

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com

2 LAUREN R. DAVIS (SBN 294115)
lauren@spivaklaw.com

3 THE SPIVAK LAW FIRM

4 8605 Santa Monica Bl

PMB 42554

5 West Hollywood, CA 90069

Telephone: (213) 725-9094

6 Facsimile: (213) 634-2485

7
8 Attorneys for Plaintiff(s),
9 GENARO REYES VILLAGRA, and all others similarly situated
(Additional attorneys for Plaintiff(s) on following page)

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

11 **FOR THE COUNTY OF SANTA BARBARA**

12 **(UNLIMITED JURISDICTION)**

13
14 GENARO REYES VILLAGRA, on behalf of
15 himself and all others similarly situated, and the
16 general public, and as an “aggrieved employee”
17 on behalf of himself and other similarly situated
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

18 *Plaintiff(s),*

19 vs.

20 INNOVATIVE PRODUCE, INC., a California
21 corporation; and DOES 1–50, inclusive,

22 *Defendant(s).*
23
24

Case No. 22CV02744

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF
GENARO REYES VILLAGRA’S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date: May 21, 2024

Hearing Time: 8:30 a.m.

Hearing Dept.: 2, The Honorable James
F. Rigali

Action filed: July 18, 2022

Trial Date: Not Set



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25
26
27 Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
28 (213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

ADDITIONAL ATTORNEYS FOR PLAINTIFF

LOUIS M. BENOWITZ (SBN 262300)

louis@benowitzlaw.com

BENOWITZ LAW CORPORATION

8605 Santa Monica Boulevard

PMB 97638

West Hollywood, CA 90069

Telephone: (747) 233-2600 Work

Facsimile: (818) 839-9610

Attorneys for Plaintiff,

GENARO REYES VILLAGRA, and all others similarly situated



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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:

1801 Century Park East

25th Fl

Los Angeles, CA 90067

DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFF GENARO REYES VILLAGRA'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, DAVID SPIVAK, declare as follows:

2. I am an attorney duly licensed to practice law in the State of California and am an attorney of record for Plaintiff Genaro Reyes Villagra ("Plaintiff") in his lawsuit against Defendant Innovative Produce, Inc. ("Defendant"). Plaintiff and Defendant are collectively referred to as the "Parties."

3. Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

4. The Class Action and PAGA Settlement Agreement and Class Notice (the "Settlement") is attached hereto as **Exhibit 1**. The Settlement Class consists of all persons directly employed by Defendant in California and classified as a non-exempt employee who worked during the Class Period. Settlement, para. 1.5. The "Class Period" means the period from July 18, 2018 through the order preliminarily approving this Settlement. *Id.*, para. 1.13. "Aggrieved Employee" means a person directly employed by Defendant in California and classified as a non-exempt employee who worked during the PAGA Period. *Id.*, para. 1.4. "PAGA Period" means the period from July 18, 2021 to the order preliminarily approving this Settlement. *Id.*, para. 1.33. The "PAGA Period" begins July 18, 2021 and ends on the date of the order preliminarily approving the Settlement. *Id.* The Settlement is written, signed by all necessary Parties, and attached to this declaration as stated above.

The Release Provisions

5. **Released Persons.** Under the Settlement, the release to be given by the participating Class Members (other than the Class Representative) is limited to the Defendant named in the Operative Complaint, together with its officers, directors, employees, and agents. "Released Parties" means: Defendant together with its present and former parents, subsidiaries, affiliated entities, commonly owned or controlled entities, its present and former owners, board members, officers, directors, trustees, shareholders, members, partners, employees, agents, insurers, attorneys, representatives, heirs, executors, administrators, successors and assigns, and any individual or entity to whom liability for the Released Claims, as defined herein, could be assigned pursuant to Labor Code §558.1, or on a joint-employer, alter-ego, or other vicarious liability theory. Settlement, para. 1.43.



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PMB 42554
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25th Fl
Los Angeles, CA 90067

1 6. **Released Claims.** Under the Settlement, the release to be given by the Participating
2 Class Members (other than the Class Representative) is limited to the claims stated in the Operative
3 Complaint, and those based solely upon the facts alleged in the Operative Complaint.

4 7. **Release Period.** Under the Settlement, the release to be given by the Participating
5 Class Members (other than the Class Representative) is limited to liability that arose during the
6 Class Period. See above.

7 8. **PAGA Release.** Under the Settlement, Plaintiff releases all claims for civil
8 penalties that could have been sought by the Labor Commissioner for the violations identified
9 in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release the claim for wages or
10 damages of any Aggrieved Employee unless such Aggrieved Employee is a participating Class
11 Member. The PAGA Release states as follows: All Participating Class Members and all Aggrieved
12 Employees (who shall not have the right to opt out) shall be bound by a release, as of the Effective
13 Date, of all claims alleged in the Operative Complaint or any of Plaintiff's PAGA Notice(s), or
14 which could have been alleged based on the facts alleged in the Operative Complaint or any of
15 Plaintiff's PAGA Notice(s), and which arose during the Class Period and PAGA Period. The
16 Released Class Claims shall include all claims alleged by Plaintiff in the Operative Complaint, or
17 which could have been alleged by Plaintiff in the Operative Complaint based on the facts stated
18 in the Operative Complaint, including any and all claims or causes of action regarding unpaid
19 wages, including but not limited to failure to pay minimum wages, straight time wages, overtime
20 compensation, and interest; failure to timely pay regular and final wages; failure to provide
21 compliant meal, rest, and/or recovery periods; failure to pay premiums at all or at the correct rate
22 for any violation of meal and rest obligations; claims arising from invalid meal period waivers;
23 payment for all hours worked; wage statements and paystubs, including wage statements and
24 paystubs furnished or available in physical, electronic, or other forms; failure to keep accurate
25 records; unfair business practices related thereto; and any and all related penalties, including
26 recordkeeping penalties, wage statement penalties, minimum wage penalties, waiting time
27 penalties, and other statutory or civil penalties associated with any of the foregoing. Such
28 Released Class Claims shall include, but are not limited to those claims arising under California
Labor Code sections 201, 202, 203, 204, 204b, 207, 208, 210, 218.5, 218.6, 221, 225.5, 226,
226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198,
1199, 2698 *et seq.*, and 2699 *et seq.*, and/or those arising under the applicable Industrial Welfare



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Los Angeles, CA 90067

1 Commission Wage Order(s) (including but not limited to subsections 3, 4, 5, 7, 8, 9, 11, 12, 13,
2 18, and 20 of the applicable Wage Order(s), such as IWC Wage Order 14-2001 [including the
3 provisions of the California Code of Regulations codifying the applicable Wage Order(s)], 8
4 C.C.R. §3395, California Business Professions Code 17200 *et seq.* (including, without limitation,
5 §§17200 through 17208); the California Civil Code §§ 3287 and 3289; California Code of Civil
6 Procedure § 1021.5, and any related claims under the provisions of the Fair Labor Standards Act
7 (29 USC §§201 *et seq.*) (“Released Claims”). Any Non-Participating Class Member shall only be
8 bound by claims for civil penalties released under PAGA as provided in paragraph 6.3 of the
9 Settlement and shall not be deemed to release any individual claims for which recovery under
PAGA is not permitted. Settlement, para. 6.3.

10 *No Reversion*

11 9. The Settlement does not provide that any portion of the consideration paid or
12 deposited by the Defendant may revert to the Defendant.

13 *Taxes*

14 10. The Settlement provides that Defendant will separately pay the employer’s
15 share of any applicable payroll taxes. 10.00% of each Participating Class Member’s Individual
16 Class Payment will be allocated to settlement of wage claims (the “Wage Portion”). The Wage
17 Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 90.00% of each
18 Participating Class Member’s Individual Class Payment will be allocated to settlement of claims
19 for interest and penalties (the “Non-Wage Portion”). The Non-Wage Portions are not subject to
20 wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume
21 full responsibility and liability for any employee taxes owed on their Individual Class Payment.
Settlement, para. 3.2.5.

22 11. The Settlement provides as follows with regard to the tax treatment of
23 settlement shares: 10.00% of each Participating Class Member’s Individual Class Payment will
24 be allocated to settlement of wage claims (the “Wage Portion”). The Wage Portions are subject
25 to tax withholding and will be reported on an IRS W-2 Form. 90.00% of each Participating Class
26 Member’s Individual Class Payment will be allocated to settlement of claims for interest and
27 penalties (the “Non-Wage Portion”). The Non-Wage Portions are not subject to wage
28 withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full



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responsibility and liability for any employee taxes owed on their Individual Class Payment. Settlement, para. 3.2.5.

Factual and Procedural Background

12. **Plaintiff's Employment with Defendant.** Defendant is an agricultural business. Defendant employed Plaintiff as a farm worker in California from about June 15, 2017 until August 5, 2021.

