

1 DAVID GLENN SPIVAK (SBN 179684)
david@spivaklaw.com
2 CAROLINE TAHMASSIAN (SBN 285680)
caroline@spivaklaw.com
3 THE SPIVAK LAW FIRM
4 8605 Santa Monica Bl
PMB 42554
5 West Hollywood, CA 90069
Telephone: (213) 725-9094
6 Facsimile: (213) 634-2485
7

8 Attorneys for Plaintiff,
9 ARLENE APODACA, and all others similarly situated

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

13 ARLENE APODACA, on behalf of herself and
14 all others similarly situated, and the general
15 public, and as an “Aggrieved Employee” on
16 behalf of other “Aggrieved Employees” and the
State of California under the Private Attorneys
General Act of 2004,

17 *Plaintiff,*

18
19 vs.

20 R AND T OIL INCORPORATED, a California
21 corporation; RAFI BARTANIYAN, an
individual; THOMAS VARTANIAN, an
22 individual; and DOES 1–50, inclusive,
23 *Defendants.*

Case No. CVRI2402196

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

Hearing Date: October 12, 2026
Hearing Time: 8:30 a.m.
Hearing Dept.: Dept. 1, The Honorable
Harold W. Hopp

Action filed: April 19, 2024
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
Fl 7
Los Angeles, CA 90067

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	v
I. INTRODUCTION.....	1
II. BACKGROUND.....	1
A. The Claims and Procedural History	2
B. Pre-Mediation Discovery.....	2
C. Mediation.....	3
D. Post-Mediation Formal Discovery	4
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.....	9
E. Apportionment of Settlement Shares.....	9
F. The Releases	9
G. Notice and Claims Process and Procedures.....	11
1. Disputes	11
2. Opting Out	12
3. Objecting	13
H. Uncashed Checks.....	13
IV. CERTIFICATION OF THE CLASS IS APPROPRIATE	14
A. The Settlement Class Is Objectively Ascertainable.....	14
B. The Membership of the Settlement Class Is Sufficiently Numerous	14
C. Class Members Share a Well-Defined Community of Interest	14
D. Plaintiff Is Typical of the Settlement Class.	16



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE, AND REASONABLE.....	29
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.....	30
XI. CONCLUSION	31



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

TABLE OF AUTHORITIES

Cases

<i>Arenas v. El Torito Rests., Inc.</i> , (2010) 183 Cal. App. 4th 723	15
<i>Belaire-West Landscape, Inc. v. Superior Court</i> (2007) 149 Cal.App.4th 554	4
<i>Bell v. Farmers Ins. Exchange</i> (2004) 115 Cal.App.4th 715	3, 29
<i>Bernstein v. Virgin Am., Inc</i> (N.D. Cal. 2022) 2022 WL 17994018	23
<i>Bowles v. Superior Court</i> (1955) 44 Cal.2d 574	14
<i>Bravo v. Gale Triangle, Inc.</i> (C.D. Cal. Feb 16, 2017) 2017 WL 708766	19
<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004	20
<i>Capitol People First v. Dept. of Developmental Servs.</i> (2007) 155 Cal. App. 4th 676	15
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504	23, 25
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	30
<i>Chindarah v. Pick Up Stix, Inc.</i> (2009) 171 Cal.App.4th 796	19, 24
<i>Chu v. Wells Fargo Investments, LLC</i> (N.D. Cal. Feb. 16, 2011) 2011 WL 67245	25
<i>Classen v. Weller</i> (1983) 145 Cal.App.3d 27	16
<i>Comcast Corporation v. Behrend</i> (2013) 133 S.Ct. 1426	21



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1	<i>Daar v. Yellow Cab Co.</i>	
2	(1967) 67 Cal.2d 695	14
3	<i>Dunk v. Ford Motor Co.</i>	
4	(1996) 48 Cal.App.4th 1794	14, 18
5	<i>Duran v. U.S. Bank National Assn</i>	
6	(2014) 59 Cal. 4th 1	3, 20, 21
7	<i>Franco v. Ruiz Food Prods., Inc</i>	
8	(E.D. Cal. Nov. 27, 2012) 2012 WL 5941801	26
9	<i>Garcia v. Gordon Trucking</i>	
10	(E.D. Cal. Oct. 31, 2012) 2012 WL 5364575	26
11	<i>Hebbard v. Colgrove</i>	
12	(1972) 28 Cal.App.3d 1017	14
13	<i>Hicks v. Toys ‘R’ Us–Delaware, Inc.</i>	
14	(C.D. Cal. Sept. 2, 2014) 2014 WL 4703915	25, 26
15	<i>Hopson v. Hanesbrands Inc.</i>	
16	(N.D. Cal. Aug. 8, 2008) 2008 WL 3385452	25
17	<i>Hopson v. Hanesbrands Inc.</i>	
18	(N.D. Cal. Apr. 3, 2009) 2009 WL 928133	25
19	<i>Hypolite v. Carlson</i>	
20	(1975) 52 Cal.App.3d 566	14
21	<i>In re Activision</i>	
22	(N.D. Cal. 1989) 723 F.Supp. 1373	28
23	<i>In re Ampicillin Antitrust Litig.</i>	
24	(D.D.C. 1981) 526 F.Supp. 494	28
25	<i>In re Newbridge Networks Sec. Litig.</i>	
26	(D.D.C. Oct. 23, 1998) 1998 WL 765724	19
27	<i>In re Omnivision Techs., Inc.</i>	
28	(N.D. Cal. 2008) 559 F.Supp.2d 1036	19
	<i>In re Pacific Enterprises</i>	
	(9th Cir. 1995) 47 F.3d 373	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



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>Jong v. Kaiser Foundation Hospital</i>	
2	(2012) 226 Cal.App.4th 391	19
3	<i>Ketchum v. Moses</i>	
4	(2001) 24 Cal. 4th 1122	28
5	<i>Kullar v. Foot Locker Retail, Inc.</i>	
6	(2008) 168 Cal.App.4th 116	18, 19
7	<i>Laffitte v. Robert Half Intl, Inc.</i>	
8	(2016) 1 Cal. 5th 480	28
9	<i>Laguna v. Coverall N. Am., Inc.</i>	
10	(9th Cir. 2014) 2014 U.S. App. LEXIS 10259	24
11	<i>Lazarin v. Pro Unlimited, Inc.</i>	
12	(N.D. Cal. July 11, 2013) 2013 WL 3541217	25
13	<i>Lealao v. Beneficial Cal., Inc.</i>	
14	(2000) 82 Cal. App. 4th 19	28
15	<i>Magadia v. Wal-Mart Assocs.</i>	
16	(N.D. Cal. 2019) 384 F. Supp. 3d. 1058	23
17	<i>McGhee v. Bank of America</i>	
18	(1976) 60 Cal.App.3d 442	16
19	<i>Nordstrom Com. Cases</i>	
20	(2010) 186 Cal.App.4 th 576	25
21	<i>Richmond v. Dart Industries, Inc.</i>	
22	(1981) 29 Cal.3d 462	14
23	<i>Rose v. City of Hayward</i>	
24	(1981) 126 Cal.App.3d 926	14
25	<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
26	(2004) 34 Cal. 4th 319	15
27	<i>Spann v. J.C. Penney Corp.</i>	
28	(C.D. Cal. 2016) 211 F.Supp.3d 1244	24
	<i>Thurman v. Bayshore Transit Management, Inc.</i>	
	(2012) 203 Cal.App.4th 1112	22
	///	

