

1 MAYALL HURLEY P.C.
VLADIMIR J. KOZINA (SBN: 284645)
2 vkozina@mayallaw.com
WILLIAM J. GORHAM, III (SBN: 151773)
3 wgorham@mayallaw.com
ROBERT J. WASSERMANN (SBN: 258538)
4 rwassermann@mayallaw.com
112 South Church Street
5 Lodi, California 95240
Telephone: (209) 477-3833
6 Facsimile: (209) 473-4818

7 Attorneys for Plaintiff Denise Jacobs

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF STANISLAUS

10 DENISE JACOBS, individually and on behalf of
11 all others similarly situated,

12 Plaintiff,

13 vs.

14 HYDRAULIC CONTROLS, INC.; and DOES
15 1-100, inclusive,

16 Defendants.
17

Case No.: CV-23-003469

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

Date:

Time: 8:30 am

Dept: 22

Table of Contents

I.	INTRODUCTION	1
II.	SUMMARY OF THE CASE	2
A.	Plaintiff's Claims.....	2
B.	The Class.....	2
C.	Procedural History and Factual Investigation	2
III.	SUMMARY OF THE PROPOSED SETTLEMENT	4
A.	Monetary Relief Under the Settlement.....	4
B.	Notice to the Class.....	4
C.	Participation in the Settlement.....	4
D.	Settlement Shares	4
E.	Scope Of Release.....	5
F.	Settlement Administration.....	5
G.	Payment To The LWDA	5
H.	Enhancement Payment to Plaintiff.	6
I.	Class Counsel's Attorneys' Fees and Costs	6
J.	Plaintiff's Individual Settlement.....	6
K.	Final Approval Hearing.....	6
L.	Proposed Implementation Schedule	6
IV.	PRELIMINARY APPROVAL OF THE SETTLEMENT IS WARRANTED.....	7
A.	Legal Standards for Preliminary Approval of Class Action Settlements	7
B.	The Settlement Terms are Fair, Reasonable, and Adequate.....	8
C.	Defendant's Defenses and Realistic Liability.....	9
D.	The Court Should Order Dissemination of the Proposed Notice	10
E.	The Administrator's Fees Are Reasonable	11
F.	The Enhancement Payment to Plaintiff Is Reasonable.....	11
G.	Class Counsel's Attorneys' Fees and Costs are Reasonable, Fair, and Appropriate	12
V.	THE CLASS SHOULD BE CERTIFIED FOR SETTLEMENT.....	13
A.	The Legal Standard.....	13
B.	The Certified Class Is Ascertainable.	13
C.	The Commonality Requirement Is Met.	13
D.	The Typicality Requirement is Met.....	13
E.	The Adequacy Requirement is Met.	14
VI.	A FINAL APPROVAL HEARING SHOULD BE SET.....	14
VII.	CONCLUSION.....	15

Table of Authorities

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135.....	7
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472	12
<i>Brinker Restaurant Corp. v. Sup. Ct.</i> (2012) 53 Cal.4th 1004	13
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	10
<i>Cordy v. USS-Posco Indus.</i> (N.D. Cal. 2013) 2013 WL 4028627	7
<i>Early v. Superior Court</i> (2000) 79 Cal.App.4th 1420	12
<i>Green v. Obledo</i> (1981) 29 Cal.3d 126	13
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011	13, 14
<i>In re Mego Fin. Corp. Sec. Litig.</i> (9th Cir. 2000) 213 F.3d 454	10
<i>In re Wachovia Corp. “Pick-A-Payment” Mortgage Mktg. & Sales Practices Litig.</i> (N.D. Cal. 2011) 2011 WL 1877630	10
<i>Ingram v. Coca-Cola Co.</i> (N.D. Ga. 2001) 200 F.R.D. 685	11
<i>Lealao v. Beneficial Cal.</i> (2000) 82 Cal.App.4th 19	12
<i>Linney v. Cellular Alaska P’ship</i> (9th Cir. 1998) 151 F.3d 1234, 1242	10
<i>McGhee v. Bank of Am.</i> (1976) 60 Cal.App.3d 442	13
<i>Moniz v. Adecco USA, Inc.</i> (2021) 72 Cal.App.5 th 56	9
<i>Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> (C.D. Cal. 2004) 221 F.R.D. 523	9
<i>Officers for Justice v. Civil Service Com’n of City and County of San Francisco</i> (9th Cir. 1982) 688 F.2d 615	10
<i>Roberts v. Texaco, Inc.</i> (S/D.N.Y. 1997) 979 F. Supp. 185	11
<i>Rodriguez v. West Publishing Corp.</i> (9th Cir. 2009) 563 F.3d 948	10
<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926.....	13
<i>Sav-on Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319	12, 13
<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25.....	12
<i>Spann v. J.C. Penney Corp.</i> (C.D. Cal. 2016) 314 F.R.D. 312	7
<i>Van Vranken v. Atl. Richfield Co.</i> (N.D. Cal. 1995) 901 F. Supp. 294	11