13. **LWDA Notices.** On April 20, 2022, Plaintiff notified Defendant 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 Defendant. A true and correct copy of the letter to the LWDA dated April 20, 2022 is attached hereto as **Exhibit 2**. On October 6, 2023, Plaintiff submitted a supplemental letter to the LWDA and Defendant notifying them of Defendant's failures to comply with the meal and rest period provisions of the Labor Code. A true and correct copy of the letter to the LWDA dated October 6, 2023 is attached hereto as **Exhibit 3**.

14. **Lawsuit.** On July 18, 2022, Plaintiff filed a Class Action Complaint in the Santa Barbara County Superior Court, Case No. 22CV02744, against Defendant on behalf of himself and all 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) Wage Statement Penalties (Lab. Code § 226); (3) Waiting Time Penalties (Lab. Code §§ 201-203); and (4) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*). On July 18, 2022, Plaintiff filed his Complaint against Defendant under PAGA in this Court, Case No. 22CV02747 ("PAGA Complaint"). On September 1, 2022, Defendant filed an answer to Plaintiff's PAGA Complaint. On February 21, 2024, Plaintiff filed his First Amended Complaint, which differs from Plaintiff's original Class Action Complaint in the following respects: causes of action and supporting facts are added for unprovided or non-compliant meal periods and unprovided or non-compliant rest breaks and recovery periods on behalf of Plaintiff and the Class; additional allegations and supporting facts are added with respect to the causes of action for failure to pay all wages earned for all hours worked and other compensable hours at the correct rates of pay and wage statement penalties; Plaintiff's counsel's contact information is updated; a common question is added pertaining to the new causes of action; Plaintiff's Unfair Competition cause of action is revised to add the new Labor Code violation(s); Plaintiff has added a derivative PAGA



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Mail:
8605 Santa Monica Bl
PMB 42554
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(213) 725-9094 Tel
(213) 634-2485 Fax
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1 cause of action based on the meal and rest period violations and the allegations and cause(s) of
2 action in Plaintiff's PAGA Complaint. The First Amended Complaint is the operative complaint
3 in the Action (the "Operative Complaint"). Defendant filed an answer on March 28, 2024.
4 Defendant denies all of Plaintiff's allegations and strongly contends that its wage and hour
5 policies, practices, and procedures are fully compliant with all applicable laws. A true and correct
6 copy of the Class Action Complaint filed on July 18, 2022 is attached hereto as **Exhibit 4**. A true
7 and correct copy of Plaintiff's PAGA Complaint filed on July 18, 2022 is attached hereto as
8 **Exhibit 5**. A true and correct copy of Defendant's Answer to Plaintiff's PAGA Complaint dated
9 September 1, 2022 is attached hereto as **Exhibit 22**. A true and correct copy of Plaintiff's First
10 Amended Complaint filed on February 21, 2024 is attached hereto as **Exhibit 6**. A true and correct
11 copy of Defendant's Answer to Plaintiff's First Amended Complaint dated March 28, 2024 is
12 attached hereto as **Exhibit 7**.

13 15. **Investigation.** On September 08, 2022, Plaintiff requested that Defendant
14 informally disclose documents and data to enable Plaintiff to prepare for settlement discussions,
15 including the number of putative class members and aggrieved employees and the number of
16 paychecks and workweeks for the various limitations periods applicable to Plaintiff's claims.
17 Plaintiff also requested a reasonable, randomly selected sample of Defendant's time, payroll, and
18 expense records, and related personnel records. *Id.* Finally, Plaintiff requested Defendant's
19 written policies applicable to the claims at hand and asked Defendant to identify any and all
20 comparable claims against it.

21 16. The Parties thereafter engaged in an informal, voluntary exchange of information
22 in the context of privileged settlement discussions to facilitate an early mediation. Defendant
23 produced Plaintiff's entire personnel file (including policies and agreements he signed and
24 acknowledged) and copies of its relevant company written policies.

25 17. **Sampling.** Defendant contends that it employed 126 putative class members
26 during the period of July 18, 2018 to July 18, 2023. Settlement, para. 9. Defendant produced the
27 records of 17.46% of the putative class members for the period of July 18, 2018 to July 18, 2023.
28 There were records for 22 employees in the sample. Plaintiff chose the sample. The sample was
randomly selected. The sample consisted of timesheets and pay stubs, and related records.



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18. **Plaintiff's Data Analyst.** Plaintiff retained Billy Bonilla, a data analyst, to analyze the sample. Plaintiff also employed the Raosoft⁶ Sample Size calculator (<http://www.raosoft.com/samplesize.html>) to determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin of error of 43.3 percent was unacceptable. Using a margin of error of 32%, a confidence level of 95%, and a population size of 126, the Raosoft Sample Size Calculator recommended a sample of 9. A true and correct copy of the results from the Raosoft Sample Size Calculator are attached as **Exhibit 8** (Raosoft Sample Size Calculator results print-out). Thus, the sample population that Plaintiff's data analyst evaluated is statistically reliable. *Id.*

19. **Mediation.** On July 18, 2023, following much of the foregoing informal discovery and exchange of information, the Parties participated in a mediation session presided over by Mediator Scott Radovich, an experienced class action mediator. During the mediation, the Parties had a full day of productive negotiations and reached agreement on a class-wide settlement after the mediation session. During the mediation sessions, each side, represented by his/its respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement.

Similar Actions

20. **Relevant Litigation and Claims.** I am not aware of any class, representative, or other collective action in any other court, in this, or any other jurisdiction, that asserts claims similar to those asserted in this action, on behalf of the class or group of individuals, some or all of whom would also be members of the class to find in this action. I have made a reasonable inquiry of the other members of my law firm and my counsel to determine

6 Raosoft advertises, “Raosoft, Inc. produces EZSurvey for the Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software 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 it is “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>.



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Mail: 27
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069 28
(213) 725-9094 Tel
(213) 634-2485 Fax
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1801 Century Park East
25th Fl
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whether they are aware of any such similar actions. Based on these inquiries, I am aware of no such similar actions. Defendant disclosed that there have not been any comparable claims against it.

Uncashed Checks

21. **Unclaimed Property Fund.** The Settlement provides for the disposition of uncashed checks as follows: 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 California Code of Civil Procedure Section 384, subd. (b). Settlement, para. 4.1.7. In my view, sending funds represented by uncashed checks to the Unclaimed Property Fund instead of a *cy pres* recipient is the best way to insure that the Class Members and Aggrieved Employees actually receive their portions of the Settlement.

Ascertainable and Numerous Class

22. **Ascertainability.** A class is ascertainable when it may be readily identified without unreasonable expense or time by reference to official records. Here, Plaintiff maintains that the above-defined Class is ascertainable because its members may be identified by reference to Defendant's records and Defendant has agreed to share the relevant information from its records to facilitate the settlement process. Therefore, the Settlement Class is ascertainable.

23. **Numerosity.** The Settlement Class has sufficiently numerous members to render joinder impractical. No set number is required as a matter of law to maintain a class action. The California Supreme Court has upheld a class of as few as 10 individuals. Defendant estimates that there are approximately 126 Class Members for the Class Period of July 18, 2018 to the date of the order preliminarily approving the Settlement. Plaintiff maintains that it would be impractical and economically inefficient to require each Settlement Class Member to separately maintain an individual action or be joined as a named plaintiff in this action. In light of these considerations, the Settlement Class's membership is sufficiently numerous. Additionally, there are 67 Aggrieved Employees for the PAGA Period of July 18, 2021 to the date of the order preliminarily approving the Settlement.



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Predominant Common Questions

24. A question of law or fact is common to the members of a class if it may be resolved through common proof. In this case, there are many predominant common questions. Plaintiff asserts that all Class Members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from Defendant's alleged policy-driven failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages during employment and upon termination of employment, failure to maintain required payroll records, and related labor law violations, all of which Plaintiff claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common questions include, but are not limited to: (1) Whether Defendant failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay; (2) Whether Defendant failed to provide the Class with all meal and rest periods in compliance with California law; (3) Whether Defendant failed to pay the Class one additional hour of pay on workdays it failed to provide the Class with one or more meal or rest periods in compliance with California law; (4) Whether Defendant knowingly and intentionally failed to provide the Class with accurate wage statements; (5) Whether Defendant willfully failed to provide the Class with timely final wages; and (6) Whether Defendant engaged in unfair competition within the meaning of Business and Professions Code sections 17200, *et seq.*, with respect to the Class.

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Typicality

25. Plaintiff contends that his claims are typical for the purposes of certifying the Settlement Class. Plaintiff asserts that he, like absent Class Members, was subject to the same relevant policies and procedures governing his compensation, hours of work, and meal and rest periods. Because Plaintiff contends that he was subject to the same general course of conduct as absent Class Members, resolving the common questions as they apply to Plaintiff will determine Defendant's *prima facie* liability to all Class Members. Moreover, Plaintiff's claims could potentially be subject to the same primary affirmative defenses as those of absent Class Members. Accordingly, Plaintiff's claims are typical of the Class.

