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JENNIFER WISE and all others similarly situated

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

10 **(UNLIMITED JURISDICTION)**

11 JENNIFER WISE, on behalf of herself and all
12 others similarly situated, and as an “aggrieved
13 employee” on behalf of other “aggrieved
14 employees” under the Labor Code Private
Attorneys General Act of 2004,

15 *Plaintiff(s),*

16 vs.

17 SPRINGS CHARTER SCHOOLS, INC., a
California corporation; RIVER SPRINGS
18 CHARTER SCHOOL, INC., a California
corporation; EMPIRE SPRINGS CHARTER
19 SCHOOL, INC., a California corporation;
HARBOR SPRINGS CHARTER SCHOOL, INC.,
20 a California corporation; CITRUS SPRINGS
CHARTER SCHOOL, INC., a California
21 corporation; VISTA SPRINGS CHARTER
SCHOOL, INC., a California corporation;
22 PACIFIC SPRINGS CHARTER SCHOOL, INC.,
a California corporation and DOES 1-50,
23 inclusive,
24

25 *Defendants.*

Case No. RIC2002359

**PLAINTIFF JENNIFER WISE’S
SUPPLEMENTAL MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF PLAINTIFF’S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date: April 18, 2023
Hearing Time: 8:30 a.m.
Hearing Dept.: 1, The Honorable Craig
G. Riemer

Action filed: July 01, 2020
Trial Date:

Submitted Herewith Under Separate Cover

1. Supplemental Memorandum of Points and Authorities;
2. Supplemental Declaration of David Spivak;
3. Supplemental Declaration of Walter L Haines;
4. Amended Compliance Chart; and
5. [Proposed] Order.



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1 **PLAINTIFF JENNIFER WISE’S SUPPLEMENTAL MEMORANDUM OF POINTS**
2 **AND AUTHORITIES IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY**
3 **APPROVAL OF CLASS ACTION SETTLEMENT**

4 Plaintiff JENNIFER WISE (“Plaintiff”) submit this supplemental briefing in support for
5 their unopposed motion for preliminary approval of class action settlement with Defendants
6 Springs Charter Schools, Inc., River Springs Charter School, Inc., Empire Springs Charter
7 School, Inc., Harbor Springs Charter School, Inc., Citrus Springs Charter School, Inc., Vista
8 Springs Charter School, Inc., and Pacific Springs Charter School, Inc. (collectively
9 “Defendants”). Pursuant to the Court’s ruling of the Court dated December 14, 2022
10 ((Supplemental Declaration of David G. Spivak (“Suppl. DS”), ¶ 3, Ex. 15), the Parties amended
11 the Joint Stipulation and Settlement Agreement dated June 27, 2022 (Suppl. DS, ¶ 4, Ex. 16) to
12 address the Court’s concerns. The Parties seek approval of this new settlement agreement,
13 entitled First Amended Joint Stipulation and Settlement Agreement dated April 10, 2023 (“First
14 Amended Settlement”). Suppl. DS, ¶¶ 5 and 6, Exs. 17 (clean) and 18 (redline). The First
15 Amended Settlement was revised in light of the Third Amended Complaint filed on February 6,
16 2023. (Suppl. DS, ¶¶ 9 and 10, Exs. 20 and 21). The Plaintiff also proposes a new preliminary
17 approval order for the First Amended Settlement, submitted herewith under separate cover
18 (“Proposed Order”), and which includes as attachments, the revised “Notice of Proposed Class
19 Action Settlement and Hearing Date for Court Approval” (sub. Ex. A), “Election Not to
20 Participate in Settlement” Form (sub. Ex. B) and the “Objection Form” (sub. Ex. B). Suppl. DS,
21 ¶¶ 7 and 8, Ex. 19 (redline). Each of the Court’s comments in the ruling of the Court are recited
22 below in bold, followed by a discussion of the Plaintiff’s response to the comment/question.

