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7

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

10 CHRIS COPE, individually, on behalf of all
other persons similarly situated, and as a
11 representative of other aggrieved employees,

12 Plaintiff,

13 vs.

14 SPOTON TRANSACT, INC., a California
corporation, SPOTON TRANSACT LLC, a
15 California limited liability company; and DOES 1
through 10, inclusive,

16 Defendants.
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CASE NO.: CVRI2200050

**SUPPLEMENTAL DECLARATION OF
STEPHANIE BANKS IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
PAGA SETTLEMENT AND RELEASE**

HEARING DATE

Date: June 12, 2024

Time: 8:30 a.m.

Department: 1

Action Filed: January 5, 2022

Trial Date: None Set

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1 claims and that the class claims should be stricken and dismissed without prejudice.

2 7. On March 4, 2022, the Court issued an order dismissing SpotOn Transact, Inc. and
3 striking all class allegations in the Complaint and dismissing the class claims without prejudice.

4 8. On or about August 11, 2022, Plaintiff's claims were ordered to arbitration, and the
5 further prosecution of the action was stayed pending the resolution of the arbitration.

6 9. On March 29, 2022, Defendant filed a Motion to Stay Proceedings, requesting a
7 stay on PAGA Claims due to pending arbitration and *Viking River Cruises, Inc. v. Moriana* (2021)
8 142 S.Ct. 734 ("Viking River Cruises").

9 10. On June 30, 2022, this Court granted a stay pending conclusion of the individual
10 claims in arbitration.

11 11. Plaintiff (as an individual) submitted a Demand for Damages with AAA. Arbitrator
12 Stephen M. Bernardo, Esq. was assigned as the arbitrator.

13 12. Thereafter, the parties began discussing the possibility of a global resolution of the
14 case.

15 13. On January 26, 2024, the Parties attended mediation with Jeff Owensby an
16 experienced mediator. Before and during that mediation, the Parties exchanged further information
17 and discussed all aspects of the case, including the risks and delays of litigation, the risk associated
18 with proceeding in a representative capacity, liability under the claims asserted, and the ability to
19 recover and measure damages and/or penalties. The settlement negotiations were at all times at
20 arm's length and although conducted in a professional manner, were adversarial. As a result of the
21 mediation, and exchange of information, a global settlement was reached with respect to Plaintiff's
22 individual claims, and separately with respect to the PAGA claims.

23 14. On April 26, 2024, notice of the Proposed Settlement was given to the Labor and
24 Workforce Development Agency ("LWDA") by visiting their website at
25 <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>land.

26 The Proposed Settlement of PAGA case form located on the website was completed with the
27 required information and submitted to the LWDA. A true and correct copy of the Proof of
28 submission to the LWDA was attached as an exhibit to my prior declaration is re-attached hereto as

1 **Exhibit A.**

2 15. On June 5, 2024, the Revised Settlement Agreement and all supplemental papers
3 was submitted to the Labor and Workforce Development Agency (“LWDA”) by visiting their
4 website at [https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
5 [Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)land. The Proposed Settlement of PAGA case form located on the website was again
6 completed with the required information and submitted to the LWDA. A true and correct copy of
7 the Proof of submission to the LWDA is attached hereto as **Exhibit B.**

8 16. The present settlement provides for payment of PAGA penalties. Based on the data
9 provided by Defendant directly to Plaintiff, the relative claims raised by Plaintiff in the Amended
10 LWDA letter and First Amended Complaint, and an analysis of data prepared (and produced) by
11 Defendant’s retained expert pertaining to the relevant claims, the maximum exposure for the
12 PAGA claims for PAGA Members was estimated to be approximately \$139,200.00.

13 17. As set forth in the accompanying declaration of Defendant’s expert, Jonathan
14 Wilson, M.S., there are believed to be 539 Aggrieved Employees. The 539 Aggrieved Employees
15 were broken down into categories based on various criteria, including but not limited to whether
16 they started Defendant’s training program, whether they completed Defendant’s training program,
17 whether they engaged in sales activities, and/or whether they had an account approved.

18 18. Defendant’s training program, and whether an individual did or did not participate
19 in the same is specifically relevant because a vast majority of the alleged violations concern the
20 first pay period worked by each individual (i.e. the training period).

21 19. Of the 539 Aggrieved Employees, 431 were identified as having participated in
22 training. The remaining 108 Aggrieved Employees were determined to be individuals who did not
23 engage in training, prior to becoming an Account Executive.

24 20. Discussions between the Parties regarding the alleged violations resulted in a
25 narrowing of the violations at issue and served as a basis for analysis by Defendant’s expert.
26 Defendant’s expert analyzed weekly calendars, training schedules, hours worked by Aggrieved
27 Employees and Defendant’s policies and procedures. A report of findings was prepared and
28 provided to Plaintiff as part of the global resolution efforts, and as part of the mediation that took

1 place.

2 21. With respect to the 431 Aggrieved Employees and based on the data provided by
3 Defendant and Defendant's expert, Plaintiff believes the common fund PAGA Settlement of
4 \$137,500.00 is fair, reasonable, and adequate and a great result for the Aggrieved Employees.

5 22. The alleged Labor Code violations at issue were discussed at arms-length and great
6 detail by the Parties in an effort to reach a good faith global resolution of PAGA issues.

7 23. With respect to the alleged Failure to Pay Wages claim, based on the data provided
8 by Defendant, it is believed that 52 individuals were affected. Penalties were calculated at the \$100
9 initial violation rate per affected individual amounting to \$5,200.00.

10 24. For the Failure to Pay Overtime claims, training schedules were analyzed, and it
11 was found that 6% of the training sessions lasted over 8 hours. As such, violations were calculated
12 based on an assumption that the same percentage of the 431 Aggrieved Employees may be owed
13 overtime wages (i.e. 24 Aggrieved Employees). Penalties were calculated at the \$100 initial
14 violation rate per affected individual amounting to \$2,400.00.

15 25. For alleged Meal and Rest Period claims, training schedules were also analyzed to
16 determine a percentage of days that contained more than 5 hours of training and/or did not have a
17 lunch break scheduled before the end of the 5th hour (i.e. 7%). A percentage was also determined as
18 to the number of training days that contained more than 3.5 hours of training and did not have a 15-
19 minute break per for hours (i.e. 21%). Potential maximum violations were again calculated based
20 on an assumption that the same percentage of the 431 Aggrieved Employees was impacted by
21 violations to meal/rest break Labor Code provisions. As to meal periods, 28 individuals were
22 determined to be affected. At the initial violation rate of \$100, maximum penalties were estimated
23 to be \$2,800.00. As to rest periods, 84 individuals were determined to be affected. At the initial
24 violation rate of \$100, maximum penalties were estimated to be \$2,800.00.

25 26. As to the Failure to Reimburse Business Expenses claim, data reflected that 197 of
26 the 431 Aggrieved Employees received expense reimbursement. Data could not confirm whether
27 the remaining 234 Aggrieved Employees incurred a business expense, and thus were entitled to
28 reimbursement. As such, maximum penalties were calculated with respect to all remaining 234

1 Aggrieved Employees at the initial \$100 violation rate per individual amounting to \$23,400.00.

2 27. Wage Statement Penalties were calculated with respect to all 431 Aggrieved
3 Employees who participated in Defendant's training program for a maximum PAGA penalty of
4 \$43,100.00.

5 28. Waiting Time Penalties were likewise calculated with respect to all 431 Aggrieved
6 Employees who participated in Defendant's training program for a maximum PAGA penalty
7 amount of \$43,100.00.

8 29. After discussions regarding the at issue labor code provisions and review of
9 Aggrieved Employee data, calculations as to PAGA penalties for the 108 Aggrieved Employees
10 who did not engage in training, were necessary with respect to Waiting Time Penalties (i.e. an
11 additional \$10,800.00).

12 30. The Parties discussed the alleged violations concerning the failure to provide
13 required information upon hire, the failure to provide at least one day's rest in seven, the
14 requirement that employee agree in writing to multiple terms and conditions prohibited by law as a
15 condition of employment, the failure to provide suitable seating, the failure to provide commission
16 agreements, misclassification, and the failure to pay accrued sick or vacation pay. Based on the
17 expert's analysis and findings, the data did not appear to support the same with respect to the
18 Aggrieved Employees.

19 31. In light of the foregoing, the maximum exposure for the PAGA claims for PAGA
20 Members was estimated to be approximately \$139,200.00.

21 32. Defendant's, of course, sought a discount to the maximum estimated exposure
22 amount.

23 33. Counsel for Plaintiff believes that Defendant would reasonably be found liable for
24 the maximum exposure amount set forth above at trial. Plaintiff believes the claims are
25 meritorious and that he could have recovered unreduced penalties. However, Defendant asserted
26 numerous defenses to the claims. For example, a significant factor in evaluating the value of a
27 PAGA-only case is that all PAGA awards are discretionary and subject to potentially significant
28 reduction by the Court. Defendant maintains that given its good faith and *de minimis* defenses, this

1 Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find
2 Defendant liable for any of Plaintiff's claims.

3 34. Notably, many of the claims were derivative of each other, which tended to
4 undermine stacking of penalties. In light of the foregoing, Plaintiff's Counsel took into
5 consideration, when valuing the merits of these claims, the chances of prevailing on the derivative
6 violations, as well as the additional hurdles of prevailing under each standalone violation in light of
7 the defenses raised and applied a minor discount.

8 35. In evaluating the fairness and reasonableness of this proposed settlement, Mr. Ho
9 and I had to consider both the potential maximum and Defendant's various defenses. This is
10 significant because in a PAGA action, the Court has the same discretion "to assess a civil penalty"
11 that the Labor Commissioner would have, as well as complete discretion to "award a lesser amount
12 than the maximum civil penalty amount specified [by PAGA] if, based on the facts and
13 circumstances of the particular case, to do otherwise would result in an award that is unjust,
14 arbitrary and oppressive, or confiscatory." Lab. Code § 2699(e)(2). Such considerations include
15 Defendant's defenses to the alleged claims.

16 36. As set forth above, the vast majority of the alleged violations are believed to have
17 occurred during the first pay period worked by each Aggrieved Employee in connection with a
18 training program put on by Defendant. Plaintiff specifically alleges that the Aggrieved Employees
19 were not compensated for all time worked during training and received inaccurate wage statements
20 in connection with the training pay period. Defendant vigorously disputed the merits of Plaintiff's
21 claims. Specifically, Defendant argued that Plaintiff's claims were false. Defendant also argued
22 that it was prepared to call current employees to testify as witnesses at trial.

23 37. Plaintiff worked for Defendant from approximately November 24, 2020, to
24 December 30, 2020. While Plaintiff only worked for Defendant for a short period of time, during
25 his time there, violations were alleged, by Plaintiff, to have occurred, thus resulting in the filing of
26 the initial complaint.

27 38. In connection with the arbitration with respect to Plaintiff's individual claims,
28 discovery was conducted (both formal and informal exchanges of information) and depositions

1 were taken, including the deposition of Plaintiff and the deposition of the PMK for Defendant. The
2 same allowed both sides to evaluate the potential exposure and potential risk, such as a discussion
3 of time and payroll records for the PAGA Members, a review of Defendant's employee handbook
4 and relevant policies, along with timekeeping, pay, and reimbursement procedures, wage
5 statements, and the total number of potential employees and/or workweeks during the PAGA
6 period.

7 39. Among other things, the depositions allowed the parties to discuss the alleged
8 violations made by Plaintiff, the strengths and potential weaknesses of the same, Defendant's
9 policies and procedures, and other potential violations allegedly suffered by Aggrieved
10 Employees.

11 40. The Parties exchanged information and discussed all aspects of the case, including
12 the risks and delays of litigation, the risk associated with Plaintiff proceeding in a representative
13 capacity, liability under the claims asserted, and the ability to recover and measure damages and/or
14 penalties.

15 41. The Labor Code violations at issue were carefully analyzed by all Parties and the
16 analysis of exchanged data pertaining to alleged violations of the Labor Code was at all times
17 collaborative.

18 42. The PAGA period is May 26, 2020, through the date of approval of the PAGA
19 Settlement by the Court. There are believed to be approximately 539 Aggrieved Employees. The
20 PAGA Approval papers filed by Plaintiff indicate 538 Aggrieved Employees. This number was
21 stated in error.

22 43. Based on my experience representing plaintiffs in wage and hour cases, including
23 PAGA representative and class actions, I believe that the Parties' proposed settlement is fair,
24 adequate and reasonable under the facts and law applicable to this case.

25 44. There is no information, known to Plaintiff, suggesting the Labor Code violations
26 were knowing or intentional.

27 45. The proposed Settlement, even with deductions, provides a substantial sum of
28 \$53,392.25 to the State and \$17,797.42 to PAGA Members. The Settlement secured by Plaintiff

1 here is in line, and actually greater than some other PAGA penalty awards approved by California
2 state courts, which often range between \$7,500.00 and \$15,000.00 for PAGA claims impacting
3 hundreds or thousands of individuals, resulting in much lower PAGA penalty payments on a per
4 capita basis. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624 at
5 *2 (Super. Ct. L.A. County, May 20, 2013) (approving PAGA penalties of \$5,000.00 to class of
6 667 members); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL
7 1182822 (Super. Ct. L.A. County, March 12, 2013) (approving PAGA penalties of \$10,000.00 for
8 class of approximately 3,000 members).

9 46. The Parties sought bids from multiple administrators. Plaintiff's Motion
10 inadvertently indicates that Simpluris is the selected administrator due to being the lowest price
11 bid. In actuality, the lowest bid was from Phoenix Settlement Administrators. The PAGA
12 Settlement, as well as the Revised PAGA Settlement reflect the same.

13 47. The Settlement Administrator will be responsible for processing the settlement
14 payments and providing notice to the PAGA Members. Neither Mr. Ho, nor I have any interest in
15 the Settlement Administrator.

16 48. As set forth above, at the time of initial analysis by Defendant's expert (whose
17 declaration was provided with the filing of Plaintiff's Motion), there were believed to be 431
18 Aggrieved Employees. As such, the bids provided by the administrators were for administration
19 with respect to 431 Aggrieved Employees. Attached hereto as **Exhibit C** is a true and copy of the
20 initial bid from Phoenix Settlement Administrators.

21 49. By the time of filing of Plaintiff's Motion, it was determined that the actual number
22 of Aggrieved Employees was 539. As such, Plaintiff's counsel sought updated bids from the
23 administrators and the bid from Phoenix Settlement Administrators remains the lowest and still
24 within the not to exceed amounts set forth in the PAGA Settlement Agreement (and now the
25 Revised PAGA Settlement Agreement. Attached hereto as **Exhibit D** is a true and correct copy of
26 the revised bid from Phoenix Settlement Administrators.

27 50. A declaration from the settlement administrator is filed herewith.

