

1 DAVID GLENN SPIVAK (SBN 179684)

2 david@spivaklaw.com

3 THE SPIVAK LAW FIRM

4 8605 Santa Monica Bl

5 PMB 42554

6 West Hollywood, CA 90069

7 Telephone: (213) 725-9094

8 Facsimile: (213) 634-2485

9 Attorneys for Plaintiff,

10 VICKIE WILLIAMS, and all others similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF SOLANO**

13 **(UNLIMITED JURISDICTION)**

14 VICKIE WILLIAMS, on behalf of herself, all
15 others similarly situated, the general public, and
16 as an “aggrieved employee” on behalf of other
17 “aggrieved employees” under the Labor Code
18 Private Attorneys General Act of 2004,

19 *Plaintiff(s),*

20 vs.

21 VALLEJO HOSPITALITY LLC, California
22 limited liability company; THREE65
23 HOSPITALITY LLC, a California limited
24 liability company; and DOES 1–50, inclusive,

25 *Defendant(s).*

Case No. FCS059352

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

Hearing Date: November 12, 2026

Hearing Time: 9:00 a.m.

Hearing Dept.: 8, The Honorable Wendy
G. Getty

Action filed: November 30, 2022

Trial Date: Not Set



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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

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),
VICKIE WILLIAMS, and all others similarly situated



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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
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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 Vickie Williams ("Plaintiff") submits this memorandum of points and authorities
5 in support of her unopposed motion for preliminary approval of the Class Action and PAGA
6 Settlement Agreement and Class Notice (the "Settlement")¹, which provides for a Gross
7 Settlement Amount ("GSA") of \$250,000.00 in compromise of all disputed claims on behalf of
8 hourly, non-exempt during the period of November 30, 2018 through March 17, 2025. Through
9 this Motion, Plaintiff respectfully requests for this Court to (1) provisionally certify the below-
10 defined Class for settlement purposes only under Code of Civil Procedure § 382; (2) preliminarily
11 approve the Settlement; (3) preliminarily appoint Plaintiff as Class Representative; (4) appoint
12 David Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group
13 as Class Counsel ; (5) approve the proposed notice procedures and related forms; and (6) schedule
14 a final approval hearing.

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

25 **II. BACKGROUND**

26 Defendants own and operate hotels. DS, ¶ 11. Defendant employed Plaintiff in California
27 as a food attendant and front desk worker from about May 8, 2022, until June 10, 2022. *Id.*

28 *///*

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



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1875 Century Park East
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Los Angeles, CA 90067

1 **A. The Claims and Procedural History**

2 On November 28, 2022, Plaintiff notified Defendants and the California Labor and
3 Workforce Development Agency (“LWDA”), pursuant to the California Private Attorneys
4 General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”), of alleged Labor
5 Code violations committed by Defendant. DS, ¶ 12, Ex. 2.

6 On November 30, 2022, Plaintiff filed a Class Action Complaint in the Solano County
7 Superior Court, Case No. FCS059352, against Defendant on behalf of herself and others similarly
8 situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages Earned
9 for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198); (2) Failure to Provide Rest
10 Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide Meal Periods (Lab. Code §§226.7,
11 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage Statement
12 Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time Penalties (Lab. Code §§ 201-203); and
13 (7) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*). DS, ¶ 13, Ex. 3. On February 10,
14 2023, Plaintiff filed her First Amended Complaint adding a claim under PAGA. DS, ¶ 13, Ex. 4.
15 On March 13, 2023, Defendant filed an answer to Plaintiff’s First Amended Complaint. DS, ¶ 13,
16 Ex. 5. Defendants deny all of Plaintiff’s allegations and strongly contend that their wage and hour
17 policies, practices and procedures are fully compliant with all applicable laws. DS, ¶ 38.

18 **B. Sampling**

19 On August 21, 2024, Plaintiff requested that Defendant informally disclose documents
20 and data to enable Plaintiff to prepare for settlement discussions, including the number of putative
21 class members and aggrieved employees, the number of paychecks and workweeks for the various
22 limitations periods applicable to Plaintiff’s claims. DS, ¶ 14. Plaintiff also requested a reasonable,
23 randomly selected sample of Defendants’ time, payroll, and expense records, and related
24 personnel records. *Id.* Finally, Plaintiff requested Defendants’ written policies applicable to the
25 claims at hand and asked Defendant identify any and all comparable claims against them.

26 The Parties thereafter engaged in an informal, voluntary exchange of information in the
27 context of privileged settlement discussions to facilitate an early mediation. Defendant produced
28 Plaintiff’s entire personnel file (including policies and agreements she signed and acknowledged)
and copies of their relevant company written policies. DS, ¶ 15.



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1 A. The Defendants disclosed that there have not been any comparable claims
2 against it. DS, ¶20.

3 B. Defendants contend that they employed 125 putative class members
4 during the period of May 03, 2021 to March 17, 2025. Defendant produced the records of 63.20%
5 of the putative class members for the period of May 03, 2021 to March 17, 2025. There were
6 records for 79 employees in the sample. Defendant chose the sample. The sample was randomly
7 selected. The sample consisted of time sheets, payroll records, and related records. DS, ¶16.

