

1 DAVID GLENN SPIVAK (SBN 179684)

david@spivaklaw.com

2 LAUREN R. DAVIS (SBN 294115)

lauren@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 KIMBERLY DAWN VANDERMOST, and all others similarly situated

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

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

13 KIMBERLY DAWN VANDERMOST, on
14 behalf of herself and all others similarly situated,
15 and the general public, and as an “aggrieved
16 employee” on behalf of other “aggrieved
17 employees” and the State of California under the
Labor Code Private Attorneys General Act of
2004,

18 *Plaintiff(s),*

19 vs.

20 DYWIDAG SYSTEMS INTERNATIONAL,
21 USA, INC., a New York corporation; and DOES
22 1–50, inclusive,

23 *Defendant(s).*

Case No. 23STCV06697

**PLAINTIFF KIMBERLY DAWN
VANDERMOST’S MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: February 5, 2026

Hearing Time: 10:00 a.m.

Hearing Dept.: SSC-7, The Honorable
Samantha P. Jessner

Action filed: March 28, 2023

Trial Date: Not Set



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
F17
Los Angeles, CA 90067

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	v
I. INTRODUCTION.....	1
II. BACKGROUND.....	2
A. The Claims and Procedural History	2
B. Sampling.....	2
C. Mediation.....	3
III. OVERVIEW OF THE SETTLEMENT	4
A. Settlement Class and Aggrieved Employees Definition	4
B. Monetary Terms	4
C. Timing of Payments	6
D. Calculation of Settlement Shares.....	6
E. Apportionment of Settlement Shares.....	6
F. The Releases.....	7
G. Notice and Claims Process and Procedures.....	8
1. Disputes.....	10
2. Opting Out	10
3. Objecting.....	10
H. Uncashed Checks.....	11
IV. CERTIFICATION OF THE CLASS IS APPROPRIATE	11
A. The Settlement Class Is Objectively Ascertainable.....	12
B. The Membership of the Settlement Class Is Sufficiently Numerous	12
C. Class Members Share a Well-Defined Community of Interest	12



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	D. Plaintiff Is Typical of the Settlement Class	13
2	E. Plaintiff Will Adequately Represent the Settlement Class	13
3	F. Class Action Treatment Is the Superior Means For Resolving The Claims Of The Class	
4	Members	14
5	V. INTRODUCTION THE COURT SHOULD GRANT PRELIMINARY APPROVAL	
6	BECAUSE THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE	15
7	A. Legal Standard	15
8	B. The Settlement Is Presumptively Fair	15
9	C. The Settlement Satisfies the Kullar Factors for Approval	18
10	1. Evaluation of Plaintiff's Case	18
11	a. Risks Associated With the Collective Bargaining Agreement	18
12	b. Risks Associated with the Waiting Time Penalty Claims.	20
13	c. Risks Associated With the PAGA Claim	20
14	d. Risks Associated With A Pick Up Stix Campaign	21
15	2. Allocation of the PAGA Payment	22
16	3. Presence of Governmental Participant	23
17	4. Reaction of Class Members to Proposed Settlement	23
18	VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY COMPENSATES	
19	CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS MEMBER BASED ON	
20	THE POTENTIAL EXTENT OF HIS OR HER INJURY COMPARED TO OTHER	
21	CLASS MEMBERS	23
22	VII. ALLOCATION FOR CLASS COUNSEL'S FEE AWARD AND ATTORNEYS' FEES	
23	AND COSTS AWARD FOR LITIGATION EXPENSES IS APPROPRIATE	25
24	VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENT TO PLAINTIFF SHOULD	
25	BE PRELIMINARILY APPROVED BECASUSE IT IS FAIR, ADEQUATE, AND	
26	REASONABLE	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
F17
Los Angeles, CA 90067

IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE, AND REASONABLE.....	26
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.....	27
XI. CONCLUSION	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
F17
Los Angeles, CA 90067

TABLE OF AUTHORITIES

Cases

<i>Arenas v. El Torito Rests., Inc.</i> , (2010) 183 Cal. App. 4th 723	13
<i>Bell v. Farmers Ins. Exchange</i> (2004) 115 Cal.App.4th 715	3, 26
<i>Bernstein v. Virgin Am., Inc</i> (N.D. Cal. 2022) 2022 WL 17994018	17
<i>Bowles v. Superior Court</i> (1955) 44 Cal.2d 574	12
<i>Bravo v. Gale Triangle, Inc.</i> (C.D. Cal. Feb 16, 2017) 2017 WL 708766	17
<i>Capitol People First v. Dept. of Developmental Servs.</i> (2007) 155 Cal. App. 4th 676	12
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504	17, 22
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	27
<i>Chindarah v. Pick Up Stix, Inc.</i> (2009) 171 Cal.App.4th 796	21
<i>Chu v. Wells Fargo Investments, LLC</i> (N.D. Cal. Feb. 16, 2011) 2011 WL 67245	22
<i>Classen v. Weller</i> (1983) 145 Cal.App.3d 27	13
<i>Daar v. Yellow Cab Co.</i> (1967) 67 Cal.2d 695	12
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	11, 15
<i>Duran v. U.S. Bank National Assn</i> (2014) 59 Cal. 4th 1	3



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
F17
Los Angeles, CA 90067

1	<i>Franco v. Ruiz Food Prods., Inc</i>	
2	(E.D. Cal. Nov. 27, 2012) 2012 WL 5941801	23
3	<i>Garcia v. Gordon Trucking</i>	
4	(E.D. Cal. Oct. 31, 2012) 2012 WL 5364575.....	23
5	<i>Hebbard v. Colgrove</i>	
6	(1972) 28 Cal.App.3d 1017	12
7	<i>Hicks v. Toys ‘R’ Us–Delaware, Inc.</i>	
8	(C.D. Cal. Sept. 2, 2014) 2014 WL 4703915	22, 23
9	<i>Hopson v. Hanesbrands Inc.</i>	
10	(N.D. Cal. Aug. 8, 2008) 2008 WL 3385452	22
11	<i>Hopson v. Hanesbrands Inc.</i>	
12	(N.D. Cal. Apr. 3, 2009) 2009 WL 928133.....	22
13	<i>Hypolite v. Carlson</i>	
14	(1975) 52 Cal.App.3d 566	12
15	<i>In re Activision</i>	
16	(N.D. Cal. 1989) 723 F.Supp. 1373.....	25
17	<i>In re Ampicillin Antitrust Litig.</i>	
18	(D.D.C. 1981) 526 F.Supp. 494.....	25
19	<i>In re Newbridge Networks Sec. Litig.</i>	
20	(D.D.C. Oct. 23, 1998) 1998 WL 765724	16
21	<i>In re Omnivision Techs., Inc.</i>	
22	(N.D. Cal. 2008) 559 F.Supp.2d 1036.....	17
23	<i>In re Pacific Enterprises</i>	
24	(9th Cir. 1995) 47 F.3d 373	25
25	<i>Ketchum v. Moses</i>	
26	(2001) 24 Cal. 4th 1122.....	25
27	<i>Kullar v. Foot Locker Retail, Inc.</i>	
28	(2008) 168 Cal.App.4th 116	15, 18
	<i>Laffitte v. Robert Half Intl, Inc.</i>	
	(2016) 1 Cal. 5th 480	25
	///	