28 51. The Settlement provides for the payment of attorney's fees and costs to Plaintiff's

1 counsel. My prior declaration, along with the Declaration of Dean Ho address and provide
2 evidence of the time spent by counsel, a description of the work performed, the reasonableness of
3 the fees charged, and a breakdown of the costs actually incurred. There is no applicable fee
4 splitting agreement with any other firm.

5 52. The PAGA Settlement Agreement (along with the Revised PAGA Settlement
6 Agreement) calls for an incentive payment to Plaintiff in the amount of \$5,000.00. Payment of the
7 same is supported by the accompanying declaration of Plaintiff.

8 53. In addition to the Settlement of PAGA claims, Plaintiff reached a settlement of his
9 individual claims which were pending in arbitration. The individual settlement to Plaintiff is in the
10 amount of \$12,500. The individual settlement includes a release in connection with claims and/or
11 causes of action relating to or arising from Plaintiff's employment relationship with Defendant and
12 in separation from his employment from Defendant, including but not limited to claims for
13 wrongful termination, termination in violation of public policy, discrimination, harassment,
14 retaliation...etc.

15 54. The individual settlement was entered into in connection with Plaintiff's demand
16 for arbitration. Among other things, on an individual basis, Plaintiff alleges that he was issued an
17 inaccurate wage statement for his training period and was not reimbursed for business
18 expenditures such as food and/or fuel. Plaintiff also alleges that he was expected to and in fact did
19 spend time performing full time work for Defendant (approximately three weeks) for which he
20 was not paid. The amount of the individual settlement is reasonable and was calculated based on
21 Plaintiff's lost wages, penalties owed to Plaintiff, fees, costs and the emotional distress. Based on
22 counsel for Plaintiff's experience, and taking into account the foregoing, Plaintiff could reasonably
23 be expected to be awarded the individual settlement amount at trial, taking into account the
24 likelihood of prevailing and other attendant risks.

25 55. In negotiating the individual settlement to Plaintiff, Plaintiff's counsel considered
26 the fact that Plaintiff only worked for Defendant for a short time, that Defendant would vigorously
27 defend the claims brought by Plaintiff, and that further prosecution of the individual action would
28 be costly for all parties involved.

1 56. The amount of the individual settlement was negotiated separately from the
2 settlement of the PAGA claims.

3 57. On or about May 23, 2024, Plaintiff's Counsel filed the First Amended Complaint.
4 The First Amended Complaint contains the same causes of action but expands the scope of the
5 alleged Labor Code Violations. More specifically, the Fifth Cause of Action was amended to
6 include additional Labor Code violations as discussed more fully herein below. Notably, but not
7 relevant for purposes of the present Motion, the Class Allegations were also removed pursuant to
8 this Court's prior ruling striking the class action allegations. Attached hereto as **Exhibit E** is a true
9 and correct copy of the First Amended Complaint.

10 58. The language in the release has been revised to comply with the CMO. Attached
11 hereto as **Exhibit F** is a true and correct copy of the Revised Settlement Agreement.

12 59. Attached hereto as **Exhibit G** is a true and correct copy of the redlined Revised
13 Settlement Agreement.

14 60. An Amended Proposed Order is being submitted herewith. No material changes
15 were made to the Amended Proposed Order. Instead, only the hearing date was updated and a
16 revision was made to indicate that a Revised Settlement Agreement was submitted and attached to
17 this decl. as an exhibit.

18 I declare under the penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20 Executed this 5th day of June, 2024 at Los Angeles, California.

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22 _____

23 Stephanie Banks, Esq.
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EXHIBIT A



Stephanie Banks <stephanie@employees-lawyer.com>

Thank you for your Proposed Settlement Submission

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
To: stephanie@employees-lawyer.com

Fri, Apr 26, 2024 at 9:59 AM

04/26/2024 09:58:42 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT B

EXHIBIT C



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

February 6, 2024

CASE ASSUMPTIONS

Class Members	431
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	431
Subtotal Admin Only	\$5,900.00

Flat Fee Total \$5,900.00

For 431 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Spanish Translation, Printing & Mailing Included

Case: Cope v. SpotOn Transact, PAGA Administration

Phoenix Contact: Melissa Meade

Contact Number: 949.331.0865

Email: melissa@phoenixclassaction.com

Requesting Attorney: Stephanie M. Banks

Firm: Optimum Employment Lawyers

Contact Number: 949-954-3180

Email: stephanie@employees-lawyer.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.

Estimate is based on **431** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	2	\$200.00
Programming Database & Setup	\$100.00	1	\$100.00
Toll Free Setup*	\$100.00	1	\$100.00
Call Center & Long Distance	\$2.00	69	\$138.00
NCOA (USPS)	\$25.00	1	\$25.00
Total			\$563.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Check & Postage / Spanish Translation

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	1	\$100.00
Spanish Translation	\$150.50	1	\$150.50
Data Merge & Duplication Scrub	\$0.10	431	\$43.10
Notice and Check Packet	\$1.00	431	\$431.00
Estimated Postage (up to 1 oz.)*	\$0.65	431	\$280.15
Total			\$1,004.75

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



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CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	3		\$165.00
Skip Tracing Undeliverables	\$0.75	108		\$81.00
Remail Notice Packets	\$0.60	108		\$64.80
Estimated Postage	\$0.65	108		\$70.20
Programming Undeliverables	\$50.00	1		\$50.00
Total				\$431.00

Database Programming				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	1		\$150.00
Case Associate	\$55.00	3		\$165.00
Case Manager	\$85.00	2		\$170.00
Total				\$485.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	4		\$540.00
Total				\$1,135.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



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CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$115.00	2	\$230.00
Remail Undeliverable Checks (Postage Included)	\$1.75	55	\$96.25
Case Associate	\$55.00	4	\$220.00
Reconcile Uncashed Checks	\$85.00	4	\$340.00
Conclusion Reports	\$115.00	2	\$230.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$115.00	3	\$345.00
QSF Annual Tax Reporting *	\$650.00	1	\$650.00
*Escheating Uncashed Checks to the State of CA included)			
Check to Cy-Pres	\$150.00	1	Included
Total			\$2,281.25

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$5,900.00



CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT D



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

May 24, 2024

CASE ASSUMPTIONS

Class Members	538
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	538
Subtotal Admin Only	\$6,250.00

Flat Fee Total **\$6,250.00**

For 538 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Spanish Translation, Printing & Mailing Included

Case: Cope v. SpotOn Transact, PAGA Administration

Phoenix Contact: Melissa Meade
Contact Number: 949.331.0865
Email: melissa@phoenixclassaction.com

Requesting Attorney: Stephanie M. Banks
Firm: Optimum Employment Lawyers
Contact Number: 949-954-3180
Email: stephanie@employees-lawyer.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.
Estimate is based on **538** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$98.45	1		\$98.45
Call Center & Long Distance	\$2.00	69		\$138.00
NCOA (USPS)	\$75.00	1		\$75.00
Total				\$711.45

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Check & Postage / Spanish Translation

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$125.00	1		\$125.00
Spanish Translation	\$150.50	1		\$150.50
Data Merge & Duplication Scrub	\$0.10	431		\$43.10
Notice and Check Packet	\$1.00	538		\$538.00
Estimated Postage (up to 1 oz.)*	\$0.65	538		\$349.70
Total				\$1,206.30

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	3		\$165.00
Skip Tracing Undeliverables	\$0.75	108		\$81.00
Remail Notice Packets	\$0.60	108		\$64.80
Estimated Postage	\$0.65	108		\$70.20
Programming Undeliverables	\$50.00	1		\$50.00
			Total	\$431.00

Database Programming

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	1		\$150.00
Case Associate	\$55.00	3		\$165.00
Case Manager	\$85.00	2		\$170.00
			Total	\$485.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	4		\$540.00
			Total	\$1,135.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	2		\$230.00
Remail Undeliverable Checks (Postage Included)	\$1.75	55		\$96.25
Case Associate	\$55.00	4		\$220.00
Reconcile Uncashed Checks	\$85.00	4		\$340.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	2		\$170.00
Final Reporting & Declarations	\$115.00	3		\$345.00
QSF Annual Tax Reporting *	\$650.00	1		\$650.00
*Escheating Uncashed Checks to the State of CA included)				
Check to Cy-Pres	\$150.00	1		Included
Total				\$2,281.25

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$6,250.00



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT E

1 Dean S. Ho, SBN 297357
2 OPTIMUM EMPLOYMENT LAWYERS, PC
3 7545 Irvine Center Dr., Suite 200
4 Irvine, California 92618
5 Telephone: (949) 954-8181
6 Facsimile: (949) 335-6106

7 Attorneys for Plaintiff

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

10 CHRIS COPE, individually and as a
11 representative of other aggrieved employees,

12 Plaintiff,

13 vs.

14 SPOTON TRANSACT, LLC, a California
15 limited liability company; and DOES 1
16 through 10, inclusive,

17 Defendants.

Case No.: CVRI2200050

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

- (1) Failure to Keep and Provide Accurate Itemized Wage Statements (Labor Code § 226);
- (2) Failure to Reimburse Business Expenses (Labor Code §§ 2800 and 2802);
- (3) Failure to Provide Personnel Records (Labor Code § 1198.5);
- (4) Private Attorneys General Act (“PAGA”) (Labor Code §§ 2698 *et seq.*); and
- (5) Unfair Business Practices (Business & Professions Code §§ 17200 *et seq.*)

DEMAND FOR JURY TRIAL

1 Plaintiff CHRIS COPE (hereinafter "Plaintiff"), individually, and as a representative of
2 other aggrieved employees, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. The monetary damages and restitution sought by Plaintiff exceeds the minimal
5 jurisdiction limits of the Superior Court and will be established according to proof at trial. The
6 penalties sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will
7 be established according to proof at trial.

8 2. This Court has jurisdiction over this action pursuant to the California Constitution,
9 Article VI § 10, which grants the Superior Court "original jurisdiction in all causes except those
10 given by statute to other courts." The statutes under which this action is brought do not specify
11 any other basis for jurisdiction.

12 3. This Court has jurisdiction over all Defendants because, upon information and
13 belief, each party is either a citizen of California, has sufficient minimum contacts in California, or
14 otherwise intentionally avails itself of the California market so as to render the exercise of
15 jurisdiction over it by the California courts consistent with traditional notions of fair play and
16 substantial justice.

17 4. Venue is proper in this Court because, upon information and belief, one or more of
18 the named Defendants reside, transact business, or have offices in this county and the acts and
19 omissions alleged herein took place in this county.

20 5. California Labor Code §§ 2698 *et seq.*, the "Labor Code Private Attorneys General
21 Act" ("PAGA"), authorizes aggrieved employees to sue directly for various civil penalties under
22 the California Labor Code.

23 6. Plaintiff timely provided notice to the California Labor Workforce Development
24 Agency ("LWDA") and to Defendants, pursuant to California Labor Code § 2699.3(a). Therefore,
25 Plaintiff may proceed with this action for penalties pursuant to California Labor Code § 2698, *et*
26 *seq.*

27 **PARTIES**

28 7. Plaintiff is, and at all relevant times was, a citizen of the state of California.

8. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association*, 5 Cal. 3d 864, 872 (1971), and other applicable law.

9. Defendant SPOTON TRANSACT, LLC (“SPOTON” or “Defendant”) was and is, upon information and belief, a California corporation and a California limited liability company. At all times hereinafter mentioned, Defendant was an employer whose employees were engaged throughout this county and the State of California.

10. Plaintiff does not know the true names or capacities of the persons or entities sued as DOES 1 to 10, inclusive, and therefore sues them by such fictitious names. Each of the DOE Defendants was in some manner legally responsible for the violations alleged. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

11. At all times, the Defendants named as DOES 1 to 10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured Plaintiff and aggrieved employees in the State of California.

12. At all times, each Defendant was the agent, servant, or employee of the other Defendants and, in acting and omitting to act as alleged herein, acted within the course and scope of that agency or employment.

13. Defendants SPOTON and DOES 1 to 10 are collectively referred to herein as “Defendants.”

JOINT LIABILITY

14. Unless otherwise indicated herein, each Defendant herein sued is the agent, co-conspirator, joint venture, general employer, special employer, dual employer, partner, and/or employee of every other Defendant and, as alleged, has been acting within the course and scope of said agency, conspiracy, joint venture, dual employment, joint employment, partnership, and/or employment with the knowledge and/or consent of co-Defendants, and each of them. Moreover, Plaintiff is informed and believes, and thereon alleges, that each Defendant has authorized and/or ratified the wrongful activities of each of the remaining Defendants.

1 **CORPORATE LIABILITY FOR PUNITIVE DAMAGES**

2 15. Defendants' conduct, as described herein, was malicious, fraudulent, oppressive,
3 mean, vile, despicable, and in conscious disregard of Plaintiff's rights and was undertaken by its
4 officers, directors, and/or managing agents, and/or pursuant to policies and procedures adopted by
5 its officers, directors, and/or managing agents as those terms are used in Civil Code, §§ 3294 and
6 3295 for purposes of establishing corporate liability for punitive damages. Further, Defendants
7 had advance knowledge of the malicious, fraudulent, and/or oppressive activities of the individual
8 perpetrators whose actions and conduct were authorized, approved, and/or ratified by Defendants'
9 directors, officers, and/or managing agents.

10 **FACTS COMMON TO ALL CAUSES OF ACTION**

11 16. Plaintiff worked for Defendants as an Account Executive from November 24, 2020
12 to December 30, 2020.

13 17. SPOTON is a payment processing company that provides payment processing
14 hardware and software solutions to businesses.

15 18. Defendants employ Account Executives to solicit and sign up new businesses to use
16 SPOTON's payment processing systems.

17 19. Upon initial hire, Defendants require Account Executives to attend a weeklong
18 training program and compensate Account Executives \$500 upon completion of the training
19 program.

20 20. Account Executives are paid on a commission-only basis, based on bonuses for
21 signing up new businesses and residuals from payment processing revenue.

22 21. Defendants set forth requirements and restrictions in order for Account Executives
23 to reach an "active" status and be eligible for compensation. For example, upon information and
24 belief, Defendants established a minimum threshold sales amount in order for employees to be
25 considered eligible for reimbursement of business expenses. Accordingly, employees were only
26 reimbursed for business expenses upon selling a minimum amount of Defendants' product, despite
27 the time and expenses incurred prior to reaching the minimum threshold.
28

1 22. Defendants encouraged and/or required Account Executives to work full-time and
2 required Account Executives to communicate regularly with their assigned manager, attend weekly
3 sales meetings, and submit weekly activity reports to the sales management team.

4 23. Defendants direct Account Executives to devise and maintain strategic marketing
5 plans in order to increase Account Executives' potential for signing up new businesses.

6 24. For the duration of Plaintiff's employment with Defendants, Plaintiff worked full
7 time for Defendants. Plaintiff used his personal vehicle to drive to businesses throughout Riverside
8 County to solicit potential customers to use SPOTON's payment processing system. Plaintiff used
9 his personal cellular phone, computer, and office supplies to contact potential customers for
10 Defendants.

