

1 DAVID GLENN 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

8 Attorneys for Plaintiff,
9 TOJYIA GREEN, and all others similarly situated

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

13 TOJYIA GREEN, on behalf of herself, all others
14 similarly situated, the general public, and as an
15 “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 MAGNUM MANAGEMENT
20 CORPORATION, an Ohio corporation; CEDAR
21 FAIR, L.P., a Delaware limited partnership; and
DOES 1–50, inclusive,

22 *Defendant(s).*
23

Case No. 30-2022-01276962-CU-OE-CXC

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

28 Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
8605 Santa Monica Bl.
PMB 63354
West Hollywood, CA 90069
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

Attorneys for Plaintiff(s),
TOJYIA GREEN, and all others similarly situated



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	vi
I. INTRODUCTION.....	1
II. BACKGROUND.....	2
A. The Claims and Procedural History	2
B. Sampling.....	2
C. Mediation.....	4
III. OVERVIEW OF THE SETTLEMENT	5
A. Settlement Class and Aggrieved Employees Definition	5
B. Monetary Terms	5
C. Timing of Payments	7
D. Calculation of Settlement Shares.....	8
E. Apportionment of Settlement Shares.....	8
F. The Releases.....	9
G. Notice and Claims Process and Procedures.....	11
1. Disputes	12
2. Opting Out.....	12
3. Objecting	13
H. Uncashed Checks.....	14
IV. CERTIFICATION OF THE CLASS IS APPROPRIATE	14
A. The Settlement Class Is Objectively Ascertainable.....	14
B. The Membership of the Settlement Class Is Sufficiently Numerous	15
C. Class Members Share a Well-Defined Community of Interest	15
D. Plaintiff Is Typical of the Settlement Class	16
E. Plaintiff Will Adequately Represent the Settlement Class	17



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1	F. Class Action Treatment Is the Superior Means For Resolving The Claims Of The Class Members	17
2		
3	V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL BECAUSE THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE.....	18
4	A. Legal Standard.....	18
5	B. The Settlement Is Presumptively Fair	18
6	C. The Settlement Satisfies the <i>Kullar</i> Factors for Approval	20
7	1. Evaluation of Plaintiff’s Case.....	20
8	a. Risks Associated with the Unpaid Wages Claim	20
9	b. Risks Associated with the Meal Period Claims.....	21
10	c. Risks Associated with the Rest Break Claims.....	22
11	d. Risks Associated with the Failure to Indemnify Claim.....	23
12	e. Risks Associated with the Statutory Wage Statement Penalty Claims	23
13	f. Risks Associated with the Waiting Time Penalty Claims.....	23
14	g. Risks Associated With the PAGA Claim	23
15	h. Risks Associated With A Pick-Up Stix Campaign.....	25
16	2. Allocation of the PAGA Payment	26
17	3. Presence of Governmental Participant	27
18	4. Reaction of Class Members to Proposed Settlement.....	27
19		
20	VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY COMPENSATE CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY COMPARED TO OTHER CLASS MEMBERS	27
21		
22	VII. ALLOCATION FOR CLASS COUNSEL’S FEE AWARD AND ATTORNEYS’ FEES AND COSTS AWARD FOR LITIGATION EXPENSES IS APPROPRIATE	29
23		
24	VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENT TO PLAINTIFF SHOULD BE PRELIMINARILY APPROVED BECASUSE IT IS FAIR, ADEQUATE, AND REASONABLE.....	30
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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE, AND REASONABLE.....	31
X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO EXERCISE THEIR RIGHTS.....	31
XI. CONCLUSION	32



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

TABLE OF AUTHORITIES

Cases

<i>Arenas v. El Torito Rests., Inc.</i> , (2010) 183 Cal. App. 4th 723	15
<i>Bell v. Farmers Ins. Exchange</i> (2004) 115 Cal.App.4th 715	4, 30
<i>Bernstein v. Virgin Am., Inc</i> (N.D. Cal. 2022) 2022 WL 17994018	24
<i>Bowles v. Superior Court</i> (1955) 44 Cal.2d 574	15
<i>Bravo v. Gale Triangle, Inc.</i> (C.D. Cal. Feb 16, 2017) 2017 WL 708766	20
<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004	22
<i>Capitol People First v. Dept. of Developmental Servs.</i> (2007) 155 Cal. App. 4th 676	15
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504	26
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	31
<i>Chindarah v. Pick Up Stix, Inc.</i> (2009) 171 Cal.App.4th 796	19, 25
<i>Chu v. Wells Fargo Investments, LLC</i> (N.D. Cal. Feb. 16, 2011) 2011 WL 67245	26
<i>Classen v. Weller</i> (1983) 145 Cal.App.3d 27	16
<i>Comcast Corporation v. Behrend</i> (2013) 133 S.Ct. 1426	23
<i>Daar v. Yellow Cab Co.</i> (1967) 67 Cal.2d 695	15



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1	<i>Dunk v. Ford Motor Co.</i>	
2	(1996) 48 Cal.App.4th 1794	14, 18
3	<i>Duran v. U.S. Bank National Assn</i>	
4	(2014) 59 Cal. 4th 1	4, 20, 23
5	<i>Franco v. Ruiz Food Prods., Inc</i>	
6	(E.D. Cal. Nov. 27, 2012) 2012 WL 5941801	27
7	<i>Garcia v. Gordon Trucking</i>	
8	(E.D. Cal. Oct. 31, 2012) 2012 WL 5364575.....	27
9	<i>Hebbard v. Colgrove</i>	
10	(1972) 28 Cal.App.3d 1017	15
11	<i>Hicks v. Toys ‘R’ Us–Delaware, Inc.</i>	
12	(C.D. Cal. Sept. 2, 2014) 2014 WL 4703915	27
13	<i>Hopson v. Hanesbrands Inc.</i>	
14	(N.D. Cal. Aug. 8, 2008) 2008 WL 3385452	26
15	<i>Hopson v. Hanesbrands Inc.</i>	
16	(N.D. Cal. Apr. 3, 2009) 2009 WL 928133.....	26
17	<i>Hypolite v. Carlson</i>	
18	(1975) 52 Cal.App.3d 566	14
19	<i>In re Activision</i>	
20	(N.D. Cal. 1989) 723 F.Supp. 1373.....	29
21	<i>In re Ampicillin Antitrust Litig.</i>	
22	(D.D.C. 1981) 526 F.Supp. 494.....	29
23	<i>In re Newbridge Networks Sec. Litig.</i>	
24	(D.D.C. Oct. 23, 1998) 1998 WL 765724	20
25	<i>In re Omnivision Techs., Inc.</i>	
26	(N.D. Cal. 2008) 559 F.Supp.2d 1036.....	20
27	<i>In re Pacific Enterprises</i>	
28	(9th Cir. 1995) 47 F.3d 373	29
	<i>Jong v. Kaiser Foundation Hospital</i>	
	(2012) 226 Cal.App.4th 391	21
	///	



