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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

JESTER JACOB, as an individual and on behalf of aggrieved employees, Plaintiff, vs. WESTERN DIGITAL TECHNOLOGIES, INC., a Delaware corporation; EMPLOYNET, INC., a California corporation; and DOES 1 through 50, inclusive, Defendants.	Case No.: 22CV394446 (Assigned to the Hon. Beth McGowen, Dept. 22) **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** Date: August 6, 2026 Time: 1:30 P.M. Dept.: 22 Action Filed: February 17, 2022

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 6, 2026, at 1:30 P.M., or as soon thereafter as the matter may be heard, in Department 22 of the above-referenced Court, located at 191 N. First Street, San Jose, California 95113, Plaintiff Jester Jacob ("Plaintiff") will seek an Order approving the concurrently filed Joint Stipulation of PAGA Settlement and Release of Claims ("Agreement" or "Settlement Agreement"), pursuant to the procedures set forth in Labor Code section 2698, *et seq*.

This motion will be based on this notice of motion, the attached memorandum of points and authorities, the accompanying declarations of Larry W. Lee, Mai Tulyathan, and Plaintiff Jester Jacob, the records and file herein, and on such other evidence as may be presented at the hearing of the motion.

DATED: July 15, 2026

DIVERSITY LAW GROUP, P.C.

By: ______________________

Larry W. Lee
Max W. Gavron
Mai Tulyathan
Attorneys for Plaintiff and Aggrieved Employees

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I. INTRODUCTION

Pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698, *et seq*., Plaintiff Jester Jacob ("Plaintiff") hereby moves the Court for an order approving the non-reversionary settlement with Defendants Western Digital Technologies, Inc. and Employnet, Inc. (together, "Defendants") (collectively with Plaintiff, the "Parties"), as set forth in the concurrently filed Joint Stipulation of PAGA Settlement and Release of Claims ("Agreement" or "Settlement Agreement").

As demonstrated below and in the accompanying attorney declarations, the proposed settlement warrants the Court's approval. This settlement was reached after extensive investigation and informal discovery, including Defendants' production of data pertaining to the size and scope of the aggrieved employees. The Parties also participated in two mediation sessions with Judge Amy D. Hogue (Ret.), and reached this settlement by way of acceptance of a mediator's proposal. Furthermore, pursuant to the terms of the settlement, Defendants will pay the gross amount of $350,000.00 (the "Gross Settlement Amount"), which includes an estimated payment of approximately $189,300.71 in civil penalties to aggrieved employees and the California Labor and Workforce Development Agency ("LWDA"). The proposed release is narrowly tailored to release only claims for civil penalties under PAGA predicated on the specific Labor Code violations alleged in the Complaint.

The proposed settlement constitutes an adequate, fair, and reasonable settlement on behalf of the LWDA and aggrieved employees, and accomplishes the goals of the PAGA.

II. PROCEDURAL HISTORY

A. The PAGA Notice

On or about December 13, 2021, Plaintiff submitted written notice under Labor Code section 2699.3 to the LWDA and Defendants, alleging that Defendants violated Labor Code sections 201-204, 226(a), 510, 558, 1194, 1197, and 1197.1 (the "PAGA Notice"). *See* Declaration of Mai Tulyathan ("Tulyathan Decl.") ¶ 2.

B. The Operative Complaint

On February 17, 2022, Plaintiff filed a representative action complaint against

Defendants, alleging a single cause of action for violation of Labor Code section 2698, *et seq.*, the Private Attorneys General Act ("PAGA"), predicated on underlying violations of Labor Code sections 201-204, 226(a), 510, 558, 1194, 1197, and 1197.1 (the "Action"). *Id.* ¶ 3. Plaintiff sought civil penalties, as well as attorneys' fees, and costs. *Id.*

The complaint alleges that Defendants required employees to undergo mandatory COVID-19 screening procedures, including completing questionnaires and temperature checks, conducted off-the-clock. Plaintiff alleges that Defendants did not pay employees for the time spent undergoing these procedures. *See id*. ¶ 4.

C. The Arbitration Dispute and Defendants' Appeal

The Action was heavily litigated. Following the filing of the Action, Defendants filed a motion to compel arbitration of Plaintiff's individual PAGA claims and dismiss the Action, pursuant to a signed arbitration agreement. Tulyathan Decl. ¶ 5. After briefing, Defendants' motion was denied by the Court. *Id*. Defendants then appealed the Trial Court's order denying the motion to compel arbitration. The Parties then briefed the issue with the Court of Appeal. After oral argument, the Court of Appeal affirmed the Trial Court's order denying the motion to compel arbitration on September 17, 2024. *Id.* ¶ 6.

