

Ian Pancer (SBN 246600)
Janine Menhennet (SBN 163501) Of Counsel
Joe Virgilio (SBN 344081)
Pancer Law Corporation
4603 Mission Blvd. Suite 220
San Diego, California 92109
ian@sandiegolegal.net
Phone: (619) 955-6644
Facsimile: (619) 374-7410

Attorneys for Plaintiff RUBY PELAYO
and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

RUBY PELAYO, an individual, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

HONEYWELL SAFETY PRODUCTS USA,
INC., a Delaware corporation, and DOES 1
through 50,

Defendants

) **Case No.: 37-2023-00055510-CU-OE-**
) **CTL**

) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES ISO PLAINTIFFS'**
) **MOTION FOR PRELIMINARY**
) **APPROVAL OF CLASS AND**
) **REPRESENTATIVE ACTION**
) **SETTLEMENT**

) Hearing Information:

) Date: April 24, 2026

) Time: 1:30 p.m.

) Dept.: C-63

) Hon. Katherine A. Bacal

) Action Filed: December 22, 2023

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	SUMMARY OF RELEVANT FACTS	2
III.	THE PARTIES	3
A.	The Defendant.....	3
B.	The Named Plaintiff.....	3
C.	The Putative Class and Aggrieved PAGA Employees	3
D.	Class Size and Pay Period Estimates	3
IV.	PROCEDURAL HISTORY	4
V.	REASONS FOR SETTLEMENT	4
A.	Individual Settlement Payments are Very Good for Members of the Settlement Class	7
B.	Settlement Administrations Costs are Reasonable	8
C.	The Enhancement Award of \$10,000 to the Named Plaintiff is Reasonable	8
D.	Class Counsel’s Proposed Fees and Costs are Reasonable.....	8
E.	Putative Class Counsel is Well Qualified in These Types of Actions.....	9
VI.	PLAN OF ALLOCATION	9
A.	The Common Fund.....	10
B.	Administration of the Gross Settlement Fund	10
C.	Apportionment and Tax Reporting of Net Settlement Amount.....	10
D.	PAGA Allocation.....	11
E.	Plaintiff’s General Release Payment and Class Representative Enhancement Payment	11
F.	Attorney’s Fees and Costs to Putative Class Counsel	11
G.	Uncashed Checks to Charity.....	12

VII. THE PUTATIVE CLASS RESPECTFULLY REQUESTS PROVISIONAL CERTIFICATION
FOR SETTLEMENT PURPOSES12

VIII. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE.....15

IX. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED.....16

X. CONCLUSIONS.....16

TABLE OF AUTHORITIES

Pages

Cases

Amchem Prods., Inc. v. George Windsor

521 U.S. 591, 625–26 (1997) 15

B.W.I. Custom Kitchen v. Owens-Illinois, Inc.

191 Cal.App.3d 1341, 1347 (1987) 12, 13, 14

Brinker Rest Corp. v. Superior Court

53 Cal.4th 1020, 1022 (2012) 13

Caro v. Procter & Gamble Co.

18 Cal.App.4th 644 (1993) 14

Cartt v. Superior Court

50 Cal.App.3d 960, 966 (1975) 16

Eisen v. Carlisle & Jacquelin

417 U.S. 156, 174–75 (1974) 15

Faulkinbury v. Boyd & Assocs., Inc.

216 Cal.App.4th 220, 232–35 (2013) 13

Ghazaryan v. Diva Limousine, Ltd.

169 Cal.App.4th 1524 (2008) 14

Hart v. Alameda County

76 Cal.App.4th 766 (1999) 14

Heritage Residential Care, Inc. v. Division of Labor Standards Enforcement

192 Cal.App.4th 75, 81 (2011) 6

In re Cellphone Fee Termination Cases

186 Cal.App.4th 1380 (2010) 8

Johnson v. GlaxoSmithKline, Inc.

166 Cal.App.4th 1497, 1509 (2008) 14

Ketchum v. Moses

24 Cal.4th 1122, 1133–34 (2001) 9

<i>Kullar v. Foot Locker Retail, Inc.</i>	
168 Cal.App.4th 116 (2008)	4
<i>La Sala v. Am. Sav. & Loan Ass’n</i>	
5 Cal.3d 864, 871 (1971)	15
<i>Laffitte v. Robert Half International Inc.</i>	
1 Cal.5th 480 (2016)	9
<i>Lubin v. The Wackenhut Corp.</i>	
5 Cal.App.5th 926, 959 (2016)	6
<i>McGhee v. Bank of America</i>	
60 Cal.App.3d 442, 450–51 (1976)	14
<i>Phillips Petroleum Co. v. Shutts</i>	
472 U.S. 797, 811–12 (1985)	15
<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
34 Cal.4th 319, 338 (2004)	13
<i>Seastrom v. Neways, Inc.</i>	
149 Cal.App.4th 1496, 1502 (2007)	14
<i>Serrano v. Priest</i>	
20 Cal.3d 25, 49 (1977)	9

Statutes, Rules, and Regulations

Code Civ. Proc.	
§ 382	12, 13, 24
California Rules of Court	
Rule 3.769 (f).....	15
Lab. Code	
§ 226 (a)(8)	2
§ 226 (e)(1)	3
§ 226 (e)(2)(B)	3
§ 226	7

Other

Cohelan on California Class Actions § 2:4 (2012-2013 ed.)15

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Ruby Pelayo (“Plaintiff”) on behalf of herself and others similarly situated and
4 aggrieved (collectively “Plaintiffs”), respectfully submit this brief in support of Plaintiffs’ unopposed
5 Motion for Preliminary Approval of Class and Representative Action Settlement. Plaintiffs and
6 Defendant Honeywell Safety Products USA, Inc. (“Defendant”) have reached a full and final
7 settlement, the terms of which are specified in the Class Action and PAGA Settlement Agreement
8 (Settlement Agreement and/or “SA”), a copy of which is attached as Exhibit 1 to the Declaration of
9 Janine R. Menhennet (Menhennet Decl. ¶2) served and filed herewith.

