

1 DAVID GLENN SPIVAK (SBN 179684)

2 david@spivaklaw.com

3 THE SPIVAK LAW FIRM

4 8605 Santa Monica Bl

5 PMB 42554

6 West Hollywood, CA 90069

7 Telephone: (213) 725-9094

8 Facsimile: (213) 634-2485

9 Attorneys for Plaintiff,

10 JORDAN ANDRADE, and all others similarly situated

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

12 **FOR THE COUNTY OF SACRAMENTO**

13 **(UNLIMITED JURISDICTION)**

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

19 *Plaintiff(s),*

20 vs.

21 RILEYSONSUTTER LLC, a California limited  
22 liability company; FOLSOMHACIENDA LLC,  
23 a California limited liability company;  
24 PLANKFOLSOM LLC, a California limited  
25 liability company; MICHAEL SHAWN  
26 SANSON, a natural person; and DOES 1–50,  
27 inclusive,

28 *Defendant(s).*

Case No. 24CV026094

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

Hearing Date: February 6, 2026  
Hearing Time: 9:00 a.m.  
Hearing Dept.: 23, Honorable Jill H.  
Talley

Action filed: December 20, 2024  
**Reservation No. A-026094-001**



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

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

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1875 Century Park East  
Fl 7  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**  
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 **I. INTRODUCTION**

4 Plaintiff Jordan Andrade (“Plaintiff”) submits this memorandum of points and authorities  
5 in support of her unopposed motion for preliminary approval of the Class Action and PAGA  
6 Settlement Agreement and Class Notice (the “Settlement”)<sup>2</sup>, which provides for a Gross  
7 Settlement Amount (“GSA”) of \$150,000.00 in compromise of all disputed claims on behalf of  
8 hourly, non-exempt during the period of December 20, 2020 through the date of preliminary  
9 approval of this Settlement. Through this Motion, Plaintiff respectfully requests for this Court to  
10 (1) provisionally certify the below-defined Class for settlement purposes only under Code of Civil  
11 Procedure § 382; (2) preliminarily approve the Settlement; (3) preliminarily appoint Plaintiff as  
12 Class Representative; (4) appoint David Spivak of The Spivak Law Firm as Class Counsel; (5)  
13 approve the proposed notice procedures and related forms; and (6) schedule a final approval  
14 hearing.

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

25 **II. BACKGROUND**

26 Defendants are restaurant owners and operators. DS, ¶ 13. Defendants employed Plaintiff  
27 in California as an hourly, non-exempt bartender from about March 15, 2023 until July 3, 2024.  
28 *Id.*

///

<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.



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1875 Century Park East  
Fl 7  
Los Angeles, CA 90067

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

2           On December 09, 2024, Plaintiff notified Defendants and the California Labor and  
3   Workforce Development Agency (“LWDA”), pursuant to the California Private Attorneys  
4   General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”), of alleged Labor  
5   Code violations committed by Defendants. DS, ¶ 14, Ex. 2.

6           On December 20, 2024, Plaintiff filed a Class Action Complaint in the Sacramento County  
7   Superior Court, Case No. 24CV026094, against Defendants on behalf of herself and others  
8   similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages  
9   Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198); (2) Failure to Provide  
10   Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide Meal Periods (Lab. Code  
11   §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage  
12   Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time Penalties (Lab. Code §§  
13   201-203); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*). DS, ¶ 15, Ex. 2. On  
14   February 27, 2025, Plaintiff filed her First Amended Complaint adding a claim under PAGA. DS,  
15   ¶ 15, Ex. 3. On March 5, 2025, Defendants filed an answer to Plaintiff’s First Amended  
16   Complaint. DS, ¶ 15, Ex. 4. Defendants deny all of Plaintiff’s allegations and strongly contend  
17   that their wage and hour policies, practices and procedures are fully compliant with all applicable  
18   laws. DS, ¶ 15.

19           Plaintiff and Defendants also attended a small employer cure conference administered by  
20   the Labor and Workforce Development Agency. The conference took place over two separate  
21   days, first on February 20, 2025, then on February 26, 2025. DS, ¶ 16. As part of the cure  
22   conference process, Defendants submitted their position and data to the LWDA and to Plaintiff’s  
23   counsel. *Id.* Plaintiff subsequently submitted her analysis and response to Defendants’ cure plan.  
24   *Id.* Ultimately, the Parties were unable to resolve the issues at the cure conference. *Id.*

25                   **B.     Sampling**

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



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1 The Parties thereafter engaged in an informal, voluntary exchange of information in the  
2 context of privileged settlement discussions to facilitate an early settlement discussion.  
3 Defendants produced Plaintiff's entire personnel file (including policies and agreements she  
4 signed and acknowledged) and copies of their relevant company written policies. DS, ¶ 18.

5 The Defendants disclosed that there have not been any comparable claims against them.  
6 DS, ¶ 17.

7 Defendants contend that they employed 458 putative class members during the period of  
8 March 01, 2023 to February 20, 2025. Defendants produced the records of many of the putative  
9 class members for the period of March 01, 2023 to February 20, 2025. There were records for  
10 3,614 workdays in the sample. Defendants chose the sample. The sample was randomly selected.  
11 The sample consisted of policies, pay stubs, time punch records, and related records. DS, ¶ 19.

12 Plaintiff retained James Toney, a data analyst, to analyze the sample.

13 **C. Settlement Discussions**

14 Following much of the foregoing informal discovery and exchange of information as well  
15 as the small employer cure conference, the Parties engaged in a settlement discussion. During the  
16 settlement discussions, the Parties had lengthy but productive negotiations and reached agreement  
17 on a class-wide settlement after the settlement discussions. During the settlement discussions,  
18 each side, represented by her / their respective counsel, recognized the risk of an adverse result  
19 in the Action and agreed to settle the Action and all other matters covered by this Agreement  
20 pursuant to the terms and conditions of this Agreement. DS, ¶ 21.

21 **D. Defendants' Financial Condition**

22 At the settlement discussions, it became clear that Defendants had insufficient resources  
23 to cover the full extent of liability. DS ¶ 21.