11 25. Throughout Plaintiff's employment with Defendants, Plaintiff participated in duties
12 and activities on behalf of and at the direction of Defendants.

13 26. On December 31, 2020, Defendants terminated Plaintiff's employment.

14 27. Plaintiff requested to be reimbursed for his business expenses incurred on behalf of
15 and at the direction of Defendants. Defendants' Human Resources manager denied the request and
16 informed Claimant that Defendants did not consider him an employee, but rather a "candidate."

17 28. Defendants informed Plaintiff that he would be compensated in the amount of
18 \$3,000, but only if Plaintiff filled out and submitted an independent contractor W-9 form.

19 29. Plaintiff did not fill out a W-9 form as Defendants expressly hired Plaintiff as an
20 employee and treated Plaintiff as an employee throughout Plaintiff's employment with Defendants.

21 30. Consequently, Plaintiff was not reimbursed for business expenses incurred on
22 behalf of and at the direction of Defendants.

23 31. Defendants failed to provide Plaintiff with accurate itemized wage statements,
24 including, but not limited to, failing to provide deductions made by Defendants, in violation of
25 Labor Code § 226.

26
27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 **Failure to Keep and Provide Accurate Itemized Wage Statements –**

3 **Violation of California Labor Code § 226**

4 **(Plaintiff against all Defendants)**

5 32. Plaintiff incorporates all paragraphs above as though fully set forth herein.

6 33. At all material times set forth herein, California Labor Code § 226(a) provides that
7 every employer shall furnish each of his or her employees an accurate itemized wage statement in
8 writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours
9 worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if
10 the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
11 written orders of the employee may be aggregated and shown as one item, (5) net wages earned,
12 (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee
13 and the last four digits of his or her social security number or an employee identification number
14 other than a social security number, (8) the name and address of the legal entity that is the
15 employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding
16 number of hours worked at each hourly rate by the employee.

17 34. Defendants have intentionally and willfully failed to provide employees with
18 complete and accurate wage statements. The deficiencies include, among other things, the failure
19 to correctly identify deductions made by Defendants.

20 35. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff has
21 suffered injury and damage to statutorily-protected rights.

22 36. Specifically, Plaintiff has been injured by Defendants' intentional violation of
23 California Labor Code § 226(a) because they were denied both their legal right to receive, and their
24 protected interest in receiving, accurate, itemized wage statements under California Labor Code §
25 226(a).

26 37. Plaintiff was also injured as a result of having to bring this action to attempt to
27 obtain correct wage information following Defendants' refusal to comply with many of the
28 mandates of California's Labor Code and related laws and regulations.

1 38. Because Plaintiff was damaged as a proximate result of Defendants' failure to
2 comply with Labor Code § 226(a), Plaintiff is entitled to recover the greater of their actual
3 damages or an aggregate penalty of \$4,000, and are entitled to an award of costs and reasonable
4 attorney's fees pursuant to Labor Code § 226(e).

5 39. Plaintiff is also entitled to injunctive relief to ensure compliance with this section,
6 pursuant to California Labor Code § 226(g).

7 **SECOND CAUSE OF ACTION**

8 **Failure to Reimburse Business Expenses – Violation of Government Code §§ 2800 and 2802**

9 **(By Plaintiff against all Defendants)**

10 40. Plaintiff incorporates all paragraphs above as though fully set forth herein.

11 41. At all relevant times, California Labor Code § 2800 and 2802 provide that an
12 employer must reimburse employees for all necessary expenditures.

13 42. Plaintiff incurred necessary business-related expenses and costs that were not fully
14 reimbursed by Defendants, including and without limitation, expenses for computer equipment,
15 high-speed Internet access, printers, paper, cellular phone usage, personal vehicle usage, gas, and
16 other related expenses that resulted from Plaintiff's employment with Defendants.

17 43. Defendants have intentionally and willfully failed to fully reimburse Plaintiff for
18 necessary business-related expenses and costs.

19 44. Plaintiff is entitled to recover from Defendants Plaintiff's business-related expenses
20 incurred during the course and scope of Plaintiff's employment, plus interest, pursuant to
21 California Labor Code §§ 2800 and 2802.

22 **THIRD CAUSE OF ACTION**

23 **Failure to Provide Personnel Records – Violation of Labor Code § 1198.5, et seq.**

24 **(By Plaintiff against all Defendants)**

25 45. Plaintiff incorporates all paragraphs above as though fully set forth herein.

26 46. California Labor Code § 1198.5(a) provides: "Every current and former employee,
27 or his or her representative, has the right to inspect and receive a copy of the personnel records that
28 the employer maintains relating to the employee's performance or to any grievance concerning the

1 employee.”

2 47. Pursuant to California Labor Code § 1198.5(b), the employer must make the
3 contents of employees’ personnel records available no later than 30 calendar days from the date the
4 employer receives a written request.

5 48. Plaintiff requested his personnel file in a letter dated March 17, 2021 and sent to
6 Defendant’s Agent for Service of Process via certified mail on March 18, 2021.

7 49. Defendants failed to provide or allow for inspection of Plaintiff’s requested
8 personnel records.

9 50. As a direct and proximate result of Defendants’ unlawful conduct as set forth
10 herein, Plaintiff may recover the penalties provided for under California Labor Code § 1198.5(k),
11 plus interest thereon, reasonable attorneys’ fees, and costs. In addition, Plaintiff is entitled to
12 injunctive relief to ensure compliance with this section, pursuant to California Labor Code §
13 1198.5(l).

14 **FOURTH CAUSE OF ACTION**

15 **Unfair Business Practices – Violation of Business & Professions Code § 17200, *et seq.***

16 **(By Plaintiff against all Defendants)**

17 51. Plaintiff incorporates all paragraphs above as though fully set forth herein.

18 52. Defendants, and each of them, are “persons” as defined under Business &
19 Professions Code § 17021.

20 53. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
21 unlawful, and harmful to Plaintiff and to the general public. Plaintiff seeks to enforce important
22 rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

23 54. Defendants’ activities, as alleged herein, are violations of California law, and
24 constitute unlawful business acts and practices in violation of California Business & Professions
25 Code § 17200, *et seq.*

26 55. A violation of California Business & Professions Code § 17200, *et seq.* may be
27 predicated on the violation of any state or federal law. All of the acts described herein as
28 violations of, among other things, the California Labor Code and Industrial Welfare Commission

1 Wage Orders, are unlawful and in violation of public policy; and in addition are immoral,
2 unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or
3 fraudulent business practices in violation of California Business and Professions Code § 17200, *et*
4 *seq.*

5 **Failing to Provide Accurate Itemized Wage Statements**

6 56. Defendants' failure to provide accurate itemized wage statements in accordance
7 with California Labor Code § 226, as alleged above, constitutes unlawful and/or unfair activity
8 prohibited by Business and Professions Code § 17200, *et seq.*

9 57. By and through their unfair, unlawful and/or fraudulent business practices described
10 herein, Defendants have obtained valuable property, money and services from Plaintiff, and have
11 deprived Plaintiff, of valuable rights and benefits guaranteed by law, all to their detriment.

12 58. Plaintiff suffered monetary injury as a direct result of Defendants' wrongful
13 conduct.

14 59. Plaintiff is entitled to, and does, seek such relief as may be necessary to disgorge the
15 profits which the Defendants have acquired, or of which Plaintiff has been deprived, by means of
16 the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff is not obligated
17 to establish individual knowledge of the unfair practices in order to recover restitution.

18 60. Plaintiff is further entitled to and do seek a declaration that the above-described
19 business practices are unfair, unlawful and/or fraudulent, and injunctive relief restraining the
20 Defendants, and each of them, from engaging in any of the above-described unfair, unlawful
21 and/or fraudulent business practices in the future.

22 61. Plaintiff has no plain, speedy, and/or adequate remedy at law to redress the injuries
23 that he has suffered as a consequence of Defendants' unfair, unlawful and/or fraudulent business
24 practices. As a result of the unfair, unlawful and/or fraudulent business practices described above,
25 Plaintiff has suffered and will continue to suffer irreparable harm unless Defendants, and each of
26 them, are restrained from continuing to engage in said unfair, unlawful and/or fraudulent business
27 practices.

28 62. Pursuant to California Business & Professions Code § 17200, *et seq.*, Plaintiff is

1 entitled to restitution of the wages withheld and retained by Defendants during a period that
2 commences four years prior to the filing of this complaint; a permanent injunction requiring
3 Defendants to pay all outstanding wages due to Plaintiff; an award of attorneys' fees pursuant to
4 California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

5 **FIFTH CAUSE OF ACTION**

6 **Private Attorneys General Act – Violation of California Labor Code §§ 2698, *et seq.***

7 **(By Plaintiff against all Defendants)**

8 63. Plaintiff incorporates all paragraphs above as though fully set forth herein.

9 64. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil
10 penalties for the violation(s) of the Labor Code section enumerated in Labor Code § 2699.5.

11 65. At all times herein set forth, PAGA was applicable to Plaintiff's employment by
12 Defendants.

13 66. At all times herein set forth, PAGA provides that any provision of law under the
14 California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA
15 for violations of the California Labor Code may, as an alternative, be recovered through a civil
16 action brought by an aggrieved employee on behalf of himself and other current or former
17 employees pursuant to procedures outlined in California Labor Code § 2699.3.

18 67. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved
19 employee," who is any person that was employed by the alleged violator and against whom one or
20 more of the alleged violations was committed.

21 68. Plaintiff was employed by Defendants and the alleged violations were committed
22 against Plaintiff during Plaintiff's time of employment. Therefore, Plaintiff is an aggrieved
23 employee. Plaintiff and other employees are aggrieved employees as defined by California Labor
24 Code § 2699(c) in that they are all current or former employees of Defendants who are or were
25 employed by Defendants, and one or more of the alleged violations were committed against them.

26 69. Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved employee,
27 including Plaintiff, may pursue a civil action arising under PAGA after the following requirements
28 have been met:

- 1 (a) The aggrieved employee shall give written notice by certified mail
2 (“Employee’s Notice”) to the LWDA and the employer of the specific
3 provisions of the California Labor Code alleged to have been violated, including
4 the facts and theories to support the alleged violations.
- 5 (b) The LWDA shall provide notice (“LWDA Notice”) to the employer and the
6 aggrieved employee by certified mail that it does not intend to investigate the
7 alleged violation within thirty (30) calendar days of the postmark date of the
8 Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice
9 is not provided within thirty-three (33) calendar days of the postmark date of the
10 Employee’s Notice, the aggrieved employee may commence a civil action
11 pursuant to California Labor Code § 2699 to recover civil penalties in addition
12 to any other penalties to which the employee may be entitled.

13 70. On May 26, 2021, Plaintiff provided written notice by certified mail to the LWDA
14 and to Defendants of the specific provisions of the California Labor Code alleged to have been
15 violated, including the facts and theories to support the alleged violations. Thereafter on or about
16 February 19, 2024, Plaintiff provided Amended written notice by certified mail to the LWDA and
17 to Defendants of the specific provisions of the California Labor Code alleged to have been
18 violated, including the facts and theories to support the alleged violations.

19 71. Plaintiff has satisfied the administrative prerequisites under California Labor Code §
20 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for violations
21 of the California Labor Code.

22 72. Defendants’ conduct, as alleged herein, violates numerous sections of the California
23 Labor Code including but not limited to the following:

- 24 (a) Failure to pay all minimum wages (Labor Code § § 1194, 1197, 1197.1, 1198,
25 and 1199);
- 26 (b) Failure to pay all overtime wages (Labor Code §§ 510, 558, 1194 and 1198 § 3
27 of the Wage Orders);
- 28 (c) Failure to provide compliant meal periods (Labor Code §§ 226.7, 512 and 1198;

§ 11 of the Wage Orders);

(d) Failure to authorize and permit compliant rest periods (Labor Code §§ 226.7 and 1198; § 12 of the Wage Orders);

(e) Failure to provide at least one day's rest in seven (Labor Code § 551);

(f) Failure to issue accurate and complete itemized wage statements and hours statements (Labor Code § 226 and 1174);

(g) Failure to maintain complete and accurate payroll records (Labor Code § 1174; § 7 of the Wage Orders);

(h) Failure to provide required information upon hire (Labor Code § 2810.5);

(i) Failure to timely pay wages during employment (Labor Code §§ 204 and 210);

(j) Failure to pay final wages (Labor Code §§ 201-203);

(k) Failure to reimburse business expenses (Labor Code §§ 2800, 2802 and 2804);

(l) Failure to pay accrued sick pay (Labor Code § 246);

(m) Failure to pay accrued vacation pay (Labor Code § 227.3);

(n) Requirement that employee agree in writing to multiple terms and conditions prohibited by law as a condition of employment (Labor Code § 432.5);

(o) Failure to provide suitable seating (§ 14 of the Wage Orders);

(p) Failure to provide personnel records (Labor Code §§ 226, 432 and 1198.5);

(q) Failure to pay wages as required by statute or contract (Labor Code § 223);

(r) Failure to keep and provide accurate records (Labor Code § 226, 1174);

(s) Willful misclassification (Lab. Code § 226.8); Failure to Provide Commission Agreements (Labor Code § 2751).

73. Pursuant to California Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff and all other aggrieved employees are entitled to recover civil penalties against Defendants, in addition to other remedies, for violations of the California Labor Code as set forth herein above.

74. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code § 2699 and any other applicable statute.

PRAYER FOR RELIEF

Plaintiff prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For actual damages, including loss of past and future earnings, in an amount according to proof at trial;
2. For general and special damages, including but not limited to, pain and suffering, emotional distress, and loss of reputation in an amount according to proof at trial;
3. For consequential and incidental damages and expenses in an amount according to proof at trial;
4. For punitive damages in an amount according to proof at trial;
5. For reasonable attorneys' fees according to proof at trial;
6. For all unpaid wages and expenses according to proof at trial;
7. For injunctive relief, as applicable, to ensure compliance with the law;
8. For any and all penalties under the law, including statutory and civil penalties;
9. For restitution and disgorgement of all unpaid wages and injunctive relief according to proof at trial;
10. For any and all penalties available under the California Private Attorneys General Act ("PAGA") (Labor Code § 2698 et seq.) for statutory violations alleged herein and any related statutory violations, including, but not limited to, any penalties for alleged violations of California Labor Code set forth herein.
11. Damages for consequential financial losses and additional emotional distress damages, increasing with each day, as described above in an amount to be determined by the jury at the trial of this matter;
12. Damages pursuant to Government Code, Section 12965(b) and California Code of Civil Procedure, Section 1021.5, for litigation costs, expert costs, and attorneys' fees incurred herein;
13. For pre-judgment and post-judgment interest, all at the legal prevailing rate;
14. For costs of suit incurred herein; and
15. For such other and further relief as the court may deem just, proper, and equitable.