D. The Parties Engage in Discovery and Investigation and Participated in Two Mediation Sessions.

Following the appeal, the Parties engaged in formal discovery. This included Plaintiff's requests for production of documents and interrogatories to Defendants. Tulyathan Decl. ¶ 7. Plaintiff also filed motions to compel discovery responses from Defendants. *Id.* ¶ 8.

The Parties then agreed to direct their efforts towards resolution of the Action. *See id.* ¶ 9. In connection with the Parties' negotiations, Defendants produced data relating to the size and scope of the group of aggrieved employees, as well as information permitting Plaintiff to fully understand the nature and scope of the allegations. *Id*. Based on the information provided by Defendants, Plaintiff's counsel conducted a full penalties analysis as to the value of the PAGA claims. *Id*.

The Parties participated in two mediation sessions. On May 12, 2025, the Parties engaged in mediation with the Hon. Amy D. Hogue (Ret.). Tulyathan Decl. ¶ 10. Despite thorough arm's length negotiations, the Parties were unable to reach an agreement. *Id.*

After some discovery, on May 5, 2026, the Parties reattempted mediation with Judge Hogue. *Id.* ¶ 11. The Parties conducted settlement negotiations at arm's length in an adversarial position. As part of these negotiations, the Parties extensively discussed all aspects of the case, including the risks and delays of further litigation and the risks to the Parties of proceeding with trial, among other issues. *Id*. While the Parties did not reach an agreement at its conclusion, settlement discussions facilitated by Judge Hogue continued following mediation, and the Parties agreed to this settlement via acceptance of a mediator's proposal. *Id*. The Parties subsequently negotiated the terms of the Settlement Agreement, described below and set forth in detail in the concurrently filed Joint Stipulation of PAGA Settlement and Release of Claims, a true and correct copy of which is attached as **Exhibit A** to the Declaration of Mai Tulyathan. *See id.* ¶ 12, Ex. A.

III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT

A. The Aggrieved Employees

The current Action is being settled on behalf of the following employees: all current and former non-exempt, hourly employees of Western Digital in California and/or current and former non-exempt, hourly employees of Employnet who were assigned to work at Western Digital in California during the PAGA Period ("Aggrieved Employees"). *See* Settlement Agreement ("SA") ¶ 4. The PAGA Period is the period from December 13, 2020 to June 5, 2021[1]. *See id*. ¶ 21. Based on Defendants' records, there are approximately 1,609 Aggrieved Employees who worked no more than 18,567 pay periods during the PAGA Period. *Id*.

B. The Gross Settlement Amount

The Settlement Agreement requires Defendants to pay the amount of Three Hundred Fifty Thousand Dollars ($350,000.00) (the "Gross Settlement Amount"). *See* SA ¶ 11. Based on this amount, Defendants will pay approximately $18.85 per pay period to resolve the claims in

[1] Defendants ceased the Covid-19 screening procedures and temperature checks as of June 5, 2021. Tulyathan Decl. ¶ 14.

this case. *See* Tulyathan Decl. ¶ 15.

C. The Allocation of the Net Settlement Amount

The balance of the Gross Settlement Amount remaining after deduction of the approved attorneys' fees and litigation costs, settlement administration costs, and Plaintiff's service award (the "PAGA Penalties"), will be available for distribution to the LWDA and Aggrieved Employees. *See* SA ¶¶ 36, 37.1-37.4. The PAGA Penalties will total approximately $189,300.71. *See* Tulyathan Decl. ¶ 22. Seventy-five percent (75%) of the PAGA Penalties, or approximately $141,975.53, will be paid to the LWDA ("LWDA PAGA Payment"). *See* SA ¶ 37.4; Tulyathan Decl. ¶ 23. The remaining twenty-five percent (25%), or approximately $47,325.18, will be distributed to Aggrieved Employees as Individual PAGA Payments. *See* SA ¶¶ 17, 37.4; Tulyathan Decl. ¶ 23.

