

COHELAN KHOURY & SINGER

Isam C. Khoury (SBN 58759)

ikhoury@ckslaw.com

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Marta Manus (SBN 260132)

mmanus@ckslaw.com

Rosemary C. Khoury (SBN 331307)

rkhoury@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001/Fax: (619) 595-3000

MAJARIAN LAW GROUP, APC

Sahag Majarian (SBN 146621)

sahagii@aol.com

Garen Majarian (SBN 334104)

garen@majarianlawgroup.com

18250 Ventura Blvd.

Tarzana, CA 91356

Telephone: (818) 609-0807/ Fax: (818) 609-0892

Attorneys for Anthony Morris, on behalf of himself
and all others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

ANTHONY MORRIS, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

THE LINCOLN NATIONAL LIFE
INSURANCE COMPANY, an Indiana
Corporation; LINCOLN NATIONAL
CORPORATION, an Indiana Corporation;
and DOES 1 Through 10, Inclusive,

Defendants.

Case No. 22STCV20426

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Lawrence P. Riff

Department SS7

CLASS AND REPRESENTATIVE ACTION

**SUPPLEMENTAL BRIEF IN SUPPORT OF
MOTION FOR ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: November 1, 2023

Time: 3:00 p.m.

Dept: SS 7

Judge: Lawrence P. Riff

Complaint filed: June 22, 2022

Trial date: Not set

The Court issued a Minute Order on Plaintiff's Motion for Order Granting Preliminary Approval of Class Action Settlement. Plaintiff now responds to each point identified in the Minute Order and checklist. The Amended Class Action and PAGA Settlement Agreement and Class Notice ("Agreement" or "SA") is attached as Exhibit 1 to the Supplemental Declaration of Marta Manus, ("Supp. Manus Decl."), ¶3 (Exh. A - Notice of Class Action Settlement; Exh. B – April 29, 2022 PAGA Notice). Redline versions reflecting changes to the Agreement and Notice of Class Action Settlement are attached as Exhibit 2 to the Supp. Manus Decl. ¶4.

I. MOVING PAPERS

B. Dunk/Kullar Analysis

1. **If approval of the settlement of class claims is requested together with approval of non-class claims (such as claims under the Labor Code's Private Attorney General Act (PAGA)) discuss why the amount allocated to the non-class claims is fair to those affected. See *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77 (*Moniz*)**

A PAGA representative action to recover civil penalties "is fundamentally a law enforcement action designed to protect the public and not to benefit private parties." *Iskanian v. CLS Transportation, Los Angeles* (2014) 59 Cal.4th 348, 381. When evaluating a PAGA settlement, a trial court "must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the state's interests, and hence the public interest." *Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App.5th 56, 89. In addition, a court must independently determine whether a PAGA settlement is fair, adequate, and reasonable using similar factors that apply to the evaluation of the fairness of a class action settlement, "including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount." *Id.* at 77.

In assessing whether the Settlement is fair, reasonable, and adequate, the Court may balance the amount in penalties with the risks of further litigation. Here, Plaintiff obtained a meaningful amount in PAGA civil penalties despite facing significant challenges and risks had the litigation continued. Plaintiff considered several factors in reaching the decision to settle at this point in the litigation, including (a) the risk that the Court would strike all or parts of Plaintiff's claims on manageability grounds given the current split of authority as to whether the

1 court has inherent power to strike PAGA claims on manageability grounds;¹ (b) the risk and
2 uncertainty in proving liability and PAGA penalties at trial; (c) the prospect that the Court could
3 substantially reduce any award of civil penalties on the grounds that “to do otherwise would result
4 in an award that is unjust, arbitrary and oppressive, or confiscatory,” pursuant to Labor Code §
5 2699(e)(2); and (d) the risk that Defendants would appeal any unfavorable judgment. Supp.
6 Manus Decl. ¶5. Continued litigation would be an expensive, time-consuming and extremely
7 uncertain proposition, and could lead to an unfavorable judgment and/or a lengthy and
8 unsuccessful appeal. *Id.* The PAGA Penalties are fair, reasonable, and adequate in view of the
9 PAGA’s purpose to remediate enforcement of state labor laws.

10 The Settlement as a whole (hybrid settlement) achieves the remedial and deterrent
11 purposes of the PAGA and the Labor Code statutes at issue while ensuring most money flows
12 into the hands of Class Members. The \$25,000 allocated to PAGA penalties represents 5% of the
13 \$500,000 settlement. This amount is consistent with PAGA’s goal of penalizing Defendants for
14 the alleged violations, deterring future violations, and providing a benefit to the public through
15 enforcement of state labor laws. The amount allocated to PAGA penalties provides a substantial
16 benefit to the State of California, with the LWDA receiving \$18,750, as 75 percent of the PAGA
17 penalties to assist with future enforcement of state labor laws. The Settlement also provides a
18 benefit to the Aggrieved Employees, who will share approximately \$6,250 as 25 percent of the
19 Net Settlement Amount. *Id.* at ¶6. Here, there are approximately 179 Aggrieved Employees who
20 worked an aggregate 5,124 pay periods during the PAGA Period, yielding approximately \$1.22
21 per pay period. *Id.* at ¶7. Furthermore, at the time of Settlement, the issue of whether PAGA has
22 manageability requirement has not been adjudicated by the California Supreme Court. If a
23 manageability requirement is imposed, this increases the chances of no recovery. Accordingly,
24 the amount allocated to PAGA penalties fulfills the underlying purposes of the statute and confers
25

26 ¹ See *Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685 (holding that PAGA claims could
27 not be stricken on manageability grounds) and *Wesson v. Staples the Office Superstore, LLC* (2021) 68
28 Cal.5th 736 (standing for the proposition that the Court has inherent power to strike PAGA claims as
unmanageable).

1 a benefit to the public. *Id.* at ¶8.

2 **E. Miscellaneous**

3 **1. Why does the agreement only define Cohelan Khoury & Singer as**
4 **“class counsel” (¶1.8)), but the MPA asks for both co-counsels to be**
5 **both class counsel? The agreement is also not signed by co-counsel**
6 **Majarian Law Group.**

7 The