1 Dated: May 23, 2024

OPTIMUM EMPLOYMENT LAWYERS, PC

2 By:



3 DEAN S. HO, ESQ.

4 Attorneys for Plaintiff

5
6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby respectfully demands a jury trial.

8 Dated: May 23, 2024

OPTIMUM EMPLOYMENT LAWYERS, PC

9
10 By:



11 DEAN S. HO, ESQ.

12 Attorneys for Plaintiff

EXHIBIT F

PRIVATE ATTORNEYS' GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE

This Private Attorneys' General Act Settlement Agreement and Release ("Settlement Agreement," "Settlement" or "Agreement"), is entered into by and between **PLAINTIFF CHRIS COPE** ("Plaintiff"), on behalf of himself and as a representative of the State of California and the Aggrieved Employees (as defined below), and **DEFENDANT SPOTON TRANSACT LLC** ("Defendant") (collectively, the "Parties"), subject to approval by the Court. This Agreement is intended to fully, finally and forever resolve, discharge and settle the Released Claims, as defined herein, upon and subject to the terms and conditions of this Agreement.

I. RECITALS

A. WHEREAS, Plaintiff is a former employee of Defendant. Plaintiff was employed by Defendant from approximately December 8, 2020 to December 30, 2020;

B. WHEREAS, on May 26, 2021, Optimum Employment Lawyers, PC ("PAGA Representative Group Counsel") submitted a letter to the California Labor and Workforce Development Agency ("LWDA") on behalf of Plaintiff to notify the LWDA that Plaintiff intended to seek civil penalties under the Private Attorneys' General Act of 2004, California Labor Code section 2698, *et seq.* ("PAGA"). Specifically, Plaintiff alleged that Defendant had willfully misclassified his and other employees as exempt. Plaintiff notified the LWDA of his intent to seek civil penalties under PAGA based on Defendant's alleged violation of California Labor Code sections 201, 202, 203, 204, 223, 226, 226.8, 1174, 1194 and 2802 (the "PAGA Notice");

C. WHEREAS, on January 5, 2021, Plaintiff filed a Complaint for Damages against Defendant and SpotOn Transact, Inc. entitled *Chris Cope, individually, on behalf of all other persons similarly situated, and as a representative of other aggrieved employees, vs. SpotOn Transact, Inc. a California Corporation, SpotOn Transact, LLC, a California limited liability company, and Does 1 through 10*, Riverside County Superior Court, Case No. CVRI2200050. Plaintiff's Complaint raised the following claims against Defendant: (1) Failure to Keep and Provide Accurate Itemized Wage Statements (Labor Code § 226); (2) Failure to Reimburse Business Expenses (Labor Code §§ 2800 and 2802); (3) Failure to Provide Personnel Records (Labor Code § 1198.5); (4) Private Attorneys General Act ("PAGA") (Labor Code §§ 2698 *et seq.*); and (5) Unfair Business Practices (Business & Professions Code §§ 17200 *et seq.*;

D. WHEREAS, on February 22, 2022, the Parties filed a Joint Stipulation and Request for Order to Arbitrate Plaintiff's Claims, which included an agreement that SpotOn Transact, Inc. should be dismissed without prejudice, that the Parties be ordered to arbitration on Plaintiff's individual claims and that the class claims should be stricken and dismissed without prejudice;

E. WHEREAS, on March 4, 2022, the Court issued an order dismissing SpotOn Transact, Inc. and striking all class allegations in the Complaint and dismissing the class claims without prejudice;

F. WHEREAS, on January 26, 2024, the Parties attended mediation with Jeff Owensby, Esq. The Parties reached a Settlement Agreement and Release of the Action in its entirety. The Settlement of Plaintiff's PAGA claim is described herein. The Parties have agreed to enter a separate settlement and release agreement with respect to Plaintiff's individual claims;

G. WHEREAS, this Settlement Agreement is made in compromise of disputed claims. Defendant makes no admission of liability or any wrongdoing whatsoever;

H. WHEREAS, this Settlement Agreement is made for the sole purpose of settling Plaintiff's PAGA claim on a representative basis. In the event that the Court does not approve the Settlement Agreement, or a Judgment is not entered in this lawsuit, or the conditions precedent are not met for any reason, this Settlement Agreement shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the negotiations, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code sections 1119 and 1152, Federal Rule of Evidence 408 and/or any other analogous rules of evidence that might apply.

II. DEFINITIONS

A. "Action" refers to the First Amended Complaint, which is the operative complaint, in the case titled *Chris Cope vs. SpotOn Transact, LLC et al.* Riverside County Superior Court, Case No. CVRI2200050.

B. "Court" refers to the Superior Court for the State of California, County of Riverside.

C. "Compensable Pay Period" refers to each pay period during which a PAGA Member performed work from May 26, 2020 through the Effective Date.

D. "Defense Counsel" refers to Mark Iezza, Esq. and Thomas Hockel, Esq. of Iezza & Hockel, PC.

E. "Effective Date" means the date of approval of the Settlement by the Court.

F. "Final Order" refers to the order of the Court approving this Settlement on substantially the terms provided herein or as the same may be modified by subsequent agreement of the Parties.

G. "Gross Settlement Amount" shall be the amount which Defendant is obligated to pay under this Agreement, which is One Hundred Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$137,500.00).

H. “Incentive Award” refers to the amount the Court authorizes to be paid to Plaintiff in recognition for his efforts and the risks associated with assisting in the litigation of the Action.

I. “Judgment” refers to the judgment entered by the Court in conjunction with the Final Order.

J. “LWDA” means the State of California Labor and Workforce Development Agency.

K. “Net Settlement Amount” refers to the Gross Settlement Amount, less (1) the PAGA Representative Group Counsel’s attorney’s fees as approved by the Court, (2) the PAGA Representative Group Counsel’s litigation costs as approved by the Court, (3) the Incentive Award as approved by the Court, and (4) the costs and fees of the Settlement Administrator as approved by the Court. To the extent the Court does not approve the full requested amount of attorney’s fees or litigation costs, the Incentive Award and/or costs and fees of the Settlement Administrator, the Net Settlement Amount will increase accordingly.

L. “PAGA” refers to the Private Attorneys’ General Act of 2004, California Labor Code section 2698, *et seq.*

M. “PAGA Notice” refers to the letter PAGA Representative Group Counsel sent the LWDA on May 26, 2021 to give notice of Plaintiff’s intent to seek civil penalties under PAGA against Defendant. The **“Amended PAGA Notice”** refers to the amended letter sent to the LWDA on or before February 16, 2024.

N. “PAGA Payment Letter” refers to the letter that the Settlement Administrator will enclose with each PAGA Representative Group Penalty Payment (substantially in the form attached hereto as Exhibit A) as it may hereafter be modified by agreement of the Parties or order of the Court.

O. “PAGA Period” means May 26, 2020 through the Effective Date.

P. “PAGA Representative Group” or “PAGA Members” consists of all Account Executives, Salespersons, and Outside Salespersons who worked for Defendant in California from May 26, 2020 through the Effective Date.

Q. “PAGA Representative Group Counsel” refers to Dean Ho, Esq. and Stephanie Banks, Esq. of Optimum Employment Lawyers, PC.

R. “PAGA Representative Group Penalty Payment” refers to the share of the Net Settlement Amount to which a PAGA Member is entitled to receive pursuant to this Settlement.

S. “Released Parties” means SpotOn Transact LLC and any past, present or future parent, subsidiary, affiliate, predecessor or successor, and all past, present and future agents, employees, officers, directors and attorneys thereof.

T. “Settlement Administrator” refers to Phoenix or such other entity upon whom the Parties mutually agree, and which will handle the administration of the Settlement set forth in this Agreement.

III. TERMS OF SETTLEMENT

A. Qualified Stipulation to Representative Group under PAGA.

The Parties stipulate, for settlement purposes only, to the establishment of a PAGA Representative Group. Should this Settlement not become effective for any reason, the fact that the Parties stipulated to the establishment of a PAGA Representative Group in this Agreement shall have no bearing on and shall not be admissible on the question of whether a representative action treatment is appropriate in a non-settlement context. Defendant has agreed to resolve the Action through this Settlement, but to the extent this Settlement is deemed void, Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including without limitation the ability to challenge representative action treatment on any grounds, as well as asserting any and all other potential defenses or privileges. Plaintiff and PAGA Representative Group Counsel agree that should this Settlement not become effective, Defendant retains and reserves these rights. Specifically, Plaintiff and PAGA Representative Group Counsel agree not to argue or present any argument that, in the event this Settlement is not approved in full, and to the extent it may be based upon any conditional agreements resulting from mediation and this Agreement, Defendant could not contest any representative action treatment on any grounds, or assert any and all other potential defenses and privileges if the Action were to proceed. Plaintiff and PAGA Representative Group Counsel hereby waive such arguments and agree they will not take a position contrary to this provision.

B. Settlement Agreement Procedure.

1. Amendment of PAGA Notice and Complaint.

The Parties agree that Plaintiff shall submit an amended PAGA Notice to the LWDA raising all claims and theories upon which Plaintiff could have sought civil penalties under PAGA in his Complaint. Within five (5) days after the 65-day waiting period has elapsed, the Parties shall file a Stipulation for Plaintiff to File an Amended Complaint. Plaintiff shall amend his Complaint to raise all applicable claims and theories upon which such allegations, based upon factual contentions, give rise to civil penalties under PAGA in his complaint. The Parties agree to further amend the Complaint, if necessary, to effectuate the terms of this Settlement. The Parties shall cooperate to file stipulations to stay, extend or modify existing court deadlines as necessary.

2. Settlement Data.

In preparation for the filing of Plaintiff’s Motion for Approval of the PAGA Settlement, Defendant shall share the following data for each PAGA Member for settlement purposes only:

Employee ID number, Position, and Pay Periods Worked from May 26, 2020 through January 26, 2024.

3. Motion for Approval of PAGA Settlement.

Within five (5) days following the filing of the Amended Complaint, Plaintiff shall file a Motion for Approval of the PAGA Settlement and the PAGA Payment Letter, attached hereto as Exhibit A. Defendant shall have the right to review and comment upon the Motion for Approval of the PAGA Settlement. The Parties will agree on the form of any proposed orders or notices to the PAGA Members, and shall work in good faith reasonably and promptly to present the Settlement to the Court for approval.

C. Attorneys' Fees and Litigation Costs.

The PAGA Representative Group Counsel will request that the Court award them attorney's fees in an amount up to one-third of the Gross Settlement Amount, which equals Forty-five Thousand, Eight Hundred and Thirty Three Dollars and Thirty Three Cents (\$45,833.33). The PAGA Representative Group Counsel will also ask the Court to award them actual litigation costs incurred in the amount of Eight Thousand Nine Hundred and Seventy Seven Dollars and Zero Cents (\$8,977.00). Defendant has agreed not to oppose such requests. However, if the Court awards a lesser amount of attorney's fees and/or litigation costs, it shall not affect the terms of the Parties' Settlement, and any portion of the requested attorney's fees and/or litigation costs not approved shall become part of the Net Settlement Amount. Any award of attorney's fees and costs shall include and satisfy all past and future fees and costs incurred to prosecute, settle, and administer this Settlement Agreement, including obtaining the Final Order and Judgment. Under no circumstances shall Defendant pay more than the Gross Settlement Amount under this Agreement. The Settlement Administrator shall issue PAGA Representative Group Counsel an IRS Form 1099 for its award of attorney's fees.

D. Incentive Award.

The PAGA Representative Group Counsel will request that the Court award Plaintiff an Incentive Award in the amount of Five Thousand Dollars and Zero Cents (\$5,000.00). Defendant has agreed not to oppose such request. However, if the Court awards a lesser amount to Plaintiff as an incentive award, it shall not affect the terms of the Parties' Settlement, and any portion of the requested Incentive Award not approved shall become part of the Net Settlement Amount. Under no circumstances shall Defendant pay more than the Gross Settlement Amount under this Agreement. The Settlement Administrator shall issue Plaintiff an IRS Form 1099 for the Incentive Award.

E. Settlement Administration Costs.

All costs of administering the Settlement, including, but not limited to, the duties provided in this Section E below (“Settlement Administration Costs”), shall be paid to the Settlement Administrator out of the Gross Settlement Amount as provided in this Agreement. Settlement Administration Costs shall not exceed Six Thousand Five Hundred Dollars and No Cents (\$6,500.00). In the event the Settlement Administration Costs exceed \$6,500.00, any additional amounts shall be paid from the Gross Settlement Amount. Defendant’s total obligation under this Settlement shall not exceed the Gross Settlement Amount, including the Settlement Administrator’s fees.

The Settlement Administrator shall be solely responsible for: (1) Preparing, printing and disseminating to PAGA Members the PAGA Payment Letter; (2) Determining and distributing the PAGA Representative Group Penalty Payment to each PAGA Member; (3) Preparing and mailing, in accordance with this Agreement and the Final Order of the Court, PAGA Representative Group Counsel’s attorney’s fees and costs, PAGA Representative Group Penalty Payments, Plaintiff’s Incentive Award and the LWDA Penalty Payment; (4) Ascertaining current address and addressee information for each PAGA Payment Letter returned as undeliverable and re-mailing the PAGA Payment Letter where appropriate and, as necessary, utilizing the National Change of Address Database maintained by the U.S. Postal Service and undertaking customary skip-tracing measures to confirm and/or determine proper addresses; (5) Performing all tax reporting duties required by federal, state, and/or local law pertaining to the Settlement Administrator’s duties (e.g., 1099s, etc.); (6) Apprising PAGA Representative Group Counsel and Defense Counsel of the activities of the Settlement Administrator; (7) Maintaining adequate records of its activities, including the dates of each mailing of PAGA Payment Letters, returned mail and other communications and attempted written or electronic communications with PAGA Members; (8) Confirming with PAGA Representative Group Counsel and Defense Counsel, in writing, its completion of the administration of the Settlement; and (9) Such other tasks as the Parties mutually agree.

F. Payment of PAGA Penalties.

Pursuant to PAGA, seventy-five percent (75%) of the Net Settlement Amount shall be distributed to the LWDA (“LWDA Penalty Payment”) and the remaining twenty-five percent (25%) shall be distributed to the PAGA Members (“PAGA Representative Group Penalty Payment”).

All PAGA Members shall be paid their PAGA Representative Group Penalty Payment. PAGA Representative Group Penalty Payment amounts shall be based on a formula taking into account the number of each PAGA Member’s Compensable Pay Periods. Based on data supplied by Defendant and Defense Counsel and reviewed by Plaintiff’s counsel, the majority of the alleged violations occurred during only one pay period. As such, the amount paid to each PAGA Member will be determined as follows: the portion of the Net Settlement Amount to be paid to PAGA Members will be divided evenly by the total number of PAGA Members who were employed during the PAGA Period. With the exception of Plaintiff, PAGA Members are not

eligible to receive any compensation other than the PAGA Representative Group Penalty Payment from this Settlement.

