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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

KATHERINE BAKER, JOSÉ LUNA,  
EDGAR POPKE, and DENNY G.  
WRASKE, Jr. on behalf of themselves and  
all others similarly situated,

Plaintiffs,

v.

SAVE MART SUPERMARKETS and  
SAVE MART SELECT RETIREE  
HEALTH BENEFIT PLAN,

Defendants.

Case No. 3:22-CV-4645-AMO

**CLASS ACTION**

**SECOND AMENDED COMPLAINT  
(ERISA)**

## INTRODUCTION

1. This case seeks redress for breaches of fiduciary duty by Defendant Save Mart Supermarkets (“Save Mart” or “Defendant”) with respect to the Save Mart Select Retiree Health Benefit Plan (the “Plan”) and for Save Mart’s failure to comply with the Plan terms for terminating a benefit program under the Plan. Save Mart repeatedly represented to Named Plaintiffs Katherine Baker, Jose Luna, Edgar Popke, and Denny G. Wraske, Jr. (“Plaintiffs”), and all other similarly situated Class members, that the company would provide non-union retirees with medical benefits as good or better than their union counterparts, and that the retiree medical benefits would be provided to any eligible non-union retiree and their spouse *for the life of the retiree*. Save Mart made these representations consistently up until the company announced in April 2022 that it was ending the non-union retiree medical benefit effective June 30, 2022. These representations were false and misleading because they obscured that the Plan could in fact be eliminated at any time, and that Save Mart did in fact intend to (and did) eliminate the Plan as a cost-saving measure when that became advantageous to Save Mart, which occurred immediately upon Save Mart’s acquisition by a private equity firm from the family that had owned the company since its founding 70 years ago.

2. Save Mart’s motive for misrepresenting the terms and value of the Plan was simple: to save money, suppress union activity, and induce Plaintiffs and the Class to work for Save Mart long enough to qualify for retiree medical benefits. Save Mart repeatedly and successfully used the medical benefits provided by the Plan to persuade employees not to join the United Food and Commercial Workers (UFCW)—a union that represented many grocery workers including at certain Save Mart stores during the relevant period—and to instead work in positions that were not covered by the UFCW’s collective bargaining. Specifically, Save Mart touted the company’s non-union retiree medical benefits as superior or equal to the benefits workers could obtain through union employment. As explained in detail below, this representation was made numerous times over a period of many years by Save Mart’s Human Resources (HR) and executive level employees in group and individual meetings with workers. According to former Vice President of HR Wendy Kennedy, “[t]hese statements were made so regularly by

1 management, supervisors, and Human Resources personnel that it was commonly understood and  
 2 repeated by and amongst Save Mart employees.” Decl. of Wendy Kennedy (“Kennedy Decl.”),  
 3 submitted herewith, ¶ 12. This message was also expressly set forth in written materials that were  
 4 disseminated to employees to persuade those employees to vote no to unionization in their stores;  
 5 for example a pamphlet entitled “Save Mart Answers Your Questions About Unions” was given  
 6 to Plaintiff Jose Luna, and it states: “your benefits are already better, or equal to, the benefits in a  
 7 union store.” Exhibit A, submitted herewith. Save Mart also distributed a pamphlet entitled  
 8 “Save Mart Select Retiree Benefits” to each employee on an annual basis, which states that retiree  
 9 medical coverage ends “upon the death of the retiree.” Exhibit B, submitted herewith.

10 3. These representations were false. In reality, the UFCW’s collective bargaining  
 11 agreement—which Save Mart is a party to—provided for, and continues to provide for, retiree  
 12 medical benefits to union retirees that were and are more secure than those offered by the Plan.  
 13 Unlike benefits provided by the Plan, the terms of the union’s retiree medical benefit program do  
 14 not permit Save Mart to eliminate the benefits at its own discretion. Unlike the benefits provided  
 15 by the Plan, the money that funds the union benefits is held by a trust and can only be used for  
 16 purposes of providing benefits, and it cannot be taken back by Save Mart. Unlike the Plan, the  
 17 union retiree medical benefits are sponsored by a joint labor-management board of trustees that  
 18 ensures employee representatives have equal representation and negotiation leverage in the  
 19 decisions that are made around how benefits will be provided. Crucially, unlike the Plan, the only  
 20 process that could result in elimination of the union benefits is collective bargaining. By contrast,  
 21 the Plan’s non-union benefits could be eliminated on the company’s whim and were eliminated as  
 22 soon as the company was acquired by new owners, who were eager to turn a quick profit on their  
 23 investment.

24 4. Thus, Save Mart’s representations to its workers that it would provide benefits as  
 25 good or better than the union’s benefits were false. Save Mart’s retiree medical benefits for non-  
 26 union employees were in fact far less secure and allowed Save Mart to eliminate the benefits at  
 27 any time, at Save Mart’s sole discretion. Put simply, Save Mart made false assurances about the  
 28 Plan’s benefits as a means of suppressing union enrollment among Save Mart employees. When

1 Save Mart functionally ended retiree medical benefits for non-union employees in June 2022,  
2 Save Mart's non-union employees—including Plaintiffs and other Class members—no longer had  
3 any form of retiree medical benefits, while Save Mart's UFCW employees continue to enjoy  
4 those benefits. Save Mart's misrepresentations therefore harmed Plaintiffs and the Class by  
5 inducing them to continue working for Save Mart as long as it took to become eligible for  
6 benefits under the Plan instead of other employment opportunities in order to secure retiree  
7 medical benefits for themselves and their spouses that have now been taken away, preventing  
8 them from adequately planning for and saving for their retirements because they relied on the  
9 availability of this valuable benefit.

10 5. Save Mart compounded these misrepresentations when it amended the Plan for  
11 2016, by leveraging the non-union medical benefits to save costs for the company. Specifically,  
12 Save Mart told retirement-eligible employees that if they did not retire on or before December 31,  
13 2017, then they would lose the Plan's medical benefits for their spouses. This representation  
14 caused Plaintiffs, as well as numerous other Class members, to retire earlier than they otherwise  
15 would have in order to retain the spousal benefit for life.

16 6. Plaintiffs and the Class are dedicated, loyal, and long-time Save Mart employees.  
17 Plaintiff Baker worked for Save Mart for 28 years; Plaintiff Luna for 33 years; Plaintiff Popke for  
18 39 years; and Plaintiff Wraske for 46 years. Indeed, in order to be eligible to participate in the  
19 Plan, an employee had to meet one of the following service requirements: (a) age 55 with 30  
20 years of service; (b) age 60 with 15 years of service; (c) age 65 with ten years of service; or (d)  
21 the "Golden 85," whereby years of service plus age equals or exceeds 85. Thus, Plaintiffs and the  
22 Class dedicated their entire careers, or major portions thereof, to Save Mart in return for the  
23 promise of the Plan's benefits upon retirement, including the medical benefits. Save Mart  
24 induced Plaintiffs and the Class to remain employed at Save Mart these many years by  
25 misrepresenting that upon retirement, the medical benefits would be theirs for the duration of  
26 their lives.

27 7. Subsequent to the filing of Plaintiffs' initial and first amended complaints,  
28 Plaintiffs have learned, through the discovery process, that Save Mart did not terminate the HRA



benefit program in compliance with the governing Plan terms for terminating a benefit program. As alleged in detail herein, *infra*, this gives rise to additional claims by Plaintiffs and the proposed Class that are asserted for the first time in this Second Amended Complaint.

8. Absent legal recourse, these long-time employees will be forced to pay for medical care and health insurance entirely on their own for the rest of their lives at significant cost—a cost they had not prepared for, given Save Mart’s repeated representations that their decades of loyalty to the company had resulted in a lifetime medical benefit. To deny them legal recourse would be to reward Save Mart’s breach of the trust Plaintiffs and the Class placed in Save Mart over the course of their life-long dedication to the company’s success. Further, Plaintiffs and the Class lost all of the unused money that they had accumulated in their Health Reimbursement Arrangement (“HRA”) benefit accounts as of June 2022, which for many Class members was in the tens-of-thousands of dollars. Thus, in eliminating the HRA benefit program, Save Mart not only broke faith with its most dedicated employees by eliminating their medical benefits going forward, it also realized ill-gotten savings of millions of dollars in existing liability that Plaintiffs and Class members had intended to use towards health insurance premiums and to reimburse medical expenses, based on the amounts that had already accrued in their accounts. Through this action, Plaintiffs and the Class seek to prevent these unlawful and unjust results.

### **JURISDICTION**

9. Plaintiffs bring this action for declaratory, injunctive, and monetary relief pursuant to sections 502(a)(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1132 (a)(3). This Court has subject matter jurisdiction over Plaintiffs’ claim pursuant to ERISA § 502(e) and (f), 29 U.S.C. § 1132(e) and (f), and 28 U.S.C. § 1331.

### **VENUE**

10. Venue lies in the Northern District of California pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the breaches alleged occurred in this District, and the ERISA-governed plan at issue was administered in this District.

11. Venue is also proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs’ claim occurred within this District. Save Mart

operates dozens of stores in this District. Plaintiff Baker currently resides, and did reside for the entire course of her career, in this District and received Plan benefits in this District. Plaintiffs Wraske, Popke and Baker all lived and worked in this District while accumulating the service credits necessary to become eligible for benefits under the Plan. Save Mart frequently transferred its employees into and within this District, including Plaintiffs Wraske and Popke.

### **PARTIES**

12. At all relevant times, Plaintiff Katherine Baker was a participant in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7). Ms. Baker began working for Save Mart in 1989 when Save Mart purchased Fry's Food Stores, where Ms. Baker had been working since 1977. Ms. Baker continued working at Save Mart until 2017, during which time she obtained the age and service requirements necessary to become eligible for benefits under the Plan, including participation in the HRA benefit program for herself and her spouse. Ms. Baker retired from Save Mart in 2017 specifically to lock in the HRA benefit for her spouse. She was 57 years old at the time, and had not planned on retiring until at least 2023.

13. At all relevant times, Plaintiff Jose Luna was a participant in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7). Mr. Luna worked for Save Mart from 1984 to 2017, during which time he obtained the age and service requirements necessary to become eligible for benefits under the Plan, including participation in the HRA benefit program for himself and his spouse. Mr. Luna retired from Save Mart in 2017 specifically to lock in the HRA benefit for his spouse. He was 53 years old at the time, and had not planned on retiring until at least 2023.

14. At all relevant times, Plaintiff Edgar Popke was a participant in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7). Mr. Popke worked for Save Mart from 1978 to 2017, during which time he obtained the age and service requirements necessary to become eligible for benefits under the Plan, including participation in the HRA benefit program for himself and his spouse. Mr. Popke retired from Save Mart in 2017 specifically to lock in the HRA benefit for his spouse. He was 56 years old at the time, and had not planned on retiring until at least 2023.

15. At all relevant times, Plaintiff Denny G. Wraske, Jr. was a participant in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7). Mr. Wraske worked for Save Mart from 1971 to 2017, during which time he obtained the age and service requirements necessary to become eligible for benefits under the Plan, including participation in the HRA benefit program for himself and his spouse. Mr. Wraske retired from Save Mart in 2017 specifically to lock in the HRA benefit for his spouse. He was 64 years old at the time, and had not planned on retiring until at least 2020.

16. Defendant Save Mart is a grocery store operator headquartered in Modesto, California. At all relevant times, the Plan was an employee welfare benefit plan within the meaning of ERISA § 3(1), 29 U.S.C. § 1002(1). At all relevant times, Save Mart was the Plan administrator within the meaning of ERISA § 3(16), 29 U.S.C. § 1002(16)(A)(i), the Plan sponsor within the meaning of ERISA § 3(16), 29 U.S.C. § 1002(16)(B), and a fiduciary of the Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21).

17. Defendant Save Mart Select Retiree Health Plan is an employee welfare benefit plan within the meaning of ERISA § 3(1), 29 U.S.C. § 1002(1). At all relevant times the Plan required Save Mart to make HRA contributions to Plaintiffs and the Class.

## FACTS

18. Save Mart is the largest regional grocer in California, operating over 200 stores across northern and central California and western Nevada. Save Mart employs tens of thousands of people and generates billions of dollars in annual revenue.

19. Save Mart employees receive different benefits from the company depending on whether they are union members or non-union employees. Most of the union employees receive benefits through the UFCW & Employers Trust pursuant to collective bargaining agreements. Non-union employees receive benefits pursuant to the terms of benefit plans adopted by Save Mart, governed by the terms of the benefit plans Save Mart has chosen to establish.

20. The Save Mart Select Retiree Health Benefit Plan, referred to herein as the Plan, is one of the benefit plans adopted by Save Mart for its non-union employees. It provides health care benefits to eligible retirees and their dependents. At all relevant times, the Plan provided for

1 a substantial medical benefit for retirees and their spouses, whether in the form of an HRA plan or  
2 payment of insurance premiums.

3 21. From the Plan's inception until the end of 2015, the Plan provided group medical  
4 benefits to retirees and their dependents and contributed toward the premiums for that coverage.  
5 Starting in 2016, Save Mart modified the Plan to provide funding to a Health Reimbursement  
6 Account in lieu of premium contributions, referred to herein as the HRA benefit. The HRA  
7 benefit was a monthly \$500 contribution to a health reimbursement account for each eligible  
8 retiree and an additional \$500 for their spouse (or \$300, respectively, after age 65). The retiree  
9 and spouse could use the money accrued in their HRA account to pay for qualified medical  
10 expenses, including paying premiums for individual health insurance coverage that retirees  
11 purchased for themselves and their spouses. Under the terms of the Plan, the monthly  
12 contributions for each retiree and spouse accumulated until they were used for qualified medical  
13 expenses. Members of Save Mart's HR Department communicated to employees that this benefit  
14 "could accumulate up until the retiree's death, [] could not be taken away, and that there was no  
15 deadline by which the amounts in the employee's HRA needed to be used prior to the death of the  
16 retiree." Decl. of Valerie Vallo ("Vallo Decl."), submitted herewith, ¶ 16.

17 22. At all times pertinent to this case, Save Mart UFCW-member employees received  
18 retiree medical benefits based on similar eligibility criteria to the Plan. UFCW retirees continue  
19 to receive those benefits to this day, and unlike the benefits provided by the Plan, those retiree  
20 medical benefits cannot be taken away at Save Mart's discretion.

21 23. The terms of the Plan and the Plan's Summary Plan Description stated that Save  
22 Mart "has the right to modify or terminate the Plan at any time for any reason." However, Save  
23 Mart consistently and repeatedly misrepresented the meaning of this term to its employees.  
24 Specifically, it consistently and repeatedly told employees that—like the union benefits—retirees  
25 and their spouses would keep their retirement benefits provided by the Plan until the death of the  
26 retiree. Save Mart made this misrepresentation both orally and in writing.

27 24. Save Mart made repeated oral misrepresentations about the terms of the Plan to  
28 Plaintiffs, to existing employees, to potential recruits, and to the employees of stores that Save

1 Mart acquired over the years, in order to convince them not to join the union. Any time a new  
 2 store opened or the union started to organize at an existing store, Save Mart sent a senior  
 3 executive and an HR employee or employees to that store to meet with the employees. In these  
 4 meetings, the HR representative(s) and company executive were trained to communicate that  
 5 employees should not pay dues to join the union, since the non-union benefits—including  
 6 retirement benefits—would always be as good as or better than the benefits enjoyed by union  
 7 employees.

