PAGA Release and will remain free to contest any claim brought by Plaintiffs that would have been  
2 barred by the Settlement, and nothing in this Settlement will constitute or be construed as a waiver of  
3 any defense Defendant has or could assert against such a claim.

4 67. Plaintiffs may not opt-out of the Settlement Class.

5 **F. Reports and Declaration by Claims Administrator**

6 68. By not later than fifteen (15) calendar days after expiration of the 45-day  
7 deadline for submission of written requests for exclusion from the Class Settlement, the Claims  
8 Administrator will submit to Class Counsel and Counsel for Defendant a report setting forth the  
9 number of individuals who as of that date have submitted (a) valid requests for exclusion, (b) invalid  
10 requests to be excluded from the Settlement, (d) disputed workweeks, and (d) objections to the  
11 Settlement. In the event that the Claims Administrator subsequently receives a request for exclusion  
12 from, disputed workweeks or objection to, the Settlement, it will promptly distribute an updated  
13 report.

14 69. By not later than the date when Plaintiffs file their motion for final approval of  
15 the Settlement, the Claims Administrator will prepare and submit for filing in support of the motion a  
16 declaration attesting to its mailing of the Class Notice, its receipt of requests for exclusion, disputed  
17 workweeks and objections, and its inability to deliver the Class Notice to potential Class Members  
18 due to invalid addresses. As applicable, the Claims Administrator will prepare and submit for filing  
19 in support of the motion for final approval, any supplemental declaration.

20 **G. Settlement Website**

21 70. The Claims Administrator will create a settlement website which contains  
22 copies of all papers and orders filed in connection with preliminary and final approval, including the  
23 final Settlement Agreement and Complaint. These documents will be posted not later than the  
24 mailing of the Class Notice and will remain posted until the date of final approval. Pursuant to  
25 California Rules of Court, Rule 3.771(b), the Claim Administrator shall post on its website a copy of  
26 the Judgment for a period of thirty days from the date the Court signs the Judgment.

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1 **VIII. RIGHT TO RESCIND**

2 71. In the event that more than five percent (5) of the Class Members submit valid  
3 requests not to participate in the Settlement, Defendant will have the exclusive right in its sole  
4 discretion to rescind the Settlement, and all actions taken in its furtherance will be null and void.  
5 Defendant must exercise this right within ten (10) calendar days after the date on which the Claims  
6 Administrator first informs Defendant that more than five percent (5%) of the potential Class  
7 Members have made valid requests to be excluded from the Settlement. In the event Defendant  
8 exercises its option to rescind the Settlement, Defendant shall be solely responsible for any costs  
9 incurred by the Claims Administrator up to the date Defendant provides notice.

10 **IX. DISTRIBUTION OF THE SETTLEMENT PAYMENTS**

11 72. Defendant or Class Counsel shall confirm with the Claims Administrator the  
12 Final Effective Date as soon as possible. No later than fifteen (15) calendar days after the Final  
13 Approval Order, the Claims Administrator will prepare and provide counsel for Defendant and Class  
14 Counsel with a report summarizing the total Participating Class Members and the Gross Individual  
15 Settlement Payment for each Participating Class Member on that list. The Class Administrator shall  
16 also calculate the amount of those Employer Payroll Taxes based on the wage portion of the Gross  
17 Individual Settlement Payments for all of the individuals on that list.

18 73. Defendant will cause the Maximum Gross Settlement Amount to be wired to  
19 the Claims Administrator no later than fifteen (15) calendar days after the Final Effective Date.

20 74. Within ten (10) calendar days after the receipt of the Maximum Gross  
21 Settlement Amount from Defendant, the Claims Administrator will distribute to every Participating  
22 Class Member and PAGA Group Member his or her Individual Settlement Payment. The Claims  
23 Administrator shall make appropriate tax reporting and withholdings in accordance with this  
24 Agreement and applicable law and regulations.

25 75. The Claims Administrator will timely remit the employer's and employee's  
26 portion of the payroll and other taxes associated with the settlement payments to the proper  
27 authorities, as required by law. In addition, the Claims Administrator will timely issue IRS Form W-  
28 2 to each Participating Class Member that reflects the wage portion of the settlement payment and an

1 IRS Form 1099-MISC to each Participating Class Member and PAGA Group Member that reflects  
2 the non-wage income portion of the settlement payment to the extent required by law.

