

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)**

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 vs.

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

25 *Defendant(s).*

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

**PLAINTIFFS’ MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF  
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



SPIVAK LAW  
EMPLOYEE RIGHTS

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

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

**ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)**

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



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](http://SpivakLaw.com)

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

## TABLE OF CONTENTS

|                                                                   |    |
|-------------------------------------------------------------------|----|
| TABLE OF AUTHORITIES.....                                         | vi |
| I. INTRODUCTION.....                                              | 1  |
| II. BACKGROUND.....                                               | 1  |
| A. The Claims and Procedural History .....                        | 2  |
| B. Sampling.....                                                  | 2  |
| C. Mediation.....                                                 | 4  |
| III. OVERVIEW OF THE SETTLEMENT .....                             | 4  |
| A. Class and Aggrieved Employees Definition.....                  | 4  |
| B. Monetary Terms .....                                           | 4  |
| C. Timing of Payments .....                                       | 6  |
| D. Calculation of Settlement Shares.....                          | 6  |
| E. Apportionment of Settlement Shares.....                        | 6  |
| F. The Releases.....                                              | 6  |
| G. Notice and Claims Process and Procedures.....                  | 9  |
| 1. Disputes .....                                                 | 9  |
| 2. Opting Out.....                                                | 10 |
| 3. Objecting .....                                                | 10 |
| H. Uncashed Checks.....                                           | 10 |
| IV. CERTIFICATION OF THE CLASS IS APPROPRIATE .....               | 11 |
| A. The Class Is Objectively Ascertainable.....                    | 11 |
| B. The Membership of the Class Is Sufficiently Numerous .....     | 11 |
| C. Class Members Share a Well-Defined Community of Interest ..... | 11 |



**SPIVAK LAW**  
EMPLOYEE RIGHTS

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

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

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



**SPIVAK LAW**  
EMPLOYEE RIGHTS

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

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

|                                                                                                                                                                                                                    |    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENTS TO PLAINTIFFS<br>SHOULD BE PRELIMINARILY APPROVED BECASUSE IT IS FAIR, ADEQUATE,<br>AND REASONABLE .....                                                           | 25 |
| IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE<br>PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE, AND<br>REASONABLE.....                                                                       | 25 |
| X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN SHOULD<br>BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO GIVE ACTUAL<br>NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO EXERCISE THEIR<br>RIGHTS..... | 26 |
| XI. CONCLUSION .....                                                                                                                                                                                               | 27 |



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> ,<br>(2010) 183 Cal. App. 4th 723 .....                    | 12    |
| <i>Bell v. Farmers Ins. Exchange</i><br>(2004) 115 Cal.App.4th 715 .....                           | 3, 25 |
| <i>Bernstein v. Virgin Am., Inc</i><br>(N.D. Cal. 2022) 2022 WL 17994018 .....                     | 19    |
| <i>Bowles v. Superior Court</i><br>(1955) 44 Cal.2d 574 .....                                      | 11    |
| <i>Bravo v. Gale Triangle, Inc.</i><br>(C.D. Cal. Feb 16, 2017) 2017 WL 708766 .....               | 21    |
| <i>Brinker Restaurant Corp. v. Superior Court</i><br>(2012) 53 Cal.4th 1004 .....                  | 17    |
| <i>Capitol People First v. Dept. of Developmental Servs.</i><br>(2007) 155 Cal. App. 4th 676 ..... | 12    |
| <i>Carrington v. Starbucks Corp.</i><br>(2018) 30 Cal.App.5th 504 .....                            | 20    |
| <i>Cartt v. Superior Court</i><br>(1975) 50 Cal.App.3d 960 .....                                   | 26    |
| <i>Chindarah v. Pick Up Stix, Inc.</i><br>(2009) 171 Cal.App.4th 796 .....                         | 20    |
| <i>Classen v. Weller</i><br>(1983) 145 Cal.App.3d 27 .....                                         | 13    |
| <i>Comcast Corporation v. Behrend</i><br>(2013) 133 S.Ct. 1426 .....                               | 18    |
| <i>Daar v. Yellow Cab Co.</i><br>(1967) 67 Cal.2d 695 .....                                        | 11    |
| <i>Dunk v. Ford Motor Co.</i><br>(1996) 48 Cal.App.4th 1794 .....                                  | 11    |



**SPIVAK LAW**  
EMPLOYEE RIGHTS

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

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

|    |                                                 |            |
|----|-------------------------------------------------|------------|
| 1  | <i>Duran v. U.S. Bank National Assn</i>         |            |
| 2  | (2014) 59 Cal. 4th 1 .....                      | 3, 17, 18  |
| 3  | <i>Hebbard v. Colgrove</i>                      |            |
| 4  | (1972) 28 Cal.App.3d 1017 .....                 | 11         |
| 5  | <i>Hypolite v. Carlson</i>                      |            |
| 6  | (1975) 52 Cal.App.3d 566 .....                  | 11         |
| 7  | <i>In re Activision</i>                         |            |
| 8  | (N.D. Cal. 1989) 723 F.Supp. 1373.....          | 24         |
| 9  | <i>In re Ampicillin Antitrust Litig.</i>        |            |
| 10 | (D.D.C. 1981) 526 F.Supp. 494.....              | 24         |
| 11 | <i>In re Newbridge Networks Sec. Litig.</i>     |            |
| 12 | (D.D.C. Oct. 23, 1998) 1998 WL 765724 .....     | 21         |
| 13 | <i>In re Omnivision Techs., Inc.</i>            |            |
| 14 | (N.D. Cal. 2008) 559 F.Supp.2d 1036.....        | 21         |
| 15 | <i>In re Pacific Enterprises</i>                |            |
| 16 | (9th Cir. 1995) 47 F.3d 373 .....               | 24         |
| 17 | <i>Jong v. Kaiser Foundation Hospital</i>       |            |
| 18 | (2012) 226 Cal.App.4th 391 .....                | 16         |
| 19 | <i>Ketchum v. Moses</i>                         |            |
| 20 | (2001) 24 Cal. 4th 1122.....                    | 24         |
| 21 | <i>Kullar v. Foot Locker Retail, Inc.</i>       |            |
| 22 | (2008) 168 Cal.App.4th 116 .....                | 14, 15, 16 |
| 23 | <i>Laffitte v. Robert Half Intl, Inc.</i>       |            |
| 24 | (2016) 1 Cal. 5th 480 .....                     | 24         |
| 25 | <i>Laguna v. Coverall N. Am., Inc.</i>          |            |
| 26 | (9th Cir. 2014) 2014 U.S. App. LEXIS 10259..... | 21         |
| 27 | <i>Lealao v. Beneficial Cal., Inc.</i>          |            |
| 28 | (2000) 82 Cal. App. 4th 19 .....                | 24         |
|    | <i>Magadia v. Wal-Mart Assocs.</i>              |            |
|    | (N.D. Cal. 2019) 384 F. Supp. 3d. 1058.....     | 20         |
|    | ///                                             |            |



