

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

6 Telephone: (213) 725-9094

Facsimile: (213) 634-2485

7 Attorneys for Plaintiff,

8 LUIS LARRABURU, and all others similarly situated

9 (Additional attorneys for Plaintiff on following page)

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

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

17 *Plaintiff(s),*

18 vs.

19 AMERICAN MERCHANDISING
20 SPECIALISTS, INC., a North Carolina
21 corporation; and DOES 1–50, inclusive,

22 *Defendant(s).*

Case No. 21STCV17704

**SUPPLEMENTAL MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF PLAINTIFF LUIS
LARRABURU’S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: March 1, 2023

Hearing Time: 10:00 a.m.

Hearing Dept.: SSC-9, The Honorable
Yvette M. Palazuelos

Action filed: May 11, 2021

Submitted Herewith Under Separate Cover:

1. Supplemental Declaration of David Spivak, and
2. Declaration of Luis Larraburu.



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:
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 Attorneys

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 **SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff Luis Larraburu (“Plaintiff”) submits this supplemental memorandum of points
3 and authorities in support of his Motion for Preliminary Approval of Class Action Settlement (the
4 “Settlement”). On September 1, 2022, the Court issued an order directing counsel to file, by
5 February 8, 2023, supplemental papers addressing specific items regarding the Motion for
6 Preliminary approval. The Court also scheduled for February 15, 2023, a non-appearance case
7 review regarding the filing of supplemental papers. Each of the Court’s comments are recited
8 below in bold, followed by a discussion of the Parties’ response to the comments.

9 **1) Was there a damage estimate calculated for the Failure to Indemnify /**
10 **Reimbursement claim asserted in the FAC?**

11 Plaintiff prepared “damages” estimates in advance of mediation and determined
12 Defendant’s maximum exposure in unreimbursed expenses to be approximately \$564,075.41.
13 Supplemental Declaration of David Spivak (“Supp. Decl. Spivak”), ¶ 6, Exhibit 15.

14 Furthermore, the Motion for Preliminary Approval mistakenly states Plaintiff’s maximum
15 exposure for restitution and penalties to be approximately “\$2,817,990.53”. However, Plaintiff’s
16 maximum exposure for restitution and penalties was determined to be approximately
17 \$3,263,405.89. Supp. Decl. Spivak, ¶ 6, Exhibit 15.

18 **2) Provide a competent declaration from Plaintiff by which the Court can ascertain**
19 **his adequacy as a class representative.**

20 Plaintiff has submitted herewith under separate cover, the Declaration of Plaintiff Luis
21 Larraburu in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

22 **3) If notice will be given in English only, explain why this is sufficient.**

23 Defendants have confirmed to Plaintiff that all employees understand English, so an English-only
24 notice is sufficient.

25 **4) Provide information regarding any fee splitting agreement and whether the client**
26 **has given written approval.**

27 Plaintiff’s counsel entered into the following agreement in the contingency fee agreement
28 executed by Plaintiff and Class Counsel:



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

1 “If the total legal fees received in this case are greater than \$250,000 it is agreed that the
2 United Employees Law Group, PC will receive 33 and 1/3% of the total legal fees received
3 and the Spivak Law Firm shall receive the remaining 66 and 2/3% of the total legal fees
4 received. If the total legal fees received in this case are equal or less than \$250,000, it is
5 agreed that the United Employees Law Group, PC will receive 25% of the total legal fees
6 received and the Spivak Law Firm shall receive the remaining 75% of the total legal fees
7 received.”

8
9 Settlement Agreement, ¶ III.C.2. The First Amended Joint Stipulation of Class Settlement and
10 Release Settlement Agreement (“Amended Settlement”) states the fee division consistent with
11 the Contingency Fee Retainer Agreement. Plaintiff has given written approval of this agreement
12 in his signed Retainer Agreement, dated May 10, 2021. Supp. Spivak Decl., ¶ 7, Exhibit 16.

13
14 **5) If there are confidentiality provisions, explain why they are in the best interest of**
15 **the Class and whether they will impede Class Counsel’s ability to discharge**
16 **fiduciary duties. See ¶ IV.B.1.c.**

17 The confidentiality provision of Settlement ¶ IV.B.1.c. is necessary for the Settlement
18 Administrator to determine Class Member share values in the event a question arises about his/her
19 dates of employment. It states,

20 “If any of the Class Members’ Data are unavailable to Defendant, Defendant will so
21 inform Class Counsel and the Parties will make its best efforts to reconstruct or otherwise
22 agree upon the Class Members’ Data prior to when it must be submitted to the Settlement
23 Administrator. Class Members’ Data will otherwise remain confidential and will not be
24 disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant to
25 Defendant’s express written authorization or by order of the Court.”

26 ///

27 ///



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

1 **6) Ensure content of the notice complies with California Rules of Court, rule**
2 **3.766(d). A separate breakdown for PAGA payments should be provided.**

3 The Amended Class Notice, attached as Exhibit A to the Amended Settlement Agreement
4 provides a separate breakdown for PAGA payments at page 3.

5 **7) Ensure the notice accurately reflects the Court's current social distancing**
6 **procedures for attendance at hearing and review of court files.**

7 The Amended Class Notice reflects the Court's current social distancing procedures for
8 attendance at hearing and review of court files at page 10 .

9 **8) Indicate how and when payments will be processed: Are ¶ IV.K and ¶ IV.M of**
10 **the Settlement Agreement in conflict? ¶ IV.K says Settlement Shares will be paid**
11 **within ten (10) calendar days of receipt of the Gross Settlement Amount.**
12 **However, ¶ IV.M says the Settlement Administrator will mail or wire all required**
13 **payments no later than fourteen (14) calendar days after receipt of the funds**
14 **representing the Gross Settlement Amount. Please clarify.**

15 The Amended Settlement, ¶ IV.K clarifies that Settlement Shares will be paid within
16 fourteen (14) calendar days of receipt of the Gross Settlement Amount, to be consistent with ¶
17 IV.M.

18 **9) Explain how notice of final judgement will be given to the class.**

19 Class Members will be notified of the final judgment through a website maintained by the
20 Settlement Administrator. The Settlement Administrator will set up the website and post all
21 relevant documents including the notice of the final judgment. This is stated in the Amended
22 Class Notice at page 5.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///



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

1 **10) Provide proof of submission of the proposed settlement agreement to the LWDA:**

2 **This also applies to any further revised versions of the Settlement Agreement.**

3 Plaintiff submitted a copy of the Amended Settlement with the LWDA at the same time
4 Plaintiff's supplemental briefing is being filed with the Court. Supp. Decl. Spivak, ¶ 8, Exhibit
5 17.

6
7 THE SPIVAK LAW FIRM

8 Dated: February 8, 2023

9 By: David Spivak
10 DAVID SPIVAK,
11 MAYA CHEAITANI, Attorneys for Plaintiff,
12 LUIS LARRABURU, and all others similarly
13 situated



25 **SPIVAK LAW**
26 Employee Rights Attorneys

27 Mail:
28 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