Adequacy

26. The adequacy requirement is met where the plaintiff is represented by counsel qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to



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1 the class's interests. In other words, where the plaintiff has adequate counsel, the plaintiff may
2 represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's
3 ability to represent the class.

4 27. Neither Plaintiff nor I have any conflicts of interest with the absent Settlement
5 Class Members. Plaintiff contends that he is an adequate class representative. Plaintiff and the
6 Class Members have strong and co-extensive interests in this litigation because they all worked
7 for Defendant during the relevant time period, allegedly suffered the same alleged injuries from
8 the same alleged course of conduct, and there is no evidence of any conflict of interest between
9 Plaintiff and the Class Members. Moreover, Plaintiff has demonstrated his commitment to the
10 Settlement Class by, among other things, retaining experienced counsel, providing counsel with
11 documents, and extensively speaking with them to assist in identifying the claims asserted in this
12 case, assisting them in identifying witnesses, as well as exposing himself to the risk of attorneys'
13 fees and costs awards against him if this lawsuit had been unsuccessful. Thus, Plaintiff is adequate
14 to serve as settlement class representative.

15 *Background of Class Counsel*

16 28. In 1991, I earned a Bachelor of the Arts degree with a major in Political Science
17 from the University of California at Berkeley. In 1995, I earned a Juris Doctor degree from
18 Southwestern University School of Law.

19 29. In December of 1995, the Supreme Court for the State of California admitted me
20 as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this
21 State. On May 11, 2012, I also became admitted to the District of Columbia Bar. In February
22 2013, I became admitted to the New York State Bar.

23 30. My law practice has always focused on representation of private and public
24 employees with claims of unpaid wages, wrongful termination, harassment, family and medical
25 leave, whistleblowing, discrimination, benefits, and civil rights violations. One of my websites,
26 FightWrongfulTermination.com, provides a further description of my practice.

27 31. I have tried many cases before California and federal courts, government agencies,
28 and neutral arbitrators. I am a member of the California Employment Lawyers Association
(“CELA”).

32. Since I started practicing law, I have tried many cases before courts, arbitrators,
and government agencies. Some of my cases are:



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8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
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(213) 634-2485 Fax
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1801 Century Park East
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Los Angeles, CA 90067

1 a. *Ricardo Sandoval v. Dept. of Treasury*, United States District Court,
2 Southern District of California (the Honorable Judith Keep presiding), 1998. Plaintiffs Special
3 Agent for the U. S. Customs Service alleged discrimination and retaliation in promotions and
4 discipline. The jury awarded compensatory damages. Court subsequently awarded additional
5 back pay and gave Plaintiffs a retroactive promotion. *See* “Lawsuit Puts Customs Service on Trial:
6 Agent Alleges Corruption, White Supremacist Cabal” by Valerie Alvord, *San Diego Union-*
7 *Tribune*, April 29, 1998; “Customs Agent Is Awarded \$200,000: Jury Says He Faced Bias and
8 Retaliation” by Valerie Alvord, *San Diego Union-Tribune*, May 16, 1998.

9 b. *Jorge Guzman v. Department of Justice*, United States District Court,
10 Central District of California (the Honorable Lourdes Baird presiding), 1999. Plaintiffs Special
11 Agent for the Immigration and Naturalization Service alleged racial discrimination, retaliation,
12 and police brutality by agents of the Office of the Inspector General. Jury found the defendants
13 liable. Case settled shortly before the damages phase. *See* “U.S. to Pay \$400,000 to INS Agent in
14 Bias Suit; Courts: Complaint Says He Suffered 10 Years of Harassment on the Job Because He
15 Is Latino, Including Falsified Charges” by Patrick J. McDonnell, *Los Angeles Times*, January 21,
16 1999.

17 c. *Dr. Perry Crouch v. SHIELDS*, Los Angeles Superior Court, Compton (the
18 Honorable Michael Rutberg presiding), 2001. Plaintiff whistleblower brought civil rights claims
19 and wrongful termination claims against employer in a month-long jury trial. The jury awarded
20 compensatory and punitive damages. *See* “Activist Says Criticism of Rail Plan Cost His Job” by
21 Dan Weikel, *Los Angeles Times*, September 28, 2000; “Punitive Damages Awarded to Fired
22 Social Worker” by Dan Weikel, *Los Angeles Times*, June 10, 2000; “A Whistleblower’s Revenge”
23 by Susan Goldsmith, *New Times Los Angeles*, June 8, 2000.

24 d. *Imagraph, Inc. (Steve Shiffman) v. Mohamed T. Nehmeh*, Orange County
25 Superior Court, Central Justice Center (the Honorable Kirk H. Nakamura presiding), 2004.
26 Plaintiff, whom I represented pro bono, sought the return of \$45,000.00 he paid to an attorney
27 escrow officer who subsequently absconded with the money. The jury awarded compensatory
28 damages. The Judgment with interest is now far in excess of that amount. Soon after this case was
litigated, the State Bar of California awarded me the Wiley W. Manuel Award for Pro Bono Legal
Services.



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1 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
2 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated Customs
3 Agent, followed by an award of attorneys' fees and costs.

4 f. *Richard Wamel v. Ocelot Engineering Co.*, Judicate West before the
5 Honorable Robert Polis (ret.) (2008). In that case, I represented a victim of FMLA violations and
6 wrongful termination against his former employer. The Neutral Arbitrator awarded compensatory
7 and liquidated damages. The claims for damages, attorney's fees, and costs were resolved shortly
8 thereafter by means of a confidential settlement.

9 g. *Alina Ghrdilyan v. RJ Financial, Inc., et al.*, LA Superior Court case no.
10 BC430633 (2012), the Honorable Ronald Sohigian presiding. To my knowledge, this case is the
11 first and only case to be successfully prosecuted through trial under the Labor Code Private
12 Attorney Generals Act of 2004, Labor Code §§ 2698, *et seq.* on behalf of plaintiffs and other
13 aggrieved employees against someone other than an employer for civil penalties, including unpaid
14 wages. The case involves claims of unpaid overtime, unprovided rest and meal periods, unpaid
15 vacation, untimely interval and final wages, and unreimbursed expenses. For my work in that
16 case, the Court awarded me an hourly rate of \$600.00 based on my skill and experience.

17 33. Since 2007, I have prosecuted several traditional wage and hour class actions as
18 the sole or primary attorney for the plaintiffs, including *Pudelwitts v. Regent Parking, Inc.*,
19 *Singery v. Quality Vessel Engineering*, *Tesillo v. LA Executive Towing Service, Inc.*, and *Madison*
20 *v. The Limousine Connection*. One such case is *Jose Tapia v. Mangen Group, Inc.*, LASC case
21 no. BC377114, a garden-variety wage and hour class action with many of the same claims at issue
22 in this case. The Honorable Jane Johnson of the Los Angeles Superior Court, presiding over the
23 motion for final approval of the Settlement Class action settlement in *Tapia*, had no quarrel with
24 an hourly rate of \$525.00 for my services.

25 34. In my representation of employees, I have prosecuted several lawsuits on behalf
26 of employees with claims of rest and meal period and overtime violations or other wage claims.

27 35. I have been involved in the prosecution of numerous wage and hour class actions
28 at various stages of litigation. A small sampling of the wage and hour class action cases in which
I have recently been counsel of record is as follows:



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Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 a. *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior
2 Court, Case No. VCU-245496 (appointed Class Counsel and granted final approval class action
3 settlement on behalf of assistant fitness manager employees).

4 b. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
5 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
6 court on behalf of nonexempt employees).

7 c. *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Superior
8 Court, Case No. BC465017 (appointed Class Counsel and granted final approval by the court of
9 class action settlement on behalf of merchandiser employees).

10 d. *Deckard v. MSL Community Management LLC*, Riverside County Superior
11 Court, Case No. RIC1204182 (appointed Class Counsel and granted final approval of class action
12 settlement on behalf of caregivers and medical technicians).

13 e. *DiCato v. Francesca's Collections, Inc.*, San Diego County Superior
14 Court, Case No. 37-2012-00094401-CU-OE-CTL (appointed Class Counsel and granted final
15 approval of class action settlement on behalf of boutique manager and assistant manager
16 employees).

17 f. *Evans v. Equinox, et al.*, Los Angeles Superior Court, Case No. BC440058
18 (appointed Class Counsel and granted final approval by the court of class action settlement on
19 behalf of personal trainer employees).

20 g. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Superior Court,
21 Case No. 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval
22 of class action settlement on behalf of medical devices employees).

23 h. *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No.
24 BC480808 (appointed Class Counsel and granted final approval of class action settlement on
25 behalf of hourly employees).

26 i. *La Fleur v. Medical Management International, Inc.*, United States District
27 Court, Central District of California, Case No. EDCV13-00398-VAP (appointed Class Counsel
28 and granted final approval of class action settlement on behalf of practice managers).

j. *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court,
Case No. CIVDS1500146 (appointed Class Counsel and granted final approval of class action
settlement on behalf of non-exempt hourly employees excluding truck drivers).