23 **1. The moving papers are inconsistent regarding the distribution of any**
24 **unclaimed sums. The Spivak declaration states (at ¶ 64) that the uncashed checks will be**
25 **distributed to Legal Aid at Work, but the Notice to class members states (at § 7, p. 5) that**
26 **the uncashed checks will be sent to the State Controller.**

27 The First Amended Settlement, notice of class action settlement, and the appended
28 Supplemental Declaration of David Spivak make clear that the Legal Aid at Work, and not the
State Controller’s Office, will be the recipient of the funds represented by claimed but uncashed
settlement share checks. Suppl. DS ¶ 11, Exs. 17 and 18, ¶ III.I., sub. Ex. A, ¶ 7.



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1 **2. If Legal Aid at Work is the correct recipient, there is no declaration of Walter**
2 **Haines, who is identified in the pleadings as co-counsel for plaintiff, as required by H.3.c.iii.**

3 The Supplemental Declaration of Walter Haines has been submitted herewith. It has been
4 supplemented to state that his office does not have any relationship with Legal Aid at Work.
5 (Supplemental Declaration of Walter Haines (“Suppl. WH”), ¶ 2-3).

6 **3. The definition of released claims (agreement, § I. BB) exceeds the limitations**
7 **of, and thus fails to comply with, the CMO.**

8 As the First Amended Settlement and related documents make clear, the release is limited
9 to comply with the CMO. The definition of “Released Claims” is now:

10 Putative class members who do not opt out of the settlement will release all claims stated
11 in or based upon the facts alleged in the Complaint, the First Amended Complaint, the
12 Second Amended Complaint, and the Third Amended Complaint from July 1, 2016
13 through the date of preliminary court approval of the settlement.

14 Suppl. DS, Exs. 17 and 18 ¶ I.BB., sub. Ex. A, ¶8.

15 **4. The definition of released parties (at agreement, § I. CC) and the description**
16 **of released parties in the notice, do not comply with Section H.3.e of the CMO.**

17 **a. First, the identification of released parties includes a number of**
18 **entities that plaintiff argues had the same orientation program as the named parties and**
19 **states that “they are related with Springs Charter School, Inc., and each such entity**
20 **conducted the alleged ‘pre-employment’ meetings that are the subject of this action during**
21 **the relevant time period.” These other entities are not signatories to the agreement and are**
22 **separate corporations. The court is not convinced, without additional information that the**
23 **additional entities should be included in the definition of released parties.**

24 The definition of “Released Parties” is now: “Defendants and any of Defendants’
25 respective officers, directors, employees, and agents.” Suppl. DS, Exs. 17 and 18 ¶ I.CC., sub.
26 Ex. A, ¶ 8.



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1 b. Second, the release, even if including the additional entities, is not
2 limited to the “officers, directors, employees and agents” of those entities, as required by
H.3.e.i.

3 As stated above, the identification of Released Parties is now consistent with Section
4 H.3.e of the CMO. Suppl. DS, Exs. 17 and 18 ¶ I.BB., sub. Ex. A, ¶ 8.

5
6 **5. The agreement defines the relevant court as being San Diego Superior Court.**
7 **(First § II.)**

8 The First Amended Settlement defines the “Superior Court” as the Riverside County
9 Superior Court. Suppl. DS, Exs. 17 and 18 ¶ I.II., sub. Ex. A, ¶ 1.

10 **6. The definition of the class in the second amended complaint (at ¶ 15) is**
11 **inconsistent with the definition of the class in the agreement (at § I. GG.) Moreover, it is**
12 **not clear how any of the claims alleged in the SAC would apply to individuals who applied**
13 **for employment by the defendants but were hired.**

14 The Third Amended Complaint defines the class as follows:

15 all persons who applied for employment with Defendants in California, were prospective
16 employees of Defendants in California, and/or who Defendants employed in California,
17 including but not limited to human resources staff, administrative staff, teachers, and
18 persons in comparable positions, at any time during the period beginning four years prior
19 to the filing of this action and ending on the date that final judgment is rendered in this
action.

20 Suppl. DS ¶ 9, Ex. 20 ¶ 20. Consistent with this, the First Amended Settlement defines the
21 “Settlement Class” as follows:

22
23 All persons who applied for employment with Defendants in California, were prospective
24 employees of Defendants in California, and/or who Defendants employed in California
25 at any time between July 1, 2016 through the date of Preliminary Approval. The
26 Settlement Class includes only such persons that attended one of Defendants’ “pre-
27 employment” meetings. (The Class will not include any person who previously settled or
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1 released any of the claims covered by this Settlement, or any person who previously was
2 paid or received awards through civil or administrative actions for the claims covered by
3 this Settlement).