3 76. If any Participating Class Member does not cash his or her settlement check(s)  
4 within six (6) months after issuance, fifteen (15) calendar days after the check-cashing deadline the  
5 Claims Administrator shall escheat the funds to the State of California Unclaimed Fund in the name  
6 of the Class Member who did not cash his or her check within 180 days of issuance. The Parties  
7 agree that this obligation shall satisfy and fully discharge Defendant's obligations under California  
8 Code of Civil Procedure section 384.

9 **X. RELEASE OF CLAIMS**

10 **A. Released Claims by Class Members Who Do Not Opt Out**

11 77. As of the date the Final Approval Order is entered by the Court and Defendant  
12 funding of the Maximum Gross Settlement Amount and except as to such rights or claims as may be  
13 created by this Settlement, to the maximum extent allowed by law, each Class Member who has not  
14 timely and effectively opted out will be deemed to have released claims as both a matter of contract  
15 and judicial procedure as follows, which release shall be incorporated into the Class Notice:

16 The settlement shall resolve and the class shall release all claims for  
17 wages, statutory and civil penalties, damages and liquidated damages,  
18 interest, restitution, injunctive relief, fees and costs under California law  
19 that were alleged in the operative Complaints and any Amended  
20 Complaints in the McCarthy Action, the Rodarte Action, the Mendoza  
21 Action (except for the Labor Code section 2802 class claim that is being  
22 dismissed on a class basis without prejudice), and/or the Consolidated  
23 Action, and/or claims which reasonable relate to or which reasonably arise  
24 out of the same set of operative facts or theories pled therein, whether such  
25 claims or forms of relief are known or unknown during the Covered  
26 Period, including, but not limited to claims for: (1) failure to pay overtime  
27 wages in full and based on the regular rate of pay (Lab. Code §§ 510, 558,  
28 1194, and 1199); (2) failure to pay minimum wages in full and liquidated

1 damages for failing to pay the minimum wage (Lab. Code §§ 1182.12,  
2 1194, 1194.2, 1197, and 1197.1); (3) failure to provide rest periods and  
3 failure to pay premiums for non-compliant rest periods and/or to pay them  
4 at the regular rate of pay (Lab. Code §§ 226.7 and 512); (4) failure to  
5 provide meal periods and failure to pay premiums for non-compliant meal  
6 periods and/or to pay them at the regular rate of pay (Lab. Code §§ 226.7  
7 and 512); (5) failure to pay for paid sick leave in full and at the correct rate  
8 of pay (Lab. Code §§ 245, 246, 248, 248.1, 248.2, 248.5, and 248.6); (6)  
9 failure to timely pay all wages during and/or at the conclusion of  
10 employment, including all penalties for failing to do so (Lab. Code §§  
11 201, 202, 203, 204, 210, and 225.5); (7) failure to provide accurate wage  
12 statements or maintain accurate records (Lab. Code §§ 226, 226.3, 1174,  
13 and 1174.5); and (8) Unfair Competition (Bus. & Prof. Code §§ 17200 et  
14 seq.) based on the Labor Code sections alleged, and with respect to the  
15 penalties claimed in the Consolidated Action, any source of obligation as a  
16 basis for claiming such penalties during the Covered Period, including any  
17 and all obligations released above which are imposed by the applicable  
18 Wage Orders (the “Released Claims”), against The Vons Companies, Inc.  
19 (“Defendant”) and each and all of its past and present direct and indirect  
20 parent, subsidiary, and affiliated corporations (including but not limited to  
21 Safeway Inc., Albertsons Companies, Inc., Albertson’s LLC, Albertson  
22 Safeway LLC), entities, divisions, general and limited partners, joint  
23 venturers and affiliates, and each of their respective current and former  
24 directors, officers, managers, employees, principals, members, agents,  
25 insurers, reinsurers, shareholders, attorneys, advisors, representatives,  
26 general partners, limited partners, joint venturers, and affiliated  
27 companies, and each of their respective executors, predecessors,  
28 successors, assigns and legal representatives (collectively, “Released

1 Parties”) in their representative and individual capacities whether under  
2 Labor Code §§ 558, 558.1. or otherwise.

3 78. The Gross Individual Settlement Payment to Participating Class Members will  
4 not result in any additional benefit payments beyond those provided by this Agreement to Plaintiffs  
5 and Participating Class Members. Participating Class Members will be deemed to have waived all  
6 such claims for benefits premised upon the Gross Individual Settlement Payments to them, whether  
7 known or unknown by them, as part of their Released Claims under this Agreement.