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

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



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1	<i>Troester v. Starbucks Corp.</i>	
2	(2018) 5 Cal.5th 829	20
3	<i>Trotsky v. Los Angeles Fed. Sav. & Loan Assn.</i>	
4	(1975) 48 Cal.App.3d 134	31
5	<i>Tyson Foods, Inc. v. Bouphakeo</i>	
6	(2015) 136 S.Ct. 382	23
7	<i>Van Vranken v. Atlantic Richfield Co.</i>	
8	(N.D.Cal. 1995) 901 F.Supp. 294	30
9	<i>Washington Mut. Bank, FA v. Superior Court</i>	
10	(2001) 248 Cal.4th 906	15
11	<i>Washington v. Joe’s Crab Shack</i>	
12	(N.D. Cal. 2010) 271 F.R.D. 629	22
13	<i>Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.</i>	
14	(E.D. Cal. Aug. 21, 2019) 2019 WL 3943859	20
15	Statutes	
16	Bus. & Prof. Code, section 17200 et seq.	2, 16
17	Civ. Code., section 1542	9, 10
18	Code Civ. Proc., section 382	1, 14, 17
19	Code Civ. Proc., section 384	14
20		
21	Lab. Code, section 201	2
22	Lab. Code, section 202	2
23	Lab. Code, section 203	2
24	Lab. Code, section 218.5	31
25	Lab. Code, section 218.6	31
26	Lab. Code, section 226	2, 23



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1	Lab. Code, section 226.2	2
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	24, 27
10	Lab. Code, section 2802	2
11	Rules	
12	California Rules of Court, Rule 3.766.....	27
13	California Rules of Court, Rule 3.769.....	18, 27
14	Other	
15	<i>Alba Conte & Herbert B. Newberg</i> , Newberg on Class Actions § 3:29	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:
1875 Century Park East
Fl 7
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 Tojyia Green (“Plaintiff”) submits this memorandum of points and authorities in
5 support of her unopposed motion for preliminary approval of the Class Action and PAGA
6 Settlement Agreement and Class Notice (the “Settlement”)³, which provides for a Gross
7 Settlement Amount (“GSA”) of \$900,000.00 in compromise of all disputed claims on behalf of
8 all persons employed by Defendants Magnum Management Corporation and Cedar Fair, L.P.
9 (“Defendants”⁴) in California as a Picnic CaterOps or Hotel Banquet employee and classified as
10 hourly and non-exempt who worked for Defendants during the Class Period of August 24, 2018
11 through the date the Court preliminarily approves this class action settlement. Through this
12 Motion, Plaintiff respectfully requests for this Court to (1) provisionally certify the below-defined
13 Class for settlement purposes only under Code of Civil Procedure § 382; (2) preliminarily approve
14 the Settlement; (3) preliminarily appoint Plaintiff as Class Representative; (4) appoint David
15 Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class
16 Counsel; (5) approve the proposed notice procedures and related forms; and (6) schedule a final
17 approval hearing.

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

27 ³ The Settlement is attached as Exhibit (“Ex.”) 1 to the Declaration of David Spivak (“DS”),
28 which is submitted herewith under a separate cover.

⁴ The term “Defendants” in this document includes Six Flags Entertainment Corporation, as
successor by merger to Cedar Fair L.P.



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

entirety and preliminarily approve the Settlement.

II. BACKGROUND

Defendants operate theme and amusement parks. DS, ¶ 4. Defendants employed Plaintiff in California as a picnic catering supervisor from about June 17, 2017 until August 30, 2021. *Id.*

A. The Claims and Procedural History

On August 19, 2022, 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 24, 2022, Plaintiff filed a Class Action Complaint in the Orange County Superior Court, Case No. 30-2022-01276962-CU-OE-CXC, 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) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (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 26, 2022, Plaintiff filed her First Amended Complaint adding a claim under PAGA. DS, ¶ 6, Ex. 4. On November 30, 2022, 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. Sampling

On March 31, 2023, Plaintiff requested that Defendants informally disclose documents and data to enable Plaintiff to prepare for settlement discussions, including the number of putative class members and aggrieved employees, the number of paychecks and workweeks for the various limitations periods applicable to Plaintiff’s claims. DS, ¶ 7. Plaintiff also requested a reasonable, randomly selected sample of Defendants’ time, payroll, and expense records, and related personnel records. *Id.* Finally, Plaintiff requested Defendants’ written policies applicable to 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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 claims at hand and asked Defendants identify any and all comparable claims against them.

2 The Parties thereafter engaged in an informal, voluntary exchange of information in the
3 context of privileged settlement discussions to facilitate an early mediation. Defendants produced
4 Plaintiff's entire personnel file (including policies and agreements she signed and acknowledged)
5 and copies of their relevant company written policies. DS, ¶ 8.

6 The Defendants disclosed that there have been comparable claims against it. Defendants
7 the following comparable claims:

8 • *Gonzales vs. Cedar Fair L.P., d.b.a. Knotts Berry Farm & Resorts*, Orange
9 County Case Number 30-2020-01173638-CU-OE-CXC, Class Action and PAGA filed on
10 December 8, 2020, for unpaid wages, failure to pay minimum wages, failure to pay overtime,
11 waiting time penalties, failure to provide accurate wage statement, unlawful business practices.
12 This action was filed before this Action. The parties in the *Gonzales* matter reached a settlement
13 and the court granted preliminary approval on or about December 23, 2024. The settlement in
14 the *Gonzalez* matter does not impact this Settlement and the claims asserted by Plaintiff because
15 it specifically excludes the Class Members, non-exempt workers who worked as banquet and
16 catering employees for otherwise Compensable Shifts when they worked as banquet and catering
17 employees as to those Compensable Shifts only.

18 • *Sawari vs. Cedar Fair Management, Inc.*, Santa Clara County Case
19 Number 21CV391149, Class and PAGA action filed on December 2, 2021 for failure to provide
20 meal breaks and failure to provide rest breaks. The case was settled individually and on behalf
21 of named plaintiff only and was dismissed.

22 • *Craig Matthew Goldsberry vs. Magnum Management Corporation, Inc.,*
23 *et al.*, Santa Clara County Case Number 23CV425686, Class and PAGA matter filed on
24 November 9, 2023 on behalf of all non-exempt employees for failure to reimburse necessary
25 business expenses, failure to provide meal periods, failure to provide itemized wage statements,
26 failure to timely pay wages due during employment; failure to timely pay wages due upon
27 separation of employment. This case was dismissed on November 15, 2024.

28 • *Adrian Novella vs Magnum Management Corporation, Inc. et al.*, Orange



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

Country Case Number 30-2024-01383614-CU-OE-CXC, Class Action and PAGA case filed on March 4, 2024 on behalf of all non-exempt employees for unpaid wages, failure to provide meal and rest periods, and failure to reimburse for business expenses. This case was filed after this Action and is currently pending in court.

DS, ¶ 9. Before the mediation, Defendants contended that they employed 406 putative class members during the period of August 24, 2018 to March 31, 2024. Defendants produced the records of 18.96% of the putative class members for the period of August 24, 2018 to March 31, 2024. There were records for 77 employees in the sample. Defendants chose the sample. Defendants contend that the sample was randomly selected. The sample consisted of time and payroll records in Microsoft Excel sheets, and related records. DS, ¶ 10.