SPIVAK LAW  
EMPLOYEE RIGHTS

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

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

|    |                                                            |          |
|----|------------------------------------------------------------|----------|
| 1  | <i>McGhee v. Bank of America</i>                           |          |
| 2  | (1976) 60 Cal.App.3d 442 .....                             | 13       |
| 3  | <i>Richmond v. Dart Industries, Inc.</i>                   |          |
| 4  | (1981) 29 Cal.3d 462 .....                                 | 11       |
| 5  | <i>Rose v. City of Hayward</i>                             |          |
| 6  | (1981) 126 Cal.App.3d 926 .....                            | 11       |
| 7  | <i>Sav-On Drug Stores, Inc. v. Superior Court</i>          |          |
| 8  | (2004) 34 Cal. 4th 319 .....                               | 11, 12   |
| 9  | <i>Spann v. J.C. Penney Corp.</i>                          |          |
| 10 | (C.D. Cal. 2016) 211 F.Supp.3d 1244 .....                  | 21       |
| 11 | <i>Thurman v. Bayshore Transit Management, Inc.</i>        |          |
| 12 | (2012) 203 Cal.App.4th 1112 .....                          | 19       |
| 13 | <i>Torrisi v. Tucson Elec. Power Co.</i>                   |          |
| 14 | (9th Cir. 1993) 8 F.3d 1370 .....                          | 21       |
| 15 | <i>Troester v. Starbucks Corp.</i>                         |          |
| 16 | (2018) 5 Cal.5th 829 .....                                 | 17       |
| 17 | <i>Trotsky v. Los Angeles Fed. Sav. &amp; Loan Assn.</i>   |          |
| 18 | (1975) 48 Cal.App.3d 134 .....                             | 26       |
| 19 | <i>Tyson Foods, Inc. v. Bouphakeo</i>                      |          |
| 20 | (2015) 136 S.Ct. 382 .....                                 | 18       |
| 21 | <i>Van Vranken v. Atlantic Richfield Co.</i>               |          |
| 22 | (N.D.Cal. 1995) 901 F.Supp. 294 .....                      | 25       |
| 23 | <i>Washington Mut. Bank, FA v. Superior Court</i>          |          |
| 24 | (2001) 248 Cal.4th 906 .....                               | 12       |
| 25 | <i>Washington v. Joe's Crab Shack</i>                      |          |
| 26 | (N.D. Cal. 2010) 271 F.R.D. 629 .....                      | 17       |
| 27 | <i>Wise v. Ulta Salon, Cosmetics &amp; Fragrance, Inc.</i> |          |
| 28 | (E.D. Cal. Aug. 21, 2019) 2019 WL 3943859 .....            | 21       |
|    | <b>Statutes</b>                                            |          |
|    | Bus. & Prof. Code, section 17200 et seq .....              | 2, 8, 12 |



**SPIVAK LAW**  
EMPLOYEE RIGHTS

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

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



|    |                                     |              |
|----|-------------------------------------|--------------|
| 1  | Code Civ. Proc., section 382 .....  | 1, 11, 14    |
| 2  | Code Civ. Proc., section 384 .....  | 11           |
| 3  | Code Civ. Proc., section 1542 ..... | 7            |
| 4  | Lab. Code, section 201 .....        | 2, 8         |
| 5  | Lab. Code, section 202 .....        | 2, 8         |
| 6  | Lab. Code, section 203 .....        | 2, 8         |
| 7  | Lab. Code, section 204 .....        | 2, 8         |
| 8  | Lab. Code, section 210 .....        | 2, 8         |
| 9  | Lab. Code, section 218.5 .....      | 25           |
| 10 | Lab. Code, section 218.6 .....      | 25           |
| 11 | Lab. Code, section 221 .....        | 2, 8         |
| 12 | Lab. Code, section 225.6 .....      | 8            |
| 13 | Lab. Code, section 226 .....        | 2, 8, 16, 18 |
| 14 | Lab. Code, section 226.2 .....      | 2            |
| 15 | Lab. Code, section 226.7 .....      | 2, 8         |
| 16 | Lab. Code, section 227.3 .....      | 2, 8         |
| 17 | Lab. Code, section 510 .....        | 2, 8         |
| 18 | Lab. Code, section 512 .....        | 2, 8         |
| 19 | Lab. Code, section 558 .....        | 8            |
| 20 | Lab. Code, section 558.1 .....      | 8            |
| 21 | Lab. Code, section 1174 .....       | 8            |
| 22 | Lab. Code, section 1194 .....       | 2, 8         |
| 23 | Lab. Code, section 1194.2 .....     | 8            |
| 24 |                                     |              |
| 25 |                                     |              |
| 26 |                                     |              |
| 27 |                                     |              |
| 28 |                                     |              |



**SPIVAK LAW**  
EMPLOYEE RIGHTS

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

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

|    |                                                                                    |        |
|----|------------------------------------------------------------------------------------|--------|
| 1  | Lab. Code, section 1197 .....                                                      | 2, 8   |
| 2  | Lab. Code, section 1197.1 .....                                                    | 8      |
| 3  | Lab. Code, section 1198 .....                                                      | 2, 8   |
| 4  | Lab. Code, section 2698 .....                                                      | 2, 8   |
| 5  | Lab. Code, section 2699 .....                                                      | 19, 21 |
| 6  |                                                                                    |        |
| 7  | Lab. Code, section 2802 .....                                                      | 2, 8   |
| 8  | <b>Rules</b>                                                                       |        |
| 9  | California Rules of Court, Rule 3.766.....                                         | 22     |
| 10 | California Rules of Court, Rule 3.769.....                                         | 14, 22 |
| 11 | <b>Other</b>                                                                       |        |
| 12 |                                                                                    |        |
| 13 | <i>Alba Conte &amp; Herbert B. Newberg</i> , Newberg on Class Actions § 3:29 ..... | 13     |



**SPIVAK LAW**  
EMPLOYEE RIGHTS

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

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

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

3 **I. INTRODUCTION**

4 Plaintiffs Jonathan Gutierrez, Jose Rivera, Oscar Ramirez, and Gustavo Gutierrez  
5 (collectively “Plaintiffs”) submit this memorandum of points and authorities in support of their  
6 unopposed motion for preliminary approval of the Class Action and PAGA Settlement Agreement  
7 and Class Notice (the “Settlement”)<sup>2</sup>, which provides for a Gross Settlement Amount (“GSA”) of  
8 \$298,575.00 in compromise of all disputed claims on behalf of all persons employed by  
9 Defendants in California and classified as non-exempt, hourly employees who worked for  
10 Defendants during the Class Period of April 17, 2020 through March 22, 2026. Through this  
11 Motion, Plaintiffs respectfully request for this Court to (1) provisionally certify the below-defined  
12 Class for settlement purposes only under Code of Civil Procedure § 382; (2) preliminarily approve  
13 the Settlement; (3) preliminarily appoint Plaintiffs as Class Representatives; (4) appoint David  
14 Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class  
15 Counsel; (5) approve the proposed notice procedures and related forms; and (6) schedule a final  
16 approval hearing.

