

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 CAROLINE TAHMASSIAN (SBN 285680)
caroline@spivaklaw.com
3 THE SPIVAK LAW FIRM
4 8605 Santa Monica Bl
PMB 42554
5 West Hollywood, CA 90069
Telephone: (213) 725-9094
6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiff(s),
8 MCKENNA MCKENZIE, and all others similarly situated
(Additional attorneys for Plaintiff(s) on following page)

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF CONTRA COSTA**
12 **(UNLIMITED JURISDICTION)**

13 MCKENNA MCKENZIE, on behalf of herself,
14 all others similarly situated, the general public,
and as an “aggrieved employee” on behalf of
15 other “aggrieved employees” under the Labor
Code Private Attorneys General Act of 2004,

16 *Plaintiff(s),*

17 vs.

18 RED DOOR ESCAPE ROOM, LLC, a
19 California limited liability company;
20 KINGSMEN ESCAPE ENTERTAINMENT
LLC, a California limited liability company;
21 KYLE MALOY, a natural person; and DOES 1–
22 50, inclusive,

23 *Defendant(s).*
24
25
26
27
28

Case No. CIVMSC21-01753

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

Hearing Date: TBD
Hearing Time: TBD
Hearing Dept.: 39, The Honorable
Edward G. Weil

Action filed: August 27, 2021



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
 walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave
Suite 301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	vi
I. INTRODUCTION	1
II. BACKGROUND	1
A. The Claims and Procedural History	2
B. Discovery and Investigation	2
C. Mediation	3
D. Defendants' Financial Condition.....	3
III. OVERVIEW OF THE SETTLEMENT	3
A. Settlement Class Definition.....	3
B. Monetary Terms	4
C. Timing of Payments	4
D. Calculation of Settlement Shares.....	5
E. Apportionment of Settlement Shares.....	5
F. The Releases	5
G. Notice and Claims Process and Procedures.....	7
1. Class Member Disputes	8
2. Opting Out	8
3. Objecting	9
H. Uncashed Checks.....	9
IV. CERTIFICATION OF THE CLASS IS APPROPRIATE	9
A. The Settlement Class Is Objectively Ascertainable.....	9
B. The Membership of the Settlement Class Is Sufficiently Numerous	10
C. Class Members Share a Well-Defined Community of Interest	10
D. Plaintiff Is Typical of the Settlement Class	11



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1	E. Plaintiff Will Adequately Represent the Settlement Class.....	11
2	F. Class Action Treatment Is the Superior Means For Resolving The Claims Of The	
3	Class Members	12
4	V. INTRODUCTION THE COURT SHOULD GRANT PRELIMINARY APPROVAL	
	BECAUSE THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE	13
5	A. Legal Standard.....	13
6	B. The Settlement Is Presumptively Fair	13
7	C. The Settlement Satisfies the <i>Kullar</i> Factors for Approval	15
8	1. Evaluation of Plaintiff’s Case.....	15
9	a. Risks Associated with Defendants’ Financial Condition	15
10	b. Risks Associated with the Unpaid Wages Claim	16
11	c. Risks Associated with the Meal Period Claims.....	17
12	d. Risks Associated with the Rest Break Claims.....	17
13	e. Risks Associated with the Statutory “Wage Statement” Penalty Claims.....	18
14	f. Risks Associated with The Waiting Time Penalties Claim.....	18
15	g. Risks Associated With the PAGA Claim	18
16	h. Risks Associated With A Pick-Up Stix Campaign.....	19
17	2. Allocation of the PAGA Payment	19
18	3. Presence of Governmental Participant	20
19	4. Reaction of Class Members to Proposed Settlement.....	20
20	VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY COMPENSATE	
21	CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS MEMBER BASED ON	
22	THE POTENTIAL EXTENT OF HIS OR HER INJURY COMPARED TO OTHER	
23	CLASS MEMBERS	21
24	VII. ALLOCATION FOR CLASS COUNSEL’S FEE AWARD AND ATTORNEYS’ FEES	
25	AND COSTS AWARD FOR LITIGATION EXPENSES IS APPROPRIATE	21
26	VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENT TO PLAINTIFF SHOULD	
27	BE PRELIMINARILY APPROVED BECAUSE IT IS FAIR, ADEQUATE, AND	
28	REASONABLE	22



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1	IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE	
2	PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE, AND	
3	REASONABLE	23
4	X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN SHOULD	
5	BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO GIVE ACTUAL	
6	NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO EXERCISE THEIR	
7	RIGHTS	23
8	XI. CONCLUSION	24



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

TABLE OF AUTHORITIES

Cases

<i>Arenas v. El Torito Rests., Inc.</i> , (2010) 183 Cal. App. 4th 723	10
<i>Bell v. Farmers Ins. Exchange</i> (2004) 115 Cal.App.4th 715	22
<i>Bernstein v. Virgin Am., Inc</i> (N.D. Cal. 2019) 2019 U.S. Dist. LEXIS 13253	14
<i>Bowles v. Superior Court</i> (1955) 44 Cal.2d 574.....	10
<i>Bravo v. Gale Triangle, Inc.</i> (C.D. Cal. Feb 16, 2017) 2017 WL 708766	14
<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004	17
<i>Capitol People First v. Dept. of Developmental Servs.</i> (2007) 155 Cal. App. 4th 676.....	10
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504.....	15, 20
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	23
<i>Chindarah v. Pick Up Stix, Inc.</i> (2009) 171 Cal.App.4th 796	19
<i>Chu v. Wells Fargo Investments, LLC</i> (N.D. Cal. Feb. 16, 2011) 2011 WL 67245	20
<i>Classen v. Weller</i> (1983) 145 Cal.App.3d 27	11
<i>Comcast Corporation v. Behrend</i> (2013) 133 S.Ct. 1426	18
<i>Daar v. Yellow Cab Co.</i> (1967) 67 Cal.2d 695.....	10



