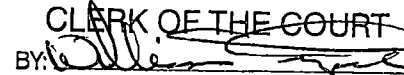


FILED
San Francisco County Superior Court

APR 10 2023

CLERK OF THE COURT
BY: 
Deputy Clerk

Prepared by Counsel for Plaintiff
Beth Gunn, Esq. (SBN 218889)
beth@gunncoble.com
Gunn Coble LLP
3555 Casitas Avenue
Los Angeles, CA 90039

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

KATHLEEN RISHI, individually, and on behalf
of others similarly situated

Plaintiff,

vs.

COGENT COMMUNICATIONS, Inc., Gregory
Dominguez, an individual, and DOES 1 through
25, inclusive,
Defendants.

Case No. CGC-21-592577

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
APPROVAL OF PRIVATE ATTORNEYS
GENERAL ACT "PAGA"
SETTLEMENT, AWARD FOR
ATTORNEYS' FEES AND COSTS,
SERVICE PAYMENT AND ENTERING
JUDGMENT**

[Filed concurrently with Memorandum of
Points and Authorities; Notice of Motion;
Declarations of Catherine J. Coble, Beth
Gunn, Kathleen Rishi, and Julie Green of CPT
Group, Inc.; and [Proposed] Judgment]

DATE: April 10, 2023

TIME: 9:30 a.m.

DEPT.: 302 (Via Zoom Videoconference)

Action Filed: June 4, 2021

Trial Date: Vacated

Plaintiff Kathleen Rishi ("Plaintiff"), individually and on behalf of aggrieved employees and
the State of California, and Defendant Cogent Communications, Inc. ("Defendant") (collectively,

1 “the Parties”) have entered into a Private Attorney General Act (“PAGA”) settlement subject to this
2 Court’s approval. The terms of the settlement, including releases of claims, are set forth in the parties’
3 Private Attorney General Act Settlement Agreement and Release (“Settlement Agreement”),
4 attached hereto as **Exhibit A**. Plaintiff moved for approval of the PAGA settlement on April 10,
5 2023.

6 On the basis of the Settlement Agreement, all fillings related to the present motion, all other
7 papers filed in this action, and the arguments of counsel,

8 **IT IS ORDERED THAT:**

9 1. Except as otherwise specified here, the Court hereby adopts and incorporates by
10 reference the terms and definitions of the Settlement Agreement.

11 2. For settlement purposes only, the Court confirms approval of the Settlement
12 Agreement as to the following group of individuals, collectively referred to as the “Aggrieved
13 Employees”

14 “The individuals who are or were non-exempt employees of Defendant in California at any
15 time between December 18, 2019 and February 28, 2022 and who were not reimbursed for
16 necessary business expenses incurred while performing work from home.”
17

18 3. The Court hereby approves the Settlement Agreement pursuant to section 2699,
19 subdivision (1) under the Labor Code’s Private Attorney General Act of 2004 (“PAGA”). The Court
20 finds the terms of the Settlement Agreement as a whole are fundamentally fair, adequate, and
21 reasonable in light of the PAGA’s policies and purposes. The parties are directed to effectuate the
22 Settlement Agreement according to its terms and this Order.
23

24 4. The “Notice of Settlement and Release of Claims” (“Post- Approval Notice”) attached
25 hereto as **Exhibit B** fairly and adequately describes the Action and the approved Settlement
26 Agreement and is the best notice practicable under the circumstances. The Post-Approval Notice is
27

1 approved as to form and content. The Court also approves the proposed procedure for distribution of
2 the Post-Approval Notice and the distribution of settlement proceeds to the Aggrieved Employees as
3 set forth in the Settlement Agreement. The Court directs the Post-Approval Notice to be distributed
4 to the PAGA Employees pursuant to the terms of the Settlement Agreement.

5
6 5. Pursuant to Cal. Lab. Code §§ 2699(1)(2), (1)(4), Plaintiff provided a copy of the
7 Settlement Agreement to the Labor Workforce Development Agency ("LWDA"). The LWDA has
8 not asserted any objection to the parties' Settlement Agreement, and the Court finds this factor
9 weighs in favor of approving the Settlement Agreement in its entirety.

10 6. No party or individual has objected to this Settlement.

11
12 7. The Court appoints CPT Group, Inc. as the third-party Settlement Administrator, and
13 approves an award of \$6,250 in costs to CPT Group, Inc. for its settlement administration services
14 to be paid from the Gross Settlement Amount. The Court directs CPT Group, Inc. to carry out all of
15 the duties and responsibilities as set forth in the Settlement Agreement.

16 8. Plaintiff's Counsel requested in attorneys' fees to be paid from the Gross Settlement
17 Amount. The Court grants the requested fee award in the amount of \$172,500. In awarding this
18 amount, the Court considered whether the requested amount of thirty percent of the gross settlement
19 amount was reasonable in light of the lodestar. The Court carefully considered the documentation
20 submitted in support of the fee request, including the declarations of Plaintiff's Counsel setting forth
21 the hours expended in this matter. Plaintiff's Counsel has spent 234.5 hours litigating the PAGA
22 claims, which results in a lodestar of \$199,325. The awarded amount represents a negative multiplier
23 of .86. The Court finds the awarded amount justified given (1) the experience, reputation and ability
24 of Plaintiff's Counsel; (2) the extent to which the case was litigated; (3) the outstanding results
25 achieved on behalf of the State of California and Aggrieved Employees; (4) the extent to which the
26 nature of the litigation precluded other employment by attorneys; and (5) the contingent nature of
27
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1 the fee award.

2 9. The Court reviewed the costs advanced and finds that they were reasonably incurred
3 in the prosecution of the action. Accordingly, the Court awards \$5,000 in actual litigation costs to be
4 paid to Plaintiff's Counsel from the Gross Settlement Amount.

5 10. The Court orders a Service Award of \$5,000.00 to Plaintiff Kathleen Rishi for her
6 service to the PAGA Employees and the State of California. This award is reasonable and justified
7 in light of Plaintiffs contributions to the case, the risks Plaintiff undertook in serving as Plaintiff, and
8 because of the need to incentivize litigants to pursue PAGA actions, and the fact that it is less than
9 one percent of the gross settlement amount. This award is separate and apart from and in addition to
10 any award to which Plaintiff may be entitled to as a PAGA Employee. The award shall be paid from
11 the Gross Settlement Amount.

