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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

HIROMI MEGURO, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

SILICON VALLEY BANK, a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 20CV369854

[Assigned to Hon. Sunil R. Kulkarni]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

*[Filed concurrently with Declaration of Larry W.
Lee; Declaration of Simon L. Yang; Declaration
of William L. Marder; Declaration of Hiromi
Meguro; [Proposed] Order]*

Date: September 29, 2022
Time: 1:30 p.m.
Department: 1

Complaint Filed: August 28, 2020

1 **TO THE COURT, DEFENDANT, AND ITS COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on September 29, 2022, at 1:30 p.m., or as soon thereafter as the
3 matter may be heard in Department 1 of the above-entitled court located at 191 North First Street, San
4 Jose, California 95113, Plaintiff, Hiromi Meguro, will and hereby does move for an Order:

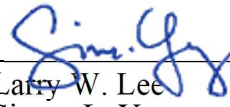
- 5 1. approving the Joint Stipulation of Class Action and PAGA Settlement (the “Agreement”)
6 attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang;
- 7 2. conditionally certifying the following Class for settlement purposes only: all hourly, non-
8 exempt employees who are currently or have been employed by Defendant, Silicon Valley
9 Bank, in the State of California and either (i) earned overtime wages and non-discretionary
10 compensation, including incentives, bonuses, and non-cash awards, at any time from April 6,
11 2016, through January 7, 2022 (the “Class Period”) or (ii) earned overtime wages at any time
12 from April 6, 2019, through January 7, 2022 (the “PAGA Period”);
- 13 3. appointing Plaintiff as the Class Representative and Larry W. Lee and Simon L. Yang of
14 Diversity Law Group, P.C. and William L. Marder of Polaris Law Group as Class Counsel;
- 15 4. approving the Agreement on a preliminary basis and finding that it, the total Gross
16 Settlement Amount in the amount of \$500,000.00, the amounts requested for the
17 Administration Costs, Attorneys’ Fees and Costs Award, Class Representative Award,
18 LWDA Payment, and the allocation of payments to Class Members appear to be within the
19 range of reasonableness for a settlement that could ultimately be given final approval;
- 20 5. appointing Phoenix Settlement Administrators as the Administrator;
- 21 6. approving the distribution of the Notice of Class Action Settlement attached as Exhibit A to
22 the Agreement; and
- 23 7. scheduling a Final Approval Hearing.

24 The Motion is made pursuant to Rule 3.769 of the California Rules of Court, which allows the
25 Court to preliminarily certify a class for settlement purposes and to approve a class action settlement.
26 The basis for the Motion is that the proposed settlement is fair, adequate, and reasonable, and the
27 procedures proposed by the Parties are adequate to ensure class members are able to participate in, opt
28 out of, or object to the settlement.

1 The Motion is based on this notice, the memorandum of points and authorities, the Agreement
2 and proposed Notice of Class Action Settlement, the supporting Declarations of Larry W. Lee, Simon L.
3 Yang, William L. Marder, and Hiromi Meguro, all pleadings and papers on file herein, and any further
4 oral and documentary evidence as may be presented before or at the hearing of this matter.

5 DATED: July 25, 2022

DIVERSITY LAW GROUP, P.C.

6 By: 
7 Larry W. Lee
8 Simon L. Yang
9 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

TABLE OF CONTENTS

	Page
SUMMARY OF MOTION.....	1
RELEVANT BACKGROUND	1
SUMMARY OF PROPOSED SETTLEMENT.....	3
I. Class Definition.....	3
II. Settlement Payments.....	3
III. Released Claims	3
LEGAL STANDARD.....	4
DISCUSSION	5
I. The Proposed Settlement Is Fair, Adequate, and Reasonable.	5
A. The Settlement Is Entitled to a Presumption of Fairness.	5
B. The Settlement Obtains an Excellent Result for Class Members.	6
1. The Settlement Amount Is Reasonable.	6
2. The Settlement Releases Are Appropriate.	8
3. The Class Notice Is Adequate.	8
C. The Requested Payments and Allocations Are Reasonable.	9
1. Each Class Member, on Average, Would Receive More than \$825.	9
2. The Requested Attorneys' Fees and Costs Award Is Reasonable.	10
3. The Proposed Class Representative Award Is Reasonable.	11
4. The Administration Costs Are Reasonable.	12
II. The Class Meets All Requirements for Certification.....	12
A. The Class Is Ascertainable and Sufficiently Numerous.	12
B. The Class Establishes a Community of Interest.	13
1. Plaintiff's Claims Are Typical of Those of the Class.	13
2. Plaintiff's Claims Raise Common Questions of Law and Fact.	13
3. Plaintiff and Her Counsel Adequately Represent the Class.....	14
CONCLUSION.....	14