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1	<i>Dunk v. Ford Motor Co.</i>	
2	(1996) 48 Cal.App.4th 1794	9, 13
3	<i>Duran v. U.S. Bank National Assn</i>	
4	(2014) 59 Cal. 4th 1	16, 17
5	<i>Franco v. Ruiz Food Prods., Inc</i>	
6	(E.D. Cal. Nov. 27, 2012) 2012 WL 5941801	20
7	<i>Garcia v. Gordon Trucking</i>	
8	(E.D. Cal. Oct. 31, 2012) 2012 WL 5364575	20
9	<i>Hebbard v. Colgrove</i>	
10	(1972) 28 Cal.App.3d 1017	10
11	<i>Hicks v. Toys ‘R’ Us–Delaware, Inc.</i>	
12	(C.D. Cal. Sept. 2, 2014) 2014 WL 4703915	20
13	<i>Hopson v. Hanesbrands Inc.</i>	
14	(N.D. Cal. Aug. 8, 2008) 2008 WL 3385452	20
15	<i>Hopson v. Hanesbrands Inc.</i>	
16	(N.D. Cal. Apr. 3, 2009) 2009 WL 928133	20
17	<i>Hypolite v. Carlson</i>	
18	(1975) 52 Cal.App.3d 566	9
19	<i>In re Activision</i>	
20	(N.D. Cal. 1989) 723 F.Supp. 1373	21
21	<i>In re Ampicillin Antitrust Litig.</i>	
22	(D.D.C. 1981) 526 F.Supp. 494	21
23	<i>In re Newbridge Networks Sec. Litig.</i>	
24	(D.D.C. Oct. 23, 1998) 1998 WL 765724	14
25	<i>In re Omnivision Techs., Inc.</i>	
26	(N.D. Cal. 2008) 559 F.Supp.2d 1036	14
27	<i>In re Pacific Enterprises</i>	
28	(9th Cir. 1995) 47 F.3d 373	21
	<i>Jong v. Kaiser Foundation Hospital</i>	
	(2012) 226 Cal.App.4th 391	16
	///	



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1	<i>Ketchum v. Moses</i>	
2	(2001) 24 Cal. 4th 1122.....	21
3	<i>Kullar v. Foot Locker Retail, Inc.</i>	
4	(2008) 168 Cal.App.4th 116	13, 15
5	<i>Laffitte v. Robert Half Intl, Inc.</i>	
6	(2016) 1 Cal. 5th 480	21
7	<i>Laguna v. Coverall N. Am., Inc.</i>	
8	(9th Cir. 2014) 2014 U.S. App. LEXIS 10259	16,18
9	<i>Lazarin v. Pro Unlimited, Inc.</i>	
10	(N.D. Cal. July 11, 2013) 2013 WL 3541217	20
11	<i>Lealao v. Beneficial Cal., Inc.</i>	
12	(2000) 82 Cal. App. 4th 19	21
13	<i>Magadia v. Wal-Mart Assocs.</i>	
14	(N.D. Cal. 2019) 384 F. Supp. 3d. 1058.....	14
15	<i>McGhee v. Bank of America</i>	
16	(1976) 60 Cal.App.3d 442	11
17	<i>Nordstrom Com. Cases</i>	
18	(2010) 186 Cal.App.4 th 576	20
19	<i>Richmond v. Dart Industries, Inc.</i>	
20	(1981) 29 Cal.3d 462	9
21	<i>Rose v. City of Hayward</i>	
22	(1981) 126 Cal.App.3d 926	9
23	<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
24	(2004) 34 Cal. 4th 319.....	10
25	<i>Spann v. J.C. Penney Corp.</i>	
26	(C.D. Cal. 2016) 211 F.Supp.3d 1244.....	16, 19
27	<i>Thurman v. Bayshore Transit Management, Inc.</i>	
28	(2012) 203 Cal.App.4th 1112	18
	<i>Torrissi v. Tucson Elec. Power Co.</i>	
	(9th Cir. 1993) 8 F.3d 1370	15, 16, 19

///

1	<i>Troester v. Starbucks Corp.</i>	
2	(2018) 5 Cal.5th 829	16
3	<i>Trotsky v. Los Angeles Fed. Sav. & Loan Assn.</i>	
4	(1975) 48 Cal.App.3d 134	23
5	<i>Tyson Foods, Inc. v. Bouphakeo</i>	
6	(2015) 136 S.Ct. 382	18
7	<i>Van Vranken v. Atlantic Richfield Co.</i>	
8	(N.D.Cal. 1995) 901 F.Supp. 294	22
9	<i>Washington Mut. Bank, FA v. Superior Court</i>	
10	(2001) 248 Cal.4th 906	10
11	<i>Washington v. Joe's Crab Shack</i>	
12	(N.D. Cal. 2010) 271 F.R.D. 629	17
13	<i>Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.</i>	
14	(E.D. Cal. Aug. 21, 2019) 2019 WL 3943859	14
15	Statutes	
16	Bus. & Prof. Code, section 17200 et seq	2, 11
17	Civ. Code., section 1542	6
18	Code Civ. Proc., section 382	1, 9, 12
19	Code Civ. Proc., section 384	9
20	Lab. Code, section 201	2, 18
21	Lab. Code, section 202	2, 18
22	Lab. Code, section 203	2, 18
23	Lab. Code, section 218.5	22
24	Lab. Code, section 218.6	22
25	Lab. Code, section 221	2
26	Lab. Code, section 226	2, 14, 28
27	Lab. Code, section 226.2	2
28		



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1		
2	Lab. Code, section 226.7	2
3	Lab. Code, section 510	2
4	Lab. Code, section 512	2
5	Lab. Code, section 1194	2
6	Lab. Code, section 1197	2
7	Lab. Code, section 1198	2
8	Lab. Code, section 2698	2
9	Lab. Code, section 2699	14, 18, 20
10		
11	Rules	
12	California Rules of Court, Rule 3.766.....	20
13	California Rules of Court, Rule 3.769.....	20
14	Other	
15	<i>Alba Conte & Herbert B. Newberg</i> , Newberg on Class Actions § 3:29	11
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

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

3 **I. INTRODUCTION**

4 Plaintiff McKenna McKenzie (“Plaintiff”) submits this memorandum of points and
5 authorities in support of her unopposed motion for preliminary approval of the Class Action and
6 PAGA Settlement Agreement (the “Settlement”)², which provides for a Gross Settlement Amount
7 (“GSA”) of \$395,000.00 in compromise of all disputed claims against Defendants Red Door
8 Escape Room, LLC, Kingsmen Escape Entertainment LLC, and Kyle Maloy (collectively
9 “Defendants”) which includes all non-exempt employees working at any of the five businesses in
10 California branded as Red Door Escape Room during the Class Period. Through this Motion,
11 Plaintiff respectfully requests for this Court to (1) provisionally certify the below-defined Class
12 for settlement purposes only under Code of Civil Procedure § 382; (2) preliminarily approve the
13 Settlement; (3) preliminarily appoint Plaintiff as Class Representative; (4) appoint David Spivak
14 of The Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel;
15 (5) approve the proposed notice procedures and related forms; and (6) schedule a final approval
16 hearing.

