ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
shani@zakaylaw.com
Eden Zakay (State Bar #339536)
eden@zakaylaw.com
Nicole Noursamadi (State Bar #357246)
nicole@zakaylaw.com
Jaclyn Joyce (State Bar # 285124)
jaclyn@zakaylaw.com
3110 Camino Del Rio S, Suite 308
San Diego, CA 92108
Telephone: (619) 255-9047

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
jlapuyade@jcl-lawfirm.com
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292

Attorneys for PLAINTIFFS

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, Plaintiff, 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 FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: July 22, 2026 Time: 9:00 a.m. Judge: Hon. John Soldati Dept.: 10D

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES, CODES, AND STATUTES

SECONDARY SOURCES

I. INTRODUCTION

Plaintiffs GIOVANNI CISNEROS and MANUEL VARGAS (collectively "Plaintiffs") seek final 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 settlement would provide valuable monetary relief for 390 Settlement Class Members who were employed by Defendant during the Class Periods.

In an order dated December 19, 2025, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Shani O. Zakay ("SOZ Dec."), ¶ 4. On January 2, 2026, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail. Declaration of Madely Nava ("Apex Dec."), ¶ 7. ***The Class greeted news of the Settlement with 100% approval.*** There are zero objections to the Settlement and zero requests for exclusion. Apex Dec., ¶¶ 11-12. The 100% participation rate by the Class evidences the clear fairness and reasonableness of the Settlement.

An objective evaluation of the proposed settlement of Five Hundred Thousand Dollars and Zero Cents ($500,000.00) ("Gross Settlement Amount") confirms that the relief negotiated on behalf of the Settlement Class Members is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Louis Marlin, Esq., a respected and experienced mediator of wage and hour Class and PAGA actions. After deducting any Court-approved Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Service Awards, PAGA Payment, and Claims Administration Expenses, 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 their respective Class Period. SOZ Dec., ¶ 8.

This Settlement provides substantial recovery for Defendant's alleged wage and hour violations. Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount of

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

approximately $250,343.34. This will result in an estimated average Individual Settlement Payment of $641.91, an estimated highest Individual Settlement Payment of $1,472.61, and estimated lowest Individual Settlement Payment of $6.52. Apex Dec. at ¶¶ 15- 16.

The relief offered by the Settlement is immediate and is particularly impressive when viewed against the difficulties encountered by Plaintiffs pursuing similar wage and hour cases (*see infra)*. Indeed, by settling now rather than proceeding to trial, the 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., ¶ 9.

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 Representatives and Class Counsel respectfully request this Court grant final approval of the Agreement and, entry of the proposed Final Approval Order and Judgment.

II. 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 a driver. This action asserts claims on behalf of Defendant's current and former non-exempt employees employed in California during the period from May 17, 2021 to July 31, 2024 (the "Cisneros Class Period") and on behalf of Defendant's current and former exempt drivers employed in California during the period from March 16, 2020 to July 31, 2024 (the "Vargas Class Period"). Throughout their employment, Plaintiffs were subject to Defendant's written policies and procedures. Declaration of Manuel Vargas ("Vargas Dec."), ¶ 3; Declaration of Giovanni Cisneros ("Cisneros Dec."), ¶ 3; SOZ Dec. ¶ 10.

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 it 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. SOZ Dec., ¶ 11.

The Vargas Action

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.)

The Cisneros Action

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 a ninth cause of action for violation of the PAGA. SOZ Dec., ¶ 12.

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. 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., ¶ 13.

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. The Second Amended Complaint is the Operative Complaint, and this Class and PAGA action is referred to herein as the "Action". SOZ Dec., ¶ 14.

On December 19, 2025, this Court granted preliminary approval of the Settlement. SOZ Dec., ¶ 4. On January 2, 2026, the Settlement Administrator mailed Notice Packets to all 390 Class Members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Class to submit requests for exclusion or objections to the Settlement. The response from the Class to the Settlement was outstanding – 100% of the Class Members are participating in the Settlement. Apex Dec., ¶ 14.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved a Gross Settlement Amount of Five Hundred Thousand Dollars and Zero Cents ($500,000.00) based on a total of 33,526 Workweeks worked by the Settlement Class during the Class Periods (14,335 Workweeks for the Cisneros Class and 19,191 Workweeks for the Vargas Class). The Gross Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments to Settlement Class Members; (2) to satisfy the Service Awards; (3) to satisfy the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (4) to satisfy the PAGA Payment; and (5) to satisfy the Claims Administration Expenses. SOZ Dec., ¶ 15.

Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified Settlement Fund within sixty (60) days after the Effective Date. Agreement, § III(U). The Settlement Administrator shall mail Individual Settlement Payments and Aggrieved Employee Payments to the Settlement Class Members and Aggrieved Employees no later than fifteen (15) business days after the Funding Date. Agreement, § III(R)(7). The Settlement Administrator will calculate Individual Settlement Payments by allocating 50% of the Net Settlement Amount to the Cisneros Class and 50% to the Vargas Class, dividing each allocated portion by the total number of Workweeks worked by all Settlement Class Members in that class during the applicable Class Period, and multiplying the result by each Settlement Class Member's Workweeks. Agreement, § III(R)(1). The estimated average Individual Settlement Payment is approximately $641.91. Apex Dec., ¶ 15.

In exchange for valuable consideration, upon the 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 applicable Class Period. Agreement, § III(A)(2).

Apex Class Action LLC was appointed as the Settlement Administrator for the Class. The Claims Administration Expenses include those expenses of effectuating and administering the Settlement, i.e., the costs incurred by the Administrator, the costs of giving notice to the Class, the costs of administering and disbursing the Individual Settlement Payments, and the fees of the Administrator approved for reimbursement by the Court. The Claims Administration Expenses are $7,990.00. Apex Dec., ¶ 19. These expenses shall be paid from the Gross Settlement Amount. Agreement, §§ III(A)(1); I(I).

