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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

GIOVANNI CISNEROS and MANUEL VARGAS, individuals, on behalf of themselves, and on behalf of all persons similarly situated, Plaintiffs, v. SAVAGE INFRASTRUCTURE LLC (formerly known as SAVAGE SERVICES CORPORATION), a Utah corporation; and DOES 1-50, Inclusive, Defendants.	Case No: STK-CV-UOE-2023-2575 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: Time: Judge: Hon. Barbara Kronlund Dept.: 10D

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I. INTRODUCTION

Plaintiffs GIOVANNI CISNEROS and MANUEL VARGAS (collectively "Plaintiffs") seek preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims ("Agreement")[1] to resolve all claims brought against Defendant Savage Infrastructure LLC (formerly known as Savage Services Corporation) ("Defendant") in their consolidated class and representative actions. If approved, the Agreement would provide valuable monetary relief for approximately 348 Class Members. The basic terms of the Agreement provide for the following:

1. The **"Class Members" or the "Class"** is comprised of two sub-classes:

   a. The Cisneros Class Members means all non-exempt employees who are or previously were employed by Defendant and performed work in California during the period from May 17, 2021 to July 31, 2024 (the "Cisneros Class Period"). Agreement at §I(E)-(F);

   b. The Vargas Class Members means all exempt drivers who are or previously were employed by Defendant and performed work in California during the period from period defined as March 16, 2020 to July 31, 2024 (the "Vargas Class Period"). Agreement at §I(UU)-(VV).

   As used herein, the "Class" means all Cisneros Class Members and Vargas Class Members. Agreement at §I(G).

2. The "**Settlement Class Members**" or "**Settlement Class**" means all Cisneros Class Members and Vargas Class Members who have not submitted a timely and valid request for exclusion as provided in the Agreement. Agreement at §I(TT).

3. **"Aggrieved Employees"** means all Cisneros Class Members and Vargas Class Members who are or previously were employed by Defendant and performed work in California during the period of February 22, 2022 to July 31, 2024 (the "PAGA Period.") Agreement at §§I(C), I(GG).

4. The "**Gross Settlement Amount**" or "GSA" is Five Hundred Thousand Dollars and Zero Cents ($500,000.00). Agreement at §I(V). The Gross Settlement Amount is non-reversionary and

[1] The Agreement is attached as Ex "A" to the Declaration of Jean-Claude Lapuyade ("JCL Dec.") at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

includes the following:

a. "**Service Awards**" in the amount of $10,000.00 per Plaintiff, or in an amount that the Court authorizes to be paid to each of the following Plaintiffs: Giovanni Cisneros and Manuel Vargas, for their services on behalf of the Class Members. Agreement at §I(RR).

b. "**Class Counsel Fees Payment**" to be paid to Class Counsel for the services they have rendered to Plaintiffs and the Settlement Class in the Action, not to exceed one-third of the Gross Settlement Amount. Attorneys' Fees will be divided between Class Counsel as follows: 35% to JCL Law Firm, APC, 35% to Zakay Law Group, APLC, and 30% to Makarem & Associates, APLC, subject to court approval. Agreement at §I(K).

a. "**Class Counsel Litigation Expenses"** to be paid to Class Counsel for the expenses they have incurred of up to $30,000. Agreement at §I(L).

b. A "**PAGA Payment**" of Twenty-Five Thousand Dollars ($25,000.00) shall be allocated from the Gross Settlement Amount for settlement of PAGA Claims asserted in the Action. Agreement at §I(HH). The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment to the Labor and Workforce Development Agency ("LWDA Payment"). The Settlement Administrator shall distribute the remaining twenty-five percent (25%) of the PAGA Payment to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement at §I(D), I(Z), III(R)(11).

c. "**Claims Administration Expenses**" paid to the Claims Administrator, Apex Class Action Settlement Administration, from the Gross Settlement Amount for administering the Settlement, currently estimated not to exceed $7,990. Agreement at §§I(H)- (I).