8         25. This understanding of the Plan emanated from the very top of the company.  
 9 Wendy Kennedy served as Save Mart’s Vice President of HR in the early 2000s. Kennedy Decl.  
 10 ¶ 3. In that role, Ms. Kennedy “oversaw the entire Human Resources Department, including  
 11 payroll, benefits, recruiting, hiring, employee relations, and training.” *Id.* ¶ 5. “All Human  
 12 Resources employees ultimately reported to [her],” and she in turn “reported directly to Mike  
 13 Silveira, the Senior Vice President of Human Resources.” *Id.* With respect to retirement  
 14 benefits, Ms. Kennedy’s “job duties included participating in meetings with Human Resources  
 15 personnel including the Benefits Manager as well as Store Managers, Division Supervisors, and  
 16 other employees about these benefits.” *Id.* ¶ 8. Ms. Kennedy confirms that “Save Mart  
 17 leadership reassured employees coming from union stores that non-union benefits would be as  
 18 good as or better than the union’s,” *id.* ¶ 12, and that she “always understood that Save Mart  
 19 would provide eligible non-union retirees with health care benefits . . . for the duration of their  
 20 lives,” *id.* ¶ 8.

21         26. In her role as Vice President of HR, Ms. Kennedy “conveyed this understanding to  
 22 the rest of the Human Resources personnel because [she] believed it to be true.” Kennedy Decl. ¶  
 23 10. Ms. Kennedy therefore “directed the personnel on [her] Human Resources Department team  
 24 to disseminate this message and they did so.” *Id.* ¶ 14. Those personnel would in turn  
 25 communicate that understanding to other Save Mart employees. For example, Kit Tharp explains  
 26 that in her role as a member of Save Mart’s HR Department, one of her “primary job duties” was  
 27 “pitching how generous the non-union benefits packages were and specifically that they were as  
 28 good or better than the union benefits.” Decl. of Kathleen Tharp (“Tharp Decl.”), submitted

herewith, ¶¶ 4-5. Ms. Tharp received the instruction to deliver this message from Save Mart executives, including Director of HR Jerry Sauer, Director of HR Steve Goodman, and Vice President of HR Mike Silveira. *Id.* Ms. Tharp also received this instruction in “training that [she] received when [she] joined Save Mart and over the course of [her] employment there,” and on the basis of this training she “always understood that Save Mart would provide eligible non-union retirees with health care benefits for the duration of their lives.” *Id.* ¶ 9. Indeed, “[i]n nearly 30 years of working in the Human Resources Department at Save Mart, no one ever told [Ms. Tharp] that the company could decide to eliminate [a] retiree’s health benefits or mentioned any sort of end date.” *Id.* ¶ 15. Ms. Tharp therefore confidently delivered the message to Save Mart employees that the Plan’s medical benefits were guaranteed for life at orientations for new store openings as well as in meetings with new hires or transferring employees. *Id.* ¶ 6.

27. At new store openings—which Ms. Tharp participated in between six and ten times per year—she was joined in delivering this message by a Vice President of HR, a Division Supervisor, a Store Manager, a Training Manager, and/or a HR Benefits Department Manager. Tharp Decl. ¶ 6. When a new store opened, it was not part of a union and would unionize only if the employees later voted to unionize. New stores were staffed by both new employees and employees transferring from an existing Save Mart location. When existing employees who were union members at their prior location expressed concern about losing their union benefits, they were repeatedly assured “not to worry” because “their benefits would be as good or better than the union’s.” *Id.* ¶ 7. In reassuring these existing employees, Ms. Tharp recalls believing that “Save Mart intended to take care of eligible non-union retirees for life because . . . the union benefits [were] for life and the non-union benefits were promised to be as good or better.” *Id.* Similarly, Ms. Kennedy recalls multiple employee rallies at which owner Bob Piccinini told employees that they were “a family.” Kennedy Decl. ¶ 7. It was her “true understanding” that “non-union retiree health benefits would always be as good or better than the union’s,” *id.* ¶ 15, and that “lifetime benefits” were a “key pillar” of the promise that Bob Piccinini would take care of the Save Mart family, *id.* ¶ 7.

28. When Save Mart received reports that a store may be unionizing, it deployed HR

professionals to “tout the generousness of the benefits package and reiterate that the non-union benefits were always as good or better than the union benefits.” Tharp Decl. ¶ 8. For example, Valerie Vallo recalls that an “important part of her role” as Manager of Employee Relations “was visiting stores to discuss the advantages to employees of stores remaining non-unionized, by talking about how generous the employee benefits were for non-union employees.” Vallo Decl. ¶ 5. Internally, these meetings were referred to as “the roadshow” or “kumbaya” meetings because “the purpose was to foster harmony amongst the employees by reassuring them about their benefits and quelling any desires to give up those benefits” by unionizing. *Id.* As with Ms. Tharp, Ms. Vallo had been trained by Save Mart to understand and communicate “that Save Mart would provide eligible non-union retirees with health care benefits for the duration of their lives.” *Id.* ¶ 6. In addition to receiving this message at “training that [she] received when [she] joined Save Mart and over the course of [her] employment there,” *id.*, Ms. Vallo recalls being told by Save Mart’s Vice President of HR, John Bacon, to deliver this message to employees, *id.* ¶ 10. The message worked: many Save Mart stores remained non-union “because the employees wanted to retain the benefits promised to non-unionized staff.” *Id.* ¶ 10. Ms. Kennedy likewise recalls that Save Mart’s anti-union messaging “was very effective and convincing to employees, and many Save Mart stores remained non-union because employees understood that their benefits would always be as good or better than the union’s.” Kennedy Decl. ¶ 13.

29. Save Mart also misrepresented the terms of the Plan to employees in writing. In various descriptions of the Plan that Save Mart disseminated to employees over the years, it told employees that they would be covered under the Plan until they died.

30. For example, Save Mart sent a pamphlet entitled “Save Mart Select Retiree Benefits” to each employee on an annual basis. Exhibit B; Vallo Decl. ¶ 15; Tharp Decl. ¶ 12. That pamphlet specifically stated that retiree medical coverage ends “[u]pon the death of the retiree,” as shown in the screenshot below:



**WHEN COVERAGE ENDS**

- Upon non-receipt of your monthly premium contribution payment by the payment due date.
- Upon the death of the retiree. ✓
- Spousal coverage ends upon divorce from or death of the retiree. Domestic partner coverage ends upon termination of the domestic partnership or death of the retiree. Spouses only may be eligible to extend medical plan coverage upon death or divorce under the Consolidated Omnibus Budget Reconciliation Act (COBRA).

31. Save Mart's HR professionals relied on this document to explain retirement benefits to Save Mart employees. Tharp Decl. ¶ 12; Vallo Decl. ¶ 15. Ms. Tharp and Ms. Vallo "understood this to mean that benefits would last until the retiree died." *Id.* Accordingly, when employees asked HR about the HRA plan, they were told "that this provision meant the benefit would last for the duration of the retiree's life." *Id.*

32. Save Mart made similar written misrepresentations of the Plan in a document entitled "Save Mart Supermarkets 2010 Retiree Health Plan Highlights." Exhibit C. This document, also, told employees that the medical benefit would last until the death of the retiree, as shown in the screenshot below:

**When Coverage Ends**

- Upon the death of the retiree
- Spousal coverage ends upon divorce from or death of the retiree. Spouses may be eligible to extend medical plan coverage upon death or divorce under the Consolidated Omnibus Budget Reconciliation Act (COBRA).

33. Upon information and belief, discovery will show many more written misrepresentations of the Plan informing employees that the retiree medical benefits they worked so hard to secure would be theirs for the duration of their lives. None of these written materials informed employees that the governing Plan documents stated that Save Mart retained the discretion to terminate the Plan and any of its component benefits at any time, including retroactively. Indeed, Ms. Kennedy confirms that in her years as Vice President of HR, she "oversaw the dissemination" of "booklets, pamphlets, letters, and other documents describing non-union retiree health benefits to employees," and does "not recall ever seeing mention in any of these documents that Save Mart reserved the right to terminate these benefits." Kennedy Decl.

¶ 16.

34. Plaintiffs and their beneficiaries, and hundreds or thousands of similarly situated people, made employment decisions and planned the financial details of their retirements, including vitally important decisions like how long they would work before retirement, based on Save Mart's misrepresentations about the duration of the retiree medical benefits, which they reasonably believed would last for the rest of their lives based on Save Mart's direct misrepresentations that they would.

35. At the time of the 2016 Plan amendment implementing the HRA benefit program for non-union employees, Save Mart told retirement-eligible employees that if they retired before December 31, 2017, they would be able to retain the HRA benefit for their spouses, but that the spousal benefit would not be available to employees who retired after this date. The purpose of this feature of the amendment was to persuade eligible employees to retire because Save Mart had concluded that their retirements were in the best economic interests of the company, and in so doing Save Mart acted against the best interests of their employees and potential Plan participants. The HR professionals charged with communicating this change to Save Mart employees and with fielding any questions about the amendment understood that the purpose of the change was to drive up retirement numbers. Vallo Decl. ¶ 12. These employees were also trained to communicate that the new "HRA benefit would belong to an employee until they died." *Id.* ¶ 14.

36. In connection with this announcement, Plaintiffs and other similarly situated employees spoke with HR employees who were specifically tasked by Save Mart to communicate information about retiree medical benefits. HR told them that by retiring by December 31, 2017, they would retain the HRA benefit for them and their spouses for life.

37. Plaintiffs and numerous other similarly situated employees retired earlier than they were planning to, on the basis of Save Mart's misrepresentation that they would retain the HRA benefit for life for them and their spouses if they retired by December 31, 2017.

38. Save Mart's representations that the HRA benefit would continue for life were false and misleading. The terms of the Plan allowed Save Mart to terminate the program at any

1 time, including for employees who retired before December 31, 2017.

2 39. In March 2022 a private equity firm called Kingswood Capital Management LP  
 3 acquired Save Mart from the family that had owned it since its founding 70 years prior. The new  
 4 owners *immediately* took action to eliminate the non-union benefits that Save Mart had so long  
 5 promised would be as good or better than the union's and would last for life. On April 2022,  
 6 Save Mart announced that it was eliminating the HRA benefit entirely as of June 2022, which  
 7 eliminated all retiree medical benefits for non-union retirees. Plan participants were told that they  
 8 had until June 2022 to incur covered medical expenses that would be paid for by the funds  
 9 accumulated in their HRA accounts. After June 2022, no further medical expenses would be  
 10 covered, and all funds accumulated in the HRA accounts would revert to Save Mart. The  
 11 decision to eliminate the HRA benefit and reclaim the accrued funds from employee accounts has  
 12 saved Save Mart's new owners tens of millions of dollars to date and will amount to potentially  
 13 hundreds of millions of dollars over the lifetimes of the eligible retirees in the Class.

14 40. This abrupt change in policy shocked not only Plaintiffs, but also the HR  
 15 professionals who had been communicating to employees for years that the Plan's medical  
 16 benefits were guaranteed for life and had themselves relied upon this lifetime guarantee in  
 17 making personal employment decisions. For example, Ms. Tharp had "counted on" receiving the  
 18 benefits for both herself and her spouse until she died, and was therefore "shocked when [she]  
 19 received notice from the company that it was terminating these benefits." Tharp Decl. ¶ 17. As  
 20 was the case for Plaintiffs and many other Save Mart employees, Ms. Tharp "had chosen to  
 21 continue [her] employment at Save Mart for so many years specifically because of the promise of  
 22 retiree medical benefits," and "would not have retired in 2015 had [she] believed Save Mart could  
 23 terminate the HRA benefit." *Id.* ¶¶ 17-18. Similarly, Ms. Vallo had retired early in 2017 in direct  
 24 response to Save Mart's promise that early retirees could preserve the Plan's medical benefits for  
 25 themselves and their spouses for life, as her husband had just undergone two major surgeries and  
 26 it was a top priority for her to preserve his medical benefits. Vallo Decl. ¶ 19. She, too, "was  
 27 shocked when [she] received notice in April 2022 from the company that it was terminating these  
 28 benefits," as this was "not something that [she] ever thought could happen" and she "would not

1 have retired in 2017 had [she] believed Save Mart could terminate the HRA benefit.” *Id.*

2 41. As a direct and proximate result of Save Mart’s misrepresentations regarding the  
3 duration of the HRA benefit, Plaintiffs and a similarly situated class of retirees and their  
4 beneficiaries were harmed in the form of lost retiree health benefits.

5 42. Save Mart’s actions in ceasing HRA contributions and dismantling the HRA  
6 benefit program in 2022 were not in compliance with the terms of the Plan.

7 43. The terms of the Plan state that: “The Company reserves the right to terminate the  
8 Plan or any Benefit Program at any time as designated by a written instrument adopted by the  
9 Board of Directors or its designee and duly executed on behalf of the Company.”

10 44. The HRA benefit was a “Benefit Program” within the meaning of the Plan.

11 45. Subsequent to the filing of their initial and first amended complaints Plaintiffs  
12 have learned through discovery that there is no “written instrument adopted by the Board of  
13 Directors or its designee and duly executed on behalf of the Company” terminating the HRA  
14 benefit program.

15 46. Save Mart was required by law to comply with the procedures and requirements  
16 set forth in the Plan document when terminating the HRA benefit program. Because Save Mart  
17 did not do that with respect to the HRA benefit program, the program should still be operational:  
18 participants should have received HRA contributions continuously from July 2022 to the present,  
19 participants should have been able to continue to utilize accrued amounts in their HRA on  
20 qualified medical expenses, and employees who retired between April 2022 and the present, and  
21 who satisfied the eligibility requirements, should have been permitted to become participants in  
22 the Plan.

23 47. Out of an abundance of caution, coincident with the filing of Plaintiffs’ motion for  
24 leave to amend the complaint, Plaintiffs initiated the Plan’s administrative claim process and  
25 submitted claims for benefits under the terms of the Plan to Save Mart in its capacity as Plan  
26 Administrator, through Save Mart’s counsel in this litigation. As of this filing Save Mart has not  
27 responded to Plaintiffs’ claims. Because Save Mart has clearly stated its position that it was  
28 entitled to terminate the program and did lawfully terminate the program, and in fact has already

dismantled the infrastructure necessary to administer the program and has not made any contributions or paid any claims out of the program since 2022, Plaintiffs believe that exhaustion of their administrative remedies with respect to this claim is futile.

48. As a direct and proximate result of Save Mart's failure to comply with the Plan's procedures for terminating a benefit program, Plaintiffs and a proposed class of similarly situated retirees and their beneficiaries have been denied monthly HRA contributions that they were entitled to receive, along with reimbursement of qualified medical expenses from their HRA accounts, from June 2022 continuing through to the present and into the future.

### **RULE 23 ALLEGATIONS**

49. Plaintiffs bring this action as a proposed class action on behalf of themselves and a Class of those similarly situated.

50. The proposed Class is all people who were participants in the Plan as of June 30, 2022, and all people who retired and met the eligibility criteria to become participants in the Plan at any time between April 22, 2022 and the resolution of this action.