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>Laguna v. Coverall N. Am., Inc.</i>	
2	(9th Cir. 2014) 2014 U.S. App. LEXIS 10259	22
3	<i>Lazarin v. Pro Unlimited, Inc.</i>	
4	(N.D. Cal. July 11, 2013) 2013 WL 3541217	22
5	<i>Lealao v. Beneficial Cal., Inc.</i>	
6	(2000) 82 Cal. App. 4th 19	25
7	<i>McGhee v. Bank of America</i>	
8	(1976) 60 Cal.App.3d 442	14
9	<i>Nordstrom Com. Cases</i>	
10	(2010) 186 Cal.App.4th 576	22
11	<i>Richmond v. Dart Industries, Inc.</i>	
12	(1981) 29 Cal.3d 462	11
13	<i>Robert Magadia v. Wal-Mart Assocs.</i>	
14	(N.D. Cal. 2019) 384 F. Supp. 3d. 1058	17
15	<i>Rose v. City of Hayward</i>	
16	(1981) 126 Cal.App.3d 926	12
17	<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
18	(2004) 34 Cal. 4th 319	12
19	<i>Spann v. J.C. Penney Corp.</i>	
20	(C.D. Cal. 2016) 211 F.Supp.3d 1244	22
21	<i>Thurman v. Bayshore Transit Management, Inc.</i>	
22	(2012) 203 Cal.App.4th 1112	20
23	<i>Torrisi v. Tucson Elec. Power Co.</i>	
24	(9th Cir. 1993) 8 F.3d 1370	21, 22
25	<i>Trotsky v. Los Angeles Fed. Sav. & Loan Assn.</i>	
26	(1975) 48 Cal.App.3d 134	27
27	<i>Van Vranken v. Atlantic Richfield Co.</i>	
28	(N.D.Cal. 1995) 901 F.Supp. 294	26
	<i>Washington Mut. Bank, FA v. Superior Court</i>	
	(2001) 248 Cal.4th 906	13
	///	



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
F17
Los Angeles, CA 90067

1	<i>Wise v. Ultra Salon, Cosmetics & Fragrance, Inc.</i>	
2	(E.D. Cal. Aug. 21, 2019) 2019 WL 3943859	16, 17

Statutes

4	Bus. & Prof. Code, section 17200 et seq	13, 19
5	Code Civ. Proc., section 382	1, 11, 14
6	Code Civ. Proc., section 384	11
7	Civ. Code., section 1542.....	7
8	Lab. Code, section 201	2
9	Lab. Code, section 202	2
10	Lab. Code, section 203	2
11	Lab. Code, section 218.5	26
12	Lab. Code, section 218.6	26
13	Lab. Code, section 226	17
14	Lab. Code, section 2698	2, 18
15	Lab. Code, section 2699	20, 23
16	Lab. Code, section 2699.3	16

Rules

21	California Rules of Court, Rule 3.766.....	23
22	California Rules of Court, Rule 3.769	15, 23

Other

24	<i>Alba Conte & Herbert B. Newberg, Newberg on Class Actions</i> § 3:29	13
----	---	----



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 Kimberly Dawn Vandermost (“Plaintiff”) submits this memorandum of points
5 and authorities in support of her unopposed motion for preliminary approval of the Class Action
6 and PAGA Settlement Agreement and Class Notice (the “Settlement”)², which provides for a
7 Gross Settlement Amount (“GSA”) of \$275,000.00 in compromise of all disputed claims on
8 behalf of all persons whose employment with Defendant Dywidag Systems International, USA,
9 Inc. (“Defendant”) in California terminated during the period of March 28, 2020 through June 28,
10 2024 (“Class Period”). Through this Motion, Plaintiff respectfully requests for this Court to (1)
11 provisionally certify the below-defined Class for settlement purposes only under Code of Civil
12 Procedure § 382; (2) preliminarily approve the Settlement; (3) preliminarily appoint Plaintiff as
13 Class Representative; (4) appoint David Spivak of The Spivak Law Firm as Class Counsel; (5)
14 approve the proposed notice procedures and related forms; and (6) schedule a final approval
15 hearing.

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

26 ///

27 ///

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 **II. BACKGROUND**

2 Defendant owns and operates a structural and geotechnical engineering firm. Defendant
3 employed Plaintiff in California as a Regional Contract Manager from about October 13, 2003
4 until April 4, 2022. . DS, ¶ 13.

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

6 On March 27, 2023, Plaintiff notified Defendant and the California Labor and Workforce
7 Development Agency (“LWDA”), pursuant to the California Private Attorneys General Act of
8 2004, California Labor Code sections 2698, *et seq.* (“PAGA”), of alleged Labor Code violations
9 committed by Defendant. DS, ¶ 14, Ex. 2.

10 On March 28, 2023, Plaintiff filed a Class Action Complaint in the Los Angeles County
11 Superior Court, Case No. 23STCV06697, against Defendant on behalf of herself and others
12 similarly situated, alleging causes of action on a class-wide basis for: Waiting Time Penalties
13 (Lab. Code §§ 201-203). DS, ¶ 15, Ex. 3. On June 1, 2023, Plaintiff filed her First Amended
14 Complaint adding a claim under PAGA. DS, ¶ 15, Ex. 4. On June 5, 2023, Defendant filed an
15 answer to Plaintiff’s First Amended Complaint. DS, ¶ 15, Ex. 5. Defendant denies all of Plaintiff’s
16 allegations and strongly contends that its wage and hour policies, practices, and procedures are
17 fully compliant with all applicable laws. DS, ¶ 15.