Plaintiff retained James Toney, a data analyst, to analyze the sample. Plaintiff also employed the Raosoft⁵ Sample Size calculator (<http://www.raosoft.com/samplesize.html>) to determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin of error of 43.3 percent was unacceptable. Using a margin of error of 10%, a confidence level of 95%, and a population size of 406, the Raosoft Sample Size Calculator recommended a sample of 78. DS, ¶ 11, **Exhibit 6** (Raosoft Sample Size Calculator results print-out). Thus, the sample population that Plaintiff's data analyst evaluated is statistically reliable. *Id.*

C. Mediation

On May 29, 2024, following much of the foregoing informal discovery and exchange of information, the Parties participated in a mediation session presided over by Mediator Chris Barnes, an experienced class action mediator. During the mediation, the Parties had a full day of



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

⁵ Raosoft advertises, “Raosoft, Inc. produces EZSurvey for the Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software programs for information gathering and analysis. The family of survey software supports data collection and reporting for any form-based data. Support is for web-surveys and forms, email distribution, diskette, PDA, laptop or pen-based: all types of distribution.” The Raosoft webpage advertises that is it “database web survey software for gathering information.” <http://www.raosoft.com/>. It also advertises, “The parameters of the sample size calculation are something that you choose.” <http://www.raosoft.com/suggestreading.html>.

1 productive negotiations and reached agreement on a class-wide settlement after the mediation
2 session. During the mediation sessions, each side, represented by her / its respective counsel,
3 recognized the risk of an adverse result in the Action and agreed to settle the Action and all other
4 matters covered by this Agreement pursuant to the terms and conditions of this Agreement. DS,
5 ¶ 12.

6 **III. OVERVIEW OF THE SETTLEMENT**

7 **A. Settlement Class and Aggrieved Employees Definition**

8 The Settlement defines the Settlement Class as all persons employed by Defendants in
9 California as a Picnic CaterOps or Hotel Banquet employee and classified as hourly and non-
10 exempt who worked for Defendants during the Class Period. “Class Period” means the period
11 from August 24, 2018 to the date the Court preliminarily approves this class action settlement.
12 Settlement, §§ 1.5 and 1.12. The “Aggrieved Employees” are all persons employed by Defendants
13 in California as Picnic CaterOps or Hotel Banquet employees and classified as hourly and non-
14 exempt who worked for Defendants during the PAGA Period. The “PAGA Period” begins August
15 19, 2021 and ends May 31, 2025. Settlement, §§ 1.4 and 1.32.

16 **B. Monetary Terms**

17 Except as otherwise provided by Paragraph 10 below, Defendants promise to pay
18 \$900,000.00 and no more as the Gross Settlement Amount and to separately pay any and all
19 employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants
20 may, but have no obligation, to pay the Gross Settlement Amount (or any payroll taxes) prior to
21 the deadline stated in Paragraph 4.3 of this Agreement, though Defendants must pay by that
22 deadline. The Administrator will disburse the entire Gross Settlement Amount without asking or
23 requiring Participating Class Members or Aggrieved Employees to submit any claim as a
24 condition of payment. None of the Gross Settlement Amount will revert to Payments from the
25 Gross Settlement Amount. The Administrator will make and deduct the following payments from
26 the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval
27 (Settlement, § 3.2):

28 **To Plaintiff:** Class Representative Service Payment to the Class Representative of not
more than \$15,000.00 (in addition to any Individual Class Payments and any Individual 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:
1875 Century Park East
Fl 7
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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 Payments the Class Representative is entitled to receive as a Participating Class Member).
2 Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that
3 does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class
4 Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative
5 Service Payment no later than 16 court days prior to the Final Approval Hearing. If the Court
6 approves a Class Representative Service Payment less than the amount requested, the
7 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will
8 pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full
9 responsibility and liability for employee taxes owed on the Class Representative Service Payment.
10 Settlement, § 3.2.1.

11 **To Class Counsel:** A Class Counsel Fees Payment of not more than 33.33%, which is
12 currently estimated to be \$300,000.00 and a Class Counsel Litigation Expenses Payment of not
13 more than \$25,000.00. Defendants will not oppose requests for these payments provided that they
14 do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel
15 Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the
16 Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class
17 Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will
18 allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to
19 Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class
20 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will
21 pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
22 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
23 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
24 Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any
25 division or sharing of any of these Payments. Settlement, § 3.2.2.

26 **To the Administrator:** An Administrator Expenses Payment not to exceed \$12,500.00
27 except for a showing of good cause and as approved by the Court. To the extent the
28 Administration Expenses are less or the Court approves payment less than \$12,500.00, the

1 Administrator will retain the remainder in the Net Settlement Amount. Settlement, § 3.2.3.

2 **To Each Participating Class Member:** An Individual Class Payment calculated by (a)
3 dividing the Net Settlement Amount by the total number of Workweeks worked by all
4 Participating Class Members during the Class Period and (b) multiplying the result by each
5 Participating Class Member's Workweeks. Settlement, § 3.2.4.

6 **To the LWDA and Aggrieved Employees:** PAGA Penalties in the amount of \$20,000.00
7 to be paid from the Gross Settlement Amount, with 75% (\$15,000.00) allocated to the LWDA
8 PAGA Payment and 25% (\$5,000.00) allocated to the Individual PAGA Payments. Settlement, §
9 3.2.5.

10 **C. Timing of Payments**

11 Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts
12 necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the
13 Administrator no later than 14 days after the Effective Date. Defendants may, but are not obligated
14 to, fund all or any part of the Gross Settlement Amount anytime prior to the Effective Date,
15 without penalty, and with any such funds to be held in escrow by the Administrator until such
16 time as they are scheduled to be disbursed under the terms of this Agreement. Settlement, § 4.3.

17 Within 28 days after Effective Date, the Administrator will mail checks for all Individual
18 Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
19 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
20 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees
21 Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service
22 Payment shall not precede disbursement of Individual Class Payments and Individual PAGA
23 Payments. Settlement, § 4.4.

24 The Administrator will issue checks for the Individual Class Payments and/or Individual
25 PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid.
26 The face of each check shall prominently state the date (not less than 180 days after the date of
27 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by
28 the void date. The Administrator will send checks for Individual Settlement Payments to all



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 Participating Class Members (including those for whom the Notice Packet was returned
2 undelivered). The Administrator will send checks for Individual PAGA Payments to all
3 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
4 Employees (including those for whom the Notice Packet was returned undelivered). The
5 Administrator may send Participating Class Members a single check combining the Individual
6 Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator
7 must update the recipients' mailing addresses using the National Change of Address Database.
8 Settlement, § 4.4.1.

9 The Administrator must conduct a Class Member Address Search for all other Class
10 Members whose checks are returned undelivered without USPS forwarding address. Within seven
11 (7) days of receiving a returned check the Administrator must re-mail checks to the USPS
12 forwarding address provided or to an address ascertained through the Class Member Address
13 Search. The Administrator need not take further steps to deliver checks to Class Members whose
14 re-mailed checks are returned as undelivered. The Administrator shall promptly send a
15 replacement check to any Class Member whose original check was lost or misplaced, requested
16 by the Class Member prior to the void date. Settlement, § 4.4.2.

17 **D. Calculation of Settlement Shares**

18 To Each Participating Class Member: An Individual Class Payment calculated by (a)
19 dividing the Net Settlement Amount by the total number of Workweeks worked by all
20 Participating Class Members during the Class Period and (b) multiplying the result by each
21 Participating Class Member's Workweeks. Settlement, § 3.2.4.

22 The Administrator will calculate each Individual PAGA Payment by (a) dividing the
23 amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$5,000.00) by the total
24 number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and
25 (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved
26 Employees assume full responsibility and liability for any taxes owed on their Individual PAGA
27 Payment. Settlement, § 3.2.5.1.

