

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

2 CAROLINE TAHMASSIAN (SBN 285680)
caroline@spivaklaw.com

3 THE SPIVAK LAW FIRM
4 8605 Santa Monica Bl., PMB 42554
West Hollywood, CA 90069
5 Telephone: (213) 725-9094
6 Facsimile: (213) 634-2485

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

12 Attorneys for Plaintiff(s),
JUAN MIGUEL PERALES, and all others similarly situated

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14
15 **FOR THE COUNTY OF STANISLAUS**
16 **(UNLIMITED JURISDICTION)**

17 JUAN PERALES, on behalf of himself and as an
18 "Aggrieved Employee" on behalf of other
19 "Aggrieved Employees" under the Private
Attorneys General Act of 2004,

20 Plaintiff,

21 v.

22 SHIPS PIZZA, INC, a California corporation;
23 CENTRAL VALLEY PIZZA LLC, a California
24 limited liability company; TEAM CENTRAL
25 VALLEY, INC, a California corporation; GREG
DEGRANDIS, an individual; and DOES 1-50,
inclusive,

26 *Defendant(s).*

Case No. CV-22-004216

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF JUAN
MIGUEL PERALES'S MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

Hearing Date: April 4, 2025
Hearing Time: 8:30 a.m.
Hearing Dept.: 24, The Honorable
Sonny S. Sandhu

Action filed: September 19, 2022
Trial Date: Not Set



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 **DECLARATION OF DAVID G. SPIVAK IN SUPPORT OF MOTION FOR APPROVAL**
2 **OF PAGA SETTLEMENT**

3 I, DAVID SPIVAK, declare as follows:

4 1. I am an attorney duly licensed to practice law in the State of California and am an
5 attorney of record for Plaintiff Juan Miguel Perales (“Plaintiff” or “Perales”) in this action against
6 Defendants Ships Pizza, Inc., Central Valley Pizza LLC, and Team Central Valley, Inc., (collectively
7 “Defendants”). I am a member in good standing of the State Bar of California. Except as otherwise
8 indicated, I have personal knowledge of all matters set forth herein and, if called as a witness,
9 could and would competently testify thereto under oath.

10 2. A true and correct copy of the PAGA Settlement Agreement (the “Agreement” or
11 “PAGA Settlement” or “Settlement”) is attached hereto as **Exhibit 1**. A true and correct copy of
12 the parties agreed upon notice to the Aggrieved Employees (the “PAGA Notice”) is attached
13 hereto as **Exhibit 2**.

14 ***Factual and Procedural Background***

15 3. Defendants are owners and operators of Domino’s Pizza franchisees. Defendants
16 employed Plaintiff as a non-exempt, hourly assistant manager from about June of 2020 until June
17 24, 2022.

18 4. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
19 under PAGA. By letters dated September 19, 2022, Plaintiff, on behalf of himself and other
20 aggrieved hourly employees gave written notice by certified mail to the Labor and Workforce
21 Development Agency (“LWDA”) and Defendants of the specific provisions of the California
22 Labor Code alleged to have been violated, including the facts and theories to support the alleged
23 violations. A true and correct copy of Plaintiff’s notice letter to the LWDA and Defendants is
24 attached as **Exhibit 3**.

25 5. Plaintiff and the Aggrieved Employees are potentially subject to arbitration
26 agreements with Defendants. On September 19, 2022, Plaintiff commenced this Action. On
27 December 9, 2022, Plaintiff filed a First Amended Complaint adding Central Valley Pizza LLC, and
28 Team Central Valley, Inc., and Greg DeGrandis as named defendants. Plaintiff also added a claim
under the 2004 Labor Code Private Attorneys General Act, Labor Code §§ 2699, *et seq.*
 (“PAGA”) against Defendant SHIPS PIZZA, INC only. On February 2, 2023, filed a Second
 Amended Complaint against all Defendants. A true and correct copy of Plaintiff’s Second



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 Amended Complaint is attached as **Exhibit 4**. On July 14, 2023, the Court granted Defendants'
2 Motion to compel Plaintiff to arbitration and dismissed Plaintiff's class claims. A true and correct
3 copy of the Court's order granting Defendants' motion is attached as **Exhibit 5**. Defendants deny
4 all of Plaintiff's allegations and strongly contend that their wage and hour policies, practices and
5 procedures are fully compliant with all applicable laws.