24 **III. OVERVIEW OF THE SETTLEMENT**

25 **A. Settlement Class and Allegedly Aggrieved Employees Definition**

26 The Settlement defines the Settlement Class as all persons Defendants employed in  
27 California as hourly and non-exempt at any time during the Class Period. Based on a review of  
28 their records to date, Defendants estimate there are approximately 458 Class Members who  
collectively worked a total of approximately 10,004 Workweeks, and approximately 210 of which  
are Allegedly Aggrieved Employees who worked a total of approximately 2,241 of PAGA Pay  
Periods. (Settlement ¶ 4.1). The Class Period is December 20, 2020 through the date of  
preliminary approval of this Settlement. (Settlement ¶ 1.12). The "Allegedly Aggrieved



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

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

Employees" means all persons Defendants employed in California as hourly and non-exempt at any time during the PAGA period. (Settlement ¶ 1.4.). The "PAGA Period" begins December 09, 2023 and ends the date preliminary approval of the class action is granted. (Settlement ¶ 1.31.).

**B. Monetary Terms**

Except as otherwise provided by Paragraph 9 below, Defendants promise to pay \$150,000 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the schedule stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Allegedly Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants. Based on their records, Defendants estimate that, as of the date of this Settlement Agreement, (1) there are total 10,004 Workweeks during the Class Period. If the Workweeks as of the date the Court approves the settlement exceeds the referenced 10,004 Workweeks by more than 10.00% (i.e. 11,004) work weeks, Defendants shall, in their sole discretion have the option to either (1) increase the Gross Settlement Amount by the proportion of the number of work weeks exceeding the 10.00% threshold divided by 11,004 workweeks or (ii) cut off the Class Period on the date on which the 10.00% threshold is exceeded. (Settlement ¶ 3.1) In the event that additional funds are added to the Gross Settlement Amount, they will be distributed according to the payments listed in Section 3.2. (*Id.*)

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:

Class Representative Service Payment to the Class Representative of not more than \$15,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive). (Settlement ¶ 3.2.1) Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service



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8605 Santa Monica Bl  
PMB 42554  
West Hollywood, CA 90069  
(213) 725-9094 Tel  
(213) 634-2485 Fax  
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Office:  
1875 Century Park East  
Fl 7  
Los Angeles, CA 90067

1 Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee  
2 taxes owed on the Class Representative Service Payment. (Settlement ¶ 3.2.1)

3 A Class Counsel Fees Payment of not more than one third (33 and 1/3%), which is  
4 currently estimated to be \$50,000.00 and a Class Counsel Litigation Expenses Payment of not  
5 more than \$7,000.00. Defendants will not oppose requests for these payments provided that do  
6 not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel  
7 Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the  
8 Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class  
9 Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will  
10 allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to  
11 Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class  
12 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will  
13 pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more  
14 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the  
15 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds  
16 Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any  
17 division or sharing of any of these Payments. (Settlement ¶ 3.2.2)

18 An Administrator Expenses Payment not to exceed \$11,000.00 except for a showing of  
19 good cause and as approved by the Court. To the extent the Administration Expenses are less or  
20 the Court approves payment less than \$11,000.00, the Administrator will retain the remainder in  
21 the Net Settlement Amount. (Settlement ¶ 3.2.3.)

22 To each participating Class Member, the Administrator will make an Individual Class  
23 Payment. (Settlement ¶ 3.2.4.)

24 To the LWDA and Allegedly Aggrieved Employees: PAGA Penalties in the amount of  
25 \$10,000.00 to be paid from the Gross Settlement Amount, with 65% (\$6,500.00) allocated to the  
26 LWDA PAGA Payment and 35% (\$3,500.00) allocated to the Individual PAGA Payments.  
27 (Settlement ¶ 3.2.5.)

28 **C. Timing of Payments**

Defendants shall fully fund the Gross Settlement Amount and also fund the amounts  
necessary to fully pay Defendants' share of payroll taxes by transmitting \$90,000 to the  
Administrator no later than 14 days after the Effective Date followed by \$10,000 every 30 days



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Mail:  
8605 Santa Monica Bl  
PMB 42554  
West Hollywood, CA 90069  
(213) 725-9094 Tel  
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Office:  
1875 Century Park East  
Fl 7  
Los Angeles, CA 90067

thereafter until fully funded. If a payment deadline falls on a holiday or weekend, the deadline shall continue to the next day that is not a weekend or holiday. (Settlement ¶ 4.3.)

Within 14 days after Defendants funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. (Settlement ¶ 4.4.)

**D. Calculation of Settlement Shares**

An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (Settlement ¶ 3.2.4)

Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. (Settlement ¶ 3.2.4.2).

If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. (Settlement ¶ 3.2.5.2).

The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Allegedly Aggrieved Employees' 35% share of PAGA Penalties (\$3,500.00) by the total number of PAGA Period Pay Periods worked by all Allegedly Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Allegedly Aggrieved Employee's PAGA Period Pay Periods. Allegedly Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (Settlement ¶ 3.2.5.1)

**E. Apportionment of Settlement Shares**

20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for [e.g., interest and penalties] (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full



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8605 Santa Monica Bl  
PMB 42554  
West Hollywood, CA 90069  
(213) 725-9094 Tel  
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Office:  
1875 Century Park East  
Fl 7  
Los Angeles, CA 90067

responsibility and liability for any employee taxes owed on their Individual Class Payment.  
(Settlement ¶ 3.2.4.1)

The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.  
(Settlement ¶ 3.2.5.4)

**F. The Releases**

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

Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.2 and 6.4, below. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them. (Settlement ¶ 6.1.)

For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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



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8605 Santa Monica Bl  
PMB 42554  
West Hollywood, CA 90069  
(213) 725-9094 Tel  
(213) 634-2485 Fax  
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Office:  
1875 Century Park East  
F17  
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1 (Settlement ¶ 6.1.1.)

2 All Participating Class Members, on behalf of themselves and their respective former and  
3 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release  
4 Released Parties from all claims that were alleged, or reasonably could have been alleged, based  
5 on the Class Period facts stated in the Operative Complaint and PAGA Notice and ascertained in  
6 the course of the Action including but not limited to: alleged failure to pay all wages, including  
7 minimum and regular wages, earned for all hours of work at the correct rates of pay; failure to  
8 provide all meal periods and/or pay premiums at the correct regular rate; failure to authorize and  
9 permit rest breaks and/or pay premiums at the correct rate of pay; failure to indemnify for  
10 necessary work related expenditures; failure to issue accurate and complete itemized wage  
11 statements; failure to issue statements of available sick leave; failure to timely pay all wages upon  
12 termination of employment; and for civil penalties based thereon. Except as set forth in Section  
13 6.4 of this Agreement, Participating Class Members do not release any other claims, including  
14 claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing  
15 Act, unemployment insurance, disability, social security, workers' compensation, or claims based  
16 on facts occurring outside the Class Period. (Settlement ¶ 6.2.)

