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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF RIVERSIDE**
12 **(UNLIMITED JURISDICTION)**

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

17 *Plaintiff(s),*

18 vs.
19

20 SPRINGS CHARTER SCHOOLS, INC., a
California corporation; RIVER SPRINGS
21 CHARTER SCHOOL, INC., a California
corporation; and DOES 1-50, inclusive,
22

23 *Defendant(s).*

Case No. RIC2002359

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

Hearing Date: December 14, 2022
Hearing Time: 8:30 a.m.
Reservation ID: 590106029795
Hearing Dept.: 1, The Honorable Craig
Riemer
Action filed: July 01, 2020



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TABLE OF CONTENTS

1		
2	TABLE OF AUTHORITIES.....	vi
3	I. INTRODUCTION.....	1
4	II. BACKGROUND.....	2
5	A. The Claims and Procedural History	2
6	B. Investigation of Claims Through Informal Discovery	2
7	C. Mediation.....	3
8	D. Defendants’ Financial Condition.....	4
9		
10	III. OVERVIEW OF THE SETTLEMENT	4
11	A. Settlement Class Definition.....	4
12	B. Monetary Terms	4
13	C. Timing of Payments	5
14	D. Calculation of Settlement Shares.....	6
15	E. Apportionment of Settlement Shares.....	6
16	F. The Releases.....	6
17	G. Notice and Claims Process and Procedures.....	7
18	1. Opting Out.....	8
19	2. Objecting	9
20		
21	H. Uncashed Checks.....	10
22	I. The Release of Claims For Settlement Class Members Is Limited To Those That Could	
23	Reasonably Arise From the Facts Alleged In The Lawsuit.....	11
24	IV. CERTIFICATION OF THE CLASS IS APPROPRIATE FOR SETTLEMENT	
25	PURPOSES	11
26	A. The Settlement Class Is Objectively Ascertainable.....	12
27	B. The Membership of the Settlement Class Is Sufficiently Numerous	12
28	C. Class Members Share a Well-Defined Community of Interest	12



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D.	Plaintiff Is Typical of the Settlement Class	13
E.	Plaintiff Will Adequately Represent the Settlement Class	14
F.	Class Action Treatment Is the Superior Means For Resolving The Claims Of The Class Members	15
V.	THE COURT SHOULD GRANT PRELIMINARY APPROVAL BECAUSE THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE	15
A.	Legal Standard.....	15
B.	The Settlement Is Presumptively Fair	16
C.	The Settlement Satisfies the Kullar Factors for Approval.....	18
1.	Evaluation of Plaintiff’s Case.....	19
a.	Risks Associated with Defendants’ Financial Condition	19
b.	Risks Associated with the Unpaid Wages Claim	20
c.	Risks Associated with the Meal Period Claims.....	21
d.	Risks Associated with the Rest Break Claims.....	22
e.	Risks Associated with the Statutory “Wage Statement” Penalty Claims.....	23
f.	Risks Associated with The Waiting Time Penalties Claim.....	25
g.	Risks Associated With the PAGA Claim	26
h.	Risks Associated With A Pick-Up Stix Campaign.....	27
2.	Allocation of the PAGA Payment	27
3.	Presence of Governmental Participant	28
4.	Reaction of Class Members to Proposed Settlement.....	28
VI.	THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY COMPENSATE CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY COMPARED TO OTHER CLASS MEMBERS.....	29
VII.	ALLOCATION OF AN ATTORNEYS’ FEES AND COSTS AWARD TO CLASS COUNSEL FOR LITIGATION EXPENSES IS APPROPRIATE.....	29
VIII.	THE CLASS REPRESENTATIVE GENERAL RELEASE PAYMENT TO	



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1 PLAINTIFF SHOULD BE PRELIMINARILY APPROVED BECASUSE IT IS FAIR,
2 ADEQUATE, AND REASONABLE. 30

3 IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE
4 PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE, AND
5 REASONABLE..... 31

6 X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN
7 SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO GIVE
8 ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO EXERCISE
9 THEIR RIGHTS. 31

10 XI. CONCLUSION 32



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TABLE OF AUTHORITIES

	Cases	Page(s)
1		
2		
3	<i>Arenas v. El Torito Rests., Inc.</i>	
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5	<i>Bernstein v. Virgin Am., Inc.</i>	
6	(N.D.Cal. 2017) 227 F.Supp.3d 1049	18
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8	(N.D. Cal. 2019) U.S. Dist. LEXIS 13253	18
9	<i>Bowles v. Superior Court</i>	
10	(1955) 44 Cal.2d 574	12
11	<i>Bravo v. Gale Triangle, Inc.</i>	
12	(C.D.Cal. Feb. 16, 2017) 2017 WL 708766	17
13	<i>Brinker Restaurant Corp. v. Superior Court</i>	
14	(2012) 53 Cal.4th 1004	21
15	<i>Capitol People First v. Dept. of Developmental Servs.</i>	
16	(2007) 155 Cal. App. 4th 676.....	13
17	<i>Carrington v. Starbucks Corp.</i>	
18	(2018) 30 Cal.App.5th 504	18, 28
19	<i>Cartt v. Superior Court</i>	
20	(1975) 50 Cal.App.3d 960	31
21	<i>Chindarah v. Pick Up Stix, Inc.</i>	
22	(2009) 171 Cal.App.4th 796	27
23	<i>Chu v. Wells Fargo Investments, LLC</i>	
24	(N.D. Cal., Feb. 16, 2011) 2011 WL 67245	28
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26	(1983) 145 Cal.App.3d 27	14
27	<i>Comcast Corp. v. Behrend</i>	
28	(2013) 133 S.Ct. 1426	23
	<i>Daar v. Yellow Cab Co.</i>	
	(1967) 67 Cal.2d 695	12



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1	<i>Dunk v. Ford Motor Co.</i>	
2	(1996) 48 Cal.App.4th 1794	12, 16
3	<i>Duran v. U.S. Bank National Assn.</i>	
4	(2014) 59 Cal.4th 1	21, 23
5	<i>EEOC v. Waffle House, Inc.</i>	
6	(2002) 534 U.S. 279	27
7	<i>Franco v. Ruiz Food Prods., Inc.</i>	
8	(E.D. Cal. Nov. 27, 2012) 2012 WL 5941801	28
9	<i>Garcia v. Gordon Trucking</i>	
10	(E.D. Cal. Oct. 31, 2012) 2012 WL 5364575	28
11	<i>Hebbard v. Colgrove</i>	
12	(1972) 28 Cal.App.3d 1017	12
13	<i>Hicks v. Toys ‘R’ Us–Delaware, Inc.</i>	
14	(C.D. Cal. Sept. 2, 2014) 2014 WL 4703915	28
15	<i>Hopson v. Hanesbrands, Inc.</i>	
16	(N.D.Cal. Aug. 8, 2008) 2008 WL 3385452	28
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18	(N.D. Cal. Apr. 3, 2009) 2009 WL 928133	28
19	<i>Hypolite v. Carleson</i>	
20	(1975) 52 Cal.App.3d 566	12
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22	(N.D. Cal. 1989) 723 F.Supp. 1373	30
23	<i>In re Ampicillin Antitrust Litig.</i>	
24	(D.D.C. 1981) 526 F.Supp. 494	30
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27	<i>In re Omnivision Techs.</i>	
28	(N.D.Cal. 2007) 559 F.Supp.2d 1036	17
	<i>In re Pacific Enterprises</i>	
	(9 th Cir. 1995) 47 F.3d 373	29
	///	



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1	<i>Iskanian v. CLS Transportation Los Angeles, LLC</i>	
2	(2014) 59 Cal.4th 348	26
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4	(C.D.Cal. Aug. 7, 2012) 2012 U.S. Dist. LEXIS 112396	25
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6	(2012) 226 Cal.App.4th 391	20
7	<i>Kao v. Holiday</i>	
8	(2017) 12 Cal.App.5th 947	24
9	<i>Ketchum v. Moses</i>	
10	(2001) 24 Cal.4th 1122	29
11	<i>Kullar v. Foot Locker Retail, Inc.</i>	
12	(2008) 168 Cal.App.4th 116	16, 18, 19
13	<i>Laffitte v. Robert Half Intl, Inc.</i>	
14	(2016) 1 Cal. 5 th 480	29
15	<i>Laguna v. Coverall N. Am., Inc.</i>	
16	(9th Cir. June 3, 2014) 2014 WL 2465049	20, 27
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21	<i>McGhee v. Bank of America</i>	
22	(1976) 60 Cal.App.3d 442	14
23	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
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25	<i>Nordstrom Com. Cases</i>	
26	(2010) 186 Cal.App.4th 576	28
27	<i>Nguyen v. Baxter Healthcare Corp.</i>	
28	(C.D.Cal. Nov. 28, 2011) 2011 U.S. Dist. LEXIS 141135	25
	<i>Richmond v. Dart Industries, Inc.</i>	
	(1981) 29 Cal.3d 462	12