Based on the number of Aggrieved Employees, employees will be entitled to recover, on average, up to approximately $29.41 each ($47,325.18 ÷ 1,609 individuals). *See* Tulyathan Decl. ¶ 24. However, the amount that any particular Aggrieved Employee will be entitled to recover will be greater or lower than this average depending on the number of pay periods in which the individual worked at Western Digital during the PAGA Period. *See* SA ¶¶ 12, 20. This is fair, as it directly allocates greater penalties to Aggrieved Employees who have allegedly suffered greater harm. *See* Tulyathan Decl. ¶ 24.

D. Attorneys' Fees, Litigation Costs, and Service Payment

As part of the settlement, Defendants do not object to Plaintiff's counsel's request for attorneys' fees of approximately one-third of the Gross Settlement Amount ("PAGA Counsel Fees Payment"), *i.e.*, One Hundred Sixteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents ($116,666.67), and reimbursement of litigation costs ("PAGA Counsel Litigation Expenses Payment") in an amount up to Twenty-Six Thousand Dollars ($26,000.00), subject to the Court finally approving this settlement. *See* SA ¶ 37.1.[2] Any costs or fees not approved will

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[2] At the time the Parties negotiated the Settlement Agreement, Plaintiff's counsel did not have a final tally of the litigation costs incurred to date. As such, the Parties included a maximum

revert to the PAGA Penalties. Tulyathan Decl. ¶¶ 17-18.

Also, as part of the settlement, Defendants do not object to Plaintiff's request for a service award to Plaintiff in an amount not to exceed Ten Thousand Dollars ($10,000.00). *See* SA ¶ 37.2. Any portion of the service award that is not approved by the Court shall become part of the PAGA Penalties. *See id*.

E. Settlement Administration Costs

The settlement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator ("Administration Expenses Payment"). *See* SA ¶ 37.3. The Parties have agreed to utilize Phoenix Settlement Administrators to administer the settlement, with the administration costs estimated to be Ten Thousand Dollars ($10,000.00). *See* SA ¶¶ 2, 37.3; Tulyathan Decl. ¶ 21.

F. Uncashed Checks

After the void date, the funds from uncashed Individual PAGA Payment Checks will be transmitted by the Settlement Administrator to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee to whom the funds relate. *See* SA ¶ 44.

G. The Scope of the Released Claims

Upon the full funding of the Gross Settlement Amount, Plaintiff and the Aggrieved Employees will release the Released Parties from the Released PAGA Claims. *See* SA ¶ 46.3. As defined in the Agreement, the term "Released PAGA Claims" means:

> [A]ll claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the facts and allegations in the Operative Complaint and PAGA Notice that occurred during the PAGA Period.

See id. ¶¶ 26, 46.3. The release does not extend to violations of any predicate statutes other than PAGA. *See id*.

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amount that could be attributed to costs under the settlement. Plaintiff's counsel requests reimbursement of **$24,032.62** for actual litigation-related expenses. *See* Tulyathan Decl. ¶ 18.

IV. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED

A. PAGA Overview

In 2004, California enacted PAGA, which allows aggrieved employees, on behalf of the LWDA and other aggrieved employees, to bring suit against their employers for alleged violations of the California labor laws and to obtain penalties that previously could only be obtained by the State. The PAGA was enacted because the Legislature determined that it was "in the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations," since the State had not been able to fully or adequately enforce its labor laws. *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009); *Kim v. Reins International California, Inc*., 9 Cal. 5th 73, 81 (2020) ("The Labor Commissioner and other agencies were likewise hampered in their enforcement of civil penalties by inadequate funding and staffing constraints. [] To facilitate broader enforcement, the Legislature enacted PAGA, authorizing "aggrieved employees" to pursue civil penalties on the state's behalf"); *Ochoa-Hernandez v. Cjaders Foods, Inc*., 2010 WL 1340777, *4 (N.D. Cal. April 2, 2010) ("The act's declared purpose is to supplement enforcement actions by public agencies, which lack adequate resources to bring all such actions themselves. Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action" [Citations omitted.]).

Labor Code section 2699(a) states that any Labor Code provision "that provides for a civil penalty to be assessed and collected by the [LWDA] may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3." An "aggrieved employee" means "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." Lab. Code § 2699(c). Prior to commencing an action, the allegedly aggrieved employee must provide notice to the LWDA and the employer setting forth the "specific provisions of [the Labor Code] alleged to have been violated, including the facts and theories to support the alleged violation." Lab. Code § 2699.3(a)(l). If the LWDA decides not to investigate the allegations or issue a citation to the employer, the proposed representative plaintiff is entitled to commence a PAGA action after 65 days. Lab. Code § 2699.3(a)(2).