28 **E. Apportionment of Settlement Shares**

Tax Allocation of Individual Class Payments. 33.33% of each Participating Class



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage
2 Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2
3 Form. The 66.67% of each Participating Class Member's Individual Class Payment will be
4 allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-
5 Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms.
6 Participating Class Members assume full responsibility and liability for any employee taxes owed
7 on their Individual Class Payment. Settlement, § 3.2.4.1.

8 **F. The Releases**

9 Effective on the date when Defendants fully fund both the entire Gross Settlement Amount
10 and all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
11 Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as
12 follows:

13 **Plaintiff's Release.** Plaintiff and her respective former and present spouses,
14 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
15 and discharge Released Parties from all claims, transactions, or occurrences that occurred during
16 the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have
17 been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims
18 that were, or reasonably could have been, alleged based on facts contained in the Operative
19 Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.3,
20 below. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to
21 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
22 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
23 on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts
24 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be
25 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
26 notwithstanding such different or additional facts or Plaintiff's discovery of them. Settlement, §
27 6.1.

28 **Plaintiff's Waiver of Rights Under California Civil Code Section 1542.** For purposes



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and
2 benefits, if any, of section 1542 of the California Civil Code, which reads:

3 A general release does not extend to claims that the creditor or releasing party does not
4 know or suspect to exist in his or her favor at the time of executing the release, and that if
5 known by him or her would have materially affected his or her settlement with the debtor
6 or Released Party.

7 Settlement, § 6.1.1.

8 **Release by Participating Class Members Who Are Not Aggrieved Employees:** All
9 Participating Class Members, on behalf of themselves and their respective former and present
10 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
11 Parties from all claims stated in the Operative Complaint and those that reasonably could have
12 been alleged based solely upon the facts alleged in the Operative Complaint. Except as set forth
13 in Section 6.3 of this Agreement, Participating Class Members do not release any other claims,
14 including claims for vested benefits, wrongful termination, violation of the Fair Employment and
15 Housing Act, unemployment insurance, disability, social security, workers' compensation, or
16 claims based on facts occurring outside the Class Period. Settlement, § 6.2.

17 **Release of PAGA Claim.** Plaintiff releases all claims for civil penalties under PAGA
18 stated in Plaintiff's pre-filing letter to the LWDA and those that reasonably could have been
19 alleged based solely upon the facts alleged in Plaintiff's pre-filing letter to the LWDA. Plaintiff
20 releases all claims for civil penalties that could have been sought by the Labor Commissioner for
21 the alleged violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not
22 release the claim for wages or damages of any Aggrieved Employee unless such Aggrieved
23 Employee is a Participating Class Member. Settlement, § 6.3.

24 **Release by Non-Participating Class Members Who Are Aggrieved Employees:** All
25 Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf
26 of themselves and their respective former and present representatives, agents, attorneys, heirs,
27 administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties
28 that were alleged, or reasonably could have been alleged, based on the facts alleged in Plaintiff's



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 pre-filing letter to the LWDA. Settlement, § 6.4.

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

3 No later than three (3) business days after receipt of the Class Data, the Administrator
4 shall notify Class Counsel that the list has been received and state the number of Class Members,
5 PAGA Members, Workweeks, and Pay Periods in the Class Data. Settlement, § 9.4.1.

6 Using best efforts to perform as soon as possible, and in no event later than 14 days after
7 receiving the Class Data, the Administrator will send to all Class Members identified in the Class
8 Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet with Spanish
9 translation, if applicable, substantially in the forms attached to this Agreement as Exhibits A, B,
10 C, and D. The first page of the Class Notice shall prominently estimate the dollar amounts of any
11 Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and
12 the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts.
13 Before mailing Notice Packets, the Administrator shall update Class Member addresses using the
14 National Change of Address database. Settlement, § 9.4.2.

15 Not later than three (3) business days after the Administrator’s receipt of any Notice
16 Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet
17 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
18 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Notice
19 Packet to the most current address obtained. The Administrator has no obligation to make further
20 attempts to locate or send Notice Packets to Class Members whose Notice Packet is returned by
21 the USPS a second time. Settlement, § 9.4.3.

22 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or
23 Pay Periods (disputes), and Requests for Exclusion will be extended an additional 14 days beyond
24 the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-
25 mailed. The Administrator will inform the Class Member of the extended deadline with the re-
26 mailed Notice Packet. Settlement, § 9.4.4.

27 If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers
28 any persons who believe they should have been included in the Class Data and should have



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 received the Notice Packet, the Parties will expeditiously meet and confer in person or by
2 telephone, and in good faith, in an effort to agree on whether to include them as Class Members.
3 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class
4 Members, and the Administrator will send, via email or overnight delivery, a Class Notice
5 requiring them to exercise options under this Agreement not later than 14 days after receipt of
6 Class Notice, or the deadline dates in the Class Notice, whichever are later. Settlement, § 9.4.5.

7 **1. Disputes**

8 Each Class Member shall have 60 days after the Administrator mails the Notice Packet
9 (plus an additional 14 days for Class Members whose Notice Packet is re-mailed) to challenge
10 the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member
11 in the Class Notice. This is also known as a dispute. A Workweek/PAGA Pay Period Dispute
12 form, attached as Exhibit C, may be used for this purpose but is not required. The Class Member
13 may challenge the allocation by communicating with the Administrator via fax, email or mail.
14 The Administrator must encourage the challenging Class Member to submit supporting
15 documentation. In the absence of any contrary documentation, the Administrator is entitled to
16 presume that the Workweeks contained in the Class Notice are correct so long as they are
17 consistent with the Class Data. The Administrator's determination of each Class Member's
18 allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise
19 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to
20 calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the
21 Administrator's determination of the challenges. Settlement, § 9.6.

22 **2. Opting Out**

23 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must
24 send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later
25 than 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class
26 Members whose Notice Packet is re-mailed). A Request for Exclusion is a letter from a Class
27 Member or his/her representative that reasonably communicates the Class Member's election to
28 be excluded from the Settlement and includes the Class Member's name, address and email
address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed,



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 or postmarked by the Response Deadline. An Election Not to Participate in Settlement form,
2 attached as Exhibit B, may be used for this purpose but is not required. Settlement, § 9.5.1.

3 The Administrator may not reject a Request for Exclusion as invalid because it fails to
4 contain all the information specified in the Class Notice. The Administrator shall accept any
5 Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the
6 person as a Class Member and the Class Member's desire to be excluded. The Administrator's
7 determination shall be final and not appealable or otherwise susceptible to challenge. If the
8 Administrator has reason to question the authenticity of a Request for Exclusion, the
9 Administrator may demand additional proof of the Class Member's identity. The Administrator's
10 determination of authenticity shall be final and not appealable or otherwise susceptible to
11 challenge. Settlement, § 9.5.2.

12 Every Class Member who does not submit a timely and valid Request for Exclusion is
13 deemed to be a Participating Class Member under this Agreement, entitled to all benefits and
14 bound by all terms and conditions of the Settlement, including the Participating Class Members'
15 Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the Participating
16 Class Member actually receives the Class Notice or objects to the Settlement. Settlement, § 9.5.3.