7. The "**Net Settlement Amount**" of approximately Two Hundred Fifty Thousand Three Hundred Forty-Three Dollars and Thirty-Three Cents ($250,343.33) (Gross Settlement Amount minus the Service Awards, Class Counsel Fees Payment, Class Counsel Litigation Expenses, PAGA Payment and Claims Administration Expenses) will be allocated to all Settlement Class Members as follows: 50% for the Cisneros Class Members and 50% for the Vargas Class Members. Within each sub-class, Individual Settlement Payments will be paid on a pro-rata basis. The respective Workweeks for each Cisneros Class Member and Vargas Class Member will be divided by the total Workweeks for all

Cisneros Class Members and Vargas Class Members, respectively, resulting in the Class Payment Ratio for each Cisneros Class Member and Vargas Class Member. Each Cisneros and Vargas Class Members' Class Payment Ratio will then be multiplied by the 50% allocated amount of the Net Settlement Amount applicable to the Cisneros Class Members and the Vargas Class Members to calculate each Class Member's estimated Individual Settlement Payments. The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement Class. Agreement at §I(R)(1).

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class Members is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length. The Settlement confers substantial benefits to the Class Members. **This is a cash settlement**. Every Class Member who does not opt out of the Settlement will automatically be mailed an individual settlement payment. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by Plaintiffs pursuing wage and hour cases (*see infra).* Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial. JCL Dec., ¶ 7.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Settlement Payment to the Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the proposed classes are appropriate for provisional certification. Accordingly, Plaintiffs respectfully request the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 8.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant provides transportation, logistics, materials handling, and other industrial services. Plaintiff Cisneros was employed by Defendant as a non-exempt employee from March of 2022 to October of 2022. Plaintiff Vargas was employed by Defendant from January 2004 to September 8, 2023 as driver. Defendant maintains that Plaintiff Vargas was classified as an exempt employee. Throughout their employment, Plaintiffs were subject to Defendant's written policies and procedures.

JCL Dec., ¶ 9.; Declaration of Vargas at ¶ 4; Declaration of Cisneros at ¶ 4.

Generally, Plaintiffs claim that Defendant failed to pay minimum wages and overtime wages, failed to provide compliant meal and rest periods, failed to furnish accurate itemized wages statements, failed to pay all wages when due and failed to reimburse for mandatory business expenses. Defendant forcefully denies liability for each of Plaintiffs' claims. Further, Defendant asserts that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims, including but not limited to, compliant meal and rest period policies, compliant wage statements, reimbursement for all required business expenses, and payment of all wages upon separation. JCL Dec., ¶ 10.

Plaintiffs exhausted the administrative requirements of the PAGA. Plaintiff Vargas submitted a PAGA Notice to the LWDA on February 22, 2023 and served the same on Defendant via certified mail. Plaintiff Cisneros submitted a PAGA Notice to the LWDA on March 14, 2023, and served the same on Defendant. Via certified mail. Both PAGA Notices outline the facts and theories underlying their claims.

<u>The Vargas Action</u>

On April 28, 2023, Plaintiff Vargas filed a Complaint alleging a single cause of action against Defendant for Violation of the Private Attorneys General Act (Labor Code sections 2698, et. seq.)

<u>The Cisneros Action</u>

On March 16, 2023, plaintiff Cisneros filed a class action complaint against Defendant, in the San Joaquin County Superior Court, Case Number STK-CV-UOE-2023-0002575 *("Cisneros* Action"). The *Cisneros* Action alleged the following: (1) Unfair Competition in violation of Business and Professions Code§ 17200 *et seq* Failure to Pay Wages; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime; (4) Failure to Provide Meal Periods as Required; (5) Failure to Provide Rest Periods as Required; (6) Failure to Reimburse Employees for Required Expenses; (7) Failure to Provide Wages When Due; and (8) Failure to Provide Accurate Itemized Wage Statements. Plaintiff Cisneros amended his complaint on September 7, 2023, in order to add an eighth cause of action for violation of the PAGA. After the settlement was reached, Plaintiff Cisneros filed a Second Amended Complaint, which amended his class and PAGA action to add Plaintiff Vargas as a named plaintiff, along with his claims and factual allegations. This is the Operative Complaint, and this Class and PAGA action is referred to herein as the "Action".