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

27 **II. BACKGROUND**

28 Defendants own and operate gas stations, food marts, and service center stations. DS, ¶ 4.  
On approximately October 26, 2022, Defendants began to employ Plaintiff Jonathan Gutierrez in

<sup>2</sup> 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

San Diego and Encinitas in the position of hourly, non-exempt cashier. Defendants continuously employed him in that capacity until on or about November 12, 2023, when his employment ended. On approximately April 16, 2023, Defendants began to employ Plaintiff Jose Rivera in San Diego in the position of hourly, non-exempt cashier. Defendants continuously employed him in that capacity until on or about August 4, 2023, when his employment ended. On approximately October 26, 2022, Defendants began to employ Plaintiff Oscar Ramirez in San Diego in the position of hourly, non-exempt cashier. Defendants continuously employed him in that capacity until on or about November 12, 2023, when his employment ended. On approximately August 2023, Defendants began to employ Plaintiff Gustavo Gutierrez in San Diego and Encinitas in the position of hourly, non-exempt cashier. Defendants continuously employed him in that capacity until on or about December 27, 2023, when his employment ended. *Id.*

**A. The Claims and Procedural History**

By letters dated April 15, 2024 and April 16, 2024, Plaintiffs notified Defendants and the California Labor and Workforce Development Agency (“LWDA”), pursuant to the California Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”), of alleged Labor Code violations committed by Defendants. DS, ¶ 5, Ex. 2.

On April 17, 2024, Plaintiffs filed a Class Action Complaint in the San Diego County Superior Court, Case No. 37-2024-00018132-CU-OE-CTL, against Defendants on behalf of themselves and others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 221, 510, 1194, 1197, and 1198); (2) Vacation Pay Forfeiture (Lab. Code §227.3); (3) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (4) Failure to Provide Meal Periods (Lab. Code §§226.7, 512 and 1198); (5) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (6) Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (7) Waiting Time Penalties (Lab. Code §§ 201-203); and (8) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*). DS, ¶ 6, Ex. 3. On July 3, 2024, Plaintiffs filed their First Amended Complaint adding a claim under PAGA. DS, ¶ 6, Ex. 4. On December 2, 2024, Defendants filed an answer to Plaintiffs’ First Amended Complaint. DS, ¶ 6, Ex. 5. Defendants deny all of Plaintiffs’ allegations and strongly contend that their wage and hour policies, practices and procedures are fully compliant with all applicable laws. *Id.*

**B. Sampling**

On April 23, 2025, Plaintiffs requested that Defendants informally disclose documents and data to enable Plaintiffs to prepare for settlement discussions, including the number of



SPIVAK LAW  
EMPLOYEE RIGHTS

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

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

1 putative class members and aggrieved employees, the number of paychecks and workweeks for  
2 the various limitations periods applicable to Plaintiffs' claims. Plaintiffs also requested a  
3 reasonable, randomly selected sample of Defendants' time and payroll records, and related  
4 personnel records. *Id.* Finally, Plaintiffs requested Defendants' written policies applicable to the  
5 claims at hand and asked Defendants identify any and all comparable claims against them. DS, ¶  
6 7.

7 The Parties thereafter engaged in an informal, voluntary exchange of information in the  
8 context of privileged settlement discussions to facilitate an early mediation. Defendants produced  
9 Plaintiffs' personnel files and copies of relevant company written policies. DS, ¶ 8.

10 Defendants contend that they employed 150 putative class members during the Class  
11 Period. Defendants produced the records of 85.33% of the putative class members. There were  
12 records for 128 employees in the sample. The sample consisted of time and payroll records. DS,  
13 ¶ 9.

14 Plaintiffs retained James Toney, a data analyst, to analyze the sample. Plaintiffs also  
15 employed the Raosoft<sup>3</sup> Sample Size calculator (<http://www.raosoft.com/samplesize.html>) to  
16 determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004)  
17 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative  
18 margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin  
19 of error of 43.3 percent was unacceptable. Using a margin of error of 5%, a confidence level of  
20 95%, and a population size of 150, the Raosoft Sample Size Calculator recommended a sample  
21 of 109. DS, ¶ 10, **Exhibit 6** (Raosoft Sample Size Calculator results print-out). There were records  
22 for 128 employees in the sample. Thus, the sample population that Plaintiffs' data analyst  
23 evaluated is statistically reliable. *Id.*

24 ///

25 ///



SPIVAK LAW  
EMPLOYEE RIGHTS

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

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

26 <sup>3</sup> Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the  
27 Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software  
28 programs for information gathering and analysis. The family of survey software supports data  
collection and reporting for any form-based data. Support is for web-surveys and forms, email  
distribution, diskette, PDA, laptop or pen-based: all types of distribution." The Raosoft webpage  
advertises that is it "database web survey software for gathering information."  
<http://www.raosoft.com/> . It also advertises, "The parameters of the sample size calculation are  
something that you choose." <http://www.raosoft.com/suggestreading.html>.

1                   **C.     Mediation**

2                   On January 21, 2026, following much of the foregoing informal discovery and exchange  
3 of information, the Parties participated in a mediation session presided over by Mediator Steven  
4 G. Mehta, an experienced class action mediator. During the mediation, the Parties had a full day  
5 of productive negotiations and reached an agreement on a class-wide settlement during the  
6 mediation session and based on a mediator's proposal. During the mediation session, each side,  
7 represented by their respective counsel, recognized the risk of an adverse result in the Action and  
8 agreed to settle the Action and all other matters covered by the Agreement pursuant to the terms  
and conditions of the Agreement. DS, ¶ 11.

9                   **III.    OVERVIEW OF THE SETTLEMENT**

10                  **A.     Class and Aggrieved Employees Definition**

11                  The Settlement defines the Class as all persons employed by Defendants in California and  
12 classified as non-exempt, hourly employees who worked for Defendants during the Class Period.  
13 Settlement, § 1.5. "Class Period" means the period from April 17, 2020 to March 22, 2026.  
Settlement, § 1.12.

14                  **B.     Monetary Terms**

15                  Except as otherwise provided by Paragraph 9 of the Settlement, Defendants promise to  
16 pay \$298,575.00 and no more as the Gross Settlement Amount and to separately pay any and all  
17 employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants  
18 have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline  
19 stated in Paragraph 4.3 of the Agreement. The Administrator will disburse the entire Gross  
20 Settlement Amount without asking or requiring Participating Class Members or Aggrieved  
21 Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount  
22 will revert to Defendants. Settlement, § 3.1. The Administrator will make and deduct the  
following payments from the Gross Settlement Amount, in the amounts specified by the Court in  
the Final Approval:

23                  **To Plaintiffs:** Class Representative Service Payments to the Class Representatives of not  
24 more than \$10,000.00 each (in addition to any Individual Class Payments and any Individual  
25 PAGA Payments the Class Representatives are entitled to receive as Participating Class  
26 Members). Defendants will not oppose Plaintiffs' requests for Class Representative Service  
27 Payments that do not exceed this amount. As part of the motion for Class Counsel Fees Payment  
28 and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for the Class



SPIVAK LAW  
EMPLOYEE RIGHTS

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

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

1 Representative Service Payments no later than 16 court days prior to the Final Approval Hearing.  
2 If the Court approves a Class Representative Service Payment less than the amount requested, the  
3 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will  
4 pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full  
5 responsibility and liability for employee taxes owed on the Class Representative Service  
6 Payments. Settlement, § 3.2.1.