Subject to Court approval, Class Counsel shall seek a Class Counsel Fees Payment of up to $166,666.66 (one-third of the Gross Settlement Amount) and a Class Counsel Litigation Expenses Payment of up to $30,000.00 for actually incurred litigation expenses. Agreement, §§ I(K)-(L). The Class Counsel Fees Payment shall be allocated as follows: 35% to JCL Law Firm, APC; 35% to Zakay Law Group, APLC; and 30% to Makarem & Associates, APLC. Agreement, § I(K). The Agreement also provides for Class Representative Service Award Payments of up to $10,000.00 to each Plaintiff in recognition of their time, risk, and efforts in assisting with the prosecution of the Actions. Agreement, § I(RR).

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 approximately $641.91. Apex Dec., ¶16.

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 Fran. v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 ("voluntary 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* (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*, 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. <u>THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE</u>

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. 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 records. SOZ Dec., ¶ 16. 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. SOZ Dec., ¶ 17.

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. SOZ Dec., ¶ 18.

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. SOZ Dec., ¶ 19.

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. SOZ Dec., ¶ 20.

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. SOZ Dec., ¶ 21.

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

On April 2, 2024, the Parties participated in a full-day mediation with respected wage and hour mediator Louis Marlin, Esq. Mediator Marlin 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 Mediator Marlin'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 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. No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiffs' service on behalf of the Class. SOZ Dec., ¶ 22.

C. <u>Class Counsel is Experienced in Similar Litigation.</u>

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., ¶¶ 24-25; Declaration of Jean-Claude Lapuyade, Esq., ¶¶ 1-9; Declaration of Samuel Almon, Esq. ¶¶ 1-14.

D. <u>The Class Responded Positively to the Settlement.</u>

The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after dissemination of the notice to the Class, which provided each Class Member with the terms of the Settlement, including the specific estimated Individual Settlement Payments, there are ***<u>zero</u>*** requests for exclusion and ***<u>zero</u>*** objections. Stated differently, **<u>100%</u>** of the Class chose to participate in the Settlement. Apex Dec., ¶¶ 11-14.

The high participation rate by the 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 requests the Court to follow the participation rate of the Class and grant final approval of the Settlement.

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

The Gross Settlement Amount of Five Hundred Thousand Dollars and Zero Cents ($500,000.00) 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 Members 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 $500,000.00 represents a discount on Defendant's potential exposure if Plaintiffs established liability on all claims and were 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 Plaintiffs' 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., ¶ 26.

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. Detailed in greater depth during the preliminary approval process, Class Counsel projected a range of Defendants' liability exposure for the claims asserted on behalf of the Class. The Gross Settlement Amount represents 18% of Defendants' *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. SOZ Dec., ¶ 27.

In *Stovall-Gusman v. W.W. Granger, Inc.,* 2015 U.S. Dist. LEXIS 78671, at * 12, 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 Plaintiffs' action, the settlement is clearly fair and reasonable.[2]

The calculation methodology used to compensate the Settlement Class Member for the alleged

[2] *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.").

damages is fair, objective, and impartial, and is based on the number of Workweeks each Settlement Class Member worked for Defendant during the applicable 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 allocating 50% of the Net Settlement Amount to each of the Cisneros and Vargas Classes, dividing each respective allocated portion by the total number of Workweeks worked by all Settlement Class Members in that class, and multiplying the result by each Settlement Class Member's Workweeks. Agreement, § III(R)(1). This process establishes an objectively fair and reasonable procedure to compensate the Class.

The settlement also provides significant relief to the Settlement Class Members. After deductions for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Claims Administration Expenses, the PAGA Payment, and the Service Awards, the Net Settlement Amount is currently estimated to be $250,343.34. Apex Dec., ¶15. The average individual settlement payment is approximately $641.91, and the highest is approximately $1,472.61. Apex Dec., ¶ 16. This average net recovery is on par with 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 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, Defendants must separately fund its share of any employer side payroll taxes. Agreement, ¶ I(O).

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., ¶ 28.

F. The Strength of Plaintiffs' Case and Risks of Continued Litigation

Although Class Counsel believes strongly in Plaintiffs' 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 Plaintiffs' claims. SOZ Dec., ¶ 29. 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 v. Superior Court,* 53 Cal. 4th 1004 (2012) 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).

Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of Defendants' 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 of 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.").

Finally, even if a class is certified and Defendant is found liable for the class claims alleged, post-certification risks remain, including a reversal of a favorable judgment for Plaintiffs 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).

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.

Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless recognize 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 Plaintiffs' claims and, in fact, already has. SOZ Dec., ¶ 30.

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 would undoubtedly 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., ¶ 31.

Class Representatives and Class Counsel recognize the expense and length of a trial against Defendant through possible appeals which could take 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 recognizes 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 increased, 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 Representatives 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., ¶ 32.

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

Where settlements "negotiate a good faith amount" for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of 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 penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Kullar v. Foot Locker Retail, Inc.*, 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, Plaintiffs and Defendant negotiated a good faith PAGA Payment in the amount of $25,000.00, which is 5% 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 ("LWDA Payment") 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., ¶ 33.

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. SOZ Dec., ¶¶ 5-6, 34. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Penalty Amount.

VII. CONCLUSION

Plaintiffs respectfully submit 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: June 26, 2026

ZAKAY LAW GROUP, APLC

By: ________________________
Jaclyn Joyce, Esq.
Attorneys for Plaintiffs