51. The proposed Class is numerous, consisting of hundreds of people, such that joinder is impractical.

52. There are questions of law and fact common to the Class, including but not limited to:

a. Whether Save Mart complied with the Plan terms governing termination of benefit programs when it purported to eliminate the HRA benefit program in 2022?

b. Whether Plaintiffs and the Class are entitled to relief under ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) based on Save Mart's failure to properly terminate the HRA benefit program?

c. Whether Plaintiffs and the Class are entitled to equitable relief, in the form of equitable surcharge, injunction, or other appropriate equitable relief under ERISA § 502(a)(3) because of Save Mart's failure to properly terminate the HRA benefit program?

d. Whether Save Mart misrepresented the terms of the retiree medical benefit to Class members?

e. Whether such misrepresentations constituted breaches of fiduciary duty under ERISA § 401(a)(1)(A)-(B)?

f. Whether Plaintiff and the Class are entitled to equitable surcharge or other monetary relief to make them whole for Save Mart's breaches of fiduciary duty?

g. Whether Plaintiffs and the Class are entitled to equitable relief to reform the terms of the Plan to make those terms consistent with the representations Save Mart made about the Plan benefits?

53. These common questions of law and fact predominate over any relevant individual issues.

54. Plaintiffs are members of the Class, and have claims typical of the Class.

55. Plaintiffs are adequate class representatives, and have secured counsel experienced in the prosecution of claims under ERISA and class actions.

### **ALLEGATIONS OF NAMED PLAINTIFFS**

#### **Plaintiff Katherine Baker**

56. Plaintiff Baker began her career in 1977, at the age of eighteen, as a Bagger at a Fry's store in Fremont, California. She worked in various positions until she was promoted to Store Manager in 1988. At all times at Fry's, her position was union.

57. Save Mart purchased Fry's in 1989, and Ms. Baker became a Save Mart employee. Her years of service and her union status were preserved with the acquisition. However, in approximately 1991 Ms. Baker's boss, Dennis Nutson, told her that if she wanted to remain a Store Manager with Save Mart, she would have to give up her union status. Because of the medical needs of her family, Ms. Baker was especially concerned about preserving her medical benefits. Mr. Nutson assured her that as a non-union manager, her benefits would always be as good as or better than the union's benefits. On the basis of this representation, Ms. Baker decided to remain in management and give up her union status.

58. Ms. Baker worked in Fremont, California until approximately 1993, when she moved to manage a store in San José, California. In approximately 1994, she was promoted to General Merchandise Supervisor for the Bay Area. In approximately 2001, she was promoted to

1 Grocery Supervisor for the Bay Area. In approximately 2006, Ms. Baker was promoted to Senior  
2 Director of Operations, based out of Dublin, California but with responsibility for the greater Bay  
3 Area. She remained in this position until her retirement in October, 2017.

4 59. Over the years, Ms. Baker observed Save Mart's efforts to defeat the union from  
5 representing additional stores. One common theme that she heard repeatedly from Save Mart  
6 representatives was that there was no need to join the union, because non-union employees'  
7 benefits would always be as good as or better than the union's benefits.

8 60. Ms. Baker received a version of the "Save Mart Select Retiree Benefits" pamphlet  
9 on one or more occasions that contained the language: "WHEN COVERAGE ENDS:... Upon the  
10 Death of the Retiree." Exhibit B. Ms. Baker understood this to mean that provided she met the  
11 eligibility requirements for retirement, she would receive retirement health benefits for the  
12 duration of her life.

13 61. Ms. Baker participated in meetings with the non-union employees whom she  
14 supervised in which it was clear that the retirement benefits really mattered to these employees,  
15 particularly the store managers, and that the understanding on the part of the employees was that  
16 as long as one met the eligibility requirements, they would retain the retiree medical benefits for  
17 life. As their supervisor, Ms. Baker reinforced this understanding because she also understood  
18 that the benefits were intended to be for life and would always be as good or better than the  
19 union's.

20 62. Throughout Ms. Baker's tenure at Save Mart, she worked long hours and six-day  
21 weeks, as well as numerous holidays. This was the expectation communicated by Save Mart  
22 executives, management, and owner Bob Piccinini. As a salaried worker, Ms. Baker was not  
23 compensated by way of added hourly earnings for the heavy workload, but the message from  
24 Save Mart was that workers would be rewarded for their years of dedicated service, hard work,  
25 and sacrifice with generous retirement benefits, including retiree health care benefits, for the rest  
26 of their lives.

27 63. Ms. Baker was never told by anyone at Save Mart, nor did she ever see or read  
28 anything in writing stating or suggesting that the non-union retiree benefits could be terminated.



1 At all trainings, meetings, and presentations in which she participated or attended, the consistent  
2 message was that non-union retiree benefits were for life and would be as good or better than the  
3 union's.

4 64. In approximately 2017, Ms. Baker received a letter from Save Mart advising her of  
5 her eligibility for retirement, and notifying her that if she retired by December 31, 2017, both she  
6 and her spouse would receive the HRA benefit, but if she did not, her spouse would lose his  
7 benefit. She was fifty-seven years old with forty years of service. Ms. Baker believed the terms  
8 of the letter were cut-and-dry: that if she retired by the deadline, she and her spouse would both  
9 receive the HRA benefit until she died.

10 65. Ms. Baker attended a presentation by HR about this letter and the HRA changes  
11 for all the non-union employees from the twenty-eight stores that Ms. Baker supervised. The  
12 employees had many questions about the HRA changes. The message from the HR  
13 representative was that provided one met the eligibility requirements and retired by December 31,  
14 2017, then the HRA benefit and spousal benefit would last for the life of the retiree.

15 66. Ms. Baker had planned to work until the age of at least sixty-five, and those years  
16 of income figured prominently in her family's retirement planning. However, she did not want to  
17 lose the HRA benefit for her spouse, knowing that medical care is especially important and costly  
18 as one ages.

19 67. In reliance on Save Mart's written and verbal representations that the HRA benefit  
20 for her and her spouse would continue for the duration of her life, Ms. Baker decided to retire  
21 early to keep the spousal benefit, and retired effective October 2017 at the age of fifty-seven.

22 68. Save Mart's termination of the HRA benefit will cost Ms. Baker tens-of-thousands  
23 of dollars over the duration of her life.

24 **Plaintiff Jose Luna**

25 69. Plaintiff Luna began his lifelong career with Save Mart in 1984, at age twenty-one,  
26 as a Cashier in Tracy, California. The store that he joined was one of the few non-unionized Save  
27 Mart stores, and the company was working hard to keep it that way. When Mr. Luna joined, the  
28 recruiters told him that as a non-union employee his benefits would be as good as or better than

1 the union's benefits.

2 70. Within two years, Mr. Luna worked his way up to a Head Clerk position. In 1989,  
3 he was promoted to Assistant Store Manager and moved to a store in Turlock, California. The  
4 store was unionized but management positions were not included in the union. At the time of his  
5 promotion, Save Mart again reassured Mr. Luna that his benefits as a non-union employee would  
6 be as good as or better than the union's benefits.

7 71. Mr. Luna became a Store Manager in 1993 in Modesto, California. From that time  
8 until his retirement in December 2017, Mr. Luna worked as a Store Manager of unionized Save  
9 Mart stores, though he was ineligible to join the union due to his management position.  
10 Throughout that period of time, Mr. Luna heard many times that benefits for non-union  
11 management positions would be as good as or better than the union's. For example, from  
12 approximately 1993 until 2017, Mr. Luna attended regular, monthly meetings at John's Incredible  
13 Pizza in Modesto. The meetings were for store managers in the Northern District, and sometimes  
14 assistant store managers attended as well. If there was a change in benefits, a representative of the  
15 benefits department would attend to discuss it. HR representatives who attended these meetings  
16 over the years included Beth Fugate, Wendy Kennedy, Valerie Vallo, Kit Tharp, and Vickie Del  
17 Rey. These HR representatives consistently said during these meetings that the store managers  
18 and assistant store managers (both non-union positions) would always have retirement benefits as  
19 good as or better than the union's.

20 72. Mr. Luna attended a meeting for store managers and assistant store managers in  
21 approximately 2010 or 2011 at a local brewery in Turlock called The Dustbowl. HR  
22 representative Beth Fugate was present at the meeting to discuss retiree benefits. Ms. Fugate  
23 described the retiree health benefits as lasting for the life of the retiree.

24 73. In 2015, through his combination of age (then fifty-three) and years of service  
25 (thirty-two), Mr. Luna met the "Golden 85" rule making him eligible for retirement. He received  
26 a letter from Save Mart advising him of his eligibility, and notifying him that if he retired by  
27 December 31, 2017, both he and his spouse would receive the HRA benefit, but if he did not, his  
28 spouse would lose her benefit.

74. Mr. Luna was extremely torn by this decision. On the one hand, he had planned to work until the age of at least sixty-two, and those years of income figured prominently in his family's retirement planning. Also, management had just offered him a new position in a store that was projected to bring large bonuses. On the other hand, he did not want to lose the HRA benefit for his spouse, knowing that medical care is especially important and costly as one ages. In 2017, he spoke with Valerie Vallo in Save Mart's HR department to ask questions about his retirement benefits to help him make this critical decision. Ms. Vallo told him that as long as he retired by December 31, 2017, both he and his spouse would keep their HRA benefit for the duration of Mr. Luna's life.

75. In reliance on Save Mart's written and verbal representations that the HRA benefit would be for the duration of his life, Mr. Luna decided to retire early to keep the spousal benefit, and retired effective December 31, 2017 at the age of fifty-six.

76. Save Mart's termination of the HRA benefit will cost Mr. Luna tens-of-thousands of dollars over the duration of his life.

**Plaintiff Edgar Popke**

77. Plaintiff Popke was raised on Save Mart food and in the Save Mart family. His mother worked most of her career for Save Mart. Mr. Popke joined Save Mart in 1978, at age eighteen, as a Produce Clerk in Modesto, California. The position was union and Mr. Popke received union benefits.

78. Mr. Popke was soon promoted to Produce Manager, and then recruited to become a Store Manager, which was a non-union position. Mr. Popke deferred the promotion for several years because of the additional hours of work it would require and the young age of his children. In 2003, he decided to accept a promotion, and at that time he spoke with his managers Steve Beaver and Bob Bauer about the impact that the promotion would have on his benefits package. They assured Mr. Popke that his benefits would always be as good as or better than the union's.

79. Mr. Popke was promoted several times in the following years. He moved from Produce Supervisor for the Central Division, to Special assistant to Executive Vice President Junquero, to Senior Director for the Bay Area District, to Senior Director of the Modesto Region,

1 and finally to Vice President of Operations in 2011. He remained in that role until his retirement  
2 in 2017.

3 80. During his tenure as Senior Director for the Bay Area, one of Mr. Popke's primary  
4 responsibilities was to oversee the integration of stores that Save Mart acquired through purchase  
5 (such as former Albertson's stores) into the Save Mart model. Save Mart worked hard to prevent  
6 these stores from joining the union. Mr. Popke was advised by Wendy Kennedy, then Vice  
7 President of HR, to tell newly-acquired store employees that their benefits would always be as  
8 good as or better than the union's. He visited many Bay Area stores alongside representatives  
9 from Save Mart's HR department to speak to the employees and their families about  
10 compensation and benefits. He consistently heard the refrain that non-union employees' benefits  
11 would always be equal to or better than the union's.

12 81. Mr. Popke received a version of the "Save Mart Select Retiree Benefits" pamphlet  
13 on one or more occasions that contained the language: "WHEN COVERAGE ENDS:...Upon the  
14 Death of the Retiree." Exhibit B. Mr. Popke understood this to mean that provided he met the  
15 eligibility requirements for retirement, he would receive retirement health benefits for the  
16 duration of his life.

17 82. In approximately 2017, Mr. Popke received a letter from Save Mart advising him  
18 of his eligibility for retirement, and notifying him that if he retired by December 31, 2017, both  
19 he and his spouse would receive the HRA benefit, but if he did not, his spouse would lose her  
20 benefit. At that time he was fifty-six years old with and thirty-eight years of service.

21 83. Mr. Popke had planned to work until the age of at least sixty-two, and those years  
22 of income figured prominently in his family's retirement planning. He was well paid for his work  
23 and enjoyed it. However, he did not want to lose the HRA benefit for his spouse, knowing that  
24 medical care is especially important and costly as one ages.

25 84. In reliance on Save Mart's written and verbal representations that the HRA benefit  
26 would be for the duration of his life, Mr. Popke decided to retire in time to keep the spousal  
27 benefit, and retired effective January 3, 2017 at the age of fifty-six.

28 85. Save Mart's termination of the HRA benefit will cost Mr. Popke tens-of-thousands

1 of dollars over the duration of his life.

2 **Plaintiff Denny G. Wraske, Jr.**

3 86. Plaintiff Wraske joined Save Mart in 1971, at the age of seventeen, as a Grocery  
4 Clerk in Modesto, California. The position was union and Mr. Wraske received union benefits.  
5 He worked in various union positions until he was promoted to Assistant Store Manager in  
6 approximately 1985.

7 87. Mr. Wraske was promoted several times in the following years. He moved from  
8 Assistant Store Manager to Store Manager, to Grocery Superior of Modesto and the Bay Area, to  
9 Senior Director in Modesto and in Fresno, and finally to Senior Director of Operations for  
10 Northern California in approximately 2010. He remained in that role until his retirement in 2017.

11 88. Over the years, Mr. Wraske observed Save Mart's efforts to defeat the union from  
12 representing additional stores. One common theme he heard repeatedly from Save Mart  
13 representatives was that there was no need to join the union, because non-union employees'  
14 benefits would always be as good as or better than the union's benefits.

15 89. In approximately 2017, Mr. Wraske received a letter from Save Mart advising him  
16 of his eligibility, and notifying him that if he retired by December 31, 2017, both he and his  
17 spouse would receive the HRA benefit, but if he did not, his spouse would lose her benefit. He  
18 was sixty-three years old and had worked for Save Mart for forty-six years.

19 90. At that time, Mr. Wraske and his wife's retirement plan was that Mr. Wraske  
20 would work for another three years. However, he did not want to lose the HRA benefit for his  
21 spouse, knowing that medical care is especially important and costly as one ages, and because his  
22 wife also wanted to retire, which would eliminate her medical benefits.

23 91. Mr. Wraske received a version of the "Save Mart Select Retiree Benefits"  
24 pamphlet on at least one occasion that contained the language: "When Coverage Ends:...Upon  
25 the Death of the Retiree." Exhibit B. Mr. Wraske understood this to mean that provided he met  
26 the eligibility requirements for retirement, he would receive retirement health benefits for the  
27 duration of his life.

28 92. In reliance on Save Mart's written and verbal representations that the HRA benefit

1 would be for the duration of his life, Mr. Wraske decided to retire in time to keep the spousal  
2 benefit, and retired effective December 28, 2017 at the age of sixty-four.

3 93. Save Mart's termination of the HRA benefit will cost Mr. Wraske tens-of-  
4 thousands of dollars over the duration of his life. It also meant that his wife has had to postpone  
5 her retirement in order to maintain her medical benefits.

6 **FIRST CLAIM FOR RELIEF**  
7 **(Breach of Fiduciary Duty Under ERISA § 401(a)(1) (A) and (B)**  
8 **Against Defendant Save Mart)**

9 94. Plaintiffs incorporate the preceding paragraphs as though set forth herein.

10 95. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), requires that a fiduciary discharge his  
11 or her duties with respect to a plan solely in the interest of the participants and beneficiaries, (A)  
12 for the exclusive purpose of providing benefits to participants and the beneficiaries of the Plan,  
13 and (B) with the care, skill, prudence and diligence under the circumstances then prevailing that a  
14 prudent person acting in a like capacity and familiar with such matters would use in the conduct  
15 of an enterprise of a like character and with like aims.