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3	<i>Rose v. City of Hayward</i>	
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5	<i>Sanford v. Landmark Protection, Inc.</i>	
6	(Cal. Ct. App., Sept. 27, 2011) 2011 WL 4452910	23, 24
7	<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
8	(2004) 34 Cal.4th 319	13
9	<i>Spann v. J.C. Penney Corp.</i>	
10	(C.D.Cal. 2016) 211 F.Supp.3d 1244	20, 27
11	<i>Thurman v. Bayshore Transit Management, Inc.</i>	
12	(2012) 203 Cal.App.4 th 1112	26
13	<i>Torrissi v. Tucson Elec. Power Co.</i>	
14	(9th Cir. 1993) 8 F.3d 1370	27
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16	(2018) 5 Cal.5th 829	20, 21
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18	(1975) 48 Cal.App.3d 134	32
19	<i>Tyson Foods, Inc. v. Bouphakeo</i>	
20	(2015) 136 S.Ct. 382	23
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22	(N.D.Cal. 1995) 901 F.Supp. 294	30
23	<i>Viking River Cruises, Inc. v. Moriana</i>	
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1 *Woods v. Vector Mktg. Corp.*,
2 (N.D. Cal. May 22, 2015) 2015 WL 2453202..... 24, 25

3 **Statutes**

4 Bus. & Prof. Code, section 17200 2, 6, 13

5 Civ. Code, section 3289 26

6 Code Civ. Proc., section 382 1, 11, 15

7 Code Civ. Proc., section 384 10

8 Lab. Code, section 200 25

9 Lab. Code, section 201 2, 7, 25, 26

10 Lab. Code, section 202 2, 7, 25, 26

11 Lab. Code, section 203 2, 7, 25, 26

12 Lab. Code, section 204 7

13 Lab. Code, section 218.5 31

14 Lab. Code, section 218.6 26, 31

15 Lab. Code, section 226 18

16 Lab. Code, section 226.2 2

17 Lab. Code, section 226.7 2, 7, 25, 26

18 Lab. Code, section 510 2, 7

19 Lab. Code, section 512 2, 7

20 Lab. Code, section 558 7

21 Lab. Code, section 1030 4

22 Lab. Code, section 1031 4

23 Lab. Code, section 1034 4

24 Lab. Code, section 1174 7



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1	Lab. Code, section 1194	2, 7
2	Lab. Code, section 1197	2, 7
3	Lab. Code, section 1198	2, 7
4	Lab. Code, section 2698	2, 7
5	Lab. Code, section 2699	26, 28
6	Rules	
7	California Rules of Court, rule 3.766	29
8	California Rules of Court, rule 3.769	15, 29
9	Other	
10	IWC Wage Order No. 4-2001	7
11	<i>Alba Conte & Herbert B. Newberg, Newberg on Class Actions</i> (4th ed. 2002)	14



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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 **I. INTRODUCTION**

4 Plaintiff Jennifer Wise (“Plaintiff”) submits this memorandum of points and authorities in
5 support of her unopposed motion for preliminary approval of the Joint Stipulation and Settlement
6 Agreement (the “Settlement”)², which provides for a Gross Settlement Amount (“GSA”) of
7 \$530,000.00 in compromise of all disputed claims on behalf of all persons who either applied for
8 employment with Defendants Springs Charter Schools, Inc. or River Springs Charter School, Inc.
9 (collectively “Defendants”) or any of Defendants’ Related or Affiliated entities in California,
10 were prospective employees of Defendants or Related or Affiliated entities in California, or who
11 were employed by Defendants or Defendants’ Affiliated or Related Entities, and attended one of
12 Defendants’ (or Defendants’ Affiliated or Related Entities) alleged “Pre-employment” meetings,
13 at any time between July 1, 2016 through the date the Court grants Preliminary Approval of the
14 Settlement (“Settlement Class” or “Settlement Class Members”). Through this Motion, Plaintiff
15 respectfully requests for this Court to (1) provisionally certify the below-defined Class for
16 settlement purposes only under Code of Civil Procedure § 382; (2) preliminarily approve the
17 Settlement; (3) preliminarily appoint Plaintiff as Class Representative for settlement purposes
18 only; (4) appoint David Spivak of The Spivak Law Firm and Walter L. Haines of United
19 Employees Law Group as Class Counsel for settlement purposes only; (5) approve the proposed
20 notice procedures and related forms; (6) direct that the notice be mailed to the Settlement Class;
21 and (7) schedule a final approval hearing.

22 This Court should grant Plaintiff’s motion because: (1) for settlement purposes only, the
23 Settlement Class meets the requirements for class certification under Code of Civil Procedure §
24 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness,
25 reasonableness, and adequacy; (3) for settlement purposes only, Plaintiff is adequate to serve as
26 Class Representative; (4) for settlement purposes only, Plaintiff’s attorneys are adequate to serve
27 as Class Counsel; (5) the proposed notice procedures, and related forms, fully comport with due

28 ² The Settlement is attached as Exhibit (“Ex.”) 1 to the Declaration of David Spivak (“DS”),
which is submitted herewith under a separate cover.



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1 process and adequately apprise the Settlement Class Members of their rights; and (6) a final
2 approval hearing must be scheduled to allow Settlement Class members an opportunity to be
3 heard regarding the Settlement and to give it finality. Accordingly, for the reasons detailed below,
4 this Court should grant Plaintiff's Motion in its entirety and preliminarily approve the Settlement.

5 **II. BACKGROUND**

6 Defendants operate public charter elementary schools. DS, ¶ 1. Defendants employed
7 Plaintiff as a human resources generalist from about January of 2019 until May 10, 2019. *Id at* ¶
8 4.

9 **A. The Claims and Procedural History**

10 On April 29, 2020, Plaintiff notified Defendants and the California Labor and Workforce
11 Development Agency ("LWDA"), pursuant to the California Private Attorneys General Act of
12 2004, California Labor Code sections 2698, *et seq.* ("PAGA"), of alleged Labor Code violations
13 committed by Defendants. DS, ¶ 5, Ex. 2.

14 On July 01, 2020, Plaintiff filed a Class Action Complaint in the Riverside County
15 Superior Court, Case No. RIC2002359, against Defendants on behalf of herself and others
16 similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages
17 Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198); (2) Failure to Provide
18 Rest Breaks (Lab. Code §§ 226.7 and 1198); (3) Failure to Provide Meal Periods (Lab. Code §§
19 226.7, 512 and 1198); (4) Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (5) Waiting
20 Time Penalties (Lab. Code §§ 201-203); and (6) Unfair Competition (Bus. & Prof. Code §§
21 17200, *et seq.*). DS, ¶ 6, Ex. 3. On July 16, 2020, Plaintiff filed her First Amended Complaint
22 adding a claim under PAGA. DS, ¶ 6, Ex. 4. On September 25, 2020, Defendants filed an answer
23 to Plaintiff's First Amended Complaint. DS, ¶ 6, Ex. 5. On November 9, 2021, Plaintiff filed her
24 Second Amended Complaint under PAGA. DS, ¶ 6, Ex. 7. On December 6, 2021, Defendants
25 filed an answer to Plaintiff's Second Amended Complaint. DS ¶ 6, Ex. 8. Defendants deny all of
26 Plaintiff's allegations and strongly contend that their wage and hour policies, practices and
27 procedures are fully compliant with all applicable laws. DS, ¶ 6.

28 **B. Investigation of Claims Through Informal Discovery**

The Parties investigated the facts and law throughout the lawsuit. Plaintiff's investigation



1 commenced prior to filing the lawsuit. The investigation during the pendency of the lawsuit
2 included the exchange of information and documents through informal discovery. Discovery
3 largely focused on Plaintiff's allegations that putative class members 1) were not paid all wages
4 owed for time spent in the new-hire orientation and related activities; 2) were not provided with
5 lawful meal and rest breaks under California law; 3) received improper or inaccurate wage
6 statements; and 4) were not timely paid all owed and due wages. Discovery included putative
7 class members' time and payroll records and all relevant policies, including applicable
8 timekeeping and meal and rest policies. The Parties also investigated the relevant law as applied
9 to the facts, potential defenses, and damages claimed by Plaintiff on behalf of herself and the
10 putative class. The Parties conducted their own evaluations of the potential outcomes based on
11 the claims alleged.

12 Plaintiff's counsel made a reasonable inquiry into whether there are similar class,
13 representative or collective action for the claims pled in the lawsuit and has not discovered any
14 such claims. Staff for Plaintiff's counsel have checked the repository of PAGA notices maintained
15 by the LWDA and have determined that there are no other PAGA notices against the Defendant.

16 **C. Mediation**

17 The Parties thereafter engaged in an informal, voluntary exchange of information in the
18 context of privileged settlement discussions to facilitate an early mediation. Defendants produced
19 Plaintiff's entire personnel file (including policies and agreements she signed and acknowledged),
20 copies of their relevant company written policies, time-keeping records, email messages, and
21 paycheck data and records for the putative class, and more detailed time and payroll data for a
22 random sample of putative class members specifically selected by Plaintiff's counsel. DS, ¶ 7.

23 On June 09, 2021, following much of the foregoing informal discovery and exchange of
24 information, the Parties participated in a mediation session presided over by Michael J. Loeb,
25 Esq. of JAMS, an experienced class action mediator. During the mediation, the Parties had a full
26 day of productive negotiations and continued to negotiate in good faith after conclusion of the
27 mediation session. On December 16, 2021, with a continuing assistance of the mediator, the
28 Parties came to an agreement as to the settlement amount. During the mediation and good-faith



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1 negotiations, each side, represented by her/their respective counsel, recognized the risk of an
2 adverse result in the Action and agreed to settle the Action and all other matters covered by the
3 Settlement pursuant to the terms and conditions of the Settlement. DS, ¶ 8.