<i>Vasquez v. Sup. Ct.</i> (1971) 4 Cal.3d 800	13
<i>Wehner v. Syntex Corp.</i> (N.D. Cal. 1987) 117 F.R.D. 641	13
<i>Williams v. MGM-Pathe Commc'ns Co.</i> (9th Cir. 1997) 129 F.3d 1026	12
<i>Wren v. RGIS Inventory Specialties</i> (N.D. Cal. 2011) 2011 WL 1230826	7, 12

Statutes

Civ. Code §1781	10
Code Civ. Proc. § 377.31.....	4
Code. Civ. Proc. § 382.....	12
Labor Code § 201	2
Labor Code § 202	2
Labor Code § 203	8
Labor Code § 204	2
Labor Code § 218.5	12
Labor Code § 226(a).....	2
Labor Code § 226(e).....	12
Labor Code § 2699(g)	12
Labor Code § 510	2

Rules

Fed. R. Civ. P. 23	13
--------------------------	----

Treatises

4 NEWBERG ON CLASS ACTION (4th Ed. 2002).....	7, 12
---	-------

1 **I. INTRODUCTION**

2 On June 23, 2023, Plaintiff Denise Jacobs (“Plaintiff”) filed the instant class and PAGA action
3 against Defendant Hydraulic Controls, Inc. (“HCI” or “Defendant”) alleging wage and hour violations
4 on behalf of a putative class of non-exempt employees employed by Defendants, specifically claims for
5 failure to properly calculate and pay overtime and paid sick time, failure to furnish accurate itemized
6 wage statements, failure to pay all wages upon separation of employment, failure to timely pay wages,
7 and unlawful business practices. Plaintiff claims all derived from a common core of allegations,
8 specifically that Defendants failed to incorporate certain non-discretionary bonuses into non-exempt
9 employees’ regular rates of pay for purposes of paying overtime wages and sick pay. Plaintiff alleged
10 that because of this failure, Defendants also failed to furnish accurate itemized wage statements and
11 willfully failed to pay all wages earned by former employees either at termination or within 72 hours of
12 resignation. On August 28, 2023, Plaintiff amended her complaint to add a claim for civil penalties
13 under the Labor Code California Private Attorneys General Act of 2004 (“PAGA”) based on the same
14 alleged facts and violations.

15 After contested litigation that included written discovery, extensive meet and confer efforts,
16 further informal discovery, and mediation, the parties have reached a settlement whereby Defendant has
17 agreed to pay a total (exclusive of employer-side taxes) of \$150,000 to resolve the claims in this action
18 asserted on behalf of a class of 114 individuals across the period of June 21, 2022, through August 3,
19 2024. In reaching this settlement, the Parties were aided by the guidance of retired judge and highly
20 experienced class action mediator Hon. William C. Pate (Ret.), who conducted the Parties’ mediation.
21 As part of the settlement, the parties agreed to pay up to \$5,950 to ILYM Group, Inc. to administer the
22 settlement; \$10,000 to resolve the PAGA claims; \$10,000 to Plaintiff (by and through her successor in
23 interest Katrina Morganson) for her services as Class Representative; and \$50,000.00 in attorney’s fees
24 and up to \$7,000 in declared costs to Class Counsel. This leaves at least \$69,550.00 to be distributed
25 among the class members. That net amount results in approximately \$610 paid to each class member
26 on average. The \$150,000 settlement represents approximately 46% of the maximum non-PAGA
27 exposure, and 21.8% of the maximum overall exposure, without any discount applied for litigation
28 risks. Because this settlement provides a strong and meaningful recovery for the class, and in light of

1 Defendant's available defenses thereto, the Court should find the Settlement fair, reasonable, and
2 adequate and grant preliminary approval of the settlement.

