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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

**CORY WALKER, Individually and on Behalf of
Others Similarly Situated,**

Plaintiff,

vs.

**AUTO BRAKES, INC.; BRAKE MASTERS of
SACRAMENTO, INC.; and DOES 1-50,
inclusive,**

Defendants.

Case No.: STK-CV-UOE-2021-0008725

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

Date:

Time: 9:00 am

Dept: 11B

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1 **I. INTRODUCTION**

2 On July 26, 2019, Plaintiff Cory Walker (“Plaintiff”) filed the instant class and PAGA action
3 against Defendants Brake Masters of Sacramento, Inc. (“Brake Masters”) and Auto Brakes, Inc. (“Auto
4 Brakes,” collectively “Defendants”) alleging individual Labor Code claims and wrongful termination
5 and wage and hour violations on behalf of a class of technicians employed by Defendants, specifically
6 claims for minimum wage and overtime violations, meal period violations, rest period violations,
7 failure to pay all wages at cessation of employment, failure to furnish accurate itemized wage
8 statements, and unlawful business practices. With respect to the class-wide claims, Plaintiff alleges
9 that he and other technicians employed by Defendants were not paid overtime at the correct rate
10 because of Defendant’s failure to incorporate non-discretionary bonuses into these employees’ regular
11 rates of pay, that he and other technicians were not paid at least double minimum wage but required to
12 supply their own tools, that he and other technicians were not afforded compliant meal and rest periods
13 and not paid the required premium wages for these violations, and that as a result he and other
14 technicians were not furnished with accurate, itemized wage statements and further that he and other
15 former employees were not paid all wages due at termination or within 72 hours of resignation.

16 After contested litigation that included written discovery, motions to compel, further informal
17 discovery, and a mediation, the parties have reached a settlement whereby Defendants have agreed to
18 pay a total (exclusive of employer-side taxes) of \$200,000 to resolve the claims in this action asserted
19 on behalf of a class of 216 individuals, covering a total of 8,515 workweeks. In reaching this
20 settlement, the Parties were aided by the guidance of Dan Quinn, Esq, who conducted the Parties’
21 mediation. As part of the settlement, the parties agreed to pay up to \$7,000 to ILYM Group, Inc. to
22 administer the settlement; \$10,000 to resolve the PAGA claims; \$7,500 to Plaintiff for his services as
23 Class Representative; and \$66,666.67 in attorney’s fees and up to \$8,000 in declared costs to Class
24 Counsel. This leaves at least \$107,833.33 to be distributed among the class members. That net amount
25 results in approximately \$500 paid to each class member on average and approximately \$12.66 paid per
26 workweek. The \$200,000 settlement represents approximately 46.2% of the realistic non-PAGA
27 exposure (approximately 39.6% of the overall realistic exposure). Because this settlement provides a
28 strong and meaningful recovery for the class, and in light of Defendant’s available defenses thereto, the

1 Court should find the Settlement fair, reasonable, and adequate and grant preliminary approval of the
2 settlement.

3 **II. SUMMARY OF THE CASE**

4 **A. Plaintiff's Class Claims**

5 Plaintiff alleges that he and other technicians were not paid overtime at the appropriate rate due
6 to their receipt of "Spiffs", which Plaintiff contends were non-discretionary bonuses that were not
7 factored into his regular rate of pay. Plaintiff also alleges that he was not paid minimum wage for all
8 hours worked because he was required to provide his own tools but was not paid at least double the
9 applicable minimum wage. Plaintiff further alleges that he was not afforded meal and rest breaks. As a
10 result of the foregoing violations, Plaintiff also alleges that he was not paid all wages owed at
11 termination and did not receive accurate, itemized wage statements. Plaintiff's unfair business
12 practices claim is derivative of the above allegations.

13 **B. The Class**

14 Plaintiff seeks to represent a Class consisting of all current and former technicians employed by
15 Brake Masters of Sacramento Inc., during the period of April 8, 2019, through January 4, 2024 (the
16 "Class" and "Class Period"). The Class Action and PAGA Settlement Agreement and Release
17 ("Settlement Agreement" or "SA") at § II.6, II.36. The Class consists of 216 individuals, and the
18 Settlement Agreement covers a total of 8,515 workweeks. SA at § III.58.

19 **C. Procedural History and Factual Investigation**

20 On August 17, 2022, Plaintiff submitted a notice to the LWDA and Defendants of alleged wage
21 and hour violations, specifically violations of Labor Code sections 201, 202, 226(a), 226.7, 512, and
22 2802. VJK Decl., ¶ 3. On August 23, 2022, Plaintiff submitted an amended notice to the LWDA and
23 Defendants to add alleged violations of Labor Code sections 510 and 246(l)(1) based on failure to
24 accurately calculate regular rate and a derivative theory under Labor Code section 226(a). VJK Decl.,
25 ¶ 4. Both of these notices are attached as exhibits to Plaintiff's First Amended Complaint filed with
26 this Court.

