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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

SAMUEL HERNANDEZ, as an individual  
and on behalf of all others similarly situated,

Plaintiff,

vs.

SPECTRA COMPANY, a California  
corporation; and DOES 1 through 100,

Defendants.

Case No. 20STCV39910

*[Assigned for all purposes to the Hon. Daniel  
J. Buckley, Dept. SSC-1]*

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Date: April 28, 2022  
Time: 10:30 a.m.  
Dept.: SSC-1

Complaint Filed: October 16, 2020  
Trial Date: None set

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,  
2 on April 28, 2022 at 10:30 a.m., or as soon thereafter as the matter may be heard in Department  
3 SSC-1 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California  
4 90012, Plaintiff Samuel Hernandez (“Plaintiff”) will, and hereby does, move this Court for:

5 1. Preliminary approval of the proposed class action Settlement Agreement  
6 (“Settlement”) between Plaintiff and Defendant Spectra Company (“Spectra”);

7 2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional  
8 certification, for settlement purposes only, of the proposed Settlement Class, defined  
9 as follows:

10 All current and former non-exempt employees of Spectra who worked  
11 for Spectra in California at any time from October 16, 2016, through  
12 the date of preliminary approval of the Settlement (“Class Period”).

13 3. Preliminary appointment of Plaintiff as Class Representative;

14 4. Preliminary appointment of Paul K. Haines, Tuvia Korobkin, and Neil M. Larsen of  
15 Haines Law Group, APC as Class Counsel;

16 5. The scheduling of a hearing to consider whether the Settlement should be finally  
17 approved and to award an amount for an enhancement award to the Class  
18 Representative, and attorneys’ fees and costs to Class Counsel;

19 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement  
20 Administrator for mailing notices; and

21 7. Approval of the proposed Notice Packet, and an order that it be disseminated to the  
22 proposed Settlement Class as provided in the Settlement Agreement.

23 ///

24 ///

25 ///

1 This motion is based on this notice of motion; the attached memorandum of points and  
2 authorities; the declarations of Paul K. Haines, Tuvia Korobkin, and Neil M. Larsen and exhibits  
3 attached thereto; the declaration of Jodey Lawrence of Phoenix Settlement Administrators and  
4 exhibits attached thereto; the declaration of Plaintiff; the declaration of Ray Adamyk of Spectra;  
5 the pleadings and other papers filed in this action; and any further oral or documentary evidence  
6 or argument presented at the time of hearing.

7  
8 Dated: April 6, 2022

Respectfully submitted,  
HAINES LAW GROUP, APC

9  
10 By:  \_\_\_\_\_

Paul K. Haines  
Attorneys for Plaintiff

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23  
24  
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26  
27  
28

**TABLE OF CONTENTS**

|                                                                         |    |
|-------------------------------------------------------------------------|----|
| I. INTRODUCTION .....                                                   | 1  |
| II. SUMMARY OF THE LITIGATION .....                                     | 2  |
| A. FACTUAL AND PROCEDURAL BACKGROUND.....                               | 2  |
| B. PLAINTIFF’S CLAIMS AND SPECTRA’S DEFENSES.....                       | 3  |
| 1. Unpaid Wage Claim Based on Checking Work Schedules After Hours ..... | 3  |
| 2. Unpaid Wage Claim Based on Unlawful Rounding/Time-Shaving .....      | 3  |
| 3. Expense Reimbursement Claim.....                                     | 4  |
| 4. Rest Period Claim .....                                              | 4  |
| 5. Meal Period Claim .....                                              | 5  |
| 6. Claims Under Lab. Code §§ 203, 226, and the PAGA .....               | 6  |
| C. DISCOVERY AND MEDIATION.....                                         | 7  |
| III. THE PROPOSED SETTLEMENT.....                                       | 8  |
| A. ESSENTIAL TERMS OF THE SETTLEMENT .....                              | 8  |
| 1. The Settlement Provides for Reasonable Monetary Payments.....        | 8  |
| 2. Enhancement Award, and Attorneys’ Fees and Costs .....               | 9  |
| IV. ARGUMENT.....                                                       | 10 |
| A. PRELIMINARY APPROVAL IS WARRANTED .....                              | 10 |
| 1. Standard for Preliminary Approval.....                               | 10 |
| a. The Strength of Plaintiff’s Case.....                                | 11 |
| b. Risk, Expense, Complexity, and Duration of Further Litigation.....   | 11 |
| c. Risk of Maintaining Class Action Status .....                        | 11 |
| d. Amount Offered in Settlement Given Realistic Value of Claims.....    | 12 |
| e. The Experience and Views of Counsel .....                            | 17 |
| 2. The Preliminary Approval Standard Is Met.....                        | 17 |
| a. The Settlement Is Within the Range of Possible Approval .....        | 18 |
| b. The Settlement Resulted from Serious, Informed Negotiations .....    | 18 |
| c. The Settlement Is Devoid of Obvious Deficiencies.....                | 18 |

|    |                                                                            |    |
|----|----------------------------------------------------------------------------|----|
| 1  | B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS.....                        | 18 |
| 2  | 1. The Proposed Class Is Ascertainable and Numerous .....                  | 18 |
| 3  | 2. Common Issues of Law and Fact Predominate for Settlement Purposes ..... | 19 |
| 4  | 3. The Claims of the Named Plaintiff Are Typical .....                     | 19 |
| 5  | 4. Plaintiff and His Counsel Will Adequately Represent the Class .....     | 19 |
| 6  | C. THE COURT SHOULD ORDER DISTRIBUTION OF THE CLASS NOTICE .....           | 19 |
| 7  | IV. CONCLUSION .....                                                       | 20 |
| 8  |                                                                            |    |
| 9  |                                                                            |    |
| 10 |                                                                            |    |
| 11 |                                                                            |    |
| 12 |                                                                            |    |
| 13 |                                                                            |    |
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| 25 |                                                                            |    |
| 26 |                                                                            |    |
| 27 |                                                                            |    |
| 28 |                                                                            |    |

## **TABLE OF AUTHORITIES**

### **Federal Cases**

|                                                                                   |    |
|-----------------------------------------------------------------------------------|----|
| <i>Eisen v. Carlisle &amp; Jacquelin</i> , 417 U.S. 156 (1974).....               | 20 |
| <i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998) .....             | 10 |
| <i>In re Pac. Enter. Sec. Litig.</i> , 47 F.3d 373 (9th Cir. 1995).....           | 17 |
| <i>In re Syncor ERISA Litig.</i> , 516 F.3d 1095 (9th Cir. 2008) .....            | 10 |
| <i>Lemus v. Denny's Inc.</i> , 617 F. App'x 701 (9th Cir. 2015).....              | 16 |
| <i>Patel v. Nike Retail Svcs., Inc.</i> , 58 F.Supp.3d 1032 (N.D. Cal. 2014)..... | 16 |