3 **II. SUMMARY OF THE CASE**

4 **A. Plaintiff's Claims**

5 Plaintiff alleges that she and other non-exempt employees received non-discretionary bonuses,
6 specifically "safety" and "ESOP" bonuses, that were not incorporated into their regular rate of pay for
7 purposes of paying overtime and sick pay. As a result of this, Plaintiff alleged that she and other non-
8 exempt employees were underpaid overtime and received inaccurate wage statements. Further,
9 Plaintiff alleges that as a result of this failure, she and other former employees who received these
10 bonuses and worked overtime and/or redeemed sick pay were not paid all wages earned but unpaid at
11 termination or within 72 hours of resignation. Plaintiff also alleged failure to timely pay wages under
12 Labor Code Section 204.

13 **B. The Class**

14 Plaintiff seeks to represent a Class consisting of: (1) all individuals who have worked, or who
15 continue to work, for Defendant in California as a non-exempt employee who received a safety and/or
16 ESOP incentive bonus during the Class Period; (2) all individuals who have worked, or who continue
17 to work, for Defendant in California as a non-exempt employee who received any other bonus(es)
18 during the Class Period; and (3) all individuals who have worked, or continue to work, for Defendant in
19 California as a non-exempt employee who received any additional compensation beyond the base
20 hourly pay that should have been included in their regular rate of pay during the Class Period. Class
21 Action and PAGA Settlement Agreement and Release ("Settlement Agreement"), § II.36. The Class
22 Period is from June 21, 2022, through August 3, 2024. Settlement Agreement, §II.6. The Class
23 consists of 114 individuals. Settlement Agreement, § III.41.

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

25 On June 21, 2023, Plaintiff submitted a notice to the LWDA and Defendants of alleged wage
26 and hour violations, specifically violations of Labor Code sections 201, 202, 204, 226(a), and 510.
27 The LWDA did not provide notice that it intended to investigate the alleged violations set forth in
28 either of Plaintiff's notices.

1 On June 23, 2023, Plaintiff Denise Jacobs (“Plaintiff”) filed the instant class and PAGA action
2 against Defendant Hydraulic Controls, Inc. (“HCI” or “Defendant”) alleging wage and hour violations
3 on behalf of a putative class of non-exempt employees employed by Defendants, specifically claims for
4 failure to properly calculate and pay overtime, failure to furnish accurate itemized wage statements,
5 failure to pay all wages upon separation of employment, and unlawful business practices. Plaintiff’s
6 claims all derived from a common core of allegations, specifically that Defendants failed to incorporate
7 certain non-discretionary bonuses into non-exempt employees’ regular rates of pay for purposes of
8 paying overtime wages and sick pay. Plaintiff alleged that because of this failure, Defendants also
9 failed to furnish accurate itemized wage statements and willfully failed to pay all wages earned by
10 former employees either at termination or within 72 hours of resignation. On August 28, 2023,
11 Plaintiff amended her complaint to add a claim for civil penalties under the Labor Code California
12 Private Attorneys General Act of 2004 (“PAGA”) based on the same alleged facts and violations.

13 On October 13, 2023, after Defendant asserted that Plaintiff’s claims were subject to an
14 arbitration agreement, Plaintiff dismissed her individual non-PAGA claims without prejudice.
15 Declaration of Vladimir J. Kozina (“VJK Decl.”), ¶¶ 3-7.

16 During this time and beyond, Plaintiff propounded formal discovery on Defendant, met and
17 conferred regarding Defendant’s responses, and the parties ultimately agreed to exchange additional
18 informal discovery and attempt mediation to resolve Plaintiff’s claims. VJK Decl., ¶ 8. As part of the
19 formal and informal discovery in this matter, Defendant provided copies of its bonus and payment
20 policies, information regarding the number of alleged aggrieved employees, and a sampling of 50
21 employees’ time and payroll records covering the PAGA Period. VJK Decl., ¶ 9. This information
22 permitted Plaintiff to develop a meaningful damages model going into mediation. VJK Decl., ¶ 10.