7 **To Class Counsel:** A Class Counsel Fees Payment of not more than 33 and 1/3% of the  
8 Gross Settlement Amount, which is currently estimated to be \$99,525.00 and a Class Counsel  
9 Litigation Expenses Payment of not more than \$20,000.00. As provided in the Escalator Clause  
10 and if Defendants exercise their right to increase the Gross Settlement Amount to account for  
11 Work Weeks beyond 4,400, the Class Counsel Fees Payment will also increase proportionally to  
12 an amount no more than 33 and 1/3% of the increased Gross Settlement Amount. Defendants will  
13 not oppose requests for these payments provided that they do not exceed these amounts. Plaintiffs  
14 and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation  
15 Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court  
16 approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment  
17 less than the amounts requested, the Administrator will allocate the remainder to the Net  
18 Settlement Amount. Released Parties shall have no liability to Class Counsel or any other  
19 Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or  
20 Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees  
21 Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel  
22 assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and  
23 the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies  
24 Defendants, from any dispute or controversy regarding any division or sharing of any of these  
25 Payments. Settlement, § 3.2.2.

26 **To the Administrator:** An Administrator Expenses Payment not to exceed \$10,000.00  
27 except for a showing of good cause and as approved by the Court. To the extent the  
28 Administration Expenses are less or the Court approves a payment less than \$10,000.00, the  
Administrator will retain the remainder in the Net Settlement Amount. Settlement, § 3.2.3.

**To Each Participating Class Member:** An Individual Class Payment calculated by (a)  
dividing the Net Settlement Amount by the total number of Work Weeks worked by all



SPIVAK LAW  
EMPLOYEE RIGHTS

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

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



1 Participating Class Members during the Class Period and (b) multiplying the result by each  
2 Participating Class Member's Work Weeks. Settlement, § 3.2.4.

3 **To the LWDA and Aggrieved Employees:** PAGA Penalties in the amount of \$5,000.00  
4 to be paid from the Gross Settlement Amount, with 75% (\$3,750.00) allocated to the LWDA  
5 PAGA Payment and 25% (\$1,250.00) allocated to the Individual PAGA Payments. The  
6 Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the  
7 Aggrieved Employees' 25% share of PAGA Penalties \$1,250.00 by the total number of PAGA  
8 Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying  
9 the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees  
10 assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.  
Settlement, § 3.2.5.

11 **C. Timing of Payments**

12 Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts  
13 necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the  
Administrator no later than 14 days after the Effective Date. Settlement, § 4.3.

14 **D. Calculation of Settlement Shares**

15 Each Individual Class Payment will be calculated by (a) dividing the Net Settlement  
16 Amount by the total number of Work Weeks worked by all Participating Class Members during  
17 the Class Period and (b) multiplying the result by each Participating Class Member's Work  
Weeks. Settlement, § 3.2.4.

18 **E. Apportionment of Settlement Shares**

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

26 **F. The Releases**

27 Effective on the date when Defendants fully fund the entire Gross Settlement Amount and  
28 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,



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 Plaintiffs, Class Members, Aggrieved Employees and Class Counsel will release claims against  
2 all Released Parties as follows:

3 **Plaintiffs' General Release of All Claims.** Plaintiffs and their respective former and  
4 present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns  
5 generally, release, acquit and forever and discharge Released Parties from any and all claims,  
6 demands, obligations, actions causes of action, liabilities, debts, promises, agreements, demands,  
7 transactions, occurrences, attorneys' fees, losses and expenses, known or unknown. Suspected or  
8 unsuspected, filed or unfiled, that they may have or have had arising out of any known or unknown  
9 fact, condition or incident occurring prior to the execution of the Agreement, or in connection  
10 with any claims, demand, charges, or complaints including, but not limited to any and all claims  
11 arising out of or in connection with their employment with Defendants, including, but not limited  
12 to the claims alleged in the Operative Complaint, including the claims released in Sections 6.2  
13 and 6.3, below ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any claims or actions  
14 to enforce the Agreement, or to any claims for vested benefits, unemployment benefits, disability  
15 benefits, social security benefits, workers' compensation benefits that arose at any time. Plaintiffs  
16 acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts  
17 or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release  
18 shall be and remain effective in all respects, notwithstanding such different or additional facts or  
19 Plaintiffs' discovery of them. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and  
20 relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,  
21 which reads:

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

26 Settlement, § 6.1.

27 **Release by Participating Class Members:** All Participating Class Members, on behalf  
28 of themselves and their respective former and present representatives, agents, attorneys, heirs,  
administrators, successors, and assigns, release Released Parties from all claims that were alleged,  
or reasonably could have been alleged based on the facts stated in the Operative Complaint that  
occurred during the Class Period for unpaid wages (including premiums) or other compensation



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 allegedly owed, or for damages, penalties, restitution, interest, liquidated damages, attorneys'  
2 fees, or costs, or any other recovery including under the California Labor Code and corresponding  
3 provisions of Wage Orders, for: (1) Failure to Pay All Wages (including minimum wage, overtime  
4 and double time, and vacation); (2) Failure to Provide Meal Periods; (3) Failure to Provide Rest  
5 Breaks; (4) Failure to Reimburse Necessary Business Expenses; (5) Failure to Provide Compliant  
6 Wage Statements; (6) Waiting Time Penalties; (7) Unfair Competition pursuant to Cal. Bus. &  
7 Prof. Code §§ 17200, et seq., including all claims and/or penalties brought under or pursuant to  
8 Labor Code §§ 201-204, 210, 221, 226, 226.7, 227.3, 510, 512, 558, 558.1, 1174, 1194, 1197,  
9 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5 (A)-  
10 (B), and the IWC Wage Orders. It is the intent of the Parties that the judgment entered by the  
11 Court upon final approval of the Settlement shall have res judicata effect and be final and binding  
12 upon Plaintiffs and all Class Members who have not expressly opted out of the settlement. Except  
13 as set forth in Sections 6.1, 6.1.1, and 6.3 of the Agreement, Participating Class Members do not  
14 release any other claims, including claims for vested benefits, wrongful termination, violation of  
15 the Fair Employment and Housing Act, unemployment insurance, disability, social security,  
16 workers' compensation, or claims based on facts occurring outside the Class Period. Settlement,  
17 § 6.2.

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



SPIVAK LAW  
EMPLOYEE RIGHTS

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

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

1 the Court, regardless of whether they negotiate (i.e. cashes or deposits) their settlement check.  
2 Settlement, § 6.3.

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

4 No later than three (3) business days after receipt of the Class Data, the Administrator  
5 shall notify Class Counsel that the list has been received and state the number of Class Members,  
6 Aggrieved Employees, Work Weeks, and Pay Periods in the Class Data. Using best efforts to  
7 perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the  
8 Administrator will send to all Class Members identified in the Class Data, via first-class United  
9 States Postal Service (“USPS”) mail, the Notice Packet with Spanish translation, if applicable  
10 substantially in the forms attached to the Agreement as Exhibits A, B, C, and D. The first page of  
11 the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment  
12 and/or Individual PAGA Payment payable to the Class Member, and the number of Work Weeks  
13 and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Notice  
14 Packets, the Administrator shall update Class Member addresses using the National Change of  
15 Address database. 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. Settlement, § 8.4.