TABLE OF AUTHORITIES

Page

State Cases

<i>Carter v. City of Los Angeles</i> , 224 Cal. App. 4th 808 (2014)	8
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008)	12
<i>City of Hayward</i> , 126 Cal. App. 3d 926 (1981)	10
<i>City of San Jose v. Superior Court</i> , 12 Cal. 3d 447 (1974)	11
<i>Consumer Advocacy Grp., Inc. v. Kintetsu Enters. of America</i> , 141 Cal. App. 4th 46 (2006)	4
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996)	4, 9, 10
<i>Global Mins. & Metals Corp. v. Superior Court</i> , 113 Cal. App. 4th 836 (2003)	9
<i>Laffitte v. Robert Half Int’l</i> , 1 Cal. 5th 480 (2016)	12
<i>Linder v. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2000)	10
<i>Richmond v. Dart Industries, Inc.</i> , 29 Cal. 3d 462 (1981)	10
<i>Rose v. City of Hayward</i> , 126 Cal. App. 3d 926 (1981)	10
<i>Serrano v. Priest</i> , 20 Cal. 3d 25 (1977)	11
<i>Sevidal v. Target Corp.</i> , 189 Cal. App. 4th 905 (2010)	10
<i>Stephens v. Montgomery Ward & Co.</i> , 193 Cal. App. 3d 411 (1987)	11
<i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800 (1971)	10
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	4, 9, 11

Federal Cases

<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 620 (1997).....	9
<i>Bellinghausen v. Tractor Supply Co.</i> , 2015 WL 1289342 (N.D. Cal. Mar. 20, 2015).....	6
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....	11
<i>Fernandez v. Victoria Secret Stores LLC</i> , 2008 WL 8150856 (C.D. Cal. July 21, 2008).....	12
<i>Gaskill v. Gordon</i> , 160 F.3d 361 (7th Cir. 1998)	12
<i>Hammon v. Barry</i> , 752 F. Supp. 1087 (D.D.C. 1990)	5
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (1998).....	10
<i>In re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979).....	5
<i>In re Chicken Antitrust Litig.</i> , 560 F. Supp. 957 (N.D. Ga. 1980).....	4
<i>In re Mego Fin. Corp. Secs. Litig.</i> , 213 F.3d 454 (9th Cir. 2000)	6
<i>Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.</i> , 834 F.2d 677 (7th Cir. 1987)	4
<i>National Rural Telecomms. Coop. v. DIRECTV, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004).....	5
<i>Priddy v. Edelman</i> , 883 F.2d 438 (6th Cir. 1989)	4
<i>Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n</i> , 79 F.R.D. 571 (E.D. Pa. 1978).....	5
<i>Steinberg v. Carey</i> , 470 F. Supp. 471 (S.D.N.Y. 1979)	5
<i>Van Ba Ma v. Covidien Holding Inc.</i> , 2014 WL 2472316 (C.D. Cal. May 30, 2014)	6
<i>Villegas v. J.P. Morgan Chase & Co.</i> , 2012 WL 5878390 (N.D. Cal. Nov. 21, 2012)	6
<i>Vincent v. Hughes Air West, Inc.</i> , 557 F. 2d 759 (9th Cir. 1997)	11, 12

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SUMMARY OF MOTION

On a classwide basis and as a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Plaintiff, Hiromi Meguro, sues Defendant, Silicon Valley Bank, for alleged underpayments of overtime and noncompliant wage statements. The overtime claim alleges Defendant at times fails to properly calculate employees’ regular rates of pay. The wage statement claim alleges Defendant’s wage statements fail to accurately itemize and show the overtime rate as 1.5 times the regular rate and also fail to accurately itemize and show the total hours worked. Defendant denies the allegations.

Based on their own independent investigations and evaluations, the Parties have agreed to a classwide resolution. The Joint Stipulation of Class Action and PAGA Settlement (“Agreement”), which is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang, requires Defendant to pay at least \$500,000.00 for the classwide settlement of claims through January 7, 2022. Plaintiff and her counsel believe the settlement is an exceptional result for the Class; based on the available data at the time of mediation, the settlement requires Defendant to pay **more than \$70 per relevant pay period and more than \$1,300, on average, per Class Member**. Significantly, the entire settlement amount is non-reversionary; none of the settlement amount will revert back to Defendant.

Although Plaintiff and her counsel are confident that litigation of the claims would result in a classwide judgment against Defendant, they recognize the inherent risks in litigation, including the specific risks that class certification could be denied, liability could not be established at trial, or the applicable law could change. The Parties and their counsel are of the opinion that the settlement on the terms set forth in the Agreement would be fair, reasonable, and adequate.