8 Plaintiff retained Sridhar Srinivasan, a data analyst, to analyze the sample. Plaintiff also
9 employed the Raosoft² Sample Size calculator (<http://www.raosoft.com/samplesize.html>) to
10 determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004)
11 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative
12 margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin
13 of error of 43.3 percent was unacceptable. Using a margin of error of 34%, a confidence level of
14 95%, and a population size of 79, the Raosoft Sample Size Calculator recommended a sample of
15 9. DS, ¶ 17, **Exhibit 6** (Raosoft Sample Size Calculator results print-out). Thus, the sample
16 population that Plaintiff's data analyst evaluated is statistically reliable. *Id.*

17 **C. Mediation**

18 On March 12, 2025, the Parties participated in a mediation session presided over by
19 Mediator Mark C. Peters, an experienced class action mediator. The mediation ended with no
20 settlement. On September 17, 2025, following much of the foregoing informal discovery and
21 exchange of information, the Parties participated in a second mediation session also presided over
22 by Mediator Mark C. Peters. During the second mediation, the Parties had a half day of productive
23 negotiations and reached agreement on a class-wide settlement after the mediation session.

24 ² Raosoft advertises, “Raosoft, Inc. produces EZSurvey for the
25 Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software
26 programs for information gathering and analysis. The family of survey software supports data
27 collection and reporting for any form-based data. Support is for web-surveys and forms, email
28 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>.



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1 During the mediation sessions, each side, represented by her / their respective counsel, recognized
2 the risk of an adverse result in the Action and agreed to settle the Action and all other matters
3 covered by this Agreement pursuant to the terms and conditions of this Agreement. DS, ¶ 18.

4 **D. Defendants' Financial Condition**

5 At the mediation, it became clear that Defendants had insufficient resources to cover the
6 full extent of liability. DS ¶ 19. As part of the settlement negotiations, Defendants disclosed their
7 balance sheets, profit and loss statements, tax returns, and related information for 2021, 2022, and
8 2023. *Id.* Plaintiff's Counsel has reviewed the financial records with the aid of an accountant. *Id.*
9 The information provided was sufficient to demonstrate the financial condition of the Defendants
10 and that they will unlikely be able to afford payment of a larger amount than the Settlement
11 amount. Based on such records, Plaintiff, on her own behalf and on behalf of the Class Members,
12 has agreed to settle the lawsuit on the terms set forth in the Settlement. *Id.*

13 **III. OVERVIEW OF THE SETTLEMENT**

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

15 The Settlement defines the Settlement Class as all Defendants' hourly, non-exempt
16 California employees during the Class Period. The Class Period is November 30, 2018 through
17 March 17, 2025. *Id.* The "Aggrieved Employees" are a person employed by Defendants in
18 California and classified as an hourly, non-exempt who worked for Defendants during the PAGA
19 Period. The "PAGA Period" begins November 28, 2021 and ends March 17, 2025. *Id.*

20 **B. Monetary Terms**

21 Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
22 Defendants promise to pay \$250,000.00 and no more as the Gross Settlement Amount and to
23 separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual
24 Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any
25 payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator
26 will disburse the entire Gross Settlement Amount without asking or requiring Participating Class
27 Members or Aggrieved Employees to submit any claim as a condition of payment. None of the
28 Gross Settlement Amount will revert to Defendants.

Payments from the Gross Settlement Amount. The Administrator will make and deduct
the following payments from the Gross Settlement Amount, in the amounts specified by the Court



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1 in the Final Approval:

2 To Plaintiff: Class Representative Service Payment to the Class representative of not more
3 than \$15,000.00 each (in addition to any Individual Class Payments and any Individual PAGA
4 Payments the Class representative is entitled to receive as Participating Class Members).
5 Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that
6 do not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class
7 Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative
8 Service Payment no later than 16 court days prior to the Final Approval Hearing. If the Court
9 approves a Class Representative Service Payment less than the amount requested, the
10 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will
11 pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full
12 responsibility and liability for employee taxes owed on the Class Representative Service Payment.

13 To Class Counsel: A Class Counsel Fees Payment of not more than 33 and 1/3%, which
14 is currently estimated to be \$83,333.33 and a Class Counsel Litigation Expenses Payment of not
15 more than \$18,500.00. Defendants will not oppose requests for these payments provided that do
16 not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel
17 Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the
18 Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class
19 Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will
20 allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to
21 Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class
22 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will
23 pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
24 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
25 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
26 Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any
27 division or sharing of any of these Payments.

28 To the Administrator: An Administrator Expenses Payment not to exceed \$4,990 except



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1 for a showing of good cause and as approved by the Court. To the extent the Administration
2 Expenses are less or the Court approves payment not to exceed \$4,990, the Administrator will
3 retain the remainder in the Net Settlement Amount.

4 To Each Participating Class Member: An Individual Class Payment calculated by (a)
5 dividing the Net Settlement Amount by the total number of Work Weeks worked by all
6 Participating Class Members during the Class Period and (b) multiplying the result by each
7 Participating Class Member's Work Weeks.

8 Tax Allocation of Individual Class Payments. 33.33% of each Participating Class
9 Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage
10 Portion").

11 **C. Timing of Payments**

12 Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement
13 Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by
14 transmitting the funds to the Administrator within 365 days of the Effective Date. Settlement
15 Agreement ¶ 4.3.

16 **D. Calculation of Settlement Shares**

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

21 The Administrator will calculate each Individual PAGA Payment by (a) dividing the
22 amount of the Aggrieved Employees' 25% share of PAGA Penalties \$2,500.00 by the total
23 number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA
24 Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.
25 Aggrieved Employees assume full responsibility and liability for any taxes owed on their
26 Individual PAGA Payment. Settlement Agreement ¶ 3.2.5.1.