The California Supreme Court has explained that a plaintiff who brings a PAGA claim "represents the same legal right and interest as state labor law enforcement agencies," and brings PAGA claims "as the proxy or agent" of the State. *Arias*, 46 Cal. 4th at 986. Of the civil penalties recovered, 75 percent goes to the LWDA, and the remaining 25 percent goes to the "aggrieved employees" for collecting the penalties on behalf of the State Lab. Code § 2699(i); *Baumann v. Chase Inv. Servs. Corp*., 747 F.3d 1117, 1123 (9th Cir. 2014) (a PAGA representative's recovery is "an incentive to perform a service to the state, not restitution for wrongs done to members of the class").

B. Class Action Settlement Standards Do Not Govern the Settlement Approval Process for PAGA Claims

In class action cases, the purpose of the court's preliminary evaluation of the settlement is to determine whether it is within the "range of reasonableness," and thus whether notice to the class of the terms and conditions of the settlement, and the scheduling of a formal fairness hearing, are worthwhile. *See* Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.25, *et seq.* and § 13.64 (4th ed. 2002 and Supp. 2004) ("*Newberg*"). The "judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing." *Manual for Complex Litigation, Fourth* § 21.632 (Fed. Jud. Ctr., 4th ed. 2004). To make the preliminary fairness determination, courts may consider several relevant factors, including "the strength of the plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status through trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; [and] the experience and views of counsel…." *See Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1026 (9th Cir. 1998).

By contrast, court approval of PAGA settlements is governed by section 2699(1) of the Labor Code, which provides, in relevant part: "The court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." The parties are not obligated to "satisfy class action requirements," including the standards for class action settlement approval. *Arias*, 46 Cal. 4th at 980-988 (affirming lower court's holding that "plaintiff need not satisfy class action requirements" to assert a PAGA claim). Notably, unlike the class action settlement approval process, there is also no statutory mechanism for this Court to conduct a two-step settlement approval review. Cal. Lab. Code § 2699(i). In addition, "[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim" or "contest a settlement, if any, reached between the parties." *Ochoa-Hernandez*, 2010 WL 1340777 at *13.

C. The Settlement is Reasonable and Effectuates PAGA's Objectives

The court's focus in a PAGA case is not the amount that aggrieved employees will ultimately receive as a result of a settlement. Instead, "a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *See Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 77 (2021) (emphasis added); *see also Kang v. Wells Fargo Bank, N.A.*, 2021 WL 5826230, at *15 (N.D. Cal., 2021) (evaluating a PAGA settlement under the standard of whether the settlement terms "are fundamentally fair, reasonable, and adequate in view of PAGA's public policy goals"). Here, the settlement vindicates the rights of Aggrieved Employees who have experienced alleged violations of the Labor Code. Additionally, the six-figure Gross Settlement Amount acts as a deterrent to other California employers.

The settlement is also consistent with the State's public policy favoring resolution of disputes. "California law favors the settlement of disputes as our high court clarified in *Neary*[]. Settlement is efficient; it reduces costs, saves resources, and minimizes court congestion. [] The parties are best positioned to understand their interests and resolve a dispute in a mutually beneficial manner without court intervention into the settlement." *Consumer Advocacy Group, Inc. v. Kintetsu*, 141 Cal. App. 4th 46, 62-63 (2006) (citing *Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-278 (1992).

D. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of Litigation

Though Plaintiff is reasonably confident that he would prevail at trial, proceeding in litigation entails significant risk on the underlying merits of Plaintiff's theories, in addition to the still-developing law under PAGA.

1. Plaintiff's Claims are Contested

Plaintiff maintains that the time spent submitting to COVID-19 screenings constitutes compensable hours worked. *See* DIR Frequently Asked Questions ("Employers that require their workers to complete a medical check in order to begin a shift, even if it is recommended under public health orders, must compensate workers for that time worked"); *see Boone v. Amazon.com Services, LLC*, 562 F. Supp. 3d 1103, 1113 (E.D. Cal. 2022) ("Plaintiffs also emphasize the guidance issued by the DIR, stating that employers must compensate their employees for time spent in COVID-19 screenings."). Recently, the district court in *Boone v. Amazon.com Services, LLC*, considered this precise question and held that "this case falls squarely within the parameters of the decision in *Frlekin*." 562 F. Supp. 3d at 1113.