The PAGA Representative Group Penalty Payments are civil penalties, shall be reported on an IRS Form 1099 (to the extent required by law), and will not be subject to local, state, or federal tax withholdings. Each PAGA Member will be responsible for paying all applicable local, state, and federal income taxes on all amounts received pursuant to this Settlement, and they shall not seek any indemnification from the Released Parties in this regard. The PAGA Representative Group Penalty Payments are not being made for any other purpose and will not be construed as compensation for purposes of determining eligibility for any health and welfare benefits or unemployment compensation.

G. Release of Claims.

Upon the payment of the Gross Settlement Amount to the Settlement Administrator by Defendant, Plaintiff and the State of California, on behalf of all PAGA Members, will fully release and discharge Defendant and other Released Parties from any and all claims for civil penalties under PAGA that were or could have been recovered based on the facts alleged in the Amended PAGA Notice to the LWDA and included in the Action from May 26, 2020 through the Effective Date (collectively, "Released Claims"). The Released Claims include all claims that were or could have been alleged in the Amended PAGA Notice to the LWDA and included in the Action for civil penalties under PAGA for California Labor Code violations, including: (1) Failure to pay all minimum wages (Labor Code §§ 1194, 1197, 1197.1, 1198, and 1199); (2) Failure to pay all overtime wages (Labor Code §§ 510, 558, 1194 and 1198; § 3 of the Wage Orders); (3) Failure to provide compliant meal periods (Labor Code §§ 226.7, 512 and 1198; § 11 of the Wage Orders); (4) Failure to authorize and permit compliant rest periods (Labor Code §§ 226.7 and 1198; § 12 of the Wage Orders); (5) Failure to provide at least one day's rest in seven (Labor Code § 551); (6) Failure to issue accurate and complete itemized wage statements and hours statements (Labor Code § 226 and 1174); (7) Failure to maintain complete and accurate payroll records (Labor Code § 1174; § 7 of the Wage Orders); (8) Failure to provide required information upon hire (Labor Code § 2810.5); (9) Failure to timely pay wages during employment (Labor Code §§ 204 and 210); (10) Failure to pay final wages (Labor Code §§ 201-203); (11) Failure to reimburse business expenses (Labor Code §§ 2800, 2802 and 2804); (12) Failure to pay accrued sick pay (Labor Code § 246); (13) Failure to pay accrued vacation pay (Labor Code § 227.3); (14) Requirement that employee agree in writing to multiple terms and conditions prohibited by law as a condition of employment (Labor Code § 432.5); (15) Failure to provide suitable seating (§ 14 of the Wage Orders); (16) Failure to provide personnel records (Labor Code §§ 226, 432 and 1198.5); (17) Failure to pay wages as required by statute or contract (Labor Code § 223); (18) Failure to keep and provide accurate records (Labor Code §§ 226, 1174); (19) Willful misclassification (Lab. Code §226.8); (20) Failure to Provide Commission Agreements (Labor Code § 2751) and (21) all claims for attorneys' fees and expenses and interest. The Released Claims do not include any claims that cannot be released as a matter of law.

H. Binding Effect of Settlement.

This Settlement shall be enforceable, binding upon and inure to the benefit of the respective Parties, their respective legal successors, heirs, administrators, executors, assigns and each of them. Upon the Court's approval, all PAGA Members will be bound by the terms and conditions of this Agreement, the Final Order, the Judgment, and the releases provided herein. The Judgement is intended to have res judicata effect with respect to the Released Claims.

I. Settlement Termination.

1. Grounds for Settlement Termination.

In accordance with the procedures specified herein, this Agreement may be terminated solely on the following grounds: Any Party may terminate the Agreement if the Court declines to enter the Final Order or Judgment in substantially the form submitted by the Parties (incidental or minor changes to the PAGA Payment Letter ordered by the Court are not grounds for termination), or the Settlement as agreed does not become final for any other reason. The terminating Party shall give written notice to the other Party no later than ten (10) business days after the Court acts. The recovery of attorney's fees and costs by PAGA Representative Group Counsel are terms of this Agreement, but the allowance or disallowance by the Court of an award of attorney's fees and/or costs shall not be grounds for terminating this Settlement.

2. Effect of Settlement Termination.

Valid termination shall have the following effects: (a) The Settlement Agreement shall be terminated and shall have no force or effect, and no Party shall be bound by any of its terms, except as otherwise provided herein; (b) The Final Order and Judgment shall be vacated; (c) The Settlement Agreement and all negotiations, statements and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in the Action prior to the Settlement; (d) This Settlement Agreement, any filings in furtherance of the Settlement and the data shared for settlement purposes shall not be admissible or offered into evidence in the Action or any other action for any purpose whatsoever; and (e) Defendant shall have no obligation to pay any amounts set forth in this Agreement.

J. Funding of Settlement.

Within fifteen (15) business days of the Effective Date, Defendant shall deposit the Gross Settlement Amount into an interest-bearing account established by the Settlement Administrator, which is to be held in escrow for the purpose of effectuating this Settlement. The Parties agree to treat this account as a "Qualified Settlement Fund" ("QSF") pursuant to section 468(13) of the Internal Revenue Code of 1986, as amended. All interest earned on the account opened by the Settlement Administrator shall inure to the benefit of the LWDA and the PAGA Representative Group.

Defendant's monetary obligation under this Agreement is limited to the Gross Settlement Amount. Defendant may not be called upon or required to contribute additional monies above the Gross Settlement Amount under any circumstances. If this Agreement is cancelled, rescinded, terminated, voided, or nullified, or the Settlement of the Action is barred by operation

of law, or invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendant will cease to have any obligation to pay any portion of the Gross Settlement Amount to anyone under the terms of this Agreement and all previous disbursements from the Gross Settlement Amount will be immediately paid back to Defendant by the person or entity who received such disbursement, except for the Settlement Administration Costs.

K. Payment Procedure.

This shall be an all-in Settlement without a reversion. PAGA Members will be automatically paid without submitting any claim form.

1. PAGA Representative Group Counsel will advise Defense Counsel and the Settlement Administrator as to the amount of attorney's fees and litigation costs payments awarded by the Court.

2. Within fifteen (15) business days of the Effective Date, Defendant will provide the Settlement Administrator with confidential "PAGA Representative Group Member Data" containing the following for each PAGA Member, to the extent Defendant has such information: (1) full legal name; (2) social security number; (3) last known address; and (4) telephone number and/or e-mail address, if available. The Parties agree that the PAGA Representative Group Member Data shall be treated and maintained as confidential. Promptly upon receipt of the PAGA Representative Group Member Data, the Settlement Administrator shall obtain updated forwarding addresses from the U.S. Postal Service.

3. Within five (5) business days after receipt of the PAGA Representative Group Member Data, the Settlement Administrator shall provide to the Parties a written statement of how the Gross Settlement Amount will be allocated. The allocation shall include attorney's fees and litigation costs of PAGA Representative Group Counsel as awarded by the Court, the Incentive Award to Plaintiff, the Settlement Administration Costs, the LWDA Penalty Payment, and the total of all payments to be paid to all eligible PAGA Members.

4. Within fifteen (15) business days after the funding of the Gross Settlement Amount, the Settlement Administrator shall issue to each qualifying PAGA Member a check in the amount of his or her PAGA Representative Group Penalty Payment with the PAGA Payment Letter via first-class mail using the updated address information. With respect to each PAGA Payment Letter and PAGA Representative Group Penalty Payment which is returned as undeliverable, the Settlement Administrator shall within ten (10) days attempt to determine a correct address by conducting a skip-trace to locate the PAGA Members and shall re-send the PAGA Payment Letter with the PAGA Representative Group Penalty Payment via first-class mail to any new address thereby determined. Checks not negotiated within one hundred and eighty (180) calendar days from their issue are void, but this Agreement and the release herein will nonetheless be binding as if they had cashed the checks. Any unclaimed funds in the Settlement Administrator's account as a result of the failure to timely cash PAGA Representative Group Penalty Payment checks, plus any interest that has accrued thereon, will be distributed to the California State Controller's Unclaimed Property Fund in the name of the PAGA Member.

5. Within fifteen (15) business days after the funding of the Gross Settlement Amount, the Settlement Administrator shall distribute the PAGA Representative Group Counsel's attorney's fees and litigation costs.

6. Within fifteen (15) business days after the funding of the Gross Settlement Amount, the Settlement Administrator shall pay the LWDA Penalty Payment to the LWDA.

7. Within fifteen (15) business days after the funding of the Gross Settlement Amount, the Settlement Administrator shall pay itself the Court approved Settlement Administration Costs.

L. No Admission.

By agreeing to this Settlement, Defendant denies that it has engaged in any unlawful activity, that it failed to comply with the law in any respect, that it has any liability to anyone based on the claims asserted in the Action, and but for this Settlement, Defendant denies that Plaintiff could proceed on her claims on a representative basis. This Agreement is entered into solely for the purposes of comprising highly-disputed claims. Nothing in this Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendant. This Settlement Agreement is a settlement document and shall, pursuant to California Evidence Code Section 1152 and/or Federal Rule of Evidence 408 and/or any other similar law, be inadmissible as evidence against the Released Parties in any proceeding, except upon an action to approve the Settlement and/or interpret or enforce the Settlement Agreement.

M. Publicity.

Plaintiff and PAGA Representative Group Counsel shall not issue a press release or otherwise notify the media or the public about the terms of the Settlement or advertise or market any of the terms of the Settlement through written, recorded or electronic communications. Plaintiff and PAGA Representative Group Counsel further agree that if contacted in writing regarding this case, they will state only that the lawsuit exists and has been resolved. This provision does not prevent PAGA Representative Group Counsel from communicating with PAGA Members and/or taking any step necessary to obtain approval of the Settlement.

N. Interim Stay of Proceedings.

Pending completion of the settlement process, the Parties agree to a stay of all proceedings in the Action except such as are necessary to implement the Settlement itself.

O. Notices

All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing and, except as provided elsewhere in this Agreement or in any communication to PAGA Members, shall be delivered personally or via postage prepaid first-class mail as follows:

If to Plaintiff or PAGA Representative Group Counsel, then to:

Dean Ho, Esq.
Optimum Employment Lawyers, PC
7545 Irvine Center Drive, Suite 200
Irvine, CA 92618
(949) 954-8181

If to Defendant or Defense Counsel, then to:

Mark Iezza, Esq.
Iezza & Hockel, PC
7200 Redwood Blvd., Ste 402
Novato, CA 94945
(415) 895-6332

P. Retention of Jurisdiction by the Court.

Following entry of the Final Order and Judgment pursuant to this Settlement Agreement, the Court shall retain jurisdiction for the purpose of addressing any issues which may arise with respect to settlement administration or the enforcement of the terms of this Settlement Agreement.

Q. Entire Agreement.

This Settlement Agreement, including the attached Exhibit A, sets forth the entire agreement of the Parties with respect to Plaintiff's PAGA claim and supersedes any and all other prior agreements and all negotiations leading up to the execution of this Settlement Agreement with respect to Plaintiff's PAGA claim, whether oral or written, regarding the subjects covered herein. With respect to Plaintiff's PAGA claim, the Parties acknowledge that no representations, inducements, promises or statements relating to the subjects covered herein, oral or otherwise, have been made by any of the Parties or by anyone acting on behalf of the Parties which are not embodied or incorporated by reference herein, and further agree that no other agreement, covenant, representation, inducement, promise or statement relating to the subjects covered herein not set forth in writing in this Settlement Agreement have been made. The Parties shall execute a separate settlement agreement regarding Plaintiff's individual claims in the Action.

R. Reasonable Cooperation.

The Parties shall support the Settlement and its approval by the Court. The Parties shall provide reasonable cooperation with one another and the Settlement Administrator in implementing this Settlement, including but not limited to providing information and executing documents necessary to effectuating its purpose.

S. Tax Treatment.

The Parties make no representations as to the tax treatment or legal effect of the payments specified in this Agreement and PAGA Members are not relying on any statement or representation by the Parties, the PAGA Representative Group Counsel or Defense Counsel in this regard. PAGA Members will be responsible for the payment of all taxes and penalties assessed on the payments specified herein and shall hold the Parties, the PAGA Representative Group Counsel and Defense Counsel free and harmless and against any claims resulting from treatment of such payments as non-taxable including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes.

T. Circular 230 Disclaimer.

The Parties acknowledge and agree: (1) no provision of this Settlement and no written communication or disclosure between or among the Parties, the PAGA Representative Group Counsel or Defense Counsel and other advisors is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Settlement, (b) has not entered this Settlement based on the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or advisor to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement.

U. Fair, Adequate and Reasonable Settlement.

The PAGA Representative Group Counsel submits that this Settlement is fair, adequate and reasonable settlement of the Action, and that the Parties have arrived at this Settlement after extensive arm's-length negotiations, taking into account all relevant factors, present and potential.

V. Miscellaneous.

1. Modification or Amendment of Settlement.

This Settlement Agreement may not be modified, amended or altered except in a writing signed by each Party whose rights or obligations hereunder would be affected thereby or by that Party's authorized legal representative, or as ordered by the Court.

2. Choice of Law.

This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

3. Construction.

This Settlement Agreement is entered into freely and voluntarily without duress or undue pressure or influence of any kind or nature whatsoever and neither Plaintiff, nor the PAGA Members, nor Defendant has relied on any promises, representations or warranties regarding the subject matter hereof other than as set forth in this Agreement. Each Party has been represented by counsel in the settlement negotiations leading up to, and in connection with the preparation and execution of, this Settlement Agreement. The headings in this Agreement are included for convenience only and shall not be given weight in its construction.

The Parties acknowledge and agree that all Parties had an equal hand in drafting this Settlement Agreement so that it shall not be deemed to have been prepared or drafted by one Party or another. All Parties waive the provisions of California Civil Code section 1654, which provides, in pertinent part, that “the language of a contract should be interpreted most strongly against the Party who caused the uncertainty to exist.”

4. Execution in Counterparts.

This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Any signature to this Agreement transmitted by digital signature and/or facsimile and any copies of any signatures are valid and binding.

5. Authority.

The individuals signing this Settlement Agreement represent and warrant that they are duly authorized to do so. The Parties likewise represent and warrant that they have the authority to execute this Settlement Agreement and to take all appropriate action required and permitted to be taken by this Settlement Agreement, except such action that is the prerogative of the Court.

6. No Prior Assignment.

The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

7. Invalidity of Any Provision.

Before declaring any term or provision of this Settlement invalid, the Parties request that the Court first attempt to construe the terms or provisions as valid to the fullest extent possible

consistent with applicable precedents so as to define all provisions of this Settlement and valid and enforceable.