As the settlement would be in the best interests of the Class, Plaintiff respectfully requests that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

RELEVANT BACKGROUND

On August 28, 2020, Plaintiff initiated this class and private attorney general action. Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2. The lawsuit seeks to remedy alleged underpayments of overtime and noncompliant wage statements.

1 The initial complaint alleged Defendant fails to consider all compensation when calculating
2 employees' regular rates of pay for purposes of paying overtime. Specifically, Plaintiff alleged
3 Defendant does not consider incentives, bonuses, non-cash awards, or shift differentials for purposes of
4 paying overtime. The initial complaint also alleged both derivative and standalone wage statement
5 violations. In addition to the derivative failure to accurately show the gross and net wages earned
6 resulting from miscalculated and underpaid overtime, there are two separate wage statement failures
7 whenever employees are paid overtime. *First*, Defendant issues wage statements that do not accurately
8 itemize and show the overtime rate as 1.5 times the regular rate. *Second*, Defendant issues wage
9 statements that do not accurately itemize and show the total hours worked.

10 Beginning on October 7, 2020, and numerous dates thereafter, Plaintiff and Defendant met and
11 conferred about the alleged claims. Yang Decl. ¶ 3. On May 20, 2021, Plaintiff served written discovery,
12 and on July 6, 2021, Defendant served responses. *Id.* Plaintiff continued investigating the claims and
13 also notified Defendant about additional theories for Defendant's failure to pay all overtime wages and
14 furnish non-exempt employees with accurate wage statements. *Id.* The Parties supplemented formal
15 discovery by continuing to exchange information and documentation pursuant to informal methods to
16 assist the Parties in exploring the possibility of a mediated resolution. *Id.* Defendant's willingness to
17 supplement formal discovery with informal discovery enabled Plaintiff to evaluate the full scope of
18 Defendant's potential liability. *Id.* Ultimately, the Parties agreed to schedule a mediation. *Id.*

19 On November 8, 2021, the Parties attended mediation with Michael Loeb, an experienced
20 mediator knowledgeable of both the wage and hour laws and class and representative action claims at
21 issue. Yang Decl. ¶ 4. With the mediator's assistance and based on a mediator's proposal, the Parties
22 were able to negotiate the settlement terms in the Joint Stipulation of Class Action and PAGA
23 Settlement. *Id.* Ex. 1 (the "Agreement"). Pursuant to the Agreement's terms, on July 1, 2022, the Parties
24 filed the operative First Amended Complaint to specify additional facts regarding Plaintiff's theories
25 regarding Defendant's underpayment of overtime. *Id.*

SUMMARY OF PROPOSED SETTLEMENT

I. Class Definition

The proposed settlement class includes all hourly, non-exempt employees who are currently or have been employed by Defendant, Silicon Valley Bank, in the State of California and either (i) earned overtime wages and non-discretionary compensation, including incentives, bonuses, and non-cash awards, at any time during the Class Period or (ii) earned overtime wages at any time during the PAGA Period. Agreement ¶¶ 1.5. The Class Period is from April 6, 2016, through January 7, 2022. *Id.* ¶ 1.7. The PAGA Period is from April 6, 2019, through January 7, 2022. *Id.* ¶ 1.18. Through September 10, 2021, there were approximately 361 Class Members. *Id.* ¶ 5.1. Unless an additional payment is made, the Class Period will include no more than 6,919 relevant pay periods. *Id.* ¶ 5.1.

II. Settlement Payments

The Agreement requires Defendant to pay a non-reversionary Gross Settlement Amount of \$500,000.00. Agreement ¶ 5.1. From the Gross Settlement Amount, the Parties will request that the Court approve allocations for an LWDA Payment, Administration Costs, Attorneys' Fees and Costs Award, and Class Representative Award. *Id.* ¶ 1.13. Except for these allocations requiring Court approval, the entirety of the remainder of the Gross Settlement Amount will be allocated to Class Members. *Id.* ¶¶ 1.13, 1.14. It is expected that, on average, each Class Member would be allocated \$825.72 (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 7.

III. Released Claims

Plaintiff is subject to a general release. Agreement ¶ 6.3. PAGA Employees are subject to a release of claims during the PAGA Period for civil penalties pleaded in the Action or that could have been pleaded based on the facts alleged in the Action and preceding PAGA notices to the LWDA. *Id.* ¶ 6.2. Settlement Class Members are subject to a release of claims for any and all claims during the Class Period expressly pleaded in the Action and all other claims that could have been pleaded based on the facts pleaded in the Action for (1) failure to pay overtime wages, (2) failure to provide accurate itemized wage statements, (3) failure to timely pay wages during employment or upon termination, (4) unfair business practices based on these violations, and (5) all claims for injunctive relief, liquidated damages, and penalties. *Id.* ¶ 6.1.