### **State Cases**

|                                                                                                 |        |
|-------------------------------------------------------------------------------------------------|--------|
| <i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal.App.4th 1157 (2008) .....                         | 16, 17 |
| <i>Benton v. Telecom Network Specialists, Inc.</i> , 220 Cal.App.4th 701 (2013).....            | 19     |
| <i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal.App.3d 1341 (1987) .....         | 19     |
| <i>Bluford v. Safeway, Inc.</i> , 216 Cal.App.4th 864 (2013) .....                              | 4      |
| <i>Brinker Restaurant Corp. v. Sup. Ct.</i> , 53 Cal.4th 1004 (2012).....                       | 5      |
| <i>Candy Shops, Inc. v. Sup. Ct.</i> , 210 Cal.App.4th 889 (2012).....                          | 3      |
| <i>Capital People First v. State Dept. of Develop. Svcs.</i> , 155 Cal.App.4th 676 (2007) ..... | 19     |
| <i>Carrington v. Starbucks Corp.</i> , 30 Cal.App.5th 504 (2018) .....                          | 7      |
| <i>Chindarah v. Pick Up Stix, Inc.</i> , 171 Cal. App. 4th 796 (2009) .....                     | 11     |
| <i>Cochran v. Schwan's Home Service, Inc.</i> , 228 Cal.App.4th 1137 (2014).....                | 19     |
| <i>Dunk v. Ford Motor Co.</i> 48 Cal.App.4th 1794 (1996) .....                                  | 11     |
| <i>Duran v. U.S. Bank Nat'l Ass'n</i> , 59 Cal.4th 1 (2014).....                                | 4      |
| <i>In re Cellphone Fee Termination Cases</i> , 186 Cal.App.4th 1380 (2010).....                 | 9      |
| <i>Kao v. Joy Holiday</i> , 12 Cal.App.5th 947 (2017) .....                                     | 6      |
| <i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th 116 (2008).....                     | 10, 18 |
| <i>Laffitte v. Robert Half Int'l, Inc.</i> , 1 Cal.5th 480 (2016).....                          | 10     |
| <i>Naranjo v. Spectrum Security Svcs., Inc.</i> , 40 Cal.App.5th. 444 (2019) .....              | 6      |
| <i>Price v. Starbucks Corp.</i> , 192 Cal.App.4th 1136 (2011).....                              | 6      |
| <i>Reed v. United Teachers Los Angeles</i> , 208 Cal.App.4th 322 (2012).....                    | 10     |
| <i>Sav-On Drug Store, Inc. v. Sup. Ct.</i> , 34 Cal.4th 319 (2004).....                         | 19     |

|    |                                                                         |       |
|----|-------------------------------------------------------------------------|-------|
| 1  | <i>Wershba v. Apple Computer, Inc</i> , 91 Cal.App.4th 224 (2001).....  | 11    |
| 2  | <b><u>Federal Statutes &amp; Rules</u></b>                              |       |
| 3  | Fed. R. Civ. Proc. Rule 23 .....                                        | 10    |
| 4  | <b><u>State Statutes and Rules</u></b>                                  |       |
| 5  | 8 Cal. Code Regs. § 13520.....                                          | 6     |
| 6  | Cal. Rule of Court 3.766(d) .....                                       | 20    |
| 7  | Cal. Rule of Court 3.769 .....                                          | 2, 10 |
| 8  | Code Civ. Proc. § 382 .....                                             | 2, 18 |
| 9  | Lab. Code § 203 .....                                                   | 6, 7  |
| 10 | Lab. Code § 226.....                                                    | 6, 16 |
| 11 | Lab. Code § 226.7 .....                                                 | 5, 15 |
| 12 | Lab. Code § 2699.....                                                   | 6, 17 |
| 13 | <b><u>Unpublished Cases</u></b>                                         |       |
| 14 | <i>Alvarado v. Nederend</i>                                             |       |
| 15 | No. 1:08-cv-01099-OWW-DLB, 2011 WL 90228 (E.D. Cal. Jan. 11, 2011)..... | 9     |
| 16 | <i>Fleming v. Covidien, Inc.</i>                                        |       |
| 17 | No. ED CV 10-01487 RGK, 2011 WL 7563047 (C.D. Cal. Aug. 12, 2011) ..... | 7     |
| 18 | <b><u>Other Citations</u></b>                                           |       |
| 19 | 4 <i>Newberg on Class Actions</i> , § 11:24-25 (4th Ed. 2013).....      | 18    |
| 20 |                                                                         |       |
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Samuel Hernandez (“Plaintiff”) seeks preliminary approval of a class action  
4 settlement (“Settlement”) with Defendant Spectra Company (“Spectra” or “Defendant”). In his  
5 lawsuit, Plaintiff primarily alleges that Spectra failed to pay all wages owed to its non-exempt  
6 employees, by engaging in rounding/time-shaving and by failing to pay for time spent checking  
7 their work schedules after hours; failed to reimburse them for work-related expenses, including  
8 cell phones or personal computers used to check work schedules after hours; and failed to provide  
9 all required meal periods and to authorize and permit all required rest periods. Based on these  
10 alleged wage and hour violations, Plaintiff also alleges derivative claims for Spectra’s alleged  
11 failure to pay all wages at termination, failure to issue accurate itemized wage statements, unfair  
12 business practices, and for civil penalties under the Private Attorneys General Act (“PAGA”),  
13 Labor Code § 2698 *et seq.*

14 Plaintiff now respectfully requests that this Court preliminarily approve this non-  
15 reversionary, common-fund class action settlement,<sup>1</sup> in which Spectra has agreed to pay  
16 \$500,000.00 to the following Settlement Class, which is estimated to consist of 346 individuals:

17 All current and former non-exempt employees of Spectra who worked for Spectra  
18 in California at any time from October 16, 2016, through the date of preliminary  
approval of the Settlement (“Class Period”).

19 The Settlement was reached after the parties engaged in mediation with Francis J.  
20 “Tripper” Ortman, Esq., an experienced wage and hour class action mediator. In connection with  
21 mediation, Spectra provided Plaintiff with extensive informal discovery, including a class list  
22 with each putative class members’ hire date, termination date, and rate of pay; timekeeping  
23 records for putative class members; Spectra’s relevant wage and hour policies; and other  
24 information and documents. Spectra also provided our office with extensive documentation  
25 regarding its financial condition, including independently reviewed financial statements and other  
26 documents. After extensive research and analysis, including a detailed evaluation of Spectra’s

27 \_\_\_\_\_  
28 <sup>1</sup> The Stipulation of Settlement (“Settlement”) is attached as Exhibit 1 to the Declaration of Paul  
K. Haines (“Haines Decl.”). The proposed Class Notice and Notice of Estimated Settlement  
Award are attached as Exhibits A and B, respectively, to the Settlement Agreement.

1 potential exposure, the parties attended a full-day mediation on October 13, 2021. At the end of  
2 mediation the parties reached a settlement in principle, conditioned on Plaintiff's receipt of  
3 additional financial documents to be reviewed by a forensic accountant retained by Plaintiff. After  
4 Plaintiff received the relevant financial records and after Plaintiff's forensic accountant reviewed  
5 the records and confirmed Spectra's representations regarding its financial condition, Plaintiff  
6 agreed to the proposed settlement terms and the parties drafted and negotiated the Settlement.