22 **1. Disputes**

23 Each Class Member shall have 60 days after the Administrator mails the Notice Packet  
24 (plus an additional 14 days for Class Members whose Notice Packet is re-mailed) to challenge  
25 the number of Class Work Weeks and PAGA Pay Periods (if any) allocated to the Class Member  
26 in the Class Notice. This is also known as a dispute. A Work Weeks/PAGA Pay Periods Dispute  
27 form, attached as Exhibit C, may be used for this purpose but is not required. The Class Member  
28 may challenge the allocation by communicating with the Administrator via fax, email or mail.  
The Administrator must encourage the challenging Class Member to submit supporting  
documentation. In the absence of any contrary documentation, the Administrator is entitled to  
presume that the Work Weeks contained in the Class Notice are correct so long as they are  
consistent with the Class Data. The Administrator’s determination of each Class Member’s



SPIVAK LAW  
EMPLOYEE RIGHTS

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

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

1 allocation of Work Weeks and/or PAGA Pay Periods shall be final and not appealable or  
2 otherwise susceptible to challenge. The Administrator shall promptly provide copies of all  
3 challenges to calculation of Work Weeks and/or PAGA Pay Periods to Defense Counsel and Class  
4 Counsel and the Administrator's determination the challenges. Settlement, § 8.6.

5 **2. Opting Out**

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

15 **3. Objecting**

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

28 **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 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" subject to the requirements of



SPIVAK LAW  
EMPLOYEE RIGHTS

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

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

California Code of Civil Procedure Section 384, subd. (b). Settlement, § 4.4.3.

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

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

**A. The Class Is Objectively Ascertainable**

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

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

The Class has sufficiently numerous members to render joinder impractical. No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030. Defendants estimate that there are approximately 150 Class Members. DS, ¶ 13. Plaintiffs maintain that it would be impractical and economically inefficient to require each Class Member to separately maintain an individual action or be joined as a named plaintiff in this action. The California Supreme Court has upheld a class of as few as 10 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations, the Class' membership is sufficiently numerous. DS, ¶ 13. *See Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695.

**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 (3) class representatives who can adequately represent the class." *Sav-On Drug Stores, Inc. v.*



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 *Superior Court* (2004) 34 Cal. 4th 319, 326. It “does not mandate that class members have  
2 uniform or identical claims.” *Capitol People First v. Dept. of Developmental Servs.* (2007) 155  
3 Cal. App. 4th 676, 692. Rather, courts focus on the defendant’s internal policies and “pattern and  
4 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).

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

11 In this case, Plaintiffs assert all Class Members were subject to the same or similar  
12 operations and employment policies, practices, and procedures. The claims arise from  
13 Defendants’ alleged policy-driven failure to pay wages, unauthorized and unlawful wage  
14 deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to  
15 indemnify for business expenses, failure to issue proper wage statements, failure to timely pay  
16 wages, failure to maintain required payroll records, and related labor law violations, all of which  
17 Plaintiffs claim constitute unfair business practices and give rise to PAGA penalties. Plaintiffs  
18 assert that common questions include, but are not limited to: (1) Whether Defendants failed to  
19 pay all wages earned to Class Members for all hours worked at the correct rates of pay; (2)  
20 Whether Defendants failed to provide the class with all meal and rest periods in compliance with  
21 California law; (3) Whether Defendants failed to pay the class one additional hour of pay on  
22 workdays they failed to provide the class with one or more meal or rest periods in compliance  
23 with California law; (4) Whether Defendants failed to indemnify the class for all necessary  
24 business expenditures incurred during the discharge of their duties; (5) Whether Defendants  
25 knowingly and intentionally failed to provide the class with accurate wage statements; (6)  
26 Whether Defendants willfully failed to provide the class with timely final wages; and (7) Whether  
27 Defendants engaged in unfair competition within the meaning of Business and Professions Code  
28 section 17200, *et seq.*, with respect to the class. DS, ¶ 14. Therefore, common questions  
predominate.

///



SPIVAK LAW  
EMPLOYEE RIGHTS

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

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



1                   **D. Plaintiffs Are Typical of the Class.**

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

16                   **E. Plaintiffs Will Adequately Represent the Class.**

17                  The adequacy requirement is met where the plaintiff is represented by counsel qualified  
18                  to conduct the litigation and the plaintiff’s interest in the litigation is not antagonistic to the class’  
19                  interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the  
20                  plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling  
21                  conflicts of interest that might hinder the plaintiff’s ability to represent the class. DS, ¶ 16.

22                  First, Class Counsel have supplied the Court with declarations to show that they are  
23                  adequate to represent the Class and that they have significant experience in employment litigation  
24                  generally, and wage and hour and employment-related class action litigation specifically. *See* DS,  
25                  ¶¶ 16-25; Declaration of Walter L. Haines (“Haines Decl.”) ¶ 3. Thus, Plaintiffs’ counsel are  
26                  adequate to serve as Class Counsel.

27                  Second, Plaintiffs contend that they are adequate class representatives. Plaintiffs and the  
28                  Class Members have strong and co-extensive interests in this litigation because they all worked  
29                  for Defendants during the relevant time period, allegedly suffered the same alleged injuries from  
30                  the same alleged course of conduct, and there is no evidence of any conflict of interest between  
31                  Plaintiffs and the Class Members. DS, ¶ 17. Moreover, Plaintiffs have demonstrated their  
32                  commitment to the Class by, among other things, retaining experienced counsel, providing



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

counsel with documents and extensively speaking with them to assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as well as exposing themselves to the risk of attorneys' fees and costs awards against them if this lawsuit had been unsuccessful. DS, ¶ 17. Thus, Plaintiffs are adequate to serve as settlement class representatives. Accordingly, this Court should find that Plaintiffs and their counsel are adequate to represent the Class as required under Code of Civil Procedure § 382.

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

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

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

**A. Legal Standard**

A class action settlement requires court approval. California Rules of Court (“CRC”), Rule 3.769 provides three steps for approval: (1) Preliminary approval after submission of a written 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 concerning the fairness, adequacy, and reasonableness of the settlement is presented. The decision to approve or reject a class settlement is committed to the Court’s broad discretion. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision to approve class settlement may be reversed only upon a showing of “clear abuse of discretion.” *Id.*

**B. The Settlement Is Presumptively Fair**

In assessing preliminary approval, a court evaluates if the settlement process has certain indicia of fairness. A “presumption of fairness exists where (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the



SPIVAK LAW  
EMPLOYEE RIGHTS

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

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



1 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage  
2 of objectors is small.” *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford Motor Co.*, (1996)  
3 48 Cal.App.4th at 1794.