Prior to mediation, the Parties engaged in further investigation and the exchange of documents and information in connection with the Action. As part of this process, Defendant provided a significant sample of time records and payroll records, policies, as well as other documents and information, to Class Counsel to review and analyze. On April 2, 2024, the Parties participated in a full day mediation with Louis Marlin, Esq., an experienced mediator of wage and hour class and PAGA actions. After arms-length negotiations and bargaining, the Parties reached an agreement to settle following their acceptance of a mediator's proposal, and signed 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. JCL Dec., ¶ 11.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began their pre-filing investigation into the Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiffs. As part of the interview process, Plaintiffs produced documents related to their employment, including payroll documents. At the conclusion of the interviews, Class Counsel determined that each of Plaintiffs' complaints appeared to substantiate Plaintiffs' claims that Defendant failed to, among other things, pay for all time worked, failed to provide compliant meal and rest periods, failed to reimburse for all mandatory business expenses, failed to issue accurate itemized wage statements, and failed to pay all wages when due. JCL Dec., ¶ 12.

To prepare for mediation, Class Counsel requested documents and data points to further evaluate Plaintiffs' claims and Defendant's liability exposure to the Class Members. In response to Class Counsel's request, Defendant produced, among other things, the time and payroll records for a representative sampling of the Class Members, aggregate workweek and pay period data, and copies of applicable policies, and agreements. In total, Defendant produced nearly 800 pages of pertinent documents for Class Members for Class Counsel to analyze. JCL Dec., ¶ 13.

Class Counsel then retained the statisticians and economists at Berger Consulting Group ("BCG") to evaluate the Class Members' payroll and time data. BCG provides data analysis and damage modeling consulting services specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. Stated differently, the BCG is uniquely qualified to analyze Defendant's time and payroll data. JCL Dec., ¶ 14.

Prior to mediation, BCG analyzed the time and payroll data provided by Defendant to assist in the development of various damage models. Among other things, BCG's analysis estimated the number of workweeks, pay periods, average rate of pay, and the regular rate of pay. BCG also estimated the amount of unreimbursed business expenses, unpaid wages due to off-the-clock work and regular rate violations, the number of missed, late, or truncated meal and rest periods, number of missed meal and rest period premiums paid during the Class Period and the amount of resulting PAGA penalties for identified Labor Code violations. JCL Dec., ¶ 15.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiffs' suitability as a putative class representatives through interviews, background investigations, and analysis of their employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class's time and payroll data; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 16.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiffs' claims. Based on its investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel believes this Agreement to be in the best interest of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 17.

C. The Parties Settled at Mediation

On April 2, 2024, the Parties conducted a full day of mediation with Louis Marlin, Esq., an experienced wage and hour mediator. Louis Marlin helped 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 evaluation of the damages. At the conclusion of the mediation, the Parties reached a settlement following their acceptance of a mediator's proposal, which was subsequently memorialized in the form of a Memorandum of Understanding. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 18.

D. The Proposed Settlement Fully Resolves Plaintiffs' Claims

1. <u>The Composition of the Settlement Class Members and Aggrieved Employees</u>

The proposed Settlement Class consists of two sub-classes: all non-exempt employees who are or previously were employed by Defendant and performed work in California during the period from May 17, 2021 to July 31, 2024 (Cisneros Class), and all exempt drivers who are or previously were employed by Defendant and performed work in California during the period from period defined as March 16, 2020 to July 31, 2024 (the Vargas Class). The Settlement Class excludes any person who submits a timely and valid request for exclusion. In the data exchanged prior to the Mediation, there were approximately 348 Class Members (162 individuals in the Cisneros Class and 186 individuals in the Vargas Class) who worked an estimated 31,500 workweeks through the conclusion of their respective Class Periods (14,000 workweeks worked by the Cisneros Class through the conclusion of the Cisneros Class Period, and 17,500 workweeks worked by the Vargas class through the conclusion of the Vargas Class Period). JCL Dec., ¶ 19.

2. <u>The Settlement Consideration</u>

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of $500,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class; (2) Service Awards of not more than $10,000 per Plaintiff, for Plaintiffs' services on behalf of the Settlement Class; (3) a PAGA Payment in the amount of $25,000,00; (4) Claims Administration Expenses estimated to be $7,990.00; (5) Class Counsel Fees Payment not to exceed one-third of the Gross Settlement Amount (estimated to be $166,666.66) plus Class Counsel Litigation Expenses not to exceed $30,000 for actually incurred litigation expenses. See generally Agreement at §§ I(I), I(K), I(L), I(RR).

