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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.

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: 9:00 am

Dept: 22

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

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

3 Pursuant to the Settlement, Defendants will pay \$150,000.00 – 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 \$5,950.00),
6 Plaintiff’s Class Representative Enhancement Payment (\$10,000), the fees (\$50,000.00) and costs (up
7 to \$7,000.00) of Class Counsel, and the amount allocated to the PAGA Claims (\$10,000), a \$69,550.00
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 \$610 each. VJK Decl. ¶ 15.

11 **B. Notice to the Class**

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

14 **C. Participation in the Settlement**

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

19 **D. Settlement Shares**

20 Individual Settlement Payments will be calculated and apportioned on a pro rata basis from the
21 Net Settlement Amount to Participating Settlement Class Members based on the number of weeks
22 during the Class Period in which they performed at least one day of work for Defendants. SA § III.48.
23 The average payment to each Participating Class Member is expected to be approximately \$610.00
24 (\$69,550.00 / 114). VJK Dec. ¶ 14. For taxes and withholdings, the Individual Class Payments will be
25 allocated one-third to wages and two-thirds to penalties and interest. SA, § III.68. PAGA Settlement
26 Payments will be allocated as 100% penalties. *Ibid.*

27 ///

28 ///

1 **E. Scope Of Release**

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

13 **F. Settlement Administration**

14 The Parties have agreed on ILYM Group, Inc. (“ILYM”), a cost-effective and experienced
15 settlement administration provider, to administer the settlement. Plaintiff seeks approval of up to
16 \$5,950 for the Administrator’s fees and costs. SA § II.34.

17 **G. Payment To The LWDA**

18 The Settlement Agreement allocates \$10,000 to resolve PAGA claims. 75% (\$7,500) will be
19 paid to the LWDA, and the remaining 25% (\$2,500) will be distributed to Class Members. SA, §
20 II.22. The Parties negotiated this amount in good faith, intending to serve the punitive and deterrent
21 purposes of the PAGA. VJK Dec. ¶ 15. The LWDA has been notified of the Settlement. VJK Dec. ¶
22 16, Ex. 2.

23 **H. Enhancement Payment to Plaintiff.**

24 Plaintiff will apply for an Enhancement Payment of \$10,000 for her service to the class. SA, §
25 II.7. Class Members will be apprised of Plaintiff’s request, their ability to review the moving papers
26 on the Court’s website, and to object to the request if they so desire. SA, Class Notice.

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

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

2 Class Counsel will request attorneys' fees of \$50,000.00 (one-third of the GSF), as well as
3 declared litigation costs up to \$7,000.00. SA § III.42. 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 Defendant separately negotiated a settlement of Plaintiff's individual
8 discrimination and wrongful termination claims. The individual settlement was negotiated separately
9 from the class settlement and will be paid from separate funds. The specific terms of this agreement are
10 confidential; however, the proposed Class Notice apprises the class members of the amount of this
11 settlement, and if 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	
19 Administrator to mail Class Notice.	Within 30 calendar days of the Order Granting Preliminary Approval.
20	
21 Deadline for Class Members to object or opt out.	Within 45 calendar days after Notice mailed.
22 Plaintiff to file Motion for Attorneys' Fees, Cost and Service Payment.	Not less than 16 court days before the Final Approval hearing.
23	
24 Deadline for Plaintiff to file Motion for Final Approval.	Not less than 16 court days before the Final Approval hearing.
25	
26 Final Approval Hearing.	Not less than 100 days after Plaintiff files his Motion for Preliminary Approval.
27	
28	

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% of the maximum non-PAGA damages recoverable to the Class (21.8%
4 overall maximum), and accounts for the risks inherent in both maintaining class certification and
5 ultimately prevailing at trial. VJK Dec. ¶ 22. 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 \$324,886.14 to the Class. VJK Dec. ¶ 21. Defendant also faced a maximum theoretical exposure of
10 \$358,550 in PAGA penalties.

11 As set forth above, Plaintiff's regular rate (i.e., overtime) class claims are based on a regular
12 rate theory, that Defendant failed to pay all required overtime pay because Plaintiff and class members
13 received non-discretionary bonuses, specifically safety and ESOP bonuses that were not factored into
14 their overtime rates of pay. With respect to the Settlement Class Members as a whole, this
15 underpayment totaled \$10,782.93 with respect to overtime payment and \$11,703.21 with respect to sick
16 pay underpayment, for a total maximum liability of \$22,486.14. VJK Decl., ¶ 23.