17 All Participating Class Members, on behalf of themselves and their respective former and  
18 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release  
19 Released Parties from all claims that were alleged, or reasonably could have been alleged, based  
20 on the Class Period facts stated in the Operative Complaint and PAGA Notice and ascertained in  
21 the course of the Action including but not limited to: alleged failure to pay all wages, including  
22 minimum and regular wages, earned for all hours of work at the correct rates of pay; failure to  
23 provide all meal periods and/or pay premiums at the correct regular rate; failure to authorize and  
24 permit rest breaks and/or pay premiums at the correct rate of pay; failure to indemnify for  
25 necessary work related expenditures; failure to issue accurate and complete itemized wage  
26 statements; failure to issue statements of available sick leave; failure to timely pay all wages upon  
27 termination of employment; and for civil penalties based thereon. Except as set forth in Section  
28 6.4 of this Agreement, Participating Class Members do not release any other claims, including  
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West Hollywood, CA 90069  
(213) 725-9094 Tel  
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SpivakLaw.com

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

1 All Participating Class Members, on behalf of themselves and their respective former and  
2 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release  
3 Released Parties from all claims that were alleged, or reasonably could have been alleged, based  
4 on the Class Period facts stated in the Operative Complaint and PAGA Notice and ascertained in  
5 the course of the Action including but not limited to: alleged failure to pay all wages, including  
6 minimum and regular wages, earned for all hours of work at the correct rates of pay; failure to  
7 provide all meal periods and/or pay premiums at the correct regular rate; failure to authorize and  
8 permit rest breaks and/or pay premiums at the correct rate of pay; failure to indemnify for  
9 necessary work related expenditures; failure to issue accurate and complete itemized wage  
10 statements; failure to issue statements of available sick leave; failure to timely pay all wages upon  
11 termination of employment.. Except as set forth in Section 6.4 of this Agreement, Participating  
12 Class Members do not release any other claims, including claims for vested benefits, wrongful  
13 termination, violation of the Fair Employment and Housing Act, unemployment insurance,  
14 disability, social security, workers' compensation, or claims based on facts occurring outside the  
15 Class Period. (Settlement ¶ 6.3.)

16 All Non-Participating Class Members who are Allegedly Aggrieved Employees are  
17 deemed to release, on behalf of themselves and their respective former and present  
18 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released  
19 Parties from all claims for civil penalties that were alleged, or reasonably could have been alleged,  
20 based on the PAGA Period facts stated in the Operative Complaint and PAGA Notice and  
21 ascertained in the course of the Action including but not limited to: alleged failure to pay all  
22 wages, including minimum and regular wages, earned for all hours of work at the correct rates of  
23 pay; failure to provide all meal periods and/or pay premiums at the correct regular rate; failure to  
24 authorize and permit rest breaks and/or pay premiums at the correct rate of pay; failure to  
25 indemnify for necessary work related expenditures; failure to issue accurate and complete  
26 itemized wage statements; failure to issue statements of available sick leave; failure to timely pay  
27 all wages upon termination of employment; and for civil penalties based thereon. (Settlement ¶  
28 6.4.)

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

No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members,



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8605 Santa Monica Bl  
PMB 42554  
West Hollywood, CA 90069  
(213) 725-9094 Tel  
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1875 Century Park East  
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1 PAGA Members, Workweeks, and Pay Periods in the Class Data. (Settlement ¶ 8.4.1.)

2 Using best efforts to perform as soon as possible, and in no event later than 14 days after  
3 receiving the Class Data, the Administrator will send to all Class Members identified in the Class  
4 Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish  
5 translation, substantially in the form attached to this Agreement as Exhibit A. The first page of  
6 the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment  
7 and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks  
8 and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class  
9 Notices, the Administrator shall update Class Member addresses using the National Change of  
Address database. (Settlement ¶ 8.4.2.)

10 Not later than 3 business days after the Administrator’s receipt of any Class Notice  
11 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any  
12 forwarding address provided by the USPS. If the USPS does not provide a forwarding address,  
13 the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to  
14 the most current address obtained. The Administrator has no obligation to make further attempts  
15 to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a  
second time. (Settlement ¶ 8.4.3.)

## 16 **1. Disputes**

17 Each Class Member shall have 60 days after the Administrator mails the Class Notice  
18 (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the  
19 number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in  
20 the Class Notice. The Class Member may challenge the allocation by communicating with the  
21 Administrator via fax, email or mail. The Administrator must encourage the challenging Class  
22 Member to submit supporting documentation. In the absence of any contrary documentation, the  
23 Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct  
24 so long as they are consistent with the Class Data. The Administrator’s determination of each  
25 Class Member’s allocation of Workweeks and/or Pay Periods shall be final and not appealable or  
26 otherwise susceptible to challenge. The Administrator shall promptly provide copies of all  
27 challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class  
28 Counsel and the Administrator’s determination the challenges. (Settlement ¶ 8.6.)

The Administrator has the authority to address and make final decisions consistent with



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

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

1 the terms of this Agreement on all Class Member challenges over the calculation of Workweeks  
2 and/or Pay Periods. The Administrator's decision shall be final and not appealable or otherwise  
3 susceptible to challenge. (Settlement ¶ 8.8.4.)

## 4 **2. Opting Out**

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

## 13 **3. Objecting**

14 Participating Class Members may send written objections to the Administrator, by fax,  
15 email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an  
16 attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A  
17 Participating Class Member who elects to send a written objection to the Administrator must do  
18 so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional  
19 14 days for Class Members whose Class Notice was re-mailed). (Settlement ¶ 8.7.2.)

## 20 **H. Uncashed Checks**

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

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

27 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable  
28 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,



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8605 Santa Monica Bl  
PMB 42554  
West Hollywood, CA 90069  
(213) 725-9094 Tel  
(213) 634-2485 Fax  
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Office:  
1875 Century Park East  
Fl 7  
Los Angeles, CA 90067

1 in the settlement context, the Court can use a lesser standard to determine the appropriateness of  
2 a settlement class as opposed to a litigated class certification. *Dunk v. Ford Motor Co.* (1996) 48  
3 Cal.App.4th 1794, 1807. As explained below, all of these requirements are met in this case.

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

5 A class is ascertainable when it may be readily identified without unreasonable expense  
6 or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932  
7 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiff maintains that the above-  
8 defined Class is ascertainable because its members may be identified by reference to Defendants'  
9 records and Defendants have agreed to share the relevant information from their records to  
10 facilitate the settlement process. DS, ¶ 25; Settlement, ¶ 2.3. Therefore, the Settlement Class is  
11 ascertainable.