1 **LEGAL STANDARD**

2 Any settlement of a class action lawsuit must be reviewed and approved by the trial court. This is
3 done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice
4 has been distributed to class members for their comment or objections. As the Manual for Complex
5 Litigation (Third) explains, in the first step “counsel submits the proposed terms of settlement and the
6 court makes a preliminary fairness evaluation”:

7 If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its
8 fairness or other obvious deficiencies, such as unduly preferential treatment of class
9 representatives or of segments of the class, or excessive compensation for attorneys, and appears
10 to fall within the range of possible approval, the court should direct that notice ... be given to the
11 class members of a formal fairness hearing, at which arguments and evidence may be presented
12 in support of and in opposition to the settlement.

13 Manual for Complex Litigation (Third) § 30.41.

14 A preliminary approval by the trial court thus is a conditional finding that the settlement does not
15 appear to be unfair. As Professor Newberg comments, “[t]he strength of the findings made by a judge at
16 a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may
17 find that the settlement proposal contains some merit, is within the range of reasonableness required for
18 a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final
19 hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).

20 The parties also may, at the preliminary approval stage, request that the court provisionally
21 approve certification of the class—conditioned upon final approval of the settlement. As further
22 explained by Professor Newberg:

23 The strength of the findings made by a judge at a preliminary hearing or conference concerning a
24 tentative settlement proposal ... may be set out in conditional orders granting tentative approval
25 to the various items submitted to the court. Three basic rulings are often conditionally entered at
26 this preliminary hearing. These conditional rulings may approve a temporary settlement class,
27 the proposed settlement, and the class counsel’s application for fees and expenses.

28 4 Newberg on Class Actions, at § 11.26. Indeed, “pre-certification settlements are routinely approved if
found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001);
accord Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794, 1803 (1996) (explaining that a settlement
before any “adversary certification” may still be approved if a court is satisfied that it is “fair, adequate
and reasonable”).

DISCUSSION

I. The Proposed Settlement Is Fair, Adequate, and Reasonable.

A. The Settlement Is Entitled to a Presumption of Fairness.

A trial court must determine and approve a class action settlement is fair to “prevent fraud, collusion or unfairness to the class” through settlement and dismissal of the class action.” *Consumer Advocacy Grp., Inc. v. Kintetsu Enters. of America*, 141 Cal. App. 4th 46, 60 (2006). Courts presume the absence of fraud or collusion in the negotiation of settlement unless there is evidence to the contrary. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Indeed, a presumption of fairness exists where (i) the settlement is reached through arm’s length bargaining; (ii) investigation is sufficient to allow counsel and the court to act intelligently, (iii) counsel is experienced in similar litigation, and (iv) the percentage of objectors is small. *Wershba*, 91 Cal. App. 4th at 245 (citing *Dunk*, 48 Cal. App. 4th at 1802).

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where, as here, they have been involved in thorough investigation, are experienced with this type of litigation, and agreed to a resolution through arm’s length negotiation. See Newberg on Class Actions, *supra*, at § 11.47; *National Rural Telecomms. Coop.*, 221 F.R.D. at 528 (“So long as the integrity of the arm’s length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement ... and ‘great weight’ is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation.”) (citations omitted). In such circumstances, as here, courts do not substitute their judgment for that of the proponents. *National Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *accord Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n*, 79 F.R.D. 571 (E.D. Pa. 1978).

Here, both Plaintiff’s counsel and Defendant’s counsel have a great deal of experience in wage and hour class action litigation. Plaintiff’s counsel have extensive class action and litigation experience

1 and have been approved as class counsel in numerous wage and hour class actions. Declaration of Larry
2 W. Lee (“Lee Decl.”) ¶¶ 5-8; Yang Decl. ¶¶ 9-13; Declaration of William L. Marder (“Marder Decl.”)
3 ¶¶ 10-11. Each side has apprised the other of their respective factual contentions and legal theories, and
4 each side has considered the other’s contentions and theories. Defendant provided the relevant numbers
5 of individuals and relevant pay periods, among other things—enabling Plaintiff to assess the full value
6 of Class Members’ claims and further enabling negotiations to take place between the Parties. Yang
7 Decl. ¶ 3. As further discussed below, the settlement is the result of extensive arm’s length negotiations
8 between the Parties and their counsel. *Id.*

9 **B. The Settlement Obtains an Excellent Result for Class Members.**

10 **1. The Settlement Amount Is Reasonable.**

11 The Agreement requires Defendant to pay approximately \$72.26 per relevant pay period. Yang
12 Decl. ¶ 7. This is an excellent result for Class Members. Plaintiff contended that wage statement claims
13 under Labor Code section 226(e)¹ result in a \$50 penalty for the first non-compliant wage statement to
14 each Class Member and a \$100 penalty for each additional non-compliant wage statement to the Class
15 Member, up to a maximum of \$4,000 per class member. Lab. Code § 226(e). Plaintiff also contended
16 PAGA penalties result in up to \$250 per violation. Lab. Code § 226.3. With respect to overtime-based
17 claims, Plaintiff contended that underpaid overtime resulted in Section 203 penalties of up to 30 days
18 wages. Lab. Code § 203.²