4 The class settlement here satisfies all of these factors. DS, ¶ 27. The Settlement resulted  
5 from thorough, arms’ length, negotiations between experienced counsel with the assistance of a  
6 respected mediator after sufficient discovery was exchanged to assess the relative strengths and  
7 weaknesses of their respective cases and Defendants’ estimated exposure. *Id.*

8 Plaintiffs prepared “damages” estimates in advance of the mediation. DS, ¶ 28, Ex. 7.  
9 Plaintiffs determined Defendants’ maximum possible exposure for restitution and penalties to be  
10 approximately \$2,421,673.47 (consisting of \$434,365.70 in unpaid wages and liquidated  
11 damages, \$276,471.98 in missed meal period premium wages, \$284,053.63 in missed rest break  
12 premium wages, \$85,170.96 in unreimbursed expenses, \$104,800.00 for wage statement  
13 penalties, \$476,611.20 for waiting time penalties, and \$760,200.00 for civil penalties under  
14 PAGA. Plaintiffs calculated the damages based on the number of workweeks and pay periods  
15 provided by Defendants, Plaintiffs’ reports, and the sample data. *Id.*

16 However, based on the difficulties of proof, the Defendants’ defenses, and the other  
17 attendant risks Plaintiffs identify, Plaintiffs estimate the likely awards at trial should  
18 Plaintiffs prevail to be the following amounts:

- 19 a. Unpaid wages and liquidated damages with interest in the amount of  
20 \$86,873.14;
- 21 b. Meal period premium wages with interest in the amount of \$55,294.40;
- 22 c. Rest period premium wages with interest in the amount of \$56,810.73;
- 23 d. Unreimbursed expenses with interest in the amount of \$17,034.19;
- 24 e. Statutory pay stub penalties in the amount of \$20,960.00;
- 25 f. Waiting time penalties in the amount of \$95,322.24; and
- 26 g. Civil penalties in the amount of \$43,440.00.

27 The total of these amounts is \$375,734.69. The Gross Settlement Amount of \$298,575.00 is  
28 79.46% of this amount. DS, ¶ 29.

Plaintiffs’ initial estimates do not realistically account for the risks outlined below or the  
risk that a class will not be certified. Therefore, Plaintiffs believe a class settlement for  
\$298,575.00 is fair and reasonable. DS, ¶ 30.



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

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

10                   **1.     Evaluation of Plaintiffs' Case**

11                   **a.     Risks Associated With the Arbitration Agreements**

12           Defendants claim that certain Class Members entered into arbitration agreements. The  
13 arbitration agreements entered into between Defendants on the one hand, and the Class Members,  
14 on the other, present a significant risk to the success of Plaintiffs' class action litigation. As the  
15 arbitration agreements in question restrict potential litigants from bringing class actions against  
16 Defendants, Plaintiffs would be effectively barred from pursuing claims on behalf of the Class in  
17 Court. Thus, there is a significant risk the Court could determine that those Class Members who  
18 have not entered into arbitration agreements with Defendants do not constitute a sufficiently  
19 numerous class to justify class action treatment. As such, by continuing to trial on class-wide  
20 claims, Plaintiffs would run the high risk of suffering defeat due to the existence of the arbitration  
21 agreement. Moreover, the arbitration agreements would pose danger to any class certification  
22 motion brought by Plaintiffs Because different defenses would apply to some Class Members and  
23 not others – i.e., the existence of signed arbitration agreements – there is a risk that the Court  
24 could determine that Plaintiffs' claims present too many individualized inquiries to justify class  
25 certification. DS ¶ 31.

26                   **b.     Risks Associated with the Unpaid Wages Claim**

27           There is a risk that Plaintiffs' recovery for unpaid wages would be extremely limited at  
28 best, largely because Defendants claim they prohibited off-the-clock work. *See Jong v. Kaiser*  
*Foundation Hospital* (2014) 226 Cal.App.4th 391 (employer must have notice of off-the-clock  
work for it to be compensable). Defendants claim that they mandate that employees must record  
all time worked accurately on their time sheets and strictly prohibit employees from performing  
any work off-the-clock. Moreover, while Defendants dispute that off-the-clock work occurred,



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 they contend that any time spent off the clock was *de minimis*. The California Supreme Court in  
2 *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and minute periods  
3 of time may still be subject to a *de minimis* defense even if compensable. (Stating that “We do  
4 not decide whether there are circumstances where compensable time is so minute or irregular that  
5 it is unreasonable to expect the time to be recorded.”). Following *Troester*, Defendants contend  
6 that the *de minimis* doctrine may apply here because the time spent off the clock were minutes  
7 and insignificant. Accordingly, a large award of penalties seems unlikely with respect to this  
8 claim. DS, ¶ 32.

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

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

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

Defendants contend they did not impede or discourage Plaintiffs, or any other employees,  
from taking their meal or rest periods. DS, ¶ 35. Defendants’ policies mandate that employees  
take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time



SPIVAK LAW  
EMPLOYEE RIGHTS

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

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

1 of their meal breaks each day on their time records. The time records that comprise the random  
2 sample Defendants produced to Plaintiffs for purposes of mediation show that meal periods were  
3 taken. Of the time records that show a late, short or no lunch, individualized evidence may be  
4 necessary to determine whether they occurred due to conduct of the Defendants or each of the  
5 employees concerned. Accordingly, there is a significant risk that the value of Plaintiffs' meal  
period claim would be substantially reduced at trial. *Id.*

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

7 There are risks to Plaintiffs' rest period claim. DS, ¶ 36. Employers are not required to  
8 record rest periods and such periods are paid. Defendants contend they provided non-exempt  
9 employees the opportunity to take rest periods in accordance with California law. Further,  
10 Defendants' written policies on meal and rest periods are consistent with the Wage Order. Thus,  
11 unlike meal periods, where there are often records showing whether an employee clocked out or  
12 not, there is no such evidence to prove a missed rest period or that the employer refused to  
13 authorize and permit one. Managing such claims at trial has become exceedingly difficult.  
14 Plaintiffs will depend on sample witness testimony and surveys to prove the claims. While a  
15 victory with such evidence is certainly possible, relevant caselaw makes such claims risky from  
16 a trial management and due process perspective. *See Duran v. U.S. Bank National Assn.*,  
17 (2014) 59 Cal. 4th 1, 31 (explaining "[I]f sufficient common questions exist to support class  
18 certification, it may be possible to manage individual issues through the use of surveys and  
19 statistical sampling."); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast*  
*Corporation v. Behrend* (2013) 133 S.Ct. 1426. DS, ¶ 36.

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

21 There is a risk that the Court may consider Plaintiffs' claims as to Defendants' alleged  
22 failure to indemnify for business expenses to be individual in nature and thus decline to certify  
23 the class. DS, ¶ 37. Plaintiffs allege that Defendants required Plaintiffs and the Class Members to  
24 use their personal items including cellular phones and failed to indemnify them for these business  
25 expenses. Defendants dispute this contention. As such, there is a risk that the Court may consider  
26 Plaintiffs' claims to be individual in nature and unfit for class wide resolution. *Id.*

27 **f. Risks Associated with the Statutory Wage Statement Penalty  
28 and the Waiting Time Penalty Claims.**

Plaintiffs also assert claims for wage statement and untimely wage violations. Under  
Labor Code section 226, wage statements must include various information, including the



SPIVAK LAW  
EMPLOYEE RIGHTS

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

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

1 applicable rates of pay, corresponding hours worked, and gross pay. Here, Plaintiffs' wage  
2 statement and waiting time penalty claims have the same underlying risks as the above claims, as  
3 they are derivative of them. Further, on their face, the wage statements issued by Defendants  
4 comply with the requirements of Labor Code § 226. Without proof willful behavior, Plaintiffs  
5 will be unable to recover these penalties. DS, ¶ 38.