7 The \$500,000.00 Gross Settlement Amount ("GSA") will be deposited with the  
8 Settlement Administrator in 19 monthly installments, with the first installment of \$100,000.00  
9 due 180 days after execution of the Settlement, and the remaining 18 installments of \$22,222.22  
10 due every 30 days thereafter until the GSA is fully funded. Settlement Class members will receive  
11 their payments ("Settlement Awards") in two equal installments: fifty percent (50%) of each  
12 Settlement Award will be paid within 30 days after the tenth installment, and the other 50% will  
13 be paid within 30 days after the Settlement is fully funded.<sup>2</sup> See Settlement, § 3(B). Funds from  
14 checks not cashed within 180 days will be sent to *cy pres* recipient, Bet Tzedek. *Id.*, § 4(F).<sup>3</sup>

15 Settlement Class members do not need to file a claim; Settlement Awards will be  
16 distributed to all Settlement Class members who do not opt out. After deductions for proposed  
17 administration costs, attorneys' fees and costs, PAGA payment to LWDA, and Class  
18 Representative Service Award, the average Settlement Award is estimated to be at least **\$748.07**.  
19 For the reasons stated herein, Plaintiff respectfully requests the Court grant preliminary approval.

## 20 **II. SUMMARY OF THE LITIGATION**

### 21 **A. FACTUAL AND PROCEDURAL BACKGROUND**

22 Spectra is a construction company headquartered in Pomona, California that provides  
23 historic restoration, materials restoration, and preservation consulting services. See Declaration  
24 of Paul K. Haines ("Haines Decl."), ¶ 11. Plaintiff and Settlement Class members are non-exempt  
25 employees who worked for Spectra in California during the Class Period. *Id.*

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26 <sup>2</sup> As noted below and in the Haines Declaration, this payment plan was warranted based on  
27 Spectra's financial condition. See Haines Decl., ¶ 15; see also Adamyk Decl., ¶¶ 3-8 (attesting  
28 to Spectra's financial condition).

<sup>3</sup> Neither Plaintiff, Spectra, nor counsel for any party has any interest or involvement in Bet  
Tzedek. See Haines Decl., ¶ 31; Hernandez Decl., ¶ 9; Adamyk Decl., ¶ 10; Estrada Decl., ¶ 3.

On October 16, 2020, Plaintiff filed the instant action against Spectra, alleging claims for failure to pay all wages owed, failure to authorize and permit rest periods, failure to provide meal periods, failure to reimburse business expenses, failure to issue accurate itemized wage statements, failure to timely pay all wages due upon separation, and unfair competition. On December 28, 2020, Plaintiff filed his operative First Amended Class and Representative Action Complaint to add a cause of action for civil penalties under the PAGA.

**B. PLAINTIFF’S CLAIMS AND SPECTRA’S DEFENSES**

**1. Unpaid Wage Claim Based on Checking Work Schedules After Hours**

Plaintiff alleges that he and other employees were required to perform work off-the-clock, in that they were required to log on to Spectra’s website each evening after 5:30 p.m. to check their work schedules for the following day. Haines Decl., ¶ 18. Because their workdays often ended prior to 5:30 p.m., Plaintiff alleges that this required employees to perform work off-the-clock. *Id.* Spectra contends that any time spent checking work schedules is not “hours worked,” as employees are not subject to Spectra’s control during such time. *Id.* Spectra further maintains that, even if such time were otherwise compensable, it is *de minimis* as it only takes a few seconds to log on and check one’s schedule, and is therefore not compensable. *Id.* Spectra further maintains this claim is not suited for class treatment, since individual inquiries would be needed to assess which Settlement Class members ended their shifts after 5:30 p.m., and how much time a particular Settlement Class member spent each day to check their schedule, leading to hundreds of individualized mini-trials. *Id.*

**2. Unpaid Wage Claim Based on Unlawful Rounding/Time-Shaving**

Plaintiff alleges that Spectra failed to pay for all hours worked, in that it generally had employees fill out time sheets reflecting their scheduled hours, and Spectra paid employees based on those timesheets rather than electronic badge-swipe records. Haines Decl., ¶ 19. Spectra counters that in general, employees consistently work their scheduled hours, and if anything, employees were often *over*-paid since they often were credited with their full scheduled hours even when they did not work their full scheduled shift. *Id.*; *see also See’s Candy Shops, Inc. v. Sup. Ct.*, 210 Cal.App.4th 889, 901 (2012) (rounding lawful if employer “applies a consistent

1 rounding policy that, on average, favors neither overpayment nor underpayment.”) Moreover,  
2 Spectra argues, the electronic badge-swipes do not indicate the time an employee actually begins  
3 working for the day, since employees frequently swipe their badges a few minutes early (to  
4 confirm that they have arrived on the job site) and then engage in personal activities such as  
5 chatting with co-workers or using their phones until the actual start of the shift. *Id.* Spectra also  
6 argues this claim is not suitable for class treatment, since it would require testimony from each  
7 and every employee, for each and every workday, to determine whether each employee was over-  
8 paid or under-paid on each individual shift and, even if they were under-paid, whether they were  
9 actually working when they swiped their badge at the beginning of the day. *Id.* This, Spectra  
10 argues, would require hundreds of mini-trials as to liability and damages, precluding a workable  
11 trial plan under *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal.4th 1 (2014).

### 12 **3. Expense Reimbursement Claim**

13 Plaintiff alleges that Spectra failed to reimburse employees for the use of their personal  
14 cell phones and/or computers that they were required to use to check their schedules each  
15 evening. Haines Decl., ¶ 20. Spectra argues that, just as it need not pay employees for time spent  
16 checking their schedules (as discussed above), it need not reimburse employees for expenses  
17 incurred in doing so. *Id.* Indeed, Spectra asserts, before the advent of personal computers and  
18 cell phones, employees frequently called in to their employer to check their schedule for the  
19 upcoming day or week, and employers generally did not reimburse for such expenses. *Id.*  
20 Moreover, as with the related unpaid wage claim, Spectra argues this claim is not suitable for  
21 class treatment, as it would require individualized inquiries into which employees had to check  
22 their work schedules off-the-clock, how much time they spent doing so, and in addition, how  
23 much expense (if any) they actually incurred in checking their work schedules. *Id.*

### 24 **4. Rest Period Claim**

25 Plaintiff alleges that Spectra failed to authorize and permit all required rest periods as a  
26 result of its policy requiring employees to combine their meal and rest periods into a one-hour  
27 break at approximately the four-hour mark of each shift. Plaintiff contends this practice runs afoul  
28 of *Rodriguez v. E.M.E., Inc.*, 246 Cal.App.4th 1027, 1040 (2016), which held that departure from  
the “preferred” rest period schedule of one 10-minute rest break before the meal period and