W. Binding Nature of Notice of PAGA Settlement and PAGA Payment Letter.

The Parties agree that because the PAGA Members are so numerous, it is impossible or impractical to have each PAGA Member execute this Settlement Agreement. The PAGA Payment Letter shall advise all PAGA Members of the binding nature of the Settlement and the release of the Released Claims and shall have the same force and effect as if this Settlement Agreement were executed by each PAGA Member.

NOW, IN WITNESS WHEREOF, this Settlement Agreement, consisting of fifteen (15) pages, has been duly executed by and on behalf of the Parties as of the date first written above.

Dated: June 3, 2024


Chris Cope
On behalf of himself and the PAGA
Members

Dated: May ____, 2024

By: _____
Name: Michelle Zmugg, Esq.
Title: General Counsel
On behalf of Defendant SpotOn
Transact, LLC

Approved as to form and content.

OPTIMUM EMPLOYMENT LAWYERS, PC

Date: June 4, 2024



Dean Ho, Esq.
Stephanie Banks, Esq.
Attorneys for Plaintiff Chris Cope

IEZZA & HOCKEL, PC

Date: _____, 2024

Mark Iezza, Esq.
Thomas Hockel, Esq.
Attorneys for Defendant SpotOn Transact, LLC

consistent with applicable precedents so as to define all provisions of this Settlement and valid and enforceable.

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NOW, IN WITNESS WHEREOF, this Settlement Agreement, consisting of fifteen (15) pages, has been duly executed by and on behalf of the Parties as of the date first written above.

Dated: May ____, 2024

Chris Cope
On behalf of himself and the PAGA
Members

Jun 3, 2024

Dated: May ____, 2024

By: Michelle Zmugg
Name: Michelle Zmugg, Esq.
Title: General Counsel
On behalf of Defendant SpotOn
Transact, LLC

Approved as to form and content.

OPTIMUM EMPLOYMENT LAWYERS, PC

Date: _____, 2024

Dean Ho, Esq.
Stephanie Banks, Esq.
Attorneys for Plaintiff Chris Cope

IEZZA & HOCKEL, PC

Date: June 3, 2024

Mark Iezza, Esq.
Thomas Hockel, Esq.
Attorneys for Defendant SpotOn Transact, LLC

Exhibit A

<<Mailing Date>>

To: **<<First Name>><<Last Name>>**
<<Street Address>>
<<City>> <<State>> <<Zip>>

Re: Settlement Payment from *Chris Cope vs. SpotOn Transact, LLC et al.* Riverside County Superior Court, Case No. CVRI2200050.

Dear **<<First Name>><<Last Name>>**:

Please find enclosed a check in the amount of **<<amount of payment>>** ("Individual Settlement Share"). This check is your payment from the settlement in the lawsuit entitled *Chris Cope vs. SpotOn Transact, LLC et al.* Riverside County Superior Court, Case No. CVRI2200050 ("Action").

The lawsuit was filed by Chris Cope ("Plaintiff") against his former employer, SpotOn Transact, LLC ("SpotOn" or "Defendant") on behalf of the State of California, with respect to himself and other alleged aggrieved employees, to seek recovery of civil penalties pursuant to the Private Attorneys' General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA"), for multiple alleged violations of the California Labor Code and Industrial Welfare Commission Wage Orders, including, *inter alia*, for failure to keep and provide accurate itemized wage statements, willful misclassification, failure to reimburse business expenses, failure to provide personnel records, failure to provide meal and rest breaks during training, failure to pay all compensation due upon separation, and unfair business practices.

Defendant denies these allegations. Defendant denies that any of its employees were misclassified or improperly paid in any way, and denies any wrongdoing of any kind associated with these allegations. Defendant is resolving the Action to avoid the uncertainties and costs of litigation.

A settlement was reached between Plaintiff and Defendant SpotOn Transact, LLC.

On **<<Date>>**, the settlement was approved by the Court, with a portion to be paid to the State of California Labor and Workforce Development Agency and a portion to be paid to (1) all Account Executives / Salespersons who worked for Defendant in California from May 26, 2020 through **<<Date>>** (collectively, the "Aggrieved Employees"). The period of May 26, 2020 through **<<Date>>** is the "PAGA Period."

You are receiving a portion of the settlement (the enclosed Individual Settlement Share) because you have been identified as an Aggrieved Employee. Your Individual Settlement Share is based on an even split between all Aggrieved Employees working in California during the PAGA Period. The Individual Settlement Share is considered to be 100% penalties, which will be reported on an IRS Form 1099. You are responsible for paying any and all taxes that may be due as a result of any payment issued to you under the settlement, and should consult a tax advisor regarding the tax consequences of such payment.

Under the settlement, as of **<<Effective Date>>**, the Released Parties are fully released and forever discharged from any and all Released Claims.

"Released Parties" means Defendant and any past, present, and future parent, subsidiary, affiliate, predecessor or successor, and all past, present and future agents, employees, officers, directors and attorneys thereof.

"Released Claims" means any and all claims for civil penalties under PAGA that were or could have been recovered based on the facts alleged in the Amended PAGA Notice to the LWDA and included in the Action from May 26, 2020 through **<<Effective Date>>**. The Released Claims include all claims that were or could have been alleged in the Amended PAGA Notice to the LWDA and included in the Action for civil penalties under PAGA for all California Labor Code violations, including: (1) Failure to pay all minimum wages (Labor Code §§ 1194, 1197, 1197.1, 1198, and 1199); (2) Failure to pay all overtime wages (Labor Code §§ 510, 558, 1194 and 1198; § 3 of the Wage Orders); (3) Failure to provide compliant meal periods (Labor Code §§ 226.7, 512 and 1198; § 11 of the Wage Orders); (4) Failure to authorize and permit compliant rest periods (Labor Code §§ 226.7 and 1198; § 12 of the Wage Orders); (5) Failure to provide at least one day's rest in seven (Labor Code

§ 551); (6) Failure to issue accurate and complete itemized wage statements and hours statements (Labor Code § 226 and 1174); (7) Failure to maintain complete and accurate payroll records (Labor Code § 1174; § 7 of the Wage Orders); (8) Failure to provide required information upon hire (Labor Code § 2810.5); (9) Failure to timely pay wages during employment (Labor Code §§ 204 and 210); (10) Failure to pay final wages (Labor Code §§ 201-203); (11) Failure to reimburse business expenses (Labor Code §§ 2800, 2802 and 2804); (12) Failure to pay accrued sick pay (Labor Code § 246); (13) Failure to pay accrued vacation pay (Labor Code § 227.3); (14) Requirement that employee agree in writing to multiple terms and conditions prohibited by law as a condition of employment (Labor Code § 432.5); (15) Failure to provide suitable seating (§ 14 of the Wage Orders); (16) Failure to provide personnel records (Labor Code §§ 226, 432 and 1198.5); (17) Failure to pay wages as required by statute or contract (Labor Code § 223); (18) Failure to keep and provide accurate records (Labor Code §§ 226, 1174); (19) Willful misclassification (Lab. Code § 226.8); (20) Failure to Provide Commission Agreements (Labor Code § 2751) and (21) all claims for attorneys' fees and expenses and interest. The Released Claims do not include any claims that cannot be released as a matter of law.

The enclosed check is valid for 180 days from the original date of issuance and mailing, and if it is not cashed, deposited, or otherwise negotiated within the 180-day timeframe, it will be cancelled, and the funds associated with the cancelled check will be transmitted to the State Controller's Office Unclaimed Property Division in your name and in the amount of your respective Individual Settlement Share.

Do not call or write the Court, Office of the Clerk of the Court, Defendant, Defendant's counsel, or Plaintiff's counsel to ask questions about the settlement or to ask tax-related questions. If you have any such questions, you may contact Phoenix at [toll-free phone number].

FINAL Cope v. SpotOn PAGA Se Ag and Release 5.29.24 v 3-2

Final Audit Report

2024-06-03

Created:	2024-06-03
By:	Mark Iezza (miezza@iezzalaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAjEcLRFa_P7D1sFYXnmn-0Ej5-TD5TdGL

"FINAL Cope v. SpotOn PAGA Se Ag and Release 5.29.24 v 3-2" History

-  Document created by Mark Iezza (miezza@iezzalaw.com)
2024-06-03 - 4:01:47 PM GMT
-  Document emailed to Michelle Zmugg (mzmugg@spoton.com) for signature
2024-06-03 - 4:02:27 PM GMT
-  Email viewed by Michelle Zmugg (mzmugg@spoton.com)
2024-06-03 - 5:10:23 PM GMT
-  Document e-signed by Michelle Zmugg (mzmugg@spoton.com)
Signature Date: 2024-06-03 - 5:10:32 PM GMT - Time Source: server
-  Agreement completed.
2024-06-03 - 5:10:32 PM GMT

EXHIBIT G

**PRIVATE ATTORNEYS' GENERAL ACT SETTLEMENT
AGREEMENT AND RELEASE**

This Private Attorneys' General Act Settlement Agreement and Release ("Settlement Agreement," "Settlement" or "Agreement"), is entered into by and between **PLAINTIFF CHRIS COPE** ("Plaintiff"), on behalf of himself and as a representative of the State of California and the Aggrieved Employees (as defined below), and **DEFENDANT SPOTON TRANSACT LLC** ("Defendant") (collectively, the "Parties"), subject to approval by the Court. This Agreement is intended to fully, finally and forever resolve, discharge and settle the Released Claims, as defined herein, upon and subject to the terms and conditions of this Agreement.

I. RECITALS

A. WHEREAS, Plaintiff is a former employee of Defendant. Plaintiff was employed by Defendant from approximately December 8, 2020 to December 30, 2020;

B. WHEREAS, on May 26, 2021, Optimum Employment Lawyers, PC ("PAGA Representative Group Counsel") submitted a letter to the California Labor and Workforce Development Agency ("LWDA") on behalf of Plaintiff to notify the LWDA that Plaintiff intended to seek civil penalties under the Private Attorneys' General Act of 2004, California Labor Code section 2698, *et seq.* ("PAGA"). Specifically, Plaintiff alleged that Defendant had willfully misclassified his and other employees as exempt. Plaintiff notified the LWDA of his intent to seek civil penalties under PAGA based on Defendant's alleged violation of California Labor Code sections 201, 202, 203, 204, 223, 226, 226.8, 1174, 1194 and 2802 (the "PAGA Notice");

C. WHEREAS, on January 5, 2021, Plaintiff filed a Complaint for Damages against Defendant and SpotOn Transact, Inc. entitled *Chris Cope, individually, on behalf of all other persons similarly situated, and as a representative of other aggrieved employees, vs. SpotOn Transact, Inc. a California Corporation, SpotOn Transact, LLC, a California limited liability company, and Does 1 through 10*, Riverside County Superior Court, Case No. CVRI2200050. Plaintiff's Complaint raised the following claims against Defendant: (1) Failure to Keep and Provide Accurate Itemized Wage Statements (Labor Code § 226); (2) Failure to Reimburse Business Expenses (Labor Code §§ 2800 and 2802); (3) Failure to Provide Personnel Records (Labor Code § 1198.5); (4) Private Attorneys General Act ("PAGA") (Labor Code §§ 2698 *et seq.*); and (5) Unfair Business Practices (Business & Professions Code §§ 17200 *et seq.*;

D. WHEREAS, on February 22, 2022, the Parties filed a Joint Stipulation and Request for Order to Arbitrate Plaintiff's Claims, which included an agreement that SpotOn Transact, Inc. should be dismissed without prejudice, that the Parties be ordered to arbitration on Plaintiff's individual claims and that the class claims should be stricken and dismissed without prejudice;

E. WHEREAS, on March 4, 2022, the Court issued an order dismissing SpotOn Transact, Inc. and striking all class allegations in the Complaint and dismissing the class claims without prejudice;

F. WHEREAS, on January 26, 2024, the Parties attended mediation with Jeff Owensby, Esq. The Parties reached a Settlement Agreement and Release of the Action in its entirety. The Settlement of Plaintiff's PAGA claim is described herein. The Parties have agreed to enter a separate settlement and release agreement with respect to Plaintiff's individual claims;

G. WHEREAS, this Settlement Agreement is made in compromise of disputed claims. Defendant makes no admission of liability or any wrongdoing whatsoever;

H. WHEREAS, this Settlement Agreement is made for the sole purpose of settling Plaintiff's PAGA claim on a representative basis. In the event that the Court does not approve the Settlement Agreement, or a Judgment is not entered in this lawsuit, or the conditions precedent are not met for any reason, this Settlement Agreement shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the negotiations, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code sections 1119 and 1152, Federal Rule of Evidence 408 and/or any other analogous rules of evidence that might apply.

II. DEFINITIONS

A. "Action" refers to the [First Amended Complaint, which is the operative complaint, in the case titled *Chris Cope vs. SpotOn Transact, LLC et al.*](#) Riverside County Superior Court, Case No. CVR12200050.

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B. "Court" refers to the Superior Court for the State of California, County of Riverside.

C. "Compensable Pay Period" refers to each pay period during which a PAGA Member performed work from May 26, 2020 through the Effective Date.

D. "Defense Counsel" refers to Mark Iezza, Esq. and Thomas Hockel, Esq. of Iezza & Hockel, PC.

E. "Effective Date" means the date of approval of the Settlement by the Court.

F. "Final Order" refers to the order of the Court approving this Settlement on substantially the terms provided herein or as the same may be modified by subsequent agreement of the Parties.

G. "Gross Settlement Amount" shall be the amount which Defendant is obligated to pay under this Agreement, which is One Hundred Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$137,500.00).

H. “Incentive Award” refers to the amount the Court authorizes to be paid to Plaintiff in recognition for his efforts and the risks associated with assisting in the litigation of the Action.

I. “Judgment” refers to the judgment entered by the Court in conjunction with the Final Order.

J. “LWDA” means the State of California Labor and Workforce Development Agency.

K. “Net Settlement Amount” refers to the Gross Settlement Amount, less (1) the PAGA Representative Group Counsel’s attorney’s fees as approved by the Court, (2) the PAGA Representative Group Counsel’s litigation costs as approved by the Court, (3) the Incentive Award as approved by the Court, and (4) the costs and fees of the Settlement Administrator as approved by the Court. To the extent the Court does not approve the full requested amount of attorney’s fees or litigation costs, the Incentive Award and/or costs and fees of the Settlement Administrator, the Net Settlement Amount will increase accordingly.

L. “PAGA” refers to the Private Attorneys’ General Act of 2004, California Labor Code section 2698, *et seq.*

M. “PAGA Notice” refers to the letter PAGA Representative Group Counsel sent the LWDA on May 26, 2021 to give notice of Plaintiff’s intent to seek civil penalties under PAGA against Defendant. The **“Amended PAGA Notice”** refers to the amended letter sent to the LWDA on or before February 16, 2024.

N. “PAGA Payment Letter” refers to the letter that the Settlement Administrator will enclose with each PAGA Representative Group Penalty Payment (substantially in the form attached hereto as Exhibit A) as it may hereafter be modified by agreement of the Parties or order of the Court.