27 **E. Apportionment of Settlement Shares**

28 Tax Allocation of Individual Class Payments. 33.33% of each Participating Class
Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage



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PMB 42554
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1875 Century Park East
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1 Portion”). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2
2 Form. The 66.67% of each Participating Class Member’s Individual Class Payment will be
3 allocated to settlement of claims for interest and penalties (the “Non-Wage Portion”). The Non-
4 Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms.
5 Participating Class Members assume full responsibility and liability for any employee taxes owed
6 on their Individual Class Payment. Settlement Agreement ¶3.2.4.1.

7 **F. The Releases**

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

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

27 Plaintiff’s Waiver of Rights Under California Civil Code Section 1542. For purposes of
28 Plaintiff’s Release, expressly waives and relinquishes the provisions, rights, and benefits, if any,



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Fl 7
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1 of section 1542 of the California Civil Code, which reads:

2
3 A general release does not extend to claims that the creditor or releasing party does
4 not know or suspect to exist in his or her favor at the time of executing the release,
5 and that if known by him or her would have materially affected his or her
6 settlement with the debtor or Released Party. Settlement Agreement ¶ 6.1.1.

7
8 Release by Participating Class Members Who Are Not Aggrieved Employees: All
9 Participating Class Members, on behalf of herself 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 based solely upon the facts
12 alleged in the Operative Complaint. Except as set forth in Section 6.3 of this Agreement,
13 Participating Class Members do not release any other claims, including claims for vested benefits,
14 wrongful termination, violation of the Fair Employment and Housing Act, unemployment
15 insurance, disability, social security, workers' compensation, or claims based on facts occurring
16 outside the Class Period. Settlement Agreement ¶ 6.2.

17 Release of PAGA Claim. Plaintiff releases all claims for civil penalties that could have
18 been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter
19 to the LWDA; Plaintiff does not release the claim for wages or damages of any Aggrieved
20 Employee unless such Aggrieved Employee is a Participating Class Member. Settlement
21 Agreement ¶ 6.3.

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

23 The deadlines for Class Members' written objections, Challenges to Work Weeks and/or
24 Pay Periods (disputes), and Requests for Exclusion will be extended an additional 14 days beyond
25 the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-
26 mailed. The Administrator will inform the Class Member of the extended deadline with the re-
27 mailed Notice Packet. Settlement Agreement ¶ 8.4.4.

28 **1. Disputes**

Only Participating Class Members may object to the class action components of the



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1 Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or
2 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses
3 Payment and/or Class Representative Service Payment. Settlement Agreement ¶ 8.7.1.

4 Participating Class Members may send written objections to the Administrator, by fax,
5 email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an
6 attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
7 Participating Class Member who elects to send a written objection to the Administrator must do
8 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
9 14 days for Class Members whose Notice Packet was re-mailed). The Objection form attached as
10 Exhibit D may be used for this purpose but is not required. Settlement Agreement ¶ 8.7.2.

11 Non-Participating Class Members have no right to object to any of the class action
12 components of the Settlement. Settlement Agreement ¶ 8.7.3.

13 **2. Opting Out**

14 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must
15 send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later
16 than 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class
17 Members whose Notice Packet is re-mailed). A Request for Exclusion is a letter from a Class
18 Member or his/her representative that reasonably communicates the Class Member's election to
19 be excluded from the Settlement and includes the Class Member's name, address and email
20 address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed,
21 or postmarked by the Response Deadline. An Election Not to Participate in Settlement form,
22 attached as Exhibit B, may be used for this purpose but is not required. Settlement Agreement ¶
23 8.5.1.

24 The Administrator may not reject a Request for Exclusion as invalid because it fails to
25 contain all the information specified in the Class Notice. The Administrator shall accept any
26 Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the
27 person as a Class Member and the Class Member's desire to be excluded. The Administrator's
28 determination shall be final and not appealable or otherwise susceptible to challenge. If the



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1 Administrator has reason to question the authenticity of a Request for Exclusion, the
2 Administrator may demand additional proof of the Class Member's identity. The Administrator's
3 determination of authenticity shall be final and not appealable or otherwise susceptible to
4 challenge. Settlement Agreement ¶ 8.5.2.

5 Every Class Member who does not submit a timely and valid Request for Exclusion is
6 deemed to be a Participating Class Member under this Agreement, entitled to all benefits and
7 bound by all terms and conditions of the Settlement, including the Participating Class Members'
8 Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the Participating
9 Class Member actually receives the Class Notice or objects to the Settlement. Settlement
10 Agreement 8.5.3.

11 Every Class Member who submits a valid and timely Request for Exclusion is a Non-
12 Participating Class Member and shall not receive an Individual Class Payment or have the right
13 to object to the class action components of the Settlement. Aggrieved Employees are eligible for
14 an Individual PAGA Payment. Settlement Agreement ¶ 8.5.4.

15 **3. Objecting**

16 Only Participating Class Members may object to the class action components of the
17 Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or
18 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses
19 Payment and/or Class Representative Service Payment. Settlement Agreement ¶ 8.7.1.

20 Participating Class Members may send written objections to the Administrator, by fax,
21 email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an
22 attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
23 Participating Class Member who elects to send a written objection to the Administrator must do
24 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
25 14 days for Class Members whose Notice Packet was re-mailed). The Objection form attached as
26 Exhibit D may be used for this purpose but is not required. Settlement Agreement ¶ 8.7.2.

27 Non-Participating Class Members have no right to object to any of the class action
28 components of the Settlement. Settlement Agreement ¶ 8.7.3.



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1
2 **H. Uncashed Checks**

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

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

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

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

19 A class is ascertainable when it may be readily identified without unreasonable expense
20 or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932
21 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiff maintains that the above-
22 defined Class is ascertainable because its members may be identified by reference to Defendants'
23 records and Defendants has agreed to share the relevant information from their records to facilitate
24 the settlement process. DS, ¶ 22. Therefore, the Settlement Class is ascertainable.

