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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

SHANE ABBOTT, individually, and on behalf of other members of the general public similarly situated, Plaintiff, v. SAUNDERS CONSTRUCTION, INC., a California corporation; and DOES 1 through 100, inclusive, Defendants.	Case No. 24CV428659 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Hearing Date: January 15, 2026 Hearing Time: 1:30 p.m. Judge: Hon. Charles F. Adams Department: 7 Trial Date: None Action Filed: January 5, 2024

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I. INTRODUCTION

Plaintiff SHANE ABBOTT ("Plaintiff") seeks final approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims ("Agreement")[1], which, if approved, will provide valuable monetary relief for 91 Settlement Class Members who were employed by Defendant Saunders Construction, Inc. ("Defendant") during the Class Period from January 5, 2020, through March 6, 2025.

In an order dated May 28, 2025, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Shani O. Zakay ("SOZ Dec."), ¶ 4. On July 11, 2025, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail. Declaration of Stacey Shim ("Apex Dec."), ¶ 7. ***The Class greeted news of the Settlement with unanimous approval as 100% of Class Members chose to participate in the Settlement.***[2] There were zero opt-outs and zero objections to the Settlement. Apex Dec., ¶¶ 11-12. The unanimous approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. SOZ Dec., ¶ 8.

An objective evaluation of the proposed settlement of Six Hundred Thousand Dollars and Zero Cents ($600,000.00) ("Gross Settlement Amount") confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is the product of informed, adversarial, and non-collusive negotiations between experienced counsel that were presided over by Jason Marsili, Esq., a highly regarded mediator. After deducting any Court-approved Attorneys' Fees and Attorneys' Expenses, the Service Award, Claims Administration Expenses, and the PAGA Payment, the Net Settlement Amount shall be distributed to the Settlement Class Members based on the number of Workweeks they worked while employed by Defendant during the Class Period. SOZ Dec., ¶ 8.

This Settlement provides substantial recovery to Settlement Class Members. Plaintiff estimates that the Settlement, if approved, will result in a Net Settlement Amount of approximately **$313,510.00.** This will result in an average Individual Settlement Payment of **$3,445.16,** and a high payment of **$6,464.65**. Apex Dec., ¶ 16. Aggrieved Employees will receive an estimated average Aggrieved Employee Payment of **$68.68** and a high payment of **$127.30.** SOZ Dec., ¶ 9; Apex Dec., ¶ 18.

The relief offered by the Settlement is immediate and is particularly impressive when viewed

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[2] As of the filing date of this Motion, 1 Notice was deemed undeliverable. Apex Dec. at ¶ 10.

against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra)*. Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain litigation. SOZ Dec., ¶ 10.

As discussed below, the proposed Settlement satisfies all criteria for final settlement approval under California law and falls well within the range of reasonableness. Accordingly, the Class Representative and Class Counsel respectfully request that this Court grant final approval of the Agreement and enter the proposed Final Approval Order and Judgment. SOZ Dec., ¶ 11.

II. OVERVIEW OF THE LITIGATION

Defendant owns and operates a contracting business, specializing in commercial seismic retrofits, in the State of California, including in Santa Clara County, where Plaintiff worked. Plaintiff was employed by Defendant as a non-exempt, hourly-paid employee from approximately March 2023 to approximately June 2023. At all times during his employment, Plaintiff earned an hourly wage of $20.00 per hour and was entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout his employment, Plaintiff was subject to Defendant's written policies and procedures contained in, among other documents, the "Saunders Construction Code of Safe Practices" and Employee Handbook. SOZ Dec., ¶ 12; Declaration of Shane Abbott ("SA Dec."), ¶ 3.

Defendant forcefully denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, compliant compensation policies and plans, compliant meal and rest practices, substantially compliant wage statements, and timely payment of all wages due upon separation of employment. SOZ Dec., ¶ 13.

On October 31, 2023, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commission ("IWC") Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, California Labor Code Sections

2698 et seq. ("PAGA"). SOZ Dec., ¶ 14.

On January 5, 2024, Plaintiff filed a complaint in this Court, alleging a single cause of action for violations of PAGA (the "Action"). SOZ Dec., ¶ 15.

On January 5, 2024, Plaintiff also filed a separate class action in the Orange County Superior Court, Case No. 30-2024-01371302-CU-OE-CXC ("Class Action"), alleging claims for: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); and (10) Violation of California Business and Professions Code §§ 17200, *et seq*. SOZ Dec., ¶ 16.