17 A total of 1,443 pay periods fell within the Class Period covering the period in which wage
18 statement penalties were available. These wage statements were furnished to a total of 114 Class
19 Members, resulting in a maximum of \$138,600 in wage statement penalties under Labor Code section
20 226(e) ((\$50 x 114 wage statements) + (\$100 x 1,329 wage statements)). VJK Decl., ¶ 24.

21 As for the waiting time penalty claim, there were 35 former Class Members overall, with a
22 calculated maximum exposure of approximately \$163,800 in waiting time penalties under Labor Code
23 section 203. VJK Decl., ¶ 25.

24 Finally, Defendant faced a calculated maximum theoretical PAGA exposure of \$364,250. VJK
25 Decl., ¶ 26. This is derived from a theoretical maximum exposure of \$72,150 on the overtime claims
26 (\$50 x 1,443 pay periods); \$144,300 on the wage statement claims (\$100 x 1,443 pay periods);
27 \$144,300 on Labor Code section 204 claims (\$100 x 1,443 pay periods); and \$3,500 on the Labor Code
28

1 section 201/202 claims (\$100 x 35 former employees). As these PAGA claims are based on the same
2 facts as the class claims, they are subject to the same defenses described below.

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

4 Defendant asserted legal and factual grounds to defend against Plaintiff's claims including,
5 but not limited to: 1) The ESOP and safety bonuses were discretionary bonuses that did not need to
6 be included in the regular rate of pay; 2) the ESOP bonus was part of a bona-fide profit sharing plan
7 that did not need to be included in the regular rate of pay, 3) Defendant believed in good faith that it
8 was in compliance with the Labor Code at all relevant times; 4) Plaintiff and other employees were
9 subject to enforceable arbitration agreements; and 5) PAGA penalties cannot be "stacked" for
10 multiple alleged violations stemming from the same set of facts. VJK Decl., ¶ 29.

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

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

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

1 of the Class Action and is preferable to continued litigation against Defendant. VJK Dec. ¶ 33³;
2 *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (approving settlement
3 amounting to 30% of the realistic damages estimated by class counsel; court noted that even if the
4 plaintiffs were entitled to treble damages the settlement would be approximately 10% of estimated
5 damages); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (settlement equal to
6 16.67% of potential recovery was fair). Indeed, “it is well-settled law that a cash settlement
7 amounting to only a fraction of the potential recovery does not . . . render the settlement inadequate
8 or unfair.” *Officers for Justice v. Civil Service Com’n of City and County of San Francisco*, 688
9 F.2d 615, 628 (9th Cir. 1982). Of course, “the very essence of a settlement is compromise, ‘a
10 yielding of absolutes and an abandoning of highest hopes.’” *Linney v. Cellular Alaska P’ship*, 151
11 F.3d 1234, 1242 (9th Cir. 1998). As such, “[t]he fact that a proposed settlement may only amount to
12 a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is
13 grossly inadequate and should be disapproved.” *Id.* Accordingly, the Settlement should be
14 preliminarily approved.

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

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

23 The Class Notice will be sent to all Class Members, informs them of the terms of the
24 Settlement, and is neutrally worded to avoid prejudice. The Class Notice meets all of the requirements
25 of procedural due process and California Rules of Court, Rules 3.766(d)-(f) and 3.769(f). SA, Exhibit
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 A. In short, the Class Notice provides Settlement Class Members with all the necessary information to
2 make an informed decision.

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

4 The Parties have selected ILYM to serve as Administrator. ILYM has substantial experience in
5 administration, and Class Counsel has found them to perform their duties well and at a reasonable
6 price. VJK Decl., ¶¶ 41-42. The Administrator's fees and costs will be paid out of the GSF/QSF. The
7 Administrator will, among other things, distribute the Court-approved Class Notice, calculate
8 Participating Settlement Class Members' shares and PAGA Payment amounts, prepare and mail
9 settlement checks, respond to inquiries/disputes as appropriate, prepare requisite tax forms, and
10 generally perform all normal and customary duties associated with the administration of such
11 settlements. Plaintiff seeks preliminary approval of \$5,950 for the Administrator's fees and costs. VJK
12 Dec. ¶ 42.