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

26 The Settlement Class has sufficiently numerous members to render joinder impractical.
27 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*
28 (1972) 28 Cal.App.3d 1017, 1030. Defendants estimates that there are approximately 125 Class
Members. DS, ¶ 23. Plaintiff maintains that it would be impractical and economically inefficient
to require each Class Member to separately maintain an individual action or be joined as a named



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1 plaintiff in this action. The California Supreme Court has upheld a class of as few as 10
2 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations,
3 the Settlement Class' membership is sufficiently numerous. DS, ¶ 23. *See Daar v. Yellow Cab*
4 *Co.* (1967) 67 Cal.2d 695.

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

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

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

20 In this case, Plaintiff asserts all Class Members were subject to the same or similar
21 operations and employment policies, practices, and procedures. The claims arise from
22 Defendants’ alleged policy-driven failure to pay wages, unauthorized and unlawful wage
23 deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to
24 indemnify for business expenses, failure to issue proper wage statements, failure to timely pay
25 wages, failure to maintain required payroll records, and related labor law violations, all of which
26 Plaintiff claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff
27 asserts that common questions include, but are not limited to: (1) Whether Defendants failed to
28 pay all wages earned to Class Members for all hours worked at the correct rates of pay; (2)



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1 Whether Defendants failed to provide the class with all meal and rest periods in compliance with
2 California law; (3) Whether Defendants failed to pay the class one additional hour of pay on
3 workdays they failed to provide the class with one or more meal or rest periods in compliance
4 with California law; (4) Whether Defendants failed to indemnify the class for all necessary
5 business expenditures incurred during the discharge of their duties; (5) Whether Defendants
6 knowingly and intentionally failed to provide the class with accurate wage statements; (6)
7 Whether Defendants willfully failed to provide the class with timely final wages; and (7) Whether
8 Defendants engaged in unfair competition within the meaning of Business and Professions Code
9 section 17200, *et seq.*, with respect to the class. DS, ¶ 24. Therefore, common questions
10 predominate.

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

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

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

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



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1 plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling
2 conflicts of interest that might hinder the plaintiff's ability to represent the class. DS, ¶ 26.

3 First, Class Counsel have supplied the Court with declarations to show that they are
4 adequate to represent the Settlement Class and that they have significant experience in
5 employment litigation generally, and wage and hour and employment-related class action
6 litigation specifically. *See* DS, ¶¶ 28-35; Declaration of Walter L. Haines ("Haines Decl.") ¶ 3.
7 Thus, Plaintiff's counsel are adequate to serve as Class Counsel.

8 Second, Plaintiff contends that she is an adequate class representative. Plaintiff and the
9 Class Members have strong and co-extensive interests in this litigation because they all worked
10 for Defendants during the relevant time period, allegedly suffered the same alleged injuries from
11 the same alleged course of conduct, and there is no evidence of any conflict of interest between
12 Plaintiff and the Class Members. DS, ¶ 27. Moreover, Plaintiff has demonstrated her commitment
13 to the Settlement Class by, among other things, retaining experienced counsel, providing counsel
14 with documents and extensively speaking with them to assist in identifying the claims asserted in
15 this case, assisting them in identifying witnesses, as well as exposing herself to the risk of
16 attorneys' fees and costs awards against her if this lawsuit had been unsuccessful. DS, ¶ 27. Thus,
17 Plaintiff is adequate to serve as settlement class representative. Accordingly, this Court should
18 find that Plaintiff and her counsel are adequate to represent the Settlement Class as required under
19 Code of Civil Procedure § 382.

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

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



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1 purposes of this Settlement only. DS, ¶ 36.

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

4 **A. Legal Standard**

5 A class action settlement requires court approval. California Rules of Court (“CRC”), Rule
6 3.769 provides three steps for approval: (1) Preliminary approval after submission of a written
7 motion for preliminary approval, the proposed class settlement, and the proposed class notice; (2)
8 Issuance of notice of settlement to class members; and (3) A final settlement approval hearing
9 where class members may be heard regarding the settlement, and at which evidence and argument
10 concerning the fairness, adequacy, and reasonableness of the settlement is presented. The decision
11 to approve or reject a class settlement is committed to the Court’s broad discretion. *Kullar v. Foot*
12 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision to approve class settlement
13 may be reversed only upon a showing of “clear abuse of discretion.” *Id.*

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

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

21 The class settlement here satisfies all of these factors. DS, ¶ 37. The Settlement resulted
22 from thorough, arms’ length, negotiations between experienced counsel with the assistance of a
23 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
24 weaknesses of their respective cases and Defendants’ estimated exposure. *Id.*

25 On November 30, 2022, Plaintiff commenced this Action by filing a Complaint alleging
26 causes of action against Defendants for failure to pay wages, unauthorized and unlawful wage
27 deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to
28 indemnify for business expenses, failure to issue proper wage statements, failure to timely pay
wages, failure to maintain required payroll records, and related claims. On February 10, 2023,
Plaintiff filed a First Amended Complaint alleging causes of action against Defendants for failure