8 **B. Released Claims by PAGA Group Members (“PAGA Release”)**

9 79. As of the date the Final Approval Order is entered by the Court and Defendant  
10 funding of the Maximum Gross Settlement Amount, Plaintiffs, individually and in their capacity as  
11 representative of the LWDA, State of California, the LWDA, State of California, and PAGA Group  
12 Members release and discharge the Released Parties from any and all claims for civil Penalties under  
13 PAGA [Cal. Lab. Code §§ 2698, *et seq.*] based on the Labor Code violations alleged and that are  
14 based upon or arise from the factual allegations in any of Plaintiffs’ PAGA letters, amended PAGA  
15 letters and/or alleged in the operative Complaints and any Amended Complaints in the McCarthy  
16 Action, the Rodarte Action, the Mendoza Action, and/or the Consolidated Action, including all  
17 attorneys’ fees and costs related thereto, regardless of whether PAGA Group Members opt out from  
18 the Settlement.

19 **B. Released Claims by the Class Representative**

20 80. As of the date the Final Approval Order and Judgment is entered by the Court  
21 and Defendant funding the Maximum Gross Settlement Amount, except as to such rights or claims  
22 as may be created by this Settlement, to the maximum extent allowed by law, the Class  
23 Representative shall be deemed to have released claims as follows:

24 The Class Representatives hereby fully and finally releases and discharges the Released Parties  
25 (defined in Paragraph 77, above) from any and all of the Released Claims (defined in Paragraph 77,  
26 above) and from any and all claims, charges, complaints, liens, demands, causes of action,  
27 obligations, damages and liabilities, known or unknown, suspected or unsuspected, that the Class  
28 Representatives had, now has, or may hereafter claim to have against the Released Parties arising out

1 of, or relating in any way to, the Class Representatives' hiring by, employment with, separation of  
2 employment with, or otherwise relating to the Released Parties, arising or accruing from the  
3 beginning of time up through the date of the Final Approval Hearing ("Class Representatives'  
4 Released Period") with the exception of claims which cannot be released by law ("Class  
5 Representatives' Released Claims").

6 The Parties stipulate and agree that, upon the Effective Date, the Class  
7 Representatives waive California Civil Code section 1542, which provides:

8 A general release does not extend to claims which the creditor does not  
9 know or suspect to exist in his or her favor at the time of executing the  
10 release, which if known by him or her must have materially affected  
his or her settlement with the debtor.

#### 11 **XI. DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

12 81. The Parties shall submit this Agreement to the Court in support of Plaintiffs'  
13 Motion for Preliminary Approval and determination by the Court as to its fairness, adequacy, and  
14 reasonableness. As soon as reasonably possible upon execution of this Agreement, the Parties shall  
15 apply to the Court for the entry of an Order Granting Preliminary Approval of the Settlement and  
16 Notice which shall provide for, among other things, the following:

17 a. Scheduling a final fairness and approval hearing on the question of  
18 whether the proposed Settlement should be finally approved as fair, reasonable and adequate as to  
19 the Settlement Class.

20 b. Approving as to form and content the proposed Class Notice described  
21 herein;

22 c. Directing the mailing of the Class Notice by first class mail to the  
23 Class Members;

24 d. Preliminarily approving the Settlement;

25 e. Preliminarily certifying the Class for settlement purposes only; and

26 f. Approving Larry W. Lee and Simon L. Yang of Diversity Law Group,

27 P.C., William L. Marder of Polaris Law Group LLP and James De Sario and Michael Nourmand of

28 The Nourmand Law Firm, APC and Carolyn H. Cottrell and Esther L. Bylsma of Schneider Wallace

1 Cottrell Konecky LLP as Class Counsel. Plaintiffs Holly McCarthy, Rachel Mendoza and Leticia  
2 Rodarte as Class Representatives, and CPT Group, Inc., or an administrator mutually agreed to by  
3 the Parties, as Claims Administrator.