17 Every Class Member who submits a valid and timely Request for Exclusion is a Non-
18 Participating Class Member and shall not receive an Individual Class Payment or have the right
19 to object to the class action components of the Settlement. Because future PAGA claims are
20 subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who
21 are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this
22 Agreement and are eligible for an Individual PAGA Payment. Settlement, § 9.5.4.

23 **3. Objecting**

24 Only Participating Class Members may object to the class action components of the
25 Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or
26 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses
27 Payment and/or Class Representative Service Payment. Settlement, § 9.7.1.

28 Participating Class Members may send written objections to the Administrator, by fax,



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an
2 attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
3 Participating Class Member who elects to send a written objection to the Administrator must do
4 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
5 14 days for Class Members whose Notice Packet was re-mailed). The Objection form attached as
6 Exhibit D may be used for this purpose but is not required. Settlement, § 9.7.2.

7 Non-Participating Class Members have no right to object to any of the class action
8 components of the Settlement. Settlement, § 9.7.3.

9 **H. Uncashed Checks**

10 For any Class Member whose Individual Class Payment check or Individual PAGA
11 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
12 funds represented by such checks to the California Controller's Unclaimed Property Fund in the
13 name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
14 California Code of Civil Procedure Section 384, subd. (b). Settlement, § 4.4.3.

15 **IV. CERTIFICATION OF THE CLASS IS APPROPRIATE**

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

25 **A. The Settlement Class Is Objectively Ascertainable**

26 A class is ascertainable when it may be readily identified without unreasonable expense
27 or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932
28 (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:
1875 Century Park East
Fl 7
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, ¶ 13. Therefore, the Settlement Class is ascertainable.

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

4 The Settlement Class has sufficiently numerous members to render joinder impractical.
5 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*
6 (1972) 28 Cal.App.3d 1017, 1030. Defendants estimates that there are approximately 449 Class
7 Members. DS, ¶ 14; Settlement, § 10. Plaintiff maintains that it would be impractical and
8 economically inefficient to require each Class Member to separately maintain an individual action
9 or be joined as a named plaintiff in this action. The California Supreme Court has upheld a class
10 of as few as 10 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these
11 considerations, the Settlement Class' membership is sufficiently numerous. DS, ¶ 14. *See Daar*
12 *v. Yellow Cab Co.* (1967) 67 Cal.2d 695.

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

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

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

28 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



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 Defendants’ alleged policy-driven failure to pay all wages earned , failure to provide meal periods,
2 failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to
3 issue proper wage statements, failure to timely pay wages, and related labor law violations, all of
4 which Plaintiff claims constitute unfair business practices and give rise to PAGA penalties.
5 Plaintiff asserts that common questions include, but are not limited to: (1) Whether Defendants
6 failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay;
7 (2) Whether Defendants failed to provide the class with all meal and rest periods in compliance
8 with California law; (3) Whether Defendants failed to pay the class one additional hour of pay on
9 workdays they failed to provide the class with one or more meal or rest periods in compliance
10 with California law; (4) Whether Defendants failed to indemnify the class for all necessary
11 business expenditures incurred during the discharge of their duties; (5) Whether Defendants
12 knowingly and intentionally failed to provide the class with accurate wage statements; (6)
13 Whether Defendants willfully failed to provide the class with timely final wages; and (7) Whether
14 Defendants engaged in unfair competition within the meaning of Business and Professions Code
15 section 17200, *et seq.*, with respect to the class. DS, ¶ 15. Therefore, common questions
16 predominate.

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

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



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 Members. Moreover, Plaintiff's claims could potentially be subject to the same primary
2 affirmative defenses as those of absent Class Members. Accordingly, Plaintiff's claims are typical
3 of the Class. DS, ¶ 16.

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

5 The adequacy requirement is met where the plaintiff is represented by counsel qualified
6 to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to the class'
7 interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the
8 plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling
9 conflicts of interest that might hinder the plaintiff's ability to represent the class. DS, ¶ 17.

10 First, Class Counsel have supplied the Court with declarations to show that they are
11 adequate to represent the Settlement Class and that they have significant experience in
12 employment litigation generally, and wage and hour and employment-related class action
13 litigation specifically. See DS, ¶¶ 18-26; Declaration of Walter L. Haines ("Haines Decl.") ¶ 3.
14 Thus, Plaintiff's counsel are adequate to serve as Class Counsel.

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

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

Plaintiff further contends that a class action is also superior to other means of adjudicating



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

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

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

11 **A. Legal Standard**

12 A class action settlement requires court approval. California Rules of Court (“CRC”), Rule
13 3.769 provides three steps for approval: (1) Preliminary approval after submission of a written
14 motion for preliminary approval, the proposed class settlement, and the proposed class notice; (2)
15 Issuance of notice of settlement to class members; and (3) A final settlement approval hearing
16 where class members may be heard regarding the settlement, and at which evidence and argument
17 concerning the fairness, adequacy, and reasonableness of the settlement is presented. The decision
18 to approve or reject a class settlement is committed to the Court’s broad discretion. *Kullar v. Foot*
19 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision to approve class settlement
20 may be reversed only upon a showing of “clear abuse of discretion.” *Id.*

21 **B. The Settlement Is Presumptively Fair**

22 In assessing preliminary approval, a court evaluates if the settlement process has certain
23 indicia of fairness. A “presumption of fairness exists where (1) the settlement is reached through
24 arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
25 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
26 of objectors is small.” *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford Motor Co.*, (1996)
27 48 Cal.App.4th at 1794.

28 The class settlement here satisfies all of these factors. 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



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:
1875 Century Park East
Fl 7
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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 weaknesses of their respective cases and Defendants' estimated exposure. DS, ¶ 28.

2 Plaintiff prepared "damages" estimates in advance of the mediation. DS, ¶ 29, Ex. 7.
3 Plaintiff determined Defendants' maximum possible exposure for restitution and penalties to be
4 approximately \$6,063,488.32 (consisting of \$381,388.83 in unpaid wages, \$333,012.46 in missed
5 meal period premium wages, \$483,849.13 in missed rest break premium wages, \$257,782.98 in
6 unreimbursed expenses, \$613,350.00 for wage statement penalties, \$560,454.91 for waiting time
7 penalties, and \$3,433,650.00 for civil penalties under PAGA. Plaintiff calculated the damages
8 based on the number of workweeks and pay periods provided by Defendants, Plaintiff's reports,
9 and the sample data. *Id.*

10 The estimates are in essence "home run" projections that omit data points that will
11 undoubtedly reduce the maximum possible damages award and do not factor in any of the risks
12 involved in litigating this Action. Plaintiff calculated the damages based on the number of
13 workweeks and pay periods provided by Defendants, Plaintiff's reports, and the sample data.
14 Plaintiff also considered the possibility that Defendants could launch a *Pick Up Stix* campaign
15 and pursue individual release agreements from the Class Members or settle Plaintiff's claims as
16 part of the settlement in the *Gonzales* matter. Defendants also represented that they had
17 interviewed Defendants' current employees regarding Plaintiff's claims, all of whom would
18 provide declarations, under penalty of perjury, that were favorable to Defendants with respect to
19 the relevant factual issues at issue in Plaintiff's action. Plaintiff's Counsel applied discounts to
20 the maximum possible exposure to account for all other risks discussed below. While it is difficult
21 to assign anything but crudely-determined percentages of risk to any of the claims, it is safe to
22 say that the risk that a *Pick Up Stix* campaign would preclude recovery for such employees is
23 substantial and alone justifies a significant discount because Defendants would likely by trial have
24 gathered releases from the majority of the Class Members. Based on the difficulties of proof,
25 the Defendants' defenses, and the other attendant risks I identify below, I estimated the *likely*
26 awards at trial should Plaintiff prevail to be the following amounts:

- 27 a. Unpaid wages with interest in the amount of \$190,694.42;
28 b. Meal period premium wages with interest in the amount of \$166,506.23;

- c. Rest period premium wages with interest in the amount of \$241,924.57;
- d. Unreimbursed expenses with interest in the amount of \$128,891.49;
- e. Statutory pay stub penalties in the amount of \$306,675.00;
- f. Waiting time penalties in the amount of \$280,227.46; and
- g. Civil penalties in the amount of \$936,450.00.