18 **B. Sampling**

19 On September 01, 2023, 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 and the number of paychecks and workweeks for the
22 limitations period applicable to Plaintiff’s claims. DS, ¶ 16. Plaintiff also requested a reasonable,
23 randomly selected sample of Defendant’s time and payroll records, and related personnel records.
24 *Id.* Finally, Plaintiff requested Defendant’s written policies applicable to the claims at hand and
25 asked Defendant to identify any and all comparable claims against it.

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 its relevant company written policies. DS, ¶ 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
F17
Los Angeles, CA 90067

1 The Defendant disclosed that there no comparable claims against it. DS, ¶ 21.

2 Defendant contends that it employed 147 putative class members during the period of
3 March 28, 2020 to November 14, 2023. Defendant produced the records of 19.00% of the putative
4 class members for the period of March 28, 2023 to November 14, 2023. There were records for
5 28 employees in the sample. Plaintiff chose the sample. The sample was randomly selected. The
6 sample consisted of time records, payroll records, and related records. DS, ¶ 18.

7 Plaintiff's counsel analyzed the sample. Plaintiff employed the Raosoft³ Sample Size
8 calculator (<http://www.raosoft.com/samplesize.html>) to determine if the sample size selected is
9 statistically reliable. *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715 and *Duran v. U.S.*
10 *Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative margin of error of 32.4 percent was
11 unacceptable whereas the *Duran* court found a relative margin of error of 43.3 percent was
12 unacceptable. Using a margin of error of 32%, a confidence level of 95%, and a population size
13 of 147, the Raosoft Sample Size Calculator recommended a sample of 9. DS, ¶ 19, **Exhibit 6**
14 (Raosoft Sample Size Calculator results print-out). Thus, the sample population that Plaintiff's
15 counsel evaluated is statistically reliable. *Id.*

16 **C. Mediation**

17 On December 21, 2023, following much of the foregoing informal discovery and
18 exchange of information, the Parties participated in a mediation session presided over by Mediator
19 Phillip K. Cha, an experienced class action mediator. During the mediation, the Parties had a full
20 day of productive negotiations. During the mediation session, each side, represented by her / its
21 respective counsel, recognized the risk of an adverse result in the Action. The case did not settle
22 at that time. However, discovery and settlement negotiations continued with the aid of the
23 mediator. On February 10, 2025, the Parties agreed to settle the Action and all other matters



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

24 ³ 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>.

covered by the Settlement pursuant to the terms and conditions of the Settlement. DS, ¶ 20.

III. OVERVIEW OF THE SETTLEMENT

A. Settlement Class and Aggrieved Employees Definition

The Settlement defines the Settlement Class as all persons whose employment with Defendant in California terminated during the Class Period. The Class Period is March 28, 2020 through June 28, 2024. *Id.* The “Aggrieved Employees” are all persons whose employment with Defendant in California terminated during the PAGA Period. The “PAGA Period” begins March 27, 2022 and ends June 28, 2024. *Id.*

B. Monetary Terms

Gross Settlement Amount. Except as otherwise provided by Paragraph 9 in the Settlement, Defendant promises to pay two hundred seventy-five thousand dollars (\$275,000.00) and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of the Settlement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant. Settlement, ¶ 3.1.

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 in the Final Approval:

To Plaintiff: Class Representative Service Payment to the Class Representative of not more than ten thousand dollars (\$10,000.00) (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is otherwise entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff’s request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for the Class Representative Service Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099.



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 Plaintiff assumes full responsibility and liability for employee taxes owed on the Class
2 Representative Service Payment. Settlement, ¶ 3.2.1.

3 To Class Counsel: A Class Counsel Fees Payment of not more than 33.33%, which is
4 currently estimated to be ninety-one thousand, six hundred sixty-six dollars and sixty-seven cents
5 (\$91,666.67) and a Class Counsel Litigation Expenses Payment of not more than twelve thousand,
6 five hundred dollars (\$12,500.00). Defendant will not oppose requests for these payments
7 provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion
8 for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than sixteen (16)
9 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees
10 Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested,
11 the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties
12 shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to
13 any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment.
14 The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses
15 Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and
16 liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation
17 Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute
18 or controversy regarding any division or sharing of any of these Payments. Settlement, ¶ 3.2.2.

19 To the Administrator: An Administrator Expenses Payment not to exceed seven thousand
20 dollars (\$7,000.00) except for a showing of good cause and as approved by the Court. To the
21 extent the Administration Expenses are less or the Court approves payment less than seven
22 thousand dollars (\$7,000.00), the Administrator will retain the remainder in the Net Settlement
23 Amount. Settlement, ¶ 3.2.3.

24 To Each Participating Class Member: An Individual Class Payment calculated by (a)
25 dividing the Net Settlement Amount by the total number of Employment Terminations of all
26 Participating Class Members during the Class Period and (b) multiplying the result by each
27 Participating Class Member's Employment Terminations. Settlement, ¶ 3.2.4.

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
F17
Los Angeles, CA 90067

1 **C. Timing of Payments**

2 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement
3 Amount by transmitting the funds to the Administrator no later than fourteen (14) days after the
4 Effective Date. Settlement, ¶ 4.3.

5 Payments from the Gross Settlement Amount. Within fourteen (14) days after Defendant
6 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
7 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
8 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
9 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees
10 Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service
11 Payment shall not precede disbursement of Individual Class Payments and Individual PAGA
12 Payments. Settlement, ¶ 4.4.

13 **D. Calculation of Settlement Shares**

14 The Administrator will calculate each Individual Class Payment as described above in
15 Section III.B. Settlement, ¶ 3.2.4.

16 The Administrator will calculate each Individual PAGA Payment by (a) dividing the
17 amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$1,000.00) by the total
18 number of PAGA Period Employment Terminations of all Aggrieved Employees during the
19 PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period
20 Employment Terminations. Aggrieved Employees assume full responsibility and liability for any
21 taxes owed on their Individual PAGA Payment. Settlement, ¶ 3.2.5.1.

22 If the Court approves PAGA Penalties of less than the amount requested, the
23 Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will
24 report the Individual PAGA Payments on IRS 1099 Forms. Settlement, ¶ 3.2.5.2.

25 **E. Apportionment of Settlement Shares**

26 Tax Allocation of Individual Class Payments. 100.00% of each Participating Class
27 Member's Individual Class Payment will be allocated to settlement of claims for interest and
28 penalties (the "Non-Wage Portion"). They are not subject to wage withholdings and will be
reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability



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 for any taxes owed on their Individual Class Payment. Settlement, 3.2.4.1.