1 another 10-minute break after the meal period is permissible only when “the departure (1) will  
2 not unduly affect employee welfare and (2) is tailored to alleviate a material burden...on the  
3 employer.” Spectra asserts it does not require employees to combine rest periods and that, in fact,  
4 it expressly advises employees in its employee handbook that they are entitled to a rest period for  
5 each 4-hour work period or major fraction thereof. Haines Decl., ¶ 21. While some employees do  
6 combine their breaks, Spectra contends this is done voluntarily because employees prefer to take  
7 one, longer break in the middle of the workday rather than two shorter breaks. *Id.* Further, Spectra  
8 contends combining rest periods in this manner is permissible under unique rest period language  
9 in Wage Order 16 that provides greater flexibility to construction industry employers regarding  
10 rest period scheduling. *Id.*; Wage Order 16, § 11 (“Nothing in this provision shall prevent an  
11 employer from...scheduling rest periods to coincide with breaks in the flow of work that occur in  
12 the course of the workday”). Finally, Spectra maintains this claim is not suited for class treatment,  
13 as individual inquiries would be needed as to which employees actually took combined rest  
14 periods and on which shifts, and which employees agreed to and preferred the combined meal-  
15 rest period schedule. *Id.* These individual issues of proof are especially present with respect to  
16 rest periods, Spectra argues, since rest periods are not – and need not be – recorded. *Id.*

##### 17 **5. Meal Period Claim**

18 Plaintiff alleges that Spectra did not provide compliant meal periods, as meal periods were  
19 often provided late (i.e., after the fifth hour of work), when combined with their two rest periods  
20 as described above. For example, Plaintiff alleges that he often began work at about 6:00 a.m. but  
21 was often not provided a meal period until after 11:00 a.m. Haines Decl., ¶ 22. Spectra counters  
22 that it has always provided employees the opportunity to take legally compliant meal periods, that  
23 its written meal period policy is compliant with California law, but that employees often preferred  
24 to take them later in the day, so that they coincided with lunch time and so that employees could  
25 perform more work earlier in the shift, before the heat of the day. *Id.* Spectra also asserts that  
26 under *Brinker* it is only required to “provide” the opportunity to take meal periods, not “ensure”  
27 meal periods are taken, and that, as described above, it has always done so. *Brinker Restaurant*  
28 *Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1038 (2012) (rejecting “ensure” standard). Finally, Spectra

maintains Plaintiff's meal period claim is not suited for class certification, as individual inquiries would be needed to assess which employees took non-compliant meal periods, how many meal periods were non-compliant, and why a particular employee did not take a compliant meal period on a particular shift. *Id.*

#### **6. Claims Under Lab. Code §§ 203, 226, and the PAGA**

As a result of these alleged wage and hour violations, Plaintiff asserts that Spectra failed to comply with its final wage payment and wage statement obligations, in violation of Labor Code §§ 203 and 226, respectively. Haines Decl., ¶¶ 23-24. Finally, Plaintiff seeks civil penalties under the PAGA, based on the aforementioned claims. Haines Decl., ¶ 25.

Spectra asserts it has strong, good-faith defenses to Plaintiff's underlying claims, precluding imposition of waiting time penalties. *See* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding "good faith dispute" precluded imposition of waiting time penalties). Spectra further contends Plaintiff's meal and rest period claims cannot support a claim for waiting time or wage statement penalties, as a Court of Appeal held in *Naranjo v. Spectrum Security Servs., Inc.*, 40 Cal.App.5th 444 (2019) (*review granted* Jan. 2, 2020). Spectra further contends any alleged wage statement violations could not be shown to be "knowing and intentional," particularly given its good-faith defenses; that Plaintiff cannot show he or other employees "suffer[ed] injury" due to alleged wage statement violations, as required by Lab. Code § 226(e); and that wage statements always accurately reflected amounts *paid* to employees. Haines Decl., ¶ 23; *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1337 (2018) ("The purpose of section 226 is to 'document the paid wages to ensure the employee is fully informed regarding the calculation of those wages'").

Finally, Spectra contends the PAGA claim fails because the underlying claims fail. *See Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Spectra further maintains that given its good-faith defenses, the Court would substantially reduce any PAGA penalties awarded. Haines Decl., ¶ 25; *see also* Lab. Code § 2699(e)(2) (authorizing reduction in PAGA penalties in

court's discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 at \*4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just \$5 per pay period where employer made "good faith attempts" to comply with the law).

**C. DISCOVERY AND MEDIATION**

In connection with mediation, the parties engaged in extensive informal discovery. Spectra produced a class list containing the hire dates, termination dates, and rates of pay for each putative class member, which enabled Plaintiff to calculate number of workweeks and pay periods worked and average rates of pay for the Settlement Class. Haines Decl., ¶ 13. Spectra also provided both timesheets and electronic badge-swipe records for Settlement Class members for nearly the entire Class Period, as well as its written wage and hour policies. *Id.* This discovery allowed the parties to assess the merits and potential value of Plaintiff's claims. *Id.*

The parties attended a full-day mediation on October 13, 2021 with Mr. Ortman. Haines Decl., ¶ 14. The parties vigorously debated their legal positions, the likelihood of certification of Plaintiff's claims, and the legal bases for the claims and defenses. *Id.* The parties also discussed Spectra's financial condition, and Spectra produced financial records, including independently reviewed financial statements, to support its representations. *Id.* Ultimately, the parties agreed in principle to a mediator's proposal, subject to Spectra's production of additional financial documents and Plaintiff's review of the same with Plaintiff's retained forensic accountant. *Id.*

Spectra provided the requested records, including additional years of independently reviewed financial statements, letters from banks regarding loans owed by Spectra, and other information. *See* Haines Decl., ¶ 15; *see also* Declaration of Ray Adamyk, ¶¶ 3-10. Plaintiff's accountant subsequently requested additional information, which Spectra provided. Haines Decl., ¶ 15. After conducting his full review of Spectra's records, Plaintiff's accountant confirmed Spectra's representations regarding its financial condition and concluded the proposed settlement was warranted in light of Spectra's financial condition. *Id.* Thereafter, the parties negotiated the settlement's finer terms, ultimately resulting in the Settlement. *Id.*

### III. THE PROPOSED SETTLEMENT

#### A. ESSENTIAL TERMS OF THE SETTLEMENT

Spectra will pay a non-reversionary Gross Settlement Amount (“GSA”) of \$500,000.00. See Settlement, § 3. No Settlement Class member will need to file a claim form; each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out. The monetary terms of the Settlement are summarized below:

|                                                           |                     |
|-----------------------------------------------------------|---------------------|
| • Gross Settlement Amount (“GSA”):                        | \$500,000.00        |
| • Minus Court-approved attorneys’ fees (one-third):       | \$166,666.67        |
| • Minus Court-approved, verified costs (up to):           | \$25,000.00         |
| • Minus Court-approved Service Award (up to):             | \$7,500.00          |
| • Minus Amount designated as PAGA penalties:              | \$40,000.00         |
| • <u>Minus estimated settlement administration costs:</u> | <u>\$12,000.00</u>  |
| Net Settlement Amount (“NSA”):                            | \$248,833.33        |
| <u>PLUS 25% of PAGA penalties (“PAGA Amount”)</u>         | <u>\$10,000.00</u>  |
| <b>TOTAL Amount Paid to Settlement Class:</b>             | <b>\$258,833.33</b> |