4 **D. Defendants' Financial Condition**

5 At the mediation, it became clear that Defendants had insufficient resources to cover the
6 full extent of alleged liability. DS ¶ 9. Therefore, as part of the settlement negotiations, Defendant
7 River Springs Charter School disclosed its 2019 through 2021 budgets, which included a
8 breakdown of its revenue and expenses for the last two years and information relating to employee
9 layoffs in 2020 due to its financial condition resulting from State budget freezes. *Id.* Defendants
10 have confirmed that this financial information as mentioned in the release provisions pertains to
11 Defendant River Springs Charter School and all of the other five schools that it is affiliated with.
12 The information provided was sufficient to demonstrate the financial condition of the company
13 and its owners. Based on such information, Plaintiff, on her own behalf and on behalf of the
14 Settlement Class Members, has agreed to settle the lawsuit on the terms set forth in the Settlement.

15 **III. OVERVIEW OF THE SETTLEMENT**

16 **A. Settlement Class Definition**

17 The Settlement defines the Settlement Class as “All persons who either applied for
18 employment with Defendants and related or affiliated entities in California, were prospective
19 employees of Defendants or related or affiliated entities in California, or who were employed by
20 Defendants or Defendants’ Affiliated or Related Entities, and attended one of Defendants’ (or
21 Defendants’ Affiliated or Related Entities) alleged “pre-employment” meetings, at any time
22 between July 1, 2016 through the date of Preliminary Approval” (hereinafter, “Class Period”).
23 Settlement, ¶ GG.

24 **B. Monetary Terms**

25 The total value of the Settlement, the “Gross Settlement Amount,” is a non-reversionary
26 Five Hundred Thirty Thousand Dollars and Zero Cents (\$530,000.00).³ The Gross Settlement
27 Amount represents the maximum amount that Defendants can be required to pay under this
28

³ Plaintiff has also, in addition to this Class Action settlement, reached her own individual settlement regarding
claims of retaliation for exercising her right to express breastmilk in the workplace, pursuant to Labor Code §§
1030, 1031 and 1034.



1 Settlement Agreement, which includes without limitation: (1) the Net Settlement Amount to be
2 paid to Participating Class Members; (2) the Attorney Fee Award and Cost Award to Class
3 Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative
4 General Release Payment paid to the Class Representative, as approved by the Court; (4) the
5 Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and
6 to Participating Class Members, as approved by the Court. Defendants will pay their portion of
7 payroll taxes as the Class Members' current or former employer separate and in addition to the
8 Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendants
9 for any reason. Settlement, ¶ I.R.

10 With a current total of 1,176 Class Members, the average Individual Settlement Award
11 per Class Member is \$272.39. Subject to the terms and conditions of the Settlement Agreement,
12 the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement
13 Amount to each Participating Class Member.

14 Under the terms of this Settlement Agreement, within ten (10) calendar days after the
15 Effective Final Settlement Date, Defendants will remit payment of the Gross Settlement Amount
16 to the Settlement Administrator to be administered as a Qualified Settlement Fund under Section
17 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et. seq.*
Settlement, ¶ I.AA.

18 **C. Timing of Payments**

19 Under the terms of this Settlement Agreement, within ten (10) business days after receipt
20 of the Settlement funds from Defendants, the Settlement Administrator shall disburse: (1) the Net
21 Settlement Amount to be paid to Participating Class Members; (2) the Attorney Fee Award and
22 Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the
23 Class Representative General Release Payment paid to the Class Representative, as approved by
24 the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment
25 to the LWDA and to Participating Class Members, as approved by the Court. Defendants shall
26 separately pay their portion of payroll taxes as the Settlement Class Members' current or former
27 employer. Settlement, ¶ I.N.
28



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1 **D. Calculation of Settlement Shares**

2 Each Participating Class Member will receive an equal share of the Net Settlement
3 Amount. The value of each Class Member's Individual Settlement Share ties directly to the one
4 day they attended an alleged "pre-employment" meeting. Settlement, ¶ III.F.1.

5 **E. Apportionment of Settlement Shares**

6 Each putative class member's Individual Settlement Share will be apportioned as follows:
7 Twenty percent (20%) as wages and Eighty percent (80%) as interest and penalties. The amounts
8 paid as wages shall be subject to all tax withholdings customarily made from an employee's
9 wages and all other authorized and required withholdings and shall be reported by W-2 forms.
10 Payment of all amounts will be made subject to backup withholding unless a duly executed W-9
11 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to
12 all authorized and required withholdings other than the tax withholdings customarily made from
13 employees' wages and shall be reported by IRS 1099 forms. Only the employee share of payroll
14 tax withholdings shall be taken from each Class Member's Individual Settlement Share.
Settlement, ¶ III.F.2.

15 **F. The Releases**

16 As of the Effective Final Settlement Date, Class Members who do not submit a timely and
17 valid request for exclusion will release the Released Parties from the Released Claims.
18 Participating Class Members agree not to sue or otherwise make a claim in any forum against any
of the Released Parties for any of the Released Claims. Settlement, ¶ III.K.

19 Settlement Class Members who do not opt out of the settlement will release all claims
20 under state, federal, and local law arising out of or related to the allegations made in the
21 Complaint, the First Amended Complaint, and the Second Amended Complaint, and all other
22 claims that could have been pled based on the facts asserted in the Action (the "Released Claims").
23 This includes but is not limited to: failure to pay straight and regular wages; failure to pay
24 overtime wages; failure to provide meal periods; failure to provide rest periods; failure to pay
25 wages due at termination; failure to provide itemized wage statements; failure to pay employees
26 twice a month; violation of Business and Professions Code section 17200, *et seq.*; PAGA claims
27 for civil penalties due to the alleged Labor Code violations by Defendants during the Class Period
28



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1 including California Labor Code sections 201-204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197,
2 1198, and 2698 *et seq.*, IWC Wage Order 4-2001; Cal. Code of Regulations sections 11040(11)
3 and (12); penalties that could have arisen out of the facts alleged in the Complaint, First Amended
4 Complaint and Second Amended Complaint, including waiting time penalties and missed breaks;
5 interest; attorneys' fees and costs; and any other claims arising out of or related to the Complaint,
6 the First Amended Complaint and the Second Amended Complaint, from July 1, 2016, through
7 the date of Preliminary Approval. Settlement, ¶ I.BB.

8 The Released Parties include Defendants, any of Defendants' successors, present and
9 former parents, subsidiaries and affiliated companies or entities, which consist of Defendants'
10 Affiliated or Related Entities, their respective officers, directors, employees, partners,
11 shareholders and agents, as well as any other successors, assigns and legal representatives and
12 their related persons and entities, and any individual or entity that could be liable for any of the
13 Released Claims, and Defendants' counsel of record in the Action. Empire Springs Charter
14 School, Inc; Harbor Springs Charter School, Inc.; Citrus Springs Charter School, Inc.; Vista
15 Springs Charter School, Inc.; and Pacific Springs Charter School, Inc. are Defendant's Affiliated
16 or Related Entities in that they are related with Springs Charter School, Inc., and each such entity
17 conducted the alleged "pre-employment" meetings that are the subject of this action during the
18 relevant time period. Settlement, ¶ I.CC. ⁴

19 **G. Notice and Claims Process and Procedures**

20 After the Court enters its Preliminary Approval Order, every Class Member will be
21 provided with the Class Notice in accordance with the following procedure:

22 Class Data to Settlement Administrator. Within ten (10) calendar days after entry of the
23 Preliminary Approval Order, Defendants shall deliver to the Settlement Administrator an
24 electronic database, which will list for each Settlement Class Member: (1) first and last name; (2)
25 last known mailing address; (3) last known telephone numbers; and (4) social security number
(collectively "Database"). If any or all of this information is unavailable to Defendants,

26 ⁴ Plaintiff also has an individual settlement separate from class allegations, in which Plaintiff made individual
27 claims for retaliation and constructive termination in violation of public policy, stemming from her alleged
28 asserted right to express breast milk in the workplace. She is receiving an individual Settlement Payment in the
amount of \$20,000 for this individual Lawsuit.



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1 Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct
2 or otherwise agree upon how to deal with the unavailable information. The Settlement
3 Administrator will conduct a skip trace for the address of all former employee Class Members.
4 The Database shall be based on Defendants' payroll, personnel, and other business records. The
5 Settlement Administrator shall maintain the Database and all data contained within the Database
6 as private and confidential. The Parties agree the Settlement Class Members' contact information
7 and Social Security numbers will be used only by the Settlement Administrator for the sole
8 purpose of effectuating the Settlement and will not be provided to Class Counsel at any time or
9 in any form. Settlement, ¶ III.J.3.a.

10 Within fifteen (15) calendar days after entry of the Preliminary Approval Order, the
11 Settlement Administrator will mail the Class Notice to all identified Class Members via first-class
12 regular U.S. Mail, using the mailing address information provided by Defendants and the results
13 of the skip trace performed on all former employee Class Members. Settlement, ¶ III.J.3.b.

14 If a Class Notice is returned because of an incorrect address, within three (3) business
15 days from receipt of the returned Notice, the Settlement Administrator will conduct a search for
16 a more current address for the Class Member and re-mail the Class Notice to the Class Member.
17 The Settlement Administrator will use the National Change of Address Database and skip traces
18 to attempt to find the current address. The Settlement Administrator will be responsible for taking
19 reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is
20 returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a
21 minimum, the tracking of all undelivered mail; performing address searches for all mail returned
22 without a forwarding address; and promptly re-mailing to Class Members for whom new
23 addresses are found. The Settlement Administrator is unable to locate a better address, the Class
24 Notice shall be re-mailed to the original address. If the Class Notice is re-mailed, the Settlement
25 Administrator will note for its own records the date and address of each re-mailing. Settlement, ¶
26 III.J.3.c. This proposed method is the most likely to give actual notice to the greatest number of
27 Settlement Class Members. DS, ¶ 63.

