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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF MARIN**

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| JOCELYN KELLER on behalf of herself and all others similarly situated,<br><br>Plaintiff,<br><br>v.<br><br>BANK OF MARIN, a California Corporation; BANK OF MARIN BANCORP, a California Corporation; and DOES 1-50, inclusive.<br><br>Defendants. | CASE NO.: CV0001538<br><br>*Assigned to Hon. Andrew Sweet*<br><br>**DECLARATION OF MEHRDAD BOKHOUR IN SUPPORT OF CLASS ACTION SETTLEMENT**<br><br>**<u>HEARING INFO</u>**<br><br>Date:<br>Time:<br>Dept.: E<br><br>Complaint Filed: December 11, 2023<br>FAC Filed: February 13, 2024<br>SAC Filed: May 7, 2025 |

## DECLARATION OF MEHRDAD BOKHOUR

I, Mehrdad Bokhour, say and declare as follows:

1. I am an attorney at law, duly licensed to practice before all the Courts of the State of California, and I am the principal of Bokhour Law Group, P.C., and I serve as attorney of record for Plaintiff Jocelyn Keller ("Plaintiff") and the Putative Class. I am familiar with the file in this matter, and if called as a witness, I could and would competently testify to the following facts of my own personal knowledge. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

2. I have been a member in good standing of the State Bar of California since 2012. I am admitted to practice before all California state courts, as well as the United States District Courts for the Central, Northern, Eastern, and Southern Districts of California. I have litigated class actions and representative actions under the Private Attorneys General Act ("PAGA") in courts throughout California..

3. I graduated from the University of California, Berkeley, in 2007 and received my Juris Doctor degree from Loyola Law School, Los Angeles, in 2012. I began my legal career with a focus on plaintiff-side employment litigation, concentrating on disability discrimination and harassment matters under the Fair Employment and Housing Act. After several years handling a broad range of civil litigation on behalf of both Plaintiffs and Defendants, I founded my law firm in 2014, devoting my practice exclusively to representing employees in actions against their employers. My firm's work primarily involves wage and hour matters, including claims for unpaid wages, as well as discrimination, harassment, and retaliation claims. A substantial portion of my practice involves class actions, representative PAGA actions, or hybrid matters involving both.

4. I am an active member of the California Employment Lawyers Association ("CELA") and have attended numerous Continuing Legal Education programs focused on employee advocacy. My firm has the experience, resources, and capacity necessary to provide adequate representation as Class Counsel to the aggrieved employees. Currently, my firm serves as lead counsel in at least twenty-five wage-and-hour class actions and as co-counsel in at least twenty additional cases.

5. I was selected as a "Super Lawyer Rising Star" in Employment Litigation each year

from 2017 through 2022, and as a "Super Lawyer" in 2023, 2024, and 2025—a distinction awarded to no more than 2.5% of attorneys practicing in the field..

6. Through a contested but productive mediation, Plaintiff and Defendantss Bank of Marin and Bank of Marin Bancorp ("Defendants") (collectively, the "Parties") entered into a Class Action and PAGA Settlement Agreement ("Settlement Agreement" or "Settlement"), resolving the wage and hour claims asserted on behalf of the Settlement Class. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit "A"**.

7. The Settlement Agreement provides for a full and final release of claims asserted in this Action in exchange for Defendants' agreement to pay a non-reversionary Gross Settlement Amount of $600,000. The Settlement is structured on a non-claims-made basis, meaning that each Settlement Class Member who does not opt out will automatically receive their share of the Net Settlement Amount without the need to submit a claim form or take any affirmative action.