1	<i>Torrisi v. Tucson Elec. Power Co.</i>	
2	(9th Cir. 1993) 8 F.3d 1370	24
3	<i>Troester v. Starbucks Corp.</i>	
4	(2018) 5 Cal.5th 829	20
5	<i>Trotsky v. Los Angeles Fed. Sav. & Loan Assn.</i>	
6	(1975) 48 Cal.App.3d 134	30
7	<i>Tyson Foods, Inc. v. Bouphakeo</i>	
8	(2015) 136 S.Ct. 382	21
9	<i>Van Vranken v. Atlantic Richfield Co.</i>	
10	(N.D.Cal. 1995) 901 F.Supp. 294	29
11	<i>Washington Mut. Bank, FA v. Superior Court</i>	
12	(2001) 248 Cal.4th 906	15
13	<i>Washington v. Joe’s Crab Shack</i>	
14	(N.D. Cal. 2010) 271 F.R.D. 629	20
15	<i>Williams v. Superior Court</i>	
16	(2017) 3 Cal. 5th 531	4
17	<i>Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.</i>	
18	(E.D. Cal. Aug. 21, 2019) 2019 WL 3943859	19
19	Statutes	
20	Bus. & Prof. Code, section 17200 et seq	2, 16
21	Civ. Code., section 1542	10
22	Code Civ. Proc., section 382	1, 14, 17
23	Lab. Code, section 201	2
24	Lab. Code, section 202	2
25	Lab. Code, section 203	2
26	Lab. Code, section 218.5	29
27	Lab. Code, section 218.6	29
28	Lab. Code, section 226	2, 6, 22, 23



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1	Lab. Code, section 226.2	2, 6
2	Lab. Code, section 226.7	2, 6
3	Lab. Code, section 510	2, 6
4	Lab. Code, section 512	2, 6
5	Lab. Code, section 1194	2, 6
6	Lab. Code, section 1197	2, 6
7	Lab. Code, section 1198	2, 6
8	Lab. Code, section 2698	2
9	Lab. Code, section 2699	22, 23, 26
10	Lab. Code, section 2802	2, 6
11	Rules	
12	California Rules of Court, Rule 3.766.....	26
13	California Rules of Court, Rule 3.769	17, 26
14	Other	
15	<i>Alba Conte & Herbert B. Newberg</i> , Newberg on Class Actions § 3:29	16



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 **I. INTRODUCTION**

4 Plaintiff Arlene Apodaca (“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”)², which provides for a Gross
7 Settlement Amount (“GSA”) of \$200,000.00 in compromise of all disputed claims on behalf of
8 hourly, non-exempt employees at any time between April 19, 2020, through the date of
9 preliminary approval of this Settlement. Through this Motion, Plaintiff respectfully requests for
10 this Court to (1) provisionally certify the below-defined Class for settlement purposes only under
11 Code of Civil Procedure § 382; (2) preliminarily approve the Settlement; (3) preliminarily appoint
12 Plaintiff as Class Representative; (4) appoint David Spivak of The Spivak Law Firm as Class
13 Counsel; (5) approve the proposed notice procedures and related forms; (6) directing that notice
14 be mailed to the proposed Settlement class; and (7) schedule 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 operate gas station and convenience stores. DS, ¶ 14. Defendants employed
27 Plaintiff as a Cashier in California from about October 14, 2023, until December 10, 2023. *Id.*

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 **A. The Claims and Procedural History**

2 On April 19, 2024, Plaintiff notified Defendants and the California Labor and Workforce
3 Development Agency (“LWDA”), pursuant to the California Private Attorneys General Act of
4 2004, California Labor Code sections 2698, *et seq.* (“PAGA”), of alleged Labor Code violations
5 committed by Defendants. DS, ¶ 15, Ex. 2.

6 On April 19, 2024, Plaintiff filed a Class Action Complaint in the Riverside County
7 Superior Court, Case No. CVRI2402196, against Defendants on behalf of herself and others
8 similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages
9 Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and
10 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide
11 Meal Periods (Lab. Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198
12 and 2802); (5) Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time
13 Penalties (Lab. Code §§ 201-203); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, *et*
14 *seq.*). DS, ¶ 16, Ex. 3. On June 25, 2024, Plaintiff filed her First Amended Complaint adding a
15 claim under PAGA. DS, ¶ 16, Ex. 4. On July 25, 2024, Defendants filed an answer to Plaintiff’s
16 First Amended Complaint. DS, ¶ 16, Ex. 5. Defendants deny all of Plaintiff’s allegations and
17 strongly contend that their wage and hour policies, practices and procedures are fully compliant
18 with all applicable laws. *Id.*

19 **B. Pre-Mediation Discovery**

20 Prior to attending mediation and on December 10, 2024, Plaintiff requested that
21 Defendants informally disclose documents and data to enable Plaintiff to prepare for settlement
22 discussions, including the number of putative class members and aggrieved employees, the
23 number of paychecks and workweeks for the various limitations periods applicable to Plaintiff’s
24 claims. Plaintiff also requested a reasonable, randomly selected sample of Defendants’ time,
25 payroll, and expense records, and related personnel records. *Id.* Finally, Plaintiff requested
26 Defendants’ written policies applicable to the claims at hand and asked Defendants to identify
27 any and all comparable claims against them. DS, ¶ 17.

28 The Parties thereafter engaged in an informal, voluntary exchange of information in the
context of privileged settlement discussions to facilitate an early mediation. Prior to mediation,



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 Defendants produced Plaintiff's personnel file and wage statements, to the extent available,
2 payroll records for all employees going back to February of 2020, sample schedules, and sample
3 POS shift close reports for all their current employees (a total of seven (7) employees). Defendants
4 also disclosed that there have not been any comparable claims against them. DS, ¶ 18.

5 Defendants contend that they employed 55 putative Class Members during the Class
6 Period. Defendants produced the shift close reports of 12.70% of the Class Members, for their
7 seven (7) current employees in the sample. DS, ¶ 19.