27 The LWDA did not provide notice that it intended to investigate the alleged violations. VJK
28 Decl., ¶ 5.

1 Plaintiff filed the instant action on August 25, 2022, asserting individual retaliation and
2 wrongful termination claims and class claims against Defendants for: 1) failure to pay minimum wage;
3 2) failure to pay overtime; 3) failure to furnish meal breaks; 4) failure to furnish rest breaks; 5) failure
4 to pay all wages at cessation of employment; 6) failure to furnish accurate itemized wage statements;
5 and 7) violation of Business and Professions Code sections 17200 *et seq.* VJK Decl., ¶ 6. On
6 November 3, 2022, Plaintiff filed a First Amended Complaint adding a cause of action under PAGA.
7 VJK Decl., ¶ 7.

8 Plaintiff propounded substantial written discovery on Defendant aimed at obtaining necessary
9 information to evaluate and prosecute his class and individual claims. VJK Decl., ¶ 8. Plaintiff filed
10 motions to compel further responses to this discovery, which were granted on June 14, 2023. VJK
11 Decl., ¶ 9. Defendant also propounded, and Plaintiff responded to, substantial written discovery
12 including over 100 interrogatories and numerous requests for production. VJK Decl., ¶ 10.

13 In late 2023, Plaintiff and Defendant agreed to seek to resolve this matter, and in connection
14 with same, Defendant provided Plaintiff with informal discovery relating to the amount of allegedly
15 underpaid wages resulting from Plaintiff's regular rate claim, the number of technicians employed
16 during the class period, the total number of workweeks worked during the class period, the number of
17 former technicians in the class period, the number of technicians who received bonuses and worked
18 overtime in the class period, and other relevant data and information which permitted Plaintiff to
19 accurately analyze and develop a damages model relating to the class claims.

20 On January 3, 2024, the Parties mediated with Dan Quinn, Esq. and were able to reach a
21 settlement of the class claims. The Parties also reached a separate, confidential settlement of Plaintiff's
22 individual retaliation and wrongful termination claims. VJK Decl., ¶ 11. As a result, the parties came
23 to an agreement to settle the class claims for a total of \$200,000 (exclusive of employer-side taxes)
24 subject to Court approval. VJK Dec., ¶ 12. At all times, the parties' negotiations were adversarial,
25 non-collusive, and at arms' length, supervised and facilitated by a highly experienced mediator. VJK
26 Dec. ¶ 13. The agreement was finalized and fully executed on February 13, 2024. VJK Dec., ¶ 14, Ex.
27 1.

28 ///

1 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

2 **A. Monetary Relief Under the Settlement**

3 Pursuant to the Settlement, Defendants will pay \$200,000.00 – the Gross Settlement Fund
4 (“GSF”) – on an all-in, non-reversionary basis to resolve the claims to be released by Participating
5 Class Members. SA § II.14, III.39. After deducting the Administrator’s costs (up to \$7,000.00),
6 Plaintiff’s Class Representative Enhancement Payment (\$7,500), the fees (\$66,666.67) and costs (up to
7 \$8,000.00) of Class Counsel, and the amount allocated to the PAGA Claims (\$10,000), a \$107,833.33
8 net settlement amount is expected to ultimately be distributed to Participating Settlement Class
9 Members. SA §§ II.2, II.7, II.22, II.34. Participating Settlement Class Members are expected to
10 receive an average payout of approximately \$500 each, representing a payment of approximately
11 \$12.66 per workweek from the net settlement amount. VJK Dec. ¶ 15.

12 **B. Notice to the Class**

13 The Class Notice will be mailed to Class Members within 30 calendar days following
14 preliminary approval of the Settlement. SA §§ III.51, III.52.

15 **C. Participation in the Settlement**

16 All Settlement Class Members who do not opt-out will be Participating Settlement Class
17 Members; no claim form is required. SA §§ II.24, III.46. Class Members who are also Aggrieved
18 Employees will also receive a pro rata share of the aggrieved employee share of the PAGA Settlement
19 Amount (\$2,500), regardless of whether they opt out. SA § III.47.