6 6. On July 25, 2023, the Parties participated in mediation with mediator Tripper
7 Ortman in an attempt to resolve the PAGA claim. The Parties engaged in arm's-length
8 negotiations and even though the case did not settle at the mediation, the Parties continued their
9 settlement negotiations with the help of the mediator and ultimately reached a resolution of the
10 PAGA claims asserted in the Action. The PAGA Settlement Agreement was reached after
11 exchanges of data, information and documents, and is a result of extensive arms-length
12 negotiations. The Parties conducted informal discovery for purposes of potential resolution
13 through which they ascertained the size of the aggrieved employee group and the number of pay
14 periods worked by them during the PAGA Period to ascertain the total value of Plaintiff's PAGA
15 claim. Now that the parties have finalized the PAGA Settlement Agreement, Plaintiff submits it
16 to this Court for approval.

17 7. Notice is being given to the LWDA concurrently with the filing of this motion.
18 Here, notice is being given to the LWDA concurrently with the filing of this motion. A true and
19 correct copy of Plaintiff's submission with the LWDA and a confirmation email is attached as
20 **Exhibit 6**.

21 8. The PAGA Settlement Agreement warrants a presumption of fairness for several
22 reasons: (1) The Parties reached the Settlement through arm's-length bargaining with the aid of a
23 respected mediator; (2) The Parties conducted sufficient investigation and discovery to allow
24 Counsel and the Court to act intelligently. Plaintiff requested and Defendants provided the number
25 Aggrieved Employees, the number of total pay periods during the PAGA Period, time and payroll
26 records, Point of Sales ("POS") records, and all policies in effect during the relevant time period;
27 and (3) Counsel for the Parties are experienced with PAGA cases.

28 9. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest
with the absent Aggrieved Employees. Plaintiff contends that he is an adequate PAGA
representative. Plaintiff and the Aggrieved Employees have strong and co-extensive interests in
this litigation because they all worked for Defendants during the relevant time period under the



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 same written and unwritten policies, allegedly suffered the same alleged injuries from the same
2 alleged course of conduct, and there is no evidence of any conflict of interest between Plaintiff
3 and the Aggrieved Employees. As this is a PAGA-only claim, there is no issue of ascertainability.
4 However, Plaintiff maintains that the number of Aggrieved Employees is ascertainable because
5 they may be identified by reference to Defendants' records and Defendants has agreed to share
6 the relevant information from their records to facilitate the process. Therefore, the number of
7 Aggrieved Employees and their whereabouts are ascertainable.

8 *Background of Counsel*

9 10. I am experienced in handling employment law matters and specifically wage and
10 hour cases. I have been practicing law since 1995. My experience has been almost exclusively in
11 the area of employment law representing employees with claims of wrongful termination,
12 harassment, whistleblower retaliation, discrimination, wage and hour, and family and medical
13 leave violations. I have tried many cases before California and federal courts, government
14 agencies and neutral arbitrators. I am a member of the California Employment Lawyers
15 Association (CELA).

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

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

24 B. *Jorge Guzman v. Department of Justice*, United States District Court,
25 Central District of California (the Honorable Lourdes Baird presiding), 1999. Plaintiffs Special
26 Agent for the Immigration and Naturalization Service alleged racial discrimination, retaliation
27 and police brutality by agents of the Office of the Inspector General. Jury found the defendants
28 liable. Case settled shortly before the damages phase. *See* "U.S. to Pay \$400,000 to INS Agent in
Bias Suit; Courts: Complaint says he suffered 10 years of harassment on the job because he is



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 Latino, including falsified charges" by Patrick J. McDonnell, *Los Angeles Times*, January 21,
2 1999.

3 C. *Dr. Perry Crouch v. SHIELDS*, Los Angeles Superior Court, Compton (the
4 Honorable Michael Rutberg presiding), 2001. Plaintiff whistleblower brought civil rights claims
5 and wrongful termination claims against employer in a month-long jury trial. The jury awarded
6 compensatory and punitive damages. See "Activist Says Criticism of Rail Plan Cost His Job" by
7 Dan Weikel, *Los Angeles Times*, September 28, 2000; "Punitive Damages Awarded to Fired
8 Social Worker" by Dan Weikel, *Los Angeles Times*, June 10, 2000; "A Whistleblower's Revenge"
9 by Susan Goldsmith, *New Times Los Angeles*, June 8, 2000.