10 This motion seeks the Court’s approval of a class and representative wage and hour settlement
11 whose claims are very specific and limited: the wage statements allegedly incorrectly identified the
12 employer of record. That is the only class-wide and common issue. After formal discovery, an
13 informal discovery conference, a fully briefed motion to compel and order, a motion for class
14 certification (which was mooted by the settlement agreement), and a full-day mediation, the parties
15 have reached an agreement which will resolve the alleged Labor Code section 226 violations on
16 behalf of represented employees, as well as Plaintiff’s broader individual claims. Plaintiff’s
17 individual claims are significant. Plaintiff’s alleged unreimbursed expenses subject to Labor Code
18 section 2802 are estimated to be \$2,500. Her unpaid wages (section 204) due to alleged inadequate
19 timekeeping records are estimated to be \$17,519, with concomitant waiting penalties (section 203)
20 adding to \$8,206. Accordingly, her compromise of \$20,000 for her individual claims constitutes a
reasonable figure for her Civil Code section 1542 waiver.

21 The Court may be familiar with the matter, because plaintiff Ruby Pelayo moved for class
22 certification of the putative wage statement class on or about June 17, 2025. (ROA 46) The Court
23 also participated in an informal discovery conference and issued an order partially granting
24 plaintiff’s requests in July, 2025. (ROA 57-58) Plaintiff alleged that the putative class and
25 aggrieved members received wage statements which stated Honeywell, Inc. as the employer of
26 record, compared to the entity Plaintiff contends is the accurate employer of record: Honeywell
27 Safety Products, Inc. (“HSP”). The parties then mediated and reached an agreement to settle the
28 matter before Kevin Barnes in September, 2025. Filing the notice of settlement took the November
motion for class certification off calendar.

1 The settlement is an excellent result, obtained after discovery, a court-assisted discovery
2 conference, a motion to compel, a motion for class certification, and supporting evidence and
3 documentation. That the parties were able to reach this settlement after a full-day mediation with an
4 experienced mediator weighs in favor of the Court's approval.

5 Class members are expected to receive approximately \$16 per workweek, based upon an
6 estimated 6,281 workweeks in the class/PAGA period (those periods are coextensive). (Menhennet
7 Decl. ¶3).

8 Without admitting wrongdoing, Defendant agrees to pay a non-reversionary gross sum of
9 \$225,000 in exchange for a release subject to Court approval. This amount is inclusive of: (1)
10 individual settlement payments to putative class members of the Settlement (SA 3.2.5); (2) Class
11 Representative Service Payment of \$10,000 to Plaintiff (SA 3.2.1); (3) General Release Payment to
12 Plaintiff in consideration of her general release and 1542 waiver in the amount of \$20,000 (SA
13 3.2.2); (4) \$10,000 to resolve Plaintiffs' Private Attorney General Act ("PAGA") claim for penalties,
14 75% of which is payable to the Labor and Workforce Development Agency ("LWDA") and the
15 remaining sum payable to the PAGA Members (SA 3.2.6); (5) Settlement Administrator costs up to
16 \$4,500 (SA 3.2.4); (6) putative Class Counsel's fees not to exceed 35% of the gross settlement
17 (\$78,750) (SA 3.2.3); and (7) putative Class Counsel's reasonable costs, not to exceed \$12,197.47
(SA 3.2.3). Uncashed checks are payable to the Legal Aid Foundation of San Diego. (SA 4.5.1)

18 Plaintiff also requests that the Court appoint plaintiff Rosa Pelayo as Class Representative and
19 Ian Pancer, Janine R. Menhennet, and Joe Virgilio of Pancer Law Corporation, as Class Counsel.

20 **II. SUMMARY OF RELEVANT FACTS**

21 This is a very straightforward case. At issue here is a motion for preliminary approval of a
22 class and representative settlement settling and releasing what is essentially one claim: for the
23 alleged failure to provide accurate wage statements stating the name of the employer, in violation of
24 Labor Code Section 226(a)(8). The class (to which the PAGA cohort is identical) consists of
25 approximately 62 employees who worked an aggregate of 6,281 workweeks (Menhennet Decl. ¶3,
26 Exh. 2, Defendant's Supplemental Response to Special Interrogatory Nos. 3 and 6). The predicate
27 facts are that class members were employed by Defendant Honeywell Safety Products USA, Inc.
28

1 (“HSP”), but the name stated on the wage statements was Honeywell International Inc. (Menhennet
2 Decl. ¶4, Exhibit 3, Defendant’s Supplemental Response to Request for Admission No. 3) in
3 violation of Labor Code Section 226(a)(8). This was established in written discovery responses
4 from HSP.