2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments.
3 Non-Participating Class Members will not receive any Individual Class Payments. The
4 Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement
5 Amount for distribution to Participating Class Members on a pro rata basis. Settlement, ¶ 3.2.4.2.

6 **F. The Releases**

7 RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire
8 Gross Settlement Amount, Plaintiff, Class Members, and Class Counsel will release claims
9 against all Released Parties as follows:

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

25 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of
26 Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits,
27 if any, of section 1542 of the California Civil Code, which reads:

28 A general release does not extend to claims that the creditor or releasing party does not



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 know or suspect to exist in his or her favor at the time of executing the release, and that if known
2 by him or her would have materially affected his or her settlement with the debtor or Released
3 Party. Settlement, ¶ 6.1.1.

4 Release by Participating Class Members Who Are Not Aggrieved Employees: All
5 Participating Class Members, on behalf of themselves and their respective former and present
6 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
7 Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the
8 Class Period facts stated in the Operative Complaint and ascertained in the course of the Action,
9 including any claims for waiting time penalties during the Class Period. Except as set forth in
10 Paragraph 6.3 of the Settlement, Participating Class Members do not release any other claims,
11 including claims for vested benefits, wrongful termination, violation of the Fair Employment and
12 Housing Act, unemployment insurance, disability, social security, workers' compensation, or
13 claims based on facts occurring outside the Class Period. Settlement, ¶ 6.2.

14 Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-
15 Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of
16 themselves and their respective former and present representatives, agents, attorneys, heirs,
17 administrators, successors and assigns, the Released Parties from all claims for PAGA penalties
18 that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated
19 in the Operative Complaint and the PAGA Notice and ascertained in the course of the Action,
20 and any claims for civil penalties arising from the non-timely payment of final wages due and
21 owing during the PAGA Period. Settlement, ¶ 6.3.

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

23 No later than ten (10) business days after receipt of the Class Data, the Administrator shall
24 notify Class Counsel that the list has been received and state the number of Class Members,
25 PAGA Members, Class Employment Terminations, and PAGA Employment Terminations in the
26 Class Data. Settlement, ¶ 8.4.1.

27 Using best efforts to perform as soon as possible, and in no event later than twenty-one
28 (21) days after receiving the Class Data, the Administrator will send to all Class Members



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
F17
Los Angeles, CA 90067

1 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice
2 Packet with Spanish translation, if applicable substantially in the forms attached to the Settlement
3 as Exhibits A, B, C, and D. The first page of the Class Notice shall prominently estimate the dollar
4 amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class
5 Member, and the number of Employment Terminations and PAGA Employment Terminations (if
6 applicable) used to calculate these amounts. Before mailing Notice Packets, the Administrator
7 shall update Class Member addresses using the National Change of Address database. Settlement,
8 ¶ 8.4.2.

9 Not later than five (5) business days after the Administrator’s receipt of any Notice Packet
10 returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet using any
11 forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
12 the Administrator shall conduct a Class Member Address Search, and re-mail the Notice Packet
13 to the most current address obtained. The Administrator has no obligation to make further
14 attempts to locate or send Notice Packet to Class Members whose Notice Packet is returned by
15 the USPS a second time. Settlement, 8.4.3.

16 The deadlines for Class Members’ written objections, Challenges to Employment
17 Terminations and/or Employment Terminations (disputes), and Requests for Exclusion will be
18 extended an additional fourteen (14) days beyond the sixty (60) days otherwise provided in the
19 Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the
20 Class Member of the extended deadline with the re-mailed Notice Packet. Settlement, ¶ 8.4.4.

21 If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers
22 any persons who believe they should have been included in the Class Data and should have
23 received Notice Packet, the Parties will expeditiously meet and confer in person or by telephone,
24 and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties
25 agree, such persons will be Class Members entitled to the same rights as other Class Members,
26 and the Administrator will send, via email or overnight delivery, a Class Notice requiring them
27 to exercise options under the Settlement not later than fourteen (14) days after receipt of Class
28 Notice, or the deadline dates in the Class Notice, which ever are later. Settlement, ¶ 8.4.5.



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 **1. Disputes**

2 Challenges to Calculation of Employment Terminations. Each Class Member shall have
3 sixty (60) days after the Administrator mails the Notice Packet (plus an additional fourteen (14)
4 days for Class Members whose Notice Packet is re-mailed) to challenge the number of Class
5 Employment Terminations and PAGA Employment Terminations (if any) allocated to the Class
6 Member in the Class Notice. This is also known as a dispute. An Employment Termination
7 Dispute form, attached as Exhibit C to the Settlement, may be used for this purpose but is not
8 required. The Class Member may challenge the allocation by communicating with the
9 Administrator via fax, email, or mail. The Administrator must encourage the challenging Class
10 Member to submit supporting documentation. In the absence of any contrary documentation, the
11 Administrator is entitled to presume that the Employment Terminations contained in the Class
12 Notice are correct so long as they are consistent with the Class Data. The Administrator's
13 determination of each Class Member's allocation of Employment Terminations and/or
14 Employment Terminations shall be final and not appealable or otherwise susceptible to challenge.
15 The Administrator shall promptly provide copies of all challenges to calculation of Employment
16 Terminations and/or Employment Terminations to Defense Counsel and Class Counsel and the
17 Administrator's determination the challenges. Settlement, ¶ 8.6.

18 **2. Opting Out**

19 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly
20 review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5)
21 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator
22 shall email a list to Class Counsel and Defense Counsel containing (a) the names and other
23 identifying information of Class Members who have timely submitted valid Requests for
24 Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members
25 who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from
26 Settlement submitted (whether valid or invalid). Settlement, ¶ 8.8.2.

27 **3. Objecting**

28 Only Participating Class Members may object to the class action components of the
Settlement and/or the Settlement, including contesting the fairness of the Settlement, and/or



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 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses
2 Payment, and/or Class Representative Service Payment. Settlement, ¶ 8.7.1.

3 Participating Class Members may send written objections to the Administrator, by fax,
4 email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an
5 attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
6 Participating Class Member who elects to send a written objection to the Administrator must do
7 so not later than sixty (60) days after the Administrator's mailing of the Notice Packet (plus an
8 additional fourteen (14) days for Class Members whose Notice Packet was re-mailed). The
9 Objection form attached as Exhibit D to the Settlement may be used for this purpose but is not
10 required. Settlement, ¶ 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, ¶ 8.7.3.