8 Plaintiff retained Sridhar Srinivasan, a data analyst, to analyze the sample. Plaintiff also
9 employed the Raosoft³ 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
13 margin of error of 43.3 percent was unacceptable. Using a margin of error of 25%, a confidence
14 level of 85%, and a population size of 55, the Raosoft Sample Size Calculator recommended a
15 sample of 6. DS, ¶ 20, Exhibit 6 (Raosoft Sample Size Calculator results print-out). Thus, the
16 sample population that Plaintiff's data analyst evaluated is statistically reliable. *Id.*

17 **C. Mediation**

18 On March 5, 2025, following the foregoing informal discovery and exchange of
19 information, the Parties participated in a mediation session presided over by Mediator Scott
20 Radovich, an experienced class action mediator. During the mediation sessions, each side,
21 represented by her/its respective counsel, recognized the risk of an adverse result in the Action
22 and agreed that settling the Action and all other matters covered by the Agreement would be of
23 benefit. During the mediation, the Parties had productive negotiations but did not reach a

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 it is a "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>.



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 settlement. DS, ¶¶ 21-22.

2 **D. Post-Mediation Formal Discovery**

3 After the Parties failed to reach a settlement at the mediation, Plaintiff resumed formal
4 discovery. Plaintiff propounded and Defendants responded to discovery seeking (1) all policies
5 and procedures applicable to Plaintiff and the proposed class pertaining to the alleged wage and
6 hour violations, (2) the size of the proposed class, (3) the names, addresses and phone numbers
7 of the proposed class, (4) the payroll, time and attendance, and personnel records pertaining to
8 Plaintiff and putative Class Members, including agreements between the parties, and (5) any and
9 all employment applications and related disclosures and acknowledgments. The Parties also
10 completed the “opt-out” notice process (as approved in *Belaire-West Landscape, Inc. v. Superior*
11 *Court* (2007) 149 Cal.App.4th 554, 561 and *Williams v. Superior Court* (2017) 3 Cal. 5th 531)
12 to precede the Defendants’ delivery of Class Members’ contact information to Plaintiff’s counsel.
13 Defendants further produced payroll journals for Plaintiff and all putative Class Members and
14 policy posters, and a meal and break acknowledgment form. The Parties also continued their
15 settlement negotiations and ultimately reached an agreement on a class-wide settlement.

16 **III. OVERVIEW OF THE SETTLEMENT**

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

18 The Settlement defines the “Class” as all persons employed by Defendants in California
19 and classified as non-exempt, hourly employees who worked for Defendants during the Class
20 Period. The Class Period is April 19, 2020, through the date of preliminary approval of this
21 Settlement. Settlement, §§ 1.5 and 1.12. The “Aggrieved Employees” are all persons employed
22 by Defendants in California and classified as an hourly, non-exempt employee who worked for
23 Defendants during the PAGA Period. The “PAGA Period” means the period from April 19, 2023
24 to the date of preliminary approval of this Settlement. Settlement, §§ 1.4 and 1.32.

25 **B. Monetary Terms**

26 Except as otherwise provided by Paragraph 9 of the Settlement, Defendants promise to
27 pay \$200,000.00 and no more as the Gross Settlement Amount and to separately pay any and all
28 employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants
have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline
stated in Paragraph 6.1 of the Agreement. The Administrator will disburse the entire Gross



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 Settlement Amount without asking or requiring Participating Class Members or Aggrieved
2 Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount
3 will revert to Defendants.

4 Payments from the Gross Settlement Amount. The Administrator will make and deduct
5 the following payments from the Gross Settlement Amount, in the amounts specified by the Court
6 in the Final Approval (*see* Settlement, § 3.2):

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

18 To Class Counsel: A Class Counsel Fees Payment of not more than 33 and 1/3%, which
19 is currently estimated to be \$66,666.66 and a Class Counsel Litigation Expenses Payment of not
20 more than \$20,000.00. Defendants will not oppose requests for these payments provided that they
21 do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel
22 Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the
23 Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class
24 Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will
25 allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to
26 Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class
27 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will
28 pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed
2 on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
3 Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any
4 division or sharing of any of these Payments.

5 To the Administrator: An Administrator Expenses Payment not to exceed \$6,000.00
6 except for a showing of good cause and as approved by the Court. To the extent the
7 Administration Expenses are less or the Court approves payment less than \$6,000.00, the
8 Administrator will retain the remainder in the Net Settlement Amount.

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

13 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$5,000.00 to
14 be paid from the Gross Settlement Amount, with 75% (\$3,750.00) allocated to the LWDA PAGA
15 Payment and 25% (\$1,250.00) allocated to the Individual PAGA Payments.

16 The Administrator will calculate each Individual PAGA Payment by (a) dividing the
17 amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$1,250.00) by the total
18 number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA
19 Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.
20 Aggrieved Employees assume full responsibility and liability for any taxes owed on their
21 Individual PAGA Payment.

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.

25 **C. Timing of Payments**

26 Based on a review of their records to date, Defendants estimate there are 55 Class
27 Members who collectively worked a total of 1,272 Work Weeks, and 25 Aggrieved Employees
28 who worked a total of 936 PAGA Pay Periods. Settlement, § 4.1.



SPIVAK LAW
EMPLOYEE RIGHTS

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 Class Data. Not later than 15 days after the Court grants Preliminary Approval of the
2 Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the
3 form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
4 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
5 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
6 employees who need access to the Class Data to effect and perform under the Agreement.
7 Defendants have a continuing duty to immediately notify Class Counsel if they discover that the
8 Class Data omitted class member identifying information and to provide corrected or updated
9 Class Data as soon as reasonably feasible. Without any extension of the deadline by which
10 Defendants must send the Class Data to the Administrator, the Parties and their counsel will
11 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related
12 to missing or omitted Class Data. Settlement, § 4.2.

13 Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement
14 Amount by transmitting the funds to the Administrator no later than 14 days after the Effective
15 Date. The Gross Settlement Amount does not include Defendants' share of payroll taxes which
16 Defendants shall separately pay to the appropriate taxing entities. Settlement, § 4.3.

17 Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator
18 will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA
19 PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the
20 Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.
21 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
22 Payment and the Class Representative Service Payment shall not precede disbursement of
23 Individual Class Payments and individual PAGA Payments. Any envelope transmitting a
24 settlement distribution to a Class Members shall bear the notation, "YOUR CLASS ACTION
25 SETTLEMENT CHECK IS ENCLOSED." Settlement, § 4.4.

26 The Administrator will issue checks for the Individual Class Payments and/or Individual
27 PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid.
28 The face of each check shall prominently state the date (not less than 180 days after the date of

mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom the Notice Packet was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom the Notice Packet was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database. Settlement, § 4.4.1.