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

14 "Courts routinely approve incentive awards to compensate plaintiffs for the services they
15 provided and the risks they incurred during the course of the class action litigation." *Ingram v. Coca-*
16 *Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (approving \$300,000 payment to each class
17 representative in employment action settling before certification).⁴ Factors used by courts in
18 determining the amount of the service payments include (1) a comparison between service awards and
19 the range of monetary recovery available to the class (*see Ingram*, 200 F.R.D. at 694; (2) time and
20 effort put into the litigation (*see Van Vranken*, 901 F. Supp. at 299); (3) whether the litigation will
21 further the public policy underlying the statutory scheme (*see Roberts*, 979 F. Supp. at 201 n.23); and
22 (4) risks of retaliation (*see Roberts*, 979 F. Supp. at 202). All factors support the \$10,000 enhancement
23 payment requested here. The sought payment is fair, reasonable and appropriate under the
24 circumstances of this case, including Plaintiff's provision of a general release and Civil Code section
25 1542 waiver. Plaintiff, worked diligently with Class Counsel throughout this entire litigation, including
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 participating in discovery, participating in mediation, and taking numerous calls with Class Counsel,
2 should be rewarded for taking the initiative to pursue these claims on behalf of the Class, and for her
3 role in reaching a substantial settlement providing valuable relief to the Class⁵. VJK Dec. ¶¶ 43-47.

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

5 Plaintiff is entitled to seek payment of attorneys' fees and costs. Cal. Lab. Code §§ 218.5,
6 226(e) (1), 1194, and 2699(g); *Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1427. In
7 conjunction with final approval, Plaintiff will seek a fee award under the common fund doctrine,
8 customarily used in awarding fees and costs in settlement of Labor Code class actions.⁶ Courts
9 ordinarily approve attorney's fees payments between one-third and forty percent in comparable wage
10 and hour class actions.⁷ Here, Plaintiff will seek attorney's fees of one-third of the GSF, or \$50,000.00
11 and declared costs of up to \$7,000. To date, Class Counsel has spent over 100 hours in the prosecution
12 of this action and incurred \$6,674.65 in out-of-pocket costs. VJK Decl., ¶ 52. The Court should
13 preliminarily approve the requested awards as fair and reasonable.

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

15 **A. The Legal Standard.**

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

22 ⁵ Tragically, Plaintiff unexpectedly passed away in August, after having approved of and signed the Settlement. While
23 it is Class Counsel's position that her unfortunate passing does not alter the ability of the Court to grant approval of the
24 Settlement or to ultimately enter judgment consistent with same, Class Counsel will request that the Court order
25 payment of any enhancement payment and her share of the class settlement to her estate.

26 ⁶ *Wershba*, 91 Cal.App.4th at 254; *Lealao v. Beneficial Cal.* (2000) 82 Cal.App.4th 19, 26-30; *Serrano v. Priest* (1977) 20
27 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
or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be
awarded attorney's fees out of the fund."); see also *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 ("[A] lawyer who
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.

28 ⁷ 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).

326-27; Fed. R. Civ. P. 23.⁸ All prerequisites to certification have been and continue to be met for each of the proposed settlement classes.

B. The Certified Class Is Ascertainable.

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

C. The Commonality Requirement Is Met.

Commonality is met if questions of law and fact that are common to the class predominate and the theory of recovery is “amenable to class treatment.” *Sav-On Drug Stores*, 34 Cal.4th at p. 327; *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033. The claims of Plaintiff and each of the Class Members flow from the same facts and legal claims. VJK Dec. ¶ 43.

D. The Typicality Requirement is Met

Typicality is met if the claims of named representatives are typical of those of the class, though “they need not be substantially identical.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1020; *Sav-On Drug Stores, Inc.*, 34 Cal.4th at p. 326. Plaintiff’s claims are typical of the claims of every Class Member because they arise from the same factual bases, policies and procedures, and legal theories. *Wehner v. Syntex Corp.* (N.D. Cal. 1987) 117 F.R.D. 641, 644. Were Plaintiff not serving as Class Representative, she would be a member of the Class. VJK Dec. ¶ 43.

E. The Adequacy Requirement is Met.

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

⁸ The California Supreme Court has authorized California’s trial courts to use Federal Rule of Civil Procedure 23 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 \$150,000, which benefits Settlement Class Members. VJK
8 Dec. ¶¶ 43-46.

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:** September 17, 2024

MAYALL HURLEY P.C.

19
20 By _____

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