19 Defendant contested the merits and denied it was liable at all. Yang Decl. ¶ 3. Moreover, even if
20 Plaintiff prevailed on the merits, Defendant contested the extent of liability. *Id.* For example, with
21 respect to wage statement liability, Defendant contended that (i) PAGA penalties would enable up to
22 \$100 (not \$250) per violation, (ii) PAGA penalties in any event be subject to discretionary reductions,
23 and (iii) liability under Section 226(e) would be subject to additional defenses requiring proof of injuries
24 resulting from knowing and intentional violations. *Id.* Likewise, with respect to overtime liability,
25 Defendant contended that it would not be subject to Section 203 penalties, based on a good faith
26 defense. *Id.*

27
28 ¹ Except as otherwise noted, all “Section” references are to the Labor Code.

² Actual underpayments of overtime amounted to comparatively smaller sums.

1 While the Parties disagree on the application of the law to the facts, each Party recognized in
2 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the
3 Gross Settlement Amount to which the Parties ultimately agreed was reasonable. Yang Decl. ¶ 4.
4 Ultimately, the Gross Settlement Amount of \$500,000 secures \$72.26 per pay period—an excellent
5 result that obtains 21.2% of the potential total recovery of \$2,363,822. *Id.*³

6 Numerous courts have held that gross settlement amounts of less than 20%—and as little as
7 8%—of a defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs.*
8 *Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16% of
9 potential exposure was fair and reasonable; “It is well-settled law that a cash settlement amounting to
10 only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.
11 Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing
12 the litigation to judgment.”); *Bellinghausen v. Tractor Supply Co.*, 2015 WL 1289342, at *6 (N.D. Cal.
13 Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the
14 defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, 2014 WL 2472316, at *3
15 (C.D. Cal. May 30, 2014) (acknowledging risks of continued litigation and granting preliminary
16 approval of wage and hour class action settlement obtaining 9.1% of projected damages); *Villegas v.*
17 *J.P. Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class
18 action settlement of approximately 15% of the potential recovery was fair and reasonable).

19 Although Plaintiff and her counsel are confident that litigation of the claims would result in a
20 classwide judgment against Defendant, they recognize the inherent risks in litigation, including the
21 specific risks that class certification could be denied, liability could not be established at trial, or the
22 applicable law could change. Yang Decl. ¶ 8. The settlement for each participating Class Member is fair,
23 reasonable, and adequate, given the inherent risks of litigation, as well as the potential for appeals and
24 the costs of pursuing litigation. *Id.*

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26
27 ³ The total recovery includes approximately \$198,072 in waiting time penalties under Section 203,
28 \$436,000 in Section 226(e) penalties, and \$1,729,750 in Section 226.3 penalties under PAGA. Yang
Decl. ¶ 5.

1 Class Members would not need to do anything to receive their share of settlement funds. This
2 eliminates any burden to Class Members who wish to participate in the class action settlement. Despite
3 the fairness of the settlement terms, should any Class Member wish to pursue his or her own case for the
4 claims proposed to be settled and released, each Class Member has the right to object or to submit a
5 request for exclusion (i.e., opt out) from the settlement.

6 **2. The Settlement Releases Are Appropriate.**

7 As discussed above, Settlement Class Members are only subject to a release of claims during the
8 Class Period expressly pleaded in the Action and all other claims that could have been pleaded based on
9 the facts pleaded in the Action. Agreement ¶ 6.1. Similarly tailored, PAGA Employees are subject to a
10 release of claims during the PAGA Period for civil penalties pleaded in the Action or that could have
11 been pleaded based on the facts alleged in the Action and preceding PAGA notices to the LWDA. *Id.* ¶
12 6.2. Only Plaintiff is subject to a general release. *Id.* ¶ 6.3.

13 The settlement releases are thus appropriate. *E.g., Carter v. City of Los Angeles*, 224 Cal. App.
14 4th 808, 820 (2014) (“A general release—covering ‘all claims’ that were or could have been raised in
15 the suit—is common in class action settlements.”). Moreover, the settlement releases apply to claims
16 arising during the Class Period only. Agreement ¶ 6.1. In sum, because Plaintiff alleged targeted claims
17 in the Action, any settlement releases also are specifically tailored to the facts alleged.