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

13 The Settlement Class has sufficiently numerous members to render joinder impractical.  
14 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*  
15 (1972) 28 Cal.App.3d 1017, 1030. Defendants estimate that there are approximately 458 Class  
16 Members. DS, ¶ 26. Plaintiff maintains that it would be impractical and economically inefficient  
17 to require each Class Member to separately maintain an individual action or be joined as a named  
18 plaintiff in this action. The California Supreme Court has upheld a class of as few as 10  
19 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations,  
20 the Settlement Class' membership is sufficiently numerous. DS, ¶ 26. *See Daar v. Yellow Cab*  
21 *Co.* (1967) 67 Cal.2d 695.

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

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

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



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West Hollywood, CA 90069  
(213) 725-9094 Tel  
(213) 634-2485 Fax  
SpivakLaw.com

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

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

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

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

24 The class representative must be similarly situated to the rest of the purported class. *See*  
25 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating "they have never been the law in  
26 California that the class representative must have identical interests with the class members. The  
27 only requirements are ... that the class representative be *similarly* situated") (emphasis in original);  
28 *See also* Newberg, § 3:29 (typicality "focuses on whether there exists a relationship between the  
Plaintiff's claims and the claims alleged on behalf of the class"). Plaintiff contends that her claims  
are typical for the purposes of certifying the Settlement Class. Plaintiff asserts that she, like absent  
Class Members was subject to the same relevant policies and procedures governing her



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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  
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Los Angeles, CA 90067

1 compensation, hours of work and meal and rest periods. Because Plaintiff contends that she was  
2 subject to the same general course of conduct as absent Class Members, resolving the common  
3 questions as they apply to Plaintiff will determine Defendants' *prima facie* liability to all Class  
4 Members. Moreover, Plaintiff's claims could potentially be subject to the same primary  
5 affirmative defenses as those of absent Class Members. Accordingly, Plaintiff's claims are typical  
of the Class. DS, ¶ 28.

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

7 The adequacy requirement is met where the plaintiff is represented by counsel qualified  
8 to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to the class'  
9 interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the  
10 plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling  
conflicts of interest that might hinder the plaintiff's ability to represent the class. DS, ¶ 29.

11 First, Class Counsel have supplied the Court with declarations to show that they are  
12 adequate to represent the Settlement Class and that they have significant experience in  
13 employment litigation generally, and wage and hour and employment-related class action  
14 litigation specifically. *See* DS, ¶¶ 29-38; Thus, Plaintiff's counsel is adequate to serve as Class  
15 Counsel.

16 Second, Plaintiff contends that she is an adequate class representative. Plaintiff and the  
17 Class Members have strong and co-extensive interests in this litigation because they all worked  
18 for Defendants during the relevant time period, allegedly suffered the same alleged injuries from  
19 the same alleged course of conduct, and there is no evidence of any conflict of interest between  
20 Plaintiff and the Class Members. DS, ¶ 30. Moreover, Plaintiff has demonstrated her commitment  
21 to the Settlement Class by, among other things, retaining experienced counsel, providing counsel  
22 with documents and extensively speaking with them to assist in identifying the claims asserted in  
23 this case, assisting them in identifying witnesses, as well as exposing herself to the risk of  
attorneys' fees and costs awards against her if this lawsuit had been unsuccessful. DS, ¶ 30. Thus,  
24 Plaintiff is adequate to serve as settlement class representative. Accordingly, this Court should  
25 find that Plaintiff and her counsel are adequate to represent the Settlement Class as required under  
Code of Civil Procedure § 382.

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West Hollywood, CA 90069  
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SpivakLaw.com

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

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

3                   Plaintiff further contends that a class action is also superior to other means of adjudicating  
4                   the issues in this action. The predominance of common legal and factual questions shows that this  
5                   Court could fairly adjudicate the claims of Class Members through a single class action. In view  
6                   of the *theoretical* alternatives that proposed class members could potentially utilize—  
7                   representative PAGA action (where there is less relief available), individual civil lawsuits or wage  
8                   claims through the Division of Labor Standards Enforcement (where there would be relatively  
9                   little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly  
10                  superior to all of them. Thus, this consideration supports conditional class action treatment for  
11                  purposes of this Settlement only. DS, ¶ 39.

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

15                  **A.       Legal Standard**

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

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

26                  In assessing preliminary approval, a court evaluates if the settlement process has certain  
27                  indicia of fairness. A “presumption of fairness exists where (1) the settlement is reached through  
28                  arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the  
29                  court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage  
30                  of objectors is small.” *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford Motor Co.*, (1996)  
31                  48 Cal.App.4th at 1794.

32                  The class settlement here satisfies all of these factors. DS, ¶ 40. The Settlement resulted  
33                  from thorough, arms’ length, negotiations between experienced counsel with the assistance of a



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1875 Century Park East  
Fl 7  
Los Angeles, CA 90067

1 respected mediator after sufficient discovery was exchanged to assess the relative strengths and  
2 weaknesses of their respective cases and Defendants' estimated exposure. *Id.*

3 On December 20, 2024, Plaintiff commenced this Action by filing a Complaint alleging  
4 causes of action against Defendants for (1) Failure to Pay All Wages Earned for All Hours  
5 Worked and Other Compensable Hours at the Correct Hourly Rates of Pay (Lab. Code §§ 1194,  
6 1197, 1198); (2) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, 1198); (3) Failure to  
7 Provide Rest Breaks (Lab. Code §§ 226.7 and 1198); (4) Failure to Indemnify (Lab. Code §§  
8 1198 and 2802); (5) Wage Statement Penalties (Lab. Code § 226); (6) Waiting Time Penalties  
9 (Lab. Code § 203); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, et seq. (Settlement  
¶ 2.1.)

10 On February 27, 2025, Plaintiff filed a First Amended Complaint alleging causes of action  
11 against Defendants for (1) Failure to Pay All Wages Earned for All Hours Worked and Other  
12 Compensable Hours at the Correct Hourly Rates of Pay (Lab. Code §§ 1194, 1197, 1198); (2)  
13 Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, 1198); (3) Failure to Provide Rest  
14 Breaks (Lab. Code §§ 226.7 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802);  
15 (5) Wage Statement Penalties (Lab. Code § 226); (6) Waiting Time Penalties (Lab. Code § 203);  
16 (7) Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and (8) Civil Penalties (Lab. Code  
17 §§ 2698, et seq.). The First Amended Complaint is the operative complaint in the Action (the  
18 "Operative Complaint.") Defendants deny the allegations in the Operative Complaint, deny any  
19 failure to comply with the laws identified in in the Operative Complaint and deny any and all  
liability for the causes of action alleged. (Settlement ¶ 2.1.) DS, ¶ 42.