4 82. After the Preliminary Approval Order is entered by the Court, and prior to the  
5 deadline for objections, Plaintiffs shall file the motion for an award of attorneys' fees and costs to be  
6 heard on the same hearing date as set by the Court for the Final Approval Hearing.

7 **XII. DUTIES OF THE PARTIES REGARDING FINAL COURT APPROVAL**

8 83. In connection with the final approval by the Court of the Settlement, the  
9 Parties will submit a proposed Order Granting Final Approval of the Class Action Settlement and  
10 Final Judgment, respectively, which shall provide, among other things, as follows:

11 a. Approving the Settlement, adjudging the terms thereof to be fair,  
12 reasonable and adequate, and directing consummation of its terms and provisions;

13 b. Approving Class Counsel's application for an award of attorneys' fees  
14 and reimbursement of costs;

15 c. Approving the Class Representatives' service payment;

16 d. Certifying the Settlement Class for purposes of this Settlement only;

17 and

18 e. Entering Judgment pursuant to California Rules of Court, rule 3.769(h)  
19 which retains jurisdiction and permanently bars the Class Members who do not timely and validly  
20 exclude themselves from the Settlement from prosecuting any and all Released Claims against the  
21 Released Parties, and permanently bars the Class Representatives from prosecuting any and all Class  
22 Representatives' Released Claims against the Released Parties. Notice of the Final Judgment shall  
23 be given as provided in the Agreement.

24 **XIII. EFFECT OF NON-APPROVAL**

25 84. If this Agreement is not preliminarily or finally approved by the Court and/or  
26 if a Final Approval Order is not entered or if Defendant exercise the option to rescind pursuant to  
27 Paragraph 71, above (*e.g.*, because the Court does not approve the settlement, or the opt-outs from  
28 the Class exceed five percent and Defendant revokes the Agreement), this Agreement shall be null



1 and void. In such event, (1) nothing in this Agreement shall be construed as a determination,  
2 admission, or concession of any issue in the Consolidated Action, and nothing in this Agreement  
3 may be offered into evidence in any trial on the merits of the claims asserted in the Consolidated  
4 Action or in any subsequent pleading; (2) the Parties expressly reserve their rights with respect to the  
5 prosecution and defense of the Consolidated Action as if this Agreement never existed; and (3)  
6 Defendant shall be responsible for any costs for Notice or claims administration incurred by the  
7 Claims Administrator through that date. If there is any reduction in the attorneys' fees or costs  
8 awards or the Class Representative Payments, such reduction may be appealed but is not a basis for  
9 rendering this Agreement null, void, voidable and/or unenforceable.

#### 10 **XIV. CONFIDENTIALITY PRECEDING MOTION FOR PRELIMINARY APPROVAL**

11 85. Plaintiffs and Plaintiffs' counsel agree to keep the settlement confidential until  
12 filed with the court, with the exception of Defendant promptly filing notices of settlement in all  
13 overlapping cases.

#### 14 **XV. MUTUAL FULL COOPERATION**

15 86. The Parties will fully cooperate with each other and use their best efforts,  
16 including all efforts contemplated by this Settlement and any other efforts that may become  
17 necessary or ordered by the Court, or otherwise, to accomplish the terms of this Settlement in  
18 accordance with the terms of the parties' memorandum of understanding, including but not limited  
19 to, executing such documents and taking such other action as may reasonably be necessary to obtain  
20 preliminary and final approval of this Settlement and to implement its terms.

#### 21 **XVI. NO PRIOR ASSIGNMENTS**

22 87. The Parties represent, covenant, and warrant that they have not directly or  
23 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any  
24 person or entity any portion of any claims, causes of action, demands, rights and liabilities of every  
25 nature and description released under this Settlement.