Defendants, however, argue that the time spent in COVID-19 screenings does not constitute hours worked under California law. Defendants maintain that the screening is not primarily for their benefit, but instead was implemented to comply with state and local policies directed at advancing public health objectives. *See Frlekin v. Apple Inc.*, 8 Cal. 5th 1038, 1056 (2020) (in determining whether an activity constitutes hours worked, "courts may and should consider additional relevant factors—including, but not limited to, the location of the activity, the degree of the employer's control, ***whether the activity primarily benefits the employee or employer***, and whether the activity is enforced through disciplinary measures") (emphasis). Defendants also contend that any liability, if any, is limited because Defendants ceased the COVID-19 screening practices as of June 5, 2021. Tulyathan Decl. ¶ 14.

Plaintiff alleges a derivative wage statement violation. *See* Tulyathan Decl. ¶ 33. As a result of the alleged underpayment and/or non-payment of wages to Aggrieved Employees, Plaintiff contends that the wage statements omit information required by Labor Code 226, including all applicable hourly rates and the total hours worked. *See id.* As argued by Defendants, Plaintiff's derivative wage statement violation is vulnerable to a motion for summary judgment based on the weaknesses of the underlying primary claims. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308 (2018) (finding that the employees did not suffer a violation under 226(a) where their wage statement cause of action was derived from an underlying wage and hour violation for overtime).

2. Recovery of Civil PAGA Penalties is Uncertain

However, even if Plaintiff were to prevail on the merits of the PAGA claim, the potential recovery is uncertain. Defendants contend that they made a good faith effort to comply with the law. As argued by Defendants, in deciding whether to award the maximum penalty amount, courts may focus on whether the employer made a good faith effort to follow the law. For example, in *Thurman v. Bayshore Transit Management, Inc*., the Court of Appeal upheld the trial court's significant reduction of PAGA penalties by 30% because the employer was not initially on notice that it was in violation of the law and because it would have been unfair to award penalties where the employer was unaware of the violations. 203 Cal. App. 4th 1112, 1136 (2012). When the employer made aware of the violations, it took timely steps to come into compliance. *Id.* By contrast, the imposition of full penalties was justified when an employer took a "'cavalier approach to fulfilling its contractual and statutory obligations'" and demonstrated "reckless disregard." *Id*. Furthermore, as the California Court of Appeal has affirmed, trial courts are well within their discretion to reduce PAGA penalties "for technical violations that cause no injury," especially where the "violation was inadvertent." *Raines v. Coastal Pac. Food Distributors, Inc*., 23 Cal. App. 5th 667, 681 (2018).

In this case, Defendants asserted that a substantial reduction in potential PAGA penalties was warranted because: (1) even assuming that Plaintiff could establish the predicate violations, the alleged violations were minor, if at all; and (2) Aggrieved Employees did not suffer substantial economic harm as a result of the alleged violations of Labor Code. *See* Tulyathan Decl. ¶ 34. Defendants have also ceased the COVID-19 screenings. Thus, Defendants contend that no PAGA penalties were needed to punish or deter Defendants, much less to deter them from committing any future violations. *See id.*

3. Maximum PAGA Civil Penalties Recoverable After Trial

Defendants have indicated that Aggrieved Employees worked approximately 18,567 pay periods during the period of December 13, 2020 to June 5, 2021. Assuming that Plaintiff was to prevail on the merits of the PAGA claim, applying the standard penalty of $100 per pay period yields $1,856,700.00 in potential liability. Tulyathan Decl. ¶ 29. In the alternative, if the Court were to "stack" penalties, (*i.e.*, award multiple PAGA penalties for different Labor Code violations in the same pay period), the potential PAGA penalties could total as high as approximately $3,713,400.[3] *See id*. ¶ 30.

Defendants contend that the imposition of multiple penalties for overlapping violations during the same pay period is not permitted under the PAGA, and that only a single $100 penalty per pay period may be awarded. While Plaintiff disputes this interpretation, some courts have exercised discretion under Labor Code § 2699(e)(2) to avoid stacking penalties for multiple violations within the same pay period. Plaintiff's analysis is also based on the initial violation penalty amount, which does not account for the imposition of the increased subsequent violation penalty amount given recent authority indicating this increased penalty is only available where there is a prior citation for a Labor Code violation. *See Bernstein v. Virgin Am., Inc*. (9th Cir. 2021) 3 F.4th 1127, 1144 (holding no heightened penalty because the Labor Commissioner nor any court warned the defendant that it was subject to the Labor Code until the court handling the case at issue). Courts are also hesitant to award the subsequent amount where there has not been a prior violation of the Labor Code. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008); *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* 2009 WL 2448430, at *9 (S.D. Cal. Aug. 10, 2009) ("[u]nder California law, courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code").