Subject to the Court approving the Service Awards, Class Counsel Fees Payment, Class Counsel Litigation Expenses, PAGA Payment, and the Claims Administration Expenses, the Net Settlement Amount will be allocated as follows: $50% to the Cisneros Class Members, and 50% to the Vargas Class Members. Within each sub-class, the Settlement Class Members will be paid their Individual Settlement Payments on a pro-rata basis, based on the number of workweeks they worked for Defendant. Agreement at § III(R)(1). There is no reversion to Defendant. Agreement at § I(V)..

3. <u>The Funding Date</u>

Defendant will fund the Total Settlement Amount of $500,000.00 within sixty (60) days of the Effective Date. Each payment shall include a proportionate share of employer payroll taxes due. Agreement at §I(U).

4. <u>Formula for Calculating Individual Settlement Payments</u>

Individual Settlement Payments shall be paid from the Net Settlement Amount and shall be paid pursuant to the formula set forth herein. Using the Class Data, the Claims Administrator shall add up the total number of Workweeks for all Cisneros Class Members and Vargas Class Members, respectively. The respective Workweeks for each Cisneros Class Member and Vargas Class Member will be divided by the total Workweeks for all Cisneros Class Members and Vargas Class Members, respectively, resulting in the Class Payment Ratio for each Cisneros Class Member and Vargas Class Member. The Net Settlement Amount shall be allocated as follows: 50% for the Cisneros Class Members and 50% for the Vargas Class Members. Each Cisneros and Vargas Class Members' Class Payment Ratio will then be multiplied by the 50% allocated amount of the Net Settlement Amount applicable to the Cisneros Class Members and the Vargas Class Members to calculate each Class Member's estimated Individual Settlement Payments. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.).

Individual Settlement Payments for Class Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their respective Class Payment Ratios. Agreement at § III(R)(1).

5. Release by Settlement Class Members

The Cisneros Class:

Upon entry of Judgment and funding of the Gross Settlement Amount, the Cisneros Class Members release Defendant and the Released Parties from all claims that were alleged, or reasonably could have been alleged based on the facts and claims alleged in the Operative Complaints and/or the Action which occurred during the Cisneros Class Period, and expressly excluding claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Cisneros Class Period. Agreement at § I(MM). The Released Parties are Defendant Savage Instructure LLC, and any of its past, present, and future parents, affiliates, subsidiaries, predecessors, successors, and assigns, and each of their officers, directors, board members, trustees, shareholders, employees, agents, attorneys, auditors, accountants, experts, contractors, stockholders, representatives, partners, insurers, reinsurers, and other persons acting on their behalf. Agreement at § I(PP).

The Vargas Class:

Upon entry of Judgment and funding of the Gross Settlement Amount, the Vargas Class Members release Defendant and the Released Parties from all claims that were alleged, or reasonably could have been alleged based on the facts and claims alleged in the Operative Complaint and/or Action which occurred during the Vargas Class Period, and expressly excluding any and all claims arising from or related to meal breaks, failure to take meal breaks, and/ or failure to pay meal premiums in lieu of providing meal breaks, rest breaks, failure to take rest breaks, and/or failure to pay rest premiums in lieu of providing rest breaks, and vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Vargas Class Period. Agreement at § I(NN).

6. PAGA Release by the State of California on Behalf of the Aggrieved Employees

Upon entry of Judgment and funding of the Gross Settlement Amount, and in exchange for the consideration set forth in this Agreement, the Plaintiffs, and the LWDA release the Released Parties from the Released PAGA Claims. The Released PAGA Claims include all PAGA claims that were alleged or reasonably could have been alleged based on the facts and claims alleged in the Operative Complaint, Action, and/or Plaintiffs' PAGA notices to the LWDA which occurred during the PAGA Period, and expressly excluding claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period. Agreement at § II(OO). As a result of this release, the Aggrieved Employees shall be precluded from bringing claims against Defendant for the Released PAGA Claims that occurred within the PAGA Period.