12 11. After deducting the amounts above, the Net Settlement Amount is \$386,250. The
13 Court approves the payment of \$289,688 to the L WDA for its 75% share of PAGA civil penalties.
14 The remaining 25% (96,563) shall be distributed to the PAGA Employees in accordance with the
15 terms of the Settlement Agreement.

16 12. The Court orders distribution of the total Gross Settlement Amount (\$575,000)
17 pursuant to the terms of the Settlement Agreement. Specifically, within fifteen business days
18 following the Effective Date (the date of this Order), Defendant shall fund the Settlement by
19 delivering the funds to the Settlement Administrator. Within 30 calendar days following the approval
20 of the Settlement, the Settlement Administrator shall issue a check payable to the LWDA for its 75%
21 share. Within 30 calendar days following the funding of the Settlement, the Settlement Administrator
22 shall issue the Individual PAGA Settlement Share from the PAGA Employee Fund to the PAGA
23 Employees, along with the Post-Approval Notice (**Exhibit B**).

24 13. The Settlement will be distributed to PAGA Employees by mailing checks. Checks
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1 will be negotiable for 180 days after they are mailed. Within fourteen calendar days after the Void
2 Date, uncashed checks will be distributed to the State of California's Controller, Unclaimed Property
3 Division for further handling on behalf of the PAGA Employee.

4 14. Upon entry of this Order, Plaintiff and the Aggrieved Employees shall be bound by
5 the Released Claims set forth in the Settlement Agreement.

6 15. The Court retains jurisdiction over the subject matter of this litigation, Plaintiff, the
7 PAGA Employees as defined in the Settlement Agreement, and Defendant, for purposes of
8 supervising the implementation, enforcement, construction, administration, and interpretation of the
9 Settlement Agreement and this Order.

10 16. Plaintiff is directed to submit a copy of this Order, and the Judgment, filed
11 concurrently herewith, to the LWDA within ten days of this Order.

12 17. Except as otherwise provided in the Settlement Agreement and this Order, the parties
13 shall bear their own attorneys' fees, costs, and expenses incurred by them in connection with this
14 action.

15 18. The Court sets a compliance hearing for **November 28, at 9:30 a.m.** in Department
16 302 of this Court. No later than **November 14, 2023**, Plaintiff's Counsel and the Settlement
17 Administrator shall submit a summary accounting, identifying distributions made as ordered herein,
18 the number and value of any uncashed settlement checks, the status of unresolved issues, if any, and
19 any other matters appropriate to bring to the Court's attention.

20 **IT IS SO ORDERED.**

21 DATED: 4/12/23

22 

23 Judge of the Superior Court

24 **RICHARD B. ULMER**

1 BETH GUNN, CA Bar No. 218889
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2 CATHERINE J. COBLE, CA Bar No. 223461
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6 Attorneys for Plaintiff
KATHLEEN RISHI, individually
7 and on behalf of others similarly situated

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN FRANCISCO**

11
12 KATHLEEN RISHI, individually, and on behalf
of others similarly situated

13 Plaintiff,

14 vs.

15 COGENT COMMUNICATIONS, Inc., Gregory
16 Dominguez, an individual, and DOES 1 through
17 25, inclusive,

18 Defendants.
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Case No. CGC-21-592577

**JOINT STIPULATION RE PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT**

Action Filed: June 4, 2021
Trial Date: December 5, 2022

1 This Settlement Agreement ("Agreement") is made by and between Plaintiff Kathleen
2 Rishi ("Plaintiff") and Defendant Cogent Communications, Inc. ("Defendant") (collectively "the
3 Parties") with regard to the thirteenth cause of action for violation of the California Labor Code
4 Private Attorneys General Act of 2004 ("PAGA") in the lawsuit titled *Kathleen Rishi v. Cogent*
5 *Communications, Inc., et al.*, Case No. CGC-21-592577 pending in the Superior Court of the State
6 of California, County of San Francisco (the "Civil Action").

7 **BACKGROUND**

8 1. On December 18, 2020, Plaintiff served on the LWDA and Defendant notice of her
9 PAGA claim for failure to reimburse aggrieved employees for necessary business expenses
10 ("PAGA Letter"). On June 4, 2021, Plaintiff filed her Complaint in the San Francisco County
11 Superior Court against Defendant, case number CGC-21-592577, which included her thirteenth
12 cause of action for violation of PAGA for failure to reimburse employees for necessary business
13 expenses. The thirteenth cause of action sought penalties, costs, attorneys' fees, and any other
14 relief deemed appropriate by the Court on the basis of the allegations.

15 2. On July 12, 2021, Defendant answered the Complaint with a general denial and
16 assertion of affirmative defenses.

17 3. The Parties resolved Plaintiff's first through twelfth causes of action in a separate
18 agreement prior to reaching this Agreement. Defendant denies the allegations in the Complaint
19 and the PAGA Letter, denies Defendant has any liability for the claims, and denies that Plaintiff or
20 any allegedly Aggrieved Employee is entitled to any relief.

21 4. PAGA Counsel and Defense Counsel are experienced in litigating wage and hour
22 class actions in California, and have litigated this matter in an adversarial manner.

23 5. On May 2, 2022, the Parties engaged in mediation before Ann Kotlarski, an
24 experienced mediator in this area of law. The mediation was not successful and the Parties
25 continued to litigate this case.

26 6. On November 15, 2022, following multiple subsequent settlement negotiations
27 with the mediator, and additional information exchanged by the Parties, the Parties both accepted a
28 mediator's proposal containing the principal terms of settlement of Plaintiff's PAGA claim.

1 7. This Agreement is made in compromise of Plaintiff's thirteenth cause of action
2 seeking PAGA penalties for Defendant's failure to reimburse necessary business expenses during
3 the time period of December 18, 2019 through February 28, 2022.