20 Plaintiff and Defendants also attended a small employer cure conference administered by  
21 the Labor and Workforce Development Agency. The conference took place over two separate  
22 days, first on February 20, 2025, then on February 26, 2025. DS, ¶ 44. As part of the cure  
23 conference process, Defendants submitted their position and data to the LWDA and to Plaintiff's  
24 counsel. *Id.* Plaintiff subsequently submitted her analysis and response to Defendants' cure plan.  
*Id.*

25 Plaintiff prepared "damages" estimates in advance of the settlement discussions. DS, ¶ 44,  
26 Ex. 6. Plaintiff determined Defendants' maximum possible exposure for restitution and penalties  
27 to be approximately \$2,153,485.36 (consisting of \$23,833.27 in unpaid wages, \$23,833.27 in  
28 liquidated damages, \$86,074.42 in missed meal period premium wages, \$86,074.42 in missed rest



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1 break premium wages, \$15,840.00 in unreimbursed expenses, \$213,600.00 for wage statement  
2 penalties, \$247,680.00 for waiting time penalties, and \$1,456,550.00 for civil penalties under  
3 PAGA. Plaintiff calculated the damages based on the number of workweeks and pay periods  
4 provided by Defendants, Plaintiff's reports, and the sample data. *Id.*

5 Plaintiff also considered the possibility that Defendants could launch a *Pick Up Stix*  
6 campaign and pursue individual release agreements from the Class Members. Defendants also  
7 represented that they had interviewed current employees regarding Plaintiff's claims, who would  
8 provide declarations, under penalty of perjury, that were favorable to Defendants with respect to  
9 the relevant factual issues at issue in Plaintiff's action. Plaintiff's Counsel applied discounts to  
10 the maximum possible exposure to account for all other risks discussed below. While it is difficult  
11 to assign anything but crudely determined percentages of risk to any of the claims, it is safe to  
12 say that the risk that a *Pick Up Stix* campaign would preclude recovery for such employees is  
13 substantial and alone justifies a significant discount because Defendants would likely by trial have  
14 gathered releases from the majority of the Class Members. A settlement for approximately of the  
15 potential recovery is a proportion substantially in excess of recovery proportions sanctioned by  
16 existing case law.<sup>3</sup> *Id.*

17 Plaintiff is aware of only two significant awards under the PAGA in a contested  
18 proceeding, both issued by federal district courts.<sup>4</sup> DS, ¶ 58. PAGA penalty awards are often

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19 <sup>3</sup> See, e.g., *In re Newbridge Networks* ¶ Litig., 1998 WL 765724 at \*2 (D.D.C. Oct. 23, 1998)  
20 (“[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to  
21 be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance,*  
22 *Inc.* 2019 WL 3943859 at \*8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the  
23 proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.,*  
24 2017 WL 708766 at \* 10 (C.D. Cal. Feb 16, 2017) (“a settlement for fourteen percent recovery  
25 of Plaintiffs’ maximum recovery is reasonable”); *In re Omnivision Techs., Inc.,* 559 F.Supp.2d  
26 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that “is just over 9% of the maximum  
27 potential recovery asserted by either party.”).

28 <sup>4</sup> In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil  
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  
unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code s 2699(e)(2) (emphasis  
added). The relationship between the amount of total damages and the amount of



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Fl 7  
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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 Defendants' meal period violations. A similar  
7 result could occur here. *Id.*

8 Plaintiff's initial estimates do not realistically account for the risks outlined below or the  
9 risk that a class will not be certified. *Id.* Therefore, Plaintiff believes a class settlement for  
10 \$150,000.00 is fair and reasonable. *Id.*

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

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

20 maximum PAGA penalties is certainly a "circumstance" of the case under the term's  
21 ordinary meaning. The weight given to that circumstance is greater in this case because  
22 Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs'  
23 individual claims except for one. As a general matter, it would be excessively punitive  
24 for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed  
25 the damages caused by that injury or set of injuries.

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

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

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



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

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

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

3           Defendants' financial condition was a key factor in reaching this Settlement. DS, ¶ 46.  
4           Due to Defendants' financial condition, even if Plaintiff prevailed on all claims at trial, she may  
5           never recover the damages due to the risk of insolvency. A very large class action judgment would  
6           almost certainly put the company out of business and/or would interfere with the company's  
7           ability to carry out its contractual obligations. *Id.* In short, the "poor financial health of [the  
8           defendant will] seriously increase [] the chance that Plaintiffs would be left with nothing if they  
9           continued to litigate their claims." *Torrissi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,  
10          1376 (the financial condition of defendant predominated in assessing the reasonableness of  
11          settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty  
12          concerning Defendants' financial stability "strongly supports the reasonableness of the  
13          settlement"); *Laguna v. Coverall N. Am., Inc.* (9th Cir. 2014) 2014 U.S. App. LEXIS 10259 at  
14          \*11 (finding potential insolvency to be additional risk that favors approval of a class action  
15          settlement). Accordingly, Defendants' financial distress supports this settlement. *Id.*

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

17           There is a risk that Plaintiff's recovery for unpaid wages would be extremely limited at  
18           best, largely because Defendants' written policies throughout the relevant time period prohibited  
19           off-the-clock work. DS, ¶ 47. Off-the-clock claims are difficult where a defendant requires in its  
20           written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation*  
21           *Hospital* (2014) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to  
22           be compensable). *Id.* In their written employment policies, Defendants mandate that employees  
23           must record all time worked accurately on their time records and strictly prohibit employees from  
24           performing any work off-the-clock. DS, ¶ 47. Moreover, while Defendants dispute that off-the-  
25           clock work occurred, they contend that any time spent off the clock was *de minimis*. The  
26           California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested  
27           that irregular and minute periods of time may still be subject to a *de minimis* defense even if  
28           compensable. (Stating that "We do not decide whether there are circumstances where  
            compensable time is so minute or irregular that it is unreasonable to expect the time to be  
            recorded."). Following *Troester*, Defendants contend that the *de minimis* doctrine applies here  
            because the time spent off the clock were minute and insignificant. Accordingly, a large award of  
            penalties seems unlikely with respect to this claim. *Id.*



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Fl 7  
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1 The difficulty inherent in proving that off-the-clock work occurred poses a significant  
2 hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim.  
3 Generally, a court will not certify a class unless it can determine an appropriate classwide  
4 methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff  
5 may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given  
6 the lack of records indicating when such off-the-clock work may have taken place. Individualized  
7 inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual  
8 in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there is a significant  
9 risk that the Court would consider this evidentiary showing insufficient as a classwide  
10 methodology. DS, ¶ 48. Off the clock work is strictly prohibited by Defendants’ policies and  
11 procedures. Defendants contend it is also prohibited in practice. Defendants investigated the claim  
12 and interviewed their employees regarding alleged off the clock work. According to Defendants,  
13 the allegation has universally been denied by other employees; none of whom reported working  
14 off the clock or being pressure to do so.

