

1 DAVID G. SPIVAK (SBN 179684)

david@spivaklaw.com

2 MAYA CHEAITANI (SBN 335777)

maya@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 WALTER L. HAINES (SBN 71075)

8 walter@uelglaw.com

UNITED EMPLOYEES LAW GROUP

9 4276 Katella Ave

10 Suite 301

Los Alamitos, CA 90720

11 Telephone: (562) 256-1047

12 Facsimile: (562) 256-1006

13 Attorneys for Plaintiff,

14 LUIS LARRABURU, and all others similarly situated

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF LOS ANGELES**

17 **(UNLIMITED JURISDICTION)**

18 LUIS LARRABURU, on behalf of himself and
19 all others similarly situated, and as an “aggrieved
20 employee” on behalf of other “aggrieved
21 employees” under the Labor Code Private
Attorneys General Act of 2004,

22 *Plaintiff,*

23 vs.

24 AMERICAN MERCHANDISING
25 SPECIALISTS, INC., a North Carolina
26 corporation; and DOES 1–50, inclusive,

27 *Defendant(s).*

Case No. 21STCV17704

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Hearing Date: September 1, 2022
Hearing Time: 10:00 a.m.
Hearing Dept.: SSC-9, The Honorable
Yvette M. Palazuelos

Action filed: May 11, 2021



SPIVAK LAW
Employee Rights Attorneys

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

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

ATTORNEYS FOR DEFENDANT

JOHN L. BARBER (SBN160317)
John.Barber@lewisbrisbois.com
EFTHALIA S. ROFOS (SBN 309065)
Thalia.Rofos@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
650 Town Center Drive, Suite 1400
Costa Mesa, California 92626
Telephone: (714) 545-9200
Facsimile: (714) 850-1030

ARMINE ANTONYAN (SBN 327220)
Armine.Antonyan@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
633 West 5th Street, Suite 4000
Los Angeles, California 90071
Telephone: (213) 250-1800
Facsimile: (213) 250-7900

Attorneys for Defendant, AMERICAN MERCHANDISING SPECIALISTS,
INC.



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
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Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 The Motion of Plaintiff Luis Larraburu (hereafter referred to as "Plaintiff") for
2 Preliminary Approval of a Class Action Settlement (the "Motion") was considered by the Court,
3 The Honorable Yvette M. Palazuelos presiding. The Court having considered the Motion, the
4 Joint Stipulation of Class Action Settlement and Release of Claims ("Settlement" or "Settlement
5 Agreement"), and supporting papers, HEREBY ORDERS THE FOLLOWING:

6 1. The Court grants preliminary approval of the Settlement and the Settlement Class
7 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
8 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
9 has determined there is sufficient evidence to preliminarily determine that (a) the terms of the
10 Settlement appear to be fair, adequate, and reasonable to the Settlement Class and (b) the
11 Settlement falls within the range of reasonableness and appears to be presumptively valid, subject
12 only to any objections that may be raised at the final hearing and final approval by this Court.
13 The Court will make a determination at the hearing on the motion for final approval of class
14 action settlement (the "Final Approval Hearing") as to whether the Settlement is fair, adequate
15 and reasonable to the Settlement Class.
16

17 2. For purposes of this Preliminary Approval Order, the "Settlement Class" means
18 all current and former non-exempt employees who are or were employed by Defendant in the
19 State of California at any time during the Class Period (collectively "Class Members"). The
20 "Class Period" shall mean the period of time from August 25, 2016, through preliminary approval
21 order date or March 15, 2022, whichever is earlier. Defendant estimated for purposes of
22 mediation that there are 6042.00 Work Weeks by 115 Class Members for the period of August
23 25, 2016 through November 15, 2021. These numbers would be expected to increase
24 proportionately for the passage of time between that date and the time of court approval. Before
25 the Parties seek or a Party seeks court approval of the Settlement, the Settlement Administrator
26 will advise Plaintiff's counsel of Defendant's report of the total number of Work Weeks and
27 Class Members. If the Work Weeks and/or Class Members as of the date the Court approves the
28 settlement exceeds the referenced 6042.00 Work Weeks and/or 115 Class Members by more than



