Exhibit 1

SETTLEMENT AGREEMENT AND LIMITED RELEASE OF CLAIMS

This Settlement Agreement and Limited Release of Claims ("Settlement Agreement") is entered into by Publix Super Markets, Inc. ("Publix"), and Audenzio Aiuto, Chenzeria Wright, and Nathaniel Palmer (the "Named Plaintiffs"), for themselves and on behalf of those opt-in plaintiffs (the "Opt-in Plaintiffs") (collectively, the "Parties") who filed consent forms in *Aiuto v. Publix Super Markets, Inc.*, No. 1:19-cv-4803 (N.D. Ga.) (the "Lawsuit") that were not withdrawn by December 23, 2020.

RECITALS

WHEREAS, the Named Plaintiffs filed the Lawsuit under 29 U.S.C. § 216(b) of the Fair Labor Standards Act ("FLSA") against Publix on October 24, 2019.

WHEREAS, in the Lawsuit, the Named Plaintiffs assert claims that they and other Meat, Deli, and Bakery Department Managers were misclassified as exempt from the FLSA's overtime provisions.

WHEREAS, the Court conditionally certified a collective consisting of all individuals who worked more than 40 hours as a Meat, Deli, and/or Bakery Department Manager paid by Publix as overtime exempt on a pay date from October 24, 2016 to April 1, 2019 ("Covered Period") (collectively the "Covered Positions").

WHEREAS, notice of the Lawsuit was sent to the conditionally certified collective on or about July 30, 2020 and approximately 1695 individuals in Covered Positions filed consent forms.

WHEREAS, Publix disputes all of the claims and material allegations made by the Named Plaintiffs and Opt-in Plaintiffs (together, the "Plaintiffs") in the Lawsuit, and maintains that it properly classified all Covered Positions as exempt from overtime requirements.

WHEREAS, the Parties mediated the Lawsuit on December 9, 2020 in Atlanta and, after a full day mediation and several weeks of continued negotiations, arrived at agreed upon terms (the "Term Sheet") to settle the claims in the Lawsuit.

WHEREAS, the parties recognize that the outcome in the Lawsuit is uncertain and that achieving a final result through litigation would incur substantial additional risk, discovery, time, and expense.

WHEREAS, Named Plaintiffs have investigated and evaluated the facts and law relating to the claims asserted in the Lawsuit to determine how best to serve the interests of the Opt-in Plaintiffs and believe, in view of the costs, risks, and delay of continued litigation balanced against the benefits of settlement, that the settlement as provided in this Settlement Agreement is in the best interests of all Named and Opt-in Plaintiffs;

WHEREAS, Named Plaintiffs and Publix believe that the settlement provided in this Settlement Agreement represents a fair, reasonable, and adequate resolution of the Lawsuit; and

WHEREAS, the Parties have agreed to settle this case as to all Named and Opt-in Plaintiffs.

NOW THEREFORE, the Parties, intending to be legally bound and in consideration of the mutual covenants and other good and valuable consideration set forth below, agree as follows:

AGREEMENT

1. No Admission of Liability

By agreeing to this Settlement Agreement, Publix admits no liability of any kind and expressly denies any liability or wrongdoing. The Parties also agree that their Term Sheet and this Settlement Agreement do not constitute determinations or admissions that any group of similarly situated people exist to maintain a collective action under the FLSA.

2. Court Approval of Settlement

A. **Motion for Approval**. The Settlement Agreement is contingent upon Court approval and entry of stipulated judgment incorporating the terms of this Settlement Agreement and dismissing the Lawsuit with prejudice. The Parties agree to jointly file a Motion for Entry of Stipulated Judgment Approving FLSA Settlement with the Court, to be accompanied by a proposed stipulated Judgment incorporating the Settlement Agreement terms and dismissing the Lawsuit with prejudice, within three court days of full execution of this Settlement Agreement and the Parties' agreement on the contents of the Joint Motion.