20 **D. Settlement Shares**

21 Individual Settlement Payments will be calculated and apportioned on a pro rata basis from the
22 Net Settlement Amount to Participating Settlement Class Members based on the number of weeks
23 during the Class Period in which they performed at least one day of work for Defendants. SA § III.46.
24 The average payment to each Participating Class Member is expected to be approximately \$500.00
25 (\$107,833.33 / 216). VJK Dec. ¶ 15. All Participating Class Members who are former employees of
26 Defendants will be credited with an additional four workweeks for purposes of calculating their
27 settlement share. SA § III.46. For taxes and withholdings, the Individual Class Payments will be
28

1 allocated one-third to wages and two-thirds to penalties and interest. SA, § III.67. PAGA Settlement
2 Payments will be allocated as 100% penalties. *Ibid.*

3 **E. Scope Of Release**

4 Upon Defendants' fulfillment of their payment obligations under the Settlement Agreement and
5 final Court approval of same, Participating Settlement Class Members will forever and completely
6 release and discharge Defendants and the Released Parties from all claims that were alleged in the
7 action, or reasonably could have been alleged in the action based on the same facts. SA § II.28.
8 Settlement Class Members employed during the PAGA Period will release Defendants and the
9 Released Parties from all claims for PAGA penalties that were alleged in the action, or reasonably
10 could have been alleged based on the facts alleged in the action during the PAGA Period. SA § II.29.
11 Additionally, Plaintiff will release Defendants and the Released Parties from all claims, known and
12 unknown, based on events that occurred during the Class Period excluding his retaliation and wrongful
13 termination claims. SA § III.60.c, III.60.d.

14 **F. Settlement Administration**

15 The Parties have agreed on ILYM Group, Inc. ("ILYM"), a cost-effective and experienced
16 settlement administration provider, to administer the settlement. Plaintiff seeks approval of up to
17 \$7,000 for the Administrator's fees and costs. SA §§ II.34, III.35.

18 **G. Payment To The LWDA**

19 The Settlement Agreement allocates \$10,000 to resolve PAGA claims. 75% (\$7,500) will be
20 paid to the LWDA, and the remaining 25% (\$2,500) will be distributed to Class Members. SA, §
21 II.22. The Parties negotiated this amount in good faith, intending to serve the punitive and deterrent
22 purposes of the PAGA. VJK Dec. ¶ 17. The LWDA has been notified of the Settlement. VJK Dec. ¶
23 18, Ex. 2.

24 **H. Enhancement Payment to Plaintiff.**

25 Plaintiff will apply for an Enhancement Payment of \$7,500 for his service to the class. SA, §
26 II.7. Class Members will be apprised of Plaintiff's request, their ability to review the moving papers
27 on the Court's website, and to object to the request if they so desire. SA, Class Notice.
28

1 **I. Class Counsel’s Attorneys’ Fees and Costs**

2 Class Counsel will request attorneys’ fees of \$66,666.67 (one-third of the GSF), as well as
3 declared litigation costs up to \$8,000.00. SA § III.40. Class Members will be apprised of Class
4 Counsel’s request, their ability to review the moving papers on the Court’s website, and to object to the
5 request if they so desire. SA, Exhibit A.

6 **J. Plaintiff’s Individual Settlement**

7 Plaintiff and Defendants separately negotiated a settlement of Plaintiff’s individual retaliation
8 and wrongful termination claims. The individual settlement was negotiated separately from the class
9 settlement and will be paid from separate funds. The specific terms of this agreement are confidential;
10 however, the proposed Class Notice apprises the class members of the amount of this settlement, and if
11 the Court so requires, the Parties will submit this agreement *in camera* to the Court.

12 **K. Final Approval Hearing**

13 At a date set by the Court, the SA contemplates the Court will hold a Final Approval Hearing
14 and, if the Settlement is approved, enter an Order of Final Approval approving the SA in a manner
15 substantially consistent with its terms and intent, and enter Judgment accordingly. SA, § III.76, III.77.

16 **L. Proposed Implementation Schedule**

17 Defendant to provide Class List to Administrator.	Within 15 calendar days of the Court’s execution of the Order Granting Preliminary Approval.
18 Administrator to mail Class Notice.	Within 30 calendar days of the Order Granting Preliminary Approval.
19 Deadline for Class Members to object or opt out.	Within 45 calendar days after Notice mailed.
20 Plaintiff to file Motion for Attorneys’ Fees, 21 Cost and Service Payment.	Not less than 16 court days before the Final Approval hearing.
22 Deadline for Plaintiff to file Motion for 23 Final Approval.	Not less than 16 court days before the Final Approval hearing.
24 Final Approval Hearing.	Not less than 100 days after Plaintiff files his 25 Motion for Preliminary Approval.
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1 **IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS WARRANTED**

2 **A. Legal Standards for Preliminary Approval of Class Action Settlements**

3 The purpose of the preliminary evaluation of a proposed class action settlement is to determine
4 whether it is within the range of possible approval, and thus whether notice to the class of the terms and
5 conditions are warranted. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
6 Cal.App.4th 1135, 1145; *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 314 F.R.D. 312, 319; William B.
7 Rubenstein, 4 NEWBERG ON CLASS ACTION (4th Ed. 2002) § 11.25. In passing on its propriety, the
8 Court has broad discretion to determine whether a settlement is fair under the unique circumstances of
9 the case at bar. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The Court need only find
10 the settlement falls within a “reasonable range”, as courts recognize that approving class action
11 settlements is “an amalgam of delicate balancing, gross approximations and rough justice.” *Ibid.*;
12 *Cordy v. USS-Posco Indus.* (N.D. Cal. 2013) 2013 WL 4028627 *4; 4 NEWBERG § 11:25.