16 96. A fiduciary's duties of loyalty and prudence include a duty to disclose and inform.  
17 These duties not only require that a fiduciary comply with the disclosure provisions in Title I of  
18 ERISA, but also require: (a) a negative duty not to misinform; (2) an affirmative duty to inform  
19 when the fiduciary knows or should know that silence might be harmful; and (3) a duty to convey  
20 complete and accurate information material to the circumstances of participants and beneficiaries.

21 97. Save Mart breached these duties as to Plaintiffs and the Class by misrepresenting  
22 that the company would provide health care benefits to eligible retirees and their spouses that  
23 were as good or better than those enjoyed by UFCW members, including by misrepresenting the  
24 duration of retiree medical benefits as lasting until the death of the retiree. These breaches  
25 occurred and continued from the inception of the Plan up through the date that Save Mart  
26 announced it was terminating the HRA benefit on April 22, 2022. Plaintiffs and other employees  
27 relied on Save Mart's misrepresentations to their detriment.

28 98. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a plan participant to bring a  
civil action to obtain appropriate equitable relief to redress violations of ERISA, including Save

1 Mart's breaches of its fiduciary duties under ERISA § 401(a)(1), 29 U.S.C. § 1104(a)(1).

2 99. Under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs and the Class are  
3 entitled to: have the Plan reformed to reflect Save Mart's repeated promise to provide benefits as  
4 good or better than the union's and to reflect Save Mart's repeated promise that retiree medical  
5 benefits, including the HRA benefit for retirees and their spouses specifically, would last until the  
6 death of the retiree; and/or have Save Mart pay an equitable surcharge or restitution to  
7 compensate Plaintiffs and the Class for the loss of retiree medical benefits and the HRA benefit  
8 specifically and the retirement decisions they made based on Defendant's misrepresentations.

9 **SECOND CLAIM FOR RELIEF**  
10 **(Claim for Benefits Due Under the Terms of the Plan Pursuant to ERISA § 502(a)(1)(B)**  
11 **Against Defendant Save Mart and Defendant Plan)**

11 100. Plaintiffs incorporate the preceding paragraphs as though set forth herein.

12 101. Under ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), a participant or  
13 beneficiary may bring a civil action to recover benefits due to them under the terms of the Plan, to  
14 enforce their rights under the terms of the Plan, or to clarify their right to future benefits under the  
15 terms of the Plan.

16 102. Defendant Save Mart violated the terms of the Plan by failing to have the Board of  
17 Directors or its designee adopt and duly execute a written instrument terminating the HRA benefit  
18 program. Defendant Save Mart and Defendant Plan's decision to cease making HRA  
19 contributions for current participants, cease reimbursing claims for qualified medical expenses,  
20 and discontinue any possibility of future participation in the Plan for active employees as of June  
21 2022 was unlawful and a violation of the Plan terms.

22 103. Defendant Plan is a proper defendant for a claim under ERISA § 502(a)(1)(B)  
23 under ERISA § 502(d)(1)-(2).

24 104. Defendant Save Mart, as the Plan's formal Plan Administrator and as the entity  
25 liable to fund benefit contributions under the Plan, is a proper defendant for a claim under ERISA  
26 § 502(a)(1)(B) pursuant to *Cyr v. Reliance Standard Life Ins. Co.*, 642 F.3d 1202, 1205-06 (9th  
27 Cir. 2011).

28 105. Coincident with the filing of their motion for leave to amend the complaint,



1 Plaintiffs submitted claims for benefits to Save Mart for past due and future HRA benefit  
 2 contributions in an attempt to exhaust their administrative remedies. However, Plaintiffs believe  
 3 that exhaustion of their administrative remedies would be futile in this case because Save Mart  
 4 has clearly established its position in this litigation that its termination of the HRA benefit  
 5 program was lawful and has already dismantled the infrastructure necessary to make HRA benefit  
 6 contributions and process HRA benefit claims.

7 106. As a direct and proximate result of Save Mart's failure to properly terminate the  
 8 HRA benefit program, Plaintiffs and the proposed Class have been deprived of monthly HRA  
 9 benefit contributions that they were and are entitled to receive starting in April 2022 and  
 10 continuing through to the present.

11 107. Under ERISA § 502(a)(1)(B), Plaintiffs and the Class are entitled to a judgment  
 12 from the Court requiring Save Mart to: (a) for Plan participants: make past-due HRA benefit  
 13 contributions from July 1, 2022 through the resolution of this action, with reasonable prejudgment  
 14 interest on each and every monthly payment, and to reimburse qualified medical expenses  
 15 incurred since July 1, 2022; and (b) for employees who retired and obtained the eligibility  
 16 requirements necessary to participate in the Plan anytime from April 22, 2022 to the resolution of  
 17 this action, an opportunity to become participants in the Plan, and for Save Mart to make past-due  
 18 HRA benefit contributions from the date eligibility was obtained through the resolution of this  
 19 action, with reasonable prejudgment interest on each and every monthly payment.

20 **THIRD CLAIM FOR RELIEF**  
 21 **(Claim for Equitable Relief to Enforce the Terms of the Plan Under ERISA § 502(a)(3)**  
**Against Defendant Save Mart)**

22 108. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

23 109. Under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), a participant or beneficiary  
 24 may bring a civil action to enjoin any act or practice which violates the terms of the Plan or to  
 25 obtain other appropriate equitable relief to redress violations of the terms of the Plan.

26 110. Save Mart's decision to cease operating the HRA benefit program in 2022 was a  
 27 violation of the Plan terms governing termination of benefit programs and the Plan terms  
 28 requiring Save Mart to make HRA contributions and to process and pay valid HRA benefit

1 claims.

2 111. As a direct and proximate result of Save Mart's failure to properly terminate the  
3 HRA benefit program, Plaintiffs and the Class have been deprived of monthly HRA benefit  
4 contributions that they were and are entitled to receive starting in April 2022 and continuing  
5 through to the present.

6 112. As a direct and proximate result of Save Mart's failure to properly terminate the  
7 HRA benefit program, Class members who obtained the necessary requirements for eligibility  
8 under the Plan after April 22, 2022 have been deprived of the opportunity to become participants  
9 in the Plan, and of the monthly HRA contributions and reimbursement of qualified medical  
10 expenses that they were entitled to receive starting on the date on which they retired and obtained  
11 eligibility and continuing through to the present.

12 113. Under ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs and the Class  
13 are entitled to injunctive relief requiring Save Mart to continue to operate the Plan, to permit any  
14 Class members who retired and obtained eligibility requirements after April 22, 2022 to become  
15 participants in the Plan, and to make monthly HRA benefit contributions and to process HRA  
16 benefit claims retroactive to July 1, 2022 (for people who were participants as of April 22, 2022)  
17 or retroactive to the date retirement and eligibility was obtained (for people who became eligible  
18 to be participants after April 22, 2022), for the remainder of their lives, along with reasonable  
19 prejudgment interest on past-due HRA benefit contributions.

## 20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs pray that the Court grant the following relief:

22 A. Declare that Save Mart has breached its fiduciary duties to Plaintiffs and  
23 the Class and/or knowingly participated in breaches of fiduciary duty;

24 B. Order that Save Mart pay benefits due under the terms of the Plan and  
25 provide appropriate equitable relief to Plaintiffs and the Class, including but not limited to  
26 surcharge, reformation of the Plan, and/or an injunction requiring Save Mart to administer the  
27 Plan with respect to Plaintiffs and the Class in a manner consistent with the terms of the Plan in  
28 existence prior to the discontinuation of the HRA benefit in 2022;

1 C. Award Plaintiffs and the Class attorneys' fees and costs of suit incurred  
2 herein pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g); and

3 D. Provide such other relief as the Court deems equitable and just.

4 Dated: February 9, 2024

Respectfully submitted,

5 BOLT KEENLEY KIM LLP

6  
7 By: /s/ James P. Keenley

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*Attorneys for Plaintiffs and the Proposed Class*

# Exhibit A

## **SAVE MART ANSWERS YOUR QUESTIONS ABOUT UNIONS**

As a major grocery chain, Save Mart is very likely to be the subject of a union organizing campaign. This means that you will probably be asked by a union to sign a union authorization card selecting the union as your collective bargaining representative.

In this area, Grocery Department employees will probably be approached by Retail Clerks Local 588, while Meat Department employees will be approached by Butchers Union Local 127. However, it is possible that other unions, such as the Teamsters, will also approach you.

We want you to know that Save Mart does not believe that a union is in your best interest. We believe that your wages and fringe benefits are much better than the union contract covering employees in this area and that there is nothing that the union can offer you that justifies the payment of dues and initiation fees and the possible labor problems that often accompany unions. Because we know from past experience that a union will often mislead, we have attempted to put in this booklet many of the questions that employees ask about unions. While the decision to support a union or not is solely yours, we hope that this information will allow you to make a wise choice.



Q. Why will the union approach you?

A. Quite simply, the union is desperate. For the last two years, more and more employees have been demanding the right to make their own choice as to whether they want a union, and employees are saying no. **None of the employees at Save Mart's Hanford, Exeter, Chowchilla, or Lindsay stores have chosen the union.** Similarly, Raley's has five "non-union" stores, Pak N' Save has three non-union stores in Sacramento, and Vons, a major grocery chain in Southern California, has five non-union stores in the Fresno area.

Q. Can Save Mart choose the union for you?

A. No. It is against the law for a company to decide that a store will be union. The law says that Save Mart may not deal with a union until a majority of the employees in the store choose the union. Save Mart cannot choose the union for you. Whether the store is union or not is a choice only the employees can make.

Q. How does the union get your support?

A. Normally a union must win an election conducted by the the government. In order to get an election, the union must get 30% of the store's employees to sign union authorization cards. All non-supervisory persons in the store would then vote on whether they wanted the union.

Q. What's the harm in signing a union authorization card?

A. The union can use the card to stop you from voting. When you sign a normal union authorization card, you are not asking for an election. You are choosing the union to be your representative. Read the card carefully, it says:

*"I hereby authorize United Food and Commercial Workers International Union, or its chartered Local Union to represent me for the purpose of collective bargaining."*

The union can use this card to claim that you have already chosen it as your representative. Moreover, the card can be used months later, even though you may have changed your mind. As you can see, this kind of card can actually take away your right to choose.

If all you want is an election, you should cross out the words on the card and write in these words:

*"I want the union to ask for a NLRB election."*

Q. How does the union get you to sign a card?

A. You can expect that a union organizer will tell you a lot of different things in order to get you to sign a card. Often, a union will promise you that it will get you higher wages or that it will protect you from the company. The law allows a union to make any promises it wants because everyone knows that a union cannot make its promises come true. That's the big difference between what Save Mart can tell you and what the union can promise you. Save Mart is not allowed to make any promises. The union can promise you anything in the world because that's just what they are, promises.

The fact is that employees at Save Mart's "non-union" stores are receiving wages and fringe benefits that equal what employees get at Save Mart's union stores.

Q. Will you lose your job if you don't sign a card?

A. No. the amazing thing is that unions often trick employees by telling them that, The choice to sign a card is yours alone. The law says that Save Mart can take no action against you because you sign or refuse to sign a card. The company cannot fire you, or change your wages or fringe benefits, or in any other way take any action against you because you don't want a union.

Q. Do you have to listen to the union's sales pitch?

A. Whether or not you talk to a union organizer or let them into your home is up to you. The union has no special rights.

A union will often keep on bothering you with the hope that you will get tired and sign a card. We know that in the Sacramento area the union has gone to Pak 'N Save employees' homes at all times of the day and has continually called them in an effort to get them to sign cards. You should know that it is against the law for a union to threaten you in any manner. If that happens, or if you feel that you are being harassed, you should feel free to let someone in management know so that Save Mart can take action to protect you and the other employees.

You should also be aware that a union will often ask you questions about the company in order to get information. While the union may assure you that the information you give will remain secret, the fact is that they usually give this information to the government in an effort to involve the company in court trials. As a result, you could be asked to be a witness in these proceedings. While the decision to talk to the union is yours and yours alone, you may want to find out from the union what they plan to do with the information.



Q. What do you get from the union in return for your dues and other fees?

A. If the store became union, you could expect to be required to pay dues to the union. While dues often vary in amount depending on your hourly wage, full-time journeyman clerks currently pay approximately \$24.00 a month in dues. (Initiation fees are also sometimes charged.) Since there are approximately 50 employees in the store who would have to become members of the union, the union can expect to make around \$1,200 a month. A typical union contract is for 3 years, and so the union can expect to earn over \$40,000 from your store alone.

In exchange for this kind of money, you should ask yourself what the union will give you. When you started working, you were given a copy of Save Mart's "Manual of Working Conditions" which sets out all your wages, fringe benefits and the terms of your employment. Read it. When the union comes to you and asks you to sign a card, you should ask the union organizer what he hopes to get for you that you do not already have.

If you compare, you will see that your wages are the same as the wages paid union employees and that your benefits are already better, or equal to, the benefits in a union store. You get all these things without having to pay dues.

Q. Then why does Save Mart have any union stores?

A. Because the employees in those stores never had the chance to choose for themselves. They were forced to become union members and to pay dues if they were going to work in those stores.

You have the choice. Like the Hanford, Exeter, Chowchilla, and Lindsay employees, you can decide for yourself whether you want a union. We are confident that like the employees in those stores and the employees at Raley's, Pak 'N Save, and Vons, you will reject the union because you realize that you are receiving fair treatment and equal wages without the hassle or burden of a union.

We hope that this booklet has answered many of the questions you may have and set the facts straight. We know that when you have all of the information, you will conclude that there is nothing the union can offer you that Save Mart does not already provide. If you have other questions, please use the open door policy to let us know what those questions are, and you can be sure that we will give you a quick and truthful answer.

# Exhibit B



2015  
**SAVE MART  
SUPERMARKETS**

Save Mart Select  
*Retiree*  
**Benefits**

2015

PUTTING OUR  
**PEOPLE  
FIRST**





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## *Contact* INFORMATION

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Benefit Plans	Phone	Website/Email	Plan Number
<b>Medical Plans</b>			
Blue Shield of California	1-888-235-1765	<a href="http://www.blueshieldca.com">www.blueshieldca.com</a>	2024107
Kaiser Permanente	1-800-464-4000 (English)  1-800-788-0616 (Spanish)	<a href="http://www.kp.org">www.kp.org</a>	Northern CA: 600526  Southern CA: 227440
<b>Life Insurance Plans</b>			
Voya (formerly ING)	1-888-238-4840	<a href="http://www.voya.com">www.voya.com</a>	31669-5
<b>Enrollment/Premium Billing</b>			
Employee Benefits Specialists (EBS)	1-888-327-2770	<a href="http://www.ebsbenefits.com">www.ebsbenefits.com</a>	
<b>Save Mart Benefits Department</b>	1-209-548-6648	<a href="mailto:benefits@savemart.com">benefits@savemart.com</a>	Not applicable



# SAVE MART SELECT RETIREE *Benefits* PROGRAM

## ELIGIBILITY

Save Mart employees who meet the age and service and Save Mart Select Benefits Program participation requirements described below are eligible for coverage under the Save Mart Select Retiree Benefits Program.

Eligible spouses/registered domestic partners who are enrolled in the Save Mart Select Benefits Program as of the employee's retirement date are eligible for coverage under the Save Mart Select Retiree Benefits Program.

## AGE AND SERVICE REQUIREMENTS FOR RETIREES

- **Employees Hired BEFORE January 1, 2010**

1. You are age 55 at retirement with 30 or more years of uninterrupted, continuous service with Save Mart, or
2. You are age 60 at retirement with at least 15 years of uninterrupted, continuous service with Save Mart, or
3. You are age 65 at retirement with at least 10 years of uninterrupted, continuous service with Save Mart.