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

16 There are risks to Plaintiff’s meal period claim. DS, ¶ 49. Defendants provided evidence  
17 that it is and has been Defendants’ policy and practice to provide their employees with the ability  
18 to take compliant meal periods (i.e. uninterrupted meal periods of at least 30-minutes starting  
19 before the end of the fifth hour of work). Defendants’ non-exempt employees have always had  
20 the opportunity to take uninterrupted meal periods of at least 30-minutes before the end of the  
21 fifth hour of work and that any facially non-compliant meal period appearing in the time records  
22 is due to an employee voluntarily choosing to take a non-compliance meal period. Supervisors do  
23 not pressure or encourage employees to take non-compliant meal periods and would face  
24 discipline for doing so. Defendants also contend that the voluntary nature of these non-compliant  
25 meal periods and lack of pressure from supervisors is corroborated by employees interviewed on  
26 the matter. Furthermore, since receiving the PAGA Notice, Defendants provided employees with  
27 a reminder that they must take duty-free meal periods of at least 30-minutes before the end of the  
28 5th hour of work and that they must record these meal periods. Since doing so, Defendants say  
the weekly audits have shown zero meal period violations. Defendants contend that, to establish  
a violation for missed meal periods, a plaintiff must do more than show that a meal break was not  
taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a



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1875 Century Park East  
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1 “reasonable opportunity” to take a duty-free meal period, it has no further duty to “police meal  
2 breaks and ensure no work thereafter is performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must  
3 show the employer impeded, discouraged, or prohibited the employee from taking a proper break,  
4 or otherwise failed to release the employee of all control. *Id.* “Thus, the crucial issue with regard  
5 to the meal break claim is the reason that a particular employee may have failed to take a meal  
6 break.” *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

7 Defendants contend they did not impede or discourage Plaintiff, or any other employees,  
8 from taking their meal or rest periods. DS, ¶ 50. Defendants’ policies mandate that employees  
9 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time  
10 of their meal breaks each day on their time records. *Id.* The time records that comprise the random  
11 sample Defendants produced to Plaintiff for purposes of settlement discussions show that meal  
12 periods were taken the vast majority of the time. *Id.* Of the time records that show a late, short or  
13 no lunch, individualized evidence may be necessary to determine whether they occurred due to  
14 conduct of the Defendants or each of the employees concerned. Accordingly, there is a significant  
15 risk that the value of Plaintiff’s meal period claim would be substantially reduced at trial. *Id.*

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

17 There are risks to Plaintiff’s rest period claim. DS, ¶ 51. During the Defendants’  
18 investigation, they contend all allegedly aggrieved employees interviewed indicated that they  
19 received their full, uninterrupted rest breaks and were not pressured to skip them or work while  
20 on break. In addition, after receiving the PAGA notice letter, Defendants say they reiterated the  
21 importance of employees taking their rest breaks and to report any missed rest breaks to  
22 management. Prior to receiving Andrade’s PAGA/LWDA notice, Defendants had never received  
23 any complaints from employees about not receiving their rest periods. Employers are not required  
24 to record rest periods and such periods are paid. *Id.* Defendants contend they provided non-exempt  
25 employees the opportunity to take rest periods in accordance with California law. Further,  
26 Defendants’ written policies on meal and rest periods are consistent with the Wage Order. *Id.*  
27 Thus, unlike meal periods, where there are often records showing whether an employee clocked  
28 out or not, there is no such evidence to prove a missed rest period or that the employer refused to  
authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. *Id.*  
Plaintiff will depend on sample witness testimony and surveys to prove the claims. *Id.* While a  
victory with such evidence is certainly possible, relevant caselaw makes such claims risky from



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1875 Century Park East  
F17  
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1 a trial management and due process perspective. *Id.*, See *Duran v. U.S. Bank National Assn.*,  
2 (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common questions exist to support class  
3 certification, it may be possible to manage individual issues through the use of surveys and  
4 statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast*  
5 *Corporation v. Behrend* (2013) 133 S.Ct. 1426.

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

7 There is a risk that the Court may consider Plaintiff’s claims as to Defendants’ alleged  
8 failure to indemnify for business expenses to be individual in nature and thus decline to certify  
9 the class. DS, ¶ 52. Defendants contend that, as an initial matter the weekly schedule was emailed  
10 to all employees every week. So, employees do not need their cell phone or an application to view  
11 the schedule. Also, Defendants contend they have never been any requirement for employees to  
12 utilize the 7Shifts application and that not all employees even use the 7Shifts application. It is  
13 merely provided as a convenience to the front-of-house employees and is in no way necessary to  
14 the employee’s job duties and is used by back-of-house staff. Plaintiff alleges that Defendants  
15 required Plaintiff and the Class Members to use their personal items including cellular phones,  
16 computers and other electronic devices, vehicles, and tools, and failed to indemnify them for these  
17 business expenses. *Id.* Defendants presented evidence that they have supplied their employees  
18 with tools, equipment, and other supplies and had an expense reimbursement policy. As such,  
19 there is a risk that the Court may consider Plaintiff’s claims to be individual in nature and unfit  
20 for class wide resolution. *Id.*

21 **f. Risks Associated with the Statutory Wage Statement Penalty**  
22 **Claims**

23 Plaintiff also asserts claims for wage statement violations, untimely wage violations, and  
24 PAGA penalties. Defendants contend Plaintiff’s claims for derivative violations of Labor Code  
25 sections 201-203 waiting time penalties, 204 penalties, 226 inaccurate wage statement penalties,  
26 and 1174 penalties for failure to maintain accurate records based on the above theories of off-the-  
27 clock work and meal/rest break violations. Defendants contend these claims for penalties are  
28 meritless because they are based on flawed meal/rest break and unpaid wages claims – Defendants  
produced evidence that they have always provided their employees with the opportunity to take  
compliant meal periods and rest breaks and has prohibited off-the-clock work. Under Labor Code  
section 226, wage statements must include various information, including the applicable rates of  
pay, corresponding hours worked, and gross pay. DS, ¶ 53.



