

1 LEXINGTON LAW GROUP
2 Mark N. Todzo, State Bar No. 168389
3 Meredyth Merrow, State Bar No. 328337
4 503 Divisadero Street
5 San Francisco, CA 94117
6 Telephone: (415) 913-7800
7 Facsimile: (415) 759-4112
8 mtodzo@lexlawgroup.com
9 mmerrow@lexlawgroup.com

10 Attorneys for Plaintiff
11 JOSEPH DIGIACINTO

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

15 JOSEPH DIGIACINTO,

16 Plaintiff,

17 v.

18 ALBERTSONS COMPANIES, INC., et al.,

19 Defendants.

Case No. 20-cv-03382-KAW

**JOINT STIPULATION FOR DISMISSAL
PURSUANT TO FRCP 41(a)(1)(A)(ii)**

1 The parties to this action, acting through counsel, and pursuant to Federal Rule of Civil
 2 Procedure 41(a)(1)(A)(ii), hereby stipulate pursuant to an agreement between the parties to the
 3 Dismissal of this action.

4 Plaintiff Joseph DiGiacinto (“Plaintiff”) and Defendants Albertsons Companies, Inc.,
 5 Safeway, Inc., and Lucerne Foods, Inc. (“Defendants”)¹ hereby provide information to the Court
 6 to ensure that Plaintiff’s voluntary dismissal of his claims will not adversely affect the interests of
 7 the absent putative class members. As set forth herein, it is unlikely that any absent putative class
 8 members will be prejudiced by the dismissal of this lawsuit.

9 In the Court’s Order Continuing Case Management Conference Re: Settlement [ECF No.
 10 48], the Court requested that the Parties be prepared to address the factors set forth in *Diaz v.*
 11 *Trust Territory of Pac. Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989) and specifically the publicity
 12 concerning this case and its filing. In *Diaz*, the Court reversed the denial of a motion to intervene
 13 in a putative class action where certain claims had been previously voluntarily dismissed. In its
 14 order, the *Diaz* court determined that inquiry into pre-certification dismissals of putative class
 15 claims should be made with regard to possible prejudice from: “(1) class members’ possible
 16 reliance on the filing of the action if they are likely to know of it either because of publicity or
 17 other circumstances, (2) lack of adequate time for class members to file other actions, because of
 18 a rapidly approaching statute of limitations, (3) any settlement or concession of class interests
 19 made by the class representative or counsel in order to further their own interests.” *Id.* Applying
 20 these factors to Plaintiff’s dismissal demonstrate that there is no prejudice to absent class
 21 members.

22 First, there has been negligible publicity surrounding this case. Neither Plaintiff nor
 23 Defendants have received any press inquiries regarding this case and neither party issued any
 24 press release concerning this action. The only mentions of the case that counsel have been able to
 25 locate were in online legal publications from mid-2020 and June 2021 discussing recent class
 26 action filings. These include topclassactions.com on May 21, 2020

27
 28 ¹ Plaintiff and Defendants are collectively referred to as the “Parties.”

(<https://topclassactions.com/lawsuit-settlements/consumer-products/household/safeway-and-albertsons-class-action-says-stores-sold-toxic-plates/>), Washington Legal Foundation (<https://www.wlf.org/2020/08/06/publishing/consumer-fraud-suits-against-retailers-a-harbinger-of-new-pfas-class-action-wave/>), and a Bloomberg Law article on June 3, 2021 (<https://news.bloomberglaw.com/environment-and-energy/wendys-states-ditch-food-wrappers-with-forever-chemicals>). In addition, Plaintiff's counsel had a posting regarding this case on its website, lexlawgroup.com. Notwithstanding this limited publicity, the Parties were never contacted by any putative class member. Accordingly, it is extremely unlikely that any putative class member was relying on this action for some sort of recovery.

In addition, no putative class members will face a short fuse on pursuing the claims that were dismissed by Plaintiff. The applicable statute of limitations for Plaintiff's UCL and express warranty claims is four years and the applicable statute of limitations for Plaintiff's CLRA and FAL claims is three years. *See* Business and Professions Code § 17208. The filing of this case tolled the applicable statute of limitations for any putative class members and the statute of limitations will not continue running until Plaintiff's claims are dismissed. *Tomblin v. Wells Fargo Bank, N.A.*, No. 13-cv-04567-JD, 2014 U.S. Dist. LEXIS 145556, at *7. Further, the alleged violations were ongoing up until January 1, 2022, when California AB 1201, now codified in Cal. Public Resources Code §§42356 et seq., took effect.² Accordingly, there is ample time for absent putative class members to bring a claim before the applicable statute of limitations expires.

Lastly, the dismissal of Plaintiff's claims in no way impacts or concedes the rights of absent putative class members. The dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) was filed prior to class certification and without prejudice. Thus, the dismissal has no res judicata effect on any absent class members or any of the claims set forth in Plaintiff's case.

² This new law mandates that foodware products may not be sold as compostable if they contain PFAS chemicals, which is the entirety of the injunctive relief sought by Plaintiff in his case.

1 Because there is no adverse impact on absent putative class members resulting from the
2 dismissal of Plaintiff's claims, the Parties believe that a stipulated dismissal will be proper and
3 that no notice to absent putative class members of the dismissal is required.

4
5 Dated: April 12, 2022

LEXINGTON LAW GROUP

6
7 /s/ Mark N. Todzo

8 Mark N. Todzo (State Bar No. 168389)
9 Meredyth L. Merrow (State Bar No. 328337)
10 LEXINGTON LAW GROUP
11 503 Divisadero Street
12 San Francisco, CA 94117
13 Telephone: (415) 913-7800
14 Facsimile: (415) 759-4112
15 mtodzo@lexlawgroup.com
16 mmerrow@lexlawgroup.com
17 Attorneys for Plaintiff
18 JOSEPH DIGIACINTO

19
20
21
22
23
24
25
26
27
28
Dated: April 12, 2022

KAHN SOARES & CONWAY, LLP

/s/ Richard Conway

Richard Conway (SBN 81679)
Rissa Stuart (SBN 166459)
Carla Khal (SBN 166491)
Attorneys for Defendants
ALBERTSONS COMPANIES, INC.
SAFEWAY, INC.
LUCERNE FOODS, INC.

ATTESTATION

I, Mark Todzo, am the CM/ECF user whose ID and password are being used to file this Joint Stipulation for Dismissal. Pursuant to Local Civil Rule 5-1(i)(3), I hereby attest that Richard Conway, on whose behalf this filing is jointly submitted, has concurred in this filing.

/s/Mark Todzo

Mark Todzo

CERTIFICATE OF SERVICE

I, Mark Todzo, an attorney, hereby certify that on April 12, 2022, I caused a complete and accurate copy of the foregoing document to be served via this Court's ECM/ECF notification system, which will serve electronically to all participants in this case.

/s/Mark Todzo

Mark Todzo