- **Employees Hired AFTER January 1, 2010 (except Local 1173 Machinists and Local 8 Golden State Employees)**

You must be age 60 or older at retirement with at least 25 years of uninterrupted, continuous service with Save Mart.

- **Local 1173 Machinists and Local 8 Golden State Employees Hired AFTER January 1, 2010**

1. You must be age 65 with at least 20 years of uninterrupted, continuous service with Save Mart, or
2. You must be age 60 with at least 25 years of uninterrupted, continuous service with Save Mart.

## SAVE MART **SELECT PLAN** PARTICIPATION REQUIREMENT

- **Employees Hired BEFORE January 1, 2010**

You must be enrolled in the Save Mart Select Benefits Program at the time of retirement and have been enrolled for at least three full years out of the last six years immediately preceding the date of retirement.

- **Employees Hired AFTER January 1, 2010 (including Local 1173 Machinists and Local 8 Golden State Employees)**

You must be enrolled in the Save Mart Select Benefits Program at the time of retirement and have been enrolled for at least ten full years immediately preceding the date of retirement.





## SERVICE YEAR MINIMUM HOURS

Employees must work a minimum number of hours each year to qualify for one year of service, as shown below.

1 Year Service Credit	1,000 hours worked per year
1/2 Year Service Credit	521 to 999 hours worked per year
No Service Credit	520 hours or less worked per year

## WHEN COVERAGE BEGINS

Coverage under the Save Mart Select Retiree Benefits Program's medical and life insurance plans begins at retirement. Dental, Vision, Long Term Disability, and Accidental Death & Dismemberment benefits cease at retirement. ✓

If you do not enroll in the Save Mart Select Retiree Benefits Program within 31 days of your Retirement date, you will not be allowed to enroll at a later date. ✓

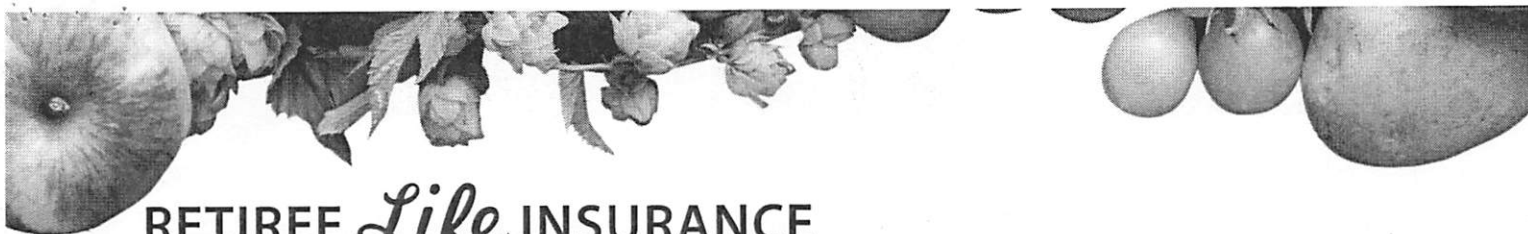
## WHEN COVERAGE ENDS

- Upon non-receipt of your monthly premium contribution payment by the payment due date.
- Upon the death of the retiree. ✓
- Spousal coverage ends upon divorce from or death of the retiree. Domestic partner coverage ends upon termination of the domestic partnership or death of the retiree. Spouses only may be eligible to extend medical plan coverage upon death or divorce under the Consolidated Omnibus Budget Reconciliation Act (COBRA).

## CHANGES TO YOUR MEDICAL PLAN ENROLLMENT

Each year you have the opportunity to make changes to your medical plan enrollment during Save Mart's Open Enrollment period. All changes made to your enrollment during Open Enrollment are effective for the next 12 months, January 1 through December 31.

If you dis-enroll from the Save Mart Select Retiree Benefits Program at any time, for any reason, you will not be allowed to re-enroll at a later date.



## RETIREE *Life* INSURANCE

### RETIREE LIFE INSURANCE

Save Mart provides Group Term Life Insurance to retirees through ING. Life insurance coverage is contingent upon your age at retirement as follows:

- Age 55 to 70: \$10,000
- Age 70 and Above: \$5,000

Spousal/registered domestic partner life insurance terminates on the day you retire. Refer to your Summary Plan Description for more details.

## *Castlight*

Castlight is a personal health care tool that can help you and your family members find high quality care at affordable prices. This tool is available free of charge to all Save Mart Blue Shield plan participants. Using Castlight online or over the phone, you can:

- Compare nearby doctors, facilities, and medical services based on the price you'll pay and patient reviews.
- See personalized cost estimates based on your medical plan.
- Review step-by-step explanations of past medical spending so you know how much you paid and why.
- Receive helpful tips on ways to reduce your medical bills and find high-quality care.

To learn more or register for Castlight today at [mycastlight.com/savemart](https://mycastlight.com/savemart). You can also call a Castlight Guide at 888-920-1146.

## PREMIUM *Cost* SHARING

### PREMIUM COST SHARING FOR RETIREE MEDICAL PLANS

Save Mart and retirees share the premium cost for medical plan coverage. The monthly premium cost for medical plan coverage is summarized below.

	Monthly Premium Cost for Under Age 65 Medical Plans	Monthly Premium Cost for Age 65 and Above Medical Plans*
<b>Retiree Only</b>	\$155.62	\$43.89
<b>Retiree Plus Spouse/ Registered Domestic Partner</b>	\$311.24	\$87.78

\* Premium rates subject to change based on Medicare plan rate adjustments.





## RETIREE *Medical* PLAN OPTIONS

Retirees and retirees' spouses/registered domestic partners are eligible for coverage under the Save Mart Select retiree medical plans. Your medical plan options are dependent upon your age at retirement and your residence location.

Save Mart provides eligible retirees with a choice of two medical plan options. The Blue Shield of California plans are available to all eligible retirees. The Kaiser Permanente Health Maintenance Organization (HMO) plans are available to eligible retirees who reside in the Kaiser California service area.

### RETIREES UNDER AGE 65

#### **Blue Shield of California – Preferred Provider Organization (PPO) Plan**

If you are enrolled in the Blue Shield PPO Plan, you may obtain services from any provider you wish. If you select provider care within the PPO network, your benefits are greater. When you obtain services from providers who are not part of the PPO network, your out-of-pocket expenses will be higher. Claim forms are required when you receive health care services from non-PPO providers.

#### **Kaiser Permanente – Health Maintenance Organization (HMO) Plan** (California only)

If you are enrolled in the Kaiser Permanente HMO Plan, you must receive all your care from a Kaiser Permanente physician or specialist, and you must use Kaiser facilities. Please note there are two Kaiser Permanente HMO Plans based on age. Most services are covered at 100%. Copays are required for certain services. No claim forms are required for this plan.

### RETIREES AGE 65 AND OVER

#### **Blue Shield of California – Medicare Retiree Plan**

Upon the attainment of age 65, you and/or your eligible spouse/registered domestic partner enrolled in the Blue Shield of California PPO Retiree Medical Plan have the opportunity to enroll in the Blue Shield of California Medicare Retiree Plan. The Blue Shield of California Medicare Retiree Plan supplements coverage provided by Medicare, as outlined in the Blue Shield of California Medicare Retiree Plan Benefit Summary.

To enroll in the Blue Shield of California Medicare Retiree Plan, you and your eligible spouse/ registered domestic partner **must be enrolled in Medicare Parts A and B AND must complete a Blue Shield of California Medicare Part D Prescription Drug Plan enrollment form.** Failure to submit the required documents within 31 days of reaching the age of 65 will result in loss of eligibility under the Save Mart Select Retiree Benefits Program.

#### **Kaiser Permanente – Senior Advantage HMO** (California only)

Upon the attainment of age 65, you and/or your eligible spouse/registered domestic partner enrolled in the Kaiser Permanente Retiree Medical Plan have the opportunity to enroll in the Kaiser Permanente Senior Advantage HMO Plan. The Kaiser Senior Advantage HMO Plan provides comprehensive medical and prescription drug coverage, as outlined in the Kaiser Senior Advantage HMO Plan Benefit Summary.

To enroll in the Kaiser Permanente Senior Advantage HMO Plan, you and your eligible spouse/ registered domestic partner **must be enrolled in Medicare Parts A and B AND must complete a Kaiser Senior Advantage HMO enrollment form.** Failure to submit the required documents within 31 days of reaching the age of 65 will result in loss of eligibility under the Save Mart Select Retiree Benefits Program.





# RETIREE *Medical* PLAN OPTIONS – *Under* AGE 65

Blue Shield of California PPO Medical Plan		
	In-Network Providers <sup>1</sup> Employee Cost Share*	Out-of-Network Providers <sup>2</sup> Employee Cost Share*
<b>General Benefits</b>		
Calendar Year Deductible	\$300 per individual to a maximum of \$600 per family	\$600 per individual to a maximum of \$1,200 per family
Calendar Year Out-of-Pocket Maximum	\$2,000 per individual to a maximum of \$4,000 per family	None
Lifetime Maximum Benefit	Unlimited	Unlimited
<b>Medical Benefits</b>		
Doctor's Office Visits	\$20 copay; deductible waived	50%
Annual Physical Exam	No charge; deductible waived	50%
X-Ray and Lab Tests	25%	50%
Chiropractic Care (up to 20 visits per calendar year)	\$20 per visit; deductible waived	50%; limited to \$20 benefit per visit
<b>Prescription Drug Benefits</b>		
Retail (30 Day Supply)	Generic: \$10 copay; Brand Name Formulary: \$20 copay; Non-Formulary: \$40 copay	Generic: 25% plus \$20 copay; Brand Name Formulary: 25% plus \$30 copay Non-Formulary: 25% plus \$45 copay
Save Mart Pharmacies (31 – 90 Day Supply)	Generic: \$15 copay; Brand Name Formulary: \$30 copay; Non-Formulary: \$60 copay	Not covered
Blue Shield Mail Order (For up to a 90 Day Supply)	Generic: \$15 copay; Brand Name Formulary: \$30 copay; Non-Formulary: \$60 copay	Not covered
<b>Hospital Benefits</b>		
Room & Board and Surgeon's Fees	25%	Covered at 50% <sup>3</sup>
Emergency Room	25% after \$75 copay (waived if admitted) <b>50% penalty for non-emergency services</b>	
<b>Mental Health Benefits</b>		
Out-Patient Services	\$20; deductible waived	50%
In-Patient Services	25%	50% <sup>3</sup>
<b>Substance Abuse Benefits</b>		
Out-Patient Services	\$20; deductible waived	50%
In-Patient Services	25%	50% <sup>3</sup>

<sup>1</sup> Subject to the deductible and paid at in-network, negotiated rates.

<sup>2</sup> Subject to deductible and paid at Blue Shield's negotiated rates. Retiree pays applicable copayment/coinsurance and any amount above Blue Shield's negotiated rates.

<sup>3</sup> Blue Shield's allowable amount is \$600 per day. Members are responsible for 50% of this amount plus all charges in excess of the allowable amount.

\* Amounts shown reflect employee cost-sharing and match the Summaries of Benefits and Coverage (SBCs) provided by carriers as part of healthcare reform.



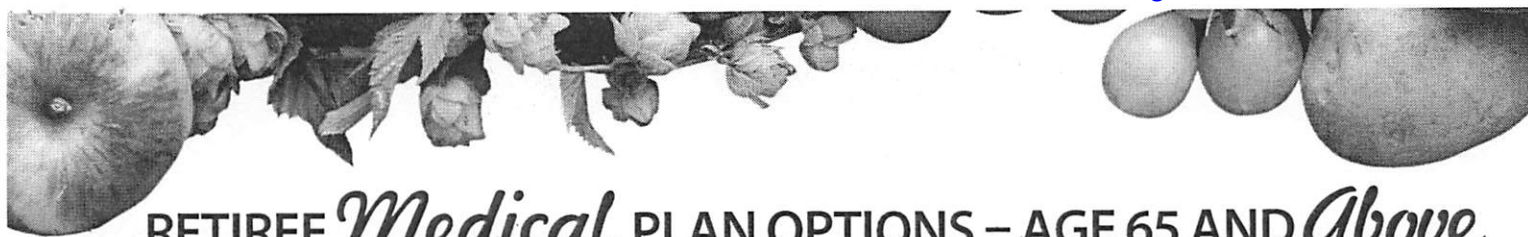


	<b>Kaiser Permanente HMO (California only)</b>
	<b>Kaiser Permanente Providers and Facilities Only Employee Cost Share*</b>
<b>General Benefits</b>	
Calendar Year Deductible	Not applicable
Calendar Year Out-of-Pocket Maximum	\$1,500 per individual to a maximum of \$3,000 per family
Lifetime Maximum Benefit	Unlimited
<b>Medical Benefits</b>	
Doctor's Office Visits	\$20
Annual Physical Exam	No charge
X-Ray and Lab Tests	No charge
Chiropractic Care	\$15; limited to 30 visits per calendar year
<b>Prescription Drug Benefits<sup>1</sup></b>	
Kaiser Retail Pharmacy (30 day supply)	Generic: \$10 copay; Brand Name: \$20 copay
(31-60 day supply)	Generic: \$20 copay; Brand Name: \$40 copay
(61-100 day supply)	Generic: \$30 copay; Brand Name: \$60 copay
Kaiser Mail Order (30 day supply)	Generic: \$10 copay; Brand Name: \$20 copay
(31-100 day supply)	Generic: \$20 copay; Brand Name: \$40 copay
<b>Hospital Benefits</b>	
Room & Board and Surgeon's Fees	\$200 copay per admission
Emergency Room	\$75 copay (copay waived if admitted)
<b>Mental Health Benefits</b>	
Out-Patient Services	\$20 copay for individual visits; \$10 copay for group therapy
In-Patient Services	\$200 copay per admission
<b>Substance Abuse Benefits</b>	
Out-Patient Services	\$20 copay for individual therapy; \$5 copay for group therapy
In-Patient Services	\$200 copay per admission (detox only); \$100 copay per admission for transitional residential recovery services

<sup>1</sup> Prescriptions obtained from non-Kaiser pharmacies are not covered.

\* Amounts shown reflect employee cost-sharing and match the Summaries of Benefits and Coverage (SBCs) provided by carriers as part of healthcare reform.