Early on, the Parties agreed to mediate. To prepare for mediation, the Parties agreed to informally produce documents and data points subject to the mediation privilege, including but not limited to, a sample of the Class Members' time data and certain payroll data points. Defendant produced, among other things, time and payroll records for 66% of the Class, aggregate workweek and pay period data, and copies of applicable handbooks, policies, and procedures. In total, Defendant produced nearly 300 pages of documents and hundreds of thousands of unique cells of time and payroll data. As discussed *infra,* Plaintiff's counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data. SOZ Dec., ¶ 17.

On December 6, 2024, the Parties participated in a full-day mediation with Jason Marsili, Esq., a highly regarded mediator of wage and hour class and PAGA actions. After arm's-length negotiations and bargaining, the mediation concluded with a settlement, which was subsequently memorialized in the form of a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. SOZ Dec., ¶ 18.

In order to facilitate the settlement, on February 6, 2025, Plaintiff filed a First Amended Complaint in this Action adding the class claims from his Class Action. On February 11, 2025, Plaintiff dismissed his separate Class Action without prejudice. SOZ Dec., ¶ 19.

On May 28, 2025, this Court granted preliminary approval of the Settlement. SOZ Dec., ¶¶ 4, 20. On July 11, 2025, the Settlement Administrator mailed the Notice Packets to all 91 Settlement Class Members. Apex Dec., ¶7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The response from the Settlement Class to the Settlement has been outstanding - 100% of the Class Members are participating in the Settlement. Apex Dec., ¶¶11-14.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved a Gross Settlement Amount of Six Hundred Thousand Dollars and Zero Cents ($600,000.00) based on Defendant's estimate that the Settlement Class would be comprised of 154 individuals who would have worked a total of approximately 12,993 Workweeks during the Class Period. After the Court granted preliminary approval, Defendant confirmed the actual number of Class Members and Workweeks and determined the total number of Workweeks actually worked by the Settlement Class was 13,073.14 and that there were actually 91 Class Members during the Class Period. Per the Agreement, there was no escalator clause, so the Gross Settlement Amount remained at Six Hundred Thousand Dollars and Zero Cents ($600,000.00). SOZ Dec., ¶ 21.

If the Court grants this motion for final approval, the Gross Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Service Award; (3) to satisfy the Attorneys' Fees and Attorneys' Expenses Payments; (4) to satisfy the PAGA Payment; and (5) to satisfy the Claims Administration Expenses incurred in this action. SOZ Dec., ¶ 22.

Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified Settlement Fund within thirty (30) calendar days after the Effective Date. Agreement, § I(O). The Settlement Administrator shall mail the Individual Settlement Payments and Aggrieved Employee Payments to the Settlement Class Members and/or Aggrieved Employees no later than fourteen (14) calendar days after the Funding Date. Agreement, § III(M)(7). The Settlement Administrator will calculate Individual Settlement Payments by dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class Members during the Class Period and multiplying the result by each Settlement Class Member's Workweeks. Agreement, § III(M)(1). The estimated average Individual Settlement Payment is approximately **$3,445.16.** SOZ Dec., ¶ 23; Apex Dec., ¶ 16.

In exchange for the valuable consideration, upon the final entry of judgment and funding of the Gross Settlement Amount, all Settlement Class Members who have not opted-out will release the Defendant from the Released Class Claims that accrued during the Class Period. The Aggrieved Employees, the LWDA, and the State of California will release the Released Parties from the Released PAGA Claims for the PAGA Period. Agreement at § III(B-C).

Apex Class Action LLC was appointed as the Settlement Administrator for the Class. The Claims Administration Expenses Payment includes those expenses of effectuating and administering the Settlement, i.e., the costs incurred by the Settlement Administrator, the costs of giving notice to the Class, the costs of administering and disbursing the Individual Settlement Payments, and the fees of the Settlement Administrator approved for reimbursement by the Court. The Claims Administration Expenses are $6,490.00. Apex Dec., ¶19. These expenses shall be paid from the Gross Settlement Amount. Agreement, §§ I(F); III(M)(12).

Subject to Court approval, Class Counsel shall seek payment of Attorneys' Fees and Attorneys' Expenses in the amount of Two Hundred Forty-Five Thousand Dollars and Zero Cents ($245,000.00). The Attorneys' Fees are equal to thirty-five percent (35%) of the Gross Settlement Amount and are estimated to be Two Hundred Ten Thousand Dollars and Zero Cents ($210,000.00). The Attorneys' Expenses are reimbursement of actual costs and expenses in the amount of up to Thirty-Five Thousand Dollars and Zero Cents ($35,000.00). The Attorneys' Fees Payment will be divided between Class Counsel as follows: 32.5% to JCL Law Firm, APC, 32.5% to Zakay Law Group, APLC, and 35% to Lawyers for Justice, PC. Agreement, § I(E). The Agreement also provides for a Class Representative Service Award Payment of up to $10,000.00 to Plaintiff in recognition of his efforts and risks in assisting with the prosecution of the Action. Agreement, § I(HH).