The total of these amounts is \$2,251,369.16. The Gross Settlement Amount of \$900,000.00 is 39.98% of this amount. A settlement for approximately 39.98% of the potential recovery is a proportion substantially in excess of recovery proportions sanctioned by existing case law.⁶ *Id.* DS, ¶ 30.

Plaintiff's initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. *Id.* Therefore, Plaintiff believes a class settlement for \$900,000.00 is fair and reasonable. *Id.*

C. The Settlement Satisfies the Kullar Factors for Approval

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

1. Evaluation of Plaintiff's Case

a. Risks Associated with the Unpaid Wages Claim

⁶ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998) (“[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) (“a settlement for fourteen percent recovery of Plaintiffs’ maximum recovery is reasonable”); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that “is just over 9% of the maximum potential recovery asserted by either party.”).



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 There is a risk that Plaintiff’s recovery for unpaid wages would be extremely limited at
2 best, largely because Defendants’ written policies throughout the relevant time period prohibited
3 off-the-clock work. Off-the-clock claims are difficult where a defendant requires in its written
4 policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation Hospital*
5 (2014) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be
6 compensable). *Id.* In their written employment policies, Defendants mandates that employees
7 must record all time worked accurately on their time records and strictly prohibit employees from
8 performing any work off-the-clock. Moreover, while Defendants disputes that off-the-clock work
9 occurred, they contend that any time spent off the clock was *de minimis*. The California Supreme
10 Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and
11 minute periods of time may still be subject to a *de minimis* defense even if compensable. (Stating
12 that “We do not decide whether there are circumstances where compensable time is so minute or
13 irregular that it is unreasonable to expect the time to be recorded.”). Following *Troester*,
14 Defendants contend that the *de minimis* doctrine may apply here because the time spent off the
15 clock were minute and insignificant. Accordingly, a large award of penalties seems unlikely with
16 respect to this claim. DS, ¶ 32.

17 The difficulty inherent in proving that off-the-clock work occurred poses a significant
18 hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim.
19 Generally, a court will not certify a class unless it can determine an appropriate classwide
20 methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff
21 may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given
22 the lack of records indicating when such off-the-clock work may have taken place. Individualized
23 inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual
24 in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there is a significant
25 risk that the Court would consider this evidentiary showing insufficient as a classwide
26 methodology. DS, ¶ 33.

27 **b. Risks Associated with the Meal Period Claims**

28 There are risks to Plaintiff’s meal period claim. Defendants contend that, to establish a



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 violation for missed meal periods, a plaintiff must do more than show that a meal break was not
2 taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a
3 “reasonable opportunity” to take a duty-free meal period, it has no further duty to “police meal
4 breaks and ensure no work thereafter is performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must
5 show the employer impeded, discouraged, or prohibited the employee from taking a proper break,
6 or otherwise failed to release the employee of all control. *Id.* “Thus, the crucial issue with regard
7 to the meal break claim is the reason that a particular employee may have failed to take a meal
8 break.” *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641; DS, ¶ 34.

9 Defendants contend they did not impede or discourage Plaintiff, or any other employees,
10 from taking their meal or rest periods. Defendants’ policies mandate that employees take at least
11 a 30-minute, uninterrupted meal periods and record the beginning and ending time of their meal
12 breaks each day on their time records. The time records that comprise the random sample
13 Defendants produced to Plaintiff for purposes of mediation show that meal periods were taken.
14 The payroll records also show that Defendants paid premium wages for meal period violations.
15 Of the time records that show a late, short or no lunch, individualized evidence may be necessary
16 to determine whether they occurred due to conduct of the Defendants or each of the employees
17 concerned. Accordingly, there is a significant risk that the value of Plaintiff’s meal period claim
18 would be substantially reduced at trial. DS, ¶ 35.

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

20 There are risks to Plaintiff’s rest period claim. Employers are not required to record rest
21 periods and such periods are paid. Defendants contend they provided non-exempt employees the
22 opportunity to take rest periods in accordance with California law. Further, Defendants’ written
23 policies on rest periods are consistent with the Wage Order. Thus, unlike meal periods, where
24 there are often records showing whether an employee clocked out or not, there is no such evidence
25 to prove a missed rest period or that the employer refused to authorize and permit one. Managing
26 such claims at trial has become exceedingly difficult. Plaintiff will depend on sample witness
27 testimony and surveys to prove the claims. While a victory with such evidence is certainly
28 possible, relevant caselaw makes such claims risky from a trial management and due process



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

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 statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426. DS, ¶ 36.

d. Risks Associated with the Failure to Indemnify Claim

There is a risk that the Court may consider Plaintiff’s claims as to Defendants’ alleged failure to indemnify for business expenses to be individual in nature and thus decline to certify the class. Plaintiff alleges that Defendants required Plaintiff and the Class Members to use their personal items including cellular phones, and failed to indemnify them for these business expenses. Defendants presented evidence that they have supplied their employees with tools, equipment, and other supplies and had an expense reimbursement policy. As such, there is a risk that the Court may consider Plaintiff’s claims to be individual in nature and unfit for class wide resolution. DS, ¶ 37.

e. Risks Associated with the Statutory Wage Statement Penalty Claims

Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA penalties. Under Labor Code section 226, wage statements must include various information, including the applicable rates of pay, corresponding hours worked, and gross pay. Here, Plaintiff’s wage statement claim has the same underlying risks as the above claims, as it is derivative of them. On their face, the wage statements issued by Defendants comply with the requirements of Labor Code § 226. DS, ¶ 38.

f. Risks Associated with the Waiting Time Penalty Claims.

Without proof willful behavior, Plaintiff will be unable to recover these penalties. DS, ¶ 39.

g. Risks Associated With the PAGA Claim

Regarding PAGA, a court has discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed valid defenses to the Labor Code claims underlying Plaintiff’s PAGA allegations. Thus, 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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 PAGA claims likewise face significant uncertainty. There is a risk that the Court would consider
2 the maximum civil penalty available to be confiscatory. This uncertainty increases Plaintiff's risk
3 of pursuing the PAGA claims and required a significant discount for settlement purposes. DS, ¶
4 40.