23 On June 4, 2024, the parties mediated with retired judge and experienced class action mediator
24 Hon. William C. Pate (Ret.). The parties were able to reach a resolution of the claims in mediation,
25 including resolution of the claims on a classwide basis covering the same period as the applicable
26 PAGA Period in this case. VJK Decl., ¶ 11. Following execution of the settlement agreement, Plaintiff
27 filed a Second Amended Complaint to conform to the settlement, specifically re-asserting her class
28 claims. VJK Decl., ¶ 13.

1 Plaintiff tragically and unexpectedly passed away in August of 2024 after having executed the
2 settlement agreement for which approval is sought by way of this motion. On November 19, 2024, Ms.
3 Morganson's daughter was appointed by this Court to act as her successor in interest in this action.
4 VJK Decl., ¶ 14. Per the Court's Order, Katrina Morganson was appointed to succeed to decedent
5 Denise Jacobs' interest in this action pursuant to Code of Civil Procedure section 377.31.

6
7 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

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

9 Pursuant to the Settlement, Defendants will pay \$150,000.00 – the Gross Settlement Fund
10 (“GSF”) – on an all-in, non-reversionary basis to resolve the claims to be released by Participating
11 Class Members. SA § II.14, III.39. After deducting the Administrator's costs (up to \$5,950.00),
12 Plaintiff's Class Representative Enhancement Payment (\$10,000), the fees (\$50,000.00) and costs (up
13 to \$7,000.00) of Class Counsel, and the amount allocated to the PAGA Claims (\$10,000), a \$69,550.00
14 net settlement amount is expected to ultimately be distributed to Participating Settlement Class
15 Members. SA §§ II.2, II.7, II.22, II.34. Participating Settlement Class Members are expected to
16 receive an average payout of approximately \$610 each. VJK Decl. ¶ 16.

17 **B. Notice to the Class**

18 The Class Notice will be mailed to Class Members within 30 calendar days following
19 preliminary approval of the Settlement. SA §§ III.53, III.54.

20 **C. Participation in the Settlement**

21 All Settlement Class Members who do not opt-out will be Participating Settlement Class
22 Members; no claim form is required. SA §§ II.24, III.48. Class Members who are also Aggrieved
23 Employees will also receive a pro rata share of the aggrieved employee share of the PAGA Settlement
24 Amount (\$2,500), regardless of whether they opt out. SA § III.49.

25 **D. Settlement Shares**

26 Individual Settlement Payments will be calculated and apportioned on a pro rata basis from the
27 Net Settlement Amount to Participating Settlement Class Members based on the number of weeks
28 during the Class Period in which they performed at least one day of work for Defendants. SA § III.48.

1 The average payment to each Participating Class Member is expected to be approximately \$610.00
2 (\$69,550.00 / 114). VJK Dec. ¶ 15. For taxes and withholdings, the Individual Class Payments will be
3 allocated one-third to wages and two-thirds to penalties and interest. SA, § III.68. PAGA Settlement
4 Payments will be allocated as 100% penalties. *Ibid.*

5 **E. Scope Of Release**

6 Upon Defendant's fulfillment of its payment obligations under the Settlement Agreement and
7 final Court approval of same, Participating Settlement Class Members will forever and completely
8 release and discharge Defendants and the Released Parties from all claims that were alleged in the
9 action and Plaintiff's PAGA notices, or reasonably could have been alleged in the action based on the
10 same facts. SA § II.28. Settlement Class Members will also release all claims for PAGA penalties that
11 were alleged in the action and Plaintiff's PAGA notices, or reasonably could have been alleged based
12 on the facts alleged in the action during the PAGA Period. SA § II.29. Additionally, Plaintiff will
13 release Defendant and the Released Parties from all claims, known and unknown, except for Plaintiff's
14 claims for wrongful termination, disability discrimination, failure to accommodate, failure to engage in
15 the interactive process, retaliation, and failure to prevent discrimination and retaliation¹. SA § III.61.c,
16 III.61.d.

17 **F. Settlement Administration**

18 The Parties have agreed on ILYM Group, Inc. ("ILYM"), a cost-effective and experienced
19 settlement administration provider, to administer the settlement. Plaintiff seeks approval of up to
20 \$5,950 for the Administrator's fees and costs. SA § II.34.