5 Labor Code section 226(a)(8) requires accurate itemized wage statements that correctly
6 identify the employer, and no further showing is necessary to demonstrate injury and recover the
7 statutory penalty:

8 “An employee is deemed to suffer injury for purposes of this subdivision if the
9 employer fails to provide accurate and complete information as required by any one
10 or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot
11 promptly and easily determine from the wage statement alone... [t]he name and
address of the employer...” Labor Code § 226(e)(2)(B).

12 Where an employee suffered an injury by an employer for failing to comply they are entitled to
13 recover \$50 for an initial violation and \$100 for each subsequent violation. Lab. Code § 226(e)(1).

14 **III. THE PARTIES.**

15 **A. The Defendant.**

16 Defendant Honeywell Safety Products USA, Inc. provides personal protective equipment for
17 companies and employees in the United States, including protective glasses, face masks, and other
18 gear made recognizable especially after the Covid 19 pandemic.

19 **B. The Named Plaintiff.**

20 Ruby Pelayo worked with HSP in California from approximately January, 2021 through
21 May, 2023, and received the same wage statements as all other approximate 62 employees
22 identifying Honeywell International, Inc. as the employer, which Plaintiff contends was incorrect.

23 **C. The Putative Class and Aggrieved PAGA Employees**

24 The putative Class consists of “all current and former employees Defendant in California at
25 any time during the Claim Period,” (Settlement Agreement 1.5) which is December 22, 2022 through
26 April 11, 2025 (Settlement Agreement 1.12).

27 The Putative Class and the PAGA Aggrieved Employees are co-extensive as to claims and
28 timeframe included in this Settlement.

1 **D. Class Size and Pay Period Estimates**

2 Defendant, in verified discovery responses, estimate the class size to be 62 class members
3 who worked 6,281 single week pay periods from December 22, 2022 through April 11, 2025.
4 Menhennet Decl. ¶3. While these figures may change slightly but are not presently anticipated, there
5 is an escalation clause in the Settlement Agreement. SA 8.2

6 **IV. PROCEDURAL HISTORY.**

7 Pelayo filed her complaint for class, representative, and individual claims on December 22,
8 2023, based primarily on the allegations that the incorrect employer was named on the section 226
9 wage statements. This implicated not just class, but also representative treatment under PAGA. Pelayo
10 also alleged individual claims for Labor Code violations, including for unpaid wages and a
11 reimbursement claim under section 2802. (ROA 1)

12 Plaintiff propounded discovery, and discovery disputes arose to the extent that the Court held an
13 informal discovery conference, noticed by Plaintiff in February 2025. (ROA 53) The IDC was held on
14 February 27, 2025. (ROA 34) Despite these efforts, Plaintiff still filed a motion to compel discovery
15 responses on April 22, 2025. (ROA 36)

16 On June 17, 2025, Plaintiff filed her motion to certify this wage statement class (the only class
17 and representative claim). (ROA 46, *et seq.*) The hearing date was set for November 7, 2025.

18 On July 11, 2025, the Court granted Plaintiff's motion to compel discovery responses, in part.
19 (ROA 57-58)

20 In September, 2025, the parties mediated the case before Kevin Barnes, which resulted in the
21 settlement which is now before the Court for approval.

22 On October 7, 2025, defendant filed its Notice of Conditional Settlement after the mediation
23 occurred. (ROA 59) This took the motion for class certification off calendar.

24 The parties have now executed a formal settlement agreement, attached to the Menhennet
25 Declaration as Exhibit 1.

26 On March 27, 2026, Plaintiffs' Counsel filed a copy of the Settlement Agreement and these
27 moving papers with the LWDA in preparation for this Motion. (Virgilio Decl., ¶ 4.)
28

1 **V. REASONS FOR SETTLEMENT.**

2 In reviewing class settlement agreements, California state court commonly evaluate the
3 factors addressed in the seminal case *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008).

4 These factors are:

5 [T]he strength of plaintiffs' case, the risk, expense, complexity and likely
6 duration of further litigation, the risk of maintaining class action status
7 through trial, the amount offered in settlement, the extent of discovery
8 completed and the stage of the proceedings, the experience and views of
9 counsel, the presence of a governmental participant, and the reaction of the
10 class members to the proposed settlement.

11 *Kullar*, at 128.

12 These factors are well established here. Through the course of this litigation, Plaintiff
13 reviewed hundreds of pages of documents, including class member wage statements, and various
14 data points concerning the size of the class and pay periods. From this, Plaintiff's Counsel was able
15 to determine the strength of the class claims Plaintiff had alleged. At all times Defendant has denied
16 and to this day continues to deny wrongdoing.

17 Before mediation, Defendant provided Plaintiff with a thorough sampling of wage statements,
18 the total number of unique employees employed by Defendant in California during the PAGA and class
19 periods (one and the same), and the total number of pay periods worked by all California employees
20 during the PAGA and class periods. Plaintiffs' Counsel reviewed the foregoing records and data and
21 made an assessment regarding the potential penalties owed. This provided Plaintiff with the
22 information necessary to evaluate the strength of the individual, class, and PAGA claims. (Menhennet
23 Decl., ¶5.) As mentioned above, Plaintiff's alleged individual claims for section 2802 reimbursement
24 (\$2,500), section 204 for unpaid wages (\$17,519), and waiting time penalties under section 203
25 (\$8,206), total \$28,225. The \$20,000 agreed individual settlement for these claims represents a fair and
26 reasonable compromise under these circumstances.