28 ///



1 **1. Opting Out**

2 The Class Notice will provide that Class Members who wish to exclude themselves from
3 the Settlement must mail to the Settlement Administrator a written request for exclusion. The
4 written request for exclusion must: (a) state the Class Member's name, address, telephone
5 number, and social security number or employee identification number; (b) state the Class
6 Member's intention to exclude themselves from or opt-out of the Settlement; (c) be addressed to
7 the Settlement Administrator; (d) be signed by the Class Member or his or her lawful
8 representative; and (e) be postmarked no later than the Response Deadline. Settlement, ¶ III.J.5.

9 If there is a question about the authenticity of a signed request for exclusion, the
10 Settlement Administrator may demand additional proof of the Class Member's identity. Any
11 Class Member who returns a timely, valid, and executed request for exclusion will not participate
12 in or be bound by the Settlement and subsequent judgment and will not receive an Individual
13 Settlement Share. A Class Member who does not complete and mail a timely request for exclusion
14 will automatically be included in the Settlement, will receive an Individual Settlement Share, and
15 be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court,
16 and by the subsequent judgment, regardless of whether he or she has objected to the Settlement.
Settlement, ¶ III.J.5.a.

17 No later than seven (7) calendar days after the Response Deadline, the Settlement
18 Administrator will provide the Parties with a complete and accurate accounting of the number of
19 Notices mailed to Settlement Class Members, the number of Notices returned as undeliverable,
20 the number of Notices re-mailed to Settlement Class Members, the number of re-mailed Notices
21 returned as undeliverable, the number of Settlement Class Members who objected to the
22 Settlement and copies of their submitted objections, the number of Settlement Class Members
23 who returned valid requests for exclusion, and the number of Settlement Class Members who
24 returned invalid requests for exclusion. This report can be in the form of a declaration by the
25 Settlement Administrator to be filed with Plaintiff's motion for final approval. Settlement, ¶
III.J.5.b.

26 **2. Objecting**

27 Objections to Settlement. The Class Notice will provide that the Class Members who wish
28



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1 to object to the Settlement must do so in writing, signed, dated, and mailed to the Settlement
2 Administrator postmarked no later than the Response Deadline. The timeframe to submit an
3 objection will not be increased for returned mailings. Settlement, ¶ III.J.4.

4 Any Objections shall state: (a) the objecting person's full name, address, and telephone
5 number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and
6 concise terms, the legal and factual arguments supporting the objection; (d) list identifying
7 witness(es) the objector may call to testify at the Final Approval hearing; and I provide true and
8 correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.
9 Settlement, ¶ III.J.4.a.

10 Class Members who timely file valid objections to the Settlement may (though are not
11 required to) appear at the Final Approval Hearing, either in person or through the objector's own
12 counsel, provided the objector has first notified the Settlement Administrator by sending his/her
13 written objections to the Settlement Administrator, postmarked no later than the Response
14 Deadline. Settlement, ¶ III.J.4.B.

14 **H. Uncashed Checks**

15 Participating Class Members must cash or deposit their Individual Settlement Share
16 checks within one hundred and eighty (180) calendar days after the checks are mailed to them.
17 If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the
18 Settlement Administrator will send a reminder postcard indicating that unless the check is
19 redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable,
20 and offer to replace the check if it was lost or misplaced. If any checks remain uncashed or not
21 deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement
22 Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel
23 the checks. All funds associated with the Individual Settlement Share checks returned as
24 undeliverable and funds associated with those Individual Settlement Share checks remaining un-
25 cashed, shall be distributed by the Settlement Administrator, to Legal Aid at Work. Settlement,
26 ¶ III.J.12. In accordance with Code of Civil Procedure section 384, subdivision (b), the Parties
27 selected Legal Aid at Work over other potential recipients considered because it is a non-profit
28



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1 organization which has provided high-quality civil legal services to the indigent for more than
2 four decades and has devoted its resources to protecting the rights of California low-wage
3 workers. DGS Decl. ¶ 64; Joan Graff Declaration (“Graff Decl.”)

4 **I. The Release of Claims For Settlement Class Members Is Limited To Those**
5 **That Could Reasonably Arise From the Facts Alleged In The Lawsuit.**

6 Upon final approval of the Settlement, Plaintiff and Class Members will fully discharge
7 Defendants, any of Defendants’ successors, present and former parents, subsidiaries and
8 affiliated companies which consist of Empire Springs Charter School, Inc. (located in
9 Temecula, California; Harbor Springs Charter School, Inc. (located in Julian, California); Citrus
10 Springs Charter School, Inc. (located in Santa Ana, California); Vista Springs Charter School,
11 Inc. (located in Vista, California); and Pacific Springs Charter School, Inc. (located in Chula
12 Vista, California), their respective officers, directors, employees, partners, shareholders and
13 agents, as well as any other successors, assigns and legal representatives and their related
14 persons and entities, and any individual or entity that could be liable for any of the Released
15 Claims, Empire Springs Charter School, Inc; Harbor Springs Charter School, Inc.; Citrus
16 Springs Charter School, Inc.; Vista Springs Charter School, Inc.; and Pacific Springs Charter
17 School, Inc. are affiliated or related entities with Springs Charter School, Inc., and each such
18 entity conducted the alleged “pre-employment” meetings that are the subject of this action
19 during the relevant time period (the “Released Parties”) from the claims stated in the First
20 Amended Complaint and those based on the facts alleged in the First Amended Complaint.
21 They include without limitation: failure to pay wages, unauthorized and unlawful wage
22 deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure
23 to indemnify for business expenses, failure to issue proper wage statements, failure to timely
24 pay wages, failure to reimburse for preemployment testing, failure to maintain required payroll
25 records, and other legal consequences that would follow from these failures, including claims
26 under California’s Business & Professions Code and PAGA. Exhibit A, Proposed Order.

25 **IV. CERTIFICATION OF THE CLASS IS APPROPRIATE FOR SETTLEMENT**
26 **PURPOSES**

27 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
28



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1 and its members are too numerous for joinder to be practical; (2) the representative and absent
2 class members share a community of interest and questions of law and fact common to the class
3 predominate over questions unique to individual class members; (3) the representative's claims
4 are typical of the class' claims; and (4) the representative will fairly and adequately represent the
5 class' interests. *See, e.g., Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Moreover,
6 in the settlement context, the Court can use a lesser standard to determine the appropriateness of
7 a settlement class as opposed to a litigated class certification. *Dunk v. Ford Motor Co.* (1996) 48
8 Cal.App.4th 1794, 1807. As explained below, all of these requirements are met in this case.

9 **A. The Settlement Class Is Objectively Ascertainable**

10 A class is ascertainable when it may be readily identified without unreasonable expense
11 or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932
12 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiff maintains that the above-
13 defined Class is ascertainable because its members may be identified by reference to Defendants'
14 records and Defendants have agreed to share the relevant information from their records to
15 facilitate the settlement process. DS, ¶ 10; Settlement, ¶ II.D. Therefore, the Settlement Class is
ascertainable.

16 **B. The Membership of the Settlement Class Is Sufficiently Numerous**

17 The Settlement Class has sufficiently numerous members to render joinder impractical.
18 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*
19 (1972) 28 Cal.App.3d 1017, 1030. Defendants estimate that there are approximately 1,176 Class
20 Members. DS, ¶ 11. Plaintiff maintains that it would be impractical and economically inefficient
21 to require each Class Member to separately maintain an individual action or be joined as a named
22 plaintiff in this action. The California Supreme Court has upheld a class of as few as 10
23 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations,
24 the Settlement Class' membership is sufficiently numerous. DS, ¶ 11. *See Daar v. Yellow Cab*
Co. (1967) 67 Cal.2d 695.

25 **C. Class Members Share a Well-Defined Community of Interest**

26 The community of interest requirement "embodies three factors: (1) predominant common
27 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
28



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(3) class representatives who can adequately represent the class.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326. It “does not mandate that class members have uniform or identical claims.” *Capitol People First v. Dept. of Developmental Servs.* (2007) 155 Cal. App. 4th 676, 692. Rather, courts focus on the defendant’s internal policies and “pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate.” *Id.* (citing *Sav-On*, 34 Cal. 4th at 333).

To justify certification, the class proponent “‘must show ... that questions of law or fact common to the class predominate over the questions affecting the individual members’” *See, Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Washington Mut. Bank, FA v. Superior Court*, 248 Cal. 4th 906, 913 (2001)). In light of the more lenient standard for certification of a settlement class, the Parties agree that for the purposes of the Settlement only, the claims of the Class Members all stem from the same sources. DS, ¶ 12.

In this case, Plaintiff asserts all class members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from Defendants’ alleged policy-driven failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related labor law violations, all of which Plaintiff claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common questions include, but are not limited to: (1) Whether Defendants failed to pay all wages earned to class members for all hours worked at the correct rates of pay; (2) Whether Defendants failed to provide the class with all meal and rest periods in compliance with California law; (3) Whether Defendants failed to pay the class one additional hour of pay on workdays they failed to provide the class with one or more meal or rest periods in compliance with California law; (4) Whether Defendants knowingly and intentionally failed to provide the class with accurate wage statements; (5) Whether Defendants willfully failed to provide the class with timely final wages; and (6) Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code section 17200, *et seq.*, with respect to the class. DS, ¶ 6. Therefore, common questions predominate.