18 **3. The Class Notice Is Adequate.**

19 A court has broad discretion in approving appropriate class notice. Code Civ. Proc. § 1781; *Cartt*
20 *v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). Here, the Agreement requires Defendant to
21 provide to the Administrator each Class Member’s last known address, among other information (the
22 “Class Data”), within 21 days of a Preliminary Approval Order. Agreement ¶ 3.2. Within 14 days of a
23 receipt of the Class Data, the Administrator would mail the Notice of Class Action Settlement (“Class
24 Notice”) to each Class Member to provide notice of settlement via First Class U.S. Mail, using the last
25 known address for each Class Member, based on Class Data. *Id.* ¶ 3.3, 3.4. Any Class Notice returned to
26 the Administrator as undeliverable would be sent promptly via First Class U.S. Mail to the forwarding
27 address affixed thereto. *Id.* If no forwarding address is provided, the Administrator would promptly
28

attempt to determine the correct address using a single skip-trace search and then promptly send a single re-mailing. *Id.*

The Class Notice accurately informs Class Members of the settlement and their rights. Agreement Ex. A. For example, Class Members are informed of their rights to object or to opt out. The Class Notice is adequate as it “present[s] a fair recital of the subject matter and proposed terms” of the settlement. *E.g., Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980) (quoting *Marshall v. Holiday Magic*, 550 F.2d 1173, 1177 (9th Cir. 1977)).

C. The Requested Payments and Allocations Are Reasonable.

The Agreement provides for a Gross Settlement Amount of \$500,000.00. Agreement ¶ 5.1. From the Gross Settlement Amount, attorneys’ fees will be no more than 33⅓% of the Gross Settlement Amount (or \$166,666.67) and litigation costs are not expected to exceed \$10,000. *Id.* ¶ 5.1.1. The Class Representative Award will be no more than \$10,000.00. Agreement ¶ 5.1.2. Administration Costs will be no more than \$9,000.00. *Id.* ¶ 5.1.3. The PAGA Penalty Fund will be \$25,000.00, and pursuant to statute, 75% of the PAGA Penalty Fund (or \$18,750.00) would constitute the LWDA Payment. *Id.*⁴

1. Each Class Member, on Average, Would Receive More than \$825.

It is expected that, on average, each Class Member would be allocated approximately \$825.72 (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 7. The amount paid on average to each Class Member may increase, depending on how many Class Members opt out of the class action settlement. *Id.* The amount actually paid to any Class Member may increase or decrease depending on his or her number of relevant pay periods during the Class Period. *Id.* After deducting any approved payments for an Attorneys’ Fees and Costs Award, Class Representative Award, Administration Costs, and PAGA Penalty Fund from the Gross Settlement Amount, the entire remainder would be allocated among Settlement Class Members on a pro rata basis based on the total number of pay periods for each Settlement Class Member either with (a) overtime wages and non-discretionary compensation during the Class Period or (b) overtime wages during the PAGA Period. Agreement ¶ 5.3.2. 5% of Individual Class Payments shall be allocated to wages and subject to IRS Form W-2

⁴ Plaintiff files this motion with the Court and with the LWDA via online submission. Yang Decl. ¶ 14.

1 reporting; the remainder of Individual Class Payments shall be allocated to interest and penalties and
2 subject to IRS Form 1099 reporting. *Id.*⁵

3 None of the settlement funds will revert to Defendant. *Id.* ¶ 5.1. The principal for any uncashed
4 checks (upon the expiration date) would escheat to the State Controller Unclaimed Property Fund in the
5 name of the Class Member. *Id.* ¶ 5.7.

6 **2. The Requested Attorneys' Fees and Costs Award Is Reasonable.**

7 California state and federal courts have recognized that an appropriate method for determining
8 award of attorneys' fees is based on a percentage of the total value of settlement benefits to Class
9 Members. *E.g., Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Wershba*, 91 Cal. App. 4th at 254; *Boeing*
10 *Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th
11 Cir. 1997). The purpose of the equitable doctrine is to "spread litigation costs proportionally among all
12 the beneficiaries so that the active beneficiary does not bear the entire burden alone" so as to avoid
13 unjust enrichment. *Vincent*, 557 F. 2d at 769.

14 Under California law, the award of attorneys' fees in common fund wage and hour class action
15 settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503
16 (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action
17 litigation establishes a monetary fund for the benefit of the class members, and the trial court in its
18 equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a
19 reasonable fee by choosing an appropriate percentage of the fund created"). Under the percentage of the
20 fund method, a court's objective remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v.*
21 *Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (Posner, J.) ("When a fee is set by a court rather than by
22 contract, the object is to set it at a level that will approximate what the market will set The judge, in
23 other words, is trying to mimic the market in legal services.").

24 Attorneys' fees awards of 35% of the fund are within the expected range in the "market in legal
25 services. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J.