27 The case went through the private mediation process during which the parties vetted their
28 claims and defenses before an experienced private mediator, Kevin Barnes. (Menhennet Decl. ¶6)
This provided a neutral, third-party view of the strength of plaintiff's claims. The parties were able
to reach the settlement currently before the Court for preliminary approval.

1 The case settled on the terms set forth in the Settlement Agreement in part because of the
2 substantial expense of litigating the action, the length of time necessary to resolve the issues
3 presented herein, the inconvenience involved, and the risk that Plaintiff would not prevail. The issues
4 in the case are contested. Defendant denies any wrongdoing, maintains that its conduct and
5 procedures were entirely lawful, and contends the violations, if any, were trivial. Plaintiff is
6 informed that Defendant contends that Honeywell International, Inc. jointly employed Plaintiff
7 Pelayo and thus her wage statements listing Honeywell International were not inaccurate.
8 (Menhennet Decl. ¶7)

9 After investigation and review of the relevant documents, discovery responses, and other
10 related evidence, Plaintiffs' Counsel has concerns that the wage statement class would be unable to
11 prove the "injury" element required for the Labor Code § 226 claims. There is competing case law
12 regarding "knowing" and "injury." See, *Heritage Residential Care, Inc. v. Division of Labor*
13 *Standards Enforcement*, 192 Cal. App. 4th 75, 81 (2011):

14 For employers who violate section 226(a), civil penalties are assessed as provided
15 in section 226.3. As relevant to this appeal, that provision states: "In enforcing this
16 section, the Labor Commissioner shall take into consideration whether the violation
17 was inadvertent, and in his or her discretion, may decide not to penalize an employer for
a first violation when that violation was due to a clerical error or inadvertent mistake."
(§ 226.3.)

18 As compared to *Lubin v. The Wackenhut Corp.*, 5 Cal.App.5th 926, 959 (2016): Under the statute,
19 "injury arises from defects in the wage statement, rather than from a showing that an individual
20 experienced harm as a result of the defect."

21 Because of this conflict regarding construing the injury component, and the risk of a finding
22 that Honeywell International, Inc. was a correct employer to list on wage statements, it made sense to
23 discount the total value of these claims rather than continue litigating on the merits with uncertain
24 outcome. (Menhennet Decl., ¶8.)

25 After the investigation undertaken and analysis performed by Plaintiff, through Class
26 Counsel, into the claims of the putative Class, the potential recovery, the disputed factual and legal
27 issues involved in this litigation, the risks of continuing the litigation, and the meaningful payments
28 members of the Settlement Class will receive because of this Agreement, the parties believe that

1 settlement is in the best interest of the Settlement Class. This settlement is the result of extensive,
2 arms' length negotiations and is fair and reasonable to the Settlement Class. (Menhennet Decl., ¶9.)

3 *Potential recovery for Wage Statement Class Claims.* Based on Defendant's representations
4 and confirmatory verified discovery, the putative class worked 6,281 pay periods from December 22,
5 2022 through April 11, 2025. Assuming a \$100¹ penalty per pay period, the maximum potential
6 recovery of wage statement penalties for the putative class would be \$628,100. (Menhennet Decl.,
7 ¶10.) Given the possibility of not prevailing, however, it made sense to compromise the value of
8 this claim.

9 *Potential recovery for PAGA penalties.* Based on the facts of this case, counsel believes
10 Defendant might have successfully persuaded the Court that its conduct was lawful and/or was not
11 done in bad faith, and that any proven violations may result in no significant award of PAGA
12 penalties if the Court finds only minimal culpability. However, for the sake of discussion, if the
13 Court were to award \$100 in PAGA penalties per pay period, the total penalties available would
14 equal the total penalties estimated above: \$628,100. The Court is aware, however, that PAGA
15 penalties are within the discretion of the Court, and are assessed with an eye toward correcting Labor
16 Code violations (the violation has already been corrected), and not imposing a punitive award such
17 that it could cripple the employer. With these factors in mind, the parties apportioned \$10,000 to
18 PAGA penalties, saving the bulk of the net settlement amount to be distributed to the same
19 employees through their class payout.

20 **A. Individual Settlement Payments are Very Good for Members of the Settlement Class.**

21 The Net Settlement Amount is \$100,532.35 for distribution to the class members: \$225,000
22 gross amount, minus \$78,750 in attorneys' fees, minus \$4,500 for administration, minus \$10,000 to
23 PAGA penalties, minus \$12,197.47 in costs, minus \$20,000 for Plaintiff's general release, minus
24 \$10,000 service award to Plaintiff.

25 Upon approval, each workweek is valued at approximately \$16. Accordingly, an employee
26 working 50 weeks per year would receive \$800. This settlement goes further than regular class
27

28 ¹ This figure is slightly inflated due to the fact that in some pay periods, the smaller \$50 penalty may apply.

1 settlements in that the entire amount consists of penalties and interest for violation of Labor Code
2 section 226. **No amount is attributed to unpaid wages** and all amounts paid will be subject to
3 1099 tax treatment. (SA 1.28, 3.2.5.2) This is of tremendous value to each class member. The
4 actual amount each member of the Settlement Class receives depends on the number of weeks that a
5 member worked and the number of opt-outs, but the end result of this settlement is very good for the
6 Class. (Menhennet Decl., ¶11.)