III. ARGUMENT

A. The Court Should Preliminarily Approve the Proposed Class Action Settlement

The proposed Settlement, including a Total Settlement Amount of $500,000.00, meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation and settlement are the preferred means of dispute resolution.").) Class action settlement approval requires an early "preliminary" review by the trial court and a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases,* 180 Cal. App. 4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").)

Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a "reasonable range." (*See North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions,* §§ 11.26 (4th ed. 2002).) Reasonableness and fairness are presumed where: (1) the settlement is reached through "arms-length bargaining;" (2) investigation and discovery are "sufficient to allow counsel and the court to act intelligently;" (3) counsel is "experienced in similar litigation. . . . ." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California's public policy goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 ("the law wisely favors settlements"); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 ("public policy generally favors the compromise of complex class action litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 ("voluntary conciliation and settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class action litigation").)

Additionally, in reviewing the fairness of a class action settlement, due regard should be given to what is "otherwise a private consensual agreement between the parties." (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389.) 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.*)

1. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel.

"[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's fairness." (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg, § 11.51.)

The Parties participated in mediation with Louis Marlin, Esq., an experienced wage and hour class action mediator. Louis Marlin managed the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig,* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.").) At all times, the Parties' negotiations were at an arm's length, adversarial, and non-collusive. The Parties reached a settlement following their acceptance of a mediator's proposal. The Parties subsequently drafted and negotiated a long-form settlement which is the subject of the instant motion. The Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 20.

2. Class Counsel's Thorough Investigation Provided an Objective Measurement of the Settlement's Reasonableness.

As detailed *infra*, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. Prior to mediation, Class Counsel fully assessed the nature and magnitude of the claims being settled, as well as the impediments to recovery. Ultimately, Class Counsel made an informed and independent assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 21.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiffs' claims. Based on this investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 22.

3. The Settlement Falls Within the Recognized Range of Reasonableness.

The Total Settlement Amount of $500,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require [] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.[2] Indeed, "[t]he determination whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.'" (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).) JCL Dec., ¶ 23.

a. <u>The Total Settlement Amount Meets the Recognized Range of Reasonableness</u>.

The Total Settlement Amount of $500,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage 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. Class Counsel projected Defendant's liability exposure for *class claims* (excluding PAGA Penalties) at $2,798,501.25. Thus, the Total Settlement Amount of $500,000.00 represents 18% of Defendant's class-wide liability exposure as estimated by Class Counsel at the time of mediation. The following summarizes Defendant's liability exposure. JCL Dec., ¶ 24.

(1) <u>Defendant's Estimated Exposure for Violations of Section 226(a)</u>

Plaintiffs alleged that the wage statements provided by Defendant failed to include the total hours worked, in violation of Labor Code Section 226(a)(2). Defendant maintains that its wage statements are compliant, as the employees can ascertain the required information by performing simple math, and moreover, that Plaintiffs will be unable to establish any injury as a result of the alleged violation. Taking Defendant's defenses into account, Plaintiff estimated Defendant's exposure for this claim to be $292,025.00. JCL Dec., ¶ 25.

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[2] Federal district courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat'l Rural Telecomm. Coop. v. Directv. Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery"); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436, 460 ("settlement amount's ratio to the maximum potential recovery need not be the sole, or even dominant, consideration when assessing settlements fairness"); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184 ("the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims"); *Officers for Justice v. Civil Serv. Comm.* (9th Cir. 1982) 688 F.2d 615, 628 (it is "the complete package, taken as a whole rather than the individual component parts, that must be examined for overall fairness").

(2) Regular Rate of Pay Violations for Purposes of Overtime, Meal Break and Sick Pay

Plaintiffs alleged that Defendant failed to include incentive compensation payments, labeled on wages statements as "Other Bonus", "Premium Pay", "Sign On Bonus", and "Quarterly Bonus" in the regular rate of pay for purposes of overtime, meal period premiums, and redeemed sick pay. Plaintiffs alleged that this error resulted in underpayment in every instance in which a non-discretionary bonus was earned during the same period that an employee earned overtime, was paid a meal period premium, or redeemed sick pay. Defendant denied liability for this claim and argued, among other things, that the incentive compensation was discretionary, and thus was properly excluded from the calculation of employees' regular rates of pay. Taking into account Defendant's defenses, Plaintiffs estimated Defendants' exposure for this claim at $14,412.00. JCL Dec., ¶ 26.