17 This Court should grant Plaintiff’s motion because: (1) for settlement purposes, the
18 Settlement Class meets the requirements for class certification under Code of Civil Procedure §
19 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness,
20 reasonableness, and adequacy; (3) for settlement purposes, Plaintiff is adequate to serve as Class
21 Representative; (4) Plaintiff’s attorneys are adequate to serve as Class Counsel; (5) the proposed
22 notice procedures, and related forms, fully comport with due process and adequately apprise Class
23 Members of their rights; and (6) a final approval hearing must be scheduled to allow Settlement
24 Class members an opportunity to be heard regarding the Settlement and to give it finality.
25 Accordingly, for the reasons detailed below, this Court should grant Plaintiff’s Motion in its
26 entirety and preliminarily approve the Settlement.

27 **II. BACKGROUND**

28 Defendants operate and create escape room games. DS, ¶ 4. Defendants employed
Plaintiff as a front desk attendant, team lead, game master, and manager-on-duty from about May
11, 2019 until June 18, 2021. *Id.*

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



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

A. The Claims and Procedural History

On August 02, 2021, Plaintiff notified Defendants and the California Labor and Workforce Development Agency (“LWDA”), pursuant to the California Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”), of alleged Labor Code violations committed by Defendants. DS, ¶ 5, Ex. 2.

On August 27, 2021, Plaintiff filed a Class Action Complaint in the Contra Costa County Superior Court, Case No. CIVMSC21-01753, against Defendants on behalf of herself and others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide Meal Periods (Lab. Code §§226.7, 512 and 1198); (4) Unlawful Deductions (Lab. Code § 221); (5) Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time Penalties (Lab. Code §§ 201-203); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*). DS, ¶ 6, Ex. 3. On October 28, 2021, Plaintiff filed her First Amended Complaint adding a claim under PAGA. DS, ¶ 6, Ex. 4. On December 13, 2021, Defendants filed an answer to Plaintiff’s First Amended Complaint. DS, ¶ 6, Ex. 5. Defendants deny all of Plaintiff’s allegations and strongly contend that their wage and hour policies, practices and procedures are fully compliant with all applicable laws. DS, ¶ 6.

B. Discovery and Investigation

Plaintiff’s counsel investigated the claims alleged, performed legal research, and conducted formal and informal discovery prior to mediation. The Parties engaged in the *Belaire-West* notice process. DS, ¶ 7. In April 2022, Defendants responded for formal discovery requests and produced relevant documents, including Plaintiff’s entire personnel file (including policies and agreements she signed and acknowledged), copies of their relevant company written policies, sample time and payroll records for the putative class, and more detailed time and payroll data for a random sample of putative class members specifically selected by Plaintiff’s counsel. *Id.*

As part of this discovery and investigation process, Plaintiff’s counsel learned that the five California businesses operated under the “Red Door Escape Room” brand name were owned by different entities, as follows:

- Defendant Kingsmen Escape Entertainment, LLC owned the escape room business located in Concord,

- Defendant Red Door Escape Room, LLC owned the escape room business located in Sacramento, and
- Red Door Jet Fuel, LP owned the escape room businesses located in Oxnard, San Diego, and San Mateo.

Id. The Parties thereafter engaged in an informal, voluntary exchange of information including about the businesses owned by Red Door Jet Fuel, LP in the context of privileged settlement discussions to facilitate an early mediation. *Id.*

C. Mediation

On August 31, 2022, following much of the foregoing formal and informal discovery and exchange of information, the Parties participated in a mediation session presided over by Mediator Monique Ngo-Bonnici, an experienced class action mediator. During the mediation, the Parties had a full day of productive negotiations and reached agreement on a class-wide settlement subject to confirmatory discovery pertaining to the number of putative class members and pay periods at all five California Red Door Escape Room locations. During the mediation sessions, each side, represented by her/their respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and all other matters covered by this Agreement pursuant to the terms and conditions of this Settlement. DS, ¶ 8.

D. Defendants' Financial Condition

At the mediation, it became clear that that Defendants had insufficient resources to cover the full extent of potential liability. DS ¶ 9. As part of the settlement negotiations, Defendants disclosed copies of their tax returns, bank and credit card statements, and loans for the last two years. *Id.* Plaintiff's Counsel reviewed the financial records. *Id.* The information provided was sufficient to demonstrate the financial condition of the company. Based on such records, Plaintiff, on her own behalf and on behalf of the Class Members, has agreed to settle the lawsuit on the terms set forth in the Settlement. *Id.*

III. OVERVIEW OF THE SETTLEMENT

A. Settlement Class Definition

The Settlement defines the Class as all persons employed by Defendants and/or Red Door Jet Fuel, L.P. in California and classified as hourly, non-exempt employees who worked for Defendants and/or Red Door Jet Fuel, L.P. during the period of August 27, 2018 through the date of preliminary approval of this Settlement except those who are immediate family members of anyone with an ownership interest in one or more of the entities.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

B. Monetary Terms

Defendants promise to pay \$395,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval: (1) Class Representative Service Payment to the Class Representative of not more than \$10,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member); (2) A Class Counsel Fees Payment of not more than 33.33%, which is currently estimated to be \$131,666.00 and a Class Counsel Litigation Expenses Payment of not more than \$20,000.00; (3) An Administrator Expenses Payment not to exceed \$9,000.00 except for a showing of good cause and as approved by the Court; and (4) PAGA Penalties in the amount of \$4,000.00 to be paid from the Gross Settlement Amount, with 75% (\$3,000.00) allocated to the LWDA PAGA Payment and 25% (\$1,000.00) allocated to the Individual PAGA Payments. Settlement, ¶ 3. Defendants shall fully fund the Gross Settlement Amount and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator as follows: Within ten (10) calendar days of the Effective Date, Defendants shall pay the first of two \$197,500.00 installment payments on the Gross Settlement Amount into the Settlement Account and shall pay the second of the remaining \$197,500.00 installment payments within 180 calendar days of the first installment payment. Settlement, ¶ 4.3.