#### 1. The Settlement Provides for Reasonable Monetary Payments

After deducting administration costs, enhancement award to Plaintiff, PAGA penalties to the LWDA, and attorneys’ fees and costs, Spectra will pay at least \$258,833.33 to the Settlement Class. See Settlement, § 3(C). According to Spectra there are approximately 346 Settlement Class members. *Id.*, § 1. Thus, the average Settlement Award is estimated to be \$748.07. *Id.*

Settlement Awards will be calculated as follows: (i) 85% of the NSA will be distributed to all participating Settlement Class members based on their proportionate number of workweeks worked for Spectra during the Class Period; (ii) 10% of the NSA will be designated the “Waiting Time Amount” and distributed equally to all participating Settlement Class members whose employment with Spectra ended at any time from October 16, 2017 through the end of the Class Period; (iii) the remaining 5% of the NSA will be designated the “Wage Statement Amount” and distributed to all participating Settlement Class members based on the proportionate number of pay periods (if any) worked for Spectra at any time from October 16, 2019 to the end of the Class Period; and (iv) in addition to the NSA, the \$10,000 “PAGA Amount” (25% of the \$40,000 PAGA set-aside) will be distributed to all Settlement Class members based on the proportionate number of pay periods (if any) worked from October 19, 2019 through the end of the Class Period (the “PAGA Period”). See Settlement, § 4(B)-(C).

1           Spectra will provide class data to the Settlement Administrator within 10 business days of  
2 preliminary approval, and Notices will be mailed 10 business days thereafter. *See* Settlement, §  
3 9(A)-(B). Settlement Class members will have 60 days from mailing to opt-out or object. *Id.*, §  
4 9(C)-(D). Settlement Class members who do not opt out will be bound by the Settlement, and will  
5 release all claims against Spectra that were pled in, or could have been pled based on the facts  
6 alleged in, Plaintiff’s operative Complaint. *Id.*, § 2(A). In addition, all Settlement Class members  
7 (regardless whether they opt out) who worked for Spectra during the PAGA Period will release  
8 all claims alleged in Plaintiff’s notice to the LWDA. *Id.*

9           As noted, the Settlement will be funded in 19 monthly installments, beginning 180 days  
10 after the execution of the Settlement. Settlement Awards will be distributed 50% after the tenth  
11 installment and 50% after the final installment. *See* Settlement, § 3(B).

## 12                   **2. Enhancement Award, Attorneys’ Fees and Costs**

13           Plaintiff will apply for a Service Award at final approval in the amount of \$7,500 for his  
14 services to the Class. *See* Settlement, § 6. “[I]ncentive awards are fairly typical in class action  
15 cases...and are intended to compensate class representatives for work done on behalf of the class  
16 [and] to make up for financial or reputational risk undertaken in bringing the action.” *In re*  
17 *Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully  
18 briefed at final approval, the requested Service Award is intended to recognize the substantial  
19 time and effort Plaintiff expended on behalf of the Settlement Class, including providing factual  
20 information and documents to counsel, identifying potential witnesses, attending meetings with  
21 counsel to discuss the claims and theories at issue in the litigation, and otherwise actively  
22 participating in the prosecution of his claims. *Id.* Plaintiff respectfully submits that this requested  
23 payment is well within the range of permissible approval. *See, e.g., Alvarado v. Nederend*, No.  
24 1:08-cv-01099-OWW-DLB, 2011 WL 1883188 at \*10 (E.D. Cal. May 17, 2011) (approving  
25 \$7,500 enhancement award to each of five named plaintiffs from \$505,058.60 settlement).

26           At final approval, Plaintiff’s counsel will request an attorneys’ fees award of one-third of  
27 the GSA, and up to \$25,000 in verified costs. Settlement, § 5. Plaintiff submits the requested fee  
28 is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on

1 a contingent basis. Plaintiff's counsel has expended significant time conducting pre-filing  
2 investigation; legal research; analyzing Plaintiff's claims; analyzing employee timekeeping  
3 records and other data and documents; preparing for and attending mediation; working with a  
4 forensic accountant to review Spectra's financial records; negotiating the Settlement; preparing  
5 this Motion; and otherwise prosecuting this case. Haines Decl., ¶ 27. Counsel anticipate incurring  
6 additional fees in appearing at the hearing on this Motion, supervising the Notice process, and  
7 preparing the Final Approval motion and appearing at the Final Approval Hearing. *Id.*

8 It is appropriate to award attorneys' fees in class actions is as a percentage of the "common  
9 fund" created by a settlement. *See Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480 (2016) (holding  
10 "the percentage of fund method survives in California class action cases"). Counsel's fee request  
11 of one-third of the GSA is well within the range of reasonableness, and is typical for common  
12 fund settlements, and in fact was the percentage approved in *Laffitte*.

#### 13 **IV. ARGUMENT**

##### 14 **A. PRELIMINARY APPROVAL IS WARRANTED**

15 Rule of Court 3.769 conditions settlement of a class action on court approval, which is  
16 generally evaluated under the federal standards under Fed. R. Civ. Proc. Rule 23. *Reed v. United*  
17 *Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule of Court 3.769 requires court to  
18 determine "the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler*  
19 *Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine "whether a  
20 proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred  
21 means of dispute resolution, particularly in complex class action litigation. *In re Syncor ERISA*  
22 *Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The court's role in evaluating a settlement is limited  
23 to ensuring the agreement, as a whole, is fair and within the range of reasonableness. *Hanlon*, 150  
24 F.3d at 1027. There is an initial presumption of fairness when a settlement was negotiated at arm's  
25 length by class counsel. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

##### 26 **1. Standard for Preliminary Approval**

27 To make a fairness determination, a court should consider several factors, including: "the  
28 strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation,

1 the risk of maintaining class action status through trial, the amount offered in settlement, the  
2 extent of discovery completed and the stage of the proceedings, [and] the experience and views  
3 of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). “The list of factors is  
4 not exclusive and the Court is free to engage in a balancing and weighing of the factors depending  
5 on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245  
6 (2001). The proposed Settlement is fair, adequate, and reasonable in light of these factors.

7 **a. The Strength of Plaintiff’s Case**

8 Although he steadfastly maintains his claims are meritorious, Plaintiff acknowledges  
9 there were substantial risks and uncertainty in proceeding with class certification and eventual  
10 trial on the merits. As described in section II.B., *supra*, Spectra presented multiple defenses to  
11 Plaintiff’s claims, both on the merits and to class certification. While Plaintiff was prepared to  
12 litigate his claims through class certification and ultimately trial, success was far from certain.

