

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.

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

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

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