C. Timing of Payments

There will be multiple distributions of the Gross Settlement Amount as follows: (1) First Distribution. Within fourteen (14) calendar days of the Effective Date, or within ten (10) calendar days of the deadline for the First payment (whichever is later), the Settlement Administrator shall distribute, pro rata, the portion of the Gross Settlement Amount Defendants paid by that date, including pro rata portions of the Individual Class Payments, Individual PAGA Payments, LWDA PAGA payment, Class Representative Service Payments, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Administrator's expenses and (2) Second Distribution. Within ten (10) calendar days of the Second Installment Payment, the Settlement Administrator shall distribute, pro rata, the portion of the Gross Settlement Amount Defendants paid since the first distribution, including pro rata portions of the Individual Class Payments, Individual PAGA Payments, LWDA PAGA payment, Class Representative Service



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 Payments, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and
2 the Administrator's expenses. Settlement, ¶ 4.4.

3 **D. Calculation of Settlement Shares**

4 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by
5 the total number of Pay Periods worked by all Participating Class Members during the Class
6 Period and (b) multiplying the result by each Participating Class Member's Pay Periods. Non-
7 Participating Class Members will not receive any Individual Class Payments. The Administrator
8 will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for
9 distribution to Participating Class Members on a pro rata basis.

10 Separately, the Administrator will calculate each Individual PAGA Payment by (a)
11 dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$1,000.00 by
12 the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the
13 PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay
14 Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on
15 their Individual PAGA Payment. Settlement, ¶ 3.2.

16 **E. Apportionment of Settlement Shares**

17 33.33% of each Participating Class Member's Individual Class Payment will be allocated
18 to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax
19 withholding and will be reported on an IRS W-2 Form. The remaining 66.67% of each
20 Participating Class Member's Individual Class Payment will be allocated to settlement of claims
21 for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to
22 wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume
23 full responsibility and liability for any employee taxes owed on their Individual Class Payment.
24 Settlement, ¶ 3.2.

25 **F. The Releases**

26 "Released Parties" means: Defendants and each of their former and present directors,
27 officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns
28 subsidiaries, and affiliates. They include Red Door Corporate, LLC, and Red Door Jet Fuel, LP.
The Settlement shall cover all five California Red Door locations (Concord, Sacramento, San
Diego, Oxnard and San Mateo), and includes only claims arising at these locations (the
"California Locations"). Settlement, ¶ 1.41.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 Effective on the date when Defendants fully fund the entire Gross Settlement Amount and
2 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
3 Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as
4 follows:

5 Plaintiff's Release. Plaintiff and her respective former and present spouses,
6 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
7 and discharge Released Parties from all claims, transactions, or occurrences that occurred during
8 the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have
9 been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims
10 that were, or reasonably could have been, alleged based on facts contained in the Operative
11 Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.2,
12 below. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to
13 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
14 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
15 on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts
16 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be
17 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
18 notwithstanding such different or additional facts or Plaintiff's discovery of them. Plaintiff's
19 Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release,
20 Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section
21 1542 of the California Civil Code, which reads:

22 A general release does not extend to claims that the creditor or releasing party does not
23 know or suspect to exist in his or her favor at the time of executing the release, and that if
24 known by him or her would have materially affected his or her settlement with the debtor
25 or released party.

26 Release by Participating Class Members Who Are Not Aggrieved Employees: All
27 Participating Class Members, on behalf of themselves and their respective former and present
28 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the
Class Period facts stated in the Operative Complaint and ascertained in the course of the Action
including, failure to pay wages, failure to provide meal periods, failure to authorize and permit



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 rest periods, failure to issue proper wage statements, failure to timely pay wages, failure to
2 maintain required payroll records, and related allegations. Except as set forth in Section 6.3 of
3 this Agreement, Participating Class Members do not release any other claims, including claims
4 for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
5 unemployment insurance, disability, social security, workers' compensation, or claims based on
6 facts occurring outside the Class Period.

7 Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-
8 Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of
9 themselves and their respective former and present representatives, agents, attorneys, heirs,
10 administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties
11 that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated
12 in the Operative Complaint and the PAGA Notice and ascertained in the course of the Action
13 including, failure to pay wages, failure to provide meal periods, failure to authorize and permit
14 rest periods, failure to issue proper wage statements, failure to timely pay wages, failure to
15 maintain required payroll records, and related claims.

16 Settlement, ¶ 6.

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

18 Not later than 15 days after the Court grants Preliminary Approval of the Settlement,
19 Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a
20 Microsoft Excel spreadsheet. Settlement, ¶ 4.2. "Class Data" means Class Member identifying
21 information in Defendants' or affiliated entities' possession including the Class Member's name,
22 last-known mailing address, Social Security number, and number of Class Period Pay Periods and
23 PAGA Pay Periods. Settlement, ¶ 1.8. No later than three (3) business days after receipt of the
24 Class Data, the Administrator shall notify Class Counsel that the list has been received and state
25 the number of Class Members, PAGA Members, Pay Periods, and Pay Periods in the Class Data.
26 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving
27 the Class Data, the Administrator will send to all Class Members identified in the Class Data, via
28 first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form
attached to the Agreement as Exhibit A. Not later than three (3) business days after the
Administrator's receipt of any Class Notice returned by the USPS as undelivered, the
Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 If the USPS does not provide a forwarding address, the Administrator shall conduct a Class
2 Member Address Search, and re-mail the Class Notice to the most current address obtained. The
3 Administrator has no obligation to make further attempts to locate or send Class Notice to Class
4 Members whose Class Notice is returned by the USPS a second time. Settlement, ¶ 8.

5 **1. Class Member Disputes**

6 Each Class Member shall have 60 days after the Administrator mails the Class Notice
7 (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the
8 number of Class Pay Periods and PAGA Pay Periods (if any) allocated to the Class Member in
9 the Class Notice. The Class Member may challenge the allocation by communicating with the
10 Administrator via fax, email or mail. The Administrator must encourage the challenging Class
11 Member to submit supporting documentation. In the absence of any contrary documentation, the
12 Administrator is entitled to presume that the Pay Periods contained in the Class Notice are correct
13 so long as they are consistent with the Class Data. The Administrator's determination of each
14 Class Member's allocation of Pay Periods and/or PAGA Pay Periods shall be final and not
15 appealable or otherwise susceptible to challenge. The Administrator shall promptly provide
16 copies of all challenges to calculation of Pay Periods and/or PAGA Pay Periods to Defense
17 Counsel and Class Counsel and the Administrator's determination the challenges. Settlement, 8.6.

