

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 FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
FINAL JUDGMENT**

Date: September 21, 2023
Time: 1:30 p.m.
Department: 1

Complaint Filed: October 7, 2020

1 On or about August 29, 2023, Plaintiff, Jordan McDonald, filed a motion for an Order Granting
2 Final Approval of Class Action Settlement, and on September 21, 2023, a hearing was held on this
3 matter.

4 The Court has considered the papers and evidence, including the Joint Stipulation of Class
5 Action and PAGA Settlement (the “Agreement”), the arguments of counsel, and all other matters
6 presented to the Court regarding final approval of the settlement, approval of requested allocations from
7 the settlement fund, and entry of final judgment.

8 **I. Recital**

9 On October 7, 2020, Plaintiff, Jordan McDonald, filed this class and Labor Code Private
10 Attorneys General Act of 2004 (“PAGA”) action against Defendant, HCL America, Inc. The lawsuit
11 seeks to remedy Defendant’s alleged failure to furnish lawful wage statements and failure to timely pay
12 wages at separation. Defendant denies the allegations.

13 **A. Class Members**

14 The Class is defined to include all members of the “Late Pay Class” and all members of the
15 “Wage Statement Class.” The Late Pay Class includes all former non-exempt employees of Defendant
16 in the State of California whose employment ended at any time from April 12, 2017, through April 30,
17 2022. The Wage Statement Class includes all current and former non-exempt employees of Defendant in
18 the State of California at any time from April 12, 2019, through February 28, 2021. There are 234
19 individuals that comprise the Class.¹

20 **B. Operation of the Settlement**

21 Pursuant to the Court’s January 23, 2023 Preliminary Approval Order, the Court conditionally
22 certified the Class and granted preliminary approval to the settlement. The Preliminary Approval Order
23 also approved of the proposed forms of notice to the Class. The Court entered the Preliminary Approval
24 Order after review and consideration of all of the pleadings filed in connection herewith, and the oral
25 presentations made by counsel at the hearing. In compliance with the Preliminary Approval Order, the
26

27
28 ¹ The settlement also defines a group of “Aggrieved Employees,” which includes all Class Members
who were employed by Defendant since April 12, 2019. There are 201 Aggrieved Employees.

1 Notice of Class Action Settlement (“Class Notice”) was sent to all Class Members via first class mail.
2 The notice process was timely completed.

3 **II. Finding**

4 This Court finds that the Agreement appears to be the product of serious, informed, non-
5 collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential treatment
6 to any individuals. The Court further finds that the Agreement is fair, adequate, and reasonable and that
7 Plaintiff has satisfied the standards for final approval of a class action settlement under California law.
8 Under the provisions of California Code of Civil Procedure section 382 and Rule 23 of the Federal
9 Rules of Civil Procedure, as approved for use in *Vasquez v. Superior Court*, 4 Cal. 3d 800, 821 (1971),
10 the trial court has discretion to certify a class where:

11 [Q]uestions of law or fact common to the members of the class predominate over any questions
12 affecting only individual members, and that a class action is superior to the available methods for
the fair and efficient adjudication of the controversy

13 FED. R. CIV. PROC. 23.

14 Certification of a settlement class is the appropriate judicial device under these circumstances.

15 **III. Order**

16 Good cause appearing **IT IS HEREBY ORDERED AND ADJUDICATED** as follows:

17 1. For purposes of this Order, the Court adopts all defined terms as set forth in the
18 Agreement.

19 2. The Court has jurisdiction over the subject matter of the litigation, the Class
20 Representative, Settlement Class Members, and Defendants.

21 3. The Court finds that the dissemination of the Class Notice to the Class Members by the
22 appointed Settlement Administrator, Phoenix Settlement Administrators, constituted the best notice
23 practicable under the circumstances to all Class Members, and fully met the requirements of California
24 law and due process under the State and Federal Constitutions.