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1 k. *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court,
2 Case No. BC462681 (appointed Class Counsel and granted final approval of class action
3 settlement on behalf of security guard employees).

4 l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
5 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
6 on behalf of dairy and agricultural laborers).

7 m. *Montes v. Branam Enterprises, Inc.*, Los Angeles Superior Court, Case No.
8 BC442608 (appointed Class Counsel and granted final approval by the court of class action
9 settlement on behalf of concert rigging employees).

10 n. *Nardone v. Sequoia Beverage Company, LP*, Tulare County Superior
11 Court, Case No. VCU-248370 (appointed Class Counsel and granted final approval of class action
12 settlement by the court on behalf of hourly employees).

13 o. *Ogbuehi v. Comcast of California/Colorado/Florida/Oregon, Inc.*, United
14 States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN
15 (appointed Class Counsel and granted final approval of class action settlement on behalf of virtual
16 customer account executives).

17 p. *Rosen v. Image Transfer*, Los Angeles Superior Court, Case No.
18 BC511072 (appointed Class Counsel and granted final approval of class action settlement on
19 behalf of bobtail truck drivers).

20 q. *Sandoval v. Rite Aid Corp.*, Los Angeles Superior Court, Case No.
21 BC431249 (granted class certification through contested motion and appointed Class Counsel in
22 case on behalf of former pharmacy employees based on late final wage payments in violation of
23 Labor Code §§ 201–203).

24 r. *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District
25 of Colorado, Case No. 13-CV-01229-REB-BNB (appointed Class Counsel and granted final
26 approval of class action settlement by the court on behalf of auditor employees).

27 s. *Stucker v. L'Oreal*, Los Angeles Superior Court, Case No. BC456080
28 (appointed Class Counsel and granted final approval by the court of class action settlement
involving alleged misclassification of sales employees and unpaid vacation pay).



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1 t. *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Superior Court,
2 Case No. BC462917 (appointed Class Counsel and granted final approval by the court of class
3 action settlement on behalf of service account manager employees).

4 u. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case
5 No. BC421485 (granted class certification through contested motion and appointed Class Counsel
6 in case on behalf of former security workers based on late final wage payments in violation of
Labor Code §§ 201–203).

7 v. *Vang v. Burlington Coat Factory Corporation*, United States District Court
8 Central District of California, Case No. 09-CV-08061-CAS-JCx (appointed Class Counsel and
9 granted final approval of class action settlement by the court on behalf of assistant store manager
10 employees).

11 w. *Volney-Parris v. Southern California Edison Company*, Los Angeles
12 Superior Court, Case No. BC493038 (appointed Class Counsel and granted final approval of class
13 action settlement on behalf of customer specialist employees).

14 x. *White v. 20/20 Communications, Inc.*, San Bernardino County Superior
15 Court, Case No. CIVRS1301718 (appointed Class Counsel and granted final approval of class
16 action settlement on behalf of hourly employees).

17 ***Class Action Treatment Is Superior***

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

27 ***The Settlement Is Presumptively Fair***

28 37. The Class Settlement here satisfies all of the *Kullar* factors. The Settlement
resulted from thorough, arms’ length negotiations between experienced counsel with the
assistance of a respected mediator after sufficient discovery was exchanged to assess the relative



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1 strengths and weaknesses of their respective cases and Defendant's estimated exposure. Both
2 defense counsel and I are particularly experienced in employment law and wage and hour class
3 actions. We are experienced and qualified to evaluate the class claims, the viability of the
4 defenses, and the risks and benefits of settlement versus trial on a fully informed basis. I have
5 negotiated many wage and hour class settlements, including many involving the same issues
6 presented here. Counsel on both sides share the view that the Settlement is a fair and reasonable
7 settlement in light of the complexities of the case and uncertainties of class certification and
litigation, and a fair result for the Class Members.

8 *Exposure & Risk Analysis*

9 38. On July 18, 2022, Plaintiff commenced this Action by filing a Complaint alleging
10 causes of action against Defendant for failure to pay wages, failure to issue proper wage
11 statements, failure to timely pay wages during and at the conclusion of employment, unfair
12 competition, and related claims. On July 18, 2022, Plaintiff filed another lawsuit against
13 Defendant under PAGA. On September 1, 2022, Defendant filed an answer to Plaintiff's PAGA
14 Complaint. February 21, 2024, Plaintiff filed a First Amended Complaint alleging causes of action
15 against Defendant for failure to pay wages, unauthorized and unlawful wage deductions, failure
16 to provide meal periods, failure to authorize and permit rest and recovery periods, failure to issue
17 proper wage statements, failure to timely pay wages during and at the conclusion of employment,
18 failure to maintain required payroll records, unfair competition, and related allegations. The First
19 Amended Complaint is the Operative Complaint in the Action (the "Operative Complaint").
20 Defendant denies the allegations in the Operative Complaint, denies any failure to comply with
21 the laws identified in in the Operative Complaint, and denies any and all liability for the causes
22 of action alleged. Settlement, para. 2.1. Plaintiff prepared "damages" estimates in advance of the
23 mediation. Plaintiff determined Defendant's maximum possible exposure for restitution and
24 penalties to be approximately \$9,993,418.65 (consisting of \$1,372,251.14 in unpaid wages,
25 \$1,372,251.14 in liquidated damages, \$0.00 in missed meal period premium wages, \$0.00 in
26 missed rest break premium wages, \$689,950.00 for wage statement penalties, \$215,866.37 for
27 waiting time penalties, and \$6,343,100.00 for civil penalties under PAGA). True and correct
28 copies of the spreadsheets I prepared for mediation of this Action are collectively attached to this
declaration as **Exhibit 9**.



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1 39. The estimates are in essence “home run” projections that omit data points that will
2 undoubtedly reduce the maximum possible damages award and do not factor in any of the risks
3 involved in litigating this Action. Plaintiff calculated the damages based on the number of
4 workweeks and pay periods provided by Defendant, Plaintiff’s reports, and the sample data. *Id.*
5 Plaintiff also considered the possibility that Defendant could launch a *Pick Up Stix* campaign and
6 pursue individual release agreements from the Class Members. Defendant also represented that it
7 had interviewed Defendant’s current employees regarding Plaintiff’s claims, all of whom would
8 provide declarations, under penalty of perjury, that were favorable to Defendant 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 Defendant would likely by trial have
14 gathered releases from the majority of the Class Members.

15 40. My initial estimates do not realistically account for the risks outlined below or the
16 risk that a class will not be certified. Therefore, I believe a class settlement for \$150,000.00 is fair
17 and reasonable.

18 41. **Risks Associated with the Arbitration Agreements.** The arbitration agreements
19 entered into between Defendant on the one hand, and the Class Members, on the other, present a
20 significant risk to the success of Plaintiff’s class action litigation. According to Defendant, the
21 majority of the Class entered into arbitration agreements with Defendant. As the arbitration
22 agreements in question restrict potential litigants from bringing class actions against Defendant,
23 Plaintiff would be effectively barred from pursuing claims on behalf of the Class in Court. Thus,
24 there is a significant risk the Court could determine that those Class Members who have not
25 entered into arbitration agreements with Defendant do not constitute a sufficiently numerous class
26 to justify class action treatment. As such, by continuing to trial on class-wide claims, Plaintiff
27 would run the high risk of suffering defeat due to the existence of the arbitration agreements.
28 Moreover, the arbitration agreements would pose danger to any class certification motion brought
by Plaintiff. Because different defenses would apply to some Class Members and not others – i.e.,
the existence of signed arbitration agreements – there is a risk that the Court could determine that
Plaintiff’s claims present too many individualized inquiries to justify class certification.



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1 42. **Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiff's
2 recovery for unpaid wages would be extremely limited at best, largely because Defendant's
3 written policies throughout the relevant time period prohibited off-the-clock work. Off-the-clock
4 claims are difficult where a defendant requires in its written policies that all work must take place
5 while clocked in. *See Jong v. Kaiser Foundation Hospital* (2014) 226 Cal.App.4th 391 (employer
6 must have notice of off-the-clock work for it to be compensable). *Id.* In its written employment
7 policies, Defendant mandates that employees must record all time worked accurately on their time
8 records and strictly prohibits employees from performing any work off-the-clock. Moreover,
9 while Defendant disputes that off-the-clock work occurred, it contends that any time spent off the
10 clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal.
11 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de*
12 *minimis* defense even if compensable. (Stating, "We do not decide whether there are
13 circumstances where compensable time is so minute or irregular that it is unreasonable to expect
14 the time to be recorded."). Following *Troester*, Defendant contends that the *de minimis* doctrine
15 may apply here because the time spent off the clock was minute and insignificant. Accordingly,
16 a large award of penalties seems unlikely with respect to this claim.