13 **H. Uncashed Checks**

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

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

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

///



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
F17
Los Angeles, CA 90067

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

2 A class is ascertainable when it may be readily identified without unreasonable expense
3 or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932
4 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiff maintains that the above-
5 defined Class is ascertainable because its members may be identified by reference to Defendant's
6 records and Defendant has agreed to share the relevant information from its records to facilitate
7 the settlement process. DS, ¶ 23; Settlement, ¶ 4.2. Therefore, the Settlement Class is
8 ascertainable.

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

10 The Settlement Class has sufficiently numerous members to render joinder impractical.
11 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*
12 (1972) 28 Cal.App.3d 1017, 1030. Defendant estimates that there are approximately 161 Class
13 Members. DS, ¶ 24. Plaintiff maintains that it would be impractical and economically inefficient
14 to require each Class Member to separately maintain an individual action or be joined as a named
15 plaintiff in this action. The California Supreme Court has upheld a class of as few as 10
16 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations,
17 the Settlement Class's membership is sufficiently numerous. DS, ¶ 24. *See Daar v. Yellow Cab*
18 *Co.* (1967) 67 Cal.2d 695.

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

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

28 To justify certification, the class proponent "must show ... that questions of law or fact
common to the class predominate over the questions affecting the individual members" *See,*



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 *Arenas v. El Torito Rests., Inc.* (2010) 183 Cal. App. 4th 723, 732 (citing *Washington Mut. Bank,*
2 *FA v. Superior Court* (2001) 248 Cal. 4th 906, 913). In light of the more lenient standard for
3 certification of a settlement class, the Parties agree that for the purposes of the Settlement only,
4 the claims of the Class Members all stem from the same sources. DS, ¶ 37.

5 In this case, Plaintiff asserts all Class Members were subject to the same or similar
6 operations and employment policies, practices, and procedures. The claims arise from
7 Defendant's alleged policy-driven failure to timely pay final wages, and related labor law
8 violations, all of which Plaintiff claims constitute unfair business practices and give rise to PAGA
9 penalties. Plaintiff asserts that common questions include but are not limited to: (1) Whether
10 Defendant willfully failed to provide the class with timely final wages and (2) Whether Defendant
11 engaged in unfair competition within the meaning of Business and Professions Code section
12 17200, *et seq.*, with respect to the class. DS, ¶ 25. Therefore, common questions predominate.

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

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

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

28 The adequacy requirement is met where the plaintiff is represented by counsel qualified
to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to the class'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 interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the
2 plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling
3 conflicts of interest that might hinder the plaintiff's ability to represent the class. DS, ¶ 27.

4 First, Class Counsel has supplied the Court with his declaration to show that he is adequate
5 to represent the Settlement Class and that he has significant experience in employment litigation
6 generally, and wage and hour and employment-related class action litigation specifically. *See* DS,
7 ¶¶ 29-36. Thus, Plaintiff's counsel is 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 Defendant 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, ¶ 28. 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, ¶ 28. 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**
21 **Of 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



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 purposes of this Settlement only. DS, ¶ 37.

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

4 **A. Legal Standard**

5 A class action settlement requires court approval. California Rules of Court (“CRC”),
6 Rule 3.769 provides three steps for approval: (1) Preliminary approval after submission of a
7 written motion for preliminary approval, the proposed class settlement, and the proposed class
8 notice; (2) Issuance of notice of settlement to class members; and (3) A final settlement approval
9 hearing where class members may be heard regarding the settlement, and at which evidence and
10 argument concerning the fairness, adequacy, and reasonableness of the settlement is presented.
11 The decision to approve or reject a class settlement is committed to the Court’s broad discretion.
12 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision to approve
13 class settlement 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
19 of objectors is small.” *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford Motor Co.*, (1996)
20 48 Cal.App.4th at 1794.

21 The class settlement here satisfies all of these factors. DS, ¶ 38. 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 Defendant’s estimated exposure. *Id.*

25 On March 28, 2023, Plaintiff commenced this Action by filing a Complaint alleging a
26 cause of action against Defendant for failure to timely pay wages. On June 2, 2023, Plaintiff filed
27 a First Amended Complaint again alleging a cause of action against Defendant for failure to
28 timely pay final wages and additionally asserting claims for civil penalties under the Private
Attorneys General Act relating to the putative failure to timely pay final wages. The First
Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”)



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 Defendant denies the allegations in the Operative Complaint, denies any failure to comply with
2 the laws identified in the Operative Complaint, and denies any and all liability for the causes of
3 action alleged. Settlement Agreement, ¶ 2.1.

4 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to
5 Defendant and the LWDA by sending the PAGA Notice. Settlement, ¶ 2.2. DS, ¶ 18. Plaintiff
6 prepared “damages” estimates in advance of the mediation. DS, ¶ 39, Ex. 7. Plaintiff determined
7 Defendant’s maximum possible exposure for restitution and penalties to be approximately
8 \$633,107.20 (consisting of \$603,807.20 for waiting time penalties and \$29,300.00 in civil
9 penalties for untimely wages). Plaintiff calculated the damages based on the number of pay
10 periods provided by Defendant, Plaintiff’s reports, and the sample data. *Id.*

11 However, based on the difficulties of proof, the Defendant’s defenses, and the other
12 attendant risks Plaintiff identifies, Plaintiff estimates the likely awards at trial should Plaintiff
13 prevail to be the following amounts:

- 14 a. Waiting time penalties in the amount of \$573,616.84; and
15 b. Civil penalties in the amount of \$27,835.00.

16 The total of these amounts is \$601,451.84. The Gross Settlement Amount of \$275,000.00 is
17 45.72% of this amount. DS, ¶ 51.

18 Plaintiff also considered the possibility that Defendant could launch a *Pick Up Stix*
19 campaign and pursue individual release agreements from the Class Members. Plaintiff’s Counsel
20 applied discounts to the maximum possible exposure to account for all other risks discussed
21 below. While it is difficult to assign anything but crudely-determined percentages of risk to any
22 of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery
23 for such employees is substantial and alone justifies a significant discount because Defendant
24 would likely by trial have gathered releases from the majority of the Class Members. A settlement
25 for approximately 45.72% of the potential recovery is a proportion substantially in excess of
26 recovery proportions sanctioned by existing case law.⁴ *Id.*

27 ⁴ 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*,



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 Plaintiff is aware of only two significant awards under the PAGA in a contested
2 proceeding, both issued by federal district courts.⁵ DS, ¶ 47. PAGA penalty awards are often
3 small even for egregious, intentional violations of the Labor Code.⁶ *Id.* For instance, on October
4 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by
5 very experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving*
6 *Company, Inc.*, LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.*
7 (2018) 30 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a
8 PAGA penalty of only \$5 per pay period for the defendant’s meal period violations. A similar

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 ⁵ 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., fn. 9. The district court further stated, “Virgin “has not presented any evidence that the full
penalty would be excessive in relation to its ability to pay,” the weight of this factor is lessened.”
Id.