8. Plaintiff seeks to represent a Class of all individuals who are or were employed by Bank of Marin as non-exempt hourly employees in California during December 11, 2019, through October 12, 2024 (the "Class" or "Class Members"). Likewise, the PAGA Members include any non-exempt hourly employee who works or worked for Bank of Marin in California at any time during November 8, 2022, through October 12, 2024. ("PAGA Members").. ("PAGA Members")

9. Under the terms of the Settlement Agreement, Defendants will not oppose Class Counsel's application for a reasonable award of attorney's fees not to exceed one-third of the Settlement Amount, Class Counsel's litigation costs not to exceed $20,000, Administrator Expenses Payment not to exceed $7,000, PAGA penalties of $10,000 (of which $7,500 or 75% will be paid to the LWDA and the remaining $2,500 or 25% will be paid to the PAGA Members), and a Class Representative Service Payment not to exceed $10,000 to the named Plaintiff (S.A. ¶ 3 *et seq.*), as follows:

| | **Total Amount** |
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| *Gross Settlement Amount* | $600,000 |
| Attorneys' Fees (not to exceed 1/3 of GSA) | $200,000 |
| Litigation Costs (not to exceed) | $20,000 |
| Administrator Costs (not to exceed) | $7,000.00 |

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| PAGA payment to LWDA (75% of $10k award) | $7,500.00 |
| PAGA payment to PAGA Members | $2,500.00 |
| Plaintiff's Class Representative Service Payments | $10,000.00 |
| ***Net Settlement Amount*** | **$353,000** |

10. The Class consists of approximately 299 non-exempt employees who worked for Defendants in California during the Class Period. Plaintiff contends that, regardless of job title or role, all non-exempt employees were subject to the same workplace wage and hour policies and practices. As a result, Individual Settlement Payments will be distributed on a pro-rata basis, determined by the number of Compensable Workweeks worked during the Class Period. Assuming a total of approximately 299 Class Members, the average payment is estimated to be **$1,180.60**, with the highest individual payment estimated at approximately **$2,919**. Class Members with more Compensable Workweeks will receive proportionally higher payments.

11. The Settlement is non-reversionary, and Class Members are not required to submit Claim Forms to receive payment. Each Class Member will be mailed a Class Notice containing information about their estimated Individual Settlement Amount, the opportunity to dispute the number of Workweeks credited to them during the Class Period, and instructions on how to submit a Request for Exclusion or an Objection to the Settlement. All Class Members who do not timely submit a valid Request for Exclusion will automatically receive their Individual Settlement Payment after the Court grants Final Approval. PAGA Members eligible for payments under the PAGA portion of the Settlement may not opt out and will receive their share of the PAGA Amount regardless of participation in the class settlement (attached hereto as **Exhibit B**).

12. Because the Settlement is fair, reasonable, and the result of arm's-length negotiations between experienced counsel with the assistance of an experienced mediator, following an appropriate and thorough exchange of relevant information and documents, it warrants preliminary approval. Plaintiff respectfully requests that the Court enter an order: (1) preliminarily approving the Settlement; (2) conditionally certifying the Class pursuant to California Code of Civil Procedure § 382 for settlement purposes only; (3) approving the form and content of the proposed Class Notice; (4) appointing Plaintiff's counsel as Class Counsel; (5) appointing ILYM Group, Inc. as the

Settlement Administrator; and (6) scheduling a Final Approval Hearing.

13. On December 11, 2023, Plaintiff filed suit in Marin County Superior Court, asserting claims based on Bank of Marin's alleged: (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to pay all sick time wages; (6) failure to provide accurate itemized wage statements; (7) failure to pay all wages due upon separation of employment; and (8) violation of California's Unfair Competition Law ("UCL"). On February 13, 2024, Plaintiff filed a First Amended Complaint alleging the same causes of action in the Complaint and adding a cause of action for alleged PAGA penalties. The parties stipulated to the filing of a Second Amended Complaint to conform the complaint to include all PAGA claims asserted in the LWDA letter.

14. The Parties conducted a thorough investigation into the facts and legal issues in this Action. This included interviews with putative class members, an investigation of Defendants' operations and pay practices, and the informal exchange of discovery materials, including Defendants' written policies and practices, as well as a representative 25% randomized sampling of payroll and timekeeping records for Class Members and PAGA Members. Class Counsel has extensive experience in wage and hour litigation and has conducted substantial research regarding the legal claims and potential defenses at issue. Class Counsel has diligently investigated the claims asserted on behalf of the Class Members and PAGA Members.