21 **G. Payment To The LWDA**

22 The Settlement Agreement allocates \$10,000 to resolve PAGA claims. 75% (\$7,500) will be
23 paid to the LWDA, and the remaining 25% (\$2,500) will be distributed to Class Members. SA, §
24 II.22. The Parties negotiated this amount in good faith, intending to serve the punitive and deterrent
25 purposes of the PAGA. VJK Dec. ¶ 15. The LWDA has been notified of the Settlement. VJK Dec. ¶
26 17, Ex. 2.

27
28 ¹ These claims are the subject of a separately-negotiated individual settlement agreement between Plaintiff and Defendant.

1 **H. Enhancement Payment to Plaintiff.**

2 Plaintiff will apply for an Enhancement Payment of \$10,000 for her service to the class. SA, §
3 II.7. Given Plaintiff's passing, this amount will be requested to be paid to Plaintiff's personal
4 representative, Katrina Morganson. Class Members will be apprised of Plaintiff's request, their ability
5 to review the moving papers on the Court's website, and to object to the request if they so desire. VJK
6 Decl., Ex. 3.

7 **I. Class Counsel's Attorneys' Fees and Costs**

8 Class Counsel will request attorneys' fees of \$50,000.00 (one-third of the GSF), as well as
9 declared litigation costs up to \$7,000.00. SA § III.42. Class Members will be apprised of Class
10 Counsel's request, their ability to review the moving papers on the Court's website, and to object to the
11 request if they so desire. VJK Decl., Ex. 3..

12 **J. Plaintiff's Individual Settlement**

13 Plaintiff and Defendant separately negotiated a settlement of Plaintiff's individual
14 discrimination and wrongful termination claims. The individual settlement was negotiated separately
15 from the class settlement and will be paid from separate funds. The specific terms of this agreement are
16 confidential; however, the proposed Class Notice apprises the class members of the amount of this
17 settlement, and if the Court so requires, the Parties will submit this agreement *in camera* to the Court.

18 **K. Final Approval Hearing**

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

22 **L. Proposed Implementation Schedule**

23 Defendant to provide Class List to Administrator.	Within 15 calendar days of the Court's execution of the Order Granting Preliminary Approval.
24 Administrator to mail Class Notice.	Within 30 calendar days of the Order Granting Preliminary Approval.
25 Deadline for Class Members to object or opt out.	Within 45 calendar days after Notice mailed.
26	
27	
28	

Plaintiff to file Motion for Attorneys' Fees, Cost and Service Payment.	Not less than 16 court days before the Final Approval hearing.
Deadline for Plaintiff to file Motion for Final Approval.	Not less than 16 court days before the Final Approval hearing.
Final Approval Hearing.	Not less than 100 days after Plaintiff files his Motion for Preliminary Approval.

IV. **PRELIMINARY APPROVAL OF THE SETTLEMENT IS WARRANTED**

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

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

To make this fairness determination, courts consider several relevant factors, including “the strength of the plaintiffs’ case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; [and] the experience and views of counsel . . .” *Hanlon*, 150 F.3d at 1026 (citations omitted). There is a presumption of fairness when the settlement is the result of arm's-length negotiation, investigation and discovery are sufficient to permit counsel and the court to act intelligently, and counsel are experienced in similar litigation, as is the case here. *Dunk*, 148 Cal.App.4th 1801; *Wren v. RGIS Inventory Specialties* (N.D. Cal. 2011) 2011 WL 1230826 *6. California courts put a great deal of stock into what is otherwise a private, negotiated, consensual agreement. Accordingly, a court’s inquiry is limited “to the extent necessary to reach a

1 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
2 between, the negotiating parties, and that the settlement, taken as a whole is fair, reasonable and
3 adequate to all concerned.” *Dunk*, 148 Cal.App.4th 1801. The Settlement Agreement satisfies all
4 applicable legal standards for preliminary approval and provides a substantial monetary recovery to
5 each Settlement Class Member, particularly in light of the challenges and risks to securing relief on a
6 class-wide basis.

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

8 The Class Action and Settlement will result in substantial benefits to the Class. The Gross
9 Settlement Fund represents 46% of the maximum non-PAGA damages recoverable to the Class (21.8%
10 overall maximum), and accounts for the risks inherent in both maintaining class certification and
11 ultimately prevailing at trial. VJK Dec. ¶ 23. In contrast to the risks of continued litigation, the
12 proposed Settlement ensures timely relief, cognizable monetary and non-monetary benefits, and is
13 undeniably fair, reasonable, and adequate.

