

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 Attorneys for Plaintiffs, and all others similarly situated  
8 (Additional attorneys for the Plaintiffs on following page)

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

13 JONATHAN GUTIERREZ, JOSE RIVERA,  
14 OSCAR RAMIREZ, and GUSTAVO  
GUTIERREZ, on behalf of themselves and all  
15 others similarly situated, and the general public,  
and as “Aggrieved Employees” on behalf of other  
16 “Aggrieved Employees” and the State of  
California under the Labor Code Private  
17 Attorneys General Act of 2004 under the Private  
Attorneys General Act of 2004,

18 *Plaintiff(s),*  
19  
20

vs.  
21

22 S & L OIL, INC., a California corporation;  
GRANT ROAD GAS & AUTO CARE, LLC, a  
23 California limited liability company; GREAT  
AMERICA GAS & AUTO CARE, LLC, a  
24 limited liability company; VIPAN K. GUPTA,  
an individual; RAVI GUPTA, an individual; and  
25 DOES 1-50, inclusive,

26 *Defendant(s).*  
27  
28

Case No. 37-2024-00018132-CU-OE-CTL

**[PROPOSED] ORDER**  
**PRELIMINARILY APPROVING**  
**CLASS ACTION SETTLEMENT**

Hearing Date: February 11, 2027  
Hearing Time: 9:00 a.m.  
Hearing Dept.: C-69, The Honorable  
Evan P. Kirvin  
Action filed: April 17, 2024



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EMPLOYEE RIGHTS

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

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

1 The Motion of Plaintiffs Jonathan Gutierrez, Jose Rivera, Oscar Ramirez, and Gustavo  
2 Gutierrez (hereafter collectively "Plaintiffs") for Preliminary Approval of a Class Action  
3 Settlement (the "Motion") was considered by the Court, The Honorable Evan P. Kirvin presiding.  
4 The Court having considered the Motion, the Class Action and PAGA Settlement Agreement and  
5 Class Notice ("Settlement" or "Settlement Agreement"), and supporting papers, HEREBY  
6 ORDERS THE FOLLOWING:

7 1. The Court grants preliminary approval of the Settlement and the Settlement Class  
8 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary  
9 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court  
10 has determined only that there is sufficient evidence to suggest that the proposed settlement might  
11 be fair, adequate, and reasonable, and that any final determination of those issues will be made at  
12 the final hearing. The Court will make a determination at the hearing on the motion for final  
13 approval of class action settlement (the "Final Approval Hearing") as to whether the Settlement  
14 is fair, adequate and reasonable to the Settlement Class.

15 2. For purposes of this Preliminary Approval Order, the "Settlement Class" means  
16 all persons employed by Defendants in California and classified as non-exempt, hourly employees  
17 who worked for Defendants during the Class Period (collectively "Class Members"). The "Class  
18 Period" shall mean the period of time from April 17, 2020, through March 22, 2026.

19 3. Based on a review of their records, Defendants estimate that as of the date of  
20 mediation on January 21, 2026, there were 150 Class Members who collectively worked a total  
21 of 4,000 Work Weeks. In the event the number of Work Weeks during the Class Period exceeds  
22 the above workweek estimate by more than 10% (e.g. if the total number of workweeks exceeds  
23 4,400) at the option of Defendants, Defendants shall either increase the Gross Settlement Amount  
24 or elect to end the Class Period and PAGA Period on an earlier date which is the latest date before  
25 end of the Class Period wherein the total number of Work Weeks does not exceed 4,400  
26 ("Alternate End Date"). In the event Defendants elect not to end the Class Period and PAGA  
27 Period on an earlier date, the Gross Settlement Amount will be increased by determining the Work  
28 Week value, calculated based on the Gross Settlement Amount divided by 4,400 Work Weeks,



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multiplied by the additional number of Work Weeks beyond 4,400.