15. Based on this investigation and their own independent evaluation, Class Counsel believes that the proposed Settlement is fair, reasonable, and adequate, and is in the best interests of the Class Members and PAGA Members, especially in light of the risks and uncertainties associated with continued litigation, Defendants' asserted defenses, potential appellate issues and the lack of facially noncompliant policies.

16. On August 12, 2024, the Parties participated in a full-day mediation with Michael Loeb, Esq., an experienced and respected mediator in wage and hour class actions. Following that session, and after the issuance of a mediator's proposal, the Parties reached a settlement.

17. Plaintiff alleges various wage and hour violations on behalf of non-exempt employees who worked for Defendants during the Class Period (i.e., Class Members).

18. First, Plaintiff alleges that Defendants failed to properly calculate and pay overtime and sick pay wages by excluding non-discretionary bonuses and other forms of remuneration from the "regular rate of pay."

19. Additionally, Plaintiff alleges that Defendants maintained deficient meal and rest period policies and practices that failed to provide Class Members with timely, duty-free, and compliant meal periods, or pay premium wages in lieu thereof. Plaintiff also alleges that Class Members were not provided with compliant, duty-free rest periods of at least ten (10) minutes for every four (4) hours worked, or major fraction thereof, due to unlawful policies requiring employees to remain on duty and/or on the premises during rest periods.

20. Plaintiff alleges that Defendants failed to pay all final wages upon separation of employment and did not furnish accurate, itemized wage statements in compliance with California Labor Code § 226. Finally, Plaintiff brings representative claims under the Private Attorneys General Act ("PAGA") for civil penalties based on the alleged Labor Code violations described above.

21. Defendants contested and denied all material allegations raised by Plaintiff, both on the merits and with respect to the propriety of class certification and PAGA representative treatment.

22. First, Defendants argued that they correctly calculated and paid all overtime and sick pay wages using the proper "regular rate of pay," including all forms of non-discretionary compensation. Defendants denied that any bonuses or other forms of remuneration were improperly excluded from those calculations.

23. Additionally, Defendants maintained that their written meal and rest period policies were compliant with California law and that, in practice, Class Members were provided the opportunity to take timely, duty-free meal and rest periods. Defendants asserted that it had no policy or practice requiring employees to remain on duty or on premises during rest periods.

24. Defendants also argued that Plaintiff's claims for wage statement violations, waiting time penalties, and PAGA penalties were derivative of other claims it contended were meritless. Defendants denied that any violations occurred that would support derivative penalties under Labor Code sections 203 or 226.

25. Finally, Defendants asserted that individual inquiries would be necessary to determine

liability, such as whether and why specific employees took shortened or untimely meal periods, and how break compliance was managed under various supervisors. Defendants emphasized that the putative Class Members held different positions with varying job duties, worked in different locations, and were subject to different managerial practices. Defendants argued that this variability rendered the case unsuitable for class or representative treatment.

26. Based upon Plaintiff's and her counsels' independent investigation and detailed data obtained through informal discovery and information exchanges, and factoring in claim certification probabilities and liability probabilities, Class Counsel formulated detailed damages models to evaluate the claims in preparation for mediation and in order to reach a realistic and reasonable resolution as further detailed below.

27. Next, Plaintiff alleged that Defendants failed to properly calculate the "regular rate of pay" by excluding non-discretionary bonuses, commissions, and other incentive payments when paying overtime and sick pay wages. Plaintiff contends that this exclusion resulted in systemic underpayment of both types of compensation in violation of California law. Based on a review of payroll and paystub data, Plaintiff estimates that Defendants' failure to include all required forms of remuneration in the "regular rate of pay" resulted in approximately $9,225 in unpaid overtime wages and approximately $47,203 in unpaid sick pay wages, for a total estimated recovery of $56,428.