B. **Cooperation and Mutual Pursuit of Approval**. If the Court rejects the Settlement Agreement in whole or in part, the Parties agree to engage in good faith in follow-up negotiations with the intent to resolve any of the Court's concerns that led to rejection, including if necessary by mediation of unresolved disputes with Hunter Hughes, Esq. The Parties agree that if approval is denied, the Parties will work in good faith to address any deficiencies the Court identifies and seek court approval again.

3. Releases of Claims

A. Named and Opt-in Plaintiffs' Release. All Plaintiffs agree to release any and all FLSA and state law wage and hour claims that arose or could have arisen because of Plaintiffs' employment by Publix in Covered Positions through and including April 1, 2019 ("Released Claims"). The parties agree that participation in the lawsuit or the settlement has no res judicata, claim-splitting, or other claim preclusion effect on anything other than Released Claims.

B. Named Plaintiffs' Separate General Release Agreements. Named Plaintiffs agree to execute a separate general release agreement in exchange for separate and additional consideration, releasing any and all labor and employment claims other than those asserted in the Action as resolved by this settlement, including wage and hour claims, that arose or could have arisen because of Named Plaintiffs' employment by Publix through and including the date on which the Court approves the Settlement Agreement. If the Court rejects the Named Plaintiffs' General Release and/or its payments, the FLSA collective action settlement agreement survives and the rejected amount from the General Releases will be added to the Gross Fund, unless otherwise ordered by the Court. If the Court in the Lawsuit reduces the General Release payments, the FLSA collective action settlement agreement and the releases given in the general release agreement survive, and the rejected amount from the General Releases will be added to the Gross Fund, unless otherwise ordered by the Court.

4. <u>Consideration Paid by Publix</u>

A. Gross Fund. In consideration for the entry of stipulated judgment incorporating this Settlement Agreement and dismissing the Lawsuit with prejudice, as well as the Releases effected by this Settlement Agreement, Publix will pay into a common fund (QSF) the sum of $7,277,500 (the "Gross Fund"). The Gross Fund includes (1) payment for settlement of all state and federal wage and hour claims for work in Covered Positions that accrued during the Covered Period; (2) attorney's fees and costs and expenses of Plaintiffs' counsel, as approved by the Court; and (3) fees and expenses of the Settlement Administrator.

B. Net Fund. The Net Fund equals the Gross Fund minus (1) Court-approved attorney's fees and expenses; (2) Publix's share of payroll taxes, and (3) Court-approved fees and expenses of the Settlement Administrator ("Net Fund").

5. <u>Settlement Administrator</u>

A third-party Settlement Administrator will administer the distribution of settlement checks to all settling Plaintiffs. The Settlement Administrator will be selected by Named Plaintiffs' counsel, subject to Publix's approval, which shall not be unreasonably withheld. The Settlement Administrator's fees and expenses will be paid out of the Gross Fund in the amount approved by the Court.

6. <u>Settlement Administration</u>

A. Collective Data. Within 14 days of the Court's Approval of this Settlement Agreement and entry of stipulated judgment dismissing the Lawsuit with prejudice, Publix will provide Plaintiffs' Counsel and the Settlement Administrator an electronic spreadsheet containing (1) the names; (2) Social Security Numbers (provided to Settlement Administrator only); (3) last known addresses; (4) email addresses; and (5) telephone numbers of the Opt-in Plaintiffs. Named Plaintiffs will provide the Settlement Administrator with the contact any information provided by Plaintiffs to Plaintiffs' counsel, and the Settlement Administrator will utilize the most updated contact information.

B. Funding Date. Publix shall deposit the Gross Fund into a qualified settlement fund ("QSF") established by the Settlement Administrator within 14 days after the date the Court's Order approving settlement and dismissing the Lawsuit with prejudice becomes a final, non-appealable order. The Settlement Administrator will send settlement checks based on the Award Calculation to Plaintiffs, and all Court-approved attorney's fees and costs and expenses, within seven days of the Funding Date.