(3) Defendants' Estimated Exposure for Failure to Pay Wages

Plaintiffs alleged that Defendant required Class Members to perform work off-the-clock work before and after their shifts. Specifically, the Plaintiff Cisneros alleged that the Cisneros Class Members regularly had open the yard gate and portable while off-the-clock, along with checking the tank cars, recording every tank car at the time, and setting up pumps for truck drivers. Plaintiff Vargas alleged that the Vargas Class would arrive at work and have to wait, sometimes in excess of an hour, for a truck to become available before they could clock in. Defendant denied requiring any work performed off-the-clock, and further argued that this claim was not suitable for class treatment because individualized issues predominated. Taking Defendant's defenses into account, Plaintiff estimated Defendant's exposure for this claim to be $1,212,988.00. JCL Dec., ¶ 27.

(4) Defendant's Unlawful Meal Period Practices

Plaintiff Cisneros alleges that Defendants violated the law by (a) failing to provide meal periods; (b)providing late meal periods; and (c) interrupting meal periods. Plaintiff Cisneros alleged he and others were often instructed to clock out but continue working, creating a synthetic paper trail of meal breaks. Plaintiffs Cisneros also alleges that meal periods were often interrupted when a truck would arrive on site, and he and other members of the Cisneros Class were instructed to begin working again. Lastly, Plaintiff Cisneros alleges that based on the data produced by Defendant, more than a quarter of all shifts between 5-6 hours did not included a recorded first meal break, over 87% of shifts between 10-12 hours did not include a second recorded meal break, and Defendant did not produce any meal break waivers. Conversely, Defendant argued that it provided Class Members and Aggrieved Employees with the opportunity to take compliant meal periods, and it implemented meal break waivers. Defendant also argued that they paid some meal premiums. Taking not account Defendant's defenses, Plaintiff Cisneros estimated Defendants' exposure for this claim to be $421,526.50. JCL Dec., ¶ 28.

(5) Defendant's Failure to Reimburse All Necessary Business Expenditures

Plaintiffs alleged that Class Members were required to use their personal cell phones, maintain and purchase tools and launder their uniform/fire resistant work apparel in connection with their job duties for Defendant but were not reimbursed for these expenses. Plaintiffs alleged that despite written policies in place, Defendant in practice would call employees on their personal cell phones during work hours, discuss work obligations and give work directives. Plaintiffs alleged Defendant failed to reimburse Plaintiffs and Class Members for these costs they incurred, in violation of California Labor Code Section 2802. Plaintiffs estimate Defendants' exposure for this claim to be $57,667.50. JCL Dec., ¶ 29.

(6) Defendant's Estimated Exposure for Rest Period Violations

Plaintiff Cisneros alleged that Defendant failed to provide compliant rest periods and failed to pay the required premiums. Due to the press of the business and their work duties, Plaintiff Cisneros and members of the Cisneros Class were often unable to take compliant rest breaks. Again, Defendant denies liability and asserts that it maintained legally compliant rest period policies and practices throughout the Class Period, and that employees were provided an opportunity to take a legally compliant rest break. Plaintiff recognizes the evidentiary burdens establishing this claim. Establishing Plaintiff Cisneros's rest period claim would rely, almost entirely, on Cisneros Class Member testimony, making it a riskier claim at class certification and liability stages. Certification likely would have required depositions of Class Members who provided declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. See, e.g., *Ordonez v. Radio Shack, Inc*. (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11

("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices."). In light of the above, Plaintiff Cisneros estimated Defendant's exposure for this claim to be $421,526.50. JCL Dec., ¶ 30.

(7) <u>Defendant's Estimated Exposure for Waiting Time Penalties</u>

Plaintiff also alleges that Defendant's Labor Code violations resulted in derivative liability for waiting time penalties. Although these penalties represented one of Defendant's largest dollar amount of exposure, this is Plaintiff's most uncertain claim. Specifically, Defendant argues that Plaintiff cannot prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, the California Supreme Court's decision in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056 (2024) creates difficulty in Plaintiffs succeeding in a purely derivative waiting time penalty claim. Plaintiffs could not give the waiting time penalty claim great weight given that it depends on proving the underlying claims, which had their own risks. Plaintiffs estimated Defendant's exposure for these claims at $378,355.75. JCL Dec., ¶ 31.