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1 Here, Plaintiff's wage statement claim has the same underlying risks as the above claims,  
2 as it is derivative of them. *Id.* On their face, the wage statements issued by Defendants complies  
3 with the requirements of Labor Code § 226. DS, ¶ 53.

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

5 Without proof willful behavior, Plaintiff will be unable to recover these penalties. Off the  
6 clock work is strictly prohibited by Defendants' policies and procedures. Defendants contend it  
7 is also prohibited in practice. Defendants investigated the claim and interviewed their employees  
8 regarding alleged off the clock work. According to Defendants, the allegation has universally  
9 been denied by other employees; none of whom reported working off the clock or being pressure  
10 to do so.

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

12 Regarding PAGA, a court has discretion to award a lesser amount than the maximum  
13 penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203  
14 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed  
15 valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. Thus, the  
16 PAGA claims likewise face significant uncertainty. DS, ¶ 56. There is a risk that the Court would  
17 consider the maximum civil penalty available to be confiscatory. This is particularly the case  
18 considering Defendants' financial condition. *Id.*

19 This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a  
20 significant discount for settlement purposes. DS, ¶ 57. For settlement discussions purposes,  
21 Plaintiff's counsel estimated a maximum possible exposure of approximately \$1,456,550.00 in  
22 civil penalties. This estimate did not take into account any of the risks discussed above and  
23 assumed a violation for every single pay period. *Id.* Plaintiff's counsel also assessed multiple  
24 penalties for the same pay period for the same alleged violations of different Labor Code  
25 provisions and derivative violations. *Id.* Although two federal district court decisions held that  
26 "stacking" PAGA penalties in this fashion may be appropriate to determine the amount in  
27 controversy for purposes of removal jurisdiction, Plaintiff's counsel is not aware of any California  
28 state courts awarding plaintiffs multiple PAGA penalties for the same violation for the same pay  
period under different Labor Code provisions. *Id.* This may be because the PAGA does not  
provide for what many employers characterize as claim splitting and not merely stacking. *Id.*

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

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

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

An employer enjoys the right to settle a putative class member's disputed wage claims individually, without the consent or involvement of class counsel. DS, ¶ 60. (See *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal. App. 4<sup>th</sup> 796. *Id.* As discussed above, Defendants may launch a "pick off" settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class – 458 members - until it is no longer numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This led to a significant reduction of claim value in settlement negotiations. *Id.*

While the evidence gathered through Plaintiff's discovery supports the merits of the claims asserted in this lawsuit, Plaintiff and her counsel recognize that continued litigation presents significant risks that support a downward departure from Defendants' estimated liability exposure. DS, ¶ 61. In view of the risks, the Settlement reflects Plaintiff's estimate of the total amount of damages, monetary penalties or other relief that the Class could reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.* It also represents a fair, adequate, and reasonable compromise amount for these claims and warrants preliminary approval. *Id.*, *Torrissi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial condition of defendant predominated in assessing the reasonableness of settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning Defendants' financial stability "strongly supports the reasonableness of the settlement"); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, \* 3.

**2. Allocation of the PAGA Payment**

The settlement of PAGA penalties in the sum of \$10,000.00, of which 65% (\$6,500.00) will be paid to the LWDA and 35% (\$3,500.00) will be distributed to the Class, is reasonable and appropriate under the circumstances. DS, ¶ 62. The Parties negotiated a good faith amount for PAGA Penalties to be paid to the LWDA and to the Class. *Id.* The portion to be paid to the LWDA was not the result of self-interest at the expense of other Class Members. *Id.* Where settlements "negotiate[] a good faith amount" for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133, at \*9. Likewise, where the employer did not act willfully, and made good



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1 faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted  
2 because imposing maximum PAGA penalty for each violation would have been unjust, arbitrary,  
3 and oppressive. *Id. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming  
4 trial court's award of only 10% of maximum PAGA penalty for meal break violations). *Id.* The  
5 amount to be paid to the LWDA comports with PAGA settlement amounts approved by other  
6 courts. See, e.g., *Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL  
7 67245, 81 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common fund);  
8 *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA  
9 payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v.*  
10 *Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at \*1 (approving PAGA  
11 settlement of 0.3% or \$1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589  
12 (approving PAGA settlement and release that allocated \$0 to PAGA claim). Courts have also  
13 approved settlements for \$20,000 or less. See, e.g., *Hicks v. Toys 'R' Us-Delaware, Inc.*, (C.D.  
14 Cal. Sept. 2, 2014) 2014 WL 4703915, at \*1 (approving \$5,000 PAGA payment in a case  
15 involving \$4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012)  
16 2012 WL 5941801 at \*14 (approving PAGA penalties of \$10,000 as part of \$2.5 million  
settlement); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at \*3  
(approving PAGA payment of \$10,000 as part of \$3.7 million common-fund settlement). *Id.*

17 **3. Presence of Governmental Participant**

18 As required under Labor Code section 2699(l)(2), Plaintiff will provide notice of this  
19 settlement to the LWDA with the filing and service of this motion. DS, ¶ 108, Ex. 18.

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

21 If the settlement is preliminarily approved, Class Members will be provided with the Class  
22 Notice (attached as Exhibit A to the Settlement) and an opportunity to object. DS, ¶ 88. The  
23 parties' proposed notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and  
will allow Class Members to make informed responses to the proposed settlement. *Id.*

24 **VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY**  
25 **COMPENSATE CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS**  
26 **MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY**  
27 **COMPARED TO OTHER CLASS MEMBERS**

28 The Individual Settlement Payments will be paid to each Class Member based on his or  
her eligible Work Weeks compared to the total Work Weeks. DS, ¶ 80, Settlement § 1.23. Because  
this method compensates Class Members based on the extent of their potential injuries, in that



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1 Class Members who worked for Defendants longer would have been subject to more alleged  
2 violations, it is fair, adequate, and reasonable. *Id.*

3 Plaintiff estimates that there are 10,004 Work Weeks for the Class Period. So, each Work  
4 Week has a value of approximately \$5.70 (\$57,000.00 Net Settlement Amount / 10,004 Work  
5 Weeks = \$5.70). Plaintiff had 68 Work Weeks during the Class Period. Based on this, it is  
6 anticipated that Plaintiff Jordan Andrade will receive an Individual Class Payment of  
7 approximately \$387.45 as a participating Class Member (68 Work Weeks x \$5.70 = \$387.45)  
8 while the average estimated Individual Class Payment to participating Class Members will be  
9 approximately \$124.45. Some Class Members – those who worked more Work Weeks during the  
10 Class Period - will receive more, and some less. The highest possible Individual Class Payment  
11 to a participating Class Member (i.e., to those who qualify for all Work Weeks in the Class Period)  
12 will be approximately \$1,385.62. The lowest possible Individual Class Payment to a participating  
13 Class Member (i.e., to those who qualify for only one Work Week in the Class Period) will be  
14 approximately \$5.70. *See* DS, ¶ 78.