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1 10.00%, the Gross Settlement Amount, including the Class Counsel Fees Payment, the Class
2 Representative Payment, and the LWDA payment will increase proportionally according to the
3 number of additional Work Weeks or Class Members, whichever results in a higher increase in
4 the Gross Settlement Amount. The “Effective Date” means as follows: If no objection to this
5 Settlement or to any of the terms and or conditions of the Settlement are filed by Plaintiff, another
6 member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur
7 on the day that the Court enters an order of final approval of this Settlement; however, if any
8 objection to this Settlement or to any of the terms and or conditions of the Stipulation is filed by
9 a member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur
10 upon the expiration of the time for the filing any appeal of the order of final approval of this
11 Settlement. If an appeal is filed or any writ granted, then the Effective Date shall occur after the
12 appeal has been dismissed or the writ dissolved and when there is no further time to appeal the
13 dismissal of the appeal or the dissolution of the writ. The occurrence of the Effective Date is a
14 prerequisite to any obligation of Defendant to pay any funds into the Settlement Account.
15

16 3. This action is provisionally certified pursuant to section 382 of the California
17 Code of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action
18 for purposes of settlement only with respect to the proposed Settlement Class.

19 4. The Court hereby preliminarily finds that the Settlement was the product of
20 serious, informed, non-collusive negotiations conducted at arm’s length by the Parties. In making
21 this preliminary finding, the Court considered the nature of the claims set forth in the pleadings,
22 the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the allocation
23 of Settlement proceeds to the Settlement Class, and the fact that the Settlement represents a
24 compromise of the Parties’ respective positions. The Court further preliminarily finds that the
25 terms of the Settlement have no obvious deficiencies and do not improperly grant preferential
26 treatment to any individual Class Member. Accordingly, the Court preliminarily finds that the
27 Settlement was entered into in good faith.
28

5. The Court finds that the dates set forth in the Settlement for mailing and



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1 distribution of the Class Notice meet the requirements of due process and provide the best notice
2 practicable under the circumstances, and constitute due and sufficient notice to all persons
3 entitled thereto, and directs the mailing of the Class Notice by first class mail to the Settlement
4 Class as set forth in the Settlement. Accordingly, the Court orders the following implementation
5 schedule for further proceedings:

6 a. Within fourteen (14) days of this Order, Defendant shall provide Phoenix
7 Settlement Administrators, the appointed Settlement Administrator, with: (a)
8 An electronic database of all Class Members, last known mailing address,
9 Social Security number and Defendant's employee identification number
10 ("Class Members' Data"); and (b) Corresponding to each Class Member's
11 name, Defendant shall provide a figure indicating the total number of Work
12 Weeks during the Class Period in which Defendant employed the Class
13 Member. That number of Work Weeks shall be referred to as that Class
14 Member's "Individual Work Weeks;" (c) If any of the Class Members' Data
15 are unavailable to Defendant, Defendant will so inform Class Counsel and the
16 Parties will make their best efforts to reconstruct or otherwise agree upon the
17 Class Members' Data prior to when it must be submitted to the Settlement
18 Administrator. Class Members' Data will otherwise remain confidential and
19 will not be disclosed to anyone, except as necessary to applicable taxing
20 authorities, or pursuant to Defendant's express written authorization or by
21 order of the Court.

22
23 b. **Mailing of Class Notice.** By Phoenix Settlement Administrators,
24 approximately fourteen (14) days after receiving the Class Members' Data, or
25 as soon thereafter as it can do so, the Settlement Administrator will mail the
26 Class Notice to all identified Class Members via first-class U.S. mail using
27 the mailing address information provided by Defendant, unless modified by
28 any updated address information that the Settlement Administrator obtains in



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the course of administration of the Settlement.

c. **Returned Class Notice.** If a Class Notice is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days from receipt of the returned Class Notice, search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the Class Members' Data and otherwise work with Defendant's Counsel and Class Counsel to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing address of any Class Member for whom a Class Notice is returned as undeliverable by the U.S. Postal Service. These reasonable steps shall include the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendant's Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

d. **Declaration of Settlement Administrator.** Not later than twenty-one (21) court days prior to the Final Approval Hearing, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

e. **Requests for Exclusion from Settlement; and Objections to Settlement.** Class Members may submit requests to be excluded from the effect of the



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1 Settlement, or objections to the Settlement, pursuant to the following
2 procedures:

3 i. **Request for Exclusion from Settlement.** A Class Member may
4 request to be excluded from the effect of this Agreement, and any
5 payment of amounts under this Agreement, by timely mailing a letter
6 to the Settlement Administrator stating that the Class Member wants
7 to be excluded from this Action. This letter must include the Class
8 Member's name, address, telephone number, and signature. To be
9 valid and timely, the request to be excluded must be postmarked by
10 the date specified in the Class Notice (60 days from the initial mailing
11 of the Class Notice by the Settlement Administrator). A Class Member
12 who properly submits a valid and timely request to be excluded from
13 the Action shall not receive any payment of any kind in connection
14 with this Agreement or this Action, shall not be bound by or receive
15 any benefit of this Agreement, and shall have no standing to object to
16 the Settlement. A request for exclusion must be mailed to the
17 Settlement Administrator at the address provided on the Class Notice.
18 The Settlement Administrator shall transmit the request for exclusion
19 to counsel for the Parties as follows:
20