C. Award Calculation.

The individual settlement payment paid to each Plaintiff from the Net Fund will be calculated as follows:

1. Each Plaintiff will first be allocated from the Net Fund a settlement payment amount of $200, so that no settlement payment to a Plaintiff as a pro rata distribution of the Distribution Amount shall be for less than the gross amount of $200;

2. The remaining Net Fund amount shall then be allocated based on each Plaintiff's assigned settlement points as a pro rata percentage of all assigned settlement points, determined as follows based on full weeks worked (defined as all weeks for which the payroll records do not indicate two or more full leave days in a workweek (each a "full week worked")) as reflected in the payroll records ("payroll records") and Time in Role data ("Time in Role data") produced to Plaintiff prior to mediation, as supplemented to account for any previously omitted Time in Role data:

   (a) Each Plaintiff shall be assigned 1 settlement point for each full week worked in Covered Positions paid within that portion of the Covered Period beginning two years prior to the Plaintiff's Consent filing date ("two year period");

   (b) Each Plaintiff shall be assigned .75 settlement points for each full week worked in Covered Positions paid within the period beginning three years prior to the Plaintiff's Consent filing date and ending on the start date of their applicable two year period ("third year period"), to account for greater risk of non-recovery for third year weeks that could not be counted under the FLSA's statute of limitations unless Plaintiffs carried their burden of proving willfulness.

D. Tax Treatment. The Settlement Administrator shall be responsible for tax reporting and payment of taxes from the QSF, and shall allocate each Plaintiff's settlement payment from the Gross Fund as 50% wages (reported by W-2) and 50% as non-wage compensation for disputed FLSA liquidated damages alleged in the Lawsuit (reported by 1099). Employer's share of payroll taxes shall be deducted and paid by the QSF, from the Gross Settlement Fund deposited in the QSF, in an amount determined by the Settlement Administrator, subject to review for accuracy by Publix, including its legal counsel and accountants.

E. Unclaimed Amounts. Settlement checks will be valid for 120 days after they are issued, after which they will be void. The Settlement Administrator shall retain any allocated portions of the Net Fund that remain unclaimed by that 120th day for an additional 120 days, during which time a Plaintiff may request payment of his or her allocated portion. Thereafter, remaining unclaimed portions of the Net Fund shall be returned to Publix. If the Court rejects a reversion to Publix of unclaimed funds, then such funds will be redistributed to participating Plaintiffs on a pro rata basis using the Award Calculations above. If Plaintiffs' counsel, after consultation with the Settlement Administrator, determines that the potential redistribution amount is insufficient to make redistribution administratively feasible and economically practical, any such remainder will be subject to the unclaimed property laws of the plaintiff whose funds remain unclaimed. The Settlement Administrator will comply with reporting and remittance obligations under the applicable state's unclaimed property laws.

7. <u>No Effect on Benefits Owed</u>

This Lawsuit did not involve and does not affect employee benefits owed. Payments of settlement proceeds to Plaintiffs shall not result in recomputation of any of benefits that may have been provided or made available by Publix and shall not be counted or considered in any manner for purposes of determining benefits under any employee benefit plan maintained by Publix in which Plaintiffs are or were eligible to participate, including benefit accrual purposes under any tax-qualified or non-qualified retirement, savings or employee stock ownership plan.

8. <u>Attorneys' Fees and Costs</u>

Publix agrees to pay, and the Parties agree that Named Plaintiffs' counsel may seek Court approval of up to, one-third of the Gross Fund as fees, plus $46,091.87 in out-ofpocket costs and litigation expenses, which amounts shall be paid from the Gross Fund by QSF distribution reported by 1099 issued to Named Plaintiff's counsel. This Settlement Agreement is not conditioned upon the Court's approval of Named Plaintiffs' Counsels' request for approval of attorneys' fees, costs, and expenses. Attorneys' fees, costs, and expenses shall be reported and paid to Plaintiffs' counsel from the Gross Fund within seven days after the Funding Date. If the Court rejects Named Plaintiffs' Counsels' request for approval of the agreed upon attorney's fees, the Settlement Agreement shall survive and the portion of requested fees un-awarded shall be redistributed to the Plaintiffs on a pro rata basis using the calculation set forth in the Award Calculation section above.