13 **b. Risk, Expense, Complexity, and Duration of Further Litigation**

14 Although the parties had engaged in significant informal discovery, the parties had not yet  
15 completed formal written and deposition discovery, which would have required the expenditure  
16 of substantial time and resources by all parties. Haines Decl., ¶ 29. Even if Plaintiff obtained  
17 class certification, the parties would incur considerable attorneys’ fees and costs through a  
18 possible decertification motion, trial, and possible appeal. *Id.* The Settlement avoids those risks  
19 and the accompanying delay and expense, and thus this factor supports preliminary approval.

20 **c. Risk of Maintaining Class Action Status**

21 Absent settlement, there was a risk that there would not be a certified class at the time of  
22 trial, or if there were, it would consist of a significantly smaller group of employees than the  
23 proposed Settlement Class. Spectra could have potentially entered into individual settlement  
24 agreements with a large portion of the putative class by way of *Pick Up Stix*-style settlement  
25 agreements,<sup>4</sup> for a fraction of what Settlement Class members will recover through this  
26 Settlement. Thus, this factor supports preliminary approval.

27 \_\_\_\_\_  
28 <sup>4</sup> *Chindarah v. Pick Up Stix, Inc.*, 171 Cal. App. 4th 796 (2009) holds that an employer may enter  
into pre-certification settlement agreements with individual putative class members in which the  
putative class members release claims for past unpaid wages and penalties.

1                                    **d.        Amount Offered in Settlement Given Realistic Value of Claims**

2            The Settlement provides fair and reasonable monetary recovery for Settlement Class  
3 members concerning heavily disputed claims where the law and current legislation are in a state  
4 of hyper-rapid change. Based on a review of the data produced by Spectra in connection with  
5 mediation, Plaintiff conducted the following exposure analyses:

6                                    **Unpaid Wages – Off-the-Clock Work: \$28,394**

7            Plaintiff alleges that Spectra failed to pay wages for off-the-clock because employees were  
8 required to check their work schedules each evening after the end of their shifts. Haines Decl., ¶  
9 18. Plaintiff estimated that it would take approximately 2-3 minutes to log on and check one's  
10 schedule each evening. Haines Decl., ¶ 18. Based on data provided by Spectra, Plaintiff calculated  
11 there were approximately 28,320 workweeks during the Class Period, and that Settlement Class  
12 members generally worked 5 days per week, for a total of approximately 141,600 workdays. *Id.*  
13 Accordingly, Plaintiff estimated approximately 5,900 hours of unpaid time (141,600 \* 2.5  
14 minutes, or .0416 hours, per day). *Id.* Plaintiff further calculated that the average minimum wage  
15 during the Class Period was approximately \$12.50. *Id.* Using these figures, Plaintiff estimated  
16 Spectra's potential liability as \$147,500 for unpaid minimum wages for off-the-clock work (5,900  
17 hrs \* \$12.50 \* 2 (liquidated damages under Labor Code § 1194.2)). *Id.*

18            As noted above, however, Spectra contends employees were not under its control while  
19 checking their work schedules and therefore such time is not compensable "hours worked."  
20 Haines Decl., ¶ 18. Spectra further argues that Plaintiff's estimate of 2-3 minutes per day is  
21 inflated, and that employees could check their schedules in a manner of seconds, such that the  
22 time spent is *de minimis* and not compensable. *Id.* Spectra also counters that Plaintiff's claim for  
23 off-the-clock work is not suited for class certification, since individual inquiries would be needed  
24 to assess which employees actually ended their shifts after 5:30 p.m. and checked their schedules  
25 off-the-clock, and how much time a particular employee spent on any particular day performing  
26 that task. *Id.* In light of these defenses, Plaintiff discounted the maximum exposure by 45% for  
27 risk of non-certification, and an additional 65% for risk of losing on the merits or failing to recover  
28 the full amount sought, to arrive at an estimated exposure of \$28,394. *Id.*

1           Unpaid Wages – Time Rounding/Shaving: \$38,042

2           Plaintiff alleges that Spectra failed to pay all wages owed because it paid employees based  
3 on their written timesheets, which generally reflected their scheduled hours, rather than based on  
4 their electronic badge swipes. Haines Decl., ¶ 19. Based on Plaintiff's analysis of timekeeping  
5 records produced by Spectra, Plaintiff estimated that employees were underpaid on  
6 approximately 53,000 shifts, by an average of about 8 minutes (or 0.133 hours) per shift, when  
7 comparing electronic badge swipes to their timesheets, for a total of approximately 7,067 unpaid  
8 hours. *Id.* Because employees frequently worked 8 hours or more per shift, Plaintiff calculated  
9 this unpaid time as overtime wages, and based on data provided by Spectra, Settlement Class  
10 members' average overtime rate during the Class Period was approximately \$38.45 (based on  
11 \$25.63 average rate of pay). *Id.* Plaintiff therefore estimated Spectra's potential exposure on this  
12 claim as \$271,726 (7,067 hrs \* \$38.45).

13           But as noted above, Spectra argues this analysis is severely inflated because it doesn't  
14 take into account those shifts where employees were *overpaid* as a result of Spectra's paying  
15 employees their full scheduled hours. Haines Decl., ¶ 19. Indeed, Spectra asserts, employees  
16 would often end working prior to the end of their shift but were still paid for their full scheduled  
17 hours, resulting in overpayment, rather than underpayment, of wages. *Id.* Moreover, Spectra  
18 asserts that employees often would swipe in for the day a few minutes prior to their scheduled  
19 shift, to indicate that they had arrived at the worksite, but would not begin working until the start  
20 of their shift and would attend to personal tasks such as chatting with co-workers or using their  
21 personal cell phones until the scheduled start of the shift. *Id.* Spectra also argues this claim is not  
22 suitable for class treatment, since it would require individualized inquiries to determine whether  
23 each employee was over-paid or under-paid on each individual shift and, even if they were under-  
24 paid, whether they were actually working when they swiped their badge at the beginning of the  
25 day. *Id.* Based on these defenses, Plaintiff discounted the maximum exposure by 60% to account  
26 for risk of non-certification, and by an additional 65% for risk of losing on the merits or failing  
27 to recover the full amount sought, to arrive at a realistic estimated exposure of \$38,042. *Id.*

28       ///

1           Unreimbursed Expenses: \$28,320

2           Plaintiff alleges Spectra failed to reimburse employees for using personal cell phones  
3 and/or personal computers to log onto Spectra's website to check their daily schedules, as  
4 discussed above. Haines Decl., ¶ 20. Based on Plaintiff's review of records produced by Spectra,  
5 Settlement Class members worked approximately 7,080 months during the Class Period. Using  
6 an estimate of \$20 per month in expenses incurred in using personal cell phones and/or computers  
7 to check work schedules, Plaintiff estimated Spectra's exposure on this claim at \$141,600 ( $\$20 * 7,080$  months). *Id.* As noted above, Spectra argues that it did not need to reimburse employees  
8 for their cell phone or compute use in connection with checking their work schedules, for the  
9 same reasons the time spent checking work schedules is non-compensable. *Id.* Spectra further  
10 argues any cell phone expenses incurred by employees are minimal, since they only needed to  
11 use them for a few seconds each evening to check their schedules. *Id.* Finally, Spectra argues that  
12 the individualized inquiries that would be needed into whether each employee incurred work-  
13 related expenses, the amount of such expenses, and the reasonableness of such expenses, would  
14 preclude class certification. In light of these defenses, Plaintiff discounted the maximum exposure  
15 by 50% for the risk of non-certification, and an additional 60% for risk of losing on the merits or  
16 failing to recover the full amount sought, resulting in an estimated exposure of \$28,320. *Id.*