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1 **D. Plaintiff Is Typical of the Settlement Class**

2 The class representative must be similarly situated to the rest of the purported class. *See*
3 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating “it has never been the law in California
4 that the class representative must have identical interests with the class members. The only
5 requirements are ... that the class representative be *similarly* situated”) (emphasis in original); *See*
6 *also* Newberg, § 3:29 (typicality “focuses on whether there exists a relationship between the
7 Plaintiff’s claims and the claims alleged on behalf of the class”). Plaintiff contends that her claims
8 are typical for the purposes of certifying the Settlement Class. Plaintiff asserts that she, like absent
9 Class Members was subject to the same relevant policies and procedures governing her
10 compensation, hours of work and meal and rest periods. Because Plaintiff contends that she was
11 subject to the same general course of conduct as absent Class Members, resolving the common
12 questions as they apply to Plaintiff will determine Defendants’ *prima facie* liability to all Class
13 Members. Moreover, Plaintiff’s claims could potentially be subject to the same primary
14 affirmative defenses as those of absent Class Members. Accordingly, Plaintiff’s claims are typical
15 of the Class. DS, ¶ 13.

16 **E. Plaintiff Will Adequately Represent the Settlement Class**

17 The adequacy requirement is met where the plaintiff is represented by counsel qualified
18 to conduct the litigation and the plaintiff’s interest in the litigation is not antagonistic to the class’
19 interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the
20 plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling
21 conflicts of interest that might hinder the plaintiff’s ability to represent the class. DS, ¶ 14.

22 First, Class Counsel have supplied the Court with declarations to show that they are
23 adequate to represent the Settlement Class and that they have significant experience in
24 employment litigation generally, and wage and hour and employment-related class action
25 litigation specifically. *See* DS, ¶¶ 16-23; Declaration of Walter L. Haines (“Haines Decl.”) ¶ 3.
26 Thus, Plaintiff’s counsel is adequate to serve as Class Counsel.

27 Second, Plaintiff contends that she is an adequate class representative. Plaintiff and the
28 Class Members have strong and co-extensive interests in this litigation because they all worked
29 for Defendants during the relevant time period, allegedly suffered the same alleged injuries from



1 the same alleged course of conduct, and there is no evidence of any conflict of interest between
2 Plaintiff and the Class Members. DS, ¶ 15. Moreover, Plaintiff has demonstrated her commitment
3 to the Settlement Class by, among other things, retaining experienced counsel, providing counsel
4 with documents and extensively speaking with them to assist in identifying the claims asserted in
5 this case, assisting them in identifying witnesses, as well as exposing herself to the risk of
6 attorneys' fees and costs awards against her if this lawsuit had been unsuccessful. DS, ¶ 15. Thus,
7 Plaintiff is adequate to serve as settlement class representative. Accordingly, this Court should
8 find that Plaintiff and her counsel are adequate to represent the Settlement Class as required under
9 Code of Civil Procedure § 382.

10 **F. Class Action Treatment Is the Superior Means For Resolving The Claims**
11 **Of The Class Members**

12 Plaintiff further contends that a class action is also superior to other means adjudicating
13 the issues in this action. The predominance of common legal and factual questions shows that this
14 Court could fairly adjudicate the claims of Class Members through a single class action. In view
15 of the *theoretical* alternatives that proposed class members could potentially utilize—
16 representative PAGA action (where there is less relief available), individual civil lawsuits or wage
17 claims through the Division of Labor Standards Enforcement (where there would be relatively
18 little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly
19 superior to all of them. Thus, this consideration supports conditional class action treatment for
20 purposes of this Settlement only. DS, ¶ 24.

21 **V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL BECAUSE THE**
22 **SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

23 **A. Legal Standard**

24 A class action settlement requires court approval. California Rules of Court (“CRC”),
25 Rule 3.769 provides three steps for approval: (1) Preliminary approval after submission of a
26 written motion for preliminary approval, the proposed class settlement, and the proposed class
27 notice; (2) Issuance of notice of settlement to class members; and (3) A final settlement approval
28 hearing where class members may be heard regarding the settlement, and at which evidence and
argument concerning the fairness, adequacy, and reasonableness of the settlement is presented.



1 The decision to approve or reject a class settlement is committed to the Court's broad discretion.
2 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision to approve
3 class settlement may be reversed only upon a showing of "clear abuse of discretion." *Id.*

4 **B. The Settlement Is Presumptively Fair**

5 In assessing preliminary approval, a court evaluates if the settlement process has certain
6 indicia of fairness. A "presumption of fairness exists where (1) the settlement is reached through
7 arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
8 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
9 of objectors is small." *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford Motor Co.* (1996)
10 48 Cal.App.4th at 1794.

11 The class settlement here satisfies all of these factors. DS, ¶ 25. The Settlement resulted
12 from thorough, arms' length negotiations between experienced counsel with the assistance of a
13 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
14 weaknesses of their respective cases and Defendants' estimated exposure. *Id.*

15 At issue in this class and PAGA action are the alleged unlawful practices of established
16 operators of more than a dozen charter schools that allegedly deny their new hires minimum
17 wages, rest breaks, meal periods, and expense reimbursement for a variety of activities including
18 health examinations and a lengthy employee orientation. Defendants employed other non-exempt
19 individuals in California, including but not limited to human resources staff, administrative staff,
20 teachers, and employees in comparable positions during the period of July 1, 2016, to the present
21 (many of whom fall within the Class definition of Plaintiff's lawsuit). Plaintiff alleges that the
22 senior human resources representatives directed new hires to engage in several onboarding
23 activities without pay, meal breaks, or rest breaks. One email directed Plaintiff and several other
24 new hires on December 10, 2018, to attend a "Pre-Employment meeting which will be scheduled
25 at the completion of the onboarding process. The onboarding process includes ... 5 steps[:]." DS,
26 ¶ 26. Plaintiff alleges that she and the Settlement Class Members were not paid for this pre-
27 employment meeting.

28 Plaintiff prepared "damages" estimates in advance of the mediation. DS, ¶ 26, Ex. 8. In



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1 advance of the mediation, Plaintiff estimated Defendants' maximum exposure for damages and
2 penalties to be approximately \$1,468,352.71 (consisting of \$125,718.52 in unpaid wages,
3 \$20,779.92 in missed meal period premium wages, \$20,779.92 in missed rest break premium
4 wages, \$6,550.00 for wage statement penalties, \$1,077,605.83 for waiting time penalties, and
5 \$91,200.00 for civil penalties). Plaintiff calculated the damages based on the number of
6 workweeks and pay periods provided by Defendants, Plaintiff's reports, and the sample data. *Id.*
7 Defendants dispute Plaintiff's damage estimate and vehemently oppose any and all liability in
8 this Action.

9 Plaintiff also considered the possibility that Defendants could launch a *PickUp Stix*
10 campaign and pursue individual release agreements from the Settlement Class Members.
11 Defendants also represented that they had interviewed all of Defendants' current employees
12 regarding Plaintiff's claims, all of whom would provide declarations, under penalty of perjury,
13 that were favorable to Defendants with respect to Plaintiff's allegations in this Action. Plaintiff's
14 Counsel applied discounts to the estimated maximum exposure resulting from their damage
15 assessment to account for these issues. While it is difficult to assign precise percentages of risk
16 to any of the claims when discounting their values, the risk that a *Pick Up Stix* campaign would
17 preclude recovery for many employees is substantial and alone justifies a significant discount to
18 the maximum exposure estimate because Defendants would likely have gathered releases from
19 the majority of the Class Members before trial. Therefore, a settlement amount equaling
20 approximately 36.09% of Plaintiff's estimated maximum recovery is false and represents a
21 proportion substantially in excess of recovery proportions sanctioned by existing case law.⁵ *Id.*

22 With a current total of 1,176 Class Members, the average Individual Settlement Award

23 ⁵ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998)
24 (“[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to
25 be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance,*
26 *Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the
27 proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*,
28 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) (“a settlement for fourteen percent recovery
of Plaintiffs’ maximum recovery is reasonable”); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d
1036, 1042 (N.D. Cal. 2008) (approving settlement amount that “is just over 9% of the maximum
potential recovery asserted by either party.”).



1 per Class Member is \$272.39.

2 Plaintiff is aware of only two significant awards under the PAGA in a contested
3 proceeding, both issued by federal district courts.⁶ DS, ¶ 43. PAGA penalty awards are often
4 small even for egregious, intentional violations of the Labor Code.⁷ *Id.* For instance, on October
5 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by
6 very experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving*
7 *Company, Inc.*, LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.*
8 (2018) 30 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a
9 PAGA penalty of only \$5 per pay period for the defendant’s meal period violations. A similar
10 result could occur here. *Id.*

11 Plaintiff’s initial estimates do not realistically account for the risks outlined herein or the
12 additional risk that a class will not be certified in this Action. *Id.* Therefore, Plaintiff believes a
13 class settlement for \$530,000.00 is fair and reasonable. *Id.*

14
15 ⁶ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2019) U.S. Dist. LEXIS 13253, the court awarded
16 civil penalties under the PAGA of approximately \$25 million, representing a 25% reduction from
17 plaintiff’s claim for approximately \$33 million. *Bernstein* represents a unique set of
18 circumstances that is distinguishable from the case at hand. Notably, the plaintiffs in *Bernstein*
19 suffered a particularly sizeable injury – the court found that the defendant’s policies caused
20 damages to the plaintiffs in excess of \$45 million. *Id.* at 20. Additionally, the defendants in
21 *Bernstein*, who the court noted had received “millions of dollars from the state of California” to
22 train their flight attendants, engaged in glaring violations of the labor code, such as failing to
23 compensate its flight attendants for work performed outside of “block time” (time during which
24 the aircraft is moving), including time spent participating in pre-flight briefings, boarding
25 passengers, and deplaning. *Bernstein v. Virgin Am., Inc.* (N.D. Cal 2017) 227 F. Supp. 3d 1049,
26 1055-1058. Indeed, the defendant’s liability was so clear in *Bernstein* that the case was resolved
27 on the plaintiffs’ motion for summary judgment. *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2019)
28 U.S. Dist. LEXIS 13253.