6 **g. Risks Associated With the PAGA Claim**

7 Regarding PAGA, a court has discretion to award a lesser amount than the maximum  
8 penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203  
9 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed  
10 valid defenses to the Labor Code claims underlying Plaintiffs' PAGA allegations. Thus, the  
11 PAGA claims likewise face significant uncertainty. There is a risk that the Court would consider  
12 the maximum civil penalty available to be confiscatory. DS, ¶ 39.

13 This uncertainty increases Plaintiffs' risk of pursuing the PAGA claims and required a  
14 significant discount for settlement purposes. DS, ¶ 40. For mediation purposes, Plaintiffs' counsel  
15 estimated a maximum possible exposure of approximately \$760,200.00 in civil penalties. This  
16 estimate did not take into account any of the risks discussed above and assumed a violation for  
17 every single pay period. *Id.* Plaintiffs' counsel also assessed multiple penalties for the same pay  
18 period for the same alleged violations of different Labor Code provisions and derivative  
19 violations. *Id.* Although two federal district court decisions held that "stacking" PAGA penalties  
20 in this fashion may be appropriate to determine the amount in controversy for purposes of removal  
21 jurisdiction, Plaintiffs' counsel is not aware of any California state courts awarding plaintiffs  
22 multiple PAGA penalties for the same violation for the same pay period under different Labor  
23 Code provisions. *Id.* This may be because the PAGA does not provide for what many employers  
24 characterize as claim splitting and not merely stacking. *Id.*

25 Plaintiffs are aware of only two significant awards under the PAGA in a contested  
26 proceeding, both issued by federal district courts.<sup>4</sup> DS, ¶ 41. PAGA penalty awards are often

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

The plain language of PAGA provides that "a court may award a lesser amount than the  
maximum civil penalty amount specified by this part if, *based on the facts and  
circumstances of the particular case*, to do otherwise would result in an award that is



SPIVAK LAW  
EMPLOYEE RIGHTS

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

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

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

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

9 An employer enjoys the right to settle a putative class member's disputed wage claims  
10 individually, without the consent or involvement of class counsel. DS, ¶ 42. (See *Chindarah v.*  
11 *Pick Up Stix, Inc.* (2009) 171 Cal. App. 4th 796. *Id.* As discussed above, Defendants may launch  
12 a "pick off" settlement campaign to pursue individual release agreements from the Class  
13 Members, thereby potentially narrowing the size of the Class – 150 members - until it is no longer  
14 numerous enough for class certification. *Id.* Plaintiffs, then, may not have sufficient number of  
15 employees to represent. This led to a significant reduction of claim value in settlement  
16 negotiations. *Id.*

17 Plaintiffs also considered the possibility that Defendants could launch a *Pick Up Stix*  
18 campaign and pursue individual release agreements from the Class Members. DS, ¶ 43. Plaintiffs'

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  
23 Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs'  
24 individual claims except for one. As a general matter, it would be excessively punitive  
25 for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed  
26 the damages caused by that injury or set of injuries.

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

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

33 <sup>5</sup> In 2012, Plaintiffs' Counsel tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court  
34 case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. The  
35 plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the  
36 Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under  
37 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 Counsel applied discounts to the maximum possible exposure to account for all other risks  
2 discussed above. While it is difficult to assign anything but crudely-determined percentages of  
3 risk to any of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude  
4 recovery for such employees is substantial and alone justifies a significant discount because  
5 Defendants would likely by trial have gathered releases from the majority of the Class Members.  
6 A settlement for approximately 79.46% of the potential recovery is a proportion substantially in  
excess of recovery proportions sanctioned by existing case law.<sup>6</sup> *Id.*

7 While the evidence gathered through Plaintiffs' discovery supports the merits of the  
8 claims asserted in this lawsuit, Plaintiffs and their counsel recognize that continued litigation  
9 presents significant risks that support a downward departure from Defendants' estimated liability  
10 exposure. DS, ¶ 44. In view of the risks, the Settlement reflects Plaintiffs' estimate of the total  
11 amount of damages, monetary penalties or other relief that the Class could reasonably expect to  
12 be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.*  
13 It also represents a fair, adequate, and reasonable compromise amount for these claims and  
14 warrants preliminary approval. *Id.*, *Torrissi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,  
15 1376 (the financial condition of defendant predominated in assessing the reasonableness of  
16 settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty  
17 concerning defendant's financial stability "strongly supports the reasonableness of the  
18 settlement"); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014  
WL 2465049, \* 3.

## 19 **2. Presence of Governmental Participant**

20 As required under Labor Code section 2699(1)(2), Plaintiffs will provide notice of this  
21 settlement to the LWDA with the filing and service of this motion. DS, ¶ 66, Ex. 21.

## 22 **3. Reaction of Class Members to Proposed Settlement**

23 If the settlement is preliminarily approved, Class Members will be provided with the

24 <sup>6</sup> 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 Notice Packet and an opportunity to object. DS, ¶ 63. The parties' proposed notice fully complies  
2 with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make  
3 informed responses to the proposed settlement. *Id.*

4 **VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY**  
5 **COMPENSATE CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS**  
6 **MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY**  
7 **COMPARED TO OTHER CLASS MEMBERS**

8 The Individual Settlement Payments will be paid to each Class Member based on his or  
9 her eligible Work Weeks compared to the total Work Weeks. Because this method compensates  
10 Class Members based on the extent of their potential injuries, in that Class Members who worked  
11 for Defendants longer would have been subject to more alleged violations, it is fair, adequate, and  
12 reasonable.

13 Plaintiffs estimate that there are 4,000 Work Weeks for the Class Period. So, each Work  
14 Week has a value of approximately \$31.01 (\$124,050.00 Net Settlement Amount / 4,000 Work  
15 Weeks = \$31.01). Plaintiff Jonathan Gutierrez had 55 Work Weeks during the Class Period. Based  
16 on this, it is anticipated that Plaintiff Jonathan Gutierrez will receive an Individual Settlement  
17 Payment of approximately \$1,705.69 as a participating Class Member (55 Work Weeks x \$31.01  
18 = \$1,705.69). Plaintiff Jose Rivera had 16 Work Weeks during the Class Period. Based on this, it  
19 is anticipated that Plaintiff Jose Rivera will receive an Individual Settlement Payment of  
20 approximately \$486.00 as a participating Class Member (16 Work Weeks x \$31.01 = \$486.00).  
21 Plaintiff Oscar Ramirez had 54 Work Weeks during the Class Period. Based on this, it is  
22 anticipated that Plaintiff Oscar Ramirez will receive an Individual Settlement Payment of  
23 approximately \$1,687.76 as a participating Class Member (54 Work Weeks x \$31.01 =  
24 \$1,687.76). Plaintiff Gustavo Gutierrez had 21 Work Weeks during the Class Period. Based on  
25 this, it is anticipated that Plaintiff Gustavo Gutierrez will receive an Individual Settlement  
26 Payment of approximately \$653.90 as a participating Class Member (21 Work Weeks x \$31.01 =  
27 \$653.90). The average estimated Individual Settlement Payment to participating Class Members  
28 will be approximately \$827.00. Some Class Members – those who worked more Work Weeks  
during the Class Period - will receive more, and some less. The highest possible Individual  
Settlement Payment to a participating Class Member (i.e., to those who qualify for all Work  
Weeks in the Class Period) will be approximately \$9,565.44. The lowest possible Individual  
Settlement Payment to a participating Class Member (i.e., to those who qualify for only one Work



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

Week in the Class Period) will be approximately \$31.01. *See* DS, ¶ 46.