14 Under Class Counsel’s damage model, Defendant faced a maximum theoretical exposure of
15 \$324,886.14 to the Class. VJK Dec. ¶ 22. Defendant also faced a maximum theoretical exposure of
16 \$358,550 in PAGA penalties.

17 As set forth above, Plaintiff’s regular rate (i.e., overtime) class claims are based on a regular
18 rate theory, that Defendant failed to pay all required overtime pay because Plaintiff and class members
19 received non-discretionary bonuses, specifically safety and ESOP bonuses that were not factored into
20 their overtime rates of pay. With respect to the Settlement Class Members as a whole, this
21 underpayment totaled \$10,782.93 with respect to overtime payment and \$11,703.21 with respect to sick
22 pay underpayment, for a total maximum liability of \$22,486.14. VJK Decl., ¶ 24.

23 A total of 1,443 pay periods fell within the Class Period covering the period in which wage
24 statement penalties were available. These wage statements were furnished to a total of 114 Class
25 Members, resulting in a maximum of \$138,600 in wage statement penalties under Labor Code section
26 226(e) ((\$50 x 114 wage statements) + (\$100 x 1,329 wage statements)). VJK Decl., ¶ 25.

1 As for the waiting time penalty claim, there were 35 former Class Members overall, with a
2 calculated maximum exposure of approximately \$163,800 in waiting time penalties under Labor Code
3 section 203. VJK Decl., ¶ 26.

4 Finally, Defendant faced a calculated maximum theoretical PAGA exposure of \$364,250. VJK
5 Decl., ¶ 27. This is derived from a theoretical maximum exposure of \$72,150 on the overtime claims
6 (\$50 x 1,443 pay periods); \$144,300 on the wage statement claims (\$100 x 1,443 pay periods);
7 \$144,300 on Labor Code section 204 claims (\$100 x 1,443 pay periods); and \$3,500 on the Labor Code
8 section 201/202 claims (\$100 x 35 former employees). As these PAGA claims are based on the same
9 facts as the class claims, they are subject to the same defenses described below.

10 **C. Defendant's Defenses and Realistic Liability**

11 Defendant asserted legal and factual grounds to defend against Plaintiff's claims including,
12 but not limited to: 1) The ESOP and safety bonuses were discretionary bonuses that did not need to
13 be included in the regular rate of pay; 2) the ESOP bonus was part of a bona-fide profit sharing plan
14 that did not need to be included in the regular rate of pay, 3) Defendant believed in good faith that it
15 was in compliance with the Labor Code at all relevant times; 4) Plaintiff and other employees were
16 subject to enforceable arbitration agreements; and 5) PAGA penalties cannot be "stacked" for
17 multiple alleged violations stemming from the same set of facts. VJK Decl., ¶ 30.

18 As set forth above, even without taking any of these defenses, or the risk of obtaining and
19 maintaining class certification and ultimately prevailing at trial, the Gross Settlement Amount
20 represents 46% of the maximum non-PAGA damages recoverable to the Class (21.8% overall
21 maximum), which itself is well within the range of settlement regularly approved by courts in wage-
22 and-hour class actions. Furthermore, the \$10,000 allocated to the PAGA is fairly and equally
23 allocated pro-rata amongst all Aggrieved Employees without preference to any subgroup of
24 employees², and is fair, reasonable, and adequate in light of the substantial relief obtained on behalf
25 of the class.

26
27
28 ² See *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.