4 8. Because the settled matter involves a representative action, this Agreement must
5 receive approval by the Court. Accordingly, Plaintiff and Defendant enter into this Agreement on
6 a conditional basis. Should the Court, or any other court taking jurisdiction of this matter, decline
7 to approve all material aspects of the Settlement or make any ruling substantially altering the
8 material terms of the Settlement, the Settlement shall be voidable and unenforceable as to Plaintiff
9 and Defendant, at the option of any party.

9. The Parties have concluded, after taking into account the disputed factual and legal issues involved in the thirteenth cause of action in the Civil Action, the risks attending further prosecution, the desire to put the controversy to rest, and the substantial benefits to be received pursuant to settlement as set forth in this Agreement, that settlement on the terms set forth herein is in the best interest of the Parties, the LWDA and the Aggrieved Employees, and is fair and reasonable and serves the purposes of the PAGA.

16 THE SETTLEMENT

17 10. Subject to the Court's approval pursuant to Section 2699.3(b)(4) of the California
18 Labor Code, Plaintiff and Defendant have agreed to settle the remaining thirteenth cause of action
19 for violation of the PAGA upon the terms and conditions and for the consideration set forth in this
20 Agreement.

21 11. **Definitions of Key Terms used in this Agreement.**

22 a. “Civil Action” means the lawsuit filed by Plaintiff in the Superior Court of
23 the State of California for the County of San Francisco titled *Kathleen Rishi v. Cogent*
24 *Communications, Inc., et al.*, Case No. CGC-21-592577.

b. "Aggrieved Employees" means all individuals who are or were non-exempt employees of Defendant in California at any time during the PAGA Period and who were not reimbursed for necessary business expenses incurred while performing work from home, as identified by Employee ID number in the attached **Exhibit A**.

- 1 c. "Complaint" means the Complaint filed in the Civil Action.
- 2 d. "Court" means the Superior Court of California for the County of San
3 Francisco.
- 4 e. "Defendant" means Defendant Cogent Communications, Inc.
- 5 f. "Defense Counsel" means Donald Sullivan of Jackson Lewis P.C.
- 6 g. "Enhancement Award" means any payment to the PAGA Representative for
7 her service as a private attorney general, which is in addition to whatever payments she may
8 otherwise be entitled to as an Aggrieved Employee.
- 9 h. "Final Order and Judgment" means the order and judgment to be entered by
10 the Court upon granting approval of the Settlement and this Agreement as binding upon the
11 Parties.
- 12 i. "Gross Settlement Amount" means the full amount of the settlement to be
13 paid in exchange for the release of the PAGA claim, as defined more thoroughly below in Section
14 12.a.
- 15 j. "LWDA" means the California Labor and Workforce Development
16 Agency.
- 17 k. "Net Settlement Amount" means the amount of the settlement remaining
18 after the agreed-upon fees and costs have been deducted from the Gross Settlement Amount, as
19 described more thoroughly below in Section 12.b.
- 20 l. "PAGA Counsel" means Beth Gunn and Catherine J. Coble of Gunn Coble
21 LLP.
- 22 m. "PAGA Letter" means the notice of alleged Labor Code violations that
23 Plaintiff caused to be sent to the LWDA pursuant to Labor Code Section 2699.3(l), which was
24 assigned LWDA Case No. LWDA-CM-815935-20, submitted on or about December 18, 2020.
- 25 n. "PAGA Period" means between the time period of December 18, 2019
26 through February 28, 2022, which reflects the time period covered by the beginning of the statute
27 of limitations for Plaintiff's PAGA claim through the date that Defendant's employees allegedly
28 stopped incurring necessary work-from-home business expenses requiring reimbursement.

- 1 o. "PAGA Representative" or "Plaintiff" means plaintiff Kathleen Rishi.
- 2 p. "PAGA Payment to LWDA" means the amount that is anticipated to be
- 3 paid to the LWDA.
- 4 q. "PAGA Settlement Shares" means the amount that is anticipated to be paid
- 5 to Aggrieved Employees in the aggregate. Pursuant to Labor Code Section 2699(i), 25% of the
- 6 Net Settlement Amount shall be distributed to Aggrieved Employees. "PAGA Settlement Share"
- 7 means each Aggrieved Employee's individual share of the aggregate PAGA Settlement Shares, to
- 8 be calculated as explained more thoroughly below in Section 12.b.v.
- 9 r. "PAGA Pay Periods" means the total number of pay periods worked by
- 10 each Aggrieved Employee during the PAGA Period based on Defendants' records.
- 11 s. "PAGA Pay Period Payment Rate" means the gross amount that shall be
- 12 paid for each PAGA Pay Period for Aggrieved Employees as described below in Paragraph
- 13 12(b)(v)(A)-(D).
- 14 t. "Party" or "Parties" means Plaintiff and Defendant.
- 15 u. "Released Parties" means Defendant and each of its present and former
- 16 parents, affiliated companies and entities, divisions and subsidiaries, and each of its respective
- 17 present and former directors, partners, officers, shareholders, representatives, employees,
- 18 attorneys, insurers, predecessors, successors, assigns, agents, and any individual or entity that
- 19 could be jointly liable with any of the foregoing.
- 20 v. "Settlement" means the final and complete disposition of the thirteenth
- 21 cause of action in the Civil Action as provided for in this Agreement and all Exhibits hereto.
- 22 w. "Settlement Administrator" means the third-party entity appointed by the
- 23 Court to conduct settlement administration duties, as defined more thoroughly below in Section
- 24 12.b.iii.
- 25 x. "Settlement Administration Costs" means the reasonable costs and fees of
- 26 administration of this Settlement to be paid to the Settlement Administrator from the Gross
- 27 Settlement Amount, as defined more thoroughly below in Section 12.b.iii.
- 28

1 12. Material Terms. The material terms of the Agreement are as follows:

2 a. Settlement Payment. Defendant shall pay a settlement amount of Five
3 Hundred Seventy-Five Thousand Dollars and No Cents (\$575,000.00), referred to herein as the
4 Gross Settlement Amount. This amount shall cover all of the damages at stake for Plaintiff's
5 PAGA claim, including (1) Attorneys' fees (not to exceed 30% of the Gross Settlement Amount)
6 and attorney costs to be paid to Plaintiff's counsel, acting as PAGA Counsel; (2) Settlement
7 administration costs, to be paid to the court-appointed Settlement Administrator; (3) any PAGA
8 Representative Enhancement Award to Plaintiff; (4) the amount to be paid to the California Labor
9 Workforce Development Agency ("LWDA"); and (5) the amounts to be paid to the Aggrieved
10 Employees as their PAGA Settlement Shares. In no event shall any portion of the Gross
11 Settlement Amount revert to Defendant.