The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without a USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, if requested by the Class Member prior to the void date. The Administrator shall mail a reminder postcard to any Class Member whose settlement distribution check has not been negotiated within 60 days after the date of mailing. If (i) any of the Class Members are current employees of the Defendants, (ii) the distribution mailed to those employees is returned to the Administrator as being undeliverable, and (iii) the Administrator is unable to locate a valid mailing address, the Administrator shall arrange with the Defendants to have those distributions delivered to the employees at their place of employment. Settlement, § 4.4.2.

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall redistribute the funds represented by such checks to those Class Members who have cashed their checks. For any redistributed checks that remain uncashed or cancelled after the void date, the Administrator



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 shall transmit the funds represented by such checks to the California Controller's Unclaimed
2 Property Fund in the name of the Class Member, thereby leaving no "unpaid residue." Settlement,
3 § 4.4.3.

4 The payment of Individual Class Payments and individual PAGA Payments shall not
5 obligate Defendants to confer any additional benefits or make any additional payments to Class
6 Members (such as 401(k) contributions or bonuses) beyond those specified in the Agreement.
7 Settlement, § 4.4.4.

8 **D. Calculation of Settlement Shares**

9 An Individual Class Payment is calculated by (a) dividing the Net Settlement Amount by
10 the total number of Work Weeks worked by all Participating Class Members during the Class
11 Period and (b) multiplying the result by each Participating Class Member's Work Weeks.
12 Settlement, § 3.2.4.

13 **E. Apportionment of Settlement Shares**

14 20.00% of each Participating Class Member's Individual Class Payment will be allocated
15 to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax
16 withholding and will be reported on an IRS W-2 Form. 80.00% of each Participating Class
17 Member's Individual Class Payment will be allocated to settlement of claims for interest and
18 penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage
19 withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full
20 responsibility and liability for any employee taxes owed on their Individual Class Payment.
21 Settlement, § 3.2.4.1.

22 **F. The Releases**

23 **RELEASES OF CLAIMS.** Effective on the date when (1) Defendants fully fund the
24 entire Gross Settlement Amount and (2) provide written confirmation to Plaintiff's counsel that
25 they have paid the taxes owed on the Wage Portion of the Individual Class Payments to the
26 appropriate tax entities, Plaintiff, Class Members, and Class Counsel will release claims against
27 all Released Parties as follows:

28 Plaintiff's Release. Plaintiff and her respective former and present spouses,
representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release



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 and discharge Released Parties from all claims, transactions, or occurrences that occurred during
2 the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have
3 been, alleged, based on the facts contained in the Operative Complaint and (b) all PAGA claims
4 that were, or reasonably could have been, alleged based on facts contained in the Operative
5 Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.3,
6 below ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to
7 enforce the Agreement, or to any claims for vested benefits, unemployment benefits, disability
8 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
9 on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts
10 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be
11 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
12 notwithstanding such different or additional facts or Plaintiff's discovery of them. Settlement, §
13 6.1.

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

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

20 Settlement, § 6.1.1.

21 Release by Participating Class Members: All Participating Class Members, on behalf of
22 themselves and their respective former and present representatives, agents, attorneys, heirs,
23 administrators, successors, and assigns, release Released Parties from all claims stated in the
24 Operative Complaint and those based solely upon the facts alleged in the Operative Complaint.
25 Except as set forth in Section 6.3 of the Agreement, Participating Class Members do not release
26 any other claims, including claims for vested benefits, wrongful termination, violation of the Fair
27 Employment and Housing Act, unemployment insurance, disability, social security, workers'
28 compensation, or claims based on facts occurring outside the Class Period.



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 Release of PAGA Claim. Plaintiff releases all claims for civil penalties that could have
2 been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter
3 to the LWDA; Plaintiff does not release the claim for wages or damages of any Aggrieved
4 Employee unless such Aggrieved Employee is a Participating Class Member. Settlement, § 6.2.

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

6 No later than three (3) business days after receipt of the Class Data, the Administrator
7 shall notify Class Counsel that the list has been received and state the number of Class Members,
8 Aggrieved Employees, Work Weeks, and Pay Periods in the Class Data. Using best efforts to
9 perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the
10 Administrator will send to all Class Members identified in the Class Data, via first-class United
11 States Postal Service ("USPS") mail, the Notice Packet with Spanish translation, if applicable,
12 substantially in the forms attached to the Agreement as Exhibits A, B, C, and D. The first page of
13 the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment
14 and/or Individual PAGA Payment payable to the Class Member, and the number of Work Weeks
15 and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Notice
16 Packets, the Administrator shall update Class Member addresses using the National Change of
17 Address database. Not later than 3 business days after the Administrator's receipt of any Notice
18 Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet
19 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
20 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Notice
21 Packet to the most current address obtained. The Administrator has no obligation to make further
22 attempts to locate or send a Notice Packet to Class Members whose Notice Packet is returned by
23 the USPS a second time. Settlement, § 8.4.

24 **1. Disputes**

25 Each Class Members shall have 60 days after the Administrator mails the Notice Packet
26 (plus an additional 14 days for Class Members whose Notice Packet is re-mailed) to challenge
27 the number of Work Weeks and PAGA Pay Periods (if any) allocated to the Class Member in the
28 Class Notice. This is also known as a dispute. A Class Work Weeks/PAGA Pay Periods Dispute
form, attached as Exhibit C, may be used for this purpose but is not required. The Class Member



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 may challenge the allocation by communicating with the Administrator via fax, email or mail.
2 The Administrator must encourage the challenging Class Member to submit supporting
3 documentation. In the absence of any contrary documentation, the Administrator is entitled to
4 presume that the Work Weeks contained in the Class Notice are correct so long as they are
5 consistent with the Class Data. The Administrator's determination of each Class Member's
6 allocation of Work Weeks and/or Pay Periods shall be final and not appealable or otherwise
7 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to
8 calculation of Work Weeks and/or Pay Periods to Defense Counsel and Class Counsel and the
9 Administrator's determination of the challenges. Settlement, § 8.6.

10 **2. Opting Out**

11 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must
12 send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later
13 than 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class
14 Members whose Notice Packet is re-mailed). A Request for Exclusion is a letter from a Class
15 Member or his/her representative that reasonably communicates the Class Member's election to
16 be excluded from the Settlement and includes the Class Member's name, address and email
17 address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed,
18 or postmarked by the Response Deadline. A Request for Exclusion form, attached as Exhibit B,
19 may be used for this purpose but is not required. The Administrator may not reject a Request for
20 Exclusion as invalid because it fails to contain all the information specified in the Class Notice.
21 The Administrator shall accept any Request for Exclusion as valid if the Administrator can
22 reasonably ascertain the identity of the person as a Class Member and the Class Member's desire
23 to be excluded. The Administrator's determination shall be final and not appealable or otherwise
24 susceptible to challenge. If the Administrator has reason to question the authenticity of a Request
25 for Exclusion, the Administrator may demand additional proof of the Class Member's identity.
26 The Administrator's determination of authenticity shall be final and not appealable or otherwise
27 susceptible to challenge. Every Class Member who does not submit a timely and valid Request
28 for Exclusion is deemed to be a Participating Class Member under the Agreement, entitled to all



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of the Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Aggrieved Employees are eligible for an Individual PAGA Payment. Settlement, § 8.5.