# RETIREE *Medical* PLAN OPTIONS – AGE 65 AND *Above*

Blue Shield of California Medicare Retiree Plan			
Medicare-Eligible Retirees Age 65 and Above (Must Be Enrolled in Medicare Parts A and B)			
Covered Services	Medicare Pays	Plan Pays	You Pay
<b>Hospitalization</b>			
First 60 days	All but \$1,156	\$1,156 (Part A deductible)	\$0
61st through 90th day	All but \$289 per day	\$289 per day	\$0
91st day and after: <i>While using 60 lifetime reserve days</i>	All but \$578 per day	\$578 per day	\$0
<i>Once lifetime reserve days are used:</i>			
• Additional 365 days	\$0	100% of Medicare eligible expenses	\$0
• Beyond the additional 365 days	\$0	80% of eligible expenses	20% of eligible expenses
<b>Skilled Nursing Facility Care</b>			
First 20 days	All approved amounts	\$0	\$0
21 <sup>st</sup> through 100 <sup>th</sup> day	All but \$144.50 per day	Up to \$144.50 per day	\$0
101 <sup>st</sup> day and after	\$0	\$0	All costs
<b>Hospice Care</b> You must meet Medicare's requirements, including a doctor's certification of terminal illness	All but very limited copayment/coinsurance for outpatient drugs and inpatient respite care	Medicare copayment/coinsurance	\$0
<b>Medical Expenses<sup>1</sup></b>			
First \$140 of Medicare-approved amounts	\$0	\$0	\$140 (Part B deductible)
Remainder of Medicare-approved amounts	Generally 80%	Generally 20%	\$0
Part B excess charges (above plan-approved amounts)	\$0	\$0	All costs
<b>Laboratory Services/ Diagnostic Testing</b>	100%	\$0	\$0
Medicare Part D Prescription Drugs			
	30-Day Supply	90-Day Supply	
	Save Mart Pharmacies Blue Shield Pharmacies	Save Mart Pharmacies Blue Shield Pharmacies	Blue Shield Mail Order
<b>Generic</b>	\$10	\$30	\$20
<b>Formulary Brand</b>	\$20	\$60	\$40
<b>Non-Formulary</b>	\$40	\$120	\$80

<sup>1</sup> Medical expenses includes services such as physician visits, surgical services and supplies, durable medical equipment.





<b>Kaiser Permanente Senior Advantage HMO (California only)</b>	
<b>Medicare-Eligible Retirees Age 65 and Above (Must Be Enrolled in Medicare Parts A and B)</b>	
<b>Kaiser Permanente Providers and Facilities Only</b>	
<b>General Benefits</b>	
Calendar Year Deductible	Not applicable
Calendar Year Out-of-Pocket Maximum	\$1,500 per individual to a maximum of \$3,000 per family
Lifetime Maximum Benefit	Unlimited
<b>Medical Benefits</b>	
Doctor's Office Visits	\$20
Annual Physical Exam	\$20
X-Ray and Lab Tests	No charge
Chiropractic Care	\$15; limited to 30 visits per calendar year
<b>Prescription Drug Benefits<sup>1</sup></b>	
Kaiser Retail Pharmacy (30 day supply)	Generic: \$10 copay; Brand Name: \$20 copay
(31-60 day supply)	Generic: \$20 copay; Brand Name: \$40 copay
(61-100 day supply)	Generic: \$30 copay; Brand Name: \$60 copay
Kaiser Mail Order (31-100 day supply)	Generic: \$20 copay; Brand Name: \$40 copay
<b>Hospital Benefits</b>	
Room & Board and Surgeon's Fees	\$500 per admission
Emergency Room	\$50 (copay waived if admitted)
<b>Mental Health Benefits</b>	
Out-Patient Services	\$20 for individual visits; \$10 for group therapy
In-Patient Services	\$500 per admission
<b>Substance Abuse Benefits</b>	
Out-Patient Services	\$20 for individual therapy; \$5 for group therapy
In-Patient Services	\$500 copay per admission (detox only); \$100 copay per admission for transitional residential recovery services

<sup>1</sup> Prescriptions obtained from non-Kaiser pharmacies are not covered.

**SAVE MART**  
**SUPERMARKETS**



### Summary Health Information

As an employee, the health benefits available to you represent a significant component of your total rewards package. They also provide important protection for you and your family in the case of illness or injury. Save Mart offers a number of health coverage options. Choosing a health coverage option is important and to help you make an informed decision, Save Mart makes available a Summary of Benefits and Coverage (SBC). The SBC summarizes important information about any health coverage option in a standard format, so that you may compare options. Save Mart's medical plan SBCs are available on the Employee Self Service website at [www.workterra.net](http://www.workterra.net). A paper copy is also available, free of charge, by calling:

- Blue Shield Member Services: **1-888-235-1765** • Kaiser Member Services: **1-800-464-400**

The information presented in this brochure — Save Mart Select 2015 Retiree Benefits Program — is a summary of the benefits for eligible retirees. Please refer to your Plan Documents or benefit plan group agreements for more details.

If there is a conflict between the benefits described in this summary and the Plan Documents, then the Plan Documents shall govern.



# Exhibit C



P.O. Box 3689, Modesto, California 95352-3689  
1800 Standiford Avenue, Modesto, California 95350  
Corporate Office (209) 574-6299

September 30, 2009

Dear Save Mart Retiree:

Retiree benefits are a difficult and sensitive subject for everybody, myself included. It is one area in which I take a great deal of interest since it affects Save Mart's retirees. This year we will be making some changes and I assure you, all of these changes were made only after careful scrutiny by me.

Historically, Save Mart has paid 100% of the monthly premium cost for our Health & Welfare programs and has never asked employees or retired employees to share in this cost. For the first time in Save Mart's history, we've decided to ask employees and retirees to make a premium contribution to the cost of their Health & Welfare coverage. Nevertheless, any change affecting your family's finances concerns me. As a result, I've only agreed to changes that I concluded were prudent to enhance the long term sustainability of our plans, while minimizing the impact on you.

As most of you are aware, the cost of health care in the United States has been and is continuing to grow dramatically. Unfortunately, our business hasn't been growing at the same pace. Our health and welfare benefits are among the best in the grocery industry and to achieve my longstanding goal to offer an outstanding health and welfare package to our retirees, we need to make a few changes to sustain it.

Healthcare trends indicate more changes will at some point become a necessity. Because of these trends I have instructed our Benefits Department to update me on a semi-annual basis concerning the financial stability of our health and welfare benefits and to make whatever recommendations that seem prudent for my consideration.

I know change is sometimes unsettling, but it is also inevitable. Because of this, it is important for us to begin making necessary changes now. Failing to make timely changes in a world that is ever changing is a recipe for future disaster. I am not going to let that happen to our company.

Please be certain to review the enclosed Plan Highlights and the Open Enrollment materials that will be sent to your home in October. As always, I am grateful for the years you've spent contributing to the Company and I genuinely hope you're enjoying your retirement.

Sincerely,

SAVE MART SUPERMARKETS

A handwritten signature in dark ink, appearing to read "Bob Piccinini".

Bob Piccinini  
Chairman & CEO

## SAVE MART SUPERMARKETS 2010 RETIREE HEALTH PLAN HIGHLIGHTS

### WHEN IS OPEN ENROLLMENT?

Save Mart's Open Enrollment for 2010 benefits will take place from November 1 through November 15.

### WHAT DO WE NEED TO DO DURING OPEN ENROLLMENT?

This year during Open Enrollment, all retirees will be required to complete an Enrollment Form for their 2010 Save Mart Select and UFCW medical plans. Enrollment forms will update your dependents eligibility and you're Life Insurance Beneficiaries. Enrollment form must be returned to the Benefits Department no later that November 15, 2009.

### WHAT HAPPENS IF I DO NOT COMPLETE A NEW ENROLLMENT FORM AND SUPPLY THE REQUIRED DOCUMENTS?

In the event you do **NOT** respond by the November 15, 2009 enrollment deadline, we will consider your lack of response as an indication that you are declining all medical benefits coverage's through Save Mart for the entire 2010 plan year.

### IS THE COVERAGE FOR THE ANNUAL PHYSICAL CHANGING?

Yes, as part of our ongoing wellness efforts, the annual maximum benefits for physical exams have increased from \$200 to \$500. Also effective January 1, 2010, the annual physical exams have been expanded to include all eligible dependent family members.

### AS A RETIREE, WILL I BE REQUIRED TO PAY A MONTHLY PREMIUM?

Yes, the premiums will be as follows.

	Premium Under age 65	Premium Over age 65
Retiree Only	\$133.00	\$35.00
Retiree and Spouse	\$266.00	\$70.00

Premiums rates are subject to change based on Medicare rate adjustments.

At age 65, the retiree and his/her spouse will automatically be enrolled into the Medicare Supplemental Plan through Blue Cross. Retirees enrolled in Kaiser will be required to enroll in the Senior Advantage Plan. Save Mart will continue to be the secondary coverage, but it will be strictly a Medicare Supplemental Plan.

### WHAT OTHER CHANGES ARE AFFECTING RETIREE HEALTH AND WELFARE?

The Plan B life time limit will increase from \$2,000,000 to \$3,000,000.



# About the Save Mart Select Retiree Benefits Program

## When Coverage Begins

Coverage under the Save Mart Select Retiree Benefits Program's medical and life insurance plans begins at retirement.

## When Coverage Ends

- Upon the death of the retiree
- Spousal coverage ends upon divorce from or death of the retiree. Spouses may be eligible to extend medical plan coverage upon death or divorce under the Consolidated Omnibus Budget Reconciliation Act (COBRA).

## Changes to Your Medical Plan Enrollment

Each year you have the opportunity to make changes to your medical plan enrollment during Save Mart/Food Maxx Trust's Open Enrollment period. All changes made to your enrollment during Open Enrollment are effective for the next 12 months, January 1 through December 31.

### Changes in Family Status

If your spouse initially declines coverage under the retiree medical plan because of other coverage, you must provide proof of other coverage to the Benefits Department.

If your spouse has a change in employment and/or loses other coverage, you may enroll your spouse in the retiree medical plan provided that you request enrollment within 31 days of the loss of other coverage.

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*Attorneys for Plaintiffs and the Class*

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

KATHERINE BAKER, JOSE LUNA,	)	Case No.: 3:22-cv-4645-WHO
EDGAR POPKE, and DENNY G. WRASKE,	)	
JR., on behalf of themselves and all others	)	<b>CLASS ACTION</b>
similarly situated,	)	
	)	<b>DECLARATION OF WENDY KENNEDY</b>
Plaintiffs,	)	
	)	
v.	)	
	)	
SAVE MART SUPERMARKETS,	)	
	)	
Defendant.	)	

1 I, Wendy Kennedy, declare as follows:

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3 1. I have personal knowledge of the facts set forth in this Declaration, and could  
4 and would testify competently under oath if called as a witness. I understand that a class action  
5 lawsuit alleging violations of the Employee Retirement Income Security Act ("ERISA") has been filed  
6 against Save Mart Supermarkets ("Save Mart"), and that this Declaration may be used by the plaintiffs  
7 in connection with this case.

8 2. I have seen a copy of the Complaint in this case and understand that this  
9 Declaration will be submitted along with the First Amended Complaint in the class action against Save  
10 Mart.

11 3. I was employed by Save Mart from 1991 until September 3, 2010. I worked  
12 primarily at the corporate headquarters in Modesto. I started as Director of Training and Development.  
13 In the early 2000's, I became Vice President of Human Resources, and for the last several years of my  
14 employment I served as the Vice President of Corporate Communications and Community Affairs.

15 4. In my role as Director of Training and Development, my primary job duties  
16 were to train store managers, corporate managers, and executives in training workshops, store  
17 openings, new hire orientations, and additionally as needed. Bob Piccinini explained to me when I  
18 started that in order to grow the company, Save Mart needed to develop its leaders, and that is what I  
19 was brought into the company to do. I implemented a training program for all managers, both  
20 operational and corporate. The company required each manger to attend sixty-four hours of this  
21 training program, and we covered a wide array of topics and skills that could be relevant for  
22 managerial positions, such as communicating with employees, giving presentations, leading meetings,  
23 conducting performance reviews, understanding technical aspects of the business, leading teams  
24 effectively, et cetera. I also oversaw the team of Training Representatives who conducted the new hire  
25 orientations and other informational meetings with store employees. I would review, vet, and provide  
26 feedback on the content and materials trainers would present to employees. One of the topics included  
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1 information on employee benefits.

2           5.       In my role as Vice President of Human Resources, I oversaw the entire Human  
3 Resources Department, including payroll, benefits, recruiting, hiring, employee relations, and training.  
4 All Human Resources employees ultimately reported to me. I reported directly to Mike Silveira, the  
5 Senior Vice President of Human Resources. I supervised multiple Department Managers, including  
6 the Benefits, Training and Development, Recruiting, and Payroll Managers. I saw an important part of  
7 my role as working to enhance the employee culture at Save Mart, such as through customer outreach  
8 programs and training store personnel in customer relations, creating rewards for employees for high  
9 performance and for developing their skills, and spearheading employee appreciation and leadership  
10 events. I saw myself as a partner with the operational team, and worked to cultivate high standards  
11 and positive professional development opportunities for all store employees. A key aspect of Save  
12 Mart culture that I consistently highlighted was the good benefits and culture of reward for our  
13 hardworking employees.

14           6.       In my role as Vice President of Corporate Communications and Community  
15 Affairs, I dealt with community outreach and charitable efforts, including coordinating community  
16 donations given out by Save Mart to non-profits, setting up a program for donating food from the  
17 stores to the local food banks, attending community events, and supervising the Director of Public  
18 Relations and Director of Events.

19           7.       Throughout my tenure at Save Mart, the message from the company and from  
20 the owner Bob Piccinini was that Save Mart would take care of its employees like family. The  
21 company's principle back then was: you give to us, and we give to you. I can remember multiple  
22 sales-generating rallies for employees at the stores where Bob Piccinini would tell employees that we  
23 are going to make this future together, and that we are a family. I and the rest of the employees that I  
24 knew believed him. We were absolutely passionate about Save Mart, and Bob Piccinini was revered  
25 by the Save Mart employees who worked for him. A big part of our job in Human Resources was to  
26 help spread this message and this feeling amongst all Save Mart employees, and we did. We were  
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1 passionate believers in and communicators of this message that Save Mart was a family and would  
2 take care of its employees. Having generous lifetime benefits was a key pillar of this promise.

3           8. Specifically with respect to retirement benefits, my job duties included  
4 participating in meetings with Human Resources personnel including the Benefits Manager as well as  
5 Store Managers, Division Supervisors, and other employees about these benefits. Each year, the  
6 benefits insurance broker Gallagher Insurance would present Save Mart with options for various  
7 benefits packages. Typically, I, Benefits Manager Beth Fugate or Vickie Del Re, and Senior Vice  
8 President of Human Resources Mike Silveira would attend this presentation, and then the Benefits  
9 Manager and Mike Silveira would present the options to owner Bob Piccinini. Bob Piccinini  
10 maintained the final decision-making authority and would select the benefits packages for that year.  
11 Then, Gallagher Insurance would provide the details of the selected packages to the Benefits Manager,  
12 who in turn would communicate those details to me and the Human Resources Department personnel.  
13 Gallagher also provided pamphlets on the benefits to the Benefits Manager, and the Benefits Manager  
14 and other Human Resources personnel would create Save Mart-specific benefits handouts and  
15 disseminate them to employees. Human Resources personnel would present this information to the  
16 non-union employees in regular meetings and in response to employee questions. Based on the  
17 training that I received when I joined Save Mart and over the course of my employment there, I always  
18 understood that Save Mart would provide eligible non-union retirees with health care benefits equal to  
19 or greater than the union's benefits which would be for the duration of their lives.

21           9. Eligible employee meant someone who met the criteria of Save Mart's  
22 retirement plan. Those criteria may have changed in small ways over the years, but generally meant:  
23 (a) age 55 with 30 years of service; (b) age 60 with 15 years of service; (c) age 65 with ten years of  
24 service; or (d) the "Golden 85," whereby years of service plus age equals or exceeds 85.