In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court
awarded approximately \$102 million in damages, primarily based on the defendants’ failures to
comply with the requirements of California Labor Code section 226.

⁷ In 2012, Plaintiff’s Counsel tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court
case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. The
plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the
Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under
the PAGA.



1 **C. The Settlement Satisfies the *Kullar* Factors for Approval**

2 The *Kullar* case sets forth several factors a court should consider in determining whether
3 to approve a class settlement. These factors include: (1) the strength of plaintiff's case; (2) the
4 risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class
5 action status through trial; (4) the amount offered in settlement; (5) the extent of discovery
6 completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence
7 of a governmental participant; and (8) the reaction of the class members to the proposed
8 settlement. 168 Cal.App.4th at 128. As demonstrated herein, the Settlement satisfies each of these
9 factors.

10 **1. Evaluation of Plaintiff's Case**

11 **a. Risks Associated with Defendants' Financial Condition**

12 Defendants' financial condition was a key factor in reaching this Settlement. DS, ¶ 29.
13 Due to Defendants' financial condition, even if Plaintiff prevailed on all claims at trial, she may
14 never recover the damages due to the risk of insolvency. This is not a case against a major or mid-
15 sized corporation with free-flowing cash reserves, highly paid executives, and creative accounting
16 abilities to cover a settlement in the amount demanded by Plaintiff. As discussed during
17 mediation:

18 • River Springs is a charter school, funded almost entirely by government dollars,
19 and is required to present a yearly accountability plan to the State ensuring that it will use its
20 funding for educational purposes. While Defendants are willing to settle this case for a reasonable
21 amount, the funds available to it for this purpose are extremely limited.

22 • The vast majority of River Springs' funding (nearly 83%) comes from Local
23 Control Funding Formula (LCFF) which allows funds to be spent for any educational purpose but
24 requires districts to develop Local Control and Accountability Plans (LCAPs) that detail district
25 goals and document how districts plan to measure their progress toward those goals.

26 • The remaining funding comes from federal, state, and local revenues, but even so,
27 to access any funding, River Springs (like all charter schools) needs to present an annual LCAP,
28 a planning tool to support student outcomes, and is required to address all state educational
priorities.



1 • Further, LCAPs require that funds apportioned on the basis of the number and
2 concentration of unduplicated pupils be used to increase services (grow services in quantity) or
3 improve services (grow services in quality) for unduplicated pupils.

4 In other words, River Springs is not able to simply re-allocate its funding, and it is unclear
5 to what extent River Springs will have any discretion to allocate certain funds toward a
6 settlement. To the extent it is able to do so, those funds will necessarily be diverted from
7 educational services, including employee salaries.

8 A very large class action judgment would almost certainly put Defendants out of business
9 and/or would interfere with the Defendants' ability to carry out their contractual obligations. *Id.*
10 In short, the "poor financial health of [the defendant will] seriously increase [] the chance that
11 Plaintiffs would be left with nothing if they continued to litigate their claims." *Torrissi v. Tucson*
12 *Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial condition of defendant
13 predominated in assessing the reasonableness of settlement); *Spann v. J.C. Penney Corp.* (C.D.
14 Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning defendant's financial stability
15 "strongly supports the reasonableness of the settlement"); *Laguna v. Coverall N. Am., Inc.* (9th
16 Cir. 2014) 2014 U.S. App. LEXIS 10259 at *11 (finding potential insolvency to be additional
17 risk that favors approval of a class action settlement). Accordingly, Defendants' financial distress
18 supports this settlement. *Id.*

18 **b. Risks Associated with the Unpaid Wages Claim**

19 There is a risk that Plaintiff's recovery for unpaid wages would be extremely limited at
20 best, largely because Defendants' written policies throughout the relevant time period prohibited
21 off-the-clock work. DS, ¶ 31. Off-the-clock claims are difficult to prove where a defendant
22 requires in its written policies that all work must take place while clocked in. *See Jong v. Kaiser*
23 *Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer must have notice of off-the-clock
24 work for it to be compensable). *Id.* In their written employment policies, Defendants mandate that
25 employees must record all time worked accurately on their time records and strictly prohibit
26 employees from performing any work off-the-clock. DS, ¶ 31. Moreover, while Defendants
27 dispute that off-the-clock work occurred, they contend that any time spent off the clock was *de*



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1 *minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835
2 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense
3 even if compensable. (Stating that “We do not decide whether there are circumstances where
4 compensable time is so minute or irregular that it is unreasonable to expect the time to be
5 recorded.”). Following *Troester*, Defendants contend that the *de minimis* doctrine applies here
6 because the alleged time spent off the clock, if any, was minute and insignificant. Accordingly, a
7 large award of penalties seems unlikely with respect to this claim. *Id.*

8 The difficulty inherent in proving that off-the-clock work occurred poses a significant
9 hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim.
10 Generally, a court will not certify a class unless it can determine an appropriate classwide
11 methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff
12 may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given
13 the lack of records indicating when such off-the-clock work may have taken place. Individualized
14 inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual
15 in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there is a significant
16 risk that the Court would consider this evidentiary showing insufficient as a classwide
17 methodology. DS, ¶ 32. There is no record of exactly how long Class Members spent in the
18 “orientation” and related onboarding practices. *Id.* Therefore, there is risk that Plaintiff’s recovery
19 for unpaid wage claim would be limited.

19 **c. Risks Associated with the Meal Period Claims**

20 There are also risks to Plaintiff’s meal period claim. DS, ¶ 33. The amount of unpaid meal
21 break premium payments is extremely small and may not be recoverable at all given the fact that
22 California law permits waiver of the meal period in the event the total hours worked in a workday
23 does not exceed six (6) hours. If the Court credits Defendants’ argument that the period of time
24 in question regarding the new-hire orientation and related activities does not amount to
25 employment, Plaintiff will not be able to recover missed meal break premiums for herself and the
26 Settlement Class. Defendants contend that, to establish a violation for missed meal periods, a
27 plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004.



1 So long as an employer provides employees with a “reasonable opportunity” to take a duty-free
2 meal period, it has no further duty to “police meal breaks and ensure no work thereafter is
3 performed.” *Id.* at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged, or
4 prohibited the employee from taking a proper break, or otherwise failed to release the employee
5 of all control during the meal period. *Id.* “Thus, the crucial issue with regard to the meal break
6 claim is the reason that a particular employee may have failed to take a meal break.” *Washington*
7 *v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

8 Defendants contend they did not impede or discourage Plaintiff, or any other non-exempt
9 employees, from taking their meal or rest periods. DS, ¶ 34. Defendants’ policies mandate that
10 employees take at least a 30-minute, uninterrupted meal period for each five (5) hours worked,
11 commencing before the fifth (5th) hour worked, and record the beginning and ending time of their
12 meal breaks each day on their time records by clocking in and out for the meal period(s). *Id.* The
13 time records that comprise the random sample Defendants produced to Plaintiff for purposes of
14 mediation show that compliant meal periods were taken the vast majority of the time. *Id.* Of the
15 time records that show a late, short or no meal period, individualized evidence may be necessary
16 to determine whether the noncompliant break occurred due to the conduct of the Defendants or
17 the independent conduct of each employee concerned. Accordingly, there is a significant risk
18 that the value of Plaintiff’s meal period claim will be substantially reduced at trial. *Id.*

19 **d. Risks Associated with the Rest Break Claims**

20 There are risks to Plaintiff’s rest period claim. DS, ¶ 35. The amount of unpaid rest break
21 premiums are extremely small. If the Court credits Defendants’ argument that the period of time
22 in question regarding the new-hire orientation and related activities does not amount to
23 employment, Plaintiff will not be able to recover missed rest break premiums for herself or the
24 Settlement Class. Employers are not required to record rest periods and such periods are paid. *Id.*
25 Defendants contend they provided non-exempt employees the opportunity to take rest periods in
26 accordance with California law. Further, Defendants’ written policies on meal and rest periods
27 are consistent with the applicable Wage Order(s). *Id.* Thus, unlike meal periods, where there are
28 usually records showing when an employee clocked in and out for the meal period, there is no



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1 such evidence to prove a noncompliant rest period, nor is there evidence to show whether an
2 employer refused to authorize and permit a compliant rest period. *Id.* Managing rest period at trial
3 has become exceedingly difficult because of the lack of records showing rest breaks. *Id.* Plaintiff
4 therefore will depend on witness testimony and surveys to prove her rest break claims. *Id.* While
5 Plaintiff may be able to prove her rest break claims with such evidence, relevant caselaw makes
6 these claims risky from a trial management standpoint and due process perspective. *Id.*, *See Duran*
7 *v. U.S. Bank National Assn.*, (2014) 59 Cal.4th 1, 31 (explaining “[I]f sufficient common
8 questions exist to support class certification, it may be possible to manage individual issues
9 through the use of surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015)
10 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