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

27 44. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiff's
28 meal period claim. Plaintiff does not attribute any value to this claim in view of Plaintiff's
investigation, which shows Defendant provided meal periods as required by law. Defendant
contends 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



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

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

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



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1 47. **Risks Associated with the Waiting Time Penalty Claims.** Plaintiff also asserts
2 claims for wage statement violations, untimely wage violations, and PAGA penalties. Under
3 Labor Code section 226, wage statements must include various information, including the
4 applicable rates of pay, corresponding hours worked, and gross pay. Here, Plaintiff's wage
5 statement claim has the same underlying risks as the above claims, as it is derivative of them. On
6 their face, the wage statements issued by Defendant comply with the requirements of Labor Code
section 226.

7 48. **Further Risks Associated with the Waiting Time Penalties Claims.** Without
8 proof of willful behavior, Plaintiff will be unable to recover these penalties.

9 49. **Risks Associated with the PAGA Claim.** As the Operative Complaint makes
10 clear, Plaintiff predicates his PAGA claim on the same Labor Code violations as his other
11 claims. Plaintiff's "damages" spreadsheet, Exhibit 9, states the length of the relevant time period
12 for the PAGA claim and the number of employees allegedly employed during that time period.
13 Plaintiff's "damages" spreadsheet, Exhibit 9, also states the total amount of civil penalties for
14 which Defendant is potentially liable if all allegations are proven. As I state above in connection
15 with Plaintiff's claims for statutory penalties with regard to proof of Defendant's intent,
16 knowledge, and willfulness, there are serious risks to proving Defendant acted intentionally,
17 knowingly, and willfully in violating the rights of Class Members under the Labor Code. Plaintiff
18 calculated the agreed-upon amount of civil penalties by considering the risks outlined above and
19 that the Settlement already provides substantial payments for the Labor Code violations that the
civil penalties claim is predicated on.

20 50. Regarding PAGA, a court has discretion to award a lesser amount than the
21 maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*
22 (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendant has
23 posed valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. Thus,
24 the PAGA claims likewise face significant uncertainty. There is a risk that the Court would
consider the maximum civil penalty available to be confiscatory.

25 51. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and
26 required a significant discount for settlement purposes. For mediation purposes, Plaintiff's
27 counsel estimated a maximum possible exposure of approximately \$6,343,100.00 in civil
28 penalties. This estimate did not take into account any of the risks discussed above and assumed a



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1 violation for every single pay period. *Id.* Plaintiff’s counsel also assessed multiple penalties for
2 the same pay period for the same alleged violations of different Labor Code provisions and
3 derivative violations. Although two federal district court decisions held that “stacking” PAGA
4 penalties in this fashion may be appropriate to determine the amount in controversy for purposes
5 of removal jurisdiction, Plaintiff’s counsel is not aware of any California state courts awarding
6 plaintiffs multiple PAGA penalties for the same violation for the same pay period under different
7 Labor Code provisions. This may be because the PAGA does not provide for what many
8 employers characterize as claim splitting and not merely stacking.

9 52. I am aware of only two significant awards under the PAGA in a contested
10 proceeding, both issued by federal district courts.⁷ PAGA penalty awards are often small, even
11 for egregious, intentional violations of the Labor Code.⁸

12 ⁷ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
13 penalties under the PAGA of \$12,277,500.00 where total adjusted damages were
14 \$18,695,692.58. In this regard, the district court stated,

15 The plain language of PAGA provides that “a court may award a lesser amount than the
16 maximum civil penalty amount specified by this part if, *based on the facts and*
17 *circumstances of the particular case*, to do otherwise would result in an award that is
18 unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code s 2699(e)(2) (emphasis
19 added). The relationship between the amount of total damages and the amount of
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.*

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

32 ⁸ In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number
33 BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and
34 correct copy of the first amended complaint in *Ghrdilyan* is attached as **Exhibit 10**. The plaintiff
35 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. A true and correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit**
38 **11**, 19:8-20:19. Also, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing



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53. For instance, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018), the Court of Appeal affirmed judgment that provided for a PAGA penalty of only \$5 per pay period for the defendant's meal period violations. A similar result could occur here.

54. **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. (*See Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796 (2009)). As discussed above, Defendant 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 – 126 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.

55. While the evidence gathered through Plaintiff's discovery supports the merits of the claims asserted in this lawsuit, Plaintiff and his counsel recognize that continued litigation presents significant risks that support a downward departure from Defendant's estimated liability exposure. In view of the risks, the Settlement reflects my 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. It also represents a fair, adequate, and reasonable compromise amount for these claims and warrants preliminary approval.

56. Above, Plaintiff lists the maximum amounts recoverable in this action. However, based on the difficulties of proof, Defendant's defenses, and the other attendant risks I identify above, I estimate the *likely* awards at trial should Plaintiff prevail to be the following amounts:

- a. Unpaid wages with interest in the amount of \$2,058,376.72;
- b. Meal period premium wages with interest in the amount of \$0.00;

PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. A similar result could occur here.



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- c. Rest period premium wages with interest in the amount of \$0.00;
- d. Statutory pay stub penalties in the amount of \$344,975.00;
- e. Waiting time penalties in the amount of \$107,933.18; and
- f. Civil penalties in the amount of \$511,550.00.

The total of these amounts is \$3,022,834.90.

Allocation of the PAGA Payment

57. The settlement of PAGA penalties in the sum of \$4,000.00, of which 75% (\$3,000.00) will be paid to the LWDA and 25% (\$1,000.00) will be distributed to the Aggrieved Employees, is reasonable and appropriate under the circumstances. The Parties negotiated a good faith amount for PAGA Penalties to be paid to the LWDA and to the Aggrieved Employees. The portion to be paid to the LWDA was not the result of self-interest at the expense of other Aggrieved Employees.

Attorneys' Fees and Costs

58. I intend to request Class Counsel Attorneys' Fees of up to one-third of the GSA and Class Counsel's litigation costs incurred in prosecuting this Action, which I currently estimate to be approximately \$4,182.52 and will be no more than \$12,000.00 at the conclusion of matters related to the Settlement. In view of my efforts and risks in pursuing this case, these amounts are well within the range of reasonableness and thus warrant this Court's preliminary approval. In addition, based on my experience in wage and hour class action matters, fee awards of approximately one-third of the settlement fund are routinely approved as reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Superior Court, Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Superior Court, Case No.



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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:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Superior Court, Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Superior Court, Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc., et al.*, Los Angeles Superior Court, Case No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare Superior Court, Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles Superior Court, Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles Superior Court, Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Superior Court, Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Superior Court, Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Superior Court, Case No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court, Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v. National Distribution Centers LP, et al.*, Riverside Superior Court, Case No. RIC1114952 (one-third of fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/ Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris v. Southern California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (one-third of fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. BC480808 (one-third of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-1500-CV-282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court, Case No. CIVDS1500146 (one-third of fund).

59. The amount of fees and costs requested are commensurate with (1) the risk Class Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the skill and determination Class Counsel have shown, (4) the results Class Counsel achieved, (5) the value Class Counsel achieved for the Class, and (6) the other cases Class Counsel turned down to devote time to this matter. Class Counsel also interviewed and obtained information from putative class members, met and conferred with Defendant's counsel on numerous



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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:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

occasions, reviewed and analyzed hundreds of pages of data and documents provided by Defendant and obtained through other sources, researched applicable law, and provided estimates of “damages” for purposes of settlement discussions, among other tasks.

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

61. Plaintiff has agreed in writing to authorize 75% of the Class Counsel Fees Payment to be issued to The Spivak Law Firm and 25% of the Class Counsel Fees Payment to be issued to Benowitz Law Corporation. Also, Plaintiff has agreed in writing to authorize The Spivak Law Firm and Benowitz Law Corporation to receive reimbursement of their respective litigation expenses upon successful resolution of this action. A true and correct copy of the fully executed retainer agreement is attached hereto as **Exhibit 12**.

Class Representative Service Payment

62. The Settlement provides that Plaintiff may seek a Class Representative Service Payment of \$10,000.00. This amount is entirely reasonable given Plaintiff’s efforts in this Action and the risks he undertook on behalf of Class Members. Here, 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 his work history with Defendant and Defendant’s policies and practices with respect to the wage and hour claims at issue, assisting counsel in identifying witnesses, participating in mediation, 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 Defendant’s 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. Plaintiff Genaro Reyes Villagra’s declaration, filed concurrently with mine, provides further information supporting his request for the Class Representative Service Payment.



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PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
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Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

63. Plaintiff began his investigation and retention of attorneys to pursue the claims at issue on approximately August 07, 2021. Awarding Plaintiff 3.33% of the GSA is entirely reasonable given Plaintiff's efforts in this case undertaken on behalf of absent Class Members. In this case, Plaintiff has devoted several hours of his time advancing the interests of the Class Members and also expects to devote additional hours of his time with Class Counsel overseeing the administration of the Settlement if the Court grants final approval of the Settlement. Plaintiff has done this by, among other things, retaining experienced counsel, providing them with extensive information about his work history with Defendant and Defendant's policies and practices with respect to the wage and hour claims at issue, assisting them in contacting absent Class Members to gather information, participating in a full day of mediation, foregoing pursuit of his individual claims in favor of a fair class-wide resolution, and being actively involved in the settlement process to ensure a fair result for the Class Members as a whole.