13 To make this fairness determination, courts consider several relevant factors, including “the
14 strength of the plaintiffs’ case; the risk, expense, complexity, and likely duration of further litigation;
15 the risk of maintaining class action status throughout the trial; the amount offered in settlement; the
16 extent of discovery completed and the stage of the proceedings; [and] the experience and views of
17 counsel . . .” *Hanlon*, 150 F.3d at 1026 (citations omitted). There is a presumption of fairness when
18 the settlement is the result of arm's-length negotiation, investigation and discovery are sufficient to
19 permit counsel and the court to act intelligently, and counsel are experienced in similar litigation, as is
20 the case here. *Dunk*, 148 Cal.App.4th 1801; *Wren v. RGIS Inventory Specialties* (N.D. Cal. 2011) 2011
21 WL 1230826 *6. California courts put a great deal of stock into what is otherwise a private, negotiated,
22 consensual agreement. Accordingly, a court’s inquiry is limited “to the extent necessary to reach a
23 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
24 between, the negotiating parties, and that the settlement, taken as a whole is fair, reasonable and
25 adequate to all concerned.” *Dunk*, 148 Cal.App.4th 1801. The Settlement Agreement satisfies all
26 applicable legal standards for preliminary approval and provides a substantial monetary recovery to
27 each Settlement Class Member, particularly in light of the challenges and risks to securing relief on a
28 class-wide basis.

1 **B. The Settlement Terms are Fair, Reasonable, and Adequate**

2 The Class Action and Settlement will result in substantial benefits to the Class. The Gross
3 Settlement Fund represents 46.2% of the realistic non-PAGA damages recoverable to the Class (39.6%
4 overall), and accounts for the substantial risks inherent in both maintaining class certification and
5 ultimately prevailing at trial. VJK Dec. ¶¶ 22-39. In contrast to the risks of continued litigation, the
6 proposed Settlement ensures timely relief, cognizable monetary and non-monetary benefits, and is
7 undeniably fair, reasonable, and adequate.

8 Under Class Counsel’s damage model, Defendant faced a maximum theoretical exposure of
9 \$3,352,030 to the Class. VJK Dec. ¶¶ 22-29. Defendant also faced a maximum theoretical exposure
10 of \$741,750 in PAGA penalties. For numerous reasons detailed in the next section; however, this
11 maximum theoretical exposure is unrealistically high under the specific facts of this case.

12 Plaintiff’s strongest class claims by far are those based on his regular rate theory, i.e., his
13 overtime claims and the wage statement and waiting time penalty claims derived therefrom. Plaintiff
14 alleges that he and the other Settlement Class Members did not receive all required overtime pay
15 because they received non-discretionary bonuses, specifically “Spiffs” that were not factored into their
16 overtime rates of pay. As to Plaintiff, this underpayment totaled \$1.55. With respect to the Settlement
17 Class Members as a whole (70 of whom received “Spiffs” and worked overtime), the underpayment
18 totaled \$6,200. Accordingly, Defendant faced a maximum \$6,200 in unpaid overtime. VJK Decl., ¶
19 23.

20 Plaintiff’s minimum wage claim is based on the theory that because he was allegedly required
21 to furnish his own tools for work, he was required to be paid at least twice the basic minimum wage of
22 \$15 per hour during his employment. Plaintiff was paid \$28 per hour, or \$2 per hour less than twice the
23 applicable minimum wage. Extrapolating across the 8,515 workweeks covered by the Class Period
24 provides a maximum (and likely highly overstated) minimum wage underpayment of \$681,200 (8,515
25 workweeks x \$2 per hour x 8 hours per day x 5 days per week). Though this number appears
26 substantial, it is also highly susceptible to numerous, and likely successful, legal and factual defenses
27 set forth in more detail below. VJK Decl., ¶ 24.