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Office:
1875 Century Park East
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West Hollywood, CA 90069
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1875 Century Park East
Fl 7
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1 to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure
2 to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue
3 proper wage statements, failure to timely pay wages, failure to maintain required payroll records,
4 and related allegations. The First Amended Complaint is the operative complaint in the Action
5 (the “Operative Complaint.”) Defendants deny the allegations in the Operative Complaint, deny
6 any failure to comply with the laws identified in in the Operative Complaint and deny any and all
7 liability for the causes of action alleged. Settlement Agreement ¶ 2.1. DS, ¶ 38. Plaintiff prepared
8 “damages” estimates in advance of the second mediation. DS, ¶ 38, Ex. 7. Plaintiff determined
9 Defendants’ maximum possible exposure for restitution and penalties to be approximately
10 \$2,060,489.98 (consisting of, \$23,645.96 in missed meal period premium wages, \$119,786.97 in
11 missed rest break premium wages, \$47,534.81 in unreimbursed expenses, \$83,650.00 for wage
12 statement penalties, \$297,772.25 for waiting time penalties, and \$1,488,100.00 for civil penalties
13 under PAGA. Plaintiff calculated the damages based on the number of workweeks and pay
14 periods provided by Defendant, Plaintiff’s reports, and the sample data. *Id.* DS, ¶ 38.

15 Plaintiff also considered the possibility that Defendants could launch a *Pick Up Stix*
16 campaign and pursue individual release agreements from the Class Member. Defendants also
17 represented that they had interviewed all of Defendants’ current employees regarding Plaintiff’s
18 claims, all of whom would provide declarations, under penalty of perjury, that were favorable to
19 Defendants with respect to the relevant factual issues at issue in Plaintiff’s action. Plaintiff’s
20 Counsel applied discounts to the maximum possible exposure to account for all other risks
21 discussed below. While it is difficult to assign anything but crudely-determined percentages of
22 risk to any of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude
23 recovery for such employees is substantial and alone justifies a significant discount because
24 Defendants would likely by trial have gathered releases from the majority of the Class Members.
25 A settlement for approximately 12.13% of the potential recovery is a proportion substantially in
26 excess of recovery proportions sanctioned by existing case law.³ *Id.*

27 ³ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998)
28 (“[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*,

1 Plaintiff is aware of only two significant awards under the PAGA in a contested
2 proceeding, both issued by federal district courts.⁴ DS, ¶ 54. PAGA penalty awards are often small
3 even for egregious, intentional violations of the Labor Code.⁵ *Id.* For instance, on October 24,
4 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very
5 experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving Company,*
6 *Inc.*, LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.* (2018) 30
7 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a PAGA
8 penalty of only \$5 per pay period for the Defendants' meal period violations. A similar result

9
10 *Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the
11 proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*,
12 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) ("a settlement for fourteen percent recovery
13 of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d
14 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that "is just over 9% of the maximum
15 potential recovery asserted by either party.").

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

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

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

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

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



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1 could occur here. *Id.*

2 Plaintiff's initial estimates do not realistically account for the risks outlined below or the
3 risk that a class will not be certified. *Id.* Therefore, Plaintiff believes a class settlement for
4 \$250,000.00 is fair and reasonable. *Id.*

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

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

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

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

16 Defendants' financial condition was the key factor in reaching this Settlement. DS, ¶ 41.
17 Due to Defendants' financial condition, even if Plaintiff prevailed on all claims at trial, she may
18 never recover the damages due to the risk of insolvency. A very large class action judgment would
19 almost certainly put the company out of business and/or would interfere with the company's
20 ability to carry out its contractual obligations. *Id.* In short, the "poor financial health of [the
21 Defendants will] seriously increase [] the chance that Plaintiffs would be left with nothing if they
22 continued to litigate their claims." *Torrise v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,
23 1376 (the financial condition of defendant predominated in assessing the reasonableness of
24 settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty
25 concerning Defendants' financial stability "strongly supports the reasonableness of the
26 settlement"); *Laguna v. Coverall N. Am., Inc.* (9th Cir. 2014) 2014 U.S. App. LEXIS 10259 at
27 *11 (finding potential insolvency to be additional risk that favors approval of a class action
28 settlement). Accordingly, Defendants' financial distress supports this settlement. *Id.*

b. Risks Associated with the Unpaid Wages Claim

There is a risk that Plaintiff's recovery for unpaid wages would be extremely limited at



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1 best, largely because Defendants’ written policies throughout the relevant time period prohibited
2 off-the-clock work. DS, ¶42. Off-the-clock claims are difficult where a defendant requires in its
3 written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation*
4 *Hospital* (2014) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to
5 be compensable). *Id.* In their written employment policies, Defendants mandate that employees
6 must record all time worked accurately on their time records and strictly prohibit employees from
7 performing any work off-the-clock. DS, ¶42. Moreover, while Defendants dispute that off-the-
8 clock work occurred, they contend that any time spent off the clock was *de minimis*. The
9 California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested
10 that irregular and minute periods of time may still be subject to a *de minimis* defense even if
11 compensable. (Stating that “We do not decide whether there are circumstances where
12 compensable time is so minute or irregular that it is unreasonable to expect the time to be
13 recorded.”). Following *Troester*, Defendants contend that the *de minimis* doctrine may apply
14 here because the time spent off the clock was minute and insignificant. Accordingly, a large
15 award of penalties seems unlikely with respect to this claim. *Id.*

16 The difficulty inherent in proving that off-the-clock work occurred poses a significant
17 hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim.
18 Generally, a court will not certify a class unless it can determine an appropriate classwide
19 methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff
20 may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given
21 the lack of records indicating when such off-the-clock work may have taken place. Individualized
22 inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual
23 in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there is a significant
24 risk that the Court would consider this evidentiary showing insufficient as a classwide
25 methodology. DS, ¶ 43.