11 **e. Risks Associated with the Statutory “Wage Statement” Penalty Claims**

12 Plaintiff also asserts claims for wage statement violations, untimely wage violations, and
13 PAGA penalties. Defendants make a compelling argument that statutory wage statement and
14 waiting time penalties do not attach when there is a good faith dispute over whether wages are
15 due. It appears Plaintiff’s demand is driven by the mistaken belief that a “good faith dispute”
16 argument is only viable if River Springs can affirmatively identify authority that the Pre-
17 Employment Meeting was not compensable time or “hours worked.” However, case law defines
18 a “good faith dispute” differently. River Springs need not point to authority that this time was not
19 compensable—it merely needs to show that a dispute over whether it was compensable existed at
20 the time. In other words, so long as River Springs can demonstrate that it did not believe this time
21 was compensable at the time final wages were due, those wages are considered “contested,” and
22 waiting time penalties do not attach. For example, in *Sanford v. Landmark Prot. Inc.* (Cal. Ct.
23 App. Sept. 27, 2011), Case No. A130836, the court affirmed the trial court’s finding at final
24 judgment that Landmark had the following policy in place regarding compensating employees
25 for meetings: “employees are entitled to be compensated for attending a meeting only if the
26 meeting is directly related to the employee’s job and his or her attendance is required.” (*Id.* at *5-
27 6.) “[T]he trial court found that, although plaintiff was indeed working for Landmark when she
28 attended the August 17, 2010 meeting, and was thus entitled to compensation, a good faith dispute



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1 existed regarding the wages plaintiff earned for that meeting, excusing Landmark from liability
2 for waiting time penalties.” (Id. at *4 (emphasis added).) Because there was a good faith dispute
3 at the time over whether plaintiff was entitled to compensation for this meeting, the employer was
4 not liable for waiting time penalties. In *Sanford*, despite finding that the time the employee spent
5 at the meeting was compensable, the court found that plaintiff was not entitled to waiting time
6 penalties because a dispute over whether this meeting was compensable time existed at the time
7 final wages were due. Like in *Sanford*, River Springs had a policy that prospective employees
8 were not compensated for the Pre-Employment Meeting. Prospective employees that participated
9 in the Pre-Employment Meeting had no expectation of compensation, evidenced by the fact that
10 they did not clock in or clock out or otherwise account for time spent in the meeting. Thus, even
11 if a court found Plaintiff and putative class members were entitled to compensation for this time,
12 because River Springs did not believe this time was compensable at the time final wages were
13 due, a good faith dispute existed.

14 Another example is *Kao v. Holiday* (Cal. Ct. App. 2017) 12 Cal. App.5th 947. *Kao*
15 involved two claims for waiting time penalties—one claim for waiting time penalties because the
16 employer improperly waited until its next regular pay day to pay Kao his final wages, and another
17 claim for waiting time penalties for overtime wages that he claimed he were due after the fact.
18 The court found that Kao was only entitled to the waiting time penalties for the wages that were
19 indisputably due on the day of his termination: “There was no dispute” that those wages were
20 due—“the employer simply delayed payment until its regular payday.” However, Kao further
21 argued that additional waiting time penalties should be imposed because his employer
22 “mischaracterized him as an exempt employee and, in doing so, failed to pay earned overtime
23 wages.” The court denied plaintiff’s request for waiting time penalties based on the overtime
24 wages because it was contested whether plaintiff was actually entitled to those overtime wages at
25 the time of his separation. “Waiting time penalties are properly limited to the uncontested wages
26 due at the time of Kao’s termination.” (Id. at 963 (emphasis added).)

27 Yet another example is *Woods v. Vector Marketing Corp.* (N.D. Cal. May 22, 2015), Case
28 No. C-14-0264 EMC. There, the court found a good faith dispute over whether a “recruit” was



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1 considered an employee and, because of that dispute, plaintiff's waiting time penalties claim
2 failed. *Id.* at *8. Like *Woods*, River Springs' prospective employees were not considered
3 "employees" at the time of the Pre-Employment Meeting because these individuals had not yet
4 signed an offer letter and were not yet committed to employment with River Springs, constituting
5 a good faith dispute for the waiting time penalties claim. Under Labor Code section 226, wage
6 statements must include various information, including the applicable rates of pay, corresponding
7 hours worked, and gross pay. DS, ¶ 36-38.

8 Here, Plaintiff's wage statement claim has the same underlying risks as the claims in the
9 above-referenced cases, as it is derivative of them. *Id.* On their face, the wage statements issued
10 by Defendants comply with the requirements of Labor Code § 226. Further, to the extent that
11 Plaintiff claims Defendants' wage statements were inaccurate because they did not include wages
12 or premium payments that they contend Defendants should have paid, Plaintiff's claims are
13 subject to additional risk, as case law suggests that such premium payments are not to be
14 considered wages, and therefore do not give rise to claims under section 203. *Id.* See *Jones v.*
15 *Spherion Staffing, LLC*, 2012 U.S. Dist. LEXIS 112396 at * 26 (C.D. Cal. Aug. 7, 2012) (no claim
16 for Labor Code section 203 penalties based on meal period claims because "the underlying
17 violation that gives rise to a section 226.7 [meal period] claim is not the nonpayment of wages");
18 *Nguyen v. Baxter Healthcare Corp.* 2011 U.S. Dist. LEXIS 141135 at * 24 (C.D. Cal. Nov. 28,
19 2011) (holding that Section 226(a) does not even cover meal period premium pay). Accordingly,
20 the *Jones* and *Nguyen* decisions will likely foreclose this claim.⁸ DS, ¶ 38.

21 **f. Risks Associated with The Waiting Time Penalties Claim**

22 Plaintiff's claims for untimely wages is predicated on Labor Code §§ 201, 202, and 203.
23 In addition to the other arguments listed above, based on *Naranjo v. Spectrum Security Services,*
24 *Inc.* (2022) 13 Cal.5th 93, a remaining risk is that Defendant denies this was employment at all
25 and therefore, Defendants had no obligation to provide a meal period. (see *Naranjo v. Spectrum*
26 *Security Services, Inc.* (2022) 13 Cal.5th 93, holding (1) because premium pay for missed meal
27 and rest breaks under Lab. Code, § 226.7, compensated employees for the work performed during
28



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1 a break period and therefore constituted wages within the meaning of Lab. Code, §§ 200, subd.
2 (a), 203, 226, penalties could be available for an employer's alleged failure to timely pay or report
3 such payments pursuant to Lab. Code, §§ 201, 202, to employees who were terminated or who
4 resigned; (2) The rate of prejudgment interest applicable to amounts due for failure to provide
5 meal and rest breaks was the default rate of 7 percent under Cal. Const., art. XV, § 1, because Lab.
6 Code, § 218.6, incorporating the contract claim interest rate in Civ. Code, § 3289, subd. (b), was
7 inapplicable and the contract rate could not be directly applied on the basis of an argument that
8 contracts of employment incorporated mandatory statutory duties. DS, ¶ 41.

9 **g. Risks Associated With the PAGA Claim**

10 For the same reasons stated above regarding waiting time penalties and statutory paystub
11 penalties, there are serious risks that a good faith defense would preclude entirely the claim for
12 civil penalties that Plaintiff makes on behalf of herself and the class. Regarding PAGA, a court
13 has discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2);
14 *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing
15 PAGA award). As set forth above, Defendants have posed valid defenses to the Labor Code
16 claims underlying Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face significant
17 uncertainty. DS, ¶ 41. There is a risk that the Court would consider the maximum civil penalty
18 available to be confiscatory. This is particularly probable considering Defendants' financial
19 condition. *Id.* Moreover, the current COVID-19 pandemic could motivate the Court to further
20 reduce the penalty award to avoid what it may consider a confiscatory taking. *Id.*

21 This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and requires a
22 significant discount for settlement purposes. DS, ¶ 42. For mediation purposes, Plaintiff's counsel
23 estimated a maximum exposure of approximately \$91,200.00 in civil penalties. This estimate did
24 not account for any of the risks discussed above and assumed a violation for every single pay
25 period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay period (i.e.
26 stacking) for the same alleged violations of different Labor Code provisions and derivative
27 violations. *Id.* Although two federal district court decisions held that "stacking" PAGA penalties
28 in this fashion may be appropriate to determine the amount in controversy for purposes of removal



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jurisdiction, Plaintiff's counsel is not aware of any California state court decisions awarding a plaintiff multiple PAGA penalties in period for different Labor Code violations. *Id.* This may be because the PAGA does not provide for what many employers characterize as claim splitting and not merely stacking. *Id.*

h. Risks Associated With A Pick-Up Stix Campaign

An employer enjoys the right to settle a putative class member's disputed wage claims individually, without the consent or involvement of class counsel. DS, ¶ 46. (See *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal. App. 4th 796. *Id.* As discussed above, Defendants may launch a "pick off" settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class – 1176 members - until it is no longer numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient number of employees to represent. Defendants' mention of a *Pick-Up Stix* campaign led to a significant reduction of claim value in settlement negotiations. *Id.*

While Plaintiff believes that the discovery conducted thus far in this Action supports the merits of the claims asserted, Plaintiff and her counsel recognize that continued litigation presents significant risks that support a downward departure from her estimated maximum liability exposure. DS, ¶ 47. In view of the risks, the Gross Settlement Amount reflects Plaintiff's estimate of the total amount of damages, monetary penalties or other relief that the Settlement Class could reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.* It also represents a fair, adequate, and reasonable compromise amount for these claims and warrants preliminary approval. *Id.*, *Torrise v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial condition of defendant predominated in assessing the reasonableness of settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning defendant's financial stability "strongly supports the reasonableness of the settlement"); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3.