18 **2. Opting Out**

19 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must
20 send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later
21 than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class
22 Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class
23 Member or his/her representative that reasonably communicates the Class Member's election to
24 be excluded from the Settlement and includes the Class Member's name, address and email
25 address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed,
26 or postmarked by the Response Deadline. Settlement, ¶ 8.5. Class Members cannot opt-out of the
27 PAGA portion of the Settlement. Class Members who exclude themselves from the Class
28 Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments
and are required to give up their right to assert PAGA claims against the Released Parties based
on the PAGA Period facts alleged in the Action. Notice, ¶ 8.

///

///



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

3. Objecting

Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed). Settlement, ¶ 8.7.

H. Uncashed Checks

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). Settlement, ¶ 4.5.3.

IV. CERTIFICATION OF THE CLASS IS APPROPRIATE

Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and its members are too numerous for joinder to be practical; (2) the representative and absent class members share a community of interest and questions of law and fact common to the class predominate over questions unique to individual class members; (3) the representative's claims are typical of the class' claims; and (4) the representative will fairly and adequately represent the class' interests. *See, e.g., Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Moreover, in the settlement context, the Court can use a lesser standard to determine the appropriateness of a settlement class as opposed to a litigated class certification. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807. As explained below, all of these requirements are met in this case.

A. The Settlement Class Is Objectively Ascertainable

A class is ascertainable when it may be readily identified without unreasonable expense or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiff maintains that the above-defined Class is ascertainable because its members may be identified by reference to Defendants'



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 records and Defendants have agreed to share the relevant information from their records to
2 facilitate the settlement process. DS, ¶ 10; Settlement, ¶ 4.2. Therefore, the Settlement Class is
3 ascertainable.

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

5 The Settlement Class has sufficiently numerous members to render joinder impractical.
6 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*
7 (1972) 28 Cal.App.3d 1017, 1030. Defendants estimate that there were approximately 262 Class
8 Members and 220 Aggrieved Employees as of the date of mediation. DS, ¶ 11. Plaintiff maintains
9 that it would be impractical and economically inefficient to require each Class Member to
10 separately maintain an individual action or be joined as a named plaintiff in this action. The
11 California Supreme Court has upheld a class of as few as 10 individuals. *See Bowles v. Superior*
12 *Court* (1955) 44 Cal.2d 574. In light of these considerations, the Settlement Class' membership
13 is sufficiently numerous. DS, ¶ 11. *See Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695.

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

15 The community of interest requirement “embodies three factors: (1) predominant common
16 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
17 (3) class representatives who can adequately represent the class.” *Sav-On Drug Stores, Inc. v.*
18 *Superior Court* (2004) 34 Cal. 4th 319, 326. It “does not mandate that class members have
19 uniform or identical claims.” *Capitol People First v. Dept. of Developmental Servs.* (2007) 155
20 Cal. App. 4th 676, 692. Rather, courts focus on the defendant’s internal policies and “pattern and
21 practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs
22 renders class certification appropriate.” *Id.* (citing *Sav-On*, 34 Cal. 4th at 333).

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

In this case, Plaintiff asserts all class members were subject to the same or similar
operations and employment policies, practices, and procedures. The claims arise from
Defendants’ alleged policy-driven failure to pay wages, unlawful deductions, failure to provide
meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements,



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 failure to timely pay wages, failure to maintain required payroll records, and related labor law
2 violations, all of which Plaintiff claims constitute unfair business practices and give rise to PAGA
3 penalties. Plaintiff asserts that common questions include, but are not limited to: (1) Whether
4 Defendants failed to pay all wages earned to class members for all hours worked at the correct
5 rates of pay; (2) Whether Defendants failed to provide the class with all meal and rest periods in
6 compliance with California law; (3) Whether Defendants failed to pay the class one additional
7 hour of pay on workdays they failed to provide the class with one or more meal or rest periods in
8 compliance with California law; (4) Whether Defendants unlawfully deducted wages from the
9 class; (5) Whether Defendants knowingly and intentionally failed to provide the class with
10 accurate wage statements; (6) Whether Defendants willfully failed to provide the class with timely
11 final wages; and (7) Whether Defendants engaged in unfair competition within the meaning of
12 Business and Professions Code section 17200, *et seq.*, with respect to the class. DS, ¶ 12.
Therefore, common questions predominate.

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

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

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

The adequacy requirement is met where the plaintiff is represented by counsel qualified
to conduct the litigation and the plaintiff’s interest in the litigation is not antagonistic to the class’
interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling
2 conflicts of interest that might hinder the plaintiff's ability to represent the class. DS, ¶ 14.

3 First, Class Counsel have supplied the Court with declarations to show that they are
4 adequate to represent the Settlement Class and that they have significant experience in
5 employment litigation generally, and wage and hour and employment-related class action
6 litigation specifically. See DS, ¶¶ 15-23; Declaration of Walter L. Haines ("Haines Decl.") ¶ 3.
7 Thus, Plaintiff's counsel are adequate to serve as Class Counsel.

8 Second, Plaintiff contends that she is an adequate class representative. Plaintiff and the
9 Class Members have strong and co-extensive interests in this litigation because they all worked
10 for Defendants during the relevant time period, allegedly suffered the same alleged injuries from
11 the same alleged course of conduct, and there is no evidence of any conflict of interest between
12 Plaintiff and the Class Members. DS, ¶ 15. Moreover, Plaintiff has demonstrated her commitment
13 to the Settlement Class by, among other things, retaining experienced counsel, providing counsel
14 with documents and extensively speaking with them to assist in identifying the claims asserted in
15 this case, assisting them in identifying witnesses, as well as exposing herself to the risk of
16 attorneys' fees and costs awards against her if this lawsuit had been unsuccessful. Plaintiff also
17 attended the mediation and was an active participant. DS, ¶ 15. Thus, Plaintiff is adequate to
18 serve as settlement class representative. Accordingly, this Court should find that Plaintiff and her
19 counsel are adequate to represent the Settlement Class as required under Code of Civil Procedure
20 § 382.