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[3] Plaintiff applied the standard penalty of $100 per pay period for the derivative wage statement violations. *See Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355-56 (2021) (declining to apply heightened penalty of $250 per pay period).

Defendants argued that no such prior violation occurred here, warranting only the initial penalty, if any penalty at all. Moreover, in this case there is no indication that Defendants had received a prior notice or citation from the Labor Commissioner regarding the alleged violations at issue.

Assuming that the Court awards $100 per pay period at issue, without stacking, the Gross Settlement Amount is approximately 18.85% of the maximum amount of penalties at issue. *See* Tulyathan Decl. ¶ 39. Alternatively, if the Court were to award multiple PAGA penalties for different Labor Code violations in the same pay period, the Gross Settlement Amount is approximately 9.43% of the penalties at issue. Settlement for this reduced value allows for the distribution of penalties in an amount which accounts for the risk of continued litigation, and Defendants' likely arguments that higher penalties would have been confiscatory. *See id*. ¶¶ 40-41.

The amount of a PAGA settlement need not represent any particular percentage of the potential penalty amount that may be recovered after trial. *See Manzo v. McDonald's Restaurants of California, Inc.*, 2022 WL 4586236, at *6 (E.D. Cal. 2022) ("There is no express or even baseline percentage of recovery required"). Consequently, trial courts routinely approve PAGA settlements representing only a tiny fraction of the potential verdict value of the claim. *See id*. (approving PAGA allocation that "is less than one percent (1%) of the verdict value" of the claim"); *Hartley v. On My Own, Inc.*, 2020 WL 5017608, *4 (E.D. Cal. Aug. 25, 2020) (approving settlement at 3.47% of verdict value of PAGA penalty, resulting in average payment per employee of $61); *Ramirez v. Benito Valley Farms, LLC*, 2017 WL 3670794, *4 (N.D. Cal. Aug. 25, 2017) (considering early stage of litigation, defendant's weak financial condition, and injunctive relief provided by settlement, approving PAGA settlement of 4.5% of verdict value). Here, the Gross Settlement Amount exceeds the typical PAGA settlement both in terms of the total dollar amount and as a percentage of overall settlement value.

E. The Scope of the Release is Appropriately Limited

The limited scope of the release also supports approval. *See* Section III-G, *supra*. The settlement only releases Defendants from civil PAGA predicated on Labor Code violations alleged in the PAGA Notice, as well as attorneys' fees and costs. The settlement would not impact any other Aggrieved Employees' ability to pursue PAGA claims predicated on other Labor Code violations or any Labor Claims not predicated on PAGA.[4]

F. The Attorneys' Fees and Costs are Reasonable

Plaintiff's counsel seeks a fee award calculated as one-third of the total value of the settlement for the successful prosecution and resolution of this action. Labor Code section 2699(g)(1) provides for the recovery of attorneys' fees and costs in any successful action brought under PAGA. Although this is not a class action, in class actions California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc*., 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc*., 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at 769.

Under California law, the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created"). Under the percentage of the fund method, the Court's objective remains to

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[4] Because an aggrieved employee's PAGA action is a substitute for an action brought by the government, "judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding." *Arias*, 46 Cal. 4th at 986. However, "the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." *Id.* at 987; *see also*, Lab. Code § 2699(g)(l) (non-party aggrieved employees retain all rights "to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part").

"mimic the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J. Posner) ("When a fee is set by a court rather than by contract, the object is to set it at a level that will approximate what the market will set…. The judge, in other words, is trying to mimic the market in legal services").

Both California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at p. 35; *Vincent*, 557 F.2d at p. 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." The reasons for applying the common fund doctrine include: "fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful." *Id*.

Here, the fee award representing one-third of the Gross Settlement Amount is consistent with other comprehensive surveys of class action settlements and fee awards. *See Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011) (recognizing that "courts may award attorney's fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under $10 million"); *see also* Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn. 16 (2010) (independent studies of class action litigation nationwide conclude that fees in the range sought here are consistent with market rates). The results delivered by Plaintiff's counsel also support the requested percentage of the fund. Here, Plaintiff's counsel secured a $350,000.00 non-reversionary common fund settlement.