21 *To Class Counsel:*

22 David G. Spivak, Esq.
23 The Spivak Law Firm
24 8605 Santa Monica Blvd., PMB 42554
25 West Hollywood, CA 90069

21 *To Defense Counsel:*

22 Thalia S. Rofos, Esq.
23 Lewis Brisbois Bisgaard & Smith, LLP
24 650 Town Center Drive
25 Suite 1400
26 Costa Mesa, CA 92626

27 ii. **Objections to Settlement.** The Class Notice will provide that any
28 Class Member who does not request exclusion from the Action and
who wishes to object to the Settlement should submit an objection in



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1 writing to the Settlement Administrator by 60 days after the Settlement
2 Administrator mails the Class Notice, a written objection to the
3 Settlement which sets forth the grounds for the objection and the other
4 information required by this paragraph. The objection should be
5 mailed to the Settlement Administrator at the address provided on the
6 Class Notice. The Settlement Administrator shall transmit the
7 objections to counsel for the Parties as follows:
8

9 *To Class Counsel:*

10 David G. Spivak, Esq.
11 The Spivak Law Firm
12 8605 Santa Monica Blvd., PMB 42554
13 West Hollywood, CA 90069

To Defense Counsel:

Thalia S. Rofos
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14 The written objection should state the objecting Class Member's full
15 name, address, and the approximate dates of his or her employment
16 with Defendant. The written objection should state the basis for each
17 specific objection and any legal support in clear and concise terms.
18 The written objection also should state whether the Class Member
19 intends to formally intervene and become a party of record in the
20 action, and upon formally intervening, appear and argue at the Final
21 Approval Hearing. However, the objectors will be provided with the
22 opportunity to speak at the final approval hearing regardless of
23 whether they have filed an appearance or submitted a written
24 opposition beforehand.

25 If the objecting Class Member does not formally intervene in the action
26 and/or the Court rejects the Class Member's objection, the Class
27 Member may still be bound by the terms of this Agreement.
28



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f. **Report.** Not later than fourteen (14) days after the deadline for submission of requests for exclusion, the Settlement Administrator will provide the Parties with a complete and accurate list of all Class Members who sent timely requests to be excluded from the Action and all Class Members who objected to the settlement.

6. The Court approves, as to form and content, the Class Notice in substantially the form attached as Exhibit A to the Settlement, the Exclusion Request form in substantially the form attached as Exhibit B to the Settlement, and the Work Weeks Dispute form in substantially the form attached as Exhibit C to the Settlement.

7. The Court approves, for settlement purposes only, David Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

8. The Court approves, for settlement purposes only, Luis Larraburu as the Class Representative.

9. The Court approves Phoenix Settlement Administrators as the Settlement Administrator.

10. The Court preliminarily approves Class Counsel’s request for attorneys’ fees and costs subject to final review by the Court.

11. The Court preliminarily approves the estimated Settlement Administrator costs payable to the Settlement Administrator subject to final review by the Court.

12. The Court preliminarily approves Plaintiff’s Class Representative Payment subject to final review by the Court.

13. A Final Approval Hearing shall be held on _____ at _____**.m.** in the Superior Court for the State of California, County of Los Angeles, located at the Los Angeles Courthouse, 312 North Spring Street, Los Angeles, CA 90012 to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys’ fees and costs and the Class Representative Payment to the Class Representative. The notice of motion and all



1 briefs and materials in support of the motion for final approval of class action settlement and
2 motion for attorneys' fees and litigation costs shall be served and filed with this Court sixteen
3 (16) court days before the Final Approval Hearing.

4 14. If for any reason the Court does not execute and file a final approval order and
5 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason,
6 the proposed Settlement that is the subject of this order, and all evidence and proceedings had in
7 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
8 litigation, as more specifically set forth in the Settlement.

9 15. The Court expressly reserves the right to adjourn or continue the Final Approval
10 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give
11 prompt notice of any continuance to Settlement Class Members who object to the Settlement.
12

13
14 DATED: _____

THE HONORABLE YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT



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