1 “‘Great weight’ is accorded to the recommendation of counsel, who are most closely
2 acquainted with the facts of the underlying litigation. This is because ‘[p]arties represented by
3 competent counsel are better positioned than courts to produce a settlement that fairly reflects each
4 party’s expected outcome in the litigation.’ Thus, ‘the trial judge, absent fraud, collusion, or the like,
5 should be hesitant to substitute its own judgment for that of counsel.’” *Nat’l Rural Telecomms. Coop.*
6 *v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528. Class Counsel, having demonstrated a high
7 degree of competence in the litigation of this case, as well as numerous other wage and hour class
8 actions, strongly believe that the proposed Settlement is a fair, adequate, and reasonable resolution
9 of the Class Action and is preferable to continued litigation against Defendant. VJK Dec. ¶ 34³;
10 *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (approving settlement
11 amounting to 30% of the realistic damages estimated by class counsel; court noted that even if the
12 plaintiffs were entitled to treble damages the settlement would be approximately 10% of estimated
13 damages); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (settlement equal to
14 16.67% of potential recovery was fair). Indeed, “it is well-settled law that a cash settlement
15 amounting to only a fraction of the potential recovery does not . . . render the settlement inadequate
16 or unfair.” *Officers for Justice v. Civil Service Com’n of City and County of San Francisco*, 688
17 F.2d 615, 628 (9th Cir. 1982). Of course, “the very essence of a settlement is compromise, ‘a
18 yielding of absolutes and an abandoning of highest hopes.’” *Linney v. Cellular Alaska P’ship*, 151
19 F.3d 1234, 1242 (9th Cir. 1998). As such, “[t]he fact that a proposed settlement may only amount to
20 a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is
21 grossly inadequate and should be disapproved.” *Id.* Accordingly, the Settlement should be
22 preliminarily approved.

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

24 California law vests the court with broad discretion to fashion an appropriate notice program.
25 Cal. Civ. Code §1781; Fed. R. Civ. Proc. Rule 23(e)(1); Rule 23(c)(2)(B); *Cartt v. Superior Court*
26 _____

27 ³ 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 (1975) 50 Cal.App.3d 960, 973-74. Because all Settlement Class Members are current or former
2 employees of Defendant for whom Defendant has current or last known addresses as well as SSNs,
3 notice is simpler and more reliable than in other types of class actions. The Class Notice is consistent
4 with notices approved by state and federal courts and, under the circumstances, affords the best notice
5 practicable.

6 The Class Notice will be sent to all Class Members, informs them of the terms of the
7 Settlement, and is neutrally worded to avoid prejudice. The Class Notice meets all of the requirements
8 of procedural due process and California Rules of Court, Rules 3.766(d)-(f) and 3.769(f). VJK Decl.,
9 Exhibit 3. In short, the Class Notice provides Settlement Class Members with all the necessary
10 information to make an informed decision.

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

12 The Parties have selected ILYM to serve as Administrator. ILYM has substantial experience in
13 administration, and Class Counsel has found them to perform their duties well and at a reasonable
14 price. VJK Decl., ¶¶ 42-43. The Administrator's fees and costs will be paid out of the GSF/QSF. The
15 Administrator will, among other things, distribute the Court-approved Class Notice, calculate
16 Participating Settlement Class Members' shares and PAGA Payment amounts, prepare and mail
17 settlement checks, respond to inquiries/disputes as appropriate, prepare requisite tax forms, and
18 generally perform all normal and customary duties associated with the administration of such
19 settlements. Plaintiff seeks preliminary approval of \$5,950 for the Administrator's fees and costs. VJK
20 Dec. ¶ 43.

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

22 "Courts routinely approve incentive awards to compensate plaintiffs for the services they
23 provided and the risks they incurred during the course of the class action litigation." *Ingram v. Coca-*
24 *Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (approving \$300,000 payment to each class
25 representative in employment action settling before certification).⁴ Factors used by courts in

26 _____
27 ⁴ *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 determining the amount of the service payments include (1) a comparison between service awards and
2 the range of monetary recovery available to the class (*see Ingram*, 200 F.R.D. at 694; (2) time and
3 effort put into the litigation (*see Van Vranken*, 901 F. Supp. at 299); (3) whether the litigation will
4 further the public policy underlying the statutory scheme (*see Roberts*, 979 F. Supp. at 201 n.23); and
5 (4) risks of retaliation (*see Roberts*, 979 F. Supp. at 202). All factors support the \$10,000 enhancement
6 payment requested here. The sought payment is fair, reasonable and appropriate under the
7 circumstances of this case, including Plaintiff's provision of a general release and Civil Code section
8 1542 waiver. Plaintiff worked diligently with Class Counsel throughout this entire litigation, including
9 participating in discovery, participating in mediation, and taking numerous calls with Class Counsel,
10 and should be rewarded for taking the initiative to pursue these claims on behalf of the Class, and for
11 her role in reaching a substantial settlement providing valuable relief to the Class. VJK Dec. ¶¶ 44-48.
12 Given Plaintiff's unfortunate passing, it is requested that Plaintiff's enhancement payment be paid to
13 her personal representative, Katrina Morganson.