1 With respect to the meal and rest break claims, Plaintiff alleged that once he was transferred to
2 the Manteca location, his supervisor there often required him and others to work through or take late
3 meal breaks and work through rest breaks to attend to customer vehicles. Failure to furnish a compliant
4 meal or rest period results in the requirement to pay an employee one hour's premium pay for each day
5 such a break is not provided. Lab. Code § 226.7. Using a liberal 50% violation rate for both meal and
6 rest periods across the 8,515 workweeks and a pay rate of \$28 per hour, Defendants would face a
7 maximum liability of \$596,050 in meal period penalties and another \$596,050 in rest period penalties
8 (8,515 workweeks x \$28 per hour x 5 days per week x 50%). VJK Dec., ¶ 25. These claims are also
9 subject to numerous defenses that would likely substantially reduce or ultimately eliminate Plaintiff's
10 ability to recover anything at all on behalf of the Settlement Class.

11 There was a total of 2,435 pay periods within the Class Period covering the period in which
12 wage statement penalties were available, as these are subject to a one-year statute of limitations (i.e.,
13 August 25, 2021, through January 3, 2024). These wage statements were furnished to a total of 149
14 technicians. If every single wage statement issued was inaccurate due to meal/rest period issues or
15 underpaid overtime/minimum wage, this would result in a maximum of \$236,050 in wage statement
16 penalties under Labor Code section 226(e) ((\$50 x 148 wage statements) + (\$100 x 2,286 wage
17 statements)). VJK Decl., ¶ 26. With respect to those individuals who received "Spiffs" and worked
18 overtime, there were 225 such pay periods in which that occurred, leading to potential wage statement
19 penalties of \$22,500. As these penalties are derivative of the above alleged violations, their viability
20 (and value) stands or falls with the viability of the above claims.

21 As for the waiting time penalty claim, there were 184 former technicians overall, which
22 included a total of 46 technicians who received "Spiffs" and worked overtime, with a calculated
23 maximum exposure of approximately \$1,236,480 in waiting time penalties under Labor Code section
24 203 *if Plaintiff could prove entitlement to waiting time penalties for all former technicians*, or \$309,120
25 *if Plaintiff could prove entitlement to waiting time penalties for all former technicians who received*
26 *"Spiffs"*. VJK Decl., ¶ 27.

27 Finally, Defendant faced a calculated maximum theoretical PAGA exposure of \$741,750. VJK
28 Decl., ¶ 28. This is derived from a theoretical maximum exposure of \$11,250 on the overtime claims

1 (\$50 x 225 pay periods); \$243,500 on the minimum wage claims (\$100 x 2,435 pay periods); \$121,750
2 on the meal period claims (\$50 x 2,435 pay periods); \$121,750 on the rest period claims (\$50 x 2,435
3 pay periods); and \$243,500 on the wage statement claims (\$100 x 2,435 pay periods). As these PAGA
4 claims are based on the same facts as the class claims, they are subject to the same defenses described
5 below.

6 **C. Defendants' Defenses and Realistic Liability**

7 Defendants asserted legal and factual grounds to defend against Plaintiff's claims including,
8 but not limited to: 1) Defendant maintained compliant written meal and rest break policies and did
9 not prevent employees from taking compliant breaks; 2) by Plaintiff's own admission, working at
10 two separate locations, his meal and rest break issues were limited to a single manager at a single
11 location, which could drastically reduce the scope of this claim or even entirely eliminate Plaintiff's
12 ability to bring it as a class claim; 3) several courts have held that there is no claim for unpaid
13 minimum wage if the employer requires an employee to provide their own tools but fails to pay at
14 least twice minimum wage. *Workforce Defense League v. Clayco, Inc.* (E.D. Cal. Aug. 22, 2022)
15 2022 WL 3587553, *2-3; *Gonzalez v. Nefab Packaging, Inc.* (C.D. Cal., Oct. 30, 2013) 2013 WL
16 12321976, *4, *aff'd*, 637 F.App'x 310 (9th Cir. 2016); 4) Defendant made all necessary tools
17 available and employees who chose to use different tools did so voluntarily; 5) Defendant stopped
18 paying "Spiffs" shortly after Plaintiff filed this action; and 6) Auto Brakes, Inc. never employed
19 Plaintiff or any other member of the putative class. *Id.* ¶ 31.