17           Rest Period Premium Wages: \$249,893

18           Plaintiff alleges Spectra unlawfully combined employees' rest periods with their meal  
19 period. Based on data produced by Spectra, Settlement Class members worked approximately  
20 130,000 workdays of over 6 hours (where two rest breaks would be required) during the Class  
21 Period. Haines Decl., ¶ 21. Additionally, Settlement Class members' average hourly rate of pay  
22 during the Class Period was approximately \$25.63. *Id.* Thus, and assuming this alleged practice  
23 affected every eligible shift, Plaintiff estimated Spectra's potential liability as:  $130,000 * \$25.63$   
24  $= \$3,331,900$ . *Id.* But as noted above, Spectra maintains that its rest period policy is compliant,  
25 that not every employee worked a combined rest period and thus Plaintiff's calculations are  
26 inflated, and that those employees who did work combined rest periods preferred that schedule in  
27 order to take one, longer break in the middle of the workday. Further, Spectra contends Wage  
28

Order 16 provides greater flexibility to construction industry employers regarding rest period scheduling and allows Spectra to “schemul[e] rest periods to coincide with breaks in the flow of work.” Finally, Spectra maintains this claim is not suited for class treatment, particularly as rest periods need not be recorded, as individual inquiries would be needed as to which employees worked a combined rest period schedule and on which shifts, and whether each preferred the combined rest period schedule. Based on these defenses, Plaintiff discounted the maximum amount by 70% for risk of non-certification and an additional 75% for risk of losing on the merits or failing to recover the full amount sought, to arrive at an estimated exposure of \$249,893. *Id.*

Meal Period Premium Wages: \$226,057

Plaintiff alleges Spectra often failed to provide timely meal periods, in that they were often provided near mid-day, more than 5 hours after employees began working. Haines Decl., ¶ 22. Based on Plaintiff’s review of employee timekeeping records produced by Spectra, there were approximately 84,000 instances of potential late meal periods reflected in the data. Thus, Plaintiff estimated a maximum potential exposure on this claim as:  $84,000 * \$25.63 = \$2,152,920$ . *Id.* Spectra, however, contends it has always provided Settlement Class members an *opportunity* to take timely meal periods, and any Settlement Class member who failed to take a timely meal period did so voluntarily. *Id.* Spectra argues its written policy is compliant with California law, but employees often prefer to take a meal period later in the day, so that they coincided with lunch time and so that employees could perform more work earlier in the shift, before the heat of the day. *Id.* Spectra also asserts that under *Brinker* it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken, and that, as described above, it has always done so. Finally, Spectra maintains the meal period claim is not suited for class certification, as individual inquiries would be needed to determine which employees took non-compliant meal periods, how many meal periods were non-compliant, and why a particular employee did not take a compliant meal on a particular shift. Given these defenses, Plaintiff discounted this maximum amount by 65% for risk of non-certification, and an additional 70% for risk of not prevailing on the merits or failure to recover the full amount sought, for an estimated realistic exposure of \$226,057. *Id.*

1            Wage Statement Penalties: \$78,750

2            Plaintiff's expert's analysis reflected that there were approximately 15,000 weekly pay  
3 periods worked by Settlement Class members within the one-year liability window under Labor  
4 Code § 226. Haines Decl., ¶ 23. In calculating Spectra's exposure, Plaintiff assumed he could  
5 recover the "initial" \$50 penalty under Section 226(e) for each violation, for a total of \$750,000  
6 (15,000 pay periods \* \$50) in potential penalties. *Id.*; see also *Amaral v. Cintas Corp. No. 2*, 163  
7 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified  
8 it violated Labor Code); *Patel v. Nike Retail Svcs., Inc.*, 58 F.Supp.3d 1032, 1042-43 (N.D. Cal.  
9 2014) (citing *Amaral* and applying "initial" \$50 penalty to all pay periods in calculating amount-  
10 in-controversy for wage statement claim). However, given Spectra's arguments that no violations  
11 occurred, that class members suffered no "injury," that any violations were not "knowing and  
12 intentional," as well as risks associated with Plaintiff's underlying claims discussed above,  
13 Plaintiff discounted the maximum exposure by 65% for risk of non-certification, and by an  
14 additional 70% for risks on the merits, for an estimated realistic exposure of \$78,750. Haines  
15 Decl., ¶ 23.

16            Waiting Time Penalties: \$96,340

17            Based on data provided by Spectra, there are approximately 179 employees who separated  
18 their employment with Spectra since October 16, 2017. Haines Decl., ¶ 24. Plaintiff estimated an  
19 average waiting time penalty of \$6,151 (\$25.63 \* 8 hours \* 30 days), and calculated Spectra's  
20 maximum waiting time penalty exposure as approximately \$1,101,029 (179 \* \$6,151). *Id.*  
21 However, Spectra asserts it has strong, good-faith defenses to Plaintiff's underlying claims and  
22 thus, even if Plaintiff were able to recover on his underlying claims, he would not be able to  
23 recover waiting time penalties. *Id.* Moreover, Plaintiff would need to overcome Spectra's  
24 defenses, both as to class certification and as to the merits, to his underlying claims. Based on  
25 these defenses, Plaintiff discounted Spectra's maximum exposure by 65% for risk of non-  
26 certification and by an additional 75% for risk of being unsuccessful on the merits, to arrive at an  
27 estimated total of \$96,340. *Id.*

28        ///

1           PAGA Civil Penalties: \$75,000

2           Plaintiff estimated a maximum PAGA exposure of \$1,500,000 based on 15,000 pay  
3 periods during the PAGA Period at the \$100 “initial” violation rate under Lab. Code § 2699(f).  
4 Haines Decl., ¶ 25; *Amaral*, 163 Cal.App.4th at 1209. However, these penalties derive from  
5 Plaintiff’s underlying claims, each of which Spectra vigorously disputes. The PAGA also grants  
6 trial courts discretion to reduce PAGA civil penalties (Lab. Code § 2699(e)(2)), and Spectra  
7 argued the Court would reduce penalties significantly given its good-faith defenses and its  
8 financial condition. *Id.* Thus, Plaintiff discounted the maximum figure by 75% for risk of losing  
9 on the merits, and by an additional 80% for risk of the Court reducing penalties, for an estimated  
10 exposure of \$75,000. *Id.*; see also, e.g., *Fleming, supra*, 2011 WL 7563047 at \*4 (reducing PAGA  
11 civil penalties by over 82%); *Carrington, supra*, 30 Cal.App.5th at 529 (affirming PAGA civil  
12 penalty of just \$5 per pay period).