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

⁶ 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 result 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 \$275,000.00 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 the Collective Bargaining Agreement**

16 A vast majority of the Class Members were subject to a collective bargaining agreement.
17 It states

18 **Pursuant to California Labor Code Section 2699.6**, the Parties hereby expressly and
19 unambiguously waive the provisions of the California Private Attorneys General Act
20 (PAGA), Labor Code Section 2698, et seq., and agree that none of the provisions of that
21 statute apply to any of the employees covered by this Agreement. The parties further
22 agree that this Agreement prohibits any and all violations of the California Labor Code
23 sections identified in Labor Code 2699.5 and 2699(f) as well as any others that would be
24 redressable by PAGA, and that such claims shall be resolved exclusively through the
25 Grievance Arbitration procedure contained in this Agreement and shall not be brought in
26 a court of law or before any administrative agency such as the California Labor
27 Commissioner.

28 An arbitrator presiding over an arbitration conducted pursuant to the Grievance Procedure
shall have the authority to make an award of any and all remedies otherwise available
under the California Labor Code, except for an award of penalties that would be payable
to the Labor and Workforce Development Agency.

All claims or disputes involving alleged violations of the Industrial Welfare Commission
Wage Order 16, the California Labor Code, and the Fair Labor Standards Act, and 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 derivative claims under Cal. Business & Professions Code section 17200, et. seq., as well
2 as for associated penalties, not otherwise covered by the this Agreement, shall be subject
3 to final and binding arbitration pursuant to Section 28 of this Agreement, To the extent
4 permitted by law, all such claims or disputes shall be brought by or on behalf of the
5 employee in their individual capacity only and not as a member of any purported class,
6 collective or representative proceeding, any Arbitrator shall not have the authority to
7 fashion a proceeding as a class, collective or representative action or to award relief to a
8 group or class of employees in one arbitration proceeding. Nothing herein shall prohibit
9 the parties from entering into an agreement to consolidate grievances before the Board of
10 Adjustment hearing . . .

11 **SECTION 28. Grievance Procedure** Boards of Adjustment shall be created for the
12 settlement of disputes, except jurisdictional disputes, which shall be composed of two (2)
13 representatives selected by the Union and two (2) representatives selected by the
14 Employers. Members of a Board of Adjustment shall be affiliated neither with the Local
15 Union or the individual employer involved in the specific grievance hearing. One of the
16 two representatives selected by the Union shall be the President of the District Council of
17 Iron Workers or his designated representative and the representatives of the individual
18 signatory employers shall be selected by the Employers Association involved. It is agreed
19 all individual employers covered by this Agreement will be represented by one of the
20 Associations and such individual employers shall reimburse the Association selected,
21 actual costs incurred in preparation for such representation. Said Board shall organize
22 within three (3) working days or as soon as practical and shall elect a Chairman and a
23 Secretary and shall adopt rules of procedure which shall bind the contracting parties. Said
24 Board shall have the power to adjust any differences that may arise regarding the meaning
25 and enforcement of this Agreement. Within fifteen (15) days of the time any dispute is
26 referred to it by either party, said Board shall meet to consider such dispute. If the Board
27 cannot agree on any matter referred to it, the members thereof within three (3) days shall
28 choose a fifth member who shall have no business or financial connection with either
party. The decisions of said Boards shall be determined by a majority of their members
and, pending such decisions, work shall be continued in accordance with the provisions
of this Agreement. Any and all expenses incurred by Boards of Adjustment created under
this Section 28, including but not limited to the expense of employing a fifth member,
shall be borne by the California Field Iron Workers Administrative Trust. No proceeding
hereunder based on any dispute, complaint or grievance herein provided for, shall be
recognized unless called to the attention of the individual employer or the Local Union
involved in writing within fifteen (15) days after the alleged violation is committed.
Copies of decisions of the Boards shall be mailed to the individual employer involved in
this dispute, the appropriate Association, the California Ironworker Employers Council
and the Union.



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

DS ¶ 42, Ex. 8. The collective bargaining agreements entered into between Defendant on the one
hand, and the Class Members, on the other, present a significant risk to the success of Plaintiff's
class action litigation. DS ¶ 42. According to Defendant, the vast majority of the Class entered

1 into collective bargaining agreements with Defendant. *Id.* As the collective bargaining
2 agreements in question restrict potential litigants from bringing class actions against Defendant,
3 Plaintiff would be effectively barred from pursuing claims on behalf of the Class in Court. *Id.*
4 Thus, there is a significant risk the Court could determine that those Class Members who have
5 not entered into collective bargaining agreements with Defendant do not constitute a sufficiently
6 numerous class to justify class action treatment. As such, by continuing to trial on class-wide
7 claims, Plaintiff would run the high risk of suffering defeat due to the existence of the collective
8 bargaining agreement. Moreover, the collective bargaining agreements would pose danger to any
9 class certification motion brought by Plaintiff. Because different defenses would apply to some
10 Class Members and not others – i.e., the existence of signed collective bargaining agreements –
11 there is a risk that the Court could determine that Plaintiff’s claims present too many
12 individualized inquiries to justify class certification. *Id.*

13 **b. Risks Associated with the Waiting Time Penalty Claims.**

14 There is a collective bargaining agreement with a union that governs the employment of
15 the vast majority of the employees for whom Plaintiff seeks to represent. DS, ¶ 43, Ex. 8.
16 Additionally, Defendant contends it provided evidence that only a portion of wages owed to
17 terminated class members, consisting of vacation pay, was paid after the termination and only as
18 the result of an innocent error. DS, ¶ 43. Without proof of willful behavior, Plaintiff will be unable
19 to recover these penalties.