12 b. Distribution of the Gross Settlement Amount. Subject to Court approval,
13 the Parties anticipate that the Gross Settlement Amount will be distributed as follows:

14	GROSS SETTLEMENT AMOUNT:	\$	575,000
15	Attorneys' Fees [30%] (not to exceed)	\$	172,500
16	PAGA Representative Enhancement Fee (not to exceed)	\$	5,000
17	Costs (not to exceed)	\$	5,000
18	Settlement Administration (not to exceed)	\$	6,250
19	Anticipated Net Settlement Amount:	\$	386,250
20	Amount to LWDA (75% of Net Settlement Amount)	\$	289,688
21	Amount To Be Distributed Equally Amongst All Aggrieved Employees (25% of Net Settlement Amount)	\$	96,563

22 PAGA counsel shall file a motion seeking court approval in the amounts set forth above. If the
23 court does not approve any of the amounts to be deducted from the Gross Settlement Amount as
24 anticipated, those amounts shall become part of the Net Settlement Amount to be distributed to the
25 LWDA and Aggrieved Employees.

26 i. PAGA Counsel's Attorneys' Fees and Costs. From the Gross
27 Settlement Amount. PAGA Counsel may seek from the Court an amount up to 30%
28 of the Gross Settlement Amount [One Hundred Seventy-Two Thousand Five
Hundred Dollars and No Cents (\$172,500)], which Defendant shall not oppose.
PAGA Counsel may also seek from the Court reasonable costs of up to Five
Thousand Dollars and No Cents (\$5,000), which Defendant shall not oppose. IRS

1 Forms 1099 and state and local equivalents will be issued to Plaintiff's Counsel for
2 any awarded attorneys' fees and costs. Plaintiff's motion seeking settlement
3 approval shall contain information regarding PAGA Counsel's attorneys' fees and
4 costs sufficient for the Court to determine the amount of attorneys' fees and costs
5 to award.

6 ii. PAGA Representative Enhancement Award. From the Gross
7 Settlement Amount, the PAGA Representative may seek from the Court an
8 Enhancement Award up to Five Thousand Dollars and No Cents (\$5,000), which
9 Defendant shall not oppose. Plaintiff will be issued an IRS Form 1099 and its state
10 and local equivalents for any incentive payment amount received under the
11 Settlement. The PAGA representative shall submit, concurrently with Plaintiff's
12 motion seeking settlement approval, a declaration regarding the PAGA
13 Representative's basis for seeking the enhancement award, sufficient for the Court
14 to determine the amount of enhancement fee to award. Should the Court award less
15 than \$5,000 for the Enhancement Award, Plaintiff agrees that (a) she will accept
16 the Court's ruling; and (b) an award of less than \$5,000 for the Enhancement
17 Award does not serve as a basis for appeal or otherwise affect the implementation
18 of this Agreement.

19 iii. Settlement Administration Costs. The Settlement Administrator
20 shall be CPT Group, Inc. Settlement administration fees are estimated to be not
21 more than Six Thousand Two Hundred Fifty Dollars and No Cents (\$6,250.00). If
22 the actual cost of settlement administration is less or more than the amount
23 approved by the Court, those funds shall be added to or subtracted from the Net
24 Settlement Amount.

25 iv. Distribution of PAGA Payment to LWDA. Pursuant to Labor
26 Code Section 2699(i), seventy-five percent (75%) of the Net Settlement Amount
27 shall be distributed to the LWDA. This amount shall be characterized, for tax
28 purposes, as penalties.

1 v. **Distribution of PAGA Settlement Shares to Aggrieved**

2 **Employees.** Pursuant to Labor Code Section 2699(i), twenty-five percent (25%) of
3 the Net Settlement Amount shall be distributed among the Aggrieved Employees
4 according to the following formula:

- 5 i. The number of PAGA Pay Periods for each Aggrieved Employee shall
6 be calculated using Defendant's records to reflect the number of pay
7 periods worked by each Aggrieved Employee according to their dates
8 of employment during the PAGA Period.
- 9 ii. The aggregate number of PAGA Pay Periods worked by all Aggrieved
10 Employees shall be added together.
- 11 iii. The Net Settlement Amount shall be divided by the aggregate number
12 of PAGA Pay Periods worked by Aggrieved Employees, to generate the
13 "PAGA Pay Period Payment Rate."
- 14 iv. Each Aggrieved Employee's number of PAGA Pay Periods shall be
15 multiplied by the PAGA Pay Period Payment Rate, to generate their
16 respective PAGA Settlement Share.

17 These amounts shall be characterized, for tax purposes, as penalties. Accordingly,
18 the payments to Aggrieved Employees will not be reduced by payroll tax withholding and
19 deductions; instead, the Settlement Administrator will issue to the Aggrieved Employees IRS
20 Form 1099s and their state and local equivalents with respect to the payments.

21 c. **Release.** Providing this Settlement is approved, then as of the Effective
22 Date, each Aggrieved Employee (including Plaintiff on behalf of herself, the State of California
23 and all Aggrieved Employees), individually and on behalf of their respective successors, assigns,
24 agents, attorneys, executors, heirs and personal representatives, shall fully and finally release and
25 discharge the Released Parties from the PAGA claim alleged in Plaintiff's Complaint as the
26 thirteenth cause of action in the Civil Action ("Released PAGA Claim"). The Released PAGA
27 Claim expressly covers any Aggrieved Employee's potential PAGA claim based on failure to
28 reimburse for necessary work-from-home business expenses during the PAGA period which might
result in PAGA penalties, interest, and/or attorneys' fees and costs. Plaintiff expressly releases all
claims for damages, costs, and expenses, attorneys' fees, enhancement fees, statutory penalties,

1 and interest against Released Parties arising from the thirteenth cause of action pursuant to PAGA
2 during the PAGA Period.