27 ⁵ 25% of the PAGA Penalty Fund would be allocated among PAGA Employees on a pro rata basis based
28 on the number of relevant pay periods with overtime for each PAGA Employee. Agreement ¶ 5.3.1. All
such payments will be subject to IRS Form 1099 reporting. *Id.*

Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that “[m]ost fee awards were between 25 percent and 35 percent”). An attorneys’ fees award of 35% of the fund mimics the market and “is supported by the fact that typical contingency fee agreements provide that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried.” *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at *16 n.59 (C.D. Cal. July 21, 2008) (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, an attorneys’ fees award of 35% of the fund is consistent with “empirical studies [that] show that ... fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

Here, Plaintiff will request an attorneys’ fees award of 33⅓% of the Gross Settlement Amount. Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs. Class Counsel have incurred costs at their own risk, for example, for filing the lawsuit, service of process, mediation fees, and payment of other litigation related costs.

3. The Proposed Class Representative Award Is Reasonable.

Plaintiff and proposed Class Representative Hiromi Meguro requests a modest Class Representative Award of \$10,000.00. The request is reasonable in light of the general release that the Agreement requires of Plaintiff but not of any other Class Member. Independently, the request is appropriate in recognition of Plaintiff’s efforts on behalf of the Class. Declaration of Hiromi Meguro (“Meguro Decl.”) ¶¶ 2-3.

As part of her duties as the Class Representative, Plaintiff provided all necessary information and evidence that resulted in this settlement. Meguro Decl. ¶¶ 2-3. Plaintiff met and conferred with Class Counsel on a number of occasions to discuss the case. *Id.* ¶ 3. She provided information and documents to Class Counsel and made herself available to answer any questions during litigation. *Id.* Ultimately, Plaintiff’s efforts secured an exceptional result for the Class.

In addition to the invaluable services that Plaintiff provided, she also took a significant risk, both professionally and monetarily. Meguro Decl. ¶ 4. Because the alleged claims involve the payment of costs to the prevailing party, Plaintiff could have possibly faced paying Defendant’s costs had Defendant prevailed in the action. Furthermore, Plaintiff risks prejudice in the future from other potential

1 employers that may be less willing to hire an individual who has filed suit against a prior employer.
2 Plaintiff took this risk upon herself and the whole class benefited. Class Members did not have to file
3 individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to
4 face potential prejudice in future employment.

5 **4. The Administration Costs Are Reasonable.**

6 Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has
7 quoted Administration Costs not to exceed \$9,000.00 to send notices and administer the settlement. The
8 Administration Costs are reasonable and should be approved.

9 **II. The Class Meets All Requirements for Certification.⁶**

10 For purposes of settlement approval, a detailed analysis of the elements required for class
11 certification is not required. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 620, 622-27 (1997). The trial
12 court can appropriately utilize a lesser standard of scrutiny to determine the propriety of a settlement
13 class as opposed to a litigation class. *Dunk*, 48 Cal. App. 4th at 1807 n.19; *see also Wershba*, 91 Cal.
14 App. 4th at 240 (explaining there is no “ironclad requirement” to conduct an evidentiary hearing to
15 satisfy the prerequisites for class certification). Because a settlement eliminates the need for a trial, when
16 considering whether to certify a settlement class, the court is not faced with the case management issues
17 present in certification of a litigation class. *Global Mins. & Metals Corp. v. Superior Court*, 113 Cal.
18 App. 4th 836, 859 (2003) (“[I]t is well established that trial courts should use different standards to
19 determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a
20 lesser standard of scrutiny is used for settlement cases.”) (citing *Dunk*, 48 Cal. App. 4th at 1807 n.19).

21 Even under the standard applicable to litigation classes, the allegations in this lawsuit present
22 paradigmatic class action claims that satisfy the elements of class certification.

23 **A. The Class Is Ascertainable and Sufficiently Numerous.**

24 Class Members are identifiable from Defendant’s records. The class definition “is precise,
25 objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010).

27 ⁶ Defendant expressly reserves its objections and does not agree that class certification of any of the
28 claims would be appropriate outside of the settlement context. Plaintiff disagrees but has considered the
inherent risk of class certification motion practice.

1 Indeed, there are approximately 361 Class Members. Agreement ¶ 5.1. Numerosity thus is sufficiently
2 established. *E.g.*, *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that “[n]o set
3 number is required as a matter of law for the maintenance of a class action” and citing examples in
4 which classes of 10—*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)—and of 28—*Hebbard v.*
5 *Colgrove*, 28 Cal. App. 3d 1017 (1972)—were upheld).

6 **B. The Class Establishes a Community of Interest.**

7 “The community of interest requirement involves three factors: ‘(1) predominant common
8 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
9 class representatives who can adequately represent the class.’” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429,
10 435 (2000).