9. Covenant Not to Sue

Named Plaintiffs agree not to assert Released Claims by suing or joining suit against Publix in any individual, class, or collective action.

10. Continuing Jurisdiction

The Parties agree to request that the United States District Court for the Northern District of Georgia retain continuing and exclusive jurisdiction over enforcing the Settlement Agreement.

11. Settlement Agreement Term Disputes

The Parties agree that any disputes over the negotiation, construction or interpretation of terms in the Term Sheet or this Settlement Agreement will be submitted for resolution by mediation with Hunter Hughes, Esq., or such other mediator mutually selected by the Parties.

12. Choice of Law

The enforcement of this Settlement Agreement shall be governed and interpreted by and under the laws of the State of Georgia whether or not any party is, or may hereafter be, a resident of another state.

13. Extensions of Time

The parties may, by mutual agreement, agree upon a reasonable extension of time for deadlines and dates reflected in this Settlement Agreement, without further notice to the Court, subject to Court approval.

14. No Waivers, Modifications, or Amendments of the Settlement Agreement

No waiver, modification or amendment of this Settlement Agreement, whether purportedly made before or after the Court's approval of this Settlement Agreement, shall be valid or binding unless in writing, signed by or on behalf of all parties and then only to the extent set forth in such written waiver, modification or amendment, subject to any required Court approval. Any failure by any party to insist upon the strict performance by the other party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of the other provisions of this Settlement Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of all of the provisions of this Settlement Agreement.

15. Severability

This Settlement Agreement shall be deemed severable, and the invalidity or unenforceability of any one or more of its provisions shall not affect the validity or enforceability of any of the other provisions.

16. Entire Agreement

This Settlement Agreement constitutes the entire agreement of Publix and Plaintiffs concerning its subject matter. All prior and contemporaneous negotiations and understandings between Publix and Plaintiffs are deemed merged into this Settlement Agreement, with the exception that this Settlement Agreement shall have no effect on or be affected by any prior settlement or other agreement entered into between Publix and any Plaintiff regarding payment for all or part of any claims released herein.

17. Counterparts

This Settlement Agreement shall become effective upon its execution, subject to subsequent Court approval and entry of stipulated judgment dismissing the Lawsuit with prejudice. The parties may execute this Settlement Agreement in counterparts, and execution in counterparts shall have the same force and effect as if the Named Plaintiffs and Publix had signed the same instrument. Any signature or e-signature made by the signing party and transmitted by facsimile, email, or electronic signature (via DocuSign, SignNow, or similar e-signing service) to execute this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement and shall bind the signing party.

18. Corporate Signatories

Each person executing this Settlement Agreement on behalf of any party hereto warrants that such person has the authority to do so, subject to applicable court approval. Any person executing this Settlement Agreement on behalf of a corporate signatory hereby warrants and promises for the benefit of all parties hereto that such person is duly authorized by such corporation to execute this Settlement Agreement.

[*Signature Page Follows*]

I read and fully understood the foregoing settlement agreement and release of claims before accepting this agreement by my signature below.

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Audenzio Aiuto

I read and fully understood the foregoing settlement agreement and release of claims before accepting this agreement by my signature below.

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Chenzeria Wright

I read and fully understood the foregoing settlement agreement and release of claims before accepting this agreement by my signature below.

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Nathaniel Palmer

I read and fully understood the foregoing settlement agreement and release of claims before accepting this agreement on behalf of the corporate entity by my signature below.

FOR PUBLIX SUPER MARKETS, INC.

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Signature

Name:______________________________

Title: CEO

Date:______________________________

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FOR PUBLIX SUPER MARKETS, INC.

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Title: CEO

Date:______________________________

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Nathaniel Palmer

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FOR PUBLIX SUPER MARKETS, INC.

Randall Todd Jones
Signature

Name: Randall Todd Jones

Title: CEO

Date: 3/17/2021