7 Plaintiff anticipates very few opt-outs, given the narrow scope of the class claim (only wage
8 statement error) and the tax treatment. Receiving a check for \$16 per workweek can be viewed only
9 as a positive outcome. Overall, the gross settlement amount is a full 35% of the total estimated
10 liability, a remarkable settlement given the competing theories and defenses regarding liability.

11 **B. Settlement Administration Costs are Reasonable.**

12 The parties received a bid for settlement administration from Phoenix Settlement
13 Administrators (“Phoenix”), a neutral settlement administrator, for \$4,500. This estimate is
14 reasonable and will not exceed this amount per the bid Plaintiff obtained. Plaintiff very respectfully
15 requests this Court to approve the appointment of Phoenix as the Settlement Administrator.
16 (Menhennet Decl. ¶12, Exhibit 4.)

17 **C. The Enhancement Award of \$10,000 to the Named Plaintiff is Reasonable.**

18 Courts frequently award service awards to named plaintiffs in putative class action
19 settlements to recognize their time and efforts, and the risks they undertake on behalf of the putative
20 class. Such payments are intended to advance public policy by encouraging individuals to come
21 forward and perform their civic duty in protecting the rights of the putative class, as well as to
22 compensate putative class representatives for their time, effort, and inconvenience. See e.g., *In re*
23 *Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380 (2010)(court granted enhancement fees
24 awards in the amount of \$10,000 each to the four named class representatives).

25 Plaintiff Pelayo risked having to submit to extensive discovery and to the payment of
26 Defendant’s costs if she lost this case. Plaintiff also assumed the risk of negative opinion by future
27 prospective employers from suing a former employer. Via this settlement, Plaintiff will cause
28 members of the Settlement Class to receive money they otherwise would not have received but for

1 this litigation. Plaintiff served a substantial role in bringing about this settlement and has the right to
2 receive a Service Award in the amount of \$10,000. Likewise, the \$20,000 in consideration for the
3 individual release for her unpaid wages and unreimbursed expenses is also reasonable, for a total
4 payment of \$30,000 to Plaintiff. Courts have approved \$10,000 service payments for PAGA-only
5 actions in recent years: *Alikhan v. Goodrich Corp.*, 2020 WL 4919382, and for section 1542
6 individual releases, in one case, of \$25,000 each for three named plaintiffs, totaling \$75,000.
7 *Alexander v. Career Sys. Dev. Corp.*, 2022 Cal. Super. LEXIS 60430, at *3. Plaintiff's request is in
8 line with these approved amounts. Defendant does not oppose the requested service award. Because
9 the requested service payment and settlement payment are reasonable and in line with other approved
10 service and release amounts cited above, Plaintiff respectfully requests the Court to approve the
11 Class Representative Service Payment and Plaintiff's General Release Payment. (Menhennet Dec.,
12 ¶13; Pelayo Declaration.)

13 **D. Class Counsel's Proposed Fees and Costs are Reasonable.**

14 Putative Class Counsel seeks an uncontested award of fees equaling 35% of the gross
15 settlement, and reasonable costs. Putative Class Counsel's fees are based on a percentage of the
16 overall settlement, and can be crosschecked against Plaintiffs Counsel's lodestar. See *Laffitte v.*
17 *Robert Half International Inc.*, 1 Cal.5th 480 (2016)(California Supreme Court holding that 1/3 of
18 the gross settlement based on a percentage of the overall settlement amount is the benchmark);
19 *Ketchum v. Moses*, 24 Cal.4th 1122, 1133-34 (2001), citing *Serrano v. Priest*, 20 Cal.3d 25, 49
20 (1977)(lodestar approach to fees is a reasonable method in assessing the reasonableness of fees).

21 Prior to preparing the motion for approval of attorneys' fees, Class Counsel has expended
22 more than 142 attorney hours in reaching this stage of settlement. While the hours will be more fully
23 detailed in the motion for approval of attorneys' fees and costs to be filed with the motion for final
24 approval, Class Counsel can represent now that the lodestar of these hours, between three attorneys,
25 currently totals \$101,430. The requested fee of \$78,750 currently constitutes a negative multiplier,
26 not including the time which will be spend on future motions for final approval and for fees and
27 costs. The requested fees and costs are fair compensation for undertaking complex, risky, expensive,
28 and time-consuming litigation solely on a contingency basis. Further, the requests are in line with

1 other attorneys' fees awards in California for wage and hour putative class actions. As will be
2 demonstrated in Plaintiffs' Counsel's moving papers in the future fee motion which will be filed
3 concurrently with Plaintiffs' Motion for Final Approval, the requested fees are supported by the
4 work counsel did on this case, including discovery, informal discovery conference, motion to
5 compel, and motion for class certification. Because the requested fees are reasonable, Plaintiff
6 respectfully requests the Court to approve these fees and costs upon final approval. (Menhennet
7 Decl., ¶14.)