It is anticipated that the average Aggrieved Employee's Individual PAGA Payment will be \$16.45. *Id.* Plaintiffs' Individual PAGA Payments, their individual shares of 25% of the PAGA Penalties, will be less than that of some absent Aggrieved Employees. Under the Settlement, each Aggrieved Employees will receive a *pro rata* distribution of 25% of the PAGA Penalties proportionate to the number of paychecks he or she had with Defendants during the PAGA Period, compared to the total of all paychecks of all Aggrieved Employees during the PAGA Period, as reflected by Defendants' records. Plaintiffs estimate that there are 1,086 Aggrieved Employee paychecks for the PAGA Period. So, each Aggrieved Employee paycheck from the PAGA Period has a value of approximately \$1.15 (25% of \$5,000.00 in PAGA Penalties / 1,086 Aggrieved Employees paychecks = \$1.15). It is anticipated that Plaintiff Jonathan Gutierrez will receive an Individual PAGA Payment of approximately \$17.25 as an Aggrieved Employee (15 paychecks during the PAGA Period x \$1.15 paycheck value = \$17.25). It is anticipated that Plaintiff Jose Rivera will receive an Individual PAGA Payment of approximately \$9.02 as an Aggrieved Employee (8 paychecks during the PAGA Period x \$1.15 paycheck value = \$9.02). It is anticipated that Plaintiff Oscar Ramirez will receive an Individual PAGA Payment of approximately \$17.25 as an Aggrieved Employee (15 paychecks during the PAGA Period x \$1.15 paycheck value = \$17.25). It is anticipated that Plaintiff Gustavo Gutierrez will receive an Individual PAGA Payment of approximately \$12.13 as an Aggrieved Employee (11 paychecks during the PAGA Period x \$1.15 paycheck value = \$12.13). The average estimated Individual PAGA Payment to an Aggrieved Employee will be approximately \$16.45 (\$1,250.00, 25% of PAGA Penalties / 76 Aggrieved Employees during the PAGA Period = \$16.45 Individual PAGA Payment). Some Aggrieved Employees – those who had more paychecks during the PAGA Period - will receive more, and some less. The highest possible Individual PAGA Payment to an Aggrieved Employees (i.e., to those who qualify for all paychecks in the PAGA Period) will be approximately \$87.89. The lowest possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for only one paycheck in the PAGA Period) will be approximately \$1.15. DS, ¶ 47.

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

The Settlement states Class Counsel may seek attorneys' fees of \$99,525.00 (one-third of the GSA) and up to \$20,000.00 for actual reasonable litigation costs and expenses incurred in



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 prosecuting the Action. These amounts are reasonable, given the facts and circumstances of the  
2 case. DS, ¶¶ 48-51.

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

16 The amount of fees and costs requested are commensurate with (1) the risk Class Counsel  
17 took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the  
18 skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the  
19 value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned  
20 down to devote time to this matter. DS, ¶ 49. Class Counsel interviewed and obtained information  
21 from putative class members, met and conferred with Defendants’ counsel on numerous  
22 occasions, reviewed and analyzed hundreds of pages of data and documents provided by  
23 Defendants and obtained through other sources, researched applicable law, and provided  
24 estimates of “damages” for purposes of settlement discussions, among other tasks. *Id.*

25 Class Counsel have borne all the risks and costs of litigation and will receive no  
26 compensation until recovery is obtained. DS, ¶ 50. Class Counsel are well-experienced in wage-  
27 and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.*  
28 Considering the amount of the attorney fees requested, the work performed, and the risks incurred,  
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  
F17  
Los Angeles, CA 90067

1 **VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENTS TO PLAINTIFFS**  
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 Plaintiffs may each seek a Class  
10 Representative Service Payment of \$10,000.00. These amounts are entirely reasonable given  
11 Plaintiffs’ efforts in this action and the risks they undertook on behalf of Class Members. DS, ¶  
12 52; see Plaintiffs’ Declarations, generally. Plaintiffs have devoted many hours advancing the  
13 interests of the Class. Plaintiffs have done this by, among other things, retaining experienced  
14 counsel, providing them with information about their 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 Class as a whole. In doing this, Plaintiffs have been exposed to significant risks, including the  
18 risk of an order to pay Defendants’ attorneys’ fees and costs if this action had been unsuccessful  
19 (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiffs undertook on behalf of the  
20 Class shows that the proposed Class Representative Service Payments are fair, adequate, and  
21 reasonable, and thus warrant preliminary approval. DS, ¶ 52-62, Exhibits 11-16; Plaintiffs decl.,  
22 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 Expenses Payment”)  
27 provision, it is reasonable. Before agreeing to Phoenix Class Action Administration Solutions and  
28 its bid of \$6,500.00, the Parties sought and reviewed bids from other reputable third-party  
administrators which provided higher bids. DS, ¶¶ 64-65, Exs. 17, 18, 19, and 20. 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 Class and  
6 administering the Settlement. The standard for determining the adequacy of notice is whether the  
7 notice has “a reasonable chance of reaching a substantial percentage of the class members.” *Cartt*  
8 *v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple measures  
9 to ensure that as many Class Members as practicable receive actual notice of the Settlement and  
10 have enough time to exercise their rights. The Settlement requires distribution of the Notice by  
11 First Class U.S. mail only. Although there are current employee Class Members, it is uncertain  
12 whether Defendants’ records of their contact information include email addresses and Class  
13 Members, who perform all of their work away from a desk, are not in a position to check their  
14 emails. As such, notice by mail alone is fair, adequate, and reasonable. DS, ¶ 63.

15 With respect to its content, “[The] notice given to the class must fairly apprise the class  
16 members of the terms of the proposed compromise and of the options open to dissenting class  
17 members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.  
18 The purpose of the notice in class settlement context is to give class members sufficient  
19 information to decide whether they should accept the benefits offered, opt out and pursue their  
20 own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) provides  
21 Class Members with all pertinent information that they need to fully evaluate their options and  
22 exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among  
23 other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how  
24 Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the  
25 Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how  
26 payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the  
27 individual Settlement Class Member’s estimated payment. Additionally, the Class Notice will  
28 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  
specificity to explain to Class Members what this action is about, their rights under the Settlement,  
and how to exercise those rights. DS, ¶ 63.

///



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 **XI. CONCLUSION**

2 For the reasons stated above, this Court should grant Plaintiffs' Motion in its entirety and  
3 adopt the proposed order submitted concurrently herewith.

4 Respectfully submitted,

5 THE SPIVAK LAW FIRM

6  
7 Dated: June 17, 2026

By:



DAVID G. SPIVAK  
CAROLINE TAHMASSIAN,  
Attorneys for Plaintiffs, JONATHAN  
GUTIERREZ, JOSE RIVERA,  
OSCAR RAMIREZ, and GUSTAVO  
GUTIERREZ, and all others similarly  
situated



SPIVAK LAW  
EMPLOYEE RIGHTS

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

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