3. Objecting

Only Participating Class Members may object to the class action components of the Settlement and/or the Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet was re-mailed). The Objection form attached as Exhibit D may be used for this purpose but is not required. Non-Participating Class Members have no right to object to any of the class action components of the Settlement. Settlement, § 8.7.

H. Uncashed Checks

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall redistribute the funds represented by such checks to those Class Members who have cashed their checks. For any redistributed checks that remain uncashed or cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member, thereby leaving no "unpaid residue." Settlement, § 4.4.3.

///



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
Fl 7
Los Angeles, CA 90067

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

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

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

12 A class is ascertainable when it may be readily identified without unreasonable expense
13 or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932
14 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiff maintains that the above-
15 defined Class is ascertainable because its members may be identified by reference to Defendants'
16 records and Defendants have agreed to share the relevant information from their records to
17 facilitate the settlement process. DS, ¶ 33. Therefore, the Settlement Class is ascertainable.

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

19 The Settlement Class has sufficiently numerous members to render joinder impractical.
20 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*
21 (1972) 28 Cal.App.3d 1017, 1030. Defendants estimate that there are approximately 55 Class
22 Members. DS, ¶ 34. Plaintiff maintains that it would be impractical and economically inefficient
23 to require each Class Member to separately maintain an individual action or be joined as a named
24 plaintiff in this action. The California Supreme Court has upheld a class of as few as 10
25 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations,
26 the Settlement Class's membership is sufficiently numerous. DS, ¶ 34. *See Daar v. Yellow Cab*
27 *Co.* (1967) 67 Cal.2d 695.

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

The community of interest requirement "embodies three factors: (1) predominant common
questions of law or fact; (2) class representatives with claims or defenses typical of the class; 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

(3) class representatives who can adequately represent the class.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326. It “does not mandate that class members have uniform or identical claims.” *Capitol People First v. Dept. of Developmental Servs.* (2007) 155 Cal. App. 4th 676, 692. Rather, courts focus on the defendant’s internal policies and “pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate.” *Id.* (citing *Sav-On*, 34 Cal. 4th at 333).

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

In this case, Plaintiff asserts all Class Members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from Defendants’ alleged policy-driven failure to pay wages for all hours worked, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, and related labor law violations, all of which Plaintiff claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common questions include, but are not limited to: (1) Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay; (2) Whether Defendants failed to provide the class with all meal and rest periods in compliance with California law; (3) Whether Defendants failed to pay the class one additional hour of pay on workdays they failed to provide the class with one or more meal or rest periods in compliance with California law; (4) Whether Defendants failed to indemnify the class for all necessary business expenditures incurred during the discharge of their duties; (5) Whether Defendants knowingly and intentionally failed to provide the class with accurate wage statements; (6) Whether Defendants willfully failed to provide the class with timely final wages; and (7) Whether Defendants engaged in unfair competition within the meaning of Business and



SPIVAK LAW
EMPLOYEE RIGHTS

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 Professions Code section 17200, *et seq.*, with respect to the class. DS, ¶ 35. Therefore, common
2 questions predominate.

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

4 The class representative must be similarly situated to the rest of the purported class. *See*
5 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating “it has never been the law in California
6 that the class representative must have identical interests with the class members. The only
7 requirements are ... that the class representative be *similarly* situated”) (emphasis in original); *See*
8 *also* Newberg, § 3:29 (typicality “focuses on whether there exists a relationship between the
9 Plaintiff’s claims and the claims alleged on behalf of the class”). Plaintiff contends that her claims
10 are typical for the purposes of certifying the Settlement Class. Plaintiff asserts that she, like absent
11 Class Members was subject to the same relevant policies and procedures governing her
12 compensation, hours of work and meal and rest periods. Because Plaintiff contends that she was
13 subject to the same general course of conduct as absent Class Members, resolving the common
14 questions as they apply to Plaintiff will determine Defendants’ *prima facie* liability to all Class
15 Members. Moreover, Plaintiff’s claims could potentially be subject to the same primary
16 affirmative defenses as those of absent Class Members. Accordingly, Plaintiff’s claims are typical
17 of the Class. DS, ¶ 36.

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

19 The adequacy requirement is met where the plaintiff is represented by counsel qualified
20 to conduct the litigation and the plaintiff’s interest in the litigation is not antagonistic to the class’s
21 interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the
22 plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling
23 conflicts of interest that might hinder the plaintiff’s ability to represent the class. DS, ¶ 37.

24 First, Class Counsel have supplied the Court with declarations to show that they are
25 adequate to represent the Settlement Class and that they have significant experience in
26 employment litigation generally, and wage and hour and employment-related class action
27 litigation specifically. *See* DS, ¶¶ 37-46. Thus, Plaintiff’s counsel is adequate to serve as Class
28 Counsel.

Second, Plaintiff contends that she is an adequate class representative. Plaintiff and the

1 Class Members have strong and co-extensive interests in this litigation because they all worked
2 for Defendants during the relevant time period, allegedly suffered the same alleged injuries from
3 the same alleged course of conduct, and there is no evidence of any conflict of interest between
4 Plaintiff and the Class Members. DS, ¶ 38; *See also generally* Apodaca Declaration. Moreover,
5 Plaintiff has demonstrated her commitment to the Settlement Class by, among other things,
6 retaining experienced counsel, providing counsel with documents and extensively speaking with
7 them to assist in identifying the claims asserted in this case, assisting them in identifying
8 witnesses, as well as exposing herself to the risk of attorneys' fees and costs awards against her
9 if this lawsuit had been unsuccessful. DS, ¶ 38. Thus, Plaintiff is adequate to serve as settlement
10 class representative. Accordingly, this Court should find that Plaintiff and her counsel are
11 adequate to represent the Settlement Class as required under Code of Civil Procedure § 382.

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

14 Plaintiff further contends that a class action is also superior to other means of adjudicating
15 the issues in this action. The predominance of common legal and factual questions shows that this
16 Court could fairly adjudicate the claims of Class Members through a single class action. In view
17 of the *theoretical* alternatives that proposed class members could potentially utilize—
18 representative PAGA action (where there is less relief available), individual civil lawsuits or wage
19 claims through the Division of Labor Standards Enforcement (where there would be relatively
20 little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly
21 superior to all of them. Thus, this consideration supports conditional class action treatment for
22 purposes of this Settlement only. DS, ¶ 47.