8 **E. Putative Class Counsel is Well Qualified in These Types of Actions.**

9 Putative Class Counsel Ian Pancer is experienced in wage and hour class action litigation. Mr.
10 Pancer became a member of the State Bar of California in December 2006. Mr. Pancer focuses his
11 practice on prosecuting employment law claims on behalf of employee-plaintiffs, and personal injury
12 cases. A very small amount of Mr. Pancer's practice devoted to other matters. Mr. Pancer has
13 personally represented hundreds of plaintiffs in individual employment cases and over 100,000 class
14 members in class actions. (Pancer Decl. ¶7)

15 Mr. Pancer has been lead or co-lead counsel in more than 15 (fifteen) representative action
16 cases – i.e., putative class action or PAGA cases. Of these cases, some have resulted in court
17 approved settlements, some are ongoing, and some resolved on an individual basis. (Pancer Decl.
18 ¶8)

19 Ms. Menhennet has been approved as class counsel in dozens of wage and hour actions
20 beginning in 2012, and more fully detailed in her declaration. She has also argued for approval of
21 class action settlements in both California and federal appeals courts, both in the Ninth and Sixth
22 Circuits. (Menhennet Decl. ¶¶ 15-18)

23 In the opinion of putative Class Counsel, the recovery for the Settlement Class is very good
24 in view of the facts of the case and particularly given the risks inherent in further litigation. (Pancer
25 Decl. ¶10; Menhennet Decl. ¶9; Virgilio Decl. ¶15) The settlement is favorable given that members
26 of the Settlement Class will be promptly compensated, rather than face uncertainties inherent in
27 further litigation and waiting for years of litigation to ensue. Based on all considerations, this
28 settlement is highly favorable, fundamentally fair, adequate, and a reasonable resolution of disputed

1 issues and is in the best interests of the Settlement Class. (Menhennet Decl., ¶9.)

2 **V. PLAN OF ALLOCATION.**

3 **A. The Common Fund.**

4 Subject to Court approval, the Gross Settlement Amount is the non-reversionary sum of
5 \$225,000, which is all-inclusive, including individual Class Member settlement amounts, the PAGA
6 Payment, the Class Representative Service Award and Individual General Release, Class Counsel
7 Attorneys' Fees and Costs, and the Settlement Administrator's expenses. SA 1.22.

8 **B. Administration of the Gross Settlement Fund.**

9 Duties of the Settlement Administrator will include processing and mailing payments to
10 Plaintiff, putative Class Counsel, and the putative Class, printing and mailing the Settlement Notices
11 to the putative Class, among other tasks agreed to in the Settlement Agreement or that the Court
12 orders the Settlement Administrator to perform. The Settlement Administrator will similarly track
13 down and locate the new and correct addresses for checks or notices returned in the mail. SA 3.1,
14 3.2.

15 No later than 15 days after Preliminary Approval of this Settlement by the Court, Defendants
16 shall provide the Settlement Administrator with the Class Data. SA 4.1 Thereafter, pursuant to the
17 terms of the Settlement Agreement, the Settlement Administrator shall mail the Notice Packet to the
18 last known address, according to Defendants' records, of each member of the Settlement Class via
19 First Class U.S. Mail. SA 7.4.

20 **C. Apportionment and Tax Reporting of Net Settlement Amount.**

21 The Settlement Payments are payments for all claims alleged in, or reasonably related to the
22 claims alleged in the Complaint. Settlement Awards to putative Class Members will be calculated by
23 taking the Net Settlement Amount, divided by the total number of workweeks worked by all
24 members of the Class, multiplied by the total number of workweeks worked by each individual
25 member of the Class. Any person who opts out of the Settlement is not a Class Member and is
26 ineligible to object to the Settlement or to participate in the Settlement. The settlement will be funded
27 within 14 days (SA 4.2) of the Effective Date ("Effective Date" means the date by when both of the
28 following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the

Settlement; and (b) the Judgment is final.) SA 1.18

As mentioned, the only class and representative claims concern penalties for inaccurate reporting of the correct employer on the wage statements, which is not a claim for unpaid wages or other typical class-wide claims. As such, all class and representative payments will be reported only as 1099 income. SA 3.2.4.2. Plaintiff's Service Payment will be apportioned 20% to wages (unpaid wages and reimbursement)(\$4,000), reported as W2 wages, and 80% to penalties and interest (\$16,000), reported as 1099 income. SA 3.2.5.1. The Service Payment is also treated as 1099 income. All PAGA payments are also considered payment as penalties and are therefore 1099 income. SA 3.2.6.2.

D. PAGA Allocation.

The sum of \$10,000 of the Gross Settlement Fund shall be designated as the recovery of civil penalties under PAGA. Of that amount, 75% (\$7,500) shall be paid to the California LWDA with the remaining 25% (\$2,500) distributed pro-rata to the PAGA Members. SA 3.6.

E. Plaintiff's General Release Payment and Class Representative Enhancement Payment.

Pursuant to the terms of the settlement agreement and subject to Court approval, Plaintiff will receive a \$20,000.00 payment in consideration of her general release for alleged unpaid wages and reimbursements, a 1542 waiver, and a \$10,000.00 Class Representative Service Payment, for a total of \$30,000.00. SA 3.2.1, 3.2.2.

F. Attorneys' Fees and Costs to Putative Class Counsel.

Plaintiffs' Counsel agree not to request more than 35% of the Gross Settlement Amount and reasonable reimbursement of actual costs and expenses incurred by Plaintiffs' Counsel. SA 3.2.3. As will be proven in moving papers to be filed when final approval is sought, the requested fees and costs are fair compensation for undertaking complex, risky, expensive, and time-consuming litigation solely on a contingency basis.