11 **1. Plaintiff’s Claims Are Typical of Those of the Class.**

12 Plaintiff alleges that Defendant, as a matter of their corporate policy, practice, or procedure
13 underpaid overtime and furnished unlawful wage statements. With respect to typicality, Plaintiff—
14 exactly like other members of the Class—was compensated based on Defendant’s common overtime
15 practices and was provided wage statements based on Defendant’s common payroll practices. Meguro
16 Decl. ¶ 2.

17 **2. Plaintiff’s Claims Raise Common Questions of Law and Fact.**

18 The typical claims raise questions of law and fact common to the class. *See Hanlon v. Chrysler*
19 *Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal issues with divergent legal factual
20 predicates is sufficient, as is a common core of salient facts couple with disparate legal remedies within
21 the class”). Commonality requires only that some common legal or factual questions exist; the plaintiffs
22 need not show that all issues in the litigation are identical. *See Richmond v. Dart Indus., Inc.*, 29 Cal. 3d
23 462, 473 (1981). Defendant’s conduct is central to the commonality inquiry. *See City of San Jose v.*
24 *Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971).
25 Where the employer’s conduct is uniformly directed at a class of employees, as it is here, the class wide
26 impact of the Defendant’s policies satisfies the commonality requirement. *See Stephens v. Montgomery*
27 *Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

1 **3. Plaintiff and Her Counsel Adequately Represent the Class.**

2 With respect to adequate representation, Plaintiff does not have any interests adverse to the
3 Class, and no such issues been raised or presented. Meguro Decl. ¶ 3. Plaintiff has taken all necessary
4 steps to represent the interests of the Class, including by providing information and documents to Class
5 Counsel, making herself available to discuss the claims, providing wage statements that she was issued,
6 reviewing wage statements while the lawsuit was pending, and answering any questions. *Id.* For such
7 reasons, Plaintiff has adequately represented the Class Members and will continue to do so.

8 From the inception of the case, Class Counsel has zealously represented the interests of the
9 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
10 Representative. Class Counsel have been approved as class counsel in a number of prior cases, have
11 litigated numerous other class action cases, and are competent to represent the Class. Lee Decl. ¶¶ 2-9;
12 Yang Decl. ¶¶ 9-13; Marder Decl. ¶¶ 10-11.

13 **CONCLUSION**

14 The proposed settlement would result in substantial monetary benefits to class members. It was
15 the result of informed, arm's length negotiations conducted by counsel experienced in wage and hour
16 class action litigation. Its terms appear to be fair, adequate, and reasonable, and there is no reason to
17 believe the proposal is outside the range of reasonableness for such a settlement. Accordingly, for the
18 benefit of the Class, Plaintiff respectfully requests that the Court (i) grant preliminary approval of the
19 settlement, (ii) approve and authorize the mailing of the proposed Class Notice, and (iii) schedule a Final
20 Approval Hearing.

21 DATED: July 25, 2022

DIVERSITY LAW GROUP, P.C.

22 By: _____
23

Larry W. Lee

Simon L. Yang

24 Attorneys for Plaintiff
25
26
27
28

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On July 25, 2022, I served the following document(s) described as:

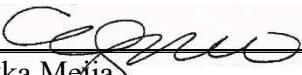
- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
12 **APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF**
13 **POINTS AND AUTHORITIES IN SUPPORT**
- 14 **2. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
15 **FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 16 **3. DECLARATION OF SIMON L. YANG IN SUPPORT OF PLAINTIFF'S**
17 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
18 **SETTLEMENT**
- 19 **4. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S**
20 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
21 **SETTLEMENT**
- 22 **5. DECLARATION OF HIROMI MEGURO IN SUPPORT OF PLAINTIFF'S**
23 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
24 **SETTLEMENT**
- 25 **6. [PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL**
26 **OF CLASS ACTION SETTLEMENT**

27 on the interested parties in this action as follows:

28 Mitchell F. Boomer
Mitchell.boomer@jacksonlewis.com
Kevin D. Reese
Kevin.reese@jacksonlewis.com
Scott P. Jang
Scott.jang@jacksonlewis.com
Jackson Lewis, P.C.
50 California Street, 9th Floor
San Francisco, California 94111
Attorneys for Defendant Silicon Valley Bank

1
2 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-
3 entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website
4 www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for
5 the above-entitled case. The service transmission was reported as complete and a copy of the
6 filing receipt/confirmation will be filed, deposited, or maintained with the original document(s)
7 in this office.

8
9 I declare under penalty of perjury under the laws of the State of California that the
10 above is true and correct. Executed on July 25, 2022, at Los Angeles, California.
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Erika Mejia