The Settlement provides for a PAGA Payment of Twenty-Five Thousand Dollars and Zero Cents ($25,000.00). Seventy-five percent (75%) of the PAGA Payment ($18,750.00) will be paid to the LWDA and twenty-five percent (25%) of the PAGA Payment ($6,250.00) will be distributed to the

Aggrieved Employees on a pro rata basis according to the number of PAGA Pay Periods each Aggrieved Employee worked during the PAGA Period. Agreement, § I(W); III(M)(11). The estimated average Aggrieved Employee Payment is approximately **$68.68**. Apex Dec., ¶18.

As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by the Settlement Class, the absence of any objections to the Settlement, and the average Individual Settlement Payment of **$3,445.16**. Apex Dec., ¶¶11-16; SOZ Dec., ¶ 23.

IV. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS

Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th 259, 265. In evaluating settlements, the courts have long recognized that compromise is particularly appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 ("[V]oluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation").

"[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The court must decide whether the proposed settlement falls within the range of reasonable settlements, considering that settlements are compromises between the parties reflecting subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. *See also Wershba v. Apple Computer*, Inc. (2001) 91 Cal.App.4th 224, 246 (The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial."). In *Wershba*, appellants argued that the settlement was too low given the "clear" liability, however, the Court rejected this argument and held that "the merits of the underlying class claims are not a basis for upsetting the settlement of a class action." *Wershba*, *supra*, at 246; *see also 7-Eleven*, *supra*, at 1150.

In these cases, Courts have repeatedly emphasized that there is a strong initial presumption that the compromise is fair and reasonable. *Wershba*, *supra,* 91 Cal.App.4th at 245. Courts should not substitute their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The presumption of fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91. Here, all of these factors support a presumption of fairness.

The essential evaluation is whether, given the risks of litigation and the range of probable results, the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. Here, the facts and circumstances compel the conclusion that the proposed settlement satisfies that standard.

V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

The court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *see also Officers for Justice v. Civil Service Com'n* (9th Cir. 1982) 688 F. 2d 615, 625. The purpose of the requirement is "the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." *Dunk*, *supra*, at 1801.

The trial court has broad discretion to determine whether the settlement is fair. *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. "The well-recognized factors that the trial court should consider in evaluating the reasonableness of a class action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.' [Citations.]" *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408.

The list of factors is not exhaustive and should be tailored to each case. *Dunk*, *supra*, at 1801. Due regard should be given to what is otherwise a private consensual agreement between the parties. *Id.* The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.* "Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross approximations and rough justice.' [Citation omitted.]" *Id.*

These factors are analyzed seriatim below and all support final approval of the class action settlement before this Court.

A. <u>Class Counsel Conducted a Thorough Investigation.</u>

As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel assessed the value of the class claims using data and documents provided by Defendant through informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding the number of Class Members, Workweeks, and average rate of pay to assess damages before mediation. Class Counsel retained Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data to formulate damage models estimating Defendant's liability exposure. Class Counsel's investigation, research, experience, and damage models informed and guided the mediated negotiations that resulted in this settlement. Accordingly, Plaintiff's Counsel fully understood the strengths and weaknesses of the class claims before the parties reached a settlement. SOZ Dec., ¶ 24-31.

B. <u>The Parties Settled at Mediation</u>.

On December 6, 2024, the Parties participated in a full day mediation with Jason Marsili, Esq., an experienced mediator of wage and hour class and PAGA actions. Mediator Marsili helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with the mediator's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluations of the damages. After a day of arm's length and adversarial negotiations, the mediation concluded with a settlement. The complete and final terms of the Parties' settlement are now set forth in the Agreement. No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiff's service on behalf of the Class. SOZ Dec., ¶ 32.

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C. Class Counsel is Experienced in Similar Litigation.

Class Counsel in this matter has extensive class action experience in multiple fields and has represented tens of thousands of persons in class actions. Counsel has previously litigated similar wage and hour class actions involving similar claims. Class Counsel has been approved as class counsel in similar wage and hour class actions throughout the State of California. As such, courts throughout California have deemed Class Counsel experienced and knowledgeable in this area of law. Class Counsel has participated in every aspect of the settlement discussions and has concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. SOZ Dec., ¶¶ 33-34; Declaration of Jean-Claude Lapuyade ("JCL Dec."), ¶¶ 14-18; Declaration of Brian J. St. John ("St. John Dec."), ¶¶ 13-18.