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

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

A. Legal Standard

A class action settlement requires court approval. California Rules of Court (“CRC”), Rule 3.769 provides three steps for approval: (1) Preliminary approval after submission of a written motion for preliminary approval, the proposed class settlement, and the proposed class notice; (2) Issuance of notice of settlement to class members; and (3) A final settlement approval hearing where class members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented. The decision to approve or reject a class settlement is committed to the Court’s broad discretion. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision to approve class settlement may be reversed only upon a showing of “clear abuse of discretion.” *Id.*

B. The Settlement Is Presumptively Fair

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

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

Plaintiff prepared “damages” estimates in advance of the mediation. DS, ¶ 26, Ex. 6. In advance of the mediation, Plaintiff determined Defendants’ maximum exposure for restitution and penalties to be approximately \$2,000,132.32 (consisting of \$30,486.01 in unpaid wages, \$60,972.01 in missed meal period premium wages, \$130,216.11 in missed rest break premium wages, \$259,293.48 for wage statement penalties, \$280,517.85 for waiting time penalties, and \$1,216,479.45 for civil penalties). Plaintiff calculated the damages based on the number of workweeks and pay periods provided by Defendants, Plaintiff’s reports, and the sample data. *Id.* Plaintiff also considered the possibility that Defendants could launch a *Pick Up Stix* campaign and pursue individual release agreements from the Class Members. Plaintiff’s Counsel applied

1 discounts to the maximum exposure to account for all other risks discussed below. While it is
2 difficult to assign anything but crudely-determined percentages of risk to any of the claims, it is
3 safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery for such employees
4 is substantial and alone justifies a significant discount because Defendants would likely by trial
5 have gathered releases from the majority of the Class Members. A settlement for approximately
6 20% of the potential recovery is a proportion substantially in excess of recovery proportions
7 sanctioned by existing case law.³ *Id.*

8 Plaintiff is aware of only two significant awards under the PAGA in a contested
9 proceeding, both issued by federal district courts.⁴ DS, ¶¶ 38-39. PAGA penalty awards are often

10 ³ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998)
11 (“[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to
12 be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance,*
13 *Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the
14 proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*,
15 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) (“a settlement for fourteen percent recovery
16 of Plaintiffs’ maximum recovery is reasonable”); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d
17 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that “is just over 9% of the maximum
18 potential recovery asserted by either party.”).

19 ⁴ In *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
20 penalties under the PAGA of \$12,277,500.00 where total adjusted damages were
21 \$18,695,692.58. In this regard, the district court stated,

22 The plain language of PAGA provides that “a court may award a lesser amount than the
23 maximum civil penalty amount specified by this part if, *based on the facts and*
24 *circumstances of the particular case*, to do otherwise would result in an award that is
25 unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code s 2699(e)(2) (emphasis
26 added). The relationship between the amount of total damages and the amount of
27 maximum PAGA penalties is certainly a “circumstance” of the case under the term's
28 ordinary meaning. The weight given to that circumstance is greater in this case because
Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs'
individual claims except for one. As a general matter, it would be excessively punitive
for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed
the damages caused by that injury or set of injuries.

Id., fn. 9. The district court further stated, “Virgin “has not presented any evidence that the full
penalty would be excessive in relation to its ability to pay,” the weight of this factor is lessened.”
Id.

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



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 small even for egregious, intentional violations of the Labor Code.⁵ *Id.* For instance, on October
2 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by
3 very experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving*
4 *Company, Inc.*, LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.*
5 (2018) 30 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a
6 PAGA penalty of only \$5 per pay period for the defendant's meal period violations. A similar
7 result could occur here. *Id.*

8 Plaintiff's initial estimates do not realistically account for the risks outlined below or the
9 risk that a class will not be certified. Therefore, Plaintiff believes a class settlement for
10 \$395,000.00 is fair and reasonable. DS, ¶ 27.

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

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

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

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

22 Defendants' financial condition was the key factor in reaching this Settlement. DS, ¶ 28.
23 Due to Defendants' financial condition, even if Plaintiff prevailed on all claims at trial, she may
24 never recover the damages due to the risk of insolvency. A very large class action judgment
25 would almost certainly put the company out of business and/or would interfere with the
26 Defendants' ability to carry out their contractual obligations. *Id.* In short, the "poor financial
27 health of [the defendant will] seriously increase [] the chance that Plaintiffs would be left with
28 nothing if they continued to litigate their claims." *Torrissi v. Tucson Elec. Power Co.* (9th Cir.

⁵ In 2012, Plaintiff's Counsel tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. The plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under the PAGA.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 1993) 8 F.3d 1370, 1376 (the financial condition of defendant predominated in assessing the
2 reasonableness of settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d
3 1244, 1256 (uncertainty concerning defendant’s financial stability “strongly supports the
4 reasonableness of the settlement”); *Laguna v. Coverall N. Am., Inc.* (9th Cir. 2014) 2014 U.S.
5 App. LEXIS 10259 at *11 (finding potential insolvency to be additional risk that favors approval
6 of a class action settlement). Accordingly, Defendants’ financial distress supports this settlement.
7 *Id.*

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

9 There is a risk that Plaintiff’s recovery for unpaid wages would be extremely limited at
10 best, largely because Defendants’ written policies throughout the relevant time period prohibited
11 off-the-clock work. DS, ¶ 29. Off-the-clock claims are difficult where a defendant requires in its
12 written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation*
13 *Hospital* (2012) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to
14 be compensable). *Id.* In their written employment policies, Defendants mandate that employees
15 must record all time worked accurately on their time records and strictly prohibit employees from
16 performing any work off-the-clock. DS, ¶ 29. Moreover, while Defendants dispute that off-the-
17 clock work occurred, they contend that any time spent off the clock was *de minimis*. The
18 California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested
19 that irregular and minute periods of time may still be subject to a *de minimis* defense even if
20 compensable. (Stating that “We do not decide whether there are circumstances where
21 compensable time is so minute or irregular that it is unreasonable to expect the time to be
22 recorded.”). Following *Troester*, Defendants contend that the *de minimis* doctrine may apply here
23 because the time spent off the clock were minute and insignificant. Accordingly, a large award of
24 penalties seems unlikely with respect to this claim. *Id.*

25 The difficulty inherent in proving that off-the-clock work occurred poses a significant
26 hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim.
27 Generally, a court will not certify a class unless it can determine an appropriate classwide
28 methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff
may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given
the lack of records indicating when such off-the-clock work may have taken place. Individualized
inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there is a significant
2 risk that the Court would consider this evidentiary showing insufficient as a classwide
3 methodology. DS, ¶ 30.