4. “Effective Date” means the date by when both of the following have occurred: (a) the court enters a judgment on its order granting final approval of the Settlement; and (b) the judgment is final and is no longer appealable. For purposes of this Agreement, the Judgment is final and is no longer appealable shall mean the latest of the following occurrences: (a) the day after the last date by which a notice of appeal, writ, or other appellate proceeding to the applicable Court of Appeal of the order and judgment approving this Agreement may be timely filed and none is filed (*i.e.*, 61 days from notice of entry of judgment); (b) if an appeal, writ, or other appellate proceeding is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or in any other manner that confirms the validity of the order and judgment, the day after the last date for filing a request for further review of the order and judgment approving this Agreement passes, and no further review is requested; or (c) if an appeal, writ, or other appellate proceeding is filed and the order approving this Agreement is affirmed and further review of the order is requested, the day after the review is finally resolved and the order and judgment approving this Agreement is affirmed.

5. This action is provisionally certified pursuant to section 382 of the California Code of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for purposes of settlement only with respect to the proposed Settlement Class.

6. Not later than fifteen (15) days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of the Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under the Settlement Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they discover that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their



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8605 Santa Monica Bl  
PMB 42554  
West Hollywood, CA 90069  
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1 counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any  
2 issues related to missing or omitted Class Data.

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

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

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

22 10. Class Counsel’s contact information is David Glenn Spivak, Esq., The Spivak Law  
23 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel’s  
24 contact information is Noah J. Woods, Esq., Littler Mendelson, P.C., 501 W. Broadway, Suite  
25 900, . San Diego, California 92101.3577.

26 11. The deadlines for Class Members’ written objections, Challenges to Work Weeks  
27 and/or PAGA Pay Periods (disputes), and Requests for Exclusion will be extended an additional  
28 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose



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1 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline  
2 with the re-mailed Notice Packet.

3 12. If the Administrator, Defendants or Class Counsel is contacted by or otherwise  
4 discovers any persons who believe they should have been included in the Class Data and should  
5 have received Notice Packet, the Parties will expeditiously meet and confer in person or by  
6 telephone, and in good faith in an effort to agree on whether to include them as Class Members.  
7 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class  
8 Members, and the Administrator will send, via email or overnight delivery, a Notice Packet  
9 requiring them to exercise options under the Settlement Agreement not later than 14 days after  
10 receipt of Notice Packet, or the deadline dates in the Notice Packet, which ever are later.

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

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



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1 challenge.

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

7 16. Every Class Member who submits a valid and timely Request for Exclusion is a  
8 Non-Participating Class Member and shall not receive an Individual Class Payment or have the  
9 right to object to the class action components of the Settlement. However, Non-Participating Class  
10 Members shall still be considered "Aggrieved Employees" and bound by the release set forth  
11 Paragraphs 6.3 of the Settlement.

12 17. Plaintiffs, all Aggrieved Employees, and the State of California are deemed to  
13 release (through Plaintiff's release as agent and proxy of the LWDA) release all claims for civil  
14 penalties under PAGA that were alleged, or reasonably could have been alleged, based on the  
15 facts stated in the Operative Complaint and/or the PAGA Notices including Labor Code §§ 201-  
16 204, 210, 221, 226, 225.5, 226.7, 227.3, 510, 512, 558, 558.1, 1174, 1194, 1194.2, 1197, 1197.1,  
17 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5 (A)-(B),  
18 California Code of Regulations, Title 8 Section 1 1070 (14) (Failure to Provide Seating), and the  
19 IWC Wage Orders, that accrued at any time during the PAGA Period. The express purpose of this  
20 Agreement and the Judgment to be entered by the Court following approval of this settlement is  
21 to forever bar Plaintiff, the LWDA, the Labor Commissioner and any other individual or entity  
22 acting on behalf of or purporting to act on behalf of the LWDA (including all Aggrieved  
23 Employees) from asserting any of the PAGA Released Claims that occurred during the PAGA  
24 Period in any future litigation. All Aggrieved Employees will be bound by the settlement of the  
25 PAGA claims that occurred during the PAGA Period being released herein, upon its approval by  
26 the Court, regardless of whether they negotiate (i.e. cashes or deposits) their settlement check.