In addition, it is recognized that one of the primary factors justifying an enhanced attorney's fees reward is the attendant risks inherent in the litigation. As observed in *City of*

Detroit v. Grinnell Corp.:

> No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

495 F.2d 448, 470 (2d Cir. 1974). For Plaintiff's counsel, the fees here were wholly contingent in nature and the case presented far more risks than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as well as a potentially drawn-out battle with corporate Defendants.

As secondary support for the percentage of the fund method, courts have discretion to "cross-check" the fees awarded through the lodestar method. However, the *Laffitte* Court "emphasize[d] [that] the lodestar calculation, when used in this manner, does not override the trial court's primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the potential fee award." *Laffitte*, 1 Cal. 5th at p. 505; *In re Rite Aid Corp. Secs. Litig*., 396 F.3d 294, 306-307 (3d Cir. 2005) ("[The lodestar cross-check does not trump the primary reliance on the percentage of common fund method").

The Supreme Court in *Laffitte* stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." *Id*. Thus, a lodestar cross-check is aimed at astronomical multipliers. Indeed, cross-checks are not required; in many cases, performing a cross-check "undermines" one of the primary reasons for using the percentage method: aligning counsel's incentives with the benefits delivered to the class and discouraging protracted litigation. *Id*. at p. 506 (finding trial courts "retain the discretion to forgo a lodestar cross-check"); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees*, 108 F.R.D. 237, 258 (1985); *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 29-30 (2000) (citing the recommendations of the Third Circuit Task Force with approval and observing that "[t]he criticisms of the lodestar approach set forth in this Report are now echoed by many authorities, who have been most vocal about the manner in which it exacerbates the problem of 'cheap settlements' and burdens already overworked trial judge").

Courts have defined reasonable multipliers on a lodestar cross-check to "range from 2 to 4 or even higher." *Wershba v. Apple Computer, Inc*., 91 Cal. App. 4th 224, 255 (2001); *see also, e.g., Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a cross-check in an antitrust class action); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 60 (2008) (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand). The intermediate court in *Laffitte*, after finding that "2 to 4" is a reasonable range for multipliers on a cross-check, affirmed a 2.13 multiplier. *Laffitte v. Robert Half Int'l*, 231 Cal. App. 4th 860, 881-82 (2014). The intermediate court opinion was affirmed in full by the California Supreme Court in its new decision guiding lower courts on assessing fees.

With respect to Plaintiff's counsel's lodestar, to date, at least approximately 305.1 hours have been expended by PAGA Counsel in this matter. *See* Tulyathan Decl. ¶ 50, Ex. C; Declaration of Larry W. Lee ("Lee Decl.") ¶ 8, Ex. A. PAGA Counsel anticipates spending an additional 15 hours on this matter through its final resolution, including preparing for the approval hearing, conferring with the Settlement Administrator regarding distribution of payment to Aggrieved Employees, and fielding phone calls regarding inquiries about the settlement and resolving any issues that may arise. *See id*. PAGA Counsel request hourly rates of $650-$900 per hour. *See* Tulyathan Decl. ¶ 53; Lee Decl. ¶ 9. The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time records are not required. An attorney's testimony alone may suffice: "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigating the facts and the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980). Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982) [*Serrano IV*]. Thus, Plaintiff's counsel requests that the Court find that these hours were reasonable in this litigation. A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). The Court may consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney's skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 632-33 (1998).

Here, Plaintiff's counsel's skill and experience justify the requested rate. As shown in the supporting declaration, Plaintiff's counsel has significant experience in the area of employment and wage and hour class actions. *See* Tulyathan Decl. ¶¶ 46-49; Lee Decl. ¶¶ 6-7. Specifically, Plaintiff's counsel's practice focuses on representing employees in employment matters, particularly wage and hour cases. *See* Tulyathan Decl. ¶¶ 46-49; Lee Decl. ¶¶ 6-7. As such, based on the hours and applicable rate, the total lodestar to be expended by Plaintiff's counsel through finalizing this settlement will be approximately $233,915.00. *See* Tulyathan Decl. ¶¶ 52; Lee Decl. ¶ 9.

Once the court establishes the lodestar amount, it may enhance the fee award by a multiplier in order to make an appropriate fee award. *Serrano III*, 20 Cal. 3d at 48. The pertinent factors include the difficulty of the questions involved and the skill in presenting them, the contingent nature of the fee award, the extent to which the litigation precluded other employment, and the percentage-of-the-fund the attorney would have received on the fair market. *Id*., *Lealao*, 82 Cal. App. 4th at 49. However, this list is not exhaustive and the court can consider other factors it deems important in setting the multiplier. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1139 (2001).