3 d. No Right to Opt Out. The Parties agree that there is no statutory right for
4 any Aggrieved Employees to opt out or otherwise exclude himself or herself from the Settlement.

5 e. Communication with Aggrieved Employees Regarding the Settlement.
6 Subject to Court approval, the Settlement Administrator shall mail each Aggrieved Employee their
7 PAGA Settlement Share accompanied by a notice briefly explaining the background of the lawsuit
8 and the scope of the release (in the form attached as **Exhibit B**), and enclose the PAGA Settlement
9 Share check made payable to the Aggrieved Employee as a result of the approval of the Settlement
10 The mailing shall also include the appropriate IRS Form 1099-MISC tax reporting form for the
11 amount of the PAGA Settlement Share, which shall be characterized as penalties.

12 f. Uncashed PAGA Settlement Share Checks. PAGA Settlement Share
13 checks shall remain negotiable for 180 days from the date of mailing. Any PAGA Settlement
14 Share checks that remain uncashed after One Hundred Eighty (180) days from issuance shall be
15 void and the Settlement Administrator shall pay the funds represented by such un-redeemed
16 checks to the California State Controller's Office as unclaimed property pursuant to the California
17 Unclaimed Property Law. In such event, the Aggrieved Employee shall nevertheless remain
18 bound by the Settlement's Release. In no event shall any portion of the Gross Settlement Amount
19 revert to Defendant.

20 g. Effective Date of the Settlement. The Settlement shall become final when
21 all of the following events have occurred:

22 i. This Agreement has been executed by all Parties, PAGA Counsel
23 and Defense Counsel;

24 ii. The Court has approved the Settlement and entered a Final Order
25 and Judgment approving the Settlement; and

26 iii. In the event no appeal is filed, then thirty (30) days after the entry of
27 the Final Order and Judgment, or, if an appeal is filed, within thirty (30) days after
28

1 the final dismissal of the appeal, writ or other appellate proceeding opposing this
2 Agreement.

3 h. **Final Order and Judgment.** Upon final approval of the Settlement, a Final
4 Order and Judgment shall be entered by the Court which shall, among other things:

5 i. Grant approval to the Settlement as fair, reasonable, adequate, and
6 consistent with the purposes of the PAGA, and order the Parties to carry out the
7 provisions of this Agreement.

8 ii. Adjudge that the Aggrieved Employees are conclusively deemed to
9 have released the Released Parties from the Released PAGA Claim, as more
10 specifically set forth above in Section 12.c.

11 iii. Prohibit and permanently enjoin each Aggrieved Employee from
12 pursuing the Released PAGA Claim.

13 iv. Reserve continuing jurisdiction as provided herein.

14 i. **Nullification.** If the Court for any reason does not approve this Settlement,
15 this Agreement shall be considered null and void and the Parties to this Agreement shall stand in
16 the same position, without prejudice, as if the Agreement had been neither entered into nor filed
17 with the Court. Invalidation of any material portion of this Agreement shall invalidate this
18 Agreement in its entirety unless the Parties agree in writing that the remaining provisions shall
19 remain in full force and effect. In the event that the Effective Date, as defined herein does not
20 occur, this Agreement shall be deemed null and void *ab initio* and shall be of no force or effect
21 whatsoever.

22 **RESPONSIBILITIES OF THE PARTIES**

23 15. **PAGA Counsel to File Approval Motion.** As soon as practicable, PAGA Counsel
24 shall file a motion with the Court seeking approval of the terms in this Agreement, including the
25 payment of attorneys' fees and costs, the PAGA representative award, and all other payments to
26 be made according to this Agreement. Plaintiff's Counsel shall draft the motion and provide the
27 draft to Defense Counsel for review and revision at least three (3) business days prior to the filing
28 of the motion. The submission shall also include admissible evidence as may be required for the

1 Court to determine that this Settlement is fair, adequate and reasonable, and serves the purposes of
2 the PAGA. If the Court does not grant the application for approval and issue an order approving
3 the Settlement, under the specific terms requested, the Parties agree to meet and confer to address
4 the Court's concerns in good faith and determine whether resolution of the claims encompassed by
5 the Settlement can be obtained in a manner consistent with the Court's concerns.

6 16. **Cooperation.** The Parties agree to cooperate with each other to accomplish the
7 terms of this Settlement. Including, but not limited to, drafting the motion, the timely execution of
8 documents and such other acts as may be reasonably necessary to implement the terms of this
9 Settlement. The Parties to the Settlement shall use their best efforts, including all efforts
10 contemplated by this Agreement and any other efforts that may become necessary by Court order,
11 or otherwise, to effectuate this Settlement and the terms set forth herein.

12 17. **Provision of Necessary Information.** Defendant agrees to provide information to
13 the Settlement Administrator, in a secure manner agreed upon with the Settlement Administrator,
14 within 10 business days of the Court's approval of the Settlement for purposes of administering
15 the Settlement, including all information required to (1) identify Aggrieved Employees; (2) mail
16 PAGA Settlement Shares to Aggrieved Employees; (4) calculate the PAGA Pay Periods worked
17 by each Aggrieved Employee; and (5) enable the Settlement Administrator to complete any tax or
18 other governmental reporting required as a result of the Settlement. At a minimum, Defendant
19 shall provide the following data regarding Aggrieved Employees: Each Aggrieved Employee's
20 full name, most recent mailing address and telephone number, social security number, most recent
21 e-mail address, and dates of hire and termination to the extent possible. The provided information
22 shall only be used by the Settlement Administrator for the purpose of administering this
23 Settlement. The Settlement Administrator shall execute an acknowledgement of the protective
24 order entered in this matter and be responsible for following all privacy laws and taking
25 appropriate steps to ensure that Aggrieved Employees' personal information is safeguarded and
26 protected from improper disclosure or use.