20 **c. Risks Associated With the PAGA Claim**

21 Regarding PAGA, a court has discretion to award a lesser amount than the maximum
22 penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
23 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendant has posed valid
24 defenses to the Labor Code claims underlying Plaintiff’s PAGA allegations. Thus, the PAGA
25 claims likewise face significant uncertainty. DS, ¶ 45. There is a risk that the Court would
26 consider the maximum civil penalty available to be confiscatory. *Id.* Moreover, the COVID-19
27 pandemic could motivate the Court to further reduce the penalty award to avoid what it may
28 consider a confiscatory taking. *Id.*

This uncertainty increases Plaintiff’s risk of pursuing the PAGA claims and required 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 significant discount for settlement purposes. DS, ¶ 46. For mediation purposes, Plaintiff’s counsel
2 estimated a maximum possible exposure of approximately \$29,300.00 in civil penalties. This
3 estimate did not take into account any of the risks discussed above and assumed a violation for
4 every single pay period. *Id.* Plaintiff’s counsel also assessed multiple penalties for the same pay
5 period for the same alleged violations of different Labor Code provisions and derivative
6 violations. *Id.* Although two federal district court decisions held that “stacking” PAGA penalties
7 in this fashion may be appropriate to determine the amount in controversy for purposes of removal
8 jurisdiction, Plaintiff’s counsel is not aware of any California state courts awarding plaintiffs
9 multiple PAGA penalties for the same violation for the same pay period under different Labor
10 Code provisions. *Id.* This may be because the PAGA does not provide for what many employers
11 characterize as claim splitting and not merely stacking. *Id.*

12 **d. Risks Associated With A Pick Up Stix Campaign**

13 An employer enjoys the right to settle a putative class member’s disputed wage claims
14 individually, without the consent or involvement of class counsel. DS, ¶ 49. (See *Chindarah v.*
15 *Pick Up Stix, Inc.* (2009) 171 Cal. App. 4th 796. *Id.* As discussed above, Defendant may launch a
16 “pick off” settlement campaign to pursue individual release agreements from the Class Members,
17 thereby potentially narrowing the size of the Settlement Class – 161 members – until it is no
18 longer numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient number
19 of employees to represent. This led to a significant reduction of claim value in settlement
20 negotiations. *Id.*

21 While the evidence gathered through Plaintiff’s discovery supports the merits of the
22 claims asserted in this lawsuit, Plaintiff and her counsel recognize that continued litigation
23 presents significant risks that support a downward departure from Defendant’s estimated liability
24 exposure. DS, ¶ 50. In view of the risks, the Settlement reflects Plaintiff’s estimate of the total
25 amount of damages, monetary penalties or other relief that the Class could reasonably expect to
26 be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.*
27 It also represents a fair, adequate, and reasonable compromise amount for these claims and
28 warrants preliminary approval. *Id.*, *Torrissi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,



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
F17
Los Angeles, CA 90067

1 1376 (the financial condition of defendant predominated in assessing the reasonableness of
2 settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty
3 concerning defendant’s financial stability “strongly supports the reasonableness of the
4 settlement”); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014
5 WL 2465049, * 3.

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

7 The settlement of PAGA penalties in the sum of \$4,000.00, of which 75% (\$3,000.00)
8 will be paid to the LWDA and 25% (\$1,000.00) will be distributed to the Class, is reasonable and
9 appropriate under the circumstances. DS, ¶ 52. The Parties negotiated a good faith amount for
10 PAGA Penalties to be paid to the LWDA and to the Class. *Id.* The portion to be paid to the LWDA
11 was not the result of self-interest at the expense of other Class Members. *Id.* Where settlements
12 “negotiate[] a good faith amount” for PAGA penalties and “there is no indication that this amount
13 was the result of self-interest at the expense of other Class Members,” such amounts are generally
14 considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844
15 EDL, 2009 WL 928133, at *9. Likewise, where the employer did not act willfully, and made good
16 faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted
17 because imposing maximum PAGA penalty for each violation would have been unjust, arbitrary,
18 and oppressive. *Id. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming
19 trial court’s award of only 10% of maximum PAGA penalty for meal break violations). *Id.* The
20 amount to be paid to the LWDA comports with PAGA settlement amounts approved by other
21 courts. *See, e.g., Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL
22 67245, 81 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common fund);
23 *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA
24 payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v.*
25 *Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA
26 settlement of 0.3% or \$1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589
27 (approving PAGA settlement and release that allocated \$0 to PAGA claim). Courts have also
28 approved settlements for \$20,000 or less. *See, e.g., Hicks v. Toys ‘R’ Us–Delaware, Inc.*, (C.D.



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 Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in a case
2 involving \$4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012)
3 2012 WL 5941801 at *14 (approving PAGA penalties of \$10,000 as part of \$2.5 million
4 settlement); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3
5 (approving PAGA payment of \$10,000 as part of \$3.7 million common-fund settlement). *Id.*

6 **3. Presence of Governmental Participant**

7 As required under Labor Code section 2699(1)(2), Plaintiff will provide notice of this
8 settlement to the LWDA with the filing and service of this motion. DS, ¶ 99, Ex. 18.

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

10 If the settlement is preliminarily approved, Class Members will be provided with the
11 Notice Packet (attached as Exhibits A-D to the Settlement) and an opportunity to object. DS, ¶
12 80. The parties' proposed notice fully complies with California Rules of Court 3.766(d) and
13 3.769(f) and will allow Class Members to make informed responses to the proposed settlement.
14 *Id.*

15 **VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY**
16 **COMPENSATES CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS**
17 **MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY**
18 **COMPARED TO OTHER CLASS MEMBERS**

19 The Individual Settlement Payments will be paid to each Class Member based on his or
20 her eligible Employment Terminations compared to the total Employment Terminations. DS, ¶
21 70, Settlement, ¶ 3.2.4. Because this method compensates Class Members based on the extent of
22 their potential injuries, in that Class Members who had more Employment Terminations would
23 have been subject to more alleged violations, it is fair, adequate, and reasonable. *Id.*

24 Defendant estimates that there are 359 Employment Terminations for the Class Period
25 because many of the Class Members had more than one Employment Termination during the
26 Class Period. So, each Employment Termination has a value of approximately \$417.36
27 (\$149,833.33 Net Settlement Amount / 359 Employment Terminations = \$417.36). Plaintiff had
28 1 Employment Termination during the Class Period. Based on this, it is anticipated that Plaintiff
will receive an Individual Class Payment of approximately \$417.36 as a participating Class
Member (1 Employment Termination x \$417.36 = \$417.36) while the average estimated



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 Individual Class Payment to participating Class Members will be approximately \$930.64. Some
2 Class Members – those who had more Employment Terminations during the Class Period – will
3 receive more, and some less. The lowest possible Individual Class Payment to a participating
4 Class Member (i.e., to those who had only one Employment Termination in the Class Period) will
5 be approximately \$417.36. *See* DS, ¶ 69.