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

25 **A. Legal Standard**

26 A class action settlement requires court approval. California Rules of Court (“CRC”), Rule
27 3.769 provides three steps for approval: (1) Preliminary approval after submission of a written
28 motion for preliminary approval, the proposed class settlement, and the proposed class notice; (2)
Issuance of notice of settlement to class members; and (3) A final settlement approval hearing
where class members may be heard regarding the settlement, and at which evidence and argument



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 concerning the fairness, adequacy, and reasonableness of the settlement is presented. The decision
2 to approve or reject a class settlement is committed to the Court's broad discretion. *Kullar v. Foot*
3 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision to approve class settlement
4 may be reversed only upon a showing of "clear abuse of discretion." *Id.*

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

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

12 The class settlement here satisfies all of these factors. DS, ¶ 48. The Settlement resulted
13 from thorough, arm's-length negotiations between experienced counsel with the assistance of a
14 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
15 weaknesses of their respective cases and Defendants' estimated exposure. *Id.*

16 Plaintiff prepared "damages" estimates in advance of the mediation. DS, ¶ 49, Ex. 7. In
17 advance of the mediation, Plaintiff determined Defendants' maximum possible exposure for
18 restitution and penalties to be approximately \$1,135,932.22 (consisting of \$54,306.25 in unpaid
19 wages, \$139,630.40 in missed meal period premium wages, \$139,630.40 in missed rest break
20 premium wages, \$92,350.00 for wage statement penalties, \$181,221.60 for waiting time penalties,
21 and \$514,800.00 for civil penalties). Plaintiff calculated the damages based on the number of
22 workweeks and pay periods Plaintiff had estimated based on the information provided by
23 Defendants, Plaintiff's reports, and the sample data. *Id.*

24 The estimates are in essence "home run" projections that omit data points that will
25 undoubtedly reduce the maximum possible damages award and do not factor in any of the risks
26 involved in litigating this Action. Plaintiff's Counsel applied discounts to the maximum possible
27 exposure to account for all risks discussed below. While it is difficult to assign anything but
28 crudely-determined percentages of risk to any of the claims, it is safe to say that the risk that 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 *Pick Up Stix* campaign (as discussed below) would preclude recovery for such employees is
2 substantial and alone justifies a significant discount because Defendants would likely by trial have
3 gathered releases from the majority of the Class Members. A settlement for approximately
4 58.69% of the potential recovery is a proportion substantially in excess of recovery proportions
5 sanctioned by existing case law.⁴ DS, ¶ 51.

6 Plaintiff's initial estimates do not realistically account for the risks outlined below or the
7 risk that a class will not be certified. Therefore, Plaintiff believes a class settlement for
8 \$200,000.00 is fair and reasonable. DS, ¶52.

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

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

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

19 **a. Risks Associated with the Unpaid Wages Claim**

20 There is a risk that Plaintiff's recovery for unpaid wages would be extremely limited at
21 best, largely because Defendants claim they prohibited off-the-clock work. Off-the-clock claims
22 are difficult where a defendant requires in its written policies that all work must take place while
23 clocked in. *See Jong v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer must

24 ⁴ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998)
25 (“[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to
26 be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance,*
27 *Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the
28 proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*,
2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) (“a settlement for fourteen percent recovery
of Plaintiffs’ maximum recovery is reasonable”); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d
1036, 1042 (N.D. Cal. 2008) (approving settlement amount that “is just over 9% of the maximum
potential recovery asserted by either party.”).



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 have notice of off-the-clock work for it to be compensable). *Id.* Moreover, while Defendants
2 dispute that off-the-clock work occurred, they contend that any time spent off the clock was *de*
3 *minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835
4 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense
5 even if compensable. *Id.* (stating that “We do not decide whether there are circumstances where
6 compensable time is so minute or irregular that it is unreasonable to expect the time to be
7 recorded.”). Following *Troester*, Defendants contend that the *de minimis* doctrine may apply here
8 because the time spent off the clock was minute and insignificant. Accordingly, a large award of
9 penalties seems unlikely with respect to this claim. DS, ¶ 53.

10 The difficulty inherent in proving that off-the-clock work occurred poses a significant
11 hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim.
12 Generally, a court will not certify a class unless it can determine an appropriate classwide
13 methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff
14 may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given
15 the lack of records indicating when such off-the-clock work may have taken place. Individualized
16 inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual
17 in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there is a significant
18 risk that the Court would consider this evidentiary showing insufficient as a classwide
19 methodology. DS, ¶ 54.

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

21 There are risks to Plaintiff’s meal period claim. Defendants contend that, to establish a
22 violation for missed meal periods, a plaintiff must do more than show that a meal break was not
23 taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a
24 “reasonable opportunity” to take a duty-free meal period, it has no further duty to “police meal
25 breaks and ensure no work thereafter is performed.” *Id.* at 1040-41. Instead, a plaintiff must show
26 the employer impeded, discouraged, or prohibited the employee from taking a proper break, or
27 otherwise failed to release the employee of all control. *Id.* “Thus, the crucial issue with regard to
28 the meal break claim is the reason that a particular employee may have failed to take a meal



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 break.” *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. DS, ¶ 55.

2 Defendants contend they did not impede or discourage Plaintiff, or any other employees,
3 from taking their meal or rest periods. Defendants claim that their policies mandate that
4 employees take at least a 30-minute, uninterrupted meal period and record the beginning and
5 ending time of their meal breaks each day on their time records. As such, to the extent that
6 evidence might show a late, short or no lunch, individualized evidence may be necessary to
7 determine whether they occurred due to conduct of the Defendants or each of the employees
8 concerned. Accordingly, there is a significant risk that the value of Plaintiff’s meal period claim
9 would be substantially reduced at trial. DS, ¶ 56.

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

11 There are risks to Plaintiff’s rest period claim. Employers are not required to record rest
12 periods and such periods are paid. Defendants contend they provided non-exempt employees the
13 opportunity to take rest periods in accordance with California law. Further, Defendants’ written
14 policies on meal and rest periods are consistent with the Wage Order. Thus, unlike meal periods,
15 where there are often records showing whether an employee clocked out or not, there is no such
16 evidence to prove a missed rest period or that the employer refused to authorize and permit one.
17 Managing such claims at trial has become exceedingly difficult. Plaintiff will depend on sample
18 witness testimony and surveys to prove the claims. While a victory with such evidence is certainly
19 possible, relevant caselaw makes such claims risky from a trial management and due process
20 perspective. *See Duran v. U.S. Bank National Assn.*, (2014) 59 Cal. 4th 1, 31 (explaining “[I]f
21 sufficient common questions exist to support class certification, it may be possible to manage
22 individual issues through the use of surveys and statistical sampling.”); *Tyson Foods, Inc. v.*
23 *Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426. DS,
24 ¶ 57.