25           10. Throughout my employment at Save Mart, if a member of the Human  
26 Resources Department or a manager, supervisor, or any employee asked me to describe non-union  
27 retiree health benefits, I would have told them that Save Mart provided health benefits to eligible  
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1 retirees and that Save Mart would always take care of them, which I believed meant for the duration of  
2 their lives. Based on the training that I received when I joined Save Mart and over the course of my  
3 employment there, I understood that the retiree health benefits would belong to an employee until they  
4 died, and if anyone asked me I would have told them so. I believe that it was broadly understood  
5 amongst employees that this benefit was for life. If anyone asked me, I am sure I told them that the  
6 benefit was for the duration of the retiree's life because that was always my understanding. None of  
7 us doubted that, nor were we given reason to. In my role as Vice President of Human Resources, I  
8 conveyed this understanding to the rest of the Human Resources personnel because I believed it to be  
9 true. All of the information and answers that we conveyed to employees were based on the premise  
10 that non-union retiree health benefits were for life.

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12 11. The Human Resources Department was responsible for disseminating the  
13 information about benefits to new hires. Save Mart provided detailed employee orientation meetings  
14 for all new hires. These orientations were held each time a new store opened and approximately  
15 weekly at various locations for any new employees in the district hired at existing stores. At the new-  
16 store orientations, Benefits Administrator Vickie Del Re, Benefits Manager Beth Fugate, Manager of  
17 Employee Relations Valerie Vallo, and/or other Human Resources representatives presented  
18 information regarding all of the benefits offered to non-union employees, including retiree health  
19 benefits, among other topics. At the district-level orientations, Training Representatives provided the  
20 same information. Commonly, benefits pamphlets were handed out, and a Power Point or other visual  
21 presentation were displayed. Typically, a Store Manager or District Manager also presented at the  
22 orientation.

23 12. The union employees had a separate benefits package under the contract with  
24 the union. My understanding was that the union package included retiree health benefits for life, and I  
25 believe this was the common understanding amongst Human Resources personnel and Save Mart  
26 employees broadly. This was important because Save Mart leadership reassured employees coming  
27 from union stores that non-union benefits were as good as or better than the union's. These statements  
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1 were made so regularly by management, supervisors, and Human Resources personnel that it was  
2 commonly understood and repeated by and amongst Save Mart employees. I along with the Human  
3 Resources employees whom I supervised all believed these messages one hundred percent. We were  
4 proud of it in our hearts and souls; it was the Save Mart way to take care of its employees. I never  
5 thought the non-union retiree health benefits would be taken away. As far as I know, no personnel in  
6 Human Resources nor any other employees thought that the non-union retiree health benefits would be  
7 taken away. The message to and from all of us in Human Resources was that these benefits are yours,  
8 you have dedicated your life to Save Mart, and we are going to take care of you from here until the  
9 end.

10 13. To my recollection, one of the first times I heard someone in Save Mart  
11 management say that the non-union benefits were as good or better than the union's benefits was Vice  
12 President of Human Resources John Bacon in approximately 1991, who was my boss at the time.  
13 Later on, Mike Silveira succeeded him in that role, and Mike Silveira also consistently repeated this  
14 messaging to everyone in Human Resources. This messaging was very effective and convincing to  
15 employees, and many Save Mart stores remained non-union because employees understood that their  
16 benefits would always be as good or better than the union's. This was the message that my superiors  
17 conveyed to me, and I conveyed it broadly and earnestly to Human Resources personnel whom I  
18 supervised, managers, and employees alike.

19 14. On some occasions, I recall repeating this message that non-union benefits  
20 would always be as good or better than the union's benefits to employees who had been members of  
21 the union while working in a store location but would lose their union membership when they were  
22 promoted to corporate-level jobs. I recall employees asking me why they should change positions or  
23 stores if it meant they would have to lose their union membership. I and other supervisors would  
24 reassure these employees that Save Mart was always going to take care of them. I told these  
25 employees that their retiree health benefits would always be as good or better than the union's. I also  
26 directed the personnel on my Human Resources Department team to disseminate this message and  
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1 they did so, including Manager of Employee Relations Valerie Vallo, Manager of Recruiting Kathleen  
2 (“Kit”) Tharp, Benefits Administrator Vickie Del Re, and Benefits Manager Beth Fugate.

3           15. It was my true understanding of the policy that non-union retiree health benefits  
4 would always be as good or better than the union’s, and that they would last for the duration of the  
5 retiree’s life. In my 19 years of working at the Director and Vice President levels at Save Mart, I did  
6 not hear any discussions or statements from Save Mart executives, owner Bob Piccinini, or other  
7 Human Resources personnel that Save Mart was reserving the right to eliminate retiree’s health  
8 benefits. To the contrary, I always heard leadership say the opposite: that the benefits would be as  
9 good or better than the union benefits, which meant the health benefits would be for life. Accordingly,  
10 I never told any Human Resources personnel, managers, or other employees that non-union retiree  
11 health benefits would potentially be taken away.

12           16. Over my years at Save Mart, I recall seeing the dissemination of numerous  
13 booklets, pamphlets, letters, and other documents describing non-union retiree health benefits to  
14 employees. I often oversaw the dissemination of such documentation to employees in my supervisory  
15 role within Human Resources. I do not recall ever seeing mention in any of these documents that Save  
16 Mart reserved the right to terminate these benefits. I never prepared a presentation or any  
17 documentation stating that Save Mart reserved the right to terminate these benefits because that was  
18 not my understanding, nor was that the direction I had received from higher-level executives.

19           17. My employment with Save Mart ended in 2010. I had not reached the eligibility  
20 requirements for retiree benefits. However, I am aware that Save Mart terminated its non-union retiree  
21 health benefits. I was shocked to hear this. I never thought this would happen. It was always my  
22 understanding that Save Mart had promised these benefits to eligible retirees for the duration of their  
23 lives. I believe that many employees relied on this promise when deciding to continue their  
24 employment at Save Mart in order to attain eligibility for these benefits and when deciding at what  
25 point to retire.  
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1 I declare under penalty of perjury under the laws of the United States that the foregoing  
2 is true and correct to the best of my knowledge.

3 Executed this <sup>22</sup> day of November, 2022, in Ripon, California.

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5 DocuSigned by:

Wendy Kennedy

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8 Wendy Kennedy  
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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

KATHERINE BAKER, JOSE LUNA,	)	Case No.: 3:22-cv-4645-WHO
EDGAR POPKE, and DENNY G. WRASKE,	)	
JR., on behalf of themselves and all others	)	<b>CLASS ACTION</b>
similarly situated,	)	
	)	<b>DECLARATION OF KATHLEEN THAR</b>
Plaintiffs,	)	
	)	
v.	)	
	)	
SAVE MART SUPERMARKETS,	)	
	)	
Defendant.	)	
	)	



1 I, Kathleen Tharp, declare as follows:

2 1. I have personal knowledge of the facts set forth in this Declaration, and could  
3 and would testify competently under oath if called as a witness. I understand that a class action  
4 lawsuit alleging violations of the Employee Retirement Income Security Act (“ERISA”) has been filed  
5 against Save Mart Supermarkets (“Save Mart”), and that this Declaration may be used by the plaintiffs  
6 in connection with this case.

7 2. I have seen a copy of the Complaint in this case and understand that this  
8 Declaration will be submitted along with the First Amended Complaint in the class action against Save  
9 Mart.

10 3. I was employed by Save Mart from 1985 until 2015. I worked primarily at the  
11 corporate headquarters in Modesto, which had various office locations over the years. I started as an  
12 Administrative Assistant in the Human Resources Department. Later, in the 1990s, I became the  
13 Manager of Recruiting, then Manager of Recruiting and Compensation, and eventually back to  
14 Manager of Recruiting as the company grew and roles needed to be divided, and finally for  
15 approximately the last two years of my employment I served as Manager of Compensation. Later,  
16 between approximately 2016-2019, I also did some part-time contracting work for Save Mart through  
17 a temporary employment contracting agency.

18 4. Initially, as an Administrative Assistant, my primary job duties were to help  
19 employees enroll in benefits, disseminate new hire paperwork, administer worker’s compensation  
20 paperwork and checks, answer personnel-related questions from employees and managers, handle  
21 filing, recruit and interview new hires, and conduct other general human resources-related tasks. I was  
22 a “Jack of all trades” within Human Resources. Later, in my management roles, I continued some of  
23 these general human-resources job duties and focused on recruiting and hiring new employees,  
24 orienting new hires and transfers when new stores opened, collaborating on organizational charts and  
25 salary rates for the various employee classifications, and administering the company’s non-union  
26 compensation plan.  
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1           5.       An important part of my role within Human Resources was pitching how  
2 generous the non-union benefits packages were and specifically that they were as good or better than  
3 the union benefits. These benefits included health care, life insurance, retirement income, and retiree  
4 health benefits, among others. The first time I remember being told that the non-union benefits were  
5 as good or better than the union's and that I should disseminate this message to employees was in  
6 approximately 1985, by the Director of Human Resources Jerry Sauer. Around the same time, Jerry  
7 Sauer's supervisor John Bacon, who I understood to be a high-level attorney within the company who  
8 speciali ed in labor relations and unions, also gave me this same message that the non-union benefits  
9 were as good or better than the union's. Over the years, I also heard Director of Human Resources  
10 Steve Goodman and Corporate Counsel and Vice President of Human Resources Mike Silveira say the  
11 same thing: that the non-union benefits would be as good or better than the union's benefits. These  
12 persons were senior to me in the company and I understood their statements to be an accurate account  
13 of the company's benefit packages.  
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15           6.       Throughout my tenure as a Human Resources employee at Save Mart, the  
16 company's approach was to tout the non-union benefits as being as good or better than the union  
17 benefits. Accordingly, when a new store opened, a team of Save Mart representatives would promote  
18 the non-union benefits at orientations and meetings with employees. During years of heavy expansion  
19 at Save Mart, I participated in approximately five to eight such new store openings per year. At any  
20 given store opening meeting, this team could include myself, a Vice President of Human Resources, a  
21 Division Supervisor, a Store Manager, a Training Manager, and/or a Human Resources Benefits  
22 Department Manager. The message from each of these Save Mart representatives including myself  
23 was consistent: the non-union benefits were as good or better than the union's benefits. I specifically  
24 recall Director of Human Resources Jerry Sauer and Director of Human Resources Steve Goodman  
25 being present at some of these store-opening meetings and stating that the non-union benefits were as  
26 good or better than the union benefits. Store management would also be conveying the same message  
27 to new hires and transferees at these meetings. I recall thinking that this was good for me as a non-  
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1 union employee myself because the company would always be competing with the union benefits and  
2 since the union benefits were so good, my benefits as a non-union employee would always be as good  
3 or better.

4           7.       As a rule of thumb, when a new store opened, new hires would account for half  
5 of the employees, and transferred employees from existing Save Mart stores would account for the  
6 other half. This meant that when a new store was opening, I would be speaking with many existing  
7 Save Mart employees, some of whom were union members prior to their transfer if their previous store  
8 was unioni ed. When a new store first opened, it would not be part of the union that could only  
9 happen later if the employees voted to unioni e. Accordingly, any union employees who transferred  
10 into a new store would lose their union membership and their eligibility for ongoing union benefits,  
11 and they would be covered under the non-union benefits packages instead. I recall that on numerous  
12 occasions, formerly union-member employees being transferred were nervous to be losing their union  
13 benefits. I repeatedly told these employees not to worry, that their benefits would be as good or better  
14 than the union's, and that their benefits would even be the same as my own benefits and those of their  
15 Store Manager, the Vice Presidents, and owner Bob Piccinini. I recall thinking these employees'  
16 concerns were unfounded because I trusted Save Mart's culture of care towards its non-union  
17 employees and believed that Save Mart intended to take care of eligible non-union retirees for life  
18 because I understood the union benefits to be for life and the non-union benefits were promised to be  
19 as good or better than the union's.

21           8.       Occasionally, I would also visit established stores where there had been reports  
22 that the union may be trying to mobili e there, or when there had been a minor change to the benefits  
23 and there was a proactive effort to calm any employee concerns about the change. I and others were  
24 sent to visit such stores to tout the generousness of the benefits package and reiterate that the non-  
25 union benefits were always as good or better than the union benefits, and that any minor changes  
26 would not alter that promise. For these meetings, it was typically announced to employees that  
27 company representatives were onsite to answer their questions, and employees could come talk with us  
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1 individually or in small groups. I would stay in the store for a few hours or sometimes a full day, and I  
2 would talk up the company's benefits for non-union employees and answer employee questions.

3 9. Specifically with respect to retirement benefits, my job duties included  
4 communicating with Save Mart's non-union employees at meetings and in individual phone calls and  
5 it was common for the issue of retiree benefits to arise. Based on the training that I received when I  
6 joined Save Mart and over the course of my employment there, I always understood that Save Mart  
7 would provide eligible non-union retirees with health care benefits for the duration of their lives.

8 10. Throughout my employment within Human Resources at Save Mart, if an  
9 employee asked me general questions regarding the non-union retiree health benefits, I would have  
10 told them that Save Mart provided retiree health benefits to eligible retirees and their eligible spouses  
11 until the death of the retiree. I had many such conversations with employees during my thirty years of  
12 service at Save Mart regarding retirement benefits, both in store meetings and individually.

13 11. The union employees had a separate benefits package under the contract with  
14 the union. My understanding was that the union package included retiree health benefits for life and  
15 that Save Mart could not take those away, and I believe this was the common understanding amongst  
16 Human Resources personnel and Save Mart employees broadly. This was important because Save  
17 Mart leadership wanted to convey to employees that they did not need to unionize because the non-  
18 union benefits would be as good as or better than the union's. Management knew that at any point the  
19 union could come in and try to unionize a store or other work unit, and so it was important to them that  
20 the non-union employees had received the message that their benefits would always be as good or  
21 better than the union benefits. These statements were made so regularly by management, supervisors,  
22 and Human Resources personnel that it was commonly understood and repeated by and amongst Save  
23 Mart employees. Specifically, at the store meetings described in Paragraphs 5-8, I, along with  
24 executive-level management and store management repeatedly told employees that the non-union  
25 benefits would be as good as or better than the union benefits.  
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27 12. Each year for at least the last two or three years of my employment at Save Mart  
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1 I received a copy of the "Save Mart Select Retiree Benefits" pamphlet, both in my Human Resources  
2 role and as an employee myself. This pamphlet was provided to employees on an annual basis. I kept  
3 one on my desk for reference when employees called me with benefits questions. The pamphlet  
4 contained useful information that we wanted to share widely so employees would have the information  
5 they needed regarding benefits. Where the pamphlet states: "WHEN COVERAGE ENDS Upon the  
6 death of the retiree," I understood this to mean that benefits would last until the retiree died. When  
7 employees asked me about their non-union retiree health benefits, they sometimes would reference  
8 this pamphlet in their questions. I would have told anyone who asked me that this provision meant the  
9 benefit would last for the duration of the retiree's life.

10 13. In 2016, Save Mart changed the retiree health benefit from a contribution  
11 towards health care premiums to an HRA plan. Save Mart would contribute 500 per month into an  
12 HRA for each eligible retiree and another 500 for their eligible spouse until they were 65 years old;  
13 once they were eligible for Medicare, the benefit went down to 300 per retiree and eligible spouse.  
14 My understanding was that while the methodology of how the retiree health benefits would be  
15 provided was changing, the benefits would still be provided to eligible retirees and their eligible  
16 spouses for the duration of the life of the retiree.