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

17 E. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
18 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated Customs
19 Agent, followed by an award of Attorneys' fees and costs.

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

25 G. *Alina Ghrdilyan v. RJ Financial, Inc.*, et al., LA Superior Court case no.
26 BC430633 (2012), the Honorable Ronald Sohigian presiding. To my knowledge, this case is the
27 first and only case to be successfully prosecuted through trial under the Labor Code Private
28 Attorney Generals Act of 2004, Labor Code §§ 2698, *et seq.* on behalf of plaintiffs and other
aggrieved employees against someone other than an employer for civil penalties including unpaid
wages. The case involves claims of unpaid overtime, unprovided rest and meal periods, unpaid
vacation, untimely interval and final wages, and unreimbursed expenses. For my work in that



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 case, the Court awarded me an hourly rate of \$600.00 hour based on my skill and experience.

2 12. I have been involved in the prosecution of numerous wage and hour class and
3 representative actions at various stages of litigation. A small sampling of the representative wage
4 and hour cases in which I have been counsel of record is as follows:

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

8 B. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
9 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
10 court on behalf of nonexempt employees).

11 C. *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case
12 No. BC465017 (appointed Class Counsel and granted final approval by this Court of class action
13 settlement on behalf of merchandiser employees).

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

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

21 F. *Evans v. Equinox, et al.*, Los Angeles Sup.Ct., Case No. BC440058
22 (appointed Class Counsel and granted final approval by this Court of class action settlement on
23 behalf of personal trainer employees).

24 G. *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No.
25 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
26 action settlement on behalf of medical devices employees).

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

I. *La Fleur v. Medical Management International, Inc.*, United States District
Court, Central District of California, Case No. EDCV13-00398-VAP (appointed Class Counsel



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 and granted final approval of class action settlement on behalf of practice managers).

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

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

8 L. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
9 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
10 on behalf of dairy and agricultural laborers).

11 M. *Montes v. Branam Enterprises, Inc.*, Los Angeles Sup.Ct. Case No.
12 BC442608 (appointed Class Counsel and granted final approval by this Court of class action
13 settlement on behalf of call concert rigging employees).

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

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

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

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

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

S. *Stucker v. L'Oreal*, Los Angeles Sup.Ct. Case No. BC456080 (appointed



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 Class Counsel and granted final approval by this Court of class action settlement involving alleged
2 misclassification of sales employees and unpaid vacation pay).

3 T. *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No.
4 BC462917 (appointed Class Counsel and granted final approval by this Court of class action
5 settlement on behalf of service account manager employees).

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

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

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

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

20 *Exposure & Risk Analysis*

21 13. I considered various sources of information in the lead-up to, during and after the
22 mediation that enabled Plaintiff to achieve the Settlement at issue. Among other things, I
23 considered the following:

- 24 • Defendants produced and Plaintiff reviewed his personnel file.
- 25 • Defendants produced and Plaintiff reviewed and analyzed time and payroll
26 records for over 574 Aggrieved Employees.
- 27 • Defendants produced and Plaintiff reviewed and analyzed Point of Sales
28 (“POS”) records for Plaintiff and the Aggrieved Employees.
- Plaintiff requested that Defendants produce any and all relevant policies
regarding Plaintiff’s claims and Defendants produced those policies in effect during the relevant
time period.



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 • Plaintiff analyzed the state of caselaw on PAGA claims, claims and related
2 claims.

3 • Plaintiff surveyed the outcomes of PAGA cases that went to trial or
4 otherwise concluded before trial.

5 14. Defendants have posed valid defenses to the Labor Code claims underlying
6 Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face significant uncertainty. There
7 is a risk that the Court would consider the maximum civil penalty available to be confiscatory.
8 This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a significant
9 discount for settlement purposes. For mediation purposes, I estimated a maximum exposure of
10 approximately \$9,147,150.00 in civil penalties. This estimate did not take into account any of the
11 risks discussed above and assumed a violation for every single pay period. Plaintiff's counsel also
12 assessed multiple penalties for the same pay period for the same alleged violations of different
13 Labor Code provisions and derivative violations. Although two federal district court decisions
14 held that "stacking" PAGA penalties in this fashion may be appropriate to determine the amount
15 in controversy for purposes of removal jurisdiction, I am not aware of any California state courts
16 awarding plaintiffs multiple PAGA penalties for the same violation for the same pay period under
17 different Labor Code provisions. This may be because the PAGA does not provide for what many
18 employers characterize as claim splitting and not merely stacking.