27 18. **PAGA Counsel's Approval of PAGA Settlement Shares.** The Settlement
28 Administrator shall provide PAGA counsel with the amounts to be paid to each Aggrieved

1 Employee within ten (10) calendar days of receipt of the information from Defendant. PAGA
2 Counsel shall review and approve the amounts to be paid, and must respond to the Settlement
3 Administrator within five (5) business days of receiving the information from the Settlement
4 Administrator.

5 19. **Notification of Settlement to LWDA.** PAGA Counsel shall notify the LWDA, via
6 its online Proposed Settlement of PAGA case interactive form, of: (i) the pending settlement, (ii)
7 the release of PAGA claims herein, (iii) the amount of the Gross Settlement and/or estimated Net
8 Settlement Amount, (iv) the date of the approval hearing, (v) a copy of the proposed settlement
9 provided to the Court; and (vi) any other information required by the LWDA's online proposed
10 settlement reporting platform accessible at [https://www.dir.ca.gov/Private-Attorneys-General-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
11 [Act/Private-Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html). Notice of the proposed settlement shall be provided to
12 the LWDA at the same time that this Stipulation is submitted to the Court. PAGA Counsel shall
13 also submit a copy of the Final Order and Judgment to the LWDA within ten (10) days after its
14 entry in accordance with California Labor Code section 2699(l)(3).

15 20. **Provision of the Gross Settlement Amount to the Settlement Administrator.**
16 Within fifteen (15) business days after the Effective Date, Defendant shall transmit the Gross
17 Settlement Amount to the Settlement Administrator. Prior to that date, Defendant shall coordinate
18 with the Settlement Administrator to handle any details required to timely transfer the settlement
19 amount.

20 **SETTLEMENT ADMINISTRATION**

21 21. **Qualified Settlement Fund.** The Settlement Administrator shall be authorized to
22 establish a Qualified Settlement Fund ("QSF") pursuant to Internal Revenue Service ("IRS") rules
23 and regulations in which the Gross Settlement Amount shall be placed and from which payments
24 required by the Settlement shall be made.

25 22. **Taxes.** The Settlement Administrator shall be responsible for ensuring that all tax
26 obligations associated with the Settlement are timely paid to the appropriate governmental taxing
27 authorities, including (i) filing all federal, state and local employment tax returns, income tax
28 returns, and any other tax returns associated with the taxes; (ii) timely and proper filing of all

1 required federal, state and local information returns (e.g., 1099s), and (iii) completing any other
2 steps necessary for compliance with any tax obligations applicable to Settlement Payments under
3 federal, state and/or local law. PAGA Settlement Shares will be characterized entirely as penalties
4 and will be included on an IRS Form 1099-MISC to each Aggrieved Employee. Each Aggrieved
5 Employee, PAGA Counsel, and the PAGA Representative shall be responsible for remitting to state
6 and/or federal taxing authorities any applicable taxes which may be owed on the portion of any
7 payment received pursuant to this Agreement, except as provided by this Agreement.

8 23. **Settlement Payment Procedures.** Within thirty (30) days of the date of approval
9 of this Settlement, the Settlement Administrator shall perform the following duties:

10 a. Mail by overnight delivery to the LWDA, at Department of Industrial
11 Relations Accounting Unit 455 Golden Gate Avenue, 10th Floor San Francisco, CA 94102, a
12 check made payable to the California Labor and Workforce Development Agency for the amount
13 approved by the Court as the PAGA Payment, and provide tracking information to PAGA Counsel
14 via email to beth@gunncoble.com and cathy@gunncoble.com when delivery is scheduled. The
15 check for penalties must be accompanied by a copy of the Court Order or Judgment awarding the
16 penalties.

17 b. Complete the calculations of PAGA Pay Periods and PAGA Settlement
18 Shares as set forth in Paragraph 12(b)(v)(A)-(D) above.

19 c. Mail by First-Class United States mail the PAGA Settlement Share to each
20 Aggrieved Employee and the letter accompanying it (in the form of the attached Exhibit B), using
21 the most recent address available to the Settlement Administrator for mail delivery, after updating
22 provided addresses using the National Change of Address Database. Any returned mail with a
23 forwarding address from the U.S. postal service shall be promptly re-mailed to the new addresses.
24 The Settlement Administrator shall perform a reasonable search for a new address for any returned
25 mails without a forwarding address. The Settlement Administrator must also provide confirmation
26 that the PAGA Settlement Shares have been mailed via email to beth@gunncoble.com and
27 cathy@gunncoble.com when the mailings have been submitted to the United States Postal Service.
28

1 d. Mail by overnight delivery to PAGA Counsel, Gunn Coble LLP, at 3555
2 Casitas Avenue, Los Angeles, California, 90039, a check made payable to Gunn Coble LLP for
3 the amount approved by the Court as attorneys' fees and costs, and provide tracking information
4 to PAGA Counsel via email to beth@gunncoble.com and cathy@gunncoble.com when delivery is
5 scheduled.

6 e. Pay itself for settlement administration costs approved by the Court, and
7 notify counsel for the Parties when the payment has been made.

8 21. **Completion of Settlement Administration.** The Settlement Administrator shall
9 complete its administrative duties within thirty (30) calendar days of entry of the Final Order and
10 Judgment.

11 **MISCELLANEOUS PROVISIONS**

12 22. **No Inducements.** Plaintiff and Defendant acknowledge that they are entering into
13 this Settlement as a free and voluntary act without duress or undue pressure or influence of any
14 kind or nature whatsoever, and that neither Plaintiff nor Defendant have relied on any promises,
15 representations or warranties regarding the subject matter hereof other than as set forth in this
16 Agreement.

17 23. **No Prior Assignment.** The Parties represent, covenant, and warrant that they have
18 not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
19 encumber to any person or entity any portion of any liability, claim, demand, action, cause of
20 action or rights herein released and discharged except as set forth herein.

21 24. **Construction.** The Parties agree that the terms and conditions of this Agreement
22 are the result of lengthy, intensive arm's-length negotiations between the Parties and their counsel,
23 and this Agreement shall not be construed in favor of or against any Party by reason of the extent
24 to which any Party or his or its counsel participated in the drafting of this Agreement.