5 For mediation purposes, Plaintiff's counsel estimated a maximum possible exposure of
6 approximately \$3,433,650.00 in civil penalties. This estimate did not take into account any of the
7 risks discussed above and assumed a violation for every single pay period. Plaintiff's counsel also
8 assessed multiple penalties for the same pay period for the same alleged violations of different
9 Labor Code provisions and derivative violations. Although two federal district court decisions
10 held that "stacking" PAGA penalties in this fashion may be appropriate to determine the amount
11 in controversy for purposes of removal jurisdiction, Plaintiff's counsel is not aware of any
12 California state courts awarding plaintiffs multiple PAGA penalties for the same violation for the
13 same pay period under different Labor Code provisions. This may be because the PAGA does not
14 provide for what many employers characterize as claim splitting and not merely stacking. DS, ¶
15 41.

16 Plaintiff is aware of only two significant awards under the PAGA in a contested
17 proceeding, both issued by federal district courts.⁷ DS, ¶42. PAGA penalty awards are often small
18
19

20 ⁷ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
21 penalties under the PAGA of \$12,277,500.00 where total adjusted damages were
22 \$18,695,692.58. In this regard, the district court stated,

23 The plain language of PAGA provides that "a court may award a lesser amount than the
24 maximum civil penalty amount specified by this part if, *based on the facts and*
25 *circumstances of the particular case*, to do otherwise would result in an award that is
26 unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code s 2699(e)(2) (emphasis
27 added). The relationship between the amount of total damages and the amount of
28 maximum PAGA penalties is certainly a "circumstance" of the case under the term's
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.



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 even for egregious, intentional violations of the Labor Code.⁸ *Id.* For instance, on October 24,
2 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very
3 experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving Company,*
4 *Inc.*, LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.* (2018) 30
5 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a PAGA
6 penalty of only \$5 per pay period for the defendant’s meal period violations. A similar result
7 could occur here. DS, ¶ 43.

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

9 An employer enjoys the right to settle a putative class member’s disputed wage claims
10 individually, without the consent or involvement of class counsel. *See Chindarah v. Pick Up Stix,*
11 *Inc.* (2009) 171 Cal. App. 4th 796. As discussed above, Defendants may launch a “pick off”
12 settlement campaign to pursue individual release agreements from the Class Members, thereby
13 potentially narrowing the size of the Settlement Class – 449 members - until it is no longer
14 numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient number of
15 employees to represent. This led to a significant reduction of claim value in settlement
16 negotiations. DS, ¶ 44.

17 While the evidence gathered through Plaintiff’s discovery supports the merits of the
18 claims asserted in this lawsuit, Plaintiff and her counsel recognize that continued litigation
19 presents significant risks that support a downward departure from Defendants’ estimated liability
20 exposure. DS, ¶ 45. In view of the risks, the Settlement reflects Plaintiff’s estimate of the total
21 amount of damages, monetary penalties or other relief that the Class could reasonably expect to

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

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

28 ⁸ 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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.*
2 It also represents a fair, adequate, and reasonable compromise amount for these claims and
3 warrants preliminary approval. *Id.*, *Torrissi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,
4 1376 (the financial condition of defendant predominated in assessing the reasonableness of
5 settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty
6 concerning defendant's financial stability "strongly supports the reasonableness of the
7 settlement"); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014
8 WL 2465049, * 3.

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

10 The settlement of PAGA penalties in the sum of \$20,000.00, of which 75% (\$15,000.00)
11 will be paid to the LWDA and 25% (\$5,000.00) will be distributed to the Class, is reasonable and
12 appropriate under the circumstances. The Parties negotiated a good faith amount for PAGA
13 Penalties to be paid to the LWDA and to the Class. The portion to be paid to the LWDA was not
14 the result of self-interest at the expense of other Aggrieved Employees. Where settlements
15 "negotiate[] a good faith amount" for PAGA penalties and "there is no indication that this amount
16 was the result of self-interest at the expense of other Class Members," such amounts are generally
17 considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844
18 EDL, 2009 WL 928133, at *9. Likewise, where the employer did not act willfully, and made good
19 faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted
20 because imposing maximum PAGA penalty for each violation would have been unjust, arbitrary,
21 and oppressive. *Id. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming
22 trial court's award of only 10% of maximum PAGA penalty for meal break violations). *Id.* The
23 amount to be paid to the LWDA comports with PAGA settlement amounts approved by other
24 courts. See, e.g., *Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL
25 67245, 81 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common fund);
26 *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA
27 payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v.*
28 *Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving 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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 settlement of 0.3% or \$1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589
2 (approving PAGA settlement and release that allocated \$0 to PAGA claim). Courts have also
3 approved settlements for \$20,000 or less. See, e.g., *Hicks v. Toys ‘R’ Us–Delaware, Inc.*, (C.D.
4 Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in a case
5 involving \$4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012)
6 2012 WL 5941801 at *14 (approving PAGA penalties of \$10,000 as part of \$2.5 million
7 settlement); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3
8 (approving PAGA payment of \$10,000 as part of \$3.7 million common-fund settlement). *Id.*

9 **3. Presence of Governmental Participant**

10 As required under Labor Code section 2699(l)(2), Plaintiff will provide notice of this
11 settlement to the LWDA with the filing and service of this motion. DS, ¶ 47, Ex. 10.

12 **4. Reaction of Class Members to Proposed Settlement**

13 If the settlement is preliminarily approved, Class Members will be provided with the Court
14 Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (attached
15 as Exhibits A-D to the Settlement) and an opportunity to object. DS, ¶ 68. The parties’ proposed
16 notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class
17 Members to make informed responses to the proposed settlement. *Id.*

18 **VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY**
19 **COMPENSATE CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS**
20 **MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY**
21 **COMPARED TO OTHER CLASS MEMBERS**

22 The estimated average Individual Class Payment is approximately \$1,174.83
23 (\$527,500.00 Net Settlement Amount / 449 Class Members = \$1,174.83). DS, ¶ 48.

24 At \$13.96 per hour (the average Class Member’s hourly wage), the average estimated
25 Individual Class Payment to Participating Class Members is the equivalent of over 84 hours of
26 unpaid wages (the primary remedies sought) (\$1,174.83 / 13.96 = 84.15 hours). Thus, this is a
27 result the Class can be proud of in view of the significant risks. DS, ¶ 49.

28 Defendants estimates that there are 16,863 Workweeks for the Class Period. So, each
Workweek has a value of approximately \$31.28 (\$527,500.00 Net Settlement Amount / 16,863
Workweeks = \$31.28). Plaintiff had 157 Workweeks during the Class Period. Based on this, it is



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 anticipated that Plaintiff Tojyia Green will receive an Individual Class Payment of approximately
2 \$4,911.20 as a Participating Class Member ($157 \text{ Workweek} \times \$31.28 = \$4,911.20$) while the
3 average estimated Individual Class Payment to Participating Class Members will be
4 approximately \$1,174.83. Some Class Members – those who worked more Workweeks during
5 the Class Period - will receive more, and some less. The highest possible Individual Class
6 Payment to a Participating Class Member (i.e., to those who qualify for all Workweeks in the
7 Class Period) will be approximately \$11,012.12. The lowest possible Individual Class Payment
8 to a Participating Class Member (i.e., to those who qualify for only one Workweek in the Class
9 Period) will be approximately \$31.28. Some Class Members – those who worked more
10 Workweeks during the Class Period - will receive more, and some less. DS, ¶ 50.