27 18. Challenges to Calculation of Work Weeks/PAGA Pay Periods. Each Class  
28 Member shall have 60 days after the Administrator mails the Notice Packet (plus an additional 14



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1 days for Class Members whose Notice Packet is re-mailed) to challenge the number of Class  
2 Work Weeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice.  
3 This is also known as a dispute. A Work Weeks/PAGA Pay Periods Dispute form, attached to  
4 the Settlement Agreement as Exhibit C, may be used for this purpose but is not required. The  
5 Class Member may challenge the allocation by communicating with the Administrator via fax,  
6 email or mail. The Administrator must encourage the challenging Class Member to submit  
7 supporting documentation. In the absence of any contrary documentation, the Administrator is  
8 entitled to presume that the Work Weeks contained in the Class Notice are correct so long as they  
9 are consistent with the Class Data. The Administrator's determination of each Class Member's  
10 allocation of Work Weeks and/or PAGA Pay Periods shall be final and not appealable or  
11 otherwise susceptible to challenge. The Administrator shall promptly provide copies of all  
12 challenges to calculation of Work Weeks and/or PAGA Pay Periods to Defense Counsel and Class  
13 Counsel and the Administrator's determination the challenges.

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

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

25 21. Non-Participating Class Members have no right to object to any of the class action  
26 components of the Settlement.

27 22. Not later than 14 days before the date by which Plaintiffs are required to file the  
28 Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and



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Mail:  
8605 Santa Monica Bl  
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West Hollywood, CA 90069  
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1 Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and  
2 compliance with all of its obligations under the Settlement Agreement, including, but not limited  
3 to, its mailing of the Notice Packets, the Notice Packets returned as undelivered, the re-mailing  
4 of Notice Packets, attempts to locate Class Members, the total number of Requests for Exclusion  
5 from Settlement it received (both valid or invalid), the number of written objections and attach  
6 the Exclusion List. The Administrator will supplement its declaration as needed or requested by  
7 the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's  
8 declaration(s) in Court.

9 23. The Court approves, as to form and content, the Class Notice in substantially the  
10 form attached as Exhibit A to the Settlement Agreement, the Election Not to Participate in  
11 Settlement form in substantially the form attached as Exhibit B to the Settlement Agreement, the  
12 Work Weeks Dispute form in substantially the form attached as Exhibit C to the Settlement  
13 Agreement, and the Objection form in substantially the form attached as Exhibit D to the  
14 Settlement Agreement.

15 24. The Court approves, for settlement purposes only, David Glenn Spivak of The  
16 Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

17 25. The Court approves, for settlement purposes only, Jonathan Gutierrez as the Class  
18 Representative.

19 26. The Court approves Phoenix Class Action Administration Solutions as the  
20 Administrator.

21 27. The Court preliminarily approves Class Counsel's request for attorneys' fees and  
22 costs subject to final review by the Court.

23 28. The Court preliminarily approves the estimated Administrator costs payable to the  
24 Administrator subject to final review by the Court.

25 29. The Court preliminarily approves Plaintiffs' Class Representative Service  
26 Payments subject to final review by the Court.

27 30. A Final Approval Hearing shall be held on \_\_\_\_\_ at  
28 \_\_\_\_\_ .m. in Department C-69 of the Superior Court for the State of California, County



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Fl 7  
Los Angeles, CA 90067

1 of San Diego, located at the Hall of Justice, 330 W. Broadway, San Diego, CA 92101 to consider  
2 the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by  
3 this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys'  
4 fees and costs and the Class Representative Service Payments to the Class Representatives. The  
5 notice of motion and all briefs and materials in support of the motion for final approval of class  
6 action settlement and motion for attorneys' fees and litigation costs shall be served and filed with  
7 this Court sixteen (16) Court days before the Final Approval Hearing. Plaintiffs' counsel must  
8 give notice to any objecting party of any continuance of the hearing of the motion for final  
9 approval.

10 31. If for any reason the Court does not execute and file a Final Approval Order and  
11 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the  
12 proposed Settlement that is the subject of this order, and all evidence and proceedings had in  
13 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the  
14 litigation, as more specifically set forth in the Settlement.

15 32. The Court expressly reserves the right to adjourn or continue the Final Approval  
16 Hearing from time to time without further notice to members of the Class. The Plaintiffs shall  
17 give prompt notice of any continuance to Settlement Class Members who object to the Settlement.

18 **IT IS SO ORDERED.**

19  
20  
21 **DATE**

21 **THE HONORABLE EVAN P. KIRVIN**  
22 **JUDGE OF SUPERIOR COURT**



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24  
25 **SPIVAK LAW**  
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26 Mail:  
27 8605 Santa Monica Bl  
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