25 25. **California Law.** All terms of this Agreement and its exhibits shall be governed and
26 interpreted by and according to the laws of the State of California, without giving effect to any
27 conflict of law principles or choice of law principles.
28

1 26. **Captions and Interpretations.** Paragraph titles or captions contained herein are
2 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
3 describe the scope of this Agreement or any provision hereof.

4 27. **Incorporation of Exhibits.** All exhibits to this Agreement are incorporated by
5 reference and are a material part of this Agreement.

6 28. **Modification.** This Agreement may not be changed, altered, or modified, except in
7 a writing signed by the Parties. This Agreement may not be discharged except by performance in
8 accordance with its terms or by a writing signed by the Parties.

9 29. **Integration Clause.** This Agreement contains the entire agreement between the
10 Parties relating to the Settlement and transaction contemplated hereby, and all prior or
11 contemporaneous agreements, understandings, representations, and statements, whether oral or
12 written and whether by a party or such party's legal counsel, are merged herein. No rights
13 hereunder may be waived except in writing.

14 30. **Binding On Assigns.** This Agreement shall be binding upon and inure to the
15 benefit of the Parties and their respective heirs, trustees, executors, administrators, successors and
16 assigns.

17 31. **No Prevailing Party.** No Party shall be considered a prevailing party for any
18 purpose. Except as otherwise provided for in this Agreement, each Party shall bear its or his own
19 attorney fees and costs.

20 32. **No Admission of Liability.**

21 a. Defendant denies that it has engaged in any unlawful activity, has failed to
22 comply with the law in any respect, or has any liability to anyone under the claims asserted in the
23 Action. This Agreement is entered into solely for the purpose of compromising highly disputed
24 claims. Nothing in this Agreement is intended or will be construed as an admission of liability or
25 wrongdoing by Defendant, or an admission by Plaintiff that any of their claims were non-
26 meritorious or any defense asserted by Defendant was meritorious.

27 b. Whether or not the Order becomes final, nothing in this Agreement, any
28 document, statement, proceeding or conduct related to the Settlement, or any reports or accounting

1 of those matters, will be construed as, offered or admitted in evidence as, received as, or deemed
2 to be evidence of a presumption, concession, indication or admission by any of the Released
3 Parties of any liability, fault, wrongdoing, omission, concession or damage.

4 c. This Section and all other provisions of this Agreement notwithstanding,
5 any and all provisions of this Agreement may be admitted in evidence and otherwise used in any
6 and all proceedings to enforce any or all terms of this Agreement, or in defense of any claims
7 released or barred by this Agreement.

8 33. **Counterparts.** This Agreement, and any amendments hereto, may be executed in
9 any number of counterparts, each of which when executed and delivered shall be deemed to be an
10 original and all of which taken together shall constitute but one and the same instrument. Fax and
11 pdf signatures shall be as valid as original signatures.

12 34. **Notice.** All notices, demands or other communications given under this Agreement
13 will be in writing and deemed to have been duly given as of the third business day after emailing
14 and mailing by United States mail, addressed as follows:

15
16 *To Plaintiff and the PAGA Settlement Members:*

17 BETH GUNN, CA Bar No. 218889
beth@gunncoble.com
18 CATHERINE J. COBLE, CA Bar No. 223461
cathy@gunncoble.com
19 GUNN COBLE LLP
3555 Casitas Avenue
Los Angeles, CA 90039
20 Telephone: 818.900.0695
Facsimile: 818.900.0723
21

22 *To Defendant:*

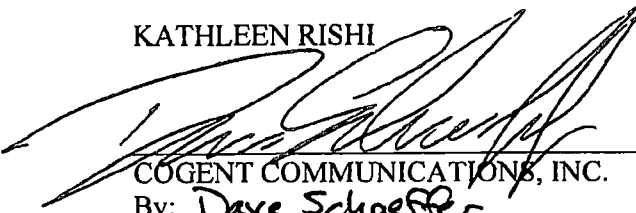
23 Donald P. Sullivan (State Bar No. 191080)
Donald.Sullivan@jacksonlewis.com
24 Isabella Shin (State Bar No. 294437)
Isabella.Shin@jacksonlewis.com
25 JACKSON LEWIS P.C.
50 California Street, 9th Floor
26 San Francisco, California 94111-4615
Telephone: (415) 394-9400
27 Facsimile: (415) 394-9401
28

1 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
2 attorneys, as of the day and year herein set forth.

3
4 DATED: _____

KATHLEEN RISHI

5
6
7 DATED: March 14, 2023


COGENT COMMUNICATIONS, INC.

By: Dave Schaeffer

8
9
10 APPROVED AS TO FORM AND CONTENT:

11
12 DATED: _____

GUNN COBLE LLP

13 By _____

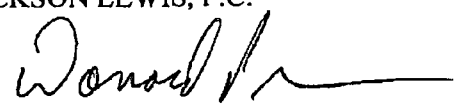
Beth Gunn

Catherine J. Coble

Attorneys for Plaintiff KATHLEEN RISHI

14
15
16
17 DATED: March 14, 2023

JACKSON LEWIS, P.C.

18
19 By  _____

Donald Sullivan

Attorneys for Defendant COGENT
COMMUNICATIONS, INC.

20
21
22
23
24
25 4890-7974-3566, v. 1

1 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
2 attorneys, as of the day and year herein set forth.

3
4 DATED: 3/15/2023

DocuSigned by:
Kathleen Rishi
370FF8F203B140C...

KATHLEEN RISHI

6
7 DATED: _____

COGENT COMMUNICATIONS, INC.

By: _____

9
10 APPROVED AS TO FORM AND CONTENT:

11
12 DATED: 3/15/23

GUNN COBLE LLP

13 By

Beth Guinn

Catherine J. Coble

Attorneys for Plaintiff KATHLEEN RISHI

16
17 DATED: _____

JACKSON LEWIS, P.C.

18
19 By

Donald Sullivan

Attorneys for Defendant COGENT
COMMUNICATIONS, INC.