O. “PAGA Period” means May 26, 2020 through the Effective Date.

P. “PAGA Representative Group” or “PAGA Members” consists of all Account Executives, Salespersons, and Outside Salespersons who worked for Defendant in California from May 26, 2020 through the Effective Date.

Q. “PAGA Representative Group Counsel” refers to Dean Ho, Esq. and Stephanie Banks, Esq. of Optimum Employment Lawyers, PC.

R. “PAGA Representative Group Penalty Payment” refers to the share of the Net Settlement Amount to which a PAGA Member is entitled to receive pursuant to this Settlement.

S. “Released Parties” means SpotOn Transact LLC and any past, present or future parent, subsidiary, affiliate, predecessor or successor, and all past, present and future agents, employees, officers, directors and attorneys thereof.

T. “Settlement Administrator” refers to Phoenix or such other entity upon whom the Parties mutually agree, and which will handle the administration of the Settlement set forth in this Agreement.

III. TERMS OF SETTLEMENT

A. Qualified Stipulation to Representative Group under PAGA.

The Parties stipulate, for settlement purposes only, to the establishment of a PAGA Representative Group. Should this Settlement not become effective for any reason, the fact that the Parties stipulated to the establishment of a PAGA Representative Group in this Agreement shall have no bearing on and shall not be admissible on the question of whether a representative action treatment is appropriate in a non-settlement context. Defendant has agreed to resolve the Action through this Settlement, but to the extent this Settlement is deemed void, Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including without limitation the ability to challenge representative action treatment on any grounds, as well as asserting any and all other potential defenses or privileges. Plaintiff and PAGA Representative Group Counsel agree that should this Settlement not become effective, Defendant retains and reserves these rights. Specifically, Plaintiff and PAGA Representative Group Counsel agree not to argue or present any argument that, in the event this Settlement is not approved in full, and to the extent it may be based upon any conditional agreements resulting from mediation and this Agreement, Defendant could not contest any representative action treatment on any grounds, or assert any and all other potential defenses and privileges if the Action were to proceed. Plaintiff and PAGA Representative Group Counsel hereby waive such arguments and agree they will not take a position contrary to this provision.

B. Settlement Agreement Procedure.

1. Amendment of PAGA Notice and Complaint.

The Parties agree that Plaintiff shall submit an amended PAGA Notice to the LWDA raising all claims and theories upon which Plaintiff could have sought civil penalties under PAGA in his Complaint. Within five (5) days after the 65-day waiting period has elapsed, the Parties shall file a Stipulation for Plaintiff to File an Amended Complaint. Plaintiff shall amend his Complaint to raise all applicable claims and theories upon which such allegations, based upon factual contentions, give rise to civil penalties under PAGA in his complaint. The Parties agree to further amend the Complaint, if necessary, to effectuate the terms of this Settlement. The Parties shall cooperate to file stipulations to stay, extend or modify existing court deadlines as necessary.

2. Settlement Data.

In preparation for the filing of Plaintiff’s Motion for Approval of the PAGA Settlement, Defendant shall share the following data for each PAGA Member for settlement purposes only:

Employee ID number, Position, and Pay Periods Worked from May 26, 2020 through January 26, 2024.

3. Motion for Approval of PAGA Settlement.

Within five (5) days following the filing of the Amended Complaint, Plaintiff shall file a Motion for Approval of the PAGA Settlement and the PAGA Payment Letter, attached hereto as Exhibit A. Defendant shall have the right to review and comment upon the Motion for Approval of the PAGA Settlement. The Parties will agree on the form of any proposed orders or notices to the PAGA Members, and shall work in good faith reasonably and promptly to present the Settlement to the Court for approval.

C. Attorneys' Fees and Litigation Costs.

The PAGA Representative Group Counsel will request that the Court award them attorney's fees in an amount up to one-third of the Gross Settlement Amount, which equals Forty-five Thousand, Eight Hundred and Thirty Three Dollars and Thirty Three Cents (\$45,833.33). The PAGA Representative Group Counsel will also ask the Court to award them actual litigation costs incurred in the amount of Eight Thousand Nine Hundred and Seventy Seven Dollars and Zero Cents (\$8,977.00). Defendant has agreed not to oppose such requests. However, if the Court awards a lesser amount of attorney's fees and/or litigation costs, it shall not affect the terms of the Parties' Settlement, and any portion of the requested attorney's fees and/or litigation costs not approved shall become part of the Net Settlement Amount. Any award of attorney's fees and costs shall include and satisfy all past and future fees and costs incurred to prosecute, settle, and administer this Settlement Agreement, including obtaining the Final Order and Judgment. Under no circumstances shall Defendant pay more than the Gross Settlement Amount under this Agreement. The Settlement Administrator shall issue PAGA Representative Group Counsel an IRS Form 1099 for its award of attorney's fees.

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D. Incentive Award.

The PAGA Representative Group Counsel will request that the Court award Plaintiff an Incentive Award in the amount of Five Thousand Dollars and Zero Cents (\$5,000.00). Defendant has agreed not to oppose such request. However, if the Court awards a lesser amount to Plaintiff as an incentive award, it shall not affect the terms of the Parties' Settlement, and any portion of the requested Incentive Award not approved shall become part of the Net Settlement Amount. Under no circumstances shall Defendant pay more than the Gross Settlement Amount under this Agreement. The Settlement Administrator shall issue Plaintiff an IRS Form 1099 for the Incentive Award.

E. Settlement Administration Costs.

All costs of administering the Settlement, including, but not limited to, the duties provided in this Section E below (“Settlement Administration Costs”), shall be paid to the Settlement Administrator out of the Gross Settlement Amount as provided in this Agreement. Settlement Administration Costs shall not exceed Six Thousand Five Hundred Dollars and No Cents (\$6,500.00). In the event the Settlement Administration Costs exceed \$6,500.00, any additional amounts shall be paid from the Gross Settlement Amount. Defendant’s total obligation under this Settlement shall not exceed the Gross Settlement Amount, including the Settlement Administrator’s fees.

The Settlement Administrator shall be solely responsible for: (1) Preparing, printing and disseminating to PAGA Members the PAGA Payment Letter; (2) Determining and distributing the PAGA Representative Group Penalty Payment to each PAGA Member; (3) Preparing and mailing, in accordance with this Agreement and the Final Order of the Court, PAGA Representative Group Counsel’s attorney’s fees and costs, PAGA Representative Group Penalty Payments, Plaintiff’s Incentive Award and the LWDA Penalty Payment; (4) Ascertaining current address and addressee information for each PAGA Payment Letter returned as undeliverable and re-mailing the PAGA Payment Letter where appropriate and, as necessary, utilizing the National Change of Address Database maintained by the U.S. Postal Service and undertaking customary skip-tracing measures to confirm and/or determine proper addresses; (5) Performing all tax reporting duties required by federal, state, and/or local law pertaining to the Settlement Administrator’s duties (e.g., 1099s, etc.); (6) Apprising PAGA Representative Group Counsel and Defense Counsel of the activities of the Settlement Administrator; (7) Maintaining adequate records of its activities, including the dates of each mailing of PAGA Payment Letters, returned mail and other communications and attempted written or electronic communications with PAGA Members; (8) Confirming with PAGA Representative Group Counsel and Defense Counsel, in writing, its completion of the administration of the Settlement; and (9) Such other tasks as the Parties mutually agree.

F. Payment of PAGA Penalties.

Pursuant to PAGA, seventy-five percent (75%) of the Net Settlement Amount shall be distributed to the LWDA (“LWDA Penalty Payment”) and the remaining twenty-five percent (25%) shall be distributed to the PAGA Members (“PAGA Representative Group Penalty Payment”).

All PAGA Members shall be paid their PAGA Representative Group Penalty Payment. PAGA Representative Group Penalty Payment amounts shall be based on a formula taking into account the number of each PAGA Member’s Compensable Pay Periods. Based on data supplied by Defendant and Defense Counsel and reviewed by Plaintiff’s counsel, the majority of the alleged violations occurred during only one pay period. As such, the amount paid to each PAGA Member will be determined as follows: the portion of the Net Settlement Amount to be paid to PAGA Members will be divided evenly by the total number of PAGA Members who were employed during the PAGA Period. With the exception of Plaintiff, PAGA Members are not

eligible to receive any compensation other than the PAGA Representative Group Penalty Payment from this Settlement.

The PAGA Representative Group Penalty Payments are civil penalties, shall be reported on an IRS Form 1099 (to the extent required by law), and will not be subject to local, state, or federal tax withholdings. Each PAGA Member will be responsible for paying all applicable local, state, and federal income taxes on all amounts received pursuant to this Settlement, and they shall not seek any indemnification from the Released Parties in this regard. The PAGA Representative Group Penalty Payments are not being made for any other purpose and will not be construed as compensation for purposes of determining eligibility for any health and welfare benefits or unemployment compensation.

G. Release of Claims.

Upon the payment of the Gross Settlement Amount to the Settlement Administrator by Defendant, Plaintiff and the State of California, on behalf of all PAGA Members, will fully release and discharge Defendant and other Released Parties from any and all claims for civil penalties under PAGA that were or could have been recovered based on the facts alleged in the Amended PAGA Notice to the LWDA and included in the Action from May 26, 2020 through the Effective Date (collectively, “Released Claims”). The Released Claims include all claims that were or could have been alleged in the Amended PAGA Notice to the LWDA and included in the Action for civil penalties under PAGA for California Labor Code violations, including: (1) Failure to pay all minimum wages (Labor Code §§ 1194, 1197, 1197.1, 1198, and 1199); (2) Failure to pay all overtime wages (Labor Code §§ 510, 558, 1194 and 1198; § 3 of the Wage Orders); (3) Failure to provide compliant meal periods (Labor Code §§ 226.7, 512 and 1198; § 11 of the Wage Orders); (4) Failure to authorize and permit compliant rest periods (Labor Code §§ 226.7 and 1198; § 12 of the Wage Orders); (5) Failure to provide at least one day’s rest in seven (Labor Code § 551); (6) Failure to issue accurate and complete itemized wage statements and hours statements (Labor Code § 226 and 1174); (7) Failure to maintain complete and accurate payroll records (Labor Code § 1174; § 7 of the Wage Orders); (8) Failure to provide required information upon hire (Labor Code § 2810.5); (9) Failure to timely pay wages during employment (Labor Code §§ 204 and 210); (10) Failure to pay final wages (Labor Code §§ 201-203); (11) Failure to reimburse business expenses (Labor Code §§ 2800, 2802 and 2804); (12) Failure to pay accrued sick pay (Labor Code § 246); (13) Failure to pay accrued vacation pay (Labor Code § 227.3); (14) Requirement that employee agree in writing to multiple terms and conditions prohibited by law as a condition of employment (Labor Code § 432.5); (15) Failure to provide suitable seating (§ 14 of the Wage Orders); (16) Failure to provide personnel records (Labor Code §§ 226, 432 and 1198.5); (17) Failure to pay wages as required by statute or contract (Labor Code § 223); (18) Failure to keep and provide accurate records (Labor Code §§ 226, 1174); (19) Willful misclassification (Lab. Code §226.8); (20) Failure to Provide Commission Agreements (Labor Code § 2751) and (21) all claims for attorneys’ fees and expenses and interest. The Released Claims do not include any claims that cannot be released as a matter of law.

H. Binding Effect of Settlement.

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This Settlement shall be enforceable, binding upon and inure to the benefit of the respective Parties, their respective legal successors, heirs, administrators, executors, assigns and each of them. Upon the Court's approval, all PAGA Members will be bound by the terms and conditions of this Agreement, the Final Order, the Judgment, and the releases provided herein. The Judgment is intended to have res judicata effect with respect to the Released Claims.

I. Settlement Termination.

1. Grounds for Settlement Termination.

In accordance with the procedures specified herein, this Agreement may be terminated solely on the following grounds: Any Party may terminate the Agreement if the Court declines to enter the Final Order or Judgment in substantially the form submitted by the Parties (incidental or minor changes to the PAGA Payment Letter ordered by the Court are not grounds for termination), or the Settlement as agreed does not become final for any other reason. The terminating Party shall give written notice to the other Party no later than ten (10) business days after the Court acts. The recovery of attorney's fees and costs by PAGA Representative Group Counsel are terms of this Agreement, but the allowance or disallowance by the Court of an award of attorney's fees and/or costs shall not be grounds for terminating this Settlement.

2. Effect of Settlement Termination.

Valid termination shall have the following effects: (a) The Settlement Agreement shall be terminated and shall have no force or effect, and no Party shall be bound by any of its terms, except as otherwise provided herein; (b) The Final Order and Judgment shall be vacated; (c) The Settlement Agreement and all negotiations, statements and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in the Action prior to the Settlement; (d) This Settlement Agreement, any filings in furtherance of the Settlement and the data shared for settlement purposes shall not be admissible or offered into evidence in the Action or any other action for any purpose whatsoever; and (e) Defendant shall have no obligation to pay any amounts set forth in this Agreement.

J. Funding of Settlement.

Within fifteen (15) business days of the Effective Date, Defendant shall deposit the Gross Settlement Amount into an interest-bearing account established by the Settlement Administrator, which is to be held in escrow for the purpose of effectuating this Settlement. The Parties agree to treat this account as a "Qualified Settlement Fund" ("QSF") pursuant to section 468(13) of the Internal Revenue Code of 1986, as amended. All interest earned on the account opened by the Settlement Administrator shall inure to the benefit of the LWDA and the PAGA Representative Group.

Defendant's monetary obligation under this Agreement is limited to the Gross Settlement Amount. Defendant may not be called upon or required to contribute additional monies above the Gross Settlement Amount under any circumstances. If this Agreement is cancelled, rescinded, terminated, voided, or nullified, or the Settlement of the Action is barred by operation

of law, or invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendant will cease to have any obligation to pay any portion of the Gross Settlement Amount to anyone under the terms of this Agreement and all previous disbursements from the Gross Settlement Amount will be immediately paid back to Defendant by the person or entity who received such disbursement, except for the Settlement Administration Costs.

K. Payment Procedure.

This shall be an all-in Settlement without a reversion. PAGA Members will be automatically paid without submitting any claim form.

1. PAGA Representative Group Counsel will advise Defense Counsel and the Settlement Administrator as to the amount of attorney's fees and litigation costs payments awarded by the Court.

2. Within fifteen (15) business days of the Effective Date, Defendant will provide the Settlement Administrator with confidential "PAGA Representative Group Member Data" containing the following for each PAGA Member, to the extent Defendant has such information: (1) full legal name; (2) social security number; (3) last known address; and (4) telephone number and/or e-mail address, if available. The Parties agree that the PAGA Representative Group Member Data shall be treated and maintained as confidential. Promptly upon receipt of the PAGA Representative Group Member Data, the Settlement Administrator shall obtain updated forwarding addresses from the U.S. Postal Service.