19 15. In preparation for mediation and during the settlement negotiations that followed,
20 Defendants disclosed that there were approximately 1,143 potentially aggrieved employees and
21 23,780 pay periods. The maximum possible civil penalties under the PAGA is the total number
22 of pay periods with one or more violations multiplied by the maximum possible civil penalty
23 amount per pay period. Unfortunately for the employees concerned, the potential for recovery of
24 the maximum possible civil penalties depends on circumstances that are extremely unlikely
25 independently and in combination. It would depend on the Court stacking the maximum
26 recoverable civil penalties for all pay periods for all potentially aggrieved employees during the
27 PAGA Period. Plaintiff's counsel is not aware of any California State court decision awarding a
28 plaintiff and the other aggrieved employees he represents multiple civil penalties for the same pay
period under different Labor Code provisions. Plaintiff's counsel had to substantially discount the
value of these claims in the settlement negotiations for this and a variety of other reasons (outlined
below).



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

16. **Risks Associated with Plaintiff's Claim That Defendants Failed To Pay All Earned Wages at the Correct Rates of Pay.** There is a risk that Plaintiff's claim that Defendants did not pay all wages at the correct rates of pay would be extremely limited at best, largely because Defendants' written policies throughout the relevant time period prohibited off-the-clock work. Off-the-clock claims are difficult where a Defendants require in their written policies that all work must take place while clocked in. In their written employment policies, Defendants mandate that employees must record all time worked accurately on their time records and strictly prohibit employees from performing any work off-the-clock. As part of the mediation discovery, Defendants also produced their store POS records which show customer transactions entered by the Aggrieved Employees. Although the POS records show certain activities taking place off the clock, individualized evidence may be necessary to determine whether they occurred due to conduct of the Defendants or each of the employees concerned and whether Defendants had knowledge of the off-the-clock work. Although Defendants dispute that off-the-clock work occurred, they contend that any time spent off the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense even if compensable (Stating that "We do not decide whether there are circumstances where compensable time is so minute or irregular that it is unreasonable to expect the time to be recorded."). Following *Troester*, Defendants contend that the *de minimis* doctrine may apply here because the time spent off the clock were minute and insignificant. Accordingly, a large award of civil penalties seems unlikely with respect to this claim.

17. The difficulty inherent in proving that off-the-clock work occurred poses a significant hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim. Here, Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given the lack of records indicating when such off-the-clock work may have taken place. Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual in fact worked "minutes" off-the-clock on a "regular" basis. Accordingly, there is a significant risk that the Court would consider this evidentiary showing insufficient as a methodology for all aggrieved employees and find such claims unmanageable at trial.

///



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 18. **Risks Associated with Plaintiff's Claim That Defendants Failed To Provide**
2 **All Meal Periods.** There are risks to Plaintiff's claims that Defendants failed to provide all meal
3 periods. Defendants contend that, to establish a violation of the meal period law, a plaintiff must
4 do more than show that a meal break was not taken. Defendants contend they did not impede or
5 discourage Plaintiff, or any other employees, from taking their meal periods. Defendants' policies
6 mandate that employees take at least a 30-minute, uninterrupted meal periods and record the
7 beginning and ending time of their meal breaks each day on their time records. The time records
8 that comprise the random sample Defendants produced to Plaintiff for purposes of mediation
9 show that meal periods were often taken. Of the time records that show a late, short or no lunch,
10 individualized evidence may be necessary to determine whether they occurred due to conduct of
11 the Defendants or each of the employees concerned.

12 19. **Risks Associated with Plaintiff's Claim That Defendants Failed To Authorize**
13 **or Permit Rest Breaks.** There are risks to Plaintiff's claims that Defendants failed to authorize
14 or permit rest breaks. Employers are not required to record rest periods and such periods are paid.
15 Defendants contend they provided non-exempt employees the opportunity to take rest periods in
16 accordance with California law. Further, Defendants' written policies on meal and rest periods
17 are consistent with the Wage Order. Thus, unlike meal periods, where there are often records
18 showing whether an employee clocked out or not, there is no such evidence to prove a missed rest
19 period or that the employer refused to authorize and permit one. Managing such claims at trial
20 has become exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys
21 to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw
22 makes such claims risky from a trial management and due process perspective.