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

5 There are risks to Plaintiff’s meal period claim. DS, ¶ 31. Defendants contend that, to
6 establish a violation for missed meal periods, a plaintiff must do more than show that a meal break
7 was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a
8 “reasonable opportunity” to take a duty-free meal period, it has no further duty to “police meal
9 breaks and ensure no work thereafter is performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must
10 show the employer impeded, discouraged, or prohibited the employee from taking a proper break,
11 or otherwise failed to release the employee of all control. *Id.* “Thus, the crucial issue with regard
12 to the meal break claim is the reason that a particular employee may have failed to take a meal
13 break.” *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

14 Defendants contend they did not impede or discourage Plaintiff, or any other employees,
15 from taking their meal or rest periods. DS, ¶ 32. Defendants’ policies mandate that employees
16 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
17 of their meal breaks each day on their time records. *Id.* Accordingly, there is a significant risk that
18 the value of Plaintiff’s meal period claim would be substantially reduced at trial. *Id.*

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

20 There are risks to Plaintiff’s rest period claim. DS, ¶ 33. Employers are not required to
21 record rest periods and such periods are paid. *Id.* Defendants contend they provided non-exempt
22 employees the opportunity to take rest periods in accordance with California law. Further,
23 Defendants’ written policies on meal and rest periods are consistent with the Wage Order. *Id.*
24 Thus, unlike meal periods, where there are often records showing whether an employee clocked
25 out or not, there is no such evidence to prove a missed rest period or that the employer refused to
26 authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. *Id.*
27 Plaintiff will depend on sample witness testimony and surveys to prove the claims. *Id.* While a
28 victory with such evidence is certainly possible, relevant caselaw makes such claims risky from
a trial management and due process perspective. *Id.*, *See Duran v. U.S. Bank National Assn.*,
(2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common questions exist to support class
certification, it may be possible to manage individual issues through the use of surveys and



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast*
2 *Corporation v. Behrend* (2013) 133 S.Ct. 1426.

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

5 Plaintiff also asserts claims for wage statement violations, untimely wage violations, and
6 PAGA penalties. Under Labor Code section 226, wage statements must include various
7 information, including the applicable rates of pay, corresponding hours worked, and gross pay.
8 DS, ¶ 34. Here, Plaintiff’s wage statement claim has the same underlying risks as the above
9 claims, as it is derivative of them. *Id.* On their face, the wage statements issued by Defendants
10 comply with the requirements of Labor Code § 226.

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

12 Plaintiff’s claim for untimely wages is predicated on Labor Code section 201 to 203. Like
13 the claim under Labor Code sec. 226, Plaintiff must establish that the late payments were willful.
14 The evidence of good faith Defendants put forth will defeat this claim. DS, ¶ 35.

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

16 Regarding PAGA, a court has discretion to award a lesser amount than the maximum
17 penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
18 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed
19 valid defenses to the Labor Code claims underlying Plaintiff’s PAGA allegations. Thus, the
20 PAGA claims likewise face significant uncertainty. DS, ¶ 36. There is a risk that the Court would
21 consider the maximum civil penalty available to be confiscatory. This is particularly the case
22 considering Defendants’ financial condition. *Id.* Moreover, the current COVID-19 pandemic
23 could motivate the Court to further reduce the penalty award to avoid what it may consider a
24 confiscatory taking. *Id.*

25 This uncertainty increases Plaintiff’s risk of pursuing the PAGA claims and required a
26 significant discount for settlement purposes. DS, ¶ 37. For mediation purposes, Plaintiff’s counsel
27 estimated a maximum exposure of approximately \$1,216,479.45 in civil penalties. This estimate
28 did not take into account any of the risks discussed above and assumed a violation for every single
pay period. *Id.* Plaintiff’s counsel also assessed multiple penalties for the same pay period for the
same alleged violations of different Labor Code provisions and derivative violations. *Id.* Although
two federal district court decisions held that “stacking” PAGA penalties in this fashion may be
appropriate to determine the amount in controversy for purposes of removal jurisdiction,



1 Plaintiff's counsel is not aware of any California state courts awarding plaintiffs multiple PAGA
2 penalties for the same violation for the same pay period under different Labor Code provisions.
3 *Id.* This may be because the PAGA does not provide for what many employers characterize as
4 claim splitting and not merely stacking. *Id.*

5 **h. Risks Associated With A Pick-Up Stix Campaign**

6 An employer enjoys the right to settle a putative class member's disputed wage claims
7 individually, without the consent or involvement of class counsel. DS, ¶ 40. (See *Chindarah v.*
8 *Pick Up Stix, Inc.* (2009) 171 Cal. App. 4th 796. *Id.* As discussed above, Defendants may launch
9 a "pick off" settlement campaign to pursue individual release agreements from the Class
10 Members, thereby potentially narrowing the size of the Settlement Class – 262 members - until it
11 is no longer numerous enough for class certification. *Id.* Plaintiff, then, may not have a sufficient
12 number of employees to represent. This led to a significant reduction of claim value in settlement
13 negotiations. *Id.*

14 While the evidence gathered through Plaintiff's discovery supports the merits of the
15 claims asserted in this lawsuit, Plaintiff and her counsel recognize that continued litigation
16 presents significant risks that support a downward departure from Defendants' estimated liability
17 exposure. DS, ¶ 41. In view of the risks, the Settlement reflects Plaintiff's estimate of the total
18 amount of damages, monetary penalties or other relief that the Class could reasonably expect to
19 be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.*
20 It also represents a fair, adequate, and reasonable compromise amount for these claims and
21 warrants preliminary approval. *Id.*, *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,
22 1376 (the financial condition of defendant predominated in assessing the reasonableness of
23 settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty
24 concerning defendant's financial stability "strongly supports the reasonableness of the
25 settlement"); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014
26 WL 2465049, * 3.

27 **2. Allocation of the PAGA Payment**

28 The settlement of PAGA penalties in the sum of \$4,000.00, of which 75% (\$3,000.00)
will be paid to the LWDA and 25% (\$1,000.00) will be distributed to the Class, is reasonable and
appropriate under the circumstances. DS, ¶ 42. The Parties negotiated a good faith amount for
PAGA penalties to be paid to the LWDA and to the Class. *Id.* The portion to be paid to the LWDA
was not the result of self-interest at the expense of other Class Members. *Id.* Where settlements



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

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

3. Presence of Governmental Participant

As required under Labor Code section 2699(l)(2), Plaintiffs will provide notice of this settlement to the LWDA. DS, ¶ 51, Ex. 13.