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

27 There are risks to Plaintiff’s meal period claim. DS, ¶ 44. Defendants contend that, to
28 establish a violation for missed meal periods, a plaintiff must do more than show that a meal break



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

8 Defendants contend they did not impede or discourage Plaintiff, or any other employees,
9 from taking their meal or rest periods. DS, ¶ 45. Defendants’ policies mandate that employees
10 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
11 of their meal breaks each day on their time records. *Id.* The time records that comprise the random
12 sample Defendants produced to Plaintiff for purposes of mediation show that meal periods were
13 taken the vast majority of the time. *Id.* Of the time records that show a late, short or no lunch,
14 individualized evidence may be necessary to determine whether they occurred due to conduct of
15 the Defendants or each of the employees concerned. Accordingly, there is a significant risk that
16 the value of Plaintiff’s meal period claim would be substantially reduced at trial. *Id.*

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

18 There are risks to Plaintiff’s rest period claim. DS, ¶ 46. Employers are not required to
19 record rest periods and such periods are paid. *Id.* Defendants contend they provided non-exempt
20 employees the opportunity to take rest periods in accordance with California law. Further,
21 Defendants’ written policies on meal and rest periods are consistent with the Wage Order. *Id.*
22 Thus, unlike meal periods, where there are often records showing whether an employee clocked
23 out or not, there is no such evidence to prove a missed rest period or that the employer refused to
24 authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. *Id.*
25 Plaintiff will depend on sample witness testimony and surveys to prove the claims. *Id.* While a
26 victory with such evidence is certainly possible, relevant caselaw makes such claims risky from
27 a trial management and due process perspective. *Id.*, *See Duran v. U.S. Bank National Assn.*,
28 (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common questions exist to support class



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1 certification, it may be possible to manage individual issues through the use of surveys and
2 statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast*
3 *Corporation v. Behrend* (2013) 133 S.Ct. 1426.

4 **e. Risks Associated with the Failure to Indemnify Claim**

5 There is a risk that the Court may consider Plaintiff’s claims as to Defendants’ alleged
6 failure to indemnify for business expenses to be individual in nature and thus decline to certify
7 the class. DS, ¶ 47. Plaintiff alleges that Defendants required Plaintiff and the Class Members to
8 use their personal items including cellular phones, computers and other electronic devices,
9 vehicles, and tools, and failed to indemnify them for these business expenses. *Id.* Defendants
10 presented evidence that they had supplied its employees with tools, equipment, and other supplies
11 and had an expense reimbursement policy. As such, there is a risk that the Court may consider
12 Plaintiff’s claims to be individual in nature and unfit for class wide resolution. *Id.*

13 **f. Risks Associated with the Statutory Wage Statement Penalty**
14 **Claims**

15 Plaintiff also asserts claims for wage statement violations, untimely wage violations, and
16 PAGA penalties. Under Labor Code section 226, wage statements must include various
17 information, including the applicable rates of pay, corresponding hours worked, and gross pay.
18 DS, ¶ 48.

19 Here, Plaintiff’s wage statement claim has the same underlying risks as the above claims,
20 as it is derivative of them. *Id.* On their face, the wage statements issued by Defendants comply
21 with the requirements of Labor Code § 226. DS, ¶ 48.

22 **g. Risks Associated with the Waiting Time Penalty Claims.**

23 Without proof willful behavior, Plaintiff will be unable to recover these penalties.

24 **h. Risks Associated With the PAGA Claim**

25 Regarding PAGA, a court has discretion to award a lesser amount than the maximum
26 penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
27 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed
28 valid defenses to the Labor Code claims underlying Plaintiff’s PAGA allegations. Thus, the
PAGA claims likewise face significant uncertainty. DS, ¶51. There is a risk that the Court would
consider the maximum civil penalty available to be confiscatory. This is particularly the case



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1 considering Defendants' financial condition. *Id.* Moreover, the current COVID-19 pandemic
2 could motivate the Court to further reduce the penalty award to avoid what it may consider a
3 confiscatory taking. *Id.*

4 This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a
5 significant discount for settlement purposes. DS, ¶ 53. For mediation purposes, Plaintiff's counsel
6 estimated a maximum possible exposure of approximately \$1,488,100.00 in civil penalties. This
7 estimate did not take into account any of the risks discussed above and assumed a violation for
8 every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay
9 period for the same alleged violations of different Labor Code provisions and derivative
10 violations. *Id.* Although two federal district court decisions held that "stacking" PAGA penalties
11 in this fashion may be appropriate to determine the amount in controversy for purposes of removal
12 jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs
13 multiple PAGA penalties for the same violation for the same pay period under different Labor
14 Code provisions. *Id.* This may be because the PAGA does not provide for what many employers
15 characterize as claim splitting and not merely stacking. *Id.*

16 **i. Risks Associated With A Pick-Up Stix Campaign**

17 An employer enjoys the right to settle a putative class member's disputed wage claims
18 individually, without the consent or involvement of class counsel. DS, ¶ 56. (See *Chindarah v.*
19 *Pick Up Stix, Inc.* (2009) 171 Cal. App. 4th 796. *Id.* As discussed above, Defendants may launch
20 a "pick off" settlement campaign to pursue individual release agreements from the Class
21 Members, thereby potentially narrowing the size of the Settlement Class – 125 members - until it
22 is no longer numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient
23 number of employees to represent. This led to a significant reduction of claim value in settlement
24 negotiations. *Id.*

25 While the evidence gathered through Plaintiff's discovery supports the merits of the
26 claims asserted in this lawsuit, Plaintiff and her counsel recognize that continued litigation
27 presents significant risks that support a downward departure from Defendants' estimated liability
28 exposure. DS, ¶ 57. In view of the risks, the Settlement reflects Plaintiff's estimate of the total