20
21
22
23
24
25 4890-7974-3566, v. 1

EXHIBIT A

Employee ID Numbers of Aggrieved Employees

Employee ID #
3301
2903
3316
2367
3110
3148
2973
3082
3340
3418
3582
3542
3597
3159
2489
2711
3067
2695
3160
2675
2803
3698
3155
3737
3619
3486
3686
3769
3644
2789
3491
3362
3327
3557
1226
3105
2790
3729
3049
3490
3838
3306
3144
3914
3653
3690
3650

EXHIBIT A

Employee ID Numbers of Aggrieved Employees

Employee ID #
3634
3854
3621
3795
3565
3668
3785
3351
3342
3633
3811
3905
3873
3500
2408
3765
3853
3772
3580
2875
3803
3862
1757
3703
3617
3577
3805
3521
3412
3330
3358
3841
4012
3831
3531
3908
3855
2592
3693
4068
3979
3452
3842
3837
3969
3930
3677

EXHIBIT A

Employee ID Numbers of Aggrieved Employees

Employee ID #
4030
3999
4147
3978
3892
3933
4072
3660
3462
3273
3546
3688
4103
3142
3967
2131
2839
3859
4221
4275
4319
4051
2644
4227
3940
3636
3804
4079
3101
4326
4035
3606
3324
4424
2388
4085
3537
4341
3792
4118
4056
4123
1957
3974
3959
863
3923

EXHIBIT A

Employee ID Numbers of Aggrieved Employees

Employee ID #
4284
3866
847
3554
3944
2932
115
1188
4470
4138
4351
4183
4376
4297
3713
4397
4245
982
4535
4565
3705
4047
4264
3083
4657
3615
3348
4663
1636
4394
3781
4653
4674
4536
684
3752
3949
4209
1067
4253
4566
2727
2287
3977
1300
1172
4337

EXHIBIT A

Employee ID Numbers of Aggrieved Employees

Employee ID #
4065
4765
3687
3409
4093
4586
3545
2594
3629
4689
4750
130
4067
4246
3928
2582
4597
2721
2775
4502
4572
2603
3645
2922
4120
4005
4440
3647
4747
3630
3987
1441
4680
3968
4038
4762
2735
4036
236
3659
1520
3492
273
4517
4250
989
4538

EXHIBIT A

Employee ID Numbers of Aggrieved Employees

Employee ID #
4509
2656
4758
2339
3685
3830
4481
4728
4366
4541
4487
4129
4086
4589
1989
4711
3442
4464
342
4334
2031
3704
4061
2935
4146
385
3102
4173
4060
1457
2171
3368
4437
4738
4702
4499
4150
4222
4479
4430
449
4563
4242
468

EXHIBIT B

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

Kathleen Rishi v. Cogent Communications, Inc.

San Francisco County Superior Court, Case No. CGC-21-592577

I. NOTICE OF PAGA SETTLEMENT

The San Francisco County Superior Court (the “Court”) approved a settlement in the above action filed by Kathleen Rishi (“Plaintiff”) on behalf of herself and all other allegedly Aggrieved Employees against Cogent Communications, Inc. (“Cogent” or “Defendant”).

Plaintiff filed the lawsuit seeking to recover civil penalties for violations of the California Labor Code on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other allegedly Aggrieved Employees under the California Private Attorneys General Act (“PAGA”). These civil penalties are based on Plaintiff’s allegations that Cogent failed to reimburse aggrieved employees for necessary work-from-home business expenses.

The Court has not made a determination about Plaintiff’s claims. This Notice is not an expression of any opinion by the Court as to the merits of Plaintiff’s claims.

Defendant denies Plaintiff’s allegations. It enters into this Settlement with no admission of liability and solely to compromise and settle the action.

You are receiving this Notice because Defendant’s records indicate that you are in the group of employees referred to as allegedly “Aggrieved Employees,” defined as: “all individuals who are or were non-exempt employees of Defendant in California at any time during the time period of December 18, 2019 through February 28, 2022 and who were not reimbursed for necessary business expenses incurred while performing work from home.”

II. INDIVIDUAL PAGA PAYMENT

The Parties calculated each allegedly Aggrieved Employee’s share on a pro rata basis (*i.e.*, proportional) based on the number of pay periods worked by each allegedly Aggrieved Employee in the Settlement Period of December 18, 2019 through February 28, 2022, based on Defendant’s records. Defendant has enclosed your payment with this Notice.

III. RELEASE

The Court approved the PAGA Settlement Agreement (“Settlement”). By operation of the Settlement’s terms, all allegedly Aggrieved Employees, including you, individually and on behalf of their respective successors, assigns, agents, attorneys, executors, heirs and personal representatives, shall fully and finally release and discharge Defendant and each of its present and former parents, affiliated companies and entities, divisions and subsidiaries, and each of its respective present and former directors, partners, officers, shareholders, representatives, employees, attorneys, insurers, predecessors, successors, assigns, agents, and any individual or entity that could be jointly liable with Defendant from the PAGA claim alleged in Plaintiff’s Complaint as the thirteenth cause of action in the Civil Action. The release expressly covers any Aggrieved Employee’s potential PAGA claim based on failure to reimburse for necessary work-from-home business expenses during the PAGA period which might result in PAGA penalties, interest, and/or attorneys’ fees and costs during the period of December 18, 2019 through February 28, 2022.

The Settlement will bar you and any allegedly Aggrieved Employee covered by this Agreement (including you) from proceeding with any claim under the PAGA released by this Settlement.

IV. QUESTIONS

You may contact the attorneys listed below with any questions:

Counsel for Plaintiff / Aggrieved Employees:	Counsel for Defendant Cogent Communications, Inc.:
Beth Gunn beth@gunncoble.com Catherine Coble cathy@gunncoble.com GUNN COBLE LLP 3555 Casitas Avenue Los Angeles, CA 90039 Telephone: 818.900.0695 Facsimile: 818.900.0723	Donald Sullivan Donald.Sullivan@jacksonlewis.com JACKSON LEWIS P.C. 50 California Street, 9 th Floor San Francisco, CA 94111 Telephone: (415) 394-9400 Facsimile: (415) 394-9401

PLEASE DO NOT CONTACT THE COURT

4873-7010-5934, v. 1