64. As Class Representative, Plaintiff agreed to (1) consider the interests of the Class just as he would consider his own interests and, in some cases, to put the interests of the Class before his own interests; (2) actively participate in the lawsuit, as necessary, by, among other things, answering interrogatories, producing documents to Defendants, and giving deposition and trial testimony if requested; (3) travel to give such testimony; (4) recognize and accept that any resolution of the lawsuit by dismissal or settlement, is subject to court approval, and must be designed in the best interest of the Class as a whole; (5) follow the progress of the lawsuit and provide all relevant facts to Class Counsel; (6) champion many other people with similar claims and injuries because of the importance of the case and that necessity that all Class Members benefit from the lawsuit; and (7) fight for a resolution in which the individual recovery to each Class Member, including Plaintiff, may be relatively small. Plaintiff agreed to shoulder all of these responsibilities in exchange for a proportionate share of funds made available for distribution to the Class Members. Plaintiff had no guarantee of a Class Representative Service Payment. This justifies the Class Representative Service Payment sought.

65. In taking the actions outlined above, Plaintiff has exposed himself to significant risks, including the risk that he could have been ordered to pay Defendant's attorneys' fees and costs if this Action had been unsuccessful (*see* Lab. Code §§ 218.5-218.6), as well as the risk that he could, in the future, face a potentially hostile work environment and worsened career prospects for suing a prior employer for wage and hour violations and serving as the Plaintiff in a class



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PMB 42554
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(213) 725-9094 Tel
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Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 action lawsuit. Additionally, Plaintiff has exposed himself to the risk that he could end up
2 receiving less than Defendant would have paid him at the beginning of the Action via a C.C.P. §
3 998 offer or other individual settlement offer to drop his class allegations. On many occasions,
4 California courts have ordered wage and hour plaintiffs and would-be class representatives to pay
outrageous fee and/or cost awards for unsuccessful claims. A few examples are:

- 5 a. *Zalewa v. Tempo Research Corp.*, No. B238142, 2013 WL 766535 (CA 2nd Dist.
6 March 1, 2013) (court awarded the employer \$2,210,360 in attorney's fees to be
7 paid by employee for employee's unsuccessful suit for unpaid bonuses). A true
8 and correct copy of the court's order is attached to this declaration as **Exhibit 13**.
- 9 b. *Cun v. Café Tiramisu LLC*, No. A131241, 2011 WL 5979937 (CA 1st Dist. Nov.
10 30, 2011) (court ordered the employee to pay \$36,612.50 in attorney's fees and
11 costs to employer for unsuccessful suit for unpaid wages). A true and correct copy
12 of the court's order is attached to this declaration as **Exhibit 14**.
- 13 c. *Csaszi v. Sharp Healthcare*, No. D038558, 2003 WL 352422 (CA 4th Dist. Feb.
14 18, 2003) (court ordered the employee to pay \$20,269 in attorney's fees and costs
15 to the employer for unsuccessful suit for unpaid wages and overtime). A true and
16 correct copy of the court's order is attached to this declaration as **Exhibit 15**.
- 17 d. *Villalobos v. Guertin*, No. CIV. S-07-2778 LKK/GGH, 2009 WL 4718721
18 (U.S.D.C. Eastern Dist. Dec. 3, 2009) (court ordered plaintiff's counsel to pay
19 \$21,180 in attorney's fees and \$1,525.80 in costs to defense counsel for unpaid
20 wages). A true and correct copy of the court's order is attached to this declaration
as **Exhibit 16**.

21 Such costs awards are higher than the share of the Net Settlement Amount ("NSA") that Plaintiff
22 stands to receive as a participating Class Member. It would be unfair in view of the substantial
23 risk of an adverse fee or cost award of several thousand dollars for Plaintiff to receive less as a
24 reward for taking such a risk. Moreover, we cannot lose sight of the fact that Plaintiff is not a high
25 wage earner. Even the lowest of the cost awards listed above would have devastating
consequences for Plaintiff in view of his modest earnings.

26 66. As I explain further below, Plaintiff's individual share of the Net Settlement
27 Amount will be less than that of some absent participating Class Members. Under the Settlement,
28 participating Class Members will receive a *pro rata* distribution of the Settlement proceeds



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1 proportionate to the period of time he or she worked for Defendant during the Class Period,
2 compared to the total period of time worked by all participating Class Members during the Class
3 Period, as reflected by Defendant's records. Because Plaintiff may have been employed for a
4 shorter period during the Class Period, some Class Members will have worked more Pay Periods
5 than Plaintiff and, as a result, receive larger shares in the recovery – *even though they did not*
6 *actively participate in the lawsuit*. While this is a risk that Plaintiff assumed when he brought his
7 lawsuit, it is unfair to limit Plaintiff's Class Representative Service Payment to an amount not
8 much greater than an absent Class Members' share of the recovery. To encourage employees like
9 Plaintiff to don the helm of class champions (and thereby advance the important public policies
10 behind class actions), the Court should award something substantial to Plaintiff for his readiness
11 to receive less than absent Class Members while assuming all the risk and delay of payment.

12 67. The average putative class member in this case would be unlikely to pursue
13 individually the claims Plaintiff brought against Defendant because such claims would be too
14 small to justify the cost and the risk. A putative class member will be unlikely to find an attorney
15 who is willing to pursue an individual's claims because the claims are too small to justify the
16 hundreds of hours of legal work necessary to prove each claim. Only the class action vehicle,
17 which allows for the aggregation of hundreds of risky small dollar value claims, makes such
18 claims advantageous for an attorney to pursue on a contingency basis, and there can be no class
19 action without a class member assuming the great fiduciary responsibilities of a class
20 representative. This Court should allow the Class Representative Service Payment requested
21 because to do otherwise would discourage employees (and attorneys) from bringing class actions
22 in the first place.

23 68. If would-be class action plaintiffs are not adequately incentivized to advance the
24 public policy behind class actions in court in light of the time and risk it will entail, it is unlikely
25 that they will bring class action lawsuits in the first place. Once employers realize that such
26 lawsuits are unlikely, they will have no incentive to comply with wage and hour laws.

27 69. Plaintiff faced the risk that he could face worsened career prospects for suing a
28 former employer for wage and hour violations and serving as the Plaintiff in a class action lawsuit.
Because he filed a lawsuit in the California Superior Court, a public record now exists that
Plaintiff sued his employer for Labor Code violations – a fact that won't be lost on prospective
employers considering him for a job. Common sense dictates that an employer will think twice



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1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 about hiring someone who sued his last employer. Legal experts have recognized this fact.
2 Attached to this declaration as **Exhibit 17** is a true and correct copy of the article “Employees:
3 Better Think Twice Before Suing Your Employer (Four Reasons Why).” Attached to this
4 declaration as **Exhibit 18** is a true and correct copy of the article “What to Expect If You Sue
5 Your Employer.” California even has laws to address this risk: Labor Code § 1102.5 prohibits
6 retaliation against employees who speak up about Labor Code violations and Labor Code § 98.6
7 prohibits discrimination against employees who bring Labor Code violations to the attention of
8 the Labor Commissioner. Thus, the risk to Plaintiff’s future employment shows that the Class
9 Representative Service Payment sought is fair, adequate, and reasonable, and warrants
preliminary approval of the Court.

10 70. Class Counsel depended on Plaintiff’s input to prosecute this lawsuit. Plaintiff
11 made this case possible for a number of reasons. First, Plaintiff challenged his employers on an
12 unlawful practice that led to Defendant paying a large percentage of the unpaid wages in question
13 plus interest to the remainder of its employees. Plaintiff provided Class Counsel with detailed
14 descriptions of how Defendant’s business operates, the hours and scheduling of employees, and
the nature of the work Class Members performed.

15 71. By agreeing to settle the case in the best interest of the Class Members, Plaintiff
16 has given up the right to pursue individual claims and recover substantially more in unpaid wages,
17 interest, waiting time penalties, pay stub penalties, and civil penalties that he will release as part
18 of the Settlement. Plaintiff did not seek an individual settlement for his claims at all, instead
19 choosing to prosecute the claims on behalf of the Class Members.

20 72. In view of the risks, Plaintiff achieved a result the Class can be proud of. There
21 were significant risks (outlined in the preliminary approval motion) to any award on behalf of the
22 Class Members and still Plaintiff achieved a settlement of \$150,000.00. This outstanding result
23 calls for significant awards to Plaintiff for making the result possible. If the Court is disinclined
24 to award Plaintiff all or part of the Class Representative Service Payment requested, Class
25 Counsel request that the Court allocate the difference to Plaintiff from Class Counsel’s requested
attorney fee award.