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

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

11 The settlement of PAGA penalties in the sum of \$10,000.00, of which 75% (\$7,500.00)
12 will be paid to the LWDA and 25% (\$2,500.00) will be distributed to the Class, is reasonable and
13 appropriate under the circumstances. DS, ¶ 58. The Parties negotiated a good faith amount for
14 PAGA Penalties to be paid to the LWDA and to the Class. *Id.* The portion to be paid to the LWDA
15 was not the result of self-interest at the expense of other Class Members. *Id.* Where settlements
16 “negotiate[] a good faith amount” for PAGA penalties and “there is no indication that this amount
17 was the result of self-interest at the expense of other Class Members,” such amounts are generally
18 considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844
19 EDL, 2009 WL 928133, at *9. Likewise, where the employer did not act willfully, and made good
20 faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted
21 because imposing maximum PAGA penalty for each violation would have been unjust, arbitrary,
22 and oppressive. *Id. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming
23 trial court’s award of only 10% of maximum PAGA penalty for meal break violations). *Id.* The
24 amount to be paid to the LWDA comports with PAGA settlement amounts approved by other
25 courts. See, e.g., *Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL
26 67245, 81 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common fund);
27 *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA
28 payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v.*



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1 *Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA
2 settlement of 0.3% or \$1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589
3 (approving PAGA settlement and release that allocated \$0 to PAGA claim). Courts have also
4 approved settlements for \$20,000 or less. See, e.g., *Hicks v. Toys 'R' Us—Delaware, Inc.*, (C.D.
5 Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in a case
6 involving \$4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012)
7 2012 WL 5941801 at *14 (approving PAGA penalties of \$10,000 as part of \$2.5 million
8 settlement); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3
9 (approving PAGA payment of \$10,000 as part of \$3.7 million common-fund settlement). *Id.*

10 **3. Presence of Governmental Participant**

11 As required under Labor Code section 2699(l)(2), Plaintiff will provide notice of this
12 settlement to the LWDA with the filing and service of this motion. DS, ¶ 106, Ex. 19.

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

14 If the settlement is preliminarily approved, Class Members will be provided with the
15 Notice Packet (attached as Exhibits A and D to the Settlement) and an opportunity to object. DS,
16 ¶ 78. The parties' proposed notice fully complies with California Rules of Court 3.766(d) and
17 3.769(f) and will allow Class Members to make informed responses to the proposed settlement.

18 *Id.*

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

23 The Individual Settlement Payments will be paid to each Class Member based on his or
24 her eligible Work Weeks compared to the total Work Weeks. DS, ¶ 76. Because this method
25 compensates Class Members based on the extent of their potential injuries, in that Class Members
26 who worked for Defendants longer would have been subject to more alleged violations, it is fair,
27 adequate, and reasonable. *Id.*

28 Plaintiff estimates that there are 1,699 Work Weeks for the Class Period. So, each Work
Week has a value of approximately \$65.43 (\$111,166.67 Net Settlement Amount / 1,699 Work
Weeks = \$65.43). Plaintiff had 6 Work Weeks during the Class Period. Based on this, it is



1 anticipated that Plaintiff Vickie Williams will receive an Individual Class Payment of
2 approximately \$392.58 as a Participating Class Member (6 Work Weeks x \$65.43 = \$392.58)
3 while the average estimated Individual Class Payment to Participating Class Members will be
4 approximately \$889.33. Some Class Members – those who worked more Work Weeks during the
5 Class Period - will receive more, and some less. The highest possible Individual Class Payment
6 to a Participating Class Member (i.e., to those who qualify for all Work Weeks in the Class Period)
7 will be approximately \$21,430.22. The lowest possible Individual Class Payment to a
8 Participating Class Member (i.e., to those who qualify for only one Work Week in the Class
9 Period) will be approximately \$65.43. *See Decl., ¶ 75.*

10 It is anticipated that the average Aggrieved Employee Individual PAGA Payment will
11 be \$20.00. *Id.* Plaintiff's Individual PAGA Payment, her individual share of 25% of the PAGA
12 Penalties, will be less than that of some absent Aggrieved Employees. Under the Settlement,
13 each Aggrieved Employee will receive a *pro rata* distribution of 25% of the PAGA Penalties
14 proportionate to the number of paychecks he or she had with Defendants during the PAGA Period,
15 compared to the total of all paychecks of all Aggrieved Employees during the PAGA Period, as
16 reflected by Defendants' records. Plaintiff estimates that there are 876 Aggrieved Employee
17 paychecks for the PAGA Period. So, each Aggrieved Employee paycheck from the PAGA
18 Period has a value of approximately \$2.85 (25% of \$2,500.00 in PAGA Penalties / 876 Aggrieved
19 Employee paychecks = \$2.85). It is anticipated that Plaintiff Vickie Williams will receive an
20 Individual PAGA Payment of approximately \$5.70 as an Aggrieved Employee (2 paychecks
21 during the PAGA Period x \$2.85 paycheck value = \$5.70) while the average estimated Individual
22 PAGA Payment to an Aggrieved Employee will be approximately \$20.00 (\$2,500.00, 25% of
23 PAGA Penalties / 125 Aggrieved Employees during the PAGA Period = \$20.00 Individual PAGA
24 Payment). Some Aggrieved Employees – those who had more paychecks during the PAGA Period
25 - will receive more, and some less. The highest possible Individual PAGA Payment to an
26 Aggrieved Employee (i.e., to those who qualify for all paychecks in the PAGA Period) will be
27 approximately \$244.96. The lowest possible Individual PAGA Payment to an Aggrieved
28 Employee (i.e., to those who qualify for only one paycheck in the PAGA Period) will be



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1 approximately \$2.85. *See* Decl., ¶ 77.