4 Suppl. DS ¶¶ 5 and 6, Exs. 17 and 18, ¶ I.G.G. When the parties negotiated this Settlement,
5 Defendants presented Plaintiff with a list of all putative class members who participated in the
6 pre-employment meeting during the period beginning four years before the filing of the lawsuit
7 through the mediation date. Defendants informed Plaintiff that prior to the mediation, Defendants
8 had ended the practice of unpaid pre-employment meetings. The Settlement Class definition from
9 the First Amended Settlement clearly treats all persons who participated in the pre-employment
10 meeting during the Class Period the same. This is because Plaintiff contends that all such persons,
11 regardless of whether Defendant deemed them hires, became employees at the time they attended
12 what the Defendants characterize as the “pre-employment” meeting. Suppl. DS, ¶ 12.

13 **7. Contrary to the Court’s recommendation (CMO, § H.3.i.), the Agreement**
14 **at § III.G.3. provides that “out of each Individual Settlement Share, the Settlement**
15 **Administrator shall also pay the Defendants’ portion of payroll taxes....” The parties shall**
16 **confirm whether that is their intention.**

17 The Parties have corrected this provision. Section III.G.3 of the First Amended Settlement
18 Agreement, consistent with Section I.R, now states that Defendants will pay their portion of
19 payroll taxes as the Class Members’ current or former employer separate and in addition to the
20 Gross Settlement Amount. Suppl. DS, ¶ 13.

21 **8. The text of the order does not require the order to be accompanied by an**
22 **exclusion form and an objection form, as required by Sections H.4.e and H.4.f of the CMO.**

23 When sent to Class Members, the Administrator will include with the “Notice of
24 Proposed Class Action Settlement and Hearing Date for Court Approval” (sub. Ex. A), an
25 “Election Not to Participate in Settlement” Form (sub. Ex. B) and an “Objection Form” (sub. Ex.
26 B). Suppl. DS, ¶ 14, Exs. 17 and 18, sub. Exs. A, B, and C. However, the Notice of Proposed
27 Class Action Settlement and Hearing Date for Court Approval does not require a Class Member
28 to use the “Election Not to Participate in Settlement” Form to exclude him/herself from the
Settlement or the “Objection Form” to object to the Settlement. The First Amended Settlement
does not require class members to send requests for exclusion or objections to the Administrator



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1 to seek exclusion or to object, respectively. It only requires them to send them in writing to the
2 Administrator. Suppl. DS, ¶ 14, Exs. 17 and 18, sub. Exs. A ¶¶ 9 and 12, B, and C. The proposed
3 approval order for the First Amended Settlement submitted herewith, includes each of these
4 documents. Suppl. DS, ¶ 7.

5 **9. The notice at § 16 fails to comply with Section H.5.c.i of the CMO because it**
6 **does not advise the class members where they can find the settlement agreement.**
7 **Specifically, it fails to describe “the full title and filing date either of the settlement**
8 **agreement or of the declaration or other document to which the agreement was attached**
9 **when filed with the Court....”**

10 The Notice of Proposed Class Action Settlement and Hearing Date for Court Approval
11 for the First Amended Joint Stipulation and Settlement Agreement advises Class Members that
12 they can view the following documents at a website hosted by the Administrator:

- 13 a. The First Amended Joint Stipulation and Settlement Agreement filed with the
14 Court on April 10, 2023.
- 15 b. The Court’ Order Preliminarily Approving the First Amended Joint Stipulation
16 and Settlement Agreement submitted with the Court on April 10, 2023.
- 17 c. The Notice of Proposed Class Action Settlement and Hearing Date for Court
18 Approval filed with the Court on April 10, 2023.
- 19 d. The Election Not to Participate in Settlement form filed with the Court on April
20 10, 2023.
- 21 e. The Objection form filed with the Court on April 10, 2023.
- 22 f. The Motion for Preliminary Approval of the Joint Stipulation and Settlement
23 Agreement filed with the Court on October 3, 2022.
- 24 g. The Declaration of David Spivak in Support of the Motion for Preliminary
25 Approval of the Joint Stipulation and Settlement Agreement filed with the Court
26 on October 3, 2022.
- 27 h. The Declaration of Walter Haines in support of the Motion for Preliminary
28 Approval of the Joint Stipulation and Settlement Agreement filed with the Court
on October 3, 2022.