23 20. **The Absence of Large Civil Penalty Awards under PAGA.** The sole source of
24 money recoverable for the Aggrieved Employees and the State is civil penalties available under
25 PAGA. It allows employees to seek civil penalties for certain violations of the Labor Code so
26 long as the penalties are not unjust, arbitrary, oppressive, or confiscatory. As discussed above,
27 Plaintiff's maximum estimated liability exposure is based on the theories that: (1) Every paycheck
28 that Defendants issued to employees during the PAGA Period represents a pay period in which
29 every Aggrieved Employee suffered a minimum wage violation; (2) Every paycheck that
30 Defendants issued to employees during the PAGA Period represents a pay period in which every
31 Aggrieved Employee suffered an overtime wage or meal period violation; and (3) Every paycheck



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 that Defendants issued to employees during the PAGA Period represents a pay period in which
2 every Aggrieved Employee suffered a rest period violation. There are no California state court
3 decisions under the PAGA to date with substantial awards of civil penalties. Plaintiff's counsel is
4 aware of only two significant awards under the PAGA in a contested proceeding, both issued by
5 federal district courts, one of which was overturned on May 28, 2021.⁶

6 21. Additionally, PAGA states a court has discretion to award a lesser amount than
7 the maximum penalty. Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*
8 (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the
9 Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's
10 evidence of willful and intentional conduct. *Carrington v. Starbucks (2018) 30 Cal.App.5th 504*
11 ("*Carrington*") illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily
12 discounted award of only \$5 per violation because it was within the Court's discretion to

13 ⁶ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
14 penalties under the PAGA of \$12,277,500.00 where total adjusted damages were
15 \$18,695,692.58. In this regard, the district court stated,

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

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

30 In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court
31 awarded approximately \$102 million in damages, primarily based on the Defendants' failures to
32 comply with the requirements of California Labor Code section 226. On May 28, 2021, the
33 United States Court of appeals for the Ninth Circuit overturned the decision finding that there is
34 no technical wage statement violation for a failure to list the rates and hours of pay associated
35 with adjustments to overtime pay. *Magadia v. Wal-Mart Assocs.*, No. 19-16184, 2021 U.S. App.
36 LEXIS 16070 (9th Cir. May 28, 2021).



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 significantly reduce PAGA penalties even when there is a finding that a violation of the California
2 Labor Code occurred. Under *Carrington*, assuming two (2) violations for each pay period for all
3 Aggrieved Employees, will result in a recovery of \$237,800 (23,780 x 2 x \$5 = \$237,800).

4 22. Moreover, judges have awarded extremely small sums to PAGA claimants in the
5 past. In *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court, case number BC430633 in
6 which I represented the Plaintiffs, the employer underpaid commission overtime wages. The
7 plaintiffs sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial,
8 the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties
9 under the PAGA. A true and correct copy of the amended judgment in *Ghrdilyan* is attached as
10 **Exhibit 7**. A true and correct copy of the first amended complaint in *Ghrdilyan* is attached as
11 **Exhibit 8**. A true and correct copy of the judgment transcript in *Ghrdilyan* is attached as **Exhibit**
12 **9**, 19:8-20:19. In a similar PAGA case before the Los Angeles Superior Court, *Shields v. Security*
13 *Paving Company, Inc.*, LA Superior Court case no. BC492828, on October 24, 2017, the court
14 awarded the prevailing PAGA plaintiff civil penalties totaling only \$50.00. A similar result could
15 occur here. A true and correct copy of the judgment in *Shields* is attached as **Exhibit 10**.