3. Within five (5) business days after receipt of the PAGA Representative Group Member Data, the Settlement Administrator shall provide to the Parties a written statement of how the Gross Settlement Amount will be allocated. The allocation shall include attorney's fees and litigation costs of PAGA Representative Group Counsel as awarded by the Court, the Incentive Award to Plaintiff, the Settlement Administration Costs, the LWDA Penalty Payment, and the total of all payments to be paid to all eligible PAGA Members.

4. Within fifteen (15) business days after the funding of the Gross Settlement Amount, the Settlement Administrator shall issue to each qualifying PAGA Member a check in the amount of his or her PAGA Representative Group Penalty Payment with the PAGA Payment Letter via first-class mail using the updated address information. With respect to each PAGA Payment Letter and PAGA Representative Group Penalty Payment which is returned as undeliverable, the Settlement Administrator shall within ten (10) days attempt to determine a correct address by conducting a skip-trace to locate the PAGA Members and shall re-send the PAGA Payment Letter with the PAGA Representative Group Penalty Payment via first-class mail to any new address thereby determined. Checks not negotiated within one hundred and eighty (180) calendar days from their issue are void, but this Agreement and the release herein will nonetheless be binding as if they had cashed the checks. Any unclaimed funds in the Settlement Administrator's account as a result of the failure to timely cash PAGA Representative Group Penalty Payment checks, plus any interest that has accrued thereon, will be distributed to the California State Controller's Unclaimed Property Fund in the name of the PAGA Member.

5. Within fifteen (15) business days after the funding of the Gross Settlement Amount, the Settlement Administrator shall distribute the PAGA Representative Group Counsel's attorney's fees and litigation costs.

6. Within fifteen (15) business days after the funding of the Gross Settlement Amount, the Settlement Administrator shall pay the LWDA Penalty Payment to the LWDA.

7. Within fifteen (15) business days after the funding of the Gross Settlement Amount, the Settlement Administrator shall pay itself the Court approved Settlement Administration Costs.

L. No Admission.

By agreeing to this Settlement, Defendant denies that it has engaged in any unlawful activity, that it failed to comply with the law in any respect, that it has any liability to anyone based on the claims asserted in the Action, and but for this Settlement, Defendant denies that Plaintiff could proceed on her claims on a representative basis. This Agreement is entered into solely for the purposes of comprising highly-disputed claims. Nothing in this Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendant. This Settlement Agreement is a settlement document and shall, pursuant to California Evidence Code Section 1152 and/or Federal Rule of Evidence 408 and/or any other similar law, be inadmissible as evidence against the Released Parties in any proceeding, except upon an action to approve the Settlement and/or interpret or enforce the Settlement Agreement.

M. Publicity.

Plaintiff and PAGA Representative Group Counsel shall not issue a press release or otherwise notify the media or the public about the terms of the Settlement or advertise or market any of the terms of the Settlement through written, recorded or electronic communications. Plaintiff and PAGA Representative Group Counsel further agree that if contacted in writing regarding this case, they will state only that the lawsuit exists and has been resolved. This provision does not prevent PAGA Representative Group Counsel from communicating with PAGA Members and/or taking any step necessary to obtain approval of the Settlement.

N. Interim Stay of Proceedings.

Pending completion of the settlement process, the Parties agree to a stay of all proceedings in the Action except such as are necessary to implement the Settlement itself.

O. Notices

All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing and, except as provided elsewhere in this Agreement or in any communication to PAGA Members, shall be delivered personally or via postage prepaid first-class mail as follows:

If to Plaintiff or PAGA Representative Group Counsel, then to:

Dean Ho, Esq.
Optimum Employment Lawyers, PC
7545 Irvine Center Drive, Suite 200
Irvine, CA 92618
(949) 954-8181

If to Defendant or Defense Counsel, then to:

Mark Iezza, Esq.
Iezza & Hockel, PC
7200 Redwood Blvd., Ste 402
Novato, CA 94945
(415) 895-6332

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P. Retention of Jurisdiction by the Court.

Following entry of the Final Order and Judgment pursuant to this Settlement Agreement, the Court shall retain jurisdiction for the purpose of addressing any issues which may arise with respect to settlement administration or the enforcement of the terms of this Settlement Agreement.

Q. Entire Agreement.

This Settlement Agreement, including the attached Exhibit A, sets forth the entire agreement of the Parties with respect to Plaintiff's PAGA claim and supersedes any and all other prior agreements and all negotiations leading up to the execution of this Settlement Agreement with respect to Plaintiff's PAGA claim, whether oral or written, regarding the subjects covered herein. With respect to Plaintiff's PAGA claim, the Parties acknowledge that no representations, inducements, promises or statements relating to the subjects covered herein, oral or otherwise, have been made by any of the Parties or by anyone acting on behalf of the Parties which are not embodied or incorporated by reference herein, and further agree that no other agreement, covenant, representation, inducement, promise or statement relating to the subjects covered herein not set forth in writing in this Settlement Agreement have been made. The Parties shall execute a separate settlement agreement regarding Plaintiff's individual claims in the Action.

R. Reasonable Cooperation.

The Parties shall support the Settlement and its approval by the Court. The Parties shall provide reasonable cooperation with one another and the Settlement Administrator in implementing this Settlement, including but not limited to providing information and executing documents necessary to effectuating its purpose.

S. Tax Treatment.

The Parties make no representations as to the tax treatment or legal effect of the payments specified in this Agreement and PAGA Members are not relying on any statement or representation by the Parties, the PAGA Representative Group Counsel or Defense Counsel in this regard. PAGA Members will be responsible for the payment of all taxes and penalties assessed on the payments specified herein and shall hold the Parties, the PAGA Representative Group Counsel and Defense Counsel free and harmless and against any claims resulting from treatment of such payments as non-taxable including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes.

T. Circular 230 Disclaimer.

The Parties acknowledge and agree: (1) no provision of this Settlement and no written communication or disclosure between or among the Parties, the PAGA Representative Group Counsel or Defense Counsel and other advisors is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Settlement, (b) has not entered this Settlement based on the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or advisor to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement.

U. Fair, Adequate and Reasonable Settlement.

The PAGA Representative Group Counsel submits that this Settlement is fair, adequate and reasonable settlement of the Action, and that the Parties have arrived at this Settlement after extensive arm's-length negotiations, taking into account all relevant factors, present and potential.

V. Miscellaneous.

1. Modification or Amendment of Settlement.

This Settlement Agreement may not be modified, amended or altered except in a writing signed by each Party whose rights or obligations hereunder would be affected thereby or by that Party's authorized legal representative, or as ordered by the Court.

2. Choice of Law.

This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

3. Construction.

This Settlement Agreement is entered into freely and voluntarily without duress or undue pressure or influence of any kind or nature whatsoever and neither Plaintiff, nor the PAGA Members, nor Defendant has relied on any promises, representations or warranties regarding the subject matter hereof other than as set forth in this Agreement. Each Party has been represented by counsel in the settlement negotiations leading up to, and in connection with the preparation and execution of, this Settlement Agreement. The headings in this Agreement are included for convenience only and shall not be given weight in its construction.

The Parties acknowledge and agree that all Parties had an equal hand in drafting this Settlement Agreement so that it shall not be deemed to have been prepared or drafted by one Party or another. All Parties waive the provisions of California Civil Code section 1654, which provides, in pertinent part, that “the language of a contract should be interpreted most strongly against the Party who caused the uncertainty to exist.”

4. Execution in Counterparts.

This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Any signature to this Agreement transmitted by digital signature and/or facsimile and any copies of any signatures are valid and binding.

5. Authority.

The individuals signing this Settlement Agreement represent and warrant that they are duly authorized to do so. The Parties likewise represent and warrant that they have the authority to execute this Settlement Agreement and to take all appropriate action required and permitted to be taken by this Settlement Agreement, except such action that is the prerogative of the Court.

6. No Prior Assignment.

The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

7. Invalidity of Any Provision.

Before declaring any term or provision of this Settlement invalid, the Parties request that the Court first attempt to construe the terms or provisions as valid to the fullest extent possible

consistent with applicable precedents so as to define all provisions of this Settlement and valid and enforceable.

W. Binding Nature of Notice of PAGA Settlement and PAGA Payment Letter.

The Parties agree that because the PAGA Members are so numerous, it is impossible or impractical to have each PAGA Member execute this Settlement Agreement. The PAGA Payment Letter shall advise all PAGA Members of the binding nature of the Settlement and the release of the Released Claims and shall have the same force and effect as if this Settlement Agreement were executed by each PAGA Member.

NOW, IN WITNESS WHEREOF, this Settlement Agreement, consisting of fifteen (15) pages, has been duly executed by and on behalf of the Parties as of the date first written above.

Dated: May, 2024

Chris Cope
On behalf of himself and the PAGA
Members

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Dated: May, 2024

By:
Name: Michelle Zmugg, Esq.
Title: General Counsel
On behalf of Defendant SpotOn
Transact, LLC

Deleted: February

Approved as to form and content.

OPTIMUM EMPLOYMENT LAWYERS, PC

Date: _____, 2024

Dean Ho, Esq.
Stephanie Banks, Esq.
Attorneys for Plaintiff Chris Cope

IEZZA & HOCKEL, PC

Date: _____, 2024

Mark Iezza, Esq.
Thomas Hockel, Esq.
Attorneys for Defendant SpotOn Transact, LLC

Exhibit A

<<Mailing Date>>

To: <<First Name>><<Last Name>>
<<Street Address>>
<<City>> <<State>> <<Zip>>

Re: Settlement Payment from *Chris Cope vs. SpotOn Transact, LLC et al.* Riverside County Superior Court, Case No. CVRI2200050.

Dear <<First Name>><<Last Name>>:

Please find enclosed a check in the amount of <<amount of payment>> ("Individual Settlement Share"). This check is your payment from the settlement in the lawsuit entitled *Chris Cope vs. SpotOn Transact, LLC et al.* Riverside County Superior Court, Case No. CVRI2200050 ("Action").

The lawsuit was filed by Chris Cope ("Plaintiff") against his former employer, SpotOn Transact, LLC ("SpotOn" or "Defendant") on behalf of the State of California, with respect to himself and other alleged aggrieved employees, to seek recovery of civil penalties pursuant to the Private Attorneys' General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA"), for multiple alleged violations of the California Labor Code and Industrial Welfare Commission Wage Orders, including, *inter alia*, for failure to keep and provide accurate itemized wage statements, willful misclassification, failure to reimburse business expenses, failure to provide personnel records, failure to provide meal and rest breaks during training, failure to pay all compensation due upon separation, and unfair business practices.

Defendant denies these allegations. Defendant denies that any of its employees were misclassified or improperly paid in any way, and denies any wrongdoing of any kind associated with these allegations. Defendant is resolving the Action to avoid the uncertainties and costs of litigation.

A settlement was reached between Plaintiff and Defendant SpotOn Transact, LLC.

On <<Date>>, the settlement was approved by the Court, with a portion to be paid to the State of California Labor and Workforce Development Agency and a portion to be paid to (1) all Account Executives / Salespersons who worked for Defendant in California from May 26, 2020 through <<Date>> (collectively, the "Aggrieved Employees"). The period of May 26, 2020 through <<Date>> is the "PAGA Period."

You are receiving a portion of the settlement (the enclosed Individual Settlement Share) because you have been identified as an Aggrieved Employee. Your Individual Settlement Share is based on an even split between all Aggrieved Employees working in California during the PAGA Period. The Individual Settlement Share is considered to be 100% penalties, which will be reported on an IRS Form 1099. You are responsible for paying any and all taxes that may be due as a result of any payment issued to you under the settlement, and should consult a tax advisor regarding the tax consequences of such payment.

Under the settlement, as of <<Effective Date>>, the Released Parties are fully released and forever discharged from any and all Released Claims.

"Released Parties" means Defendant and any past, present, and future parent, subsidiary, affiliate, predecessor or successor, and all past, present and future agents, employees, officers, directors and attorneys thereof.

"Released Claims" means any and all claims for civil penalties under PAGA that were or could have been recovered based on the facts alleged in the [Amended PAGA Notice to the LWDA and included in the Action](#) from May 26, 2020 through <<Effective Date>>. The Released Claims include all claims [that were or could have been alleged in the Amended PAGA Notice to the LWDA and included in the Action](#) for civil penalties under PAGA for all California Labor Code violations, including: (1) Failure to pay all minimum wages (Labor Code §§ 1194, 1197, 1197.1, 1198, and 1199); (2) Failure to pay all overtime wages (Labor Code §§ 510, 558, 1194 and 1198; § 3 of the Wage Orders); (3) Failure to provide compliant meal periods (Labor Code §§ 226.7, 512 and 1198; § 11 of the Wage Orders); (4) Failure to authorize and permit compliant rest periods (Labor Code §§ 226.7 and 1198; § 12 of the Wage Orders); (5) Failure to provide at least one day's rest in seven (Labor Code

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§ 551); (6) Failure to issue accurate and complete itemized wage statements and hours statements (Labor Code § 226 and 1174); (7) Failure to maintain complete and accurate payroll records (Labor Code § 1174; § 7 of the Wage Orders); (8) Failure to provide required information upon hire (Labor Code § 2810.5); (9) Failure to timely pay wages during employment (Labor Code §§ 204 and 210); (10) Failure to pay final wages (Labor Code §§ 201-203); (11) Failure to reimburse business expenses (Labor Code §§ 2800, 2802 and 2804); (12) Failure to pay accrued sick pay (Labor Code § 246); (13) Failure to pay accrued vacation pay (Labor Code § 227.3); (14) Requirement that employee agree in writing to multiple terms and conditions prohibited by law as a condition of employment (Labor Code § 432.5); (15) Failure to provide suitable seating (§ 14 of the Wage Orders); (16) Failure to provide personnel records (Labor Code §§ 226, 432 and 1198.5); (17) Failure to pay wages as required by statute or contract (Labor Code § 223); (18) Failure to keep and provide accurate records (Labor Code §§ 226, 1174); (19) Willful misclassification (Lab. Code § 226.8); (20) Failure to Provide Commission Agreements (Labor Code § 2751) and (21) all claims for attorneys' fees and expenses and interest. The Released Claims do not include any claims that cannot be released as a matter of law.

The enclosed check is valid for 180 days from the original date of issuance and mailing, and if it is not cashed, deposited, or otherwise negotiated within the 180-day timeframe, it will be cancelled, and the funds associated with the cancelled check will be transmitted to the State Controller's Office Unclaimed Property Division in your name and in the amount of your respective Individual Settlement Share.

Do not call or write the Court, Office of the Clerk of the Court, Defendant, Defendant's counsel, or Plaintiff's counsel to ask questions about the settlement or to ask tax-related questions. If you have any such questions, you may contact Phoenix at [toll-free phone number].

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