

DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

POLARIS LAW GROUP
William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: (831) 531-4214
Facsimile: (831) 634-0333

Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

JORDAN MCDONALD, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiffs,

vs.

HCL AMERICA, INC., a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 20CV371353

[Hon. Sunil R. Kulkarni, Department 1]

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: January 19, 2023
Time: 1:30 p.m.
Department: 1

Complaint Filed: October 7, 2020

1 Plaintiff's motion for an Order Granting Preliminary Approval of Class Action Settlement was
2 filed with the Court on December 22, 2022, and a hearing was held before this Court on January 19,
3 2023.

4 **I. RECITALS**

5 1. On October 7, 2020, Plaintiff, Jordan McDonald, initiated this class and Labor Code
6 Private Attorneys General Act of 2004 ("PAGA") action. The lawsuit seeks to remedy alleged failures to
7 furnish lawful wage statements and failure to timely pay wages at separation. The wage statement claim
8 alleges Defendant, HCL America, Inc., furnishes wage statements that fail to accurately itemize and
9 show the number of total hours worked or the hourly rates paid for any hours worked; instead, wage
10 statements show gross wages earned, without any hourly rates or the corresponding number of hours
11 worked at the rates. The untimely payment claim alleges final wages were not paid promptly upon
12 termination but delayed until Defendant's next regular pay date. Defendant denies the allegations.

13 2. On February 16, 2022, the Parties attended a mediation. The Parties were able to
14 negotiate the settlement terms in the Joint Stipulation of Class Action and PAGA Settlement (the
15 "Agreement").

16 **II. FINDINGS**

17 3. The Court conditionally certifies the following Classes: (i) the Late Pay Class of all
18 former non-exempt employees of Defendant in the State of California whose employment ended at any
19 time from April 12, 2017, through April 30, 2022 (the "Late Pay Period"), and (ii) the Wage Statement
20 Class of all current and former non-exempt employees of Defendant in the State of California at any
21 time from April 12, 2019, through February 28, 2021 (the "Wage Statement Period").

22 4. The Court hereby approves the terms and conditions provided for in the Agreement. The
23 Court finds that on a preliminary basis the Agreement falls within the range of reasonableness of a
24 settlement and appears to be presumptively valid, subject to any objections that may be raised at the
25 final fairness hearing and subject to final approval by the Court. It appears to the Court on a preliminary
26 basis that the settlement is fair, adequate, and reasonable as to all potential Class Members when
27 balanced against the uncertain outcome of further litigation relating to liability and damages issues. It
28 also appears that investigation, research, and proceedings have been conducted so that counsel for the

Parties are able to reasonably evaluate their respective positions. It appears to the Court that settlement at this time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that would be presented by the further prosecution of the action. It also appears that settlement has been reached as a result of intensive, serious, and non-collusive arms-length negotiations.

III. ORDERS

After considering the papers and evidence, arguments of counsel, and all other matters presented to the Court, and having taken the matter under submission, **IT IS HEREBY ORDERED** as follows:

5. The Court grants preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement (“Agreement”) submitted by the Parties. The Agreement appears to be fair, adequate, and reasonable to the Class.

6. The Court appoints and designates: (a) Plaintiff, Jordan McDonald, as Class Representative, and (b) Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C., and William L. Marder of Polaris Law Group as Class Counsel for the Class. Class Counsel is authorized to act on behalf of the Class with respect to all acts or consents required by, or which may be given, pursuant to the Agreement, and such other acts reasonably necessary to finalize the Agreement and its terms. Any Class Member may enter an appearance through his or her own counsel at such Class Member’s own expense. Any Class Member who does not enter an appearance or appear on his or her own behalf will be represented by Class Counsel.

7. A final fairness hearing on the question of whether the proposed Agreement, the allocation of payments to Class Members, attorneys’ fees and costs to Class Counsel, the payment to the Labor Workforce & Development Agency, and the Class Representative Award should be finally approved as fair, reasonable, and adequate as to the members of the Class is set for _____, 2023, at 1:30 p.m. in this Court.

8. The Court hereby approves, as to form and content, the Notice of Class Action Settlement (“Class Notice”), which is attached as Exhibit A to the Agreement and this Order. The Court finds that distribution of the Class Notice to Class Members substantially in the manner and form set forth in the Agreement and this Order meets the requirements of due process and shall constitute due and sufficient notice to all parties entitled thereto.

1 9. The Court appoints and designates Phoenix Settlement Administrators as the
2 Administrator. The Court hereby directs the Administrator to provide the approved Class Notice to Class
3 Members using the procedures set forth in the Agreement.

4 10. Any Class Member may choose to opt out of and be excluded from the settlement as
5 provided in the Agreement and Class Notice and by following the instructions for requesting exclusion.
6 Any person who timely and properly opts out of the settlement will not be bound by the Agreement or
7 have any right to object, appeal, or comment thereon. Any request for exclusion must be in writing and
8 signed by each such Class Member opting out and must otherwise comply with the requirements
9 delineated in the Class Notice. Class Members who have not requested exclusion by submitting a valid
10 and timely request for exclusion shall be bound by all determinations of the Court, the Agreement, and
11 Judgment.

12 11. Any Class Member may object to the Agreement or express his or her views regarding
13 the Agreement. Any Class Member may present evidence and file briefs or other papers relevant to the
14 issues to be heard and determined by the Court as provided in the Class Notice.

15 12. A Motion for Final Approval shall be filed by the Class Representatives no later than
16 sixteen (16) court days before the final fairness hearing.

17 13. The Court reserves the right to adjourn or continue the date of the final fairness hearing
18 and all dates provided for in the Agreement without further notice to the Class. The Court retains
19 jurisdiction to consider all further applications arising out of or connected with the Agreement.

20 14. Should for whatever reason final approval is not granted, the fact that the Parties were
21 willing to stipulate to certification of a class as part of the settlement shall have no bearing on the issue
22 of whether a class should be certified in a non-settlement context.

23 **IT IS SO ORDERED.**

24 DATED: _____, 2023

THE HONORABLE SUNIL R. KULKARNI