25 4. The Court approves the settlement of the above-captioned action, as set forth in the
26 Agreement, as fair, adequate, and reasonable to the Parties and Class Members. The Parties are directed
27 to perform in accordance with the terms set forth in the Agreement.
28

1 5. Except as otherwise provided in the Agreement, the Parties are to bear their own costs
2 and attorneys' fees.

3 6. The Court hereby certifies the following Class including all members of the "Late Pay
4 Class" and all members of the "Wage Statement Class." The Late Pay Class includes all former non-
5 exempt employees of Defendant in the State of California whose employment ended at any time from
6 April 12, 2017, through April 30, 2022. The Wage Statement Class includes all current and former non-
7 exempt employees of Defendant in the State of California at any time from April 12, 2019, through
8 February 28, 2021.

9 7. With respect to the Class and for purposes of approving the settlement only and for no
10 other purpose, this Court finds and concludes that: (a) the members of the Class are ascertainable and so
11 numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to
12 the Class, and there is a well-defined community of interest among members of the Class with respect to
13 the subject matter of the non-exempt claims in the Action; (c) the claims of Class Representative are
14 typical of the claims of the members of the Class; (d) the Class Representative has fairly and adequately
15 protected the interests of the members of the Class; (e) a class action is superior to other available
16 methods for an efficient adjudication of this controversy; and (f) the counsel of record for the Class
17 Representative, i.e., Class Counsel, are qualified to serve as counsel for Plaintiff in his individual and
18 representative capacities and for the Class.

19 8. Within seven calendar days, Defendants shall deposit the Gross Settlement Amount of
20 \$410,000.00 with the Administrator, pursuant to the terms of the Agreement.

21 9. From the Gross Settlement Amount, the Administrator shall pay:

- 22 • to Class Counsel attorneys' fees in the amount of \$136,666.67 and reimbursement of
23 costs in the amount of \$8,583.88;
- 24 • to Class Representative Jordan McDonald for his unique services to the Class, and as
25 consideration for the execution of a general release apart from pending claims, the
26 amount of \$10,000.00;
- 27 • to the California Labor and Workforce Development Agency the amount of
28 \$30,000.00 for its 75% share of PAGA Penalties; and

- to Phoenix Settlement Administrators the amount of \$10,000.00 for its fees and costs in administering the settlement.

10. The Court finds that these amounts are fair and reasonable. The Administrator is directed to make such payments in accordance with the terms of the Agreement.

11. The Court approves the Individual Settlement Payment and PAGA payment amounts, which shall be distributed by the Administrator pursuant to the terms of the Agreement, after allocation of the amounts set forth in Paragraph 9.

12. The Court hereby orders the parties to implement the terms of the Agreement, including distributing the funds from any uncashed settlement checks to the State Unclaimed Property Fund in the name of the recipient.

13. A compliance hearing is set for [April 18, 2024], at 2:30 p.m. in Department 1 of this Court. At least 10 court days prior to the compliance hearing, Plaintiff shall file a declaration from the Administrator establishing the status of distribution of settlement funds.

14. All Class Members, the LWDA, and Plaintiff shall be bound by the applicable releases provided in the Agreement.

IV. Judgment

The Court hereby enters final judgment in this case in accordance with the terms of the Settlement, Preliminary Approval Order, and this Order. Pursuant to Rule 3.769(h) of the California Rules of Court, and without affecting the finality of the Settlement or Judgment entered, this Court shall retain exclusive and continuing jurisdiction over the action and the Parties, including all Settlement Class Members, for purposes of enforcing this Judgment.

Pursuant to Code of Civil Procedure section 668.5, judgment shall be entered as of the filing of this judgment. This judgment makes no finding of any violation of the Labor Code, liability, or other wrongdoing. None of the settlement or any of its terms, the order approving the settlement, or this judgment are an admission of any liability or finding of any violation of the Labor Code.

IT IS SO ORDERED AND ADJUDGED.

DATED: _____, 2023

THE HONORABLE SUNIL R. KULKARNI