28. In response, Defendants argued that many of the bonus and incentive payments at issue were taken into account for overtime payments or were otherwise discretionary in nature and therefore lawfully excluded from regular rate calculations. Defendants further contended that it correctly paid all overtime and sick pay in accordance with the Labor Code and that any potential underpayment was minimal and made in good faith.

29. While Plaintiff maintains that these payments were non-discretionary and required to be included in the regular rate, Plaintiff acknowledges litigation risk, including the possibility that the Court could deny class certification based on individual variations in pay structure and the nature of the bonuses. Due to this, and in light of Defendants' other defenses, Plaintiff completely discounted this claim, keeping in mind that the true significant value of these unpaid wage claims lies in the derivative claims for waiting time penalties under Labor Code § 203, and wage statement violations

under Labor Code § 226, which is discussed below.

30. Plaintiff also alleged that Defendants failed to timely pay all wages due at separation of employment, entitling former employees to waiting time penalties under Labor Code §§ 201–203. Based on Defendants' records, there were approximately 147 Class Members who separated from their employment during the applicable statutory period. Using the statutory maximum of 30 days, with an assumed 8-hour workday and an average hourly rate of $25.46, the total maximum potential exposure for waiting time penalties is approximately $898,228.80 (147 employees × 8 hours/day × $25.46/hour × 30 days).

31. Defendants disputed this claim and asserted that any failure to pay wages at separation was not willful and, therefore, did not give rise to waiting time penalties under the Labor Code. Defendants also contended that it maintained facially neutral and compliant payroll practices and would defeat any underlying wage claims on the merits or at class certification.

32. To account for these risks, Plaintiff applied an equitable discount reflecting the risk of denial at class certification, as well as an additional discount for the risk of defeat at summary judgment or trial. Therefore, Plaintiff applied a 25% risk of defeat at the class certification stage, and an additional 25% risk of defeat at the summary judgment stage or on the merits, resulting in the risk-adjusted value of $505,253 for the waiting time penalty claim.

33. With respect to Plaintiff's meal and rest period claims, the Class Members collectively worked approximately 135,328 shifts during the Class Period. Based on the Plaintiff's analysis of a representative sample of Defendants' timekeeping and payroll records produced prior to mediation, the Plaintiff applied estimated violation rates of 10% for meal periods and 25% for rest periods. Using the applicable premium rate of $25.46 per missed break, the maximum potential damages are estimated at approximately $344,545 for the meal period claim (135,328 shifts × 10% × $25.46) and $861,362 for the rest period claim (135,328 shifts × 25% × $25.46).

34. Defendants contested liability for both claims, asserting that meal and rest period issues presented individualized questions inappropriate for class certification. Defendants maintained that their written policies were facially compliant with California law and that employees were provided flexibility to take breaks at their discretion. It further argued that manager-specific practices,

job duties, and employee choices varied significantly, requiring individualized inquiries into whether breaks were missed or voluntarily skipped. Based on these risks, Plaintiff acknowledged that there was a decent chance that the Court could deny class certification.

35. Defendants also asserted that, even if certification were granted, it would prevail on the merits by showing that it either provided compliant breaks or paid the required premium compensation. Defendants contended that Plaintiff would be unable to present reliable, representative evidence sufficient to establish liability or support a classwide damages award. In light of these risks, Plaintiff discounted Defendants' maximum exposure by 70% to account for the risk of non-certification, and an additional 60% to account for Defendants' defenses on the merits to arrive at an estimated exposure of approximately $41,345 for the meal period claim and $103,363.52 for the rest period claim.

36. Finally, Plaintiff alleged that Defendants issued noncompliant wage statements in violation of Labor Code § 226, based on the same facts underlying Plaintiff's claims for unpaid wages, meal and rest period premiums, and failure to include all forms of compensation in the regular rate of pay. Plaintiff estimates that approximately 12,956 allegedly violative wage statements were issued during the Class Period. In calculating Defendants' maximum potential exposure, Plaintiff conservatively assumed that only the "initial" penalty of $50 per violation would apply, for a total of $647,800 in potential wage statement penalties, in accordance with Labor Code § 226(e) and case law holding that higher penalties apply only after an employer has been notified of the violations. See *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008). This results in a maximum potential penalty of $97,500 (1,950 × $50).