13           Using these figures for each of the claims described above, Plaintiff estimated the realistic  
14 total recovery for the Settlement Class would be approximately \$820,796. Haines Decl., ¶ 26.  
15 The proposed settlement of \$500,000.00 (the GSA) therefore represents approximately 61% of  
16 Plaintiff’s reasonably forecasted recovery. *Id.* Particularly in light of Spectra’s financial  
17 condition, as attested to by its President and as confirmed by Plaintiff’s forensic accountant, the  
18 amount recovered by Plaintiff is substantial, and preliminary approval is therefore appropriate.

19                   **e. The Experience and Views of Counsel.**

20           “Parties represented by competent counsel are better positioned than courts to produce a  
21 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter. Sec.*  
22 *Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by competent counsel with  
23 extensive experience litigating wage and hour class actions from both the plaintiff and defense  
24 side and have been appointed class counsel in numerous cases with similar claims. Haines Decl.,  
25 ¶¶ 3-8; Declaration of Tuvia Korobkin, ¶¶ 2-6; Declaration of Neil M. Larsen, ¶¶ 2-5.

26                   **2. The Preliminary Approval Standard Is Met**

27           The Court can grant preliminary approval of the settlement and direct that notice be given  
28 if the proposed settlement: (1) falls within the range of possible approval; (2) appears to be the

product of serious, informed and non-collusive negotiations; and (3) has no obvious deficiencies. See 4 Newberg on Class Actions, § 11:24-25 (4th Ed. 2013).

**a. The Settlement Is Within the Range of Possible Approval**

The Settlement reflects about 61% of the estimated recovery the Settlement Class could realistically expect in light of the significant litigation risks, and will provide tangible, monetary compensation for hotly disputed wage claims. In addition, and as attested to in the concurrently-filed declaration of Spectra’s owner and President Ray Adamyk, the Settlement represents a significant recovery in light of Spectra’s financial condition. Plaintiff submits the Settlement is within the range of possible approval, such that notice should be provided to the Settlement Class.

**b. The Settlement Resulted from Serious, Informed Negotiations**

The Settlement is a result of extensive informal discovery, a full-day mediation, and months of negotiations. Thus, it is entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130. Plaintiff carefully vetted the claims at issue, conducted detailed data analyses to arrive at estimated damages, and worked with a forensic accountant to review Spectra’s financial condition. Haines Decl., ¶¶ 15, 18-26. The parties then worked together to finalize the Settlement. *Id.*, ¶ 15. This factor thus supports preliminary approval.

**c. The Settlement Is Devoid of Obvious Deficiencies**

The Settlement contains no obvious deficiencies. The Settlement will provide tangible monetary relief to Settlement Class members. The amounts proposed for attorneys’ fees, costs, and service payment are reasonable. Thus, this factor supports preliminary approval.

**B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS**

The Settlement Class satisfies the criteria for certification because: 1) it is sufficiently numerous; 2) common questions of law and fact predominate; 3) Plaintiff’s claims are typical; and 4) Plaintiff and her counsel will adequately represent them. Cal. Code Civ. Proc. § 382.

**1. The Proposed Class Is Ascertainable and Numerous**

A class is “ascertainable” where members “may be readily identified without unreasonable expense or time by reference to...[business] records.” *Sevidal v. Target*, 189 Cal.App.4th 905, 919 (2010). Here, the Settlement Class includes non-exempt employees who worked for

1 Spectra in California during the Class Period. The Settlement Class can therefore be identified  
2 from Spectra’s records. Spectra represents there are approximately 346 Settlement Class members  
3 (see Settlement, § 1), making it impracticable to bring them all before the Court. Thus, numerosity  
4 is satisfied.

5 **2. Common Issues of Law and Fact Predominate for Settlement Purposes**

6 The focus on certification is what types of questions, “common or individual,” are likely  
7 to arise. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiff’s claims are  
8 predicated primarily on Spectra’s alleged failures to pay wages, provide meal and rest periods,  
9 and reimburse business expenses. These claims are commonly held proper for class certification.  
10 *See, e.g., Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701 (2013) (certifying  
11 meal & rest period claims); *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137  
12 (2014) (reversing denial of certification of reimbursement claim).

13 **3. The Claims of the Named Plaintiff Are Typical**

14 Typicality is satisfied where a class representative’s claims are typical of those of the class.  
15 *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). Plaintiff’s  
16 claims are typical of the Settlement Class. Plaintiff worked for Spectra during the Class Period,  
17 and was injured in the same manner as Settlement Class members. *See* Declaration of Samuel  
18 Hernandez, ¶¶ 2-4. Typicality is thus satisfied.

19 **4. Plaintiff and His Counsel Will Adequately Represent the Class**

20 The adequacy inquiry examines conflicts of interest between a named plaintiff and the  
21 class he seeks to represent. *Capital People First v. State Dept. of Develop. Svcs.*, 155 Cal.App.4th  
22 676, 697 (2007). Plaintiff and his counsel will adequately represent the Settlement Class as there  
23 are no known conflicts between Plaintiff and Settlement Class members, and Plaintiff’s counsel  
24 have extensive relevant experience. *See* Haines Decl., ¶¶ 3-8, 30.

25 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE CLASS NOTICE**

26 This Court should order distribution of the Notice by U.S. Mail, using last known mailing  
27 addresses provided by Spectra. *See* Settlement, § 9. This is the “best notice practicable” under  
28 the circumstances because it provides “individual notice to all members who can be identified

1 through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff  
2 proposes the settlement be administered by Phoenix Settlement Administrators (“Phoenix”), an  
3 experienced settlement administrator. *See* Declaration of Jodey Lawrence and exhibits. To the  
4 extent Settlement Class members’ addresses have changed, Phoenix will run all addresses through  
5 the National Change of Address database to obtain current address information, and Phoenix will  
6 run a skip trace on Notices returned as undeliverable. *See* Settlement, § 9(B), (F).

7 The Notice satisfies Cal. Rule of Court 3.766(d) because it advises Settlement Class  
8 members of the basic contentions and denials of the parties, the key terms of the Settlement, the  
9 60-day deadline to opt-out or object, the recovery formula, and advises they will be bound by the  
10 Settlement if they do not opt-out. *See* Haines Decl., Exh. A to Exh. 1. The Notice also notifies  
11 Settlement Class members of the final fairness hearing and provides Class Counsel’s contact  
12 information. *Id.* The Notice satisfies Rule 3.766 as the most reliable and cost-effective method of  
13 reaching Settlement Class members.

14 **V. CONCLUSION**

15 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily  
16 approve the proposed Settlement, provisionally certify the proposed Settlement Class, and enter  
17 the Proposed Order submitted concurrently herewith.

18 Dated: April 6, 2022

Respectfully submitted,  
HAINES LAW GROUP, APC

19  
20 By:

  
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