17 14. Based on the training that I received when I joined Save Mart and over the  
18 course of my employment there, I understood that the retiree health benefits would belong to an  
19 employee until they died, and if any Save Mart employees asked me I would have told them so. I  
20 believed that it was broadly understood amongst employees that the retiree health benefit was for life.  
21 If anyone asked me how long the retiree health benefits lasted, I am sure I told them that it was for the  
22 duration of their life. Because myself and the rest of the Human Resources Department believed this to  
23 be true, all of the information and answers that we conveyed to employees were based on the premise  
24 that the retiree health benefits were for life. Nothing about this was secret; I was not aware of any  
25 confidential meetings within Human Resources where it was discussed that the retiree health benefits  
26 could be terminated prior to an employee's death. Quite the contrary, we widely disseminated the  
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1 information about how generous the non-union retiree health benefits were and that Save Mart would  
2 take care of its retirees.

3           15. This was my true understanding of the policy. In nearly 30 years of working in  
4 the Human Resources Department at Save Mart, no one ever told me that the company could decide to  
5 eliminate retiree's health benefits or mentioned any sort of end date. To the contrary, I always heard  
6 leadership say the opposite: that the benefits would be as good or better than the union benefits, which  
7 meant the health benefits would be for life and could not be taken away. Throughout my tenure as a  
8 Save Mart employee, Save Mart portrayed a company ethos of taking care of its employees, which  
9 was fostered by the owner Bob Piccinini. It was widely understood both within Human Resources and  
10 companywide that Save Mart would take care of eligible retirees for life. There was a culture of  
11 longevity and a system of reward for longevity at Save Mart employees stayed with the company for  
12 decades, and the company fostered a feeling of trust that it would always take care of its employees. I  
13 never heard of employees suspecting that Save Mart could or would terminate the retiree health  
14 benefits.

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16           16. I retired from Save Mart in 2015. I had been a non-union employee and was  
17 eligible for the non-union retiree benefits. A large part of my decision to retire was based on my  
18 eligibility for retiree health benefits for me and my husband. As I was considering retirement in 2015,  
19 I recall Larry Sanford, who was in the role of Senior Director of Human Resources, telling me not to  
20 worry, that the HRA would be plenty to cover whatever I needed to purchase health insurance, and  
21 that I would be fine. I understood him to be saying that Save Mart had done their research on the cost  
22 of health insurance premiums and that the HRA would be enough to cover those premiums for the rest  
23 of my life. He did not state that the HRA benefit could be revoked; quite the contrary, he was  
24 reassuring me that I would be taken care of and I believed this meant for the duration of my life.

25           17. I counted on both myself and my spouse having the HRA benefit until I died. I  
26 was shocked when I received notice from the company in April 2022 that it was terminating these  
27 benefits. That is not something that I ever thought could happen. In fact, I had chosen to continue my  
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1 employment at Save Mart for so many years specifically because of the promise of retiree medical  
2 benefits--when I had opportunities or considered changing jobs over the years, I decided to stay at  
3 Save Mart because of the retiree benefits. I recall telling new employees over the years that if I were  
4 their age I would be open to considering a different job, but that because I was getting closer to  
5 retirement eligibility and the retirement medical benefits were so good, I was going to stay.

6 18. I would not have retired in 2015 had I believed Save Mart could terminate the  
7 HRA benefit. I was only 58 years old at the time and would have continued working to earn money if  
8 I had thought this benefit might not last my entire life. I had carefully planned and budgeted for my  
9 retirement with these funds in mind, so losing them has impacted my standard of living.

10  
11 I declare under penalty of perjury under the laws of the United States that the foregoing  
12 is true and correct to the best of my knowledge.

13 Executed this 22 day of November, 2022, in Modesto, California.

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15 DocuSigned by:  
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18 Kathleen Tharp  
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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

KATHERINE BAKER, JOSE LUNA,	)	Case No.: 3:22-cv-4645-WHO
EDGAR POPKE, and DENNY G. WRASKE,	)	
JR., on behalf of themselves and all others	)	<b>CLASS ACTION</b>
similarly situated,	)	
	)	<b>DECLARATION OF VALERIE VALLO</b>
Plaintiffs,	)	
	)	
v.	)	
	)	
SAVE MART SUPERMARKETS,	)	
	)	
Defendant.	)	
	)	



1 I, Valerie Vallo, declare as follows:

2 1. I have personal knowledge of the facts set forth in this Declaration, and could  
3 and would testify competently under oath if called as a witness. I understand that a class action  
4 lawsuit alleging violations of the Employee Retirement Income Security Act (“ERISA”) has been filed  
5 against Save Mart Supermarkets (“Save Mart”), and that this Declaration may be used by the Plaintiffs  
6 in connection with this case.

7 2. I have seen a copy of the Complaint in this case and understand that this  
8 Declaration will be submitted along with the First Amended Complaint in the class action against Save  
9 Mart.

10 3. I was employed by Save Mart from May 12, 1986 until October 2017. I worked  
11 primarily at the corporate headquarters in Modesto, which had various office locations over the years.  
12 I started as an Administrative Assistant in the Human Resources Department. Later I became the  
13 Personnel Supervisor, then Employee and Labor Relations Supervisor, and then until my retirement I  
14 served as Manager of Employee Relations.

15 4. My primary job duties initially were to help employees enroll in benefits,  
16 disseminate new hire paperwork, hand out worker’s compensation paperwork, answer personnel-  
17 related questions from employees and managers, handle filing, interview job applicants, and handle  
18 other general human resources-related tasks. I considered myself a “Jill of all trades” within Human  
19 Resources. In my role as Manager of Employee Relations, I continued these functions and also  
20 conducted trainings and meetings with store managers particularly around union grievances,  
21 arbitrations, and personnel issues.

22 5. An important part of my role within Human Resources was visiting stores to  
23 discuss the advantages to employees of stores remaining non-unionized, by talking about how  
24 generous the employee benefits were for non-union employees. These meetings were informally  
25 referred to internally as “the roadshow” or “kumbaya” meetings because the purpose was to foster  
26 harmony amongst the employees by reassuring them about their benefits and quelling any desires to  
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1 give up those benefits in favor of the union benefits package if the store unionized. For these  
2 meetings, it was typically announced to employees that company representatives were onsite to answer  
3 their questions, and employees could come and talk with us individually or in small groups. I stayed  
4 in the store for a few hours or sometimes a full day, typically along with a Vice President of Human  
5 Resources and/or a Division Supervisor, and we talked up the company's benefits for non-union  
6 employees and answer employee questions. These meetings were typically scheduled in response to  
7 reports that the union was working to organize within a particular store. I participated in, on average,  
8 two or three such meetings per year, up until the point around approximately 2007 when Save Mart's  
9 approach changed and it allowed the union organizing to proceed without attempting to convince  
10 employees of the benefits of remaining non-union.

11  
12 6. Specifically with respect to retirement benefits, my job duties included  
13 communicating with Save Mart's non-union employees about retirement benefits at meetings and in  
14 individual phone calls. Based on the training that I received when I joined Save Mart and over the  
15 course of my employment there, I always understood that Save Mart would provide eligible non-union  
16 retirees with health care benefits for the duration of their lives.

17 7. Eligible employee meant someone who met the criteria of Save Mart's  
18 retirement plan. Those criteria may have changed in small ways over the years, but generally meant:  
19 (a) age 55 with 30 years of service; (b) age 60 with 15 years of service; (c) age 65 with ten years of  
20 service; or (d) the "Golden 85," whereby years of service plus age equals or exceeds 85.

21 8. Throughout my employment within Human Resources at Save Mart, if an  
22 employee asked me to describe non-union retiree health benefits, I would have told them that Save  
23 Mart provided health benefits to eligible retirees for the duration of their lives and that the non-union  
24 benefits would always be as good or better than the union's benefits.

25 9. The union employees had a separate benefits package under the contract with  
26 the union. My understanding was that the union package included retiree health benefits for life and  
27 that Save Mart could not take those away, and I believe this was the common understanding amongst  
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1 Human Resources personnel and Save Mart employees broadly. This was important because Save  
2 Mart leadership actively discouraged employees from joining the union by promising that the non-  
3 union benefits would be as good as or better than the union's. These statements were made so  
4 regularly by management, supervisors, and Human Resources personnel that it was commonly  
5 understood and repeated by and amongst Save Mart employees. Specifically, at the "roadshow"  
6 meetings described in Paragraph 5, I, along with a Vice President and/or a Division Supervisor,  
7 repeatedly told employees that the non-union benefits would be as good as or better than the union  
8 benefits.

9  
10 10. To my recollection, one of the first times I heard someone in Save Mart  
11 management say that the non-union benefits were as good or better than the union's benefits was early  
12 in my tenure by Vice President of Human Resources John Bacon, who was my boss at the time. There  
13 was a new Save Mart store opening in Modesto where I made multiple visits around its opening, and  
14 on at least one occasion John Bacon was there as well, talking to employees. He told employees that it  
15 was their choice and they could choose to be union but they could also choose to be non-union, and  
16 that the non-union benefits were as good or better than the union's. John Bacon told me that this is the  
17 way that it was, and that I should tell this to employees. This messaging was very effective and  
18 convincing to employees, and many Save Mart stores remained non-union because the employees  
19 wanted to retain the benefits promised to non-unionized staff. I also heard this promise that the  
20 benefits for non-union employees were as good or better than the union's made by subsequent Vice  
21 President of Human Resources Mike Silveira, Benefits Manager Beth Fugate, Division Supervisor  
22 Steve Beaver, and Division Supervisor Erik Saam, among others.

23 11. I specifically recall describing non-union retiree health benefits at the roadshow  
24 meetings which I participated in on average two to three times per year, at other store meetings, and in  
25 many individual phone calls with employees who contacted Human Resources with questions about  
26 their benefits. It was a daily part of my job to respond to these types of questions. I remember  
27 keeping a "cheat sheet" in my desk drawer with the retirement eligibility formula because employees  
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1 called so frequently to ask about when they would be eligible for retirement and what the benefits  
2 would be. I also assembled the relevant benefits booklets and pamphlets into a binder so that I had  
3 ready access to the information when employees called with questions.

4           12. In 2016, Save Mart changed the retiree health benefit from a contribution  
5 towards health care premiums to an HRA plan. Save Mart would contribute \$500 per month into an  
6 HRA for each eligible retiree and another \$500 for their spouse. Around the same time, Save Mart sent  
7 letters to retirement-eligible employees, encouraging them to retire before December 31, 2017, or else  
8 they would lose the spousal HRA benefit. I know this because I received this letter myself. My  
9 understanding from this document was that the company wanted people to retire, and it was  
10 encouraging them to do so by eliminating the HRA spousal benefit unless people retired by December  
11 31, 2017. This letter further contributed to my understanding that the company had promised us retiree  
12 health benefits for life because it was using that promise to try to convince me and other employees to  
13 retire; it would have made no sense for us to retire based on this offer if we believed that the company  
14 could take away the retiree health benefits at any time.

15           13. I recall that in 2016 or 2017, a female center store manager from Northern  
16 California called me in my capacity as Manager of Employee Relations to ask me about the letter  
17 described in Paragraph 12. She was having difficulty making the decision of whether to retire in order  
18 to keep her spousal medical benefits. As employees, while we were actively working, we received  
19 spousal health benefits, but based on the letter we now needed to retire by the end of 2017 or we  
20 would no longer receive spousal health benefits. She and I talked about what a difficult decision this  
21 was. My understanding at the time was that the retiree health benefits would be for life, and our entire  
22 conversation was premised on this understanding. The center store manager had this same  
23 understanding, and if she asked me whether the benefit would be for life, I am sure I told her that they  
24 would be.

25           14. A lot of employees had questions about the new HRA plan. It was part of my  
26 job duties to answer those questions. Based on the training that I received when I joined Save Mart and  
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1 over the course of my employment there, I understood that the HRA benefit would belong to an  
2 employee until they died, and if anyone asked me I would have told them so. I believe that it was  
3 broadly understood amongst employees that this benefit was for life and that the funds could not be  
4 forfeited prior to the retiree's death. If employees asked me, I am sure I told them that the benefit was  
5 for the duration of their lives because that was always my understanding. Because I and the rest of the  
6 Human Resources department believed this to be true, all of the information and answers that we  
7 conveyed to employees were based on the premise that the HRA plan was for life. Nothing about this  
8 was secret; there were not any confidential meetings within Human Resources where it was discussed  
9 that the HRA benefits could be terminated prior to an employee's death. Quite the contrary, we widely  
10 disseminated the information about the beneficial aspects of being able to use the HRA to obtain  
11 health insurance and cover other costs during retirement, and I understood that employees were relying  
12 on this information when making their retirement decisions.

13  
14 15. Each year starting in approximately 2013, I received a copy of the "Save Mart  
15 Select Retiree Benefits" pamphlet, both in my Human Resources role and as an employee myself. This  
16 pamphlet was mailed out to employees on an annual basis. In my role, when someone requested an  
17 additional or replacement copy, I sent it to them via interstore mail. The pamphlet contained useful  
18 information that we wanted to share widely so employees would have the information they needed  
19 regarding benefits. Where the pamphlet states: "WHEN COVERAGE ENDS...Upon the death of the  
20 retiree," I understood this to mean that benefits would last until the retiree died. When employees  
21 called me with questions about the HRA plan, they sometimes would reference this pamphlet in their  
22 questions. I would have told anyone who asked me that this provision meant the benefit would last for  
23 the duration of the retiree's life. I dealt with a lot of "gray areas" in my role as Human Resources, but  
24 to my mind this was not a gray area; it was in black and white that the benefit lasted until the retiree  
25 died.

26 16. Based on the information I had been given, I also regularly said to employees  
27 statements along the lines of: "You can save this up [in the HRA], you can accumulate this; nothing  
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1 says that you have to use it every year.” This was my understanding—that the benefits could  
2 accumulate up until the retiree’s death, that they could not be taken away, and that there was no  
3 deadline by which the amounts in the employee’s HRA needed to be used prior to the death of the  
4 retiree.

5           17. One component of the HRA was that the monthly benefit amount decreased  
6 when the retiree reached Medicare-eligibility age. I received numerous individual questions from  
7 employees about this in which I explained that the HRA would be \$500 per month until the retiree was  
8 eligible for Medicare so that the retiree could purchase primary medical insurance; and then the HRA  
9 benefit would decrease when the retiree was eligible for Medicare because then the retiree would only  
10 need to purchase a supplemental policy. The retiree medical plan, for my entire tenure, always was a  
11 secondary payor to Medicare for Medicare eligible employees, so this feature of the plan was  
12 consistent with how the plan had always worked. I believe this is an additional reason why  
13 employees, including myself and others in Human Resources, believed the HRA benefit would be for  
14 life—Medicare lasts for the duration of the retiree’s life, and the HRA was meant to run up to and then  
15 concurrent with Medicare. I and others believed this meant that the HRA and Medicare would last for  
16 the duration of our lives.

17           18. This was my true understanding of the policy. In over 30 years of working in  
18 the HR Department at Save Mart, no one ever told me that the company could decide to eliminate  
19 retiree’s health benefits or mentioned any sort of sunset clause. To the contrary, I always heard  
20 leadership say the opposite: that the benefits were as good or better than the union benefits, which  
21 meant the health benefits would be for life and could not be taken away. Prior to approximately 2015,  
22 Save Mart portrayed a company ethos of taking care of its employees, which was fostered by the  
23 owner Bob Piccinini. It was widely understood both within Human Resources and companywide that  
24 Save Mart would take care of eligible retirees for life. There was a strong culture of trust within the  
25 company, and I never heard of employees suspecting that Save Mart could or would terminate the  
26 retiree health benefits.  
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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

DocuSigned by:  
Valerie Valla  
377AC01DD270466

DECLARATION OF VALERIE VALLO