26 ***Class Member and Aggrieved Employee Settlement Share Estimates***

27 73. Above, Plaintiff estimates Plaintiff’s anticipated Individual Class Payment.
28



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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:
1801 Century Park East
25th Fl
Los Angeles, CA 90067



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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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1801 Century Park East
25th Fl
Los Angeles, CA 90067

74. **Individual Class Payments.** At \$15.88 per hour (the average Class Member's hourly wage), the average estimated Individual Class Payment to Participating Class Members is the equivalent of over 31 hours of unpaid wages (the primary remedies sought) ($\$507.94 / \$15.88 = 31.99$ hours). Thus, this is a result the Class can be proud of in view of the significant risks.

75. Plaintiff estimates that there are 14,193 Pay Periods for the Class Period. So, each Pay Period has a value of approximately \$4.51 ($\$64,000.00$ Net Settlement Amount / 14,193 Pay Periods = \$4.51). Plaintiff had 79 Pay Periods during the Class Period. Based on this, it is anticipated that Plaintiff Genaro Reyes Villagra will receive an Individual Class Payment of approximately \$356.29 as a participating Class Member ($79 \text{ Pay Period} \times \$4.51 = \$356.29$) while the average estimated Individual Class Payment to participating Class Members will be approximately \$507.94. Some Class Members – those who worked more Pay Periods during the Class Period – will receive more, and some less. The highest possible Individual Class Payment to a participating Class Member (i.e., to those who qualify for all Pay Periods in the Class Period) will be approximately \$643.06. The lowest possible Individual Class Payment to a participating Class Member (i.e., to those who qualify for only one Pay Period in the Class Period) will be approximately \$4.51. Some Class Members – those who worked more Pay Periods during the Class Period – will receive more, and some less.

76. The Individual Class Payment will be paid to each Class Member based on his or her eligible Pay Periods compared to the total Pay Periods. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendant longer would have been subject to more alleged violations, it is fair, adequate, and reasonable.

77. **Individual PAGA Payments.** I estimate that the average Aggrieved Employee Individual PAGA Payment will be \$14.93. *Id.* Plaintiff's Individual PAGA Payment, his individual share of 25% of the PAGA Penalties, will be less than that of some absent Aggrieved Employees. Under the Settlement, each Aggrieved Employee will receive a *pro rata* distribution of 25% of the PAGA Penalties proportionate to the number of paychecks he or she had with Defendant during the PAGA Period, compared to the total of all paychecks of all Aggrieved Employees during the PAGA Period, as reflected by Defendant's records. Plaintiff estimates that there are 4,093 Aggrieved Employee paychecks for the PAGA Period. So, each Aggrieved Employee paycheck from the PAGA Period has a value of approximately \$0.24 (25%

1 of \$4,000.00 in PAGA Penalties / 4,093 Aggrieved Employee paychecks = \$0.24). It is
2 anticipated that Plaintiff Genaro Reyes Villagra will receive an Individual PAGA Payment of
3 approximately \$0.48 as an Aggrieved Employee (2 paychecks during the PAGA Period x \$0.24
4 paycheck value = \$0.48) while the average estimated Individual PAGA Payment to an Aggrieved
5 Employee will be approximately \$14.93 (\$1,000.00, 25% of PAGA Penalties / 67 Aggrieved
6 Employees = \$14.93 average Individual PAGA Payment). Some Aggrieved Employees – those
7 who had more paychecks during the PAGA Period – will receive more, and some less. The highest
8 possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for all
9 paychecks in the PAGA Period) will be approximately \$15.77. The lowest possible Individual
10 PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for only one paycheck in
the PAGA Period) will be approximately \$0.24.

11 *Proposed Preliminary Approval Order*

12 78. Plaintiff files a proposed Preliminary Approval Order with this declaration. The
13 proposed Preliminary Approval Order includes the Notice Packet. The Notice Packet consists of
14 the Class Notice (Exhibit A to the Preliminary Approval Order), the Election Not to Participate
15 in Settlement form (Exhibit B to the Preliminary Approval Order), the Pay Period Dispute form
16 (Exhibit C to the Preliminary Approval Order), and the Objection form (Exhibit D to the
17 Preliminary Approval Order) in English with Spanish translations. Based on my investigation,
18 the Class Members all understand English, Spanish, or both. The Notice Packet does not include
19 any other forms. The Settlement Agreement is not attached to the proposed Preliminary Approval
20 Order. I have carefully reviewed both the terms and the terminology of the proposed
21 Preliminary Approval Order and accompanying Notice Packet to confirm that the various
22 documents are internally consistent, consistent with each other, and consistent with the
Settlement Agreement.

23 79. **Identity of Administrator.** The proposed Preliminary Approval Order states
24 the name of the Administrator, and describes the nature of the services that the Administrator
will be required to perform, either directly or by reference to the Settlement Agreement.

25 80. **Exclusion Form.** The proposed Preliminary Approval Order provides that the
26 Class Notice shall be accompanied by the Election Not to Participate in Settlement form
27 (Exhibit B to the Preliminary Approval Order), the Pay Period Dispute form (Exhibit C to the
28 Preliminary Approval Order), and the Objection form (Exhibit D to the Preliminary Approval



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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
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Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

Order) in English with Spanish translations. Based on my investigation, the Class Members all understand English, Spanish, or both. The proposed Preliminary Approval Order provides that any exclusion form shall be submitted to the Administrator rather than filed with the Court. The proposed Preliminary Approval Order does not require the Class Member to send copies of the exclusion form to counsel, but requires the Administrator to do so. The proposed Preliminary Approval Order provides that the Administrator shall file a declaration concurrently with the filing of Plaintiff's motion for final approval with a copy of every exclusion form received by the Administrator.

81. **Objection Form.** The proposed Preliminary Approval Order provides that the Class Notice shall be accompanied by the Objection form that the Class Members may use. The proposed Preliminary Approval Order provides that any objection shall be submitted to the Administrator rather than filed with the Court. The proposed Preliminary Approval Order does not require the Class Member to send copies of the Objection form to counsel, but requires the Administrator to do so. The proposed Preliminary Approval Order provides that the Administrator shall file a declaration concurrently with the filing of the motion for final approval with a copy of every Objection form received by the administrator.

82. Neither the proposed Preliminary Approval Order, the Class Notice, nor the Objection form requires an objecting party to, either personally or through counsel, appear at the hearing on the motion for final approval for that party's objection to be considered. Neither the proposed Preliminary Approval Order, the Class Notice, nor the Objection form requires an objecting party, either personally or through counsel, to file or serve, or to state in the objection, a notice of intention to appear at the hearing on the motion for final approval.

83. **Final Approval Hearing Date.** The proposed Preliminary Approval Order provides a proposed date for the Final Approval Hearing. The proposed Preliminary Approval Order requires the Administrator to give notice to any objecting party of any continuance of the hearing of the motion for final approval.

84. **No Injunction Against Filing Claims.** Neither the proposed Preliminary Approval Order nor the Class Notice purports to enjoin the Class Members from filing any actions or administrative claims or proceedings pending the final hearing on the Settlement, or for any other period.

85. **No Claim Form.** The Settlement does not require a claim form.

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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:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

The Notice Packet

86. The Settlement requires distribution of the Notice by First Class U.S. mail only. Settlement, para. 4.1.5. Although there are current employee Class Members, it is uncertain whether Defendant's records of their contact information include email addresses, and Class Members, who perform all of their work away from a desk, are not in a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable. The Notice Packet (attached as Exhibits A, B, C, and D to the Settlement) provides Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how 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 estimated settlement shares for each Class Member. Additionally, the Notice will include the number of eligible Pay Periods 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. As such, the 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.

87. The Settlement does not require Class Members to submit claims to participate.

88. Each document in the Notice Packet is drafted in a manner that is likely to be readily understood by the members of the Class. The Notice Packet does not contain any Latin terms, legal terms of art, or unfamiliar symbols or abbreviations.

89. As stated above, the Class Notice includes an estimate of the likely recovery by the individual Class Member. It also provides the estimated dollar value of a Pay Period and the estimated dollar value of a workweek.

90. The Class Notice states that the Court has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the final hearing.



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8605 Santa Monica Bl
PMB 42554
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(213) 725-9094 Tel
(213) 634-2485 Fax
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Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

1 91. The Class Notice advises the Class Members of where they can find the
2 Settlement Agreement, by describing the full title and filing date either of the Settlement
3 Agreement and this declaration to which the Settlement Agreement is attached. The Class
4 Notice also states the address of the courthouse to which the case is assigned, and the address
5 of the court's website at which the case file can be viewed online.

6 92. The Class Notice describes the releases by Plaintiff and the Class Members.