2. Allocation of the PAGA Payment

The settlement of PAGA penalties in the sum of \$4,000.00, of which 75% (\$3,000.00) will be paid to the LWDA and 25% (\$1,000.00) will be distributed to the Settlement Class, is



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1 reasonable and appropriate under the circumstances. DS, ¶ 48. The Parties negotiated a good faith
2 amount for PAGA penalties to be paid to the LWDA and to the Settlement Class. *Id.* The portion
3 to be paid to the LWDA was not the result of any self-interest at the expense of other Class
4 Members. *Id.* Where settlements “negotiate[] a good faith amount” for PAGA penalties and “there
5 is no indication that this amount was the result of self-interest at the expense of other Class
6 Members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D.
7 Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133, at *9. Likewise, where the employer
8 did not act willfully, and made good faith attempts to comply with applicable wage and hour laws,
9 a reduction or lesser penalty is warranted because imposing a maximum PAGA penalty for each
10 violation would be unjust, arbitrary, and oppressive. *Id. Carrington v. Starbucks Corp.* (2018) 30
11 Cal.App.5th 504, 528-529 (affirming trial court’s award of only 10% of maximum PAGA penalty
12 for meal break violations). *Id.* The amount to be paid to the LWDA comports with PAGA
13 settlement amounts approved by other courts. See, e.g., *Chu v. Wells Fargo Investments, LLC*
14 (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA payment of \$7,500 to LWDA
15 out of \$6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013
16 WL 3541217 (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common fund
17 settlement); *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1
18 (approving PAGA settlement of 0.3% or \$1,500); see *Nordstrom Com. Cases* (2010) 186
19 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim).
20 Courts have also approved settlements for \$20,000 or less. See, e.g., *Hicks v. Toys ‘R’ Us–*
21 *Delaware, Inc.*, (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA
22 payment in a case involving \$4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal.
23 Nov. 27, 2012) 2012 WL 5941801 at *14 (approving PAGA penalties of \$10,000 as part of \$2.5
24 million settlement); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at
25 *3 (approving PAGA payment of \$10,000 as part of \$3.7 million common-fund settlement). *Id.*

26 **3. Presence of Governmental Participant**

27 As required under Labor Code section 2699(1)(2), Plaintiffs will provide notice of this
28 settlement to the LWDA. DS, ¶ 57, Ex. 14.



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1 **4. Reaction of Class Members to Proposed Settlement**

2 If the settlement is preliminarily approved, Class Members will be provided with the
3 notice packet (attached as Exhibit A to the Proposed Order) and an opportunity to object. DS, ¶
4 54. The parties' proposed notice fully complies with California Rules of Court 3.766(d) and
5 3.769(f) and will allow Class Members to make informed responses to the proposed settlement.
6 *Id.*

7 **VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY**
8 **COMPENSATE CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS**
9 **MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY**
10 **COMPARED TO OTHER CLASS MEMBERS**

11 The Individual Settlement Payments will be paid to each Class Member based on his or
12 her participation in a pre-employment meeting. DS, ¶ 53, Settlement ¶ III.F.1. Because this
13 method compensates Class Members based on an equal share of the Net Settlement Amount and
14 value of each Class Member's Individual Settlement Share ties directly to the one day they
15 attended an alleged "pre-employment" meeting, it is fair, adequate, and reasonable. *Id.*

16 **VII. ALLOCATION OF AN ATTORNEYS' FEES AND COSTS AWARD TO CLASS**
17 **COUNSEL FOR LITIGATION EXPENSES IS APPROPRIATE**

18 The Settlement states that Class Counsel may seek attorneys' fees of \$176,666.67 (one-
19 third of the Gross Settlement Amount) and up to \$15,000.00 for actual reasonable litigation costs
20 and expenses incurred in prosecuting the Action. Settlement ¶ D. These amounts are reasonable,
21 given the facts and circumstances of the case. DS, ¶¶ 25-27.

22 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
23 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
24 *Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 41. Indeed, it is long settled that the "experienced
25 trial judge is the best judge of the value of professional services rendered in his court." *Ketchum*
26 *v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney fee awards should
27 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
28 incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Cal. 5th 480, 503 (citing *Lealao, supra*, 82
Cal.App.4th at p. 48-49). The California Supreme Court has recently approved fees equal to one-



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1 third (1/3) of the common fund. *Laffitte, supra*, 1 Cal. 5th 480. Many courts have similarly
2 approved fee awards equal to or greater than the percentage requested here. *See, e.g., In re*
3 *Pacific Enterprises* (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of the common fund); *In re*
4 *Activision* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the common fund); *In re*
5 *Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of settlement fund).

6 The amount of fees and costs requested are commensurate with (1) the risk Class Counsel
7 took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the
8 skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the
9 value the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned down
10 to devote time to this matter. DS, ¶ 50. Class Counsel interviewed and obtained information from
11 putative class members, met and conferred with Defendants' counsel on numerous occasions,
12 reviewed and analyzed hundreds of pages of data and documents provided by Defendants and
13 obtained through other sources, researched applicable law, and provided estimates of "damages"
14 for purposes of settlement discussions, among other tasks. *Id.*

15 Class Counsel have borne all the risks and costs of litigation and will receive no
16 compensation until recovery is obtained. DS, ¶ 51. Class Counsel are well-experienced in wage-
17 and-hour class action litigation and used that experience to obtain a fair result for the Settlement
18 Class. *Id.* Considering the amount of the attorney fees requested, the work performed, and the
19 risks incurred, the requested fees and costs are reasonable and should be awarded. *Id.*

20 **VIII. THE CLASS REPRESENTATIVE GENERAL RELEASE PAYMENT TO**
21 **PLAINTIFF SHOULD BE PRELIMINARILY APPROVED BECAUSE IT IS**
22 **FAIR, ADEQUATE, AND REASONABLE.**

23 Courts routinely approve incentive awards to compensate named plaintiffs for the services
24 they provide and the risks they incur during class action litigation, often in much higher amounts
25 than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726
26 (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van*
27 *Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000
28 enhancement award). The Settlement provides that Plaintiff may seek a Class Representative
General Release Payment of \$5,000.00. This amount is entirely reasonable given Plaintiff's



1 efforts in this action and the risks she undertook on behalf of the Class Members. DS, ¶ 52.
2 Plaintiff has devoted many hours advancing the interests of the Settlement Class. Plaintiff has
3 done this by, among other things, retaining experienced counsel, providing them with information
4 about her work history with Defendants and Defendants' policies and practices with respect to
5 the wage and hour claims at issue, participating in mediation, and being actively involved in the
6 settlement process to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiff
7 has been exposed to significant risks, including the risk of an order to pay Defendants' attorneys'
8 fees and costs if this action had been unsuccessful (See Labor Code §§ 218.5-218.6). The efforts
9 and risks that Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class
10 Representative General Release Payment is fair, adequate, and reasonable, and thus warrants
11 preliminary approval. DS, ¶ 52.

12 **IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE**
13 **PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE,**
14 **AND REASONABLE.**

15 The Settlement Administration costs provision is reasonable. Before agreeing to Phoenix
16 Settlement Administrators and its bid of \$10,000.00, the Parties sought and reviewed bids from
17 other reputable third-party administrators who provided higher bids. DS, ¶ 55-56, Exs. 9, 10, and
18 11. Thus, the Settlement Administration costs provision should be given preliminary approval.

19 **X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN**
20 **SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO**
21 **GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO**
22 **EXERCISE THEIR RIGHTS.**

23 This Court should approve the proposed plans for giving notice to the Settlement Class
24 and administering the Settlement. The standard for determining the adequacy of notice is whether
25 the notice has "a reasonable chance of reaching a substantial percentage of the class members."
26 *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple
27 measures to ensure that as many Class Members as practicable receive actual notice of the
28 Settlement and have enough time to exercise their rights. The Settlement requires distribution of
the Notice by First Class U.S. mail only. Settlement, ¶ EE. Although there are current employee



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1 Class Members, it is uncertain whether defendants' records of their contact information include
2 email addresses and Class Members. As such, notice by mail alone is fair, adequate, and
3 reasonable. DS, ¶ 63.

4 With respect to its content, "[The] notice given to the class must fairly apprise the class
5 members of the terms of the proposed compromise and of the options open to dissenting class
6 members." *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.
7 The purpose of the notice in class settlement context is to give class members sufficient
8 information to decide whether they should accept the benefits offered, opt out and pursue their
9 own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Proposed Order)
10 provides Class Members with all pertinent information that they need to fully evaluate their
11 options and exercise their rights under the Settlement. Specifically, it clearly and concisely
12 explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class
13 Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be
14 bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be
15 allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be
16 resolved; and (9) the individual Settlement Class Member's estimated payment. Accordingly, the
17 Notice should be approved because it describes the Settlement with sufficient clarity and
18 specificity to explain to Class Members what this action is about, their rights under the Settlement,
and how to exercise those rights. DS, ¶ 64.

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1 **XI. CONCLUSION**

2 For the reasons stated above, this Court should grant Plaintiff's Motion in its entirety and
3 adopt the proposed order submitted concurrently herewith.

4 Respectfully submitted,

5 THE SPIVAK LAW FIRM

7 Dated: September 30, 2022

6 By: David Spivak
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12 others similarly situated
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