25 **d. Risks Associated with the Failure to Indemnify Claim**

26 There is a risk that the Court may consider Plaintiff’s claims as to Defendants’ alleged
27 failure to indemnify for business expenses to be individual in nature and thus decline to certify
28 the class. Plaintiff alleges that Defendants required Plaintiff and the Class Members to use their
cellular phones, and failed to indemnify them for these business expenses. Defendants presented



1 evidence that they have supplied their employees with tools, equipment, and other supplies. As
2 such, there is a risk that the Court may consider Plaintiff's claims to be individual in nature and
3 unfit for classwide resolution. DS, ¶ 58.

4 **e. Risks Associated with the Statutory "Wage Statement"**
5 **Penalty and Waiting Time Penalty Claims**

6 Plaintiff also asserts claims for wage statement violations, untimely wage violations, and
7 PAGA penalties. Under Labor Code section 226, wage statements must include various
8 information, including the applicable rates of pay, corresponding hours worked, and gross pay.
9 Here, Plaintiff's wage statement and waiting time penalty claims have the same underlying risks
10 as the above claims, as they are derivative of them. On their face, the wage statements issued by
11 Defendants comply with the requirements of Labor Code § 226. Further, without proof of willful
12 behavior, Plaintiff will be unable to recover these penalties. DS, ¶ 59.

13 **f. Risks Associated With the PAGA Claim**

14 Regarding PAGA, a court has discretion to award a lesser amount than the maximum
15 penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
16 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed
17 valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. Thus, the
18 PAGA claims likewise face significant uncertainty. There is a risk that the Court would consider
19 the maximum civil penalty available to be confiscatory. DS, ¶ 66.

20 This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a
21 significant discount for settlement purposes. DS, ¶ 67. For mediation purposes, Plaintiff's counsel
22 estimated a maximum possible exposure of approximately \$514,800.00 in civil penalties. This
23 estimate did not take into account any of the risks discussed above and assumed a violation for
24 every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay
25 period for the same alleged violations of different Labor Code provisions and derivative
26 violations. *Id.* Although two federal district court decisions held that "stacking" PAGA penalties
27 in this fashion may be appropriate to determine the amount in controversy for purposes of removal
28 jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs
multiple PAGA penalties for the same violation for the same pay period under different Labor



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 Code provisions. *Id.* This may be because the PAGA does not provide for what many employers
2 characterize as claim splitting and not merely stacking. *Id.*

3 Plaintiff is aware of only two significant awards under the PAGA in a contested
4 proceeding, both issued by federal district courts.⁵ DS, ¶ 68. PAGA penalty awards are often small
5 even for egregious, intentional violations of the Labor Code.⁶ *Id.* For instance, on October 24,
6 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very
7 experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving Company,*
8 *Inc.*, LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.* (2018) 30
9 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a PAGA
10 penalty of only \$5 per pay period for the defendant's meal period violations. A similar result
11 could occur here. *Id.*

12 ///

13 _____
14 ⁵ In *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
15 penalties under the PAGA of \$12,277,500.00 where the total adjusted damages were
\$18,695,692.58. In this regard, the district court stated,

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

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

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

27 ⁶ In 2012, Plaintiff's Counsel tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court
28 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
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

9
10
11
12
13
14
15
16
17
18
19
20
21

21
22
23
24

- 25
26
27
28



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

- e. Statutory pay stub penalties in the amount of \$27,705.00;
- f. Waiting time penalties in the amount of \$54,366.48; and
- g. Civil penalties in the amount of \$154,440.00.

The total of these amounts is \$340,779.67. The Gross Settlement Amount of \$200,000.00 is 58.69% of this amount. DS, ¶ 73.

2. Allocation of the PAGA Payment

The settlement of PAGA penalties in the sum of \$5,000.00, of which 75% (\$3,750.00) will be paid to the LWDA and 25% (\$1,250.00) will be distributed to the Class, is reasonable and appropriate under the circumstances. DS, ¶ 74. The Parties negotiated a good faith amount for PAGA Penalties to be paid to the LWDA and to the Class. *Id.* The portion to be paid to the LWDA was not the result of self-interest at the expense of other Class Members. *Id.* Where settlements “negotiate[] a good faith amount” for PAGA penalties and “there is no indication that this amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133, at *9. Likewise, where the employer did not act willfully, and made good faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted because imposing maximum PAGA penalties for each violation would have been unjust, arbitrary, and oppressive. *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming trial court’s award of only 10% of maximum PAGA penalty for meal break violations). *Id.* The amount to be paid to the LWDA comports with PAGA settlement amounts approved by other courts. See, e.g., *Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA settlement of 0.3% or \$1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim). Courts have also 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(l)(2), Plaintiff will provide notice of this
8 settlement to the LWDA with the filing and service of this motion. DS, ¶ 134, Ex. 20.

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 (as attached to the Settlement) and an opportunity to object. DS, ¶ 106. The parties'
12 proposed notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will
13 allow Class Members to make informed responses to the proposed settlement. *Id.*

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

18 The Individual Settlement Payments will be paid to each Class Member based on his or
19 her eligible Work Weeks compared to the total Work Weeks. DS, ¶ 93. Because this method
20 compensates Class Members based on the extent of their potential injuries, in that Class Members
21 who worked for Defendants longer would have been subject to more alleged violations, it is fair,
22 adequate, and reasonable. *Id.*

23 Plaintiff estimates that there are 1,272 Work Weeks for the Class Period. So, each Work
24 Week has a value of approximately \$72.59 (\$92,333.34 Net Settlement Amount / 1,272 Work
25 Weeks = \$72.59). Plaintiff had 8 Work Weeks during the Class Period. Based on this, it is
26 anticipated that Plaintiff Arlene Apodaca will receive an Individual Class Payment of
27 approximately \$580.71 as a Participating Class Member (8 Work Weeks x \$72.59 = \$580.71)
28 while the average estimated Individual Class Payment to Participating Class Members will be
approximately \$1,678.79 (\$92,333.34 Net Settlement Amount / 55 Class Members = \$1,678.79).
Some Class Members – those who worked more Work Weeks during the Class Period - will



SPIVAK LAW
EMPLOYEE RIGHTS

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 receive more, and some less. The highest possible Individual Class Payment to a Participating
2 Class Member (i.e., to those who qualify for all Work Weeks in the Class Period) will be
3 approximately \$24,829.85. The lowest possible Individual Class Payment to a Participating Class
4 Member (i.e., to those who qualify for only one Work Week in the Class Period) will be
5 approximately \$72.59. *See DS, ¶ 82.*