4. Reaction of Class Members to Proposed Settlement

If the settlement is preliminarily approved, Class Members will be provided with the Notice (attached as Exhibit A to the Settlement) and an opportunity to object. DS, ¶ 48. The parties’ proposed notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed settlement. *Id.*

///

///

1 **VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY**
2 **COMPENSATE CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS**
3 **MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY**
4 **COMPARED TO OTHER CLASS MEMBERS**

5 The Individual Class Payments will be paid to each Class Member based on his or her
6 eligible Pay Periods compared to the total Pay Periods. DS, ¶ 47, Settlement ¶ 3.2. Because this
7 method compensates Class Members based on the extent of their potential injuries, in that Class
8 Members who worked for Defendants longer would have been subject to more alleged violations,
9 it is fair, adequate, and reasonable. *Id.*

10 **VII. ALLOCATION FOR CLASS COUNSEL'S FEE AWARD AND ATTORNEYS'**
11 **FEES AND COSTS AWARD FOR LITIGATION EXPENSES IS**
12 **APPROPRIATE**

13 The Settlement states Class Counsel may seek attorneys' fees of \$131,666.00 (one-third
14 of the GSA) and up to \$20,000.00 for actual reasonable litigation costs and expenses incurred in
15 prosecuting the Action. Settlement, ¶ 4.3. These amounts are reasonable, given the facts and
16 circumstances of the case. DS, ¶¶ 43-45.

17 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
18 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
19 *Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 41. Indeed, it is long settled that the "experienced
20 trial judge is the best judge of the value of professional services rendered in his court." *Ketchum*
21 *v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney fee awards should
22 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
23 incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Ca1. 5th 480, 503 (citing *Lealao, supra*, 82
24 Cal.App.4th at p. 48-49). The Supreme Court has recently approved fees equal to one-third (1/3)
25 of the common fund. *Laffitte, supra*, 1 Ca1. 5th 480. Many courts have similarly approved fee
26 awards equal to or greater than the percentage requested here. *See, e.g., In re Pacific Enterprises*
27 (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of the common fund); *In re Activision* (N.D.
28 Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the common fund); *In re Ampicillin Antitrust*
Litig. (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of settlement fund).

29 The amount of fees and costs requested are commensurate with (1) the risk Class Counsel
30 took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the
31 skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the
32 value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 down to devote time to this matter. DS, ¶ 44. Class Counsel interviewed and obtained information
2 from putative class members, met and conferred with Defendants' counsel on numerous
3 occasions, reviewed and analyzed hundreds of pages of data and documents provided by
4 Defendants and obtained through other sources, researched applicable law, and provided
5 estimates of "damages" for purposes of settlement discussions, among other tasks. *Id.*

6 Class Counsel have borne all the risks and costs of litigation and will receive no
7 compensation until recovery is obtained. DS, ¶ 45. Class Counsel are well-experienced in wage-
8 and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.*
9 Considering the amount of the attorney fees requested, the work performed, and the risks incurred,
10 the requested fees and costs are reasonable and should be awarded. *Id.*

11 **VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENT TO PLAINTIFF**
12 **SHOULD BE PRELIMINARILY APPROVED BECAUSE IT IS FAIR,**
13 **ADEQUATE, AND REASONABLE**

14 Courts routinely approve incentive awards to compensate named plaintiffs for the services
15 they provide and the risks they incur during class action litigation, often in much higher amounts
16 than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726
17 (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van*
18 *Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000
19 enhancement award). The Settlement provides that Plaintiff may seek a Class Representative
20 Service Payment of \$10,000.00. This amount is entirely reasonable given Plaintiff's efforts in this
21 action and the risks she undertook on behalf of Class Members. DS, ¶ 46. Plaintiff has devoted
22 many hours advancing the interests of the Settlement Class. Plaintiff has done this by, among
23 other things, retaining experienced counsel, providing them with information about her work
24 history with Defendants and Defendants' policies and practices with respect to the wage and hour
25 claims at issue, participating in mediation, and being actively involved in the settlement process
26 to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiff has been exposed
27 to significant risks, including the risk of an order to pay Defendants' attorneys' fees and costs if
28 this action had been unsuccessful (*See Labor Code §§ 218.5-218.6*). The efforts and risks that
Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class
Representative Service Payment is fair, adequate, and reasonable, and thus warrants preliminary
approval. DS, ¶ 46.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 **IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE**
2 **PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE,**
3 **AND REASONABLE**

4 With regard to the settlement administration costs provision, it is reasonable. Before
5 agreeing to Simpluris, Inc. and its bid of \$9,000.00, the Parties sought and reviewed bids from
6 other reputable third-party administrators which provided higher bids. DS, ¶ 49-50, Exs. 9-12.
7 Thus, the settlement administration costs provision should be given preliminary approval.

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

12 This Court should approve the proposed plans for giving notice to the Settlement Class
13 and administering the Settlement. The standard for determining the adequacy of notice is whether
14 the notice has “a reasonable chance of reaching a substantial percentage of the class members.”
15 *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple
16 measures to ensure that as many Class Members as practicable receive actual notice of the
17 Settlement and have enough time to exercise their rights. The Settlement requires distribution of
18 the Notice by First Class U.S. mail only. Settlement, ¶ 8.4.2. Although there are current employee
19 Class Members, it is uncertain whether Defendants’ records of their contact information include
20 email addresses and Class Members are not in a position to check their emails. As such, notice
21 by mail alone is fair, adequate, and reasonable. DS, ¶ 48.

22 With respect to its content, “[The] notice given to the class must fairly apprise the class
23 members of the terms of the proposed compromise and of the options open to dissenting class
24 members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.
25 The purpose of the notice in class settlement context is to give class members sufficient
26 information to decide whether they should accept the benefits offered, opt out and pursue their
27 own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) provides
28 Class Members with all pertinent information that they need to fully evaluate their options and
exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among
other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how
Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the
Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how
payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 individual Settlement Class Member's estimated payment. Additionally, the Class Notice will
2 include the number of Pay Periods a Class Member had during the Class Period. Accordingly, the
3 Notice should be approved because it describes the Settlement with sufficient clarity and
4 specificity to explain to Class Members what this action is about, their rights under the Settlement,
and how to exercise those rights. DS, ¶ 48.

5 **XI. CONCLUSION**

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

8 Respectfully submitted,

9 THE SPIVAK LAW FIRM

10
11 Dated: February 23, 2023

By: 

DAVID G. SPIVAK, Attorneys for
Plaintiff(s), MCKENNA MCKENZIE,
and all others similarly situated



19 SPIVAK LAW
20 EMPLOYEE RIGHTS

21 Mail:
22 8605 Santa Monica Bl
23 PMB 42554
24 West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

25 Office:
26 1801 Century Park East
27 25th Fl
28 Los Angeles, CA 90067