G. Uncashed Checks to Charity.

Settlement checks will specifically indicate the checks are void if not negotiated within 180 days of their issuance. Any settlement checks that remain uncashed 180 calendar days after issuance

1 by the Settlement Administrator shall be voided. SA 4.4.1.

2 If the residual amount is less than \$25,000, the *cy pres* designee is the Legal Aid Foundation
3 of San Diego. SA 4.5.1. If the residual amount is greater than \$25,000, the Administrator will
4 redistribute those funds on a pro rata basis to those class members who cashed their checks. SA
5 4.5.2. If there are any additional uncashed checks after the 30-day redistribution period, that amount
6 will revert to the *cy pres* recipient named above. SA 4.5.3.

7 This feature of redistribution to class members also weighs in favor of approval given the
8 obvious benefit to the class.

9 **VI. THE PUTATIVE CLASS RESPECTFULLY REQUESTS PROVISIONAL**
10 **CERTIFICATION FOR SETTLEMENT PURPOSES.**

11 Plaintiff respectfully requests certification of this Action for settlement purposes only
12 pursuant to § 382 of the Code of Civil Procedure. Class certification is appropriate “when the
13 question is one of a common or general interest, of many persons, or when the parties are numerous,
14 and it is impracticable to bring them all before the court . . .” Code Civ. Pro. § 382. The party
15 seeking certification has the burden to establish the existence of both an ascertainable class and a
16 well-defined community of interest among members of the Settlement Class. *B.W.I. Custom Kitchen*
17 *v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987).

18 Here, the putative Class Members are ascertainable. The putative Class consists of “all
19 current and former employees of Defendant in California at any time during the Claim Period,”
20 (Settlement Agreement ¶1.5) which is December 22, 2022 through April 11, 2025 (Settlement
21 Agreement ¶1.12).

22 The “community of interest” requirement consists of three criteria: (1) predominant common
23 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
24 class representatives that will adequately represent the class. Code Civ. Pro. § 382. As explained
25 below, the “community of interest” requirement is satisfied and, as such, the proposed settlement
26 meets all the requirements for class certification under California law.

27 **A. Common Questions of Law and Fact Predominate the Putative Class.**

28 Under Code of Civil Procedure § 382, a plaintiff must show the predominance of common

1 questions of law or fact to get a class certified. To meet this requirement, Plaintiff must show the
2 existence of one or more factual or legal questions common to all members of the Settlement Class.
3 *B.W.I. Custom Kitchen*, 191 Cal.App.3d at 1347.

4 Class members' claims need not be identical. *Sav-on Drug Stores, Inc. v. Superior Court*, 34
5 Cal.4th 319, 338 (2004). But in this case, they are. The only variation among class members is how
6 many wage statements they received. Predominance is not defeated even if there are some individual
7 issues, as long as those individual issues may be effectively managed. *Id.* at 334. This is especially
8 so where the key difference between class members solely concerns their damages: "As a general
9 rule if the defendant's liability can be determined by facts common to all members of the class, a
10 class will be certified even if the members must individually prove their damages." *Brinker Rest*
11 *Corp. v. Super Ct*, 53 Cal.4th 1020, 1022 (2012).

12 In fact, in this case HSP can, and in fact already has, determined the number of wage
13 statements at issue, and can determine how many each class member received.

14 Where "[t]he theory of liability is that the defendant ha[d] a uniform policy, and that that
15 policy, measured against wage order requirements, allegedly violate[d] the law—[that theory of
16 liability] is by its nature a common question eminently suited for class treatment." *Brinker*, 53
17 Cal.4th at 1033-34. That is because the defendant's liability on a class basis will turn on the legality
18 of its "uniform policy consistently applied to a group of employees," not on the extent to which
19 individual class members were injured by defendant's illegal policy, which is a damages issue.
20 *Faulkinbury v. Boyd & Assocs., Inc.*, 216 Cal.App.4th 220, 232-35 (2013) ("the employer's liability
21 arises by adopting a uniform policy that violates wage and hour laws. Whether or not the employee
22 [actually suffered a violation] goes to damages . . ."). Because the theories of liability in wage and
23 hour cases typically challenge the defendant's common employment policies that are applicable to
24 all employees, such cases are particularly well-suited for class treatment. *Ghazaryan v. Diva*
Limousine, Ltd., 169 Cal.App.4th 1524 (2008).

25 There is only one theory: did HSP wage statements name the correct employer? This is a
26 common question ripe for certification at this settlement stage.

27 **B. The Named Plaintiff's Claim is Typical of the Putative Class's Claims.**

28 The typicality requirement of Code of Civil Procedure § 382 requires a plaintiff to

1 demonstrate that the members of the class have the same or similar claims as the named plaintiff.
2 *B.W.I. Custom Kitchen*, at 1347. The typicality requirement, a prerequisite in both California and
3 federal class actions, seeks to protect the due process rights of absent class members by ensuring that
4 the class representative will pursue the action vigorously, which is more likely to occur if the
5 interests of the members and the representative are aligned. *Caro v. Procter & Gamble Co.*, 18
6 Cal.App.4th 644 (1993); *Hart v. Alameda County*, 76 Cal.App.4th 766 (1999); *Seastrom v. Neways,*
7 *Inc.*, 149 Cal.App.4th 1496, 1502 (2007).