20 Because of anticipated challenges to certification, success on the merits at trial, and on appeal,
21 Class Counsel adjusted the exposure for reasonableness to account for risk. Taking these defenses
22 into account, Plaintiff applied the following reductions to arrive at a more realistic estimate of
23 Defendants' overall exposure. Given the exceedingly low probability of success on the minimum
24 wage claim, which would likely have been eliminated in summary adjudication, Plaintiff discounted
25 that claim by 95%, resulting in a realistic potential exposure of \$34,060. Plaintiff did not discount
26 the unpaid overtime claim, which is valued at \$6,200. Because of the admittedly limited nature of
27 Plaintiff's meal and rest break violations to a single manager at a single location (Brake Masters of
28 Sacramento operates approximately four locations), Plaintiff applied a 90% reduction to his meal

1 and rest break claims, accounting for the limited potential scope (one location out of four), and the
2 more likely situation in which the overall violation rate is closer to 33% than 50%, given the
3 existence of compliant policies, resulting in a potential overall liability of \$59,605. As for the wage
4 statement claims, Plaintiff applied a similar 90% reduction given their derivative nature, for potential
5 penalties of \$23,605. Finally, with respect to the waiting time penalty claim, the truly realistic
6 exposure to Defendants comes from the regular rate claim based on “Spiffs” paid to employees.
7 This, as set forth above, resulted in a potential exposure to Defendants of \$309,120. VJK Decl., ¶¶
8 32-34.

9 With respect to the PAGA claims, applying the same reductions results in a realistic PAGA
10 exposure on the overtime claim of \$11,250; a realistic PAGA exposure on the minimum wage claim
11 of \$12,175; a realistic PAGA exposure on the meal period claim of \$12,175; a realistic PAGA
12 exposure on the rest period claim of \$12,175, and a realistic PAGA exposure on the wage statement
13 claim of \$24,350. This results in a realistic overall PAGA exposure of \$72,125. VJK Decl., ¶ 35.

14 These adjustments result in a realistic liability estimate of \$504,715 overall (\$432,590 on the
15 non-PAGA claims, and \$72,125 on the PAGA claims). The \$200,000 Gross Settlement Fund
16 represents approximately 46.2% of the realistic non-PAGA exposure and 39.6% of the realistic overall
17 exposure. VJK Decl., ¶ 36. The \$10,000 allocated to the PAGA settlement represents approximately
18 13.9% of the realistic PAGA exposure, is fairly and equally allocated pro-rata amongst all Aggrieved
19 Employees without preference to any subgroup of employees¹, and is fair, reasonable, and adequate.

20 “‘Great weight’ is accorded to the recommendation of counsel, who are most closely
21 acquainted with the facts of the underlying litigation. This is because ‘[p]arties represented by
22 competent counsel are better positioned than courts to produce a settlement that fairly reflects each
23 party’s expected outcome in the litigation.’ Thus, ‘the trial judge, absent fraud, collusion, or the like,
24 should be hesitant to substitute its own judgment for that of counsel.’” *Nat’l Rural Telecomms. Coop.*
25 *v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528. Class Counsel, having demonstrated a high
26 degree of competence in the litigation of this case, as well as numerous other wage and hour class

27 ¹ See *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.
28

1 actions, strongly believe that the proposed Settlement is a fair, adequate, and reasonable resolution
2 of the Class Action and is preferable to continued litigation against Defendant. VJK Dec. ¶ 39²;
3 *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (approving settlement
4 amounting to 30% of the realistic damages estimated by class counsel; court noted that even if the
5 plaintiffs were entitled to treble damages the settlement would be approximately 10% of estimated
6 damages); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (settlement equal to
7 16.67% of potential recovery was fair). Indeed, “it is well-settled law that a cash settlement
8 amounting to only a fraction of the potential recovery does not . . . render the settlement inadequate
9 or unfair.” *Officers for Justice v. Civil Service Com’n of City and County of San Francisco*, 688
10 F.2d 615, 628 (9th Cir. 1982). Of course, “the very essence of a settlement is compromise, ‘a
11 yielding of absolutes and an abandoning of highest hopes.’” *Linney v. Cellular Alaska P’ship*, 151
12 F.3d 1234, 1242 (9th Cir. 1998). As such, “[t]he fact that a proposed settlement may only amount to
13 a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is
14 grossly inadequate and should be disapproved.” *Id.* Accordingly, the Settlement should be
15 preliminarily approved.

16 **D. The Court Should Order Dissemination of the Proposed Notice**

17 California law vests the court with broad discretion to fashion an appropriate notice program.
18 Cal. Civ. Code §1781; Fed. R. Civ. Proc. Rule 23(e)(1); Rule 23(c)(2)(B); *Cartt v. Superior Court*
19 (1975) 50 Cal.App.3d 960, 973-74. Because all Settlement Class Members are current or former
20 employees of Brake Masters for whom Defendants have current or last known addresses as well as
21 SSNs, notice is simpler and more reliable than in other types of class actions. The Class Notice is
22 consistent with notices approved by state and federal courts and, under the circumstances, affords the
23 best notice practicable.

24 The Class Notice will be sent to all Class Members, informs them of the terms of the
25 Settlement, and is neutrally worded to avoid prejudice. The Class Notice meets all of the requirements
26

27 ² See *In re Wachovia Corp. “Pick-A-Payment” Mortgage Mktg. & Sales Practices Litig.* (N.D. Cal. 2011) 2011 WL
28 1877630, at *3 (approving settlement based upon, among other factors, the belief of “Plaintiffs’ counsel, who are
experienced attorneys . . . that the settlement is extremely favorable to the class”).