D. The Settlement Class Responded Positively to the Settlement.

The reaction of the Settlement Class unequivocally supports approval of the Settlement. Significantly, after dissemination of the notice to the Settlement Class, which provided each class member with the terms of the Settlement, including the specific estimated Individual Settlement Payments, ***none*** of the Class Members opted out of the Settlement. Moreover, there are ***zero*** objections. Stated differently, **100%** of the Settlement Class chose to participate in the Settlement. SOZ Dec., ¶ 8; Apex Dec., ¶¶ 11-12, 14.

The high approval by the Settlement Class strongly supports a finding that the Settlement is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation* (S.D.N.Y. 2000)80 F.Supp.2d 164, 175 ("If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement."); *Stoetzner v. U.S. Steel Corp.* (3d. Cir. 1990) 897 F.2d 115, 118-119 (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the proposed settlement should be considered when determining fairness of settlement.). Consequently, Class Counsel respectfully request the Court to follow the high approval of the Settlement Class and grant final approval of the Settlement.

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E. <u>The Maximum Settlement Amount is Fair and Reasonable.</u>

The Gross Settlement Amount of Six Hundred Thousand Dollars and Zero Cents ($600,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar* court acknowledged that "as the court does when it approves a settlement as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of reasonableness." *Kullar*, *supra,* at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).)

Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250. While the Gross Settlement Amount of Six Hundred Thousand Dollars and Zero Cents ($600,000.00) represents a discount on Defendant's potential exposure if Plaintiff established liability on all claims and was awarded the full amount of the estimated damages at trial, this compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk that could award significantly less in damages than Plaintiff's estimate and (2) any theoretical post-trial recovery may require many more years of litigation, resulting in added fees and costs without any guarantee of recovery for the Class. SOZ Dec., ¶ 35.

As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Class Counsel developed varied economic damages models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. As detailed in greater depth during the preliminary approval process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on behalf of the Settlement Class. The Gross Settlement Amount of $600,000.00 represents approximately 34.33% of Defendant's total *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. SOZ Dec., ¶ 36.

In *Stovall-Gusman v. W.W. Grainger, Inc.,* 2015 U.S. Dist. LEXIS 78671, at * 4, the District

Court for the Northern District of California granted final approval in a wage and hour misclassification action and found that the Gross Settlement Amount representing 10% of the estimated trial award was within the "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000) 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing "roughly one-sixth of the potential recovery." Given the amount of the settlement here as compared to potential value of the claims, particularly the strength of Plaintiff's action, the settlement is clearly fair and reasonable[3].

The calculation methodology used to compensate the Settlement Class for the alleged damages was negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and impartial. The calculation methodology is based on the number of Workweeks each Settlement Class Member worked for Defendant during the Class Period. The number of Workweeks for the Settlement Class Members is established through Defendant's data and documented compensation records. The Settlement Administrator is responsible for calculating the Individual Settlement Payments by dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class Members during the Class Period and multiplying the result by each Settlement Class Member's Workweeks. Agreement, § III(M)(1). This process establishes an objectively fair and reasonable procedure to compensate the Settlement Class.

After deduction of the Claims Administration Expenses, the PAGA Payment, and the Class Representative Service Award, the Net Settlement Amount is currently estimated to be **$313,510.00**. Apex Dec., ¶15. The average settlement payment is approximately **$3,445.16**, and the highest is approximately **$6,464.65**. Apex Dec., ¶16. This average net recovery is greater than many wage and hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores,* No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of approximately $80); *Fukuchi v. Pizza Hut,* Case No. BC302589 (LA. County Super. Ct.) (average net

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[3] *See also Viceral v. Mistras Grp., Inc*. (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately $29 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); *see also In re Newbridge Networks Sec. Litig.* (D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2 ("Courts have not identified a precise numerical range within which a settlement must fall in order to be deemed reasonable; but an agreement that secures roughly six to twelve percent of a potential trial recovery, while preventing further expenditures and delays and eliminating the risk that no recovery at all will be won, seems to be within the targeted range of reasonableness.").

recovery of approximately $120); *Contreras v. United Food Group, LLC,* Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately $120); *Ressler v. Federated Department Stores, Inc.,* Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately $90); *Doty v. Costco Wholesale Corp.,* Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately $65); *Sorenson v. PetSmart, Inc.,* Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately $60); *Lim v. Victoria's Secret Stores, Inc.,* Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately $35); and *Gomez v. Amadeus Salon, Inc.,* Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately $20). Additionally, Defendant must separately fund its share of any employer side payroll taxes. Agreement, § III(A)(4).

Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval. SOZ Dec., ¶ 37.

F. <u>The Strength of Plaintiff's Case and Risks of Continued Litigation</u>

Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or, at least, drastically undercut Plaintiff's claims. SOZ Dec., ¶ 38. As the federal court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:

> ***In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and likely duration of further litigation likewise favors the settlement.*** Regardless of how this Court might have ruled on the merits of the legal issues, the losing party likely would have appealed, and the parties would have faced the expense and uncertainty of litigating an appeal. The expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement.

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court's denial of class certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). SOZ Dec., ¶ 39.

Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of Defendant's liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."). SOZ Dec., ¶ 40.

Finally, even if a class is certified and Defendants are found liable for the class claims alleged, post-certification risks remain, including a reversal of a favorable judgment for Plaintiff and decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded a $110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action). SOZ Dec., ¶ 41.

Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. SOZ Dec., ¶ 42.

Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically affect the value of Plaintiff's claims and, in fact, already has. SOZ Dec., ¶ 43.

In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900 at * 19-20 (N.D. Cal. 2009), granted approval of an overtime class action settlement and explained:

> **Plaintiffs may have a strong case, but the risks inherent in continued litigation are great**. Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service Associates were misclassified as exempt. In addition to the uncertainties raised by Defendants at the preliminary stage regarding Plaintiffs' chance of success in this case, Defendants notes that the question of an employer's duty to provide rest and meal periods is an open one, signaling even less certainty for Plaintiffs.....[**T]he Total Settlement amount and the Class Members' expected net recovery, after fees and other costs are deducted, appear to be a reasonable compromise, in light of the risks of litigation**.

See also Browning v. Yahoo!, Inc., 2007 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiffs' case, legal uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor approval.").

As recognized in a federal decision approving settlement of an overtime wage class action:

> **The potential complexity and possible duration of trial also weigh in favor of granting final approval**. Plaintiffs acknowledge the difficulties of proving damages, recognize the uncertainty of outcome, and believe defendant would appeal in the event of adverse judgment. A post-judgment appeal would require many years to resolve and delay payment to class members. Plaintiffs believe the benefits of a guaranteed recovery today outweigh an uncertain future result. Accordingly, plaintiffs argue, and the Court agrees, the actual recovery confers substantial benefits on the class that outweigh the potential recovery through full adjudication.

Barcia v. Contain-A-Way, Inc., 2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009); see also *Louie v. Kaiser Foundation Health Plan, Inc*., 2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008).

In sum, while other cases have approved class certification in wage and hour claims, class certification in this action would have been hotly disputed and was by no means a foregone conclusion. Where both sides face significant uncertainty, as here, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.)

As demonstrated by the decisions in *Magadia, supra,* 999 F.3d 668, *O'Conner v. Uber Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to post a bond and appeal. A post-judgment appeal by Defendant would have required many more years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh an uncertain result three or more years in the future. SOZ Dec., ¶ 44.

The Class Representative and Class Counsel recognize the expense and length of a trial against Defendant through possible appeals which could take another three years. In arriving at their informed belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Class Representatives and Class Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable, and adequate, and should be granted final approval. SOZ Dec., ¶ 45.

VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE REASONABLE

Where settlements "negotiate a good faith amount" for PAGA settlements and "there is no indication that this amount was the result of self-interest at the expense of class members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.,* No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA settlements in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

Here, Plaintiff and Defendant negotiated a good faith PAGA Payment in the amount of $25,000.00 which is 4.2% of the Gross Settlement Amount. As illustrated above, this amount falls well within the range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Payment ($18,750.00) will be paid to the LWDA with the remaining twenty-five percent (25%) of the PAGA Payment ($6,250.00) to be distributed to the Aggrieved Employees, which is within the range of PAGA Payments approved by courts and should be approved. SOZ Dec., ¶ 46.

Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval with the LWDA. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Payment. SOZ Dec., ¶¶ 5-6, 47.

VII. CONCLUSION

Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness established in California law and should therefore be finally approved as fair, reasonable, and adequate and requests entry of the Final Approval Order and Judgment submitted herewith.

Dated: December 17, 2025

ZAKAY LAW GROUP, APLC

By: ______________________
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