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

15 Plaintiff is entitled to seek payment of attorneys' fees and costs. Cal. Lab. Code §§ 218.5,
16 226(e) (1), 1194, and 2699(g); *Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1427. In
17 conjunction with final approval, Plaintiff will seek a fee award under the common fund doctrine,
18 customarily used in awarding fees and costs in settlement of Labor Code class actions.⁵ Courts
19 ordinarily approve attorney's fees payments between one-third and forty percent in comparable wage
20 and hour class actions.⁶ Here, Plaintiff will seek attorney's fees of one-third of the GSF, or \$50,000.00
21 and declared costs of up to \$7,000. To date, Class Counsel has spent over 100 hours in the prosecution
22
23

24 ⁵ *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.

⁶ 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 of this action and incurred \$6,674.65 in out-of-pocket costs. VJK Decl., ¶ 53. The Court should
2 preliminarily approve the requested awards as fair and reasonable.

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

4 **A. The Legal Standard.**

5 A settlement class must meet the following criteria for certification: (1) the individuals in the
6 class are so numerous that joinder would be impractical; (2) there is a commonality of interest between
7 the plaintiff and the members of the class; (3) plaintiff's claims are typical of the claims of the class
8 members; and (4) plaintiff and his counsel will fully and adequately represent the interests of the class
9 members. Code. Civ. Proc. § 382; *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319,
10 326-27; Fed. R. Civ. P. 23.⁷ All prerequisites to certification have been and continue to be met for each
11 of the proposed settlement classes.

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

13 The identity of each Class Member remains ascertainable because all Class Members worked
14 for Defendant within California during the Class Period, are readily identified through employee and
15 payroll records, and will receive notice of this Action. *Rose v. City of Hayward* (1981) 126 Cal.App.3d
16 926, 932. With 114 individuals, joinder is impractical.

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

18 Commonality is met if questions of law and fact that are common to the class predominate and
19 the theory of recovery is "amenable to class treatment." *Sav-On Drug Stores*, 34 Cal.4th at p. 327;
20 *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033. The claims of Plaintiff and each of
21 the Class Members flow from the same facts and legal claims. VJK Dec. ¶ 44.

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

23 Typicality is met if the claims of named representatives are typical of those of the class, though
24 "they need not be substantially identical." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011,
25 1020; *Sav-On Drug Stores, Inc.*, 34 Cal.4th at p. 326. Plaintiff's claims are typical of the claims of
26

27 ⁷ 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 every Class Member because they arise from the same factual bases, policies and procedures, and legal
2 theories. *Wehner v. Syntex Corp.* (N.D. Cal. 1987) 117 F.R.D. 641, 644. Were Plaintiff not serving as
3 Class Representative, she would be a member of the Class. VJK Dec. ¶ 44.

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

5 Adequacy exists if the named representative and counsel have no interests adverse to those of
6 the Class Members and are committed to vigorously prosecuting the case on behalf of the class.
7 *Hanlon*, 150 F. 3d at 1020; *McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450-51. Plaintiff's
8 interest in prosecuting this matter and obtaining the most beneficial recovery practicable fully
9 comported with the collective interests of each respective Class Member. There are no conflicts
10 between Plaintiff and the other Class Members, and Plaintiff was a member of the Class. *Hanlon*, 150.
11 F 3d at 1021. Moreover, any Class Member who wishes to opt-out and/or object to the Settlement will
12 have the opportunity to protect his/her individual interest by doing so. *Hanlon, supra*, 150. F.3d 1021.

13 Plaintiff and Class Counsel have demonstrated their commitment to vigorously prosecuting this
14 lawsuit on behalf of the Class as demonstrated by Class Counsel's experience in wage and hour cases
15 and the substantial benefits they have and will continue to confer upon Class Members, including
16 securing the Class Settlement Amount of \$150,000, which benefits Settlement Class Members. VJK
17 Dec. ¶¶ 44-47.

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

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

24 ///

25 ///

26 ///

1 **VII. CONCLUSION**

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

3
4 **DATED:** November 25, 2024

MAYALL HURLEY P.C.

5 By _____

6 ROBERT J. WASSERMAN

7 WILLIAM J. GORHAM, III

8 VLADIMIR J. KOZINA

9 Attorneys for Plaintiff and the Putative Class