(8) <u>Defendant's PAGA Exposure</u>

Class Counsel's damage models also estimated Defendant's exposure for PAGA Payment. At the time of mediation, Plaintiffs estimated Defendant's PAGA exposure to be approximately $935,275.00 if successful at trial. JCL Dec., ¶ 32. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a good faith amount" for PAGA Payment 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 Payment 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, the Parties negotiated a good faith PAGA Payment in the amount of $25,0000.00 which is 5% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment. Seventy-Five percent (75%) of the PAGA Payment ($18,750.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment (6,250.00) will be distributed to the Aggrieved Employees, which is within the range of PAGA payments approved by courts and should be approved. JCL Dec., ¶ 33.

Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from $2,800,000 to $500,000, a reduction of 82.2%, because the court found maximum penalties "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming an award of $0 in PAGA penalties in a wage and hour class action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

Carrington v. Starbucks Corp., 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims. In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after Plaintiff prevailed at trial, and even then, the PAGA penalties were reduced by 90%. For the aforementioned reasons, the PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable.

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

"It can be difficult to ascertain with precision the likelihood of success at trial. The Court cannot and need not determine the merits of the contested facts and legal issues at this stage, [Citation], and to the extent courts assess this factor, it is to 'determine whether the decision to settle is a good value for a relatively weak case or a sell-out of an extraordinary strong case.'" (*Misra v. Decision One Mortg. Co.*

(C.D. Cal. 2009) 2009 WL 4581276, at *7.)

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 *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); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *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."); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *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). 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. JCL Dec., ¶ 34.

"The Settlement eliminates these and other risks of continued litigation, including the very real risk of no recovery after several years of litigation." (*In re Nvidia Derivs. Litig*. (N.D. Cal. 2008) 2008 WL 5382544, at *3.) Indeed, potential appeals aside, litigating a complex case through trial is inherently perilous regardless of the strengths of merits of the claims:

> [N]othing is assured when litigating against commercial giants with vast litigative resources, particular in such complex litigation as this, which would strain the cognitive capacities of any jury. Defense judgments were hardly beyond the realm of possibility. Accordingly, this factor weighs in

favor of preliminary approval.

(*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1140, *opinion modified* (June 18, 1990).)

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions, which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 35. "Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation." (*Nat'l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (*Id*. at 526.)

Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 36.

B. The Proposed Notice Informs the Class about the Case and Settlement

The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal. App. 3d 143, 151-52.) The notice must advise class members "that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion." (*Kass,* 67 Cal.App.3d at 106.) Authorities generally require service of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)[3]

[3] Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice. *Fontana v. Elrod* (7^{th} Cir. 1987) 826 F.2d 729, 732.

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definitions, the procedure and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the released claims. See generally Agreement at § III(L). The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. JCL Dec., ¶ 37.

Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi* Strauss (1986) 41 Cal.3d 460,485 (the class notice must "fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.").) JCL Dec., ¶ 38.

C. The Court Should Preliminarily Approve the Class Representative Service Award

Enhancement payments "are fairly typical in class action cases." (*Cellphone Termination Fee* Cases (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of $10,000); *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002) § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study,* 53 UCLA L. Rev. 1303 (2006).) Enhancement payments "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." (*Rodriguez,* 563 F.3d at 958-59.) "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785.)

The Settlement provides for Service Awards of up to $10,000 for Plaintiff Cisneros and $10,000 for Plaintiff Vargas,[4] subject to the Court's approval. The service awards are fair and reasonable

[4] The amount of the requested enhancement payments is reasonable by reference to the amounts that California courts (both federal and

compensation for Plaintiffs' efforts bringing the actions, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of their case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. JCL Dec., ¶ 39.

Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Service Awards once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Service Awards. JCL Dec., ¶ 40.

D. The Court Should Preliminarily Approve the Class Counsel Fees Payment

The purpose of an award of a Class Counsel's attorney's fees in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. California courts routinely award attorneys' fees equaling one-third or more of the potential value of the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 ("Empirical studies show that regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study, J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent with market rates).