2 **VII. ALLOCATION FOR CLASS COUNSEL'S FEE AWARD AND ATTORNEYS'**
3 **FEES AND COSTS AWARD FOR LITIGATION EXPENSES IS APPROPRIATE**

4 The Settlement states Class Counsel may seek attorneys' fees of \$83,333.33 (one-third of
5 the GSA) and up to \$18,500.00 for actual reasonable litigation costs and expenses incurred in
6 prosecuting the Action. Settlement § 3.2.2. These amounts are reasonable, given the facts and
7 circumstances of the case. DS, ¶¶ 59-61.

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

21 The amount of fees and costs requested are commensurate with (1) the risk Class Counsel
22 took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the
23 skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the
24 value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned
25 down to devote time to this matter. DS, ¶ 60. Class Counsel interviewed and obtained information
26 from putative class members, met and conferred with Defendants' counsel on numerous
27 occasions, reviewed and analyzed hundreds of pages of data and documents provided by
28 Defendants and obtained through other sources, researched applicable law, and provided
estimates of "damages" for purposes of settlement discussions, among other tasks. *Id.*



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1 Class Counsel have borne all the risks and costs of litigation and will receive no
2 compensation until recovery is obtained. DS, ¶ 61. Class Counsel are well-experienced in wage-
3 and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.*
4 Considering the amount of the attorney fees requested, the work performed, and the risks incurred,
5 the requested fees and costs are reasonable and should be awarded. *Id.*

6 **VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENT TO PLAINTIFF**
7 **SHOULD BE PRELIMINARILY APPROVED BECAUSE IT IS FAIR,**
8 **ADEQUATE, AND REASONABLE**

9 Courts routinely approve incentive awards to compensate named plaintiffs for the services
10 they provide and the risks they incur during class action litigation, often in much higher amounts
11 than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726
12 (upholding “service payments” to named plaintiffs for their efforts in bringing the case); *Van*
13 *Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000
14 enhancement award). The Settlement provides that Plaintiff may seek a Class Representative
15 Service Payment of \$15,000.00. This amount is entirely reasonable given Plaintiff’s efforts in this
16 action and the risks she undertook on behalf of Class Members. DS, ¶ 62; Declaration of Vickie
17 Williams (“Plaintiff decl.”), generally. Plaintiff has devoted many hours advancing the interests
18 of the Settlement Class. Plaintiff has done this by, among other things, retaining experienced
19 counsel, providing them with information about her work history with Defendants and
20 Defendants’ policies and practices with respect to the wage and hour claims at issue, participating
21 in mediation, and being actively involved in the settlement process to ensure a fair result for the
22 Settlement Class as a whole. In doing this, Plaintiff has been exposed to significant risks,
23 including the risk of an order to pay Defendants’ attorneys’ fees and costs if this action had been
24 unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on
25 behalf of the Settlement Class shows that the proposed Class Representative Service Payment is
26 fair, adequate, and reasonable, and thus warrants preliminary approval. DS, ¶ 62; Plaintiff decl.,
27 generally.

28 ///

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

5 With regard to the settlement administration costs (“Administration Expenses Payment”) provision, it is reasonable. Before agreeing to APEX Class Action Administration and its bid of \$4,990.00, the Parties sought and reviewed bids from other reputable third-party administrators which provided higher bids. DS, ¶ 99-100, Exs. 16, 17, and 18. Thus, the settlement administration costs provision should be given preliminary approval.

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

12 This Court should approve the proposed plans for giving notice to the Settlement Class and administering the Settlement. The standard for determining the adequacy of notice is whether the notice has “a reasonable chance of reaching a substantial percentage of the class members.” *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple measures to ensure that as many Class Members as practicable receive actual notice of the Settlement and have enough time to exercise their rights. The Settlement requires distribution of the Notice by First Class U.S. mail only. Settlement, ¶ 4.4.1. Although there are current employee Class Members, it is uncertain whether Defendants’ records of their contact information include email addresses and Class Members, who perform all of their work away from a desk, are not in a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable. DS, ¶ 86.

22 With respect to its content, “[The] notice given to the class must fairly apprise the class 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 information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) provides Class Members with all pertinent information that they need to fully evaluate their options 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

1 exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among
2 other things: (1) what the Settlement is about; (2) who is a Class Member; (3) how Class Counsel
3 will be paid; (4) how to submit an exclusion request not to be bound by the Settlement; (5) how
4 to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class
5 Members will be calculated; (8) how the disputes will be resolved; and (9) the individual Class
6 Member's estimated payment. Additionally, the Class Notice will include the number of Work
7 Weeks a Class Member had during the Class Period. Accordingly, the Notice should be approved
8 because it describes the Settlement with sufficient clarity and specificity to explain to Class
9 Members what this action is about, their rights under the Settlement, and how to exercise those
10 rights. DS, ¶ 88.

11 **XI. CONCLUSION**

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

14 Respectfully submitted,

15 THE SPIVAK LAW FIRM

16
17 Dated: July 22, 2026

By:



18 DAVID G. SPIVAK, Attorneys for
19 Plaintiff, VICKIE WILLIAMS, and all
20 others similarly situated



21 SPIVAK LAW
22 EMPLOYEE RIGHTS

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

28 Office:
1875 Century Park East
F17
Los Angeles, CA 90067