#### 26 **XVII. NOTICES**

27 88. Unless otherwise specifically provided by this Settlement, all notices,  
28 demands or other communications given under this Settlement will be in writing and be deemed to

1 have been duly given as of the third business day after mailing by United States registered or  
2 certified mail, return-receipt requested, addressed as follows:

3 **To Plaintiffs and the Settlement Class:**

4 LARRY W. LEE  
5 SIMON L. YANG  
6 DIVERSITY LAW GROUP, P.C.  
7 515 South Figueroa Street, Suite 1250  
8 Los Angeles, California 90071  
9 Telephone: (213) 488-6555

10 WILLIAM L. MARDER  
11 POLARIS LAW GROUP LLP  
12 501 San Benito Street, Suite 200  
13 Hollister, California 95023  
14 Telephone: (831) 531-4214

15 MICHAEL NOURMAND  
16 JAMES A. DE SARIO  
17 THE NOURMAND LAW FIRM, APC  
18 8822 West Olympic Boulevard  
19 Beverly Hills, California 90211  
20 Telephone: (310) 553-3600

21 CAROLYN H. COTTRELL  
22 ESTHER L. BYLSMA  
23 SCHNEIDER WALLACE  
24 COTTRELL KONECKY LLP  
25 2000 Powell Street, Suite 1400  
26 Emeryville, California 94608  
27 Telephone: (415) 421-7100

28 **To Defendant:**

R. BRIAN DIXON  
LAURA E. HAYWARD  
ADAM J. FISS  
LITTLER MENDELSON, P.C.  
333 Bush Street, 34<sup>th</sup> Floor  
San Francisco, CA 94104  
Telephone: (415) 433-1940

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1 **XVIII. CONSTRUCTION**

2 89. This Settlement is the result of lengthy, arms-length negotiations between the  
3 Parties. This Settlement will not be construed in favor of or against any Party by reason of the extent  
4 to which any Party or her or its counsel participated in the drafting of this Settlement.

5 **XIX. CAPTIONS AND INTERPRETATIONS**

6 90. Paragraph and section titles, headings, or captions contained in this Settlement  
7 are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or  
8 describe the scope of this Settlement or any of its provisions. Each term of this Settlement is  
9 contractual and not merely a recital, except for those set forth in Section I, above.

10 **XX. MODIFICATION**

11 91. This Settlement may not be changed, altered, or modified, except in writing  
12 and signed by counsel for the Parties and approved by the Court. This Settlement may not be  
13 discharged except by performance in accordance with its terms or by a writing signed by the Parties.

14 **XXI. APPLICABLE LAW**

15 92. All terms and conditions of this Agreement will be governed by and  
16 interpreted according to the laws of the State of California, without giving effect to any conflict of  
17 law or choice of law principles.

18 **XXII. INTEGRATION CLAUSE**

19 93. This Settlement and all the attached Exhibits which by this reference are  
20 incorporated into this Settlement constitutes the entire agreement between the Parties relating to the  
21 Settlement and transactions contemplated by the Settlement. All prior or contemporaneous  
22 agreements, understandings, representations, and statements, whether oral or written and whether by  
23 a Party or a Party's counsel, are merged into this Settlement. No rights under this Settlement may be  
24 waived except in writing.

25 **XXIII. BINDING ON ASSIGNS**

26 94. This Settlement will be binding upon and will inure to the benefit of the  
27 Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

28 ///

1 **XXIV. CLASS MEMBER SIGNATORIES**

2 95. It is agreed that because the members of the Class are so numerous, it is  
3 impossible or impractical to have each Class Member who does not timely and validly opt-out  
4 execute this Settlement. The Class Notice will inform all Class Members of the binding nature of  
5 the release contained herein will have the same force and effect as if this Settlement were executed  
6 by each Class Member who does not timely and validly opt-out.

7 **XXV. COUNTERPARTS**

8 96. This Settlement may be executed in counterparts, and when each Party has  
9 signed and delivered at least one such counterpart, each counterpart will be deemed an original, and,  
10 when taken together with other signed counterparts, will constitute one Settlement, which will be  
11 binding upon and effective as to all Parties.

12 97. This Settlement may be signed by facsimile signature or digital signature,  
13 each of which will have the same force and effect as an original signature.

14 **XXVI. PARTIES' AUTHORITY TO SIGN**

15 98. The signatories to this Settlement hereby represent that they are fully  
16 authorized to enter into this Settlement on behalf of themselves or their respective principals.

17 **EXECUTION BY PARTIES AND COUNSEL**

18 The Parties and their counsel hereby execute this document to evidence their  
19 acceptance of and agreement to the Settlement.