15 It is anticipated that the average Allegedly Aggrieved Employee Individual PAGA  
16 Payment will be \$16.67. *Id.* Plaintiff's Individual PAGA Payment, her individual share of 35%  
17 of the PAGA Penalties, will be less than that of some absent Allegedly Aggrieved Employees.  
18 Under the Settlement, each Allegedly Aggrieved Employee will receive a *pro rata* distribution  
19 of 35% of the PAGA Penalties proportionate to the number of paychecks he or she had with  
20 Defendants during the PAGA Period, compared to the total of all paychecks of all Allegedly  
21 Aggrieved Employees during the PAGA Period, as reflected by Defendants' records. Plaintiff  
22 estimates that there are 2241 Allegedly Aggrieved Employee pay periods for the PAGA Period.  
23 So, each Allegedly Aggrieved Employee paycheck from the PAGA Period has a value of  
24 approximately \$1.56 (35% of \$10,000.00 in PAGA Penalties / 2,241 Allegedly Aggrieved  
25 Employee paychecks = \$1.56). It is anticipated that Plaintiff Jordan Andrade will receive an  
26 Individual PAGA Payment of approximately \$23.03 as an Allegedly Aggrieved Employee (15  
27 pay periods during the PAGA Period x \$1.56 paycheck value = \$23.03) while the average  
28 estimated Individual PAGA Payment to an Allegedly Aggrieved Employee will be  
approximately \$16.67 (\$3,500.00, 35% of PAGA Penalties / Allegedly Aggrieved Employee  
paychecks during the PAGA Period = \$16.67 Individual PAGA Payment). Some Allegedly  
Aggrieved Employees – those who had more paychecks during the PAGA Period - will receive



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1 more, and some less. The highest possible Individual PAGA Payment to an Allegedly Aggrieved  
2 Employee (i.e., to those who qualify for all paychecks in the PAGA Period) will be approximately  
3 \$69.31. The lowest possible Individual PAGA Payment to an Allegedly Aggrieved Employee  
4 (i.e., to those who qualify for only one paycheck in the PAGA Period) will be approximately  
5 \$1.56. *See* DS, ¶ 81.

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

8 The Settlement states Class Counsel may seek attorneys’ fees of \$50,000.00 (one-third of  
9 the GSA) and up to \$7,000.00 for actual reasonable litigation costs and expenses incurred in  
10 prosecuting the Action. Settlement § 3.2. These amounts are reasonable, given the facts and  
11 circumstances of the case. DS, ¶¶ 61-63.

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

24 The amount of fees and costs requested are commensurate with (1) the risk Class Counsel  
25 took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the  
26 skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the  
27 value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned  
28 down to devote time to this matter. DS, ¶ 64. Class Counsel interviewed and obtained information  
from putative class members, met and conferred with Defendants’ counsel on numerous  
occasions, reviewed and analyzed hundreds of pages of data and documents provided by  
Defendants and obtained through other sources, researched applicable law, and provided



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estimates of “damages” for purposes of settlement discussions, among other tasks. *Id.*

Class Counsel have borne all the risks and costs of litigation and will receive no compensation until recovery is obtained. DS, ¶ 65. Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.* 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.*

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

Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000 enhancement award). The Settlement provides that Plaintiff may seek a Class Representative Service Payment of \$15,000.00. This amount is entirely reasonable given Plaintiff’s efforts in this action and the risks she undertook on behalf of Class Members. DS, ¶ 66; Declaration of Jordan Andrade (“Plaintiff decl.”), generally. Plaintiff has devoted many hours advancing the interests of the Settlement Class. Plaintiff has done this by, among other things, retaining experienced counsel, providing them with information about her work history with Defendants and Defendants’ policies and practices with respect to the wage and hour claims at issue, participating in settlement discussions, and being actively involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay Defendants’ attorneys’ fees and costs if this action had been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class Representative Service Payment is fair, adequate, and reasonable, and thus warrants preliminary approval. DS, ¶ 67; Plaintiff decl., generally.

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

With regard to the settlement administration costs (“Administration Expenses Payment”) provision, it is reasonable. Before agreeing to Phoenix Settlement Administrators and its bid of



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1 \$11,000.00, the Parties sought and reviewed bids from other reputable third-party administrators  
2 which provided higher bids. DS, ¶ 101-102, Exs. 15, 16, and 17. Thus, the settlement  
3 administration costs provision should be given preliminary approval.

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

8 This Court should approve the proposed plans for giving notice to the Settlement Class  
9 and administering the Settlement. The standard for determining the adequacy of notice is whether  
10 the notice has “a reasonable chance of reaching a substantial percentage of the class members.”  
11 *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple  
12 measures to ensure that as many Class Members as practicable receive actual notice of the  
13 Settlement and have enough time to exercise their rights. The Settlement requires distribution of  
14 the Notice by First Class U.S. mail only. Settlement, ¶ 8.4.2. Although there are current employee  
15 Class Members, it is uncertain whether Defendants’ records of their contact information include  
16 email addresses and Class Members, who perform all of their work away from a desk, are not in  
17 a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable.  
18 DS, ¶ 88.

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



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1 the Notice should be approved because it describes the Settlement with sufficient clarity and  
2 specificity to explain to Class Members what this action is about, their rights under the Settlement,  
3 and how to exercise those rights. DS, ¶ 88.

4 **XI. CONCLUSION**

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

7 Respectfully submitted,

8 THE SPIVAK LAW FIRM

9 Dated: November 10, 2025

10 By:



11 DAVID G. SPIVAK,  
12 Attorney for Plaintiff, JORDAN  
13 ANDRADE, and all others similarly  
14 situated



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