11 The Individual Class Payment will be paid to each Class Member based on his or her
12 eligible Workweeks compared to the total Workweeks. Because this method compensates Class
13 Members based on the extent of their potential injuries, in that Class Members who worked for
14 Defendants longer would have been subject to more alleged violations, it is fair, adequate, and
15 reasonable. DS, ¶ 51.

16 Plaintiff estimates that the average Aggrieved Employee Individual PAGA Payment
17 will be \$22.83. Plaintiff's Individual PAGA Payment, her individual share of 25% of the PAGA
18 Penalties, will be less than that of some absent Aggrieved Employees. Under the Settlement,
19 each Aggrieved Employee will receive a *pro rata* distribution of 25% of the PAGA Penalties
20 proportionate to the number of paychecks he or she had with Defendants during the PAGA Period,
21 compared to the total of all paychecks of all Aggrieved Employees during the PAGA Period, as
22 reflected by Defendants' records. Plaintiff estimates that there are 6,243 Aggrieved Employee
23 paychecks for the PAGA Period. So, each Aggrieved Employee paycheck from the PAGA
24 Period has a value of approximately \$0.80 ($25\% \text{ of } \$20,000.00 \text{ in PAGA Penalties} / 6,243$
25 Aggrieved Employee paychecks = \$0.80). It is anticipated that Plaintiff Tojyia Green will
26 receive an Individual PAGA Payment of approximately \$0.80 as an Aggrieved Employee (one
27 (1) paychecks during the PAGA Period $\times$ \$0.80 paycheck value = \$0.80) while the average
28 estimated Individual PAGA Payment to an Aggrieved Employee will be approximately \$22.83



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 (\$5,000.00, 25% of PAGA Penalties / Aggrieved Employee paychecks during the PAGA Period
2 = \$22.83 Individual PAGA Payment). Some Aggrieved Employees – those who had more
3 paychecks during the PAGA Period - will receive more, and some less. The highest possible
4 Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for all paychecks
5 in the PAGA Period) will be approximately \$78.79. The lowest possible Individual PAGA
6 Payment to an Aggrieved Employee (i.e., to those who qualify for only one paycheck in the PAGA
7 Period) will be approximately \$0.80. DS, ¶ 52.

8 **VII. ALLOCATION FOR CLASS COUNSEL’S FEE AWARD AND ATTORNEYS’**
9 **FEES AND COSTS AWARD FOR LITIGATION EXPENSES IS APPROPRIATE**

10 The Settlement states Class Counsel may seek attorneys’ fees of \$300,000.00 (one-third
11 of the GSA) and up to \$25,000.00 for actual reasonable litigation costs and expenses incurred in
12 prosecuting the Action. Settlement § 3. These amounts are reasonable, given the facts and
13 circumstances of the case. DS, ¶¶ 53-56.

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

27 The amount of fees and costs requested are commensurate with (1) the risk Class Counsel
28 took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the
skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) 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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned
2 down to devote time to this matter. DS, ¶ 54. Class Counsel interviewed and obtained information
3 from putative class members, met and conferred with Defendants' counsel on numerous
4 occasions, reviewed and analyzed hundreds of pages of data and documents provided by
5 Defendants and obtained through other sources, researched applicable law, and provided
6 estimates of "damages" for purposes of settlement discussions, among other tasks. *Id.*

7 Class Counsel have borne all the risks and costs of litigation and will receive no
8 compensation until recovery is obtained. DS, ¶ 55. Class Counsel are well-experienced in wage-
9 and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.*
10 Considering the amount of the attorney fees requested, the work performed, and the risks incurred,
11 the requested fees and costs are reasonable and should be awarded. *Id.*

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

15 Courts routinely approve incentive awards to compensate named plaintiffs for the services
16 they provide and the risks they incur during class action litigation, often in much higher amounts
17 than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726
18 (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van*
19 *Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000
20 enhancement award). The Settlement provides that Plaintiff may seek a Class Representative
21 Service Payment of \$15,000.00. This amount is entirely reasonable given Plaintiff's efforts in this
22 action and the risks she undertook on behalf of Class Members. DS, ¶ 57; Declaration of Tojyia
23 Green ("Plaintiff decl."), generally. Plaintiff has devoted many hours advancing the interests of
24 the Settlement Class. Plaintiff has done this by, among other things, retaining experienced
25 counsel, providing them with information about her work history with Defendants and
26 Defendants' policies and practices with respect to the wage and hour claims at issue, participating
27 in mediation, and being actively involved in the settlement process to ensure a fair result for the
28 Settlement Class as a whole. In doing this, Plaintiff has been exposed to significant risks,
including the risk of an order to pay Defendants' attorneys' fees and costs if this action had been



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 unsuccessful (See Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on
2 behalf of the Settlement Class shows that the proposed Class Representative Service Payment is
3 fair, adequate, and reasonable, and thus warrants preliminary approval. DS, ¶¶ 57-67, Exs. 11-16;
4 Plaintiff decl., generally.

5 **IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE**
6 **PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE,**
7 **AND REASONABLE**

8 With regard to the settlement administration costs (“Administration Expenses Payment”) provision, it is reasonable. Before agreeing to ILYM Group, Inc. and its bid of \$9,650.00, the
9 Parties sought and reviewed bids from other reputable third-party administrators which provided
10 higher or comparable bids. DS, ¶ 71-72, Exs. 17-20. Thus, the settlement administration costs
11 provision should be given preliminary approval.

12 **X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN**
13 **SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO**
14 **GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO**
15 **EXERCISE THEIR RIGHTS**

16 This Court should approve the proposed plans for giving notice to the Settlement Class
17 and administering the Settlement. The standard for determining the adequacy of notice is whether
18 the notice has “a reasonable chance of reaching a substantial percentage of the class members.”
19 *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple
20 measures to ensure that as many Class Members as practicable receive actual notice of the
21 Settlement and have enough time to exercise their rights. The Settlement requires distribution of
22 the Notice by First Class U.S. mail only. Settlement, ¶ 68. Although there are current employee
23 Class Members, it is uncertain whether Defendants’ records of their contact information include
24 email addresses and Class Members, who perform all of their work away from a desk, are not in
25 a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable.
26 DS, ¶ 68.

27 With respect to its content, “[The] notice given to the class must fairly apprise the class
28 members of the terms of the proposed compromise and of the options open to dissenting class
members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.
The purpose of the notice in class settlement context is to give class members sufficient



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:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 information to decide whether they should accept the benefits offered, opt out and pursue their
2 own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) provides
3 Class Members with all pertinent information that they need to fully evaluate their options and
4 exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among
5 other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how
6 Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the
7 Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how
8 payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the
9 individual Settlement Class Member's estimated payment. Additionally, the Class Notice will
10 include the number of Workweeks a Class Member had during the Class Period. Accordingly, the
11 Notice should be approved because it describes the Settlement with sufficient clarity and
12 specificity to explain to Class Members what this action is about, their rights under the Settlement,
13 and how to exercise those rights. DS, ¶ 68.

14 **XI. CONCLUSION**

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

17 Respectfully submitted,

18 THE SPIVAK LAW FIRM

19
20 Dated: April 21, 2025

By:



21 DAVID G. SPIVAK, Attorneys for
22 Plaintiff, TOJYIA GREEN, and all
23 others similarly situated



24 SPIVAK LAW
EMPLOYEE RIGHTS

25 Mail:
26 8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

27 Office:
28 1875 Century Park East
Fl 7
Los Angeles, CA 90067