It is also critical to note that prompt settlement cannot be used to diminish the fee or the enhancement based on a percentage-of-the-fund. *Lealao*, 82 Cal. App. 4th at 52 (the promptness of settlement "cannot be used to justify the refusal to apply a multiplier"). According to *Lealao*, courts placed "an extraordinarily high value" on settlement, and counsel should be rewarded, not punished, for achieving this goal in a timely fashion. *Id*.

Here based upon Plaintiff's counsel's lodestar of $233,915.00, Plaintiff's request for a fee award of $116,666.67 is more than reasonable and fair. As the Court can see, the lodestar exceeds the fee request such that it would result in a ***negative*** multiplier. Based thereon, Plaintiff's counsel's request for attorneys' fees in the amount of $116,666.67 is fair and reasonable, and the Court should approve this amount in full.

Additionally, Plaintiff's counsel's cost reimbursement request in the amount of $24,032.62 is also reasonable, given that the Settlement Agreement allows for costs of up to $26,000.00. *See* Tulyathan Decl. ¶ 57, Exhibit D. The costs were all directly incurred in the prosecution of this action, including court and filing fees (including for the appellate briefs), service of process, mediation fees (two sessions), postage, and copying. *See id*. As such, the requested costs should be awarded as fair and reasonable.

G. The Settlement Administrator's Costs Should be Approved

The Parties have agreed to pay actual costs of administration, or Ten Thousand Dollars ($10,000.00), to the Settlement Administrator, Phoenix Settlement Administrators, to administer this settlement. *See* SA ¶¶ 2, 37.3. The Parties believe that the administration fee is reasonable and should be approved. Tulyathan Decl. ¶ 21.

H. Plaintiff's Service Award Should be Approved

Courts have held that named plaintiffs in class, or private attorney general actions can request a service award. *Rodriguez v. W. Publ'g Corp*., 563 F.3d 948, 958-59 (9th Cir. 2009) (explaining that service awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their **willingness to act as a private attorney general**") (emphasis added).

Here, Plaintiff seeks $10,000.00 for his service award, which is intended to compensate Plaintiff for the time spent on this case, including reviewing pleadings and the potential for hesitation from later prospective employers that might find out he brought this claim. Declaration of Jester Jacob ¶¶ 6-7, 9. Plaintiff also provided a general release of all claims. SA

¶¶ 46.1-46.2. This requested enhancement is consistent with awards approved in other common fund cases. *See Van Vranken v. Atlantic Richfield Co*., 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of $50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig*., 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of $55,000, and three incentive awards of $35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a $50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp*., 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) ($50,000 awarded to each class representative); *Glass v. UBS Fin. Servs*., No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding $25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming $25,000 incentive award to class representative in ERISA case).

I. Notice to the LWDA Has Been Provided

Concurrent with the filing of this Motion, Plaintiff uploaded the instant motion to the LWDA's website. *See* Tulyathan Decl. ¶ 58, Exhibit E.

V. <u>CONCLUSION</u>

Based on the above, Plaintiff requests the Court approve the current PAGA settlement.

DATED: July 15, 2026

DIVERSITY LAW GROUP, P.C.

By:______________________________

Larry W. Lee
Max W. Gavron
Mai Tulyathan
Attorneys for Plaintiff and Aggrieved Employees

PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On July 15, 2026, I served the following document(s) described as:

____

on the interested parties in this action as follows:

Geoffrey C. Westbrook Yoon-Woo Nam Linda Ninelist Seyfarth Shaw LLP 400 Capitol Mall, Suite 2350 Sacramento, CA 95814-4428	*Attorneys for Western Digital Technologies, Inc.* GWestbrook@seyfarth.com ynam@seyfarth.com lninelist@seyfarth.com
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Shane M. Abergel Gary A. Nye Kristin Galetano Roxborough, Pomerance, Nye & Adreani LLP 5900 Canoga Avenue, Suite 450 Woodland Hills, CA 91367	*Attorneys for Defendant Employnet, Inc* sma@rpnalaw.com gan@rpnalaw.com krisi@rpnalaw.com

__X__ BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 15, 2026, at Los Angeles, California.

Linda Lee