37. Defendants disputed this claim and asserted that their wage statements fully complied with the requirements of Labor Code § 226. Defendants further argued that, even if there were any errors, they were not "knowing and intentional," and Plaintiff could not establish the required element of injury. Defendants also relied on their defenses to the underlying wage and hour claims and class certification.

38. In light of these risks, Plaintiff applied a reasonable discount to account for the possibility of denial at the class certification stage, as well as an additional discount for the risk of

loss on the merits. As such, Plaintiff discounted the calculated maximum exposure by 30% for the risk of non-certification, and by an additional 50% for the risk of being unsuccessful on the merits to arrive at an estimated total of $226,730.

39. Plaintiff also sought civil penalties under the Private Attorneys General Act of 2004 ("PAGA") for each violation for which such penalties are available, and alleged that these penalties could be assessed on a cumulative or "stacked" basis. See *Gonzalez v. Corecivic of Tennessee, LLC*, No. 1:16-cv-01891-DAD-JLT, 2018 WL 4388425, at *12 (E.D. Cal. Sept. 12, 2018) ("'stacking' PAGA penalties is not inappropriate under California law"). Assuming application of the default penalty of $100 per pay period pursuant to Labor Code § 2699(f)(2), and that penalties are not subject to reduction or judicial discretion, the maximum potential exposure for PAGA penalties could reach approximately $1,295,600 (12,956 pay periods x $100).

40. However, this theoretical maximum does not account for significant legal uncertainties. First, courts are divided on whether "stacking" PAGA penalties across multiple violations in a single pay period is appropriate, especially where the violations are derivative in nature. Second, Labor Code § 2699(e)(2) grants courts broad discretion to reduce civil penalties where doing so would avoid an award that is "unjust, arbitrary and oppressive, or confiscatory." See *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (approving reduction of PAGA penalties where the employer did not act willfully or negligently, and legal obligations were unclear).

41. In recognition of these risks, including the likelihood of judicial reduction and the difficulties of prevailing on the merits of the underlying claims, Plaintiff applied significant discounts to the estimated exposure. After accounting for these risks, Plaintiff estimates a reasonable potential value of $64,780 in PAGA penalties. However, in light of the Parties' mutual desire to resolve the matter without protracted litigation, they agreed to allocate $10,000 of the Gross Settlement Amount toward resolution of the PAGA claim, which Plaintiff believes is fair and reasonable under the circumstances.

42. In sum, when factoring in defenses and risks of ongoing litigation, Plaintiff estimates the risk-adjusted class recovery as follows:

- Regular Rate of Pay Claim: Discounted

- Labor Code §§ 201 – 203 Claims: $505,253
- Meal Period Claims: $41,345
- Rest Break Claims: $103,363.52
- Wage Statement Claims: $226,730
- PAGA Penalties $64,780
- **<u>Total Risk-Adjusted Penalties and Damages</u>: $941,471.52**

Given the realistic value of Plaintiff's claims, the $600,000 Settlement Amount is an excellent result for the Class, considering that the Settlement Amount totals approximately 63% of Plaintiff's risk-adjusted value of the case. Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Class.

43. The Settlement was the product of extensive arm's-length negotiations between counsel and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and professional, the Settlement negotiations were adversarial and non-collusive. The Settlement reached is the product of substantial effort by the Parties and their counsel. Although Plaintiff and his counsel believe that there was a possibility of certifying the claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate. In addition, if Defendants prevailed on any of their defenses, the employees may not have received any substantial monetary recovery.