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiffs' claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed award of Class Counsel Award is fair and reasonable. JCL Dec., ¶ 41.

Plaintiffs will file a formal motion for the negotiated award of the Class Counsel Fees Payment

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state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Magee v. American Residential Services, LLC,* No. BC423798 (LA. County Super. Ct Apr. 21, 2011) (awarding $15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC,* No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding $15,000 enhancement payments to the named plaintiffs); *Zamora v. Balboa Life & Casualty LLC,* No. BC360026 (LA. County Super. Ct. Mar. 7, 2013) (awarding $25,000 enhancement payments to the named plaintiffs); *Aguiar v. Cinguar Wireless. LLC,* No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding $14,767 enhancement payment).

once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 42.

E. Plaintiff's Settlements of their FEHA Claim Against Defendant

Both Plaintiffs have alleged FEHA claims against Defendant. Plaintiff Cisneros submitted a complaint to the California Civil Rights Department and obtained a Right to Sue letter on October 11, 2023. The complaint asserted claims for harassment, discrimination, failure to prevent harassment and discrimination, retaliation and wrongful termination. Plaintiff Vargas filed a separate action in Los Angeles County Superior Court (Case No. 24STCV06671) against Defendant alleging claims for discrimination, failure to prevent discrimination, failure to accommodate, failure to engage in the interactive process, retaliation, and wrongful termination. Separate from the Class and PAGA settlement, Plaintiffs each entered into an individual settlements with Defendant in which each Plaintiff granted Defendant a broad release of all claims, including, for Plaintiff Cisneros, the claims alleged in his California Civil Rights Dept. Complaint, and for Plaintiff Vargas, the claims alleged in his separate lawsuit. Plaintiffs will file their settlement agreements under seal for the Court to review in camera, at the Court's request. JCL Dec., ¶ 43.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement only, Plaintiffs contend, and Defendant does not dispute, that provisional certification of the Cisneros Class and the Vargas Class is appropriate. JCL Dec., ¶ 44.

1. <u>The Standard for Class Certification</u>

Class actions are statutorily authorized "when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court" (*Cal.Civ.Proc*. Code § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class certification is appropriate when there is an "ascertainable class and a well-defined community of interest among class members." (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment is appropriate even if class members at some point may be required to make an individual showing as to eligibility for recovery. (*Bufil v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207; *Sav-On,* 34 Cal.4th at 333.)

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2. The Proposed Settlement Class is Ascertainable and there is a Well-Defined Community of Interest Among the Settlement Class Members.

Whether a class is "ascertainable" within the meaning of Code of Civil Procedure section 382 is "determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." (*Lee,* 166 Cal.App.4th at 1334.) Class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records. (*Id.*)

The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a class representative and counsel who can adequately represent the class. (*Cal. Civ. Proc. Code* § 382.)

In April 2012, the Supreme Court expounded on the element of predominance: The "ultimate question" the element of predominance presents is whether "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." (*Brinker,* 53 Cal. 4th at 1021-1022 (citations omitted).)

Because all Class Members are Defendant's current and former employees, the class is readily ascertainable from Defendant's regular business records, i.e., payroll records. JCL Dec., ¶ 45.

The statutes relating to each of Plaintiff Cisneros' claims and Plaintiff Vargas' claims apply with equal force and effect to the entire Cisneros Class and Vargas Class, respectively. Factually, Defendant's policies and practices apply class-wide, and Defendant's liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class. JCL Dec., ¶ 46.

Plaintiffs' wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Settlement Class. Plaintiffs allege that they were injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 47.

Additionally, Plaintiffs are represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. JCL Dec., ¶ 48; 50-55.; Declaration of Shani O. Zakay at ¶ 3; Declaration of Samuel D. Almon, Esq. at ¶¶ 2 – 13.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. JCL Dec., ¶ 55.

IV. CONCLUSION

The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately presented the materials and information necessary for preliminarily approval, the Parties request that the Court preliminarily approve the settlement.

Dated: September 23, 2025

ZAKAY LAW GROUP, APLC

By: ______________________________

Jaclyn Joyce, Esq.

Attorney for Plaintiffs