16 23. Defendants could also convince the Court to dismiss the claims due to
17 unmanageability because determining whether each Aggrieved Employee worked off the clock
18 or why each employee missed a meal or rest period would require separate mini-trials. *Id. See,*
19 *Mendiola v. CPS Sec. Solutions, Inc.* (2015) 60 Cal.4th 833. In *Ortiz v. CVS Caremark Corp.*, the
20 court dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at *3–4 (N.D.
21 Cal. 2014). The *Ortiz* court cited the “multitude of individualized assessments” that case would
22 have required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*, and
23 dismissed PAGA claims where, there are a large number of allegedly aggrieved individuals whose
24 claims require individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL 5904904,
25 at *3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D. Cal. 2015);
26 *see also Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal. 2014)
27 (bifurcating trial of plaintiff’s claim from representative claims: “in light of the number of
28 potential aggrieved employees, judicial economy favors deferring the representative portion of
the PAGA claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May 13,
2015). Further, on September 9, 2021, the California Court of Appeal issued a decision in *Wesson*
v. Staples The Office Superstore, LLC, 68 Cal. App. 5th 746 (2021), reh'g denied (Sept. 27, 2021)



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 holding that trial courts have authority to ensure that claims under PAGA are manageable, and
2 that courts may limit or strike unmanageable PAGA claims.

3 24. **Expense Associated with Taking the Case to Trial.** I estimate that the cost of
4 taking this case to trial will exceed \$500,000 in attorney fees and costs alone.

5 25. As stated above, Defendants offer \$280,000.00 to resolve this controversy. The
6 Parties have also agreed to a separate payment to Plaintiff of \$15,000 for a general release of his
7 individual (non-PAGA) claims pursuant to a separate confidential settlement agreement. Plaintiff
8 will present the confidential agreement to the Court if requested.

9 26. While the evidence gathered through Plaintiff's discovery supports the merits of
10 the claims asserted in this lawsuit, the settlement is fair, reasonable, and adequate in light of the
11 risks associated with the merits of Plaintiff's claims, the uncertainties of complex litigation, the
12 cost of pretrial and trial proceedings, the Court's discretion to lower the amount of penalties
13 ultimately awarded, and the secured benefit to the Aggrieved Employees and the LWDA
14 promoting compliance with the Labor Code.

15 27. Each Aggrieved Employee will receive a portion of the civil penalties on a pro-
16 rata basis depending on the number of pay periods Defendants employed them for during the
17 PAGA Period. With a total of approximately 1,143 Aggrieved Employees, the average estimated
18 individual Settlement Payment for each Aggrieved Employee is approximately \$32.63
19 (\$37291.67 / 1,143 Aggrieved Employees). Although an average payment of \$32.63 per
20 Aggrieved Employee is not an enormous sum of money, it is an excellent result given the
21 uncertainties this lawsuit entails. It is also reasonable given the structure and purpose of the
22 PAGA. The PAGA is not a restitution statute with a traditional damages provision designed to
23 restore victims to the position they would have been in had the Labor Code violations not taken
24 place. Rather, it is at best a punishment statute designed to reduce future Labor Code violations.
25 It provides for civil penalties only.

26 28. Further, PAGA obligates the prevailing plaintiff to disburse 75% of the civil
27 penalties collected to the State. Within the framework he is bound by, Plaintiff, considering the
28 evidence he faced, achieved a phenomenal result for the employees concerned. What's more, the
Settlement Plaintiff achieved permits the employees concerned who are dissatisfied with the
amount they received in civil penalties to pursue any unpaid restitution, wages, interest, statutory
penalties, and attorney fees and costs they believe they are owed in arbitration pursuant to their



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 agreements with the Defendants. The Settlement does not require them to opt out to do so. As
2 such, there is no basis for objection even if the PAGA permitted it.

3 *Attorneys' Fees and Costs*

4 29. My co-counsel and I intend to request attorneys' fees of \$93,333.33 (1/3 of the
5 Gross Settlement Amount) and up to \$17,500.00 in litigation expenses. The written retainer
6 agreement I entered into with Plaintiff provides that I may elect to recover either (a) statutorily
7 awarded attorney fees or (b) up to 40% of any recovery.

8 30. Should the Court elect to use Plaintiff's Counsel's lodestar as the method for
9 awarding fees, notwithstanding courts' clear preference for the percentage method, Plaintiff's
10 Counsel's fee request of \$93,333.33 (one-third of the Gross Settlement Amount) is fair and
11 reasonable based on their lodestar as cross-checked against the percentage of the recovery. In this
12 case, Plaintiff's Counsel have a total lodestar of approximately \$133,745.50 without the use of
13 any multiplier, which results in a negative multiplier of 0.70 when compared against the
14 \$93,333.33 fee request. A true and correct summary of the time records of my firm is attached as
15 **Exhibit 11** to this declaration. I will make the detailed copies of such records available to the
16 Court for in camera inspection upon its request. I will have waited for a lengthy period to be
17 awarded attorneys' fees for work performed since Plaintiff first contacted my office, compared to
18 Defendants' counsel who have been paid as they performed work during this case. Moreover, my
19 co-counsel and I have expended time, effort, and money that we could have expended on less
20 risky cases instead.