6 Plaintiff's Individual PAGA Payment, her individual share of 25% of the PAGA Penalties,
7 will be less than that of some absent Aggrieved Employees. Under the Settlement, each
8 Aggrieved Employee will receive a *pro rata* distribution of 25% of the PAGA Penalties
9 proportionate to the number of paychecks he or she had with Defendants during the PAGA Period,
10 compared to the total of all paychecks of all Aggrieved Employees during the PAGA Period, as
11 reflected by Defendants' records. Defendants estimate that there are 936 Aggrieved Employee
12 paychecks for the PAGA Period. So, each Aggrieved Employee paycheck from the PAGA
13 Period has a value of approximately \$1.34 (25% of \$5,000.00 in PAGA Penalties / 936 Aggrieved
14 Employee paychecks = \$1.34). It is anticipated that Plaintiff Arlene Apodaca will receive an
15 Individual PAGA Payment of approximately \$10.68 as an Aggrieved Employee (8 paychecks
16 during the PAGA Period x \$1.34 paycheck value = \$10.68) while the average estimated Individual
17 PAGA Payment to an Aggrieved Employee will be approximately \$50.00 (\$1,250.00, 25% of
18 PAGA Penalties / 25 Aggrieved Employees = \$50.00 Individual PAGA Payment). Some
19 Aggrieved Employees – those who had more paychecks during the PAGA Period - will receive
20 more, and some less. The highest possible Individual PAGA Payment to an Aggrieved Employee
21 (i.e., to those who qualify for all paychecks in the PAGA Period) will be approximately \$248.48.
22 The lowest possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those who
23 qualify for only one paycheck in the PAGA Period) will be approximately \$1.34. *See DS, ¶ 92.*

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

26 The Settlement states Class Counsel may seek attorneys' fees of \$66,666.66 (one-third of
27 the GSA) and up to \$20,000.00 for actual reasonable litigation costs and expenses incurred in
28 prosecuting the Action. These amounts are reasonable, given the facts and circumstances of the
case. *DS, ¶¶ 75-77.*

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

14 The amount of fees and costs requested IS commensurate with (1) the risk Class Counsel
15 took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the
16 skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the
17 value of the settlement Class Counsel achieved for the class, and (6) the other cases Class Counsel
18 turned down to devote time to this matter. DS, ¶ 76. Class Counsel also met and conferred with
19 Defendants’ counsel on numerous occasions, reviewed and analyzed hundreds of pages of data
20 and documents provided by Defendants and obtained through other sources, researched
21 applicable law, and estimates of damages for purposes of settlement discussions, among other
22 tasks. *Id.*

23 Class Counsel have borne all the risks and costs of litigation and will receive no
24 compensation until recovery is obtained. DS, ¶ 77. Class Counsel are well-experienced in wage-
25 and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.*
26 Considering the amount of the attorney fees requested, the work performed, and the risks incurred,
27 the requested fees and costs are reasonable and should be awarded. *Id.*



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

4 Courts routinely approve incentive awards to compensate named plaintiffs for the services
5 they provide and the risks they incur during class action litigation, often in much higher amounts
6 than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726
7 (upholding “service payments” to named plaintiffs for their efforts in bringing the case); *Van*
8 *Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000
9 enhancement award). The Settlement provides that Plaintiff may seek a Class Representative
10 Service Payment of \$10,000.00. This amount is entirely reasonable given Plaintiff’s efforts in this
11 action and the risks she undertook on behalf of Class Members. DS, ¶ 78; Declaration of Arlene
12 Apodaca (“Plaintiff decl.”), generally. Plaintiff has devoted many hours advancing the interests
13 of the Settlement Class. Plaintiff has done this by, among other things, retaining experienced
14 counsel, providing them with information about her work history with Defendants and
15 Defendants’ policies and practices with respect to the wage and hour claims at issue, participating
16 in mediation, and being actively involved in the settlement process to ensure a fair result for the
17 Settlement Class as a whole. In doing this, Plaintiff has been exposed to significant risks,
18 including the risk of an order to pay Defendants’ attorneys’ fees and costs if this action had been
19 unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on
20 behalf of the Settlement Class show that the proposed Class Representative Service Payment is
21 fair, adequate, and reasonable, and thus warrants preliminary approval. DS, ¶¶ 78-88; Exhibits 10
22 to 13. Plaintiff Decl., generally.

23 **IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE**
24 **PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE,**
25 **AND REASONABLE**

26 With regard to the settlement administration costs (“Administration Expense Payment”)
27 provision, it is reasonable. Before agreeing to Apex Class Action Administration and its bid of
28 \$3,990.00, the Parties sought and reviewed bids from other reputable third-party administrators
which provided higher bids. DS, ¶ 124-125, Exs. 17, 18, and 19. Thus, the settlement
administration costs provision should be given preliminary approval.



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

5 This Court should approve the proposed plans for giving notice to the Settlement Class
6 and administering the Settlement. The standard for determining the adequacy of notice is whether
7 the notice has “a reasonable chance of reaching a substantial percentage of the class members.”
8 *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple
9 measures to ensure that as many Class Members as practicable receive actual notice of the
10 Settlement and have enough time to exercise their rights. The Settlement requires distribution of
11 the Notice by First Class U.S. mail only. Settlement, ¶ 8.4.2. Although there are current employee
12 Class Members, it is uncertain whether Defendants’ records of their contact information include
13 email addresses and Class Members, who perform all of their work away from a desk, are not in
14 a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable.
15 DS, ¶ 106.

16 With respect to its content, “[The] notice given to the class must fairly apprise the class
17 members of the terms of the proposed compromise and of the options open to dissenting class
18 members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.
19 The purpose of the notice in class settlement context is to give class members sufficient
20 information to decide whether they should accept the benefits offered, opt out and pursue their
21 own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) provides
22 Class Members with all pertinent information that they need to fully evaluate their options and
23 exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among
24 other things: (1) what the Settlement is about; (2) who is a Settlement Class Member ; (3) how
25 Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the
26 Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how
27 payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the
28 individual Settlement Class Member ’s estimated payment. Additionally, the Class Notice will
include the number of Work Weeks a Class Member had during the Class Period. Accordingly,
the Notice should be approved because it describes the Settlement with sufficient clarity 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 specificity to explain to Class Members what this action is about, their rights under the Settlement,
2 and how to exercise those rights. DS, ¶ 106.

3 **XI. CONCLUSION**

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

6 Respectfully submitted,

7 THE SPIVAK LAW FIRM

8
9 Dated: September 18, 2026

By:



10 DAVID G. SPIVAK, Attorneys for
11 Plaintiff, ARLENE APODACA, and all
12 others similarly situated
13
14
15
16
17
18
19
20
21
22
23



24 SPIVAK LAW
25 EMPLOYEE RIGHTS

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

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