44. The Settlement will result in a fair payment to each Settlement Class Member based on the number of Weeks Worked during the Class Period. As set forth hereinabove, Plaintiff and counsel have diligently investigated the claims and defenses on behalf of the Settlement Class Members and worked to achieve a resolution of the claims to maximize the recovery by avoiding further expenditure of Attorneys' Fees and Costs. After evaluating the significant risks attendant with further litigation described above and weighing them against the benefits of a known compromise and settlement as set forth in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best interest of Plaintiff and the Settlement Class, and is a fair and reasonable resolution of the claims alleged.

45. Plaintiff's counsel brought to bear a great deal of collective experience in negotiating the settlement of this case. As detailed herein, Plaintiff's counsel engaged in necessary informal discovery, investigation, sampling, and expert evaluation, making it possible to exercise informed judgment throughout the settlement process, including significant document review (e.g., documents pertaining to Defendants's policies and procedures, personnel documents, wage statements, time records, among others) and conducted an extensive analysis and extrapolation of the sampling of class-wide data provided by Defendants.

46. Based on our experience in other cases, including wage and hour matters, I believe our office, along with Joshua Falakassa, is qualified to evaluate the class claims and viability of defenses in this class action. In this case, the recovery for each Settlement Class Member is reasonable, fair, and adequate, and a settlement at this time is in the best interest of the Settlement Class. The Settlement provides each Settlement Class Member with compensation for the alleged violations when viewed in relation to the costs and risks inherent in obtaining class certification and proceeding to trial.

47. Plaintiff's counsel, as well as Defendants' counsel, fully endorse the terms and conditions of the Settlement as set forth in the abovementioned Settlement Agreement.

48. Of course, the Settlement Amount represents a compromise figure, taking into account the various risks surrounding class certification and the merits of Defendants' asserted defenses. Nevertheless, the Settlement provides fair and adequate payments to the Settlement Class Members, with no reversion to Defendants.

49. Plaintiff seeks a Service Award of $10,000, which we believe is fair and warranted. Plaintiff agreed to come forward in an effort to effectuate a policy and practice change that would benefit all other Settlement Class Members and to recover unpaid wages and penalties. Plaintiff assumed significant risk in bringing this litigation, namely, had she lost, she could have been ordered to pay Defendants' costs.

50. Plaintiff provided invaluable assistance to the investigation and prosecution of this case, including: providing factual background for the Class Complaint; reviewing the litigation documents; providing information and documentation about Defendants's policies and practices;

participating in phone calls to discuss litigation and settlement strategy; participating in the mediation process, and reviewing the settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal benefit. Plaintiff' comprehensive declarations setting forth all of the reasons why she believes that the Service Award should be approved has been filed herewith.

51. When this case was taken on a contingency fee basis, with our firms agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain. In the course of this litigation, we paid all costs, including the filing fees, court costs, mediation costs, and expert costs. There was never a guarantee that our firms would recoup these expenditures.

52. It is our experience that attorneys' fee awards of one-third of a common fund settlement are the standard in California. In this case, Plaintiff's counsel agreed to seek one-third of the Settlement Amount for Attorneys' Fees. Defendants does not oppose this fee request. The fee is further warranted because it is within the range of reasonableness typically awarded in class actions. Our firm's Costs will not exceed $20,000 and will be based on the actual amount incurred at the time of final approval.

53. Subject to the Court's approval, the parties stipulated that ILYM Group, Inc. would serve as the Settlement Administrator. ILYM is experienced in administering class action settlements and will not exceed $9,000 to administer this class action Settlement.

54. Plaintiff has concurrently submitted the Settlement to the LWDA in accordance with Labor Code Section 2699(1)(2). The proof of submission is attached hereto as **Exhibit "C."**

55. For the foregoing reasons, it is respectfully requested that the Court grant preliminary approval of the Settlement as being fair, reasonable, and in the best interests of the Settlement Class, as well as preliminarily approve the requested attorneys' fees and Costs, and the Service Award to the Class Representative.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct on this 12th of June 2025, in Los Angeles, California.

By: ______________________________
Mehrdad Bokhour, Esq.