20 Dated: 04/04/2023, 2023

21 DocuSigned by:  
22 Walter McCarthy  
23 WALTER M. MCCARTHY  
24 Plaintiff

25 Dated: \_\_\_\_\_, 2023

26 \_\_\_\_\_  
27 LETICIA RODARTE  
28 Plaintiff

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19 acceptance of and agreement to the Settlement.

20 Dated: \_\_\_\_\_, 2023  
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22 \_\_\_\_\_  
23 HOLLY McCARTHY  
24 Plaintiff

25 Dated: 03-28-2023, 2023

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27 \_\_\_\_\_  
28 LETICIA RODARTE  
Plaintiff

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Dated: 03 / 30 / 2023, 2023



\_\_\_\_\_  
RACHEL MENDOZA  
Plaintiff

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
LARRY W. LEE  
SIMON L. YANG  
DIVERSITY LAW GROUP, P.C.  
  
Attorneys for Plaintiffs and Settlement Class


Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
WILLIAM L. MARDER  
POLARIS LAW GROUP LLP  
  
Attorneys for Plaintiffs and Settlement Class

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
MICHAEL NOURMAND  
JAMES A. DE SARIO  
THE NOURMAND LAW FIRM, APC  
  
Attorneys for Plaintiffs and Settlement Class

Dated: April 3, 2023

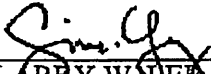
  
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CAROLYN H. COTTRELL  
ESTHER L. BYLSMA  
SCHNEIDER WALLACE COTTRELL  
KONECKY LLP  
  
Attorneys for Plaintiffs and Settlement Class

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Dated: \_\_\_\_\_, 2023

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RACHEL MENDOZA  
Plaintiff

Dated: April 3, 2023

  
\_\_\_\_\_  
LARRY W. YEE  
SIMON L. YANG  
DIVERSITY LAW GROUP, P.C.

Attorneys for Plaintiffs and Settlement Class

Dated: April 4, 2023

  
\_\_\_\_\_  
WILLIAM L. MARDER  
POLARIS LAW GROUP LLP

Attorneys for Plaintiffs and Settlement Class

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
MICHAEL NOURMAND  
JAMES A. DE SARIO  
THE NOURMAND LAW FIRM, APC

Attorneys for Plaintiffs and Settlement Class

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
CAROLYN H. COTTRELL  
ESTHER L. BYLSMA  
SCHNEIDER WALLACE COTTRELL  
KONECKY LLP

Attorneys for Plaintiffs and Settlement Class

1 Dated: \_\_\_\_\_, 2023

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\_\_\_\_\_  
RACHEL MENDOZA  
Plaintiff

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5 Dated: \_\_\_\_\_, 2023

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\_\_\_\_\_  
LARRY W. LEE  
SIMON L. YANG  
DIVERSITY LAW GROUP, P.C.

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Attorneys for Plaintiffs and Settlement Class

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10 Dated: \_\_\_\_\_, 2023

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WILLIAM L. MARDER  
POLARIS LAW GROUP LLP

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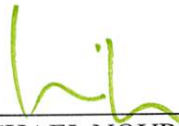
Attorneys for Plaintiffs and Settlement Class

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15 Dated: 3/20 \_\_\_\_\_, 2023

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\_\_\_\_\_  
MICHAEL NOURMAND  
JAMES A. DE SARIO  
THE NOURMAND LAW FIRM, APC

18

Attorneys for Plaintiffs and Settlement Class

19

20 Dated: \_\_\_\_\_, 2023

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CAROLYN H. COTTRELL  
ESTHER L. BYLSMA  
SCHNEIDER WALLACE COTTRELL  
KONECKY LLP

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Attorneys for Plaintiffs and Settlement Class

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DocuSigned by:  
*Elena Dietrich*  
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THE VONS COMPANIES, INC.  
Defendant

By Elena Dietrich  
[Print Name]

Its SVP, Field Operations & Employment Law

Dated: April 4, 2023



R. BRIAN DIXON  
LAURA E. HAYWARD  
ADAM J. FISS  
LITTLER MENDELSON, P.C.

Attorneys for Defendant  
THE VONS COMPANIES, INC.

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