6 It is anticipated that the average Aggrieved Employee Individual PAGA Payment will
7 be \$20.83. *Id.* Plaintiff's Individual PAGA Payment, her individual share of 25% of the PAGA
8 Penalties, will be less than that of some absent Aggrieved Employees. Under the Settlement,
9 each Aggrieved Employee will receive a *pro rata* distribution of 25% of the PAGA Penalties
10 proportionate to the number of PAGA Employment Terminations he or she had with Defendant
11 during the PAGA Period, compared to the total of all Employment Terminations of all Aggrieved
12 Employees during the PAGA Period, as reflected by Defendant's records. Defendant estimates
13 that there are 48 Aggrieved Employees who collectively had a total of 112 PAGA
14 Employment Terminations for the PAGA Period. So, each PAGA Employment Termination
15 from the PAGA Period has a value of approximately \$8.93 (25% of \$4,000.00 in PAGA Penalties
16 / 112 PAGA Employment Terminations = \$8.93). It is anticipated that Plaintiff will receive an
17 Individual PAGA Payment of approximately \$8.93 as an Aggrieved Employee (1 PAGA
18 Employment Termination during the PAGA Period x \$8.93 PAGA Employment Termination
19 value = \$8.93) while the average estimated Individual PAGA Payment to an Aggrieved Employee
20 will be approximately \$20.83 (\$1,000.00, 25% of PAGA Penalties / 48 Aggrieved Employees
21 during the PAGA Period = \$20.83 Individual PAGA Payment). Some Aggrieved Employees –
22 those who had more PAGA Employment Terminations during the PAGA Period – will receive
23 more, and some less. The lowest possible Individual PAGA Payment to an Aggrieved Employee
24 (i.e., to those who only had one PAGA Employment Termination in the PAGA Period) will be
25 approximately \$8.93. *See* DS, ¶ 71.

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

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

3 The Settlement states Class Counsel may seek attorneys' fees of \$91,666.67 (33.33% of
4 the GSA) and up to \$12,500.00 for actual reasonable litigation costs and expenses incurred in
5 prosecuting the Action. Settlement ¶ 3.2.2. These amounts are reasonable, given the facts and
6 circumstances of the case. DS, ¶¶ 53-55.

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

20 The amount of fees and costs requested are commensurate with (1) the risk Class Counsel
21 took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the
22 skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the
23 value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned
24 down to devote time to this matter. DS, ¶ 54. Class Counsel interviewed and obtained information
25 from putative class members, met and conferred with Defendant's counsel on numerous
26 occasions, reviewed and analyzed hundreds of pages of data and documents provided by
27 Defendant and obtained through other sources, researched applicable law, and provided
28 estimates of "damages" for purposes of settlement discussions, among other tasks. *Id.*

Class Counsel has borne all the risks and costs of litigation and will receive no



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 compensation until recovery is obtained. DS, ¶ 55. Class Counsel is well-experienced in wage-
2 and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.*
3 Considering the amount of the attorney fees requested, the work performed, and the risks incurred,
4 the requested fees and costs are reasonable and should be awarded. *Id.*

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

8 Courts routinely approve incentive awards to compensate named plaintiffs for the services
9 they provide and the risks they incur during class action litigation, often in much higher amounts
10 than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726
11 (upholding “service payments” to named plaintiffs for their efforts in bringing the case); *Van*
12 *Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000
13 enhancement award). The Settlement provides that Plaintiff may seek a Class Representative
14 Service Payment of \$10,000.00. This amount is entirely reasonable given Plaintiff’s efforts in this
15 action and the risks she undertook on behalf of Class Members. DS, ¶ 56; Declaration of Kimberly
16 Dawn Vandermost (“Plaintiff decl.”), generally. Plaintiff has devoted many hours advancing the
17 interests of the Settlement Class. Plaintiff has done this by, among other things, retaining
18 experienced counsel, providing them with information about her work history with Defendant
19 and Defendant’s policies and practices with respect to the wage and hour claims at issue,
20 participating in mediation, and being actively involved in the settlement process to ensure a fair
21 result for the Settlement Class as a whole. In doing this, Plaintiff has been exposed to significant
22 risks, including the risk of an order to pay Defendant’s attorneys’ fees and costs if this action had
23 been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook
24 on behalf of the Settlement Class shows that the proposed Class Representative Service Payment
25 is fair, adequate, and reasonable, and thus warrants preliminary approval. DS, ¶ 56.

26 **IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE**
27 **PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE,**
28 **AND REASONABLE**

With regard to the settlement administration costs (“Administration Expenses Payment”) provision, it is reasonable. Before agreeing to Phoenix Class Action Administration Solutions 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
F17
Los Angeles, CA 90067

1 its bid of \$4,500.00, the Parties sought and reviewed bids from other reputable third-party
2 administrators that provided higher bids. DS, ¶¶ 93-94, Exs. 15, 16, and 17. Thus, the settlement
3 administration costs provision should be given preliminary approval. Plaintiff decl., generally.

4 **X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN**
5 **SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO**
6 **GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO**
7 **EXERCISE THEIR RIGHTS**

8 This Court should approve the proposed plans for giving notice to the Settlement Class
9 and administering the Settlement. The standard for determining the adequacy of notice is whether
10 the notice has “a reasonable chance of reaching a substantial percentage of the class members.”
11 *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple
12 measures to ensure that as many Class Members as practicable receive actual notice of the
13 Settlement and have enough time to exercise their rights. The Settlement requires distribution of
14 the Notice by First Class U.S. mail only. Settlement, ¶ 8.4.2. Although there are current employee
15 Class Members, it is uncertain whether Defendant’s records of their contact information include
16 email addresses and Class Members, who perform most of their work away from a desk, are not
17 in a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable.
18 DS, ¶ 80.

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 individual Settlement Class Member's estimated payment. Additionally, the Class Notice will
2 include the number of Employment Terminations a Class Member had during the Class Period.
3 Accordingly, the Notice should be approved because it describes the Settlement with sufficient
4 clarity and specificity to explain to Class Members what this action is about, their rights under
5 the Settlement, and how to exercise those rights. DS, ¶ 80.

6 **XI. CONCLUSION**

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

9 Respectfully submitted,

10 THE SPIVAK LAW FIRM

11
12 Dated: September 23, 2025

By: 

13 DAVID G. SPIVAK
14 LAUREN R. DAVIS, Attorneys for
15 Plaintiff, KIMBERLY DAWN
16 VANDERMOST, and all others
17 similarly situated
18
19
20
21
22
23
24
25
26
27
28



SPIVAK LAW
EMPLOYEE RIGHTS

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

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