1 of procedural due process and California Rules of Court, Rules 3.766(d)-(f) and 3.769(f). SA, Exhibit
2 A. In short, the Class Notice provides Settlement Class Members with all the necessary information to
3 make an informed decision.

4 **E. The Administrator's Fees Are Reasonable**

5 The Parties have selected ILYM to serve as Administrator. ILYM has substantial experience in
6 administration, and Class Counsel has found them to perform their duties well and at a reasonable
7 price. VJK Decl., ¶¶ 47-48. The Administrator's fees and costs will be paid out of the GSF/QSF. The
8 Administrator will, among other things, distribute the Court-approved Class Notice, calculate
9 Participating Settlement Class Members' shares and PAGA Payment amounts, prepare and mail
10 settlement checks, respond to inquiries/disputes as appropriate, prepare requisite tax forms, and
11 generally perform all normal and customary duties associated with the administration of such
12 settlements. Plaintiff seeks preliminary approval of \$7,000 for the Administrator's fees and costs. VJK
13 Dec. ¶ 48.

14 **F. The Enhancement Payment to Plaintiff Is Reasonable**

15 "Courts routinely approve incentive awards to compensate plaintiffs for the services they
16 provided and the risks they incurred during the course of the class action litigation." *Ingram v. Coca-*
17 *Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (approving \$300,000 payment to each class
18 representative in employment action settling before certification).³ Factors used by courts in
19 determining the amount of the service payments include (1) a comparison between service awards and
20 the range of monetary recovery available to the class (*see Ingram*, 200 F.R.D. at 694; (2) time and
21 effort put into the litigation (*see Van Vranken*, 901 F. Supp. at 299); (3) whether the litigation will
22 further the public policy underlying the statutory scheme (*see Roberts*, 979 F. Supp. at 201 n.23); and
23 (4) risks of retaliation (*see Roberts*, 979 F. Supp. at 202). All factors support the \$7,500 enhancement
24 payment requested here. The sought payment is fair, reasonable and appropriate under the
25 circumstances of this case, including Plaintiff's provision of a general release and Civil Code section

26 _____
27 ³ *Roberts v. Texaco, Inc.* (S/D.N.Y. 1997) 979 F. Supp. 185 (approving incentive payments up to \$85,000 for named
28 plaintiffs in employment action settling before certification); *Van Vranken v. Atl. Richfield Co.* (N.D. Cal. 1995) 901 F.
Supp. 294, 300 (\$50,000 service payment for named plaintiff in class action).

1 1542 waiver. Plaintiff, who has worked diligently with Class Counsel throughout this entire litigation,
2 including participating in discovery, participating in mediation, and taking numerous calls with Class
3 Counsel, should be rewarded for taking the initiative to pursue these claims on behalf of the Class, and
4 for his role in reaching a substantial settlement providing valuable relief to the Class. VJK Dec. ¶¶ 49-
5 53.

6 **G. Class Counsel's Attorneys' Fees and Costs are Reasonable, Fair, and Appropriate**

7 Plaintiff is entitled to seek payment of attorneys' fees and costs. Cal. Lab. Code §§ 218.5,
8 226(e) (1), 1194, and 2699(g); *Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1427. In
9 conjunction with final approval, Plaintiff will seek a fee award under the common fund doctrine,
10 customarily used in awarding fees and costs in settlement of Labor Code class actions.⁴ Courts
11 ordinarily approve attorney's fees payments between one-third and forty percent in comparable wage
12 and hour class actions.⁵ Here, Plaintiff will seek attorney's fees of one-third of the GSF, or \$66,666.67
13 and declared costs of up to \$8,000. To date, Class Counsel has spent over 210 hours in the prosecution
14 of this action and incurred \$7,285.48 in out-of-pocket costs. VJK Decl., ¶ 58. The Court should
15 preliminarily approve the requested awards as fair and reasonable.

16 **V. THE CLASS SHOULD BE CERTIFIED FOR SETTLEMENT.**

17 **A. The Legal Standard.**

18 A settlement class must meet the following criteria for certification: (1) the individuals in the
19 class are so numerous that joinder would be impractical; (2) there is a commonality of interest between
20 the plaintiff and the members of the class; (3) plaintiff's claims are typical of the claims of the class
21 members; and (4) plaintiff and his counsel will fully and adequately represent the interests of the class
22 members. Code. Civ. Proc. § 382; *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319,
23

24 ⁴ *Wershba*, 91 Cal.App.4th at 254; *Lealao v. Beneficial Cal.* (2000) 82 Cal.App.4th 19, 26-30; *Serrano v. Priest* (1977) 20
25 Cal.3d 25, 34 (“[w]hen a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff
26 or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be
27 awarded attorney's fees out of the fund.”); see also *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 (“[A] lawyer who
28 recovers for a common fund . . . is entitled to a reasonable attorney's fee from the fund as a whole.”); *Hanlon*, 150 F.3d. at
1029.