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- 1 i. The Declaration of Lara Besser in support of the Motion for Preliminary Approval
2 of the Joint Stipulation and Settlement Agreement filed with the Court on October
3 3, 2022.
- 4 j. The Declaration of Michael Moore on Behalf of Administrator with Respect to
5 Qualifications of Class Administration filed with the Court on October 3, 2022.
- 6 k. The Declaration of Joan Graff (Legal Aid at Work) filed with the Court on
7 October 3, 2022.
- 8 l. The Supplemental Briefing in Support of the Motion for Preliminary Approval of
9 the First Amended Joint Stipulation and Settlement Agreement filed with the
10 Court on April 10, 2023.
- 11 m. The Supplemental Declaration of David Spivak in Support of the Supplemental
12 Briefing for the Motion for Preliminary Approval of the First Amended Joint
13 Stipulation and Settlement Agreement filed with the Court on April 10, 2023.
- 14 n. The Supplemental Declaration of Walter Haines in Support of the Supplemental
15 Briefing for the Motion for Preliminary Approval of the First Amended Joint
16 Stipulation and Settlement Agreement filed with the Court on April 10, 2023.

17 See Suppl. DS, ¶¶ 5 and 6, Exs. 17 and 18, sub. Exs. A ¶ 16.

18 **10. The certification under penalty of perjury shall be deleted from the exclusion
19 form. The form should be as simple as reasonably possible. (See CMO, § H.8.b.)**

20 The certification has been removed. See Suppl. DS, ¶¶ 5 and 6, Exs. 17 and 18, sub. Ex.
21 B.

22 **11. Paragraphs 10 to 12 of the Proposed Order shall be deleted. The Court
23 preliminarily approves the settlement, but does not preliminarily approve the attorney's
24 fees, costs, administrative fees, or service award.**

25 These paragraphs have been removed. See Proposed Order submitted herewith, see also
26 Suppl. DS, ¶8, Ex. 19 (redline).

27 **12. It does not appear that the declaration of Spivak complies with the portion
28 of the CMO that requires counsel to estimate the judgment that could be realistically
recovered at trial as to each claim. (CMO, H.3.a.iii.)**

In the Supplemental Declaration of David Spivak, appended hereto, he presents his
estimate of the judgment that could be realistically recovered at trial as to each claim. Suppl. DS,
¶ 15. He states as follows:



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I estimate that judgment could be realistically recovered at trial as to each claim in the following amounts:

Restitution/Wages

Wage underpayments:	\$125,718.52
Liquidated damages:	\$125,718.52
Unreimbursed Expenses	\$-
Rest periods:	\$ 20,779.92
Meal Periods:	\$ 20,779.92

Total:	\$292,996.87
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Penalties

Wage Statement Penalties:	\$6,550.00
Waiting time penalties:	\$1,077,605.83
Civil Penalties:	\$ 91,200.00

Total:	\$1,175,355.83
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GRAND TOTAL:	\$1,468,352.71
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Suppl. DS, ¶ 15. The calculations for each claim are attached to the original Declaration of David Spivak in support of the preliminary approval motion at Exhibit 8. Suppl. DS, ¶ 16.

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1 Because of the number and materiality of the errors and omissions in the moving
2 papers, the Court has suspended its detailed review. Therefore, there are likely to be errors
3 and omissions in addition to those listed above. The plaintiff shall review the CMO to
4 confirm that the revised or supplemental documents will be sufficient to bring the moving
5 papers into full compliance with the CMO.

6 Plaintiff has reviewed the CMO and has concluded that the responses to the Court's
7 tentative ruling of December 14, 2022 referenced comply with the CMO. Suppl. DS, ¶ 17.

8 Respectfully submitted,

9 THE SPIVAK LAW FIRM

10 Dated: April 10, 2023

11 By:



12 DAVID G. SPIVAK
13 MAYA CHEAITANI, Attorneys for
14 Plaintiff(s), JENNIFER WISE and all
15 others similarly situated



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