7 93. The lawsuit includes a claim for civil penalties under PAGA. The Class Notice
8 defines PAGA. It states that Class Members may not opt out of the PAGA provisions of the
9 Settlement. However, it does not bar them from objecting to the PAGA portions of the
10 Settlement. The Class Notice also describes the terms of the settlement of the PAGA claim,
11 including who is an Aggrieved Employee. The Class Notice provides an estimate of the
12 individual Aggrieved Employee's share of 25% of the PAGA Penalties and advises
13 Aggrieved Employees that the payments will be reported on a Form 1099.

14 94. The Objection form instructs the objecting Class Member that the objection
15 must be delivered to the Administrator. The Objection form states the name and address of
16 the Administrator. It also states the date by which the objection must be mailed or otherwise
17 delivered.

18 95. The information required to be provided by an objecting Class Member on the
19 Objection form does not exceed the minimum information necessary to (i) identify the
20 objector as a person entitled to object to the Settlement, (ii) describe the nature of and basis
21 for the objection, and (iii) contact the objector to clarify any uncertainties.

22 96. The Election Not To Participate form (i) instructs the Class Member seeking
23 exclusion that the exclusion form must be mailed or delivered to the Administrator, (ii) states
24 the name and address of the Administrator, and (iii) states the date by which the exclusion
25 form must be mailed or otherwise delivered.

26 97. The information required to be provided by a Class Member on the Election
27 Not To Participate form does not exceed the minimum information necessary to (i) identify
28 the person as a Class Member and (ii) contact the person to clarify any uncertainties.

 98. The Election Not To Participate form indicates that exclusion from the Class
Settlement will not result in exclusion from the PAGA portion of the Settlement.

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EMPLOYEE RIGHTS

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

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

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Administrator Duties

99. The duties of the Settlement Administrator are spelled out in the Settlement and in the bid provided by ILYM Group, Inc., a true and correct copy of which is attached hereto as **Exhibit 19**.

Administration Costs

100. With regard to the settlement administration costs provision (Settlement, para. 3.2.3), it is reasonable. Before agreeing to ILYM Group, Inc., the Parties sought and reviewed bids from other reputable third-party administrators, which provided higher bids. A true and correct copy of the bid from Phoenix is attached hereto as **Exhibit 20**. A true and correct copy of the bid from CPT Group is attached hereto as **Exhibit 21**. The bid provided by ILYM Group, Inc. was the lowest. Thus, the settlement administration costs provision should be given preliminary approval.

PAGA Provisions of the Settlement

101. The memorandum of points and authorities that accompanies this declaration explains the terms of the provisions of the Settlement that apply to PAGA and civil penalties.

102. The Settlement provides that 25% of the PAGA Penalties shall be distributed among all Aggrieved Employees, even those who opt out of the Class Settlement. *See* Settlement, paras. 3.2.7, 3.2.8, and 4.1.5.

103. The Settlement releases only those claims described in the notice sent by Plaintiff to the LWDA, and only to the extent that they are alleged in the Operative Complaint. The Settlement states as follows with regard to the release of the PAGA claim: All Participating Class Members and all Aggrieved Employees (who shall not have the right to opt out) shall be bound by a release, as of the Effective Date, of all claims alleged in the Operative Complaint or any of Plaintiff's PAGA Notice(s), or which could have been alleged based on the facts alleged in the Operative Complaint or any of Plaintiff's PAGA Notice(s), and which arose during the Class Period and PAGA Period. The Released Class Claims shall include all claims alleged by Plaintiff in the Operative Complaint, or which could have been alleged by Plaintiff in the Operative Complaint based on the facts stated in the Operative Complaint, including any and all claims or causes of action regarding unpaid wages, including but not limited to failure to pay minimum wages, straight time wages, overtime compensation, and interest; failure to timely pay regular and final wages; failure to provide compliant meal, rest, and/or recovery periods; failure



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1 to pay premiums at all or at the correct rate for any violation of meal and rest obligations; claims
2 arising from invalid meal period waivers; payment for all hours worked; failure to issue proper
3 wage statements and paystubs, including wage statements and paystubs furnished or available in
4 physical, electronic, or other forms; failure to keep accurate records; unfair business practices
5 related thereto; and any and all related penalties, including recordkeeping penalties, wage
6 statement penalties, minimum wage penalties, waiting time penalties, and other statutory or civil
7 penalties associated with any of the foregoing. Such Released Class Claims shall include, but are
8 not limited to those claims arising under California Labor Code sections 201, 202, 203, 204, 204b,
9 207, 208, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5,
10 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, and 2699 *et seq.*, and/or those
11 arising under the applicable Industrial Welfare Commission Wage Order(s) (including but not
12 limited to subsections 3, 4, 5, 7, 8, 9, 11, 12, 13, 18, and 20 of the applicable Wage Order(s), such
13 as IWC Wage Order 14-2001 [including the provisions of the California Code of Regulations
14 codifying the applicable Wage Order(s)], 8 C.C.R. §3395, California Business Professions Code
15 §§17200 *et seq.* (including, without limitation, §§17200 through 17208); the California Civil
16 Code sections 3287, and 3289; California Code of Civil Procedure section 1021.5, and any related
17 claims under the provisions of the Fair Labor Standards Act (29 USC §§201 *et seq.*) (“Released
18 Claims”). Any Non-Participating Class Member shall only be bound by claims for civil penalties
19 released under PAGA as provided in this section and shall not be deemed to release any individual
20 claims for which recovery under PAGA is not permitted. Settlement, para. 6.3.

104. The PAGA Release is limited to the Defendant named in the Operative
21 Complaint, together with its present and former parents, subsidiaries, affiliated entities,
22 commonly owned or controlled entities, its present and former owners, board members,
23 officers, directors, trustees, shareholders, members, partners, employees, agents, insurers,
24 attorneys, representatives, heirs, executors, administrators, successors and assigns, and any
25 individual or entity to whom liability for the Released Claims, as defined in the Settlement,
26 could be assigned pursuant to Labor Code §558.1, or on a joint-employer, alter-ego, or other
27 vicarious liability. *See* Settlement, para. 1.43 (“Released Parties”).

105. The Settlement releases only those claims described in the notice sent by
28 Plaintiff to the LWDA, and only to the extent that they are alleged in the Operative
Complaint. The Settlement states: All Participating Class Members and all Aggrieved Employees



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(who shall not have the right to opt out) shall be bound by a release, as of the Effective Date, of all claims alleged in the Operative Complaint or any of Plaintiff's PAGA Notice(s) , or which could have been alleged based on the facts alleged in the Operative Complaint or any of Plaintiff's PAGA Notice(s), and which arose during the Class Period and PAGA Period. The Released Class Claims shall include all claims alleged by Plaintiff in the Operative Complaint, or which could have been alleged by Plaintiff in the Operative Complaint based on the facts stated in the Operative Complaint, including any and all claims or causes of action regarding unpaid wages, including but not limited to failure to pay minimum wages, straight time wages, overtime compensation, and interest; failure to timely pay regular and final wages; failure to provide compliant meal, rest, and/or recovery periods; failure to pay premiums at all or at the correct rate for any violation of meal and rest obligations; claims arising from invalid meal period waivers; payment for all hours worked; wage statements and paystubs, including wage statements and paystubs furnished or available in physical, electronic, or other forms; failure to keep accurate records; unfair business practices related thereto; and any and all related penalties, including recordkeeping penalties, wage statement penalties, minimum wage penalties, waiting time penalties, and other statutory or civil penalties associated with any of the foregoing. Such Released Class Claims shall include, but are not limited to those claims arising under California Labor Code sections 201, 202, 203, 204, 204b, 207, 208, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 et seq., and 2699 et seq., and/or those arising under the applicable Industrial Welfare Commission Wage Order(s) (including but not limited to subsections 3, 4, 5, 7, 8, 9, 11, 12, 13, 18, and 20 of the applicable Wage Order(s), such as IWC Wage Order 14-2001 [including the provisions of the California Code of Regulations codifying the applicable Wage Order(s)]), 8 C.C.R. §3395, California Business Professions Code 17200 et seq. (including, without limitation, §§17200 through 17208); the California Civil Code sections 3287, and 3289; California Code of Civil Procedure section 1021.5, and any related claims under the claims under the provisions of the Fair Labor Standards Act (29 USC §§201, et seq.) ("Released Claims"). Any Non-Participating Class Member shall only be bound by claims for civil penalties released under PAGA as provided in this section and shall not be deemed to release any individual claims for which recovery under PAGA is not permitted. Settlement, para. 6.3.

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Notice of Settlement to the LWDA

106. Pursuant to Labor Code § 2699(1)(2), Plaintiff has provided notice of this Settlement to the LWDA with the filing and service of this motion. A true and correct copy of Plaintiff's submission with the LWDA and a confirmation email is attached hereto as **Exhibit 23**.

I declare under the penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed on Thursday, April 25, 2024 at Los Angeles, California.



DAVID SPIVAK,
Declarant



SPIVAK LAW
EMPLOYEE RIGHTS

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