⁵ 4 NEWBERG § 14:6 (Studies show that “Fee awards in class actions average around one-third of the recovery”); *Williams v.*
MGM-Pathe Commc'ns Co. (9th Cir. 1997) 129 F.3d 1026, 1027 (33% fee award); *Wren*, 2011 WL 1230826, at *29 (42%
fee award in common fund wage and hour class action).

1 326-27; Fed. R. Civ. P. 23.⁶ All prerequisites to certification have been and continue to be met for each
2 of the proposed settlement classes.

3 **B. The Certified Class Is Ascertainable.**

4 The identity of each Class Member remains ascertainable because all Class Members worked
5 for Defendant Brake Masters within California during the Class Period, are readily identified through
6 employee and payroll records, and will receive notice of this Action. *Rose v. City of Hayward* (1981)
7 126 Cal.App.3d 926, 932. With 216 individuals, joinder is impractical.

8 **C. The Commonality Requirement Is Met.**

9 Commonality is met if questions of law and fact that are common to the class predominate and
10 the theory of recovery is “amenable to class treatment.” *Sav-On Drug Stores*, 34 Cal.4th at p. 327;
11 *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033. The claims of Plaintiff and each of
12 the Class Members flow from the same facts and legal claims. VJK Dec. ¶ 49.

13 **D. The Typicality Requirement is Met**

14 Typicality is met if the claims of named representatives are typical of those of the class, though
15 “they need not be substantially identical.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011,
16 1020; *Sav-On Drug Stores, Inc.*, 34 Cal.4th at p. 326. Plaintiff’s claims are typical of the claims of
17 every Class Member because they arise from the same factual bases, policies and procedures, and legal
18 theories. *Wehner v. Syntex Corp.* (N.D. Cal. 1987) 117 F.R.D. 641, 644. Were Plaintiff not serving as
19 Class Representative, he would be a member of the Class. VJK Dec. ¶ 49.

20 **E. The Adequacy Requirement is Met.**

21 Adequacy exists if the named representative and counsel have no interests adverse to those of
22 the Class Members and are committed to vigorously prosecuting the case on behalf of the class.
23 *Hanlon*, 150 F. 3d at 1020; *McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450-51. Plaintiff’s
24 interest in prosecuting this matter and obtaining the most beneficial recovery practicable fully comports
25 with the collective interests of each respective Class Member. There are no conflicts between Plaintiff
26

27 ⁶ The California Supreme Court has authorized California’s trial courts to use Federal Rule of Civil Procedure 23
28 and cases applying it for guidance in considering class issues. See *Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800, 821; *Green v.*
Obledo (1981) 29 Cal.3d 126, 145-146. Where appropriate, federal case law will be cited in addition to California law.

1 and the other Class Members, and Plaintiff is a member of the Class. *Hanlon*, 150. F 3d at 1021.
2 Moreover, any Class Member who wishes to opt-out and/or object to the Settlement will have the
3 opportunity to protect his/her individual interest by doing so. *Hanlon, supra*, 150. F.3d 1021.

4 Plaintiff and Class Counsel have demonstrated their commitment to vigorously prosecuting this
5 lawsuit on behalf of the Class, as demonstrated by Class Counsel's experience in wage and hour cases
6 and the substantial benefits they have and will continue to confer upon Class Members, including
7 securing the Class Settlement Amount of \$200,000, which benefits Settlement Class Members. VJK
8 Dec. ¶¶ 49-58.

9 **VI. A FINAL APPROVAL HEARING SHOULD BE SET**

10 Plaintiff requests the Court set a date for hearing on a motion for final approval as well as a
11 motion for fees, costs, and enhancement payment, deadlines for Class Members to opt-out, object, and
12 for the submission of associated moving papers. For sufficient time to mail the Class Notice and for
13 Settlement Class Members to decide how they wish to proceed, Plaintiffs request that the date for the
14 final approval hearing be set not less than 100 days after this motion has been filed.

15 **VII. CONCLUSION**

16 For all the reasons stated above, Plaintiff's Motion should be granted.

17
18 **DATED:** February 23, 2024

MAYALL HURLEY P.C.

19
20 By _____

ROBERT J. WASSERMAN

WILLIAM J. GORHAM, III

VLADIMIR J. KOZINA

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