21 31. My firm's current litigation costs total approximately \$17,674.49. A true and
22 correct summary of my firm's costs and expense is attached as **Exhibit 12** to this declaration. I
23 will make detailed copies of such records available to the Court for in camera inspection upon its
24 request. I anticipate that I will incur an additional \$121.94 in costs, which consist of filing fees
25 and attorney service fees for filing this motion, appearance fees for the hearing on this motion,
26 and notice of entry of order. Thus, I anticipate my firm's litigations costs will total approximately
27 \$17,796.43 through final accounting of the Settlement. Including the out-of-pocket expenses
28 incurred by my co-counsel⁷, Plaintiff's Counsel request a total of \$17,797.52 in reasonable

⁷ My co-counsel's current out of pocket expenses total approximately \$1.09. See Haines Decl. ¶ 11.



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

litigation costs.⁸

32. In addition, based on my experience in wage and hour class action and PAGA 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 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 Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., 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 Sup.Ct., 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 Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., 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

⁸ My co-counsel and I do not seek reimbursement for the wages we paid to the attorneys, paralegals, and legal assistants to aid in the representation of the Aggrieved Employees. We bore these expenses over the time since this lawsuit began without expectation of reimbursement.



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 Sup.Ct., Case No. RIC1114952 (one-third of fund); *Shaw, et al. v. Interthinx, Inc.*, United States
2 District Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB (one-third of
3 fund); *Ogbuehi v. Comcast of California/ Colorado/ Florida/ Oregon, Inc.*, United States District
4 Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN (one-third of fund);
5 *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court, Case No. BC462681 (one-
6 third of fund); *Volney-Parris v. Southern California Edison Company*, Los Angeles Superior
7 Court, Case No. BC493038 (one-third of fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior
8 Court, Case No. BC480808 (one-third of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern
9 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).

10 33. My previous experience in litigating wage and hour class and representative
11 actions supports the reasonableness of the fee request, as does the caliber of opposing counsel.
12 My previous experience in similar matters was integral in evaluating the strengths and weaknesses
13 of the case against Defendants and the reasonableness of the Settlement. Practice in the narrow
14 field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving
15 substantive law, state and federal, as well as the procedural law of class action litigation. Because
16 it is reasonable to compensate me commensurate with my skill, reputation, and experience,
17 attorneys' fees of approximately one-third of the Gross Settlement Amount is reasonable.
18 Likewise, the caliber and experience of opposing counsel in labor and employment litigation
support the fairness and reasonableness of the requested fee award.

19 *Settlement Administration Duties*

20 34. The duties of the Administrator are spelled out in the in the bid by Simpluris,
21 Inc. ("Simpluris, Inc."), a true and correct copy of which is attached as **Exhibit 13**.

22 35. With regard to the Administrator's Expenses Payment provision, it is reasonable.
23 Before agreeing to Simpluris, Inc., the Parties sought and reviewed bids from other reputable
third-party administrators which provided higher bids:

- 24 A. Apex Class Action Administration = \$8,000.00; and
- 25 B. ILMY Group, Inc. = \$9,950.00.
- 26 C. Xpand = \$6,500

27 A true and correct copy of the bid from Apex Class Action Administration is attached hereto as
28 **Exhibit 14**. A true and correct copy of the bid from ILMY Group, Inc. is attached hereto as



SPIVAK LAW
EMPLOYEE RIGHTS

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

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

1 **Exhibit 15.** true and correct copy of the bid from Xpand is attached hereto as **Exhibit 16.** Thus,
2 the Administrator's Expenses Payment provision should be given approval.

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

5 Executed on Friday, February 07, 2025 at New York, New York.

6 

7 DAVID SPIVAK,
8 Declarant
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23



24 SPIVAK LAW
25 EMPLOYEE RIGHTS

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

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