8 This requirement is satisfied where class members have similar injuries and where the action
9 is based on conduct that is not unique to the named plaintiff. *Johnson v. GlaxoSmithKline, Inc.*, 166
10 Cal.App.4th 1497, 1509 (2008). Here, Plaintiff's claims are typical of those held by the members of
11 the proposed class. Like all other class members, all of Plaintiff's wage statements during the class
12 period listed Honeywell, International, Inc. as her employer, which was inaccurate. HSP was the
13 employer. Therefore, Plaintiff satisfies the typicality requirement for purposes of certifying a
14 settlement class.

15 **C. The Putative Class Representative Has Fairly and Adequately Protected the Interest**
16 **of the Putative Class.**

17 Class representatives must fairly and adequately represent the interests of the class. *McGhee*
18 *v. Bank of America*, 60 Cal.App.3d 442, 450-51 (1976). Certification for purposes of settlement
19 approval requires adequacy of both the proposed class representatives and class counsel. Code Civ.
20 Proc. § 382. The class representative "assumes a fiduciary obligation to the members of the class,
21 surrendering any right to compromise the group action in return for an individual gain." *La Sala v.*
22 *Am. Sav. & Loan Ass'n.*, 5 Cal.3d 864, 871 (1971). The adequacy requirement "serves to uncover
23 conflicts of interest between named parties and the class they seek to represent." *Amchem Prods.,*
24 *Inc. v. George Windsor*, 521 U.S. 591, 625-26 (1997). In addition, "[a] key element in determining
25 the class representative's adequacy is that person's ability and willingness to pursue the class
26 members' claims vigorously." *Cohelan on California Class Actions* § 2:4 (2012-2013 ed.).

27 Here, Plaintiff is aware of her fiduciary obligations to the class and has stepped forward to
28 serve as named plaintiff and class representative and will represent the class, true to the fiduciary

1 obligation by working with counsel to represent the class members, participating in discovery, and
2 complying with any obligation to the litigation and/or settlement. Pelayo Decl. ¶6. Plaintiff does not
3 have a conflict of interest with Class Members, but rather suffered the same type of violations as the
4 other class members with respect to the uniform format of the wage statements. Pelayo Decl. ¶4.
5 While Pelayo did plead individual claims, those are easily separated for purposes of assessing the
6 fairness and adequacy of the proposed settlement.

7 As to class counsel, Ian Pancer, Janine Menhennet, and Joe Virgilio of Pancer Law
8 Corporation satisfy the adequacy requirement. Plaintiff's Counsel have repeatedly been appointed
9 class counsel in both California State and Federal courts. (Pancer Decl. ¶ 8; Menhennet Decl. ¶¶ 15-
10 18; Virgilio Decl. ¶ 14) Counsel's wage-and-hour class action expertise establishes they are
11 qualified to represent the interests of this class and should be appointed class counsel. Plaintiff's
12 Counsel have devoted time and resources in identifying and investigating potential claims in this
13 action, reviewed and analyzed hundreds of pages of documents and data, taken multiple rounds of
14 supplemental discovery, and taken HSP's deposition. (Pancer Decl. ¶ 9). As such, this Court
15 should appoint Plaintiff as Class Representative and appoint Plaintiff's Counsel as Class Counsel.

16 **VII. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE.**

17 To protect the rights of absent class members, the court must ensure that class members
18 receive the best class action settlement notice practicable. *Phillips Petroleum Co. v. Shutts*, 472 U.S.
19 797, 811-12 (1985); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974). California Rules of
20 Court, Rule 3.769(f) requires that class members be provided with notice of the final approval
21 hearing, as well as an explanation of the proposed settlement and objection procedures, in the
22 manner specified by the Court.

23 Here, the proposed Notice of Settlement of Class Action satisfies these requirements. Exhibit
24 A to Settlement Agreement. Preliminary approval of the Settlement will enable Class Members to
25 receive notice of this class settlement in the best practicable manner possible. The proposed notice
26 plan, calling for first-class mailed notice to all members of the Settlement Class and PAGA Group, is
27 consistent with class notices approved by state and federal courts, and under the circumstances here
28 constitutes the best notice practicable. *Cartt v. Super. Ct.*, 50 Cal.App.3d 960, 966 (1975); SA 4.4.1.

1 4.4.2.

2 **VIII. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED.**

3 The last step in the settlement approval process is the final hearing, at which the Court may
4 hear all evidence and argument necessary to evaluate the proposed Settlement after notice to the
5 class. At that hearing, proponents of the Settlement may explain and describe its terms and
6 conditions and offer argument in support of settlement approval; and, members of the Settlement
7 Class, or their counsel, may be heard in support of or in opposition to the Settlement Agreement. The
8 parties respectfully request that the hearing be held at the earliest date permitted by the terms of the
9 Settlement.

10 **IX. CONCLUSION.**

11 For the foregoing reasons, Plaintiffs respectfully request this Court to enter the concurrently
12 filed [Proposed] Preliminary Approval Order.

13
14
15 Dated: March 27, 2026

By: /s/ Janine Menhennet

Ian Pancer

Janine R. Menhennet

Joe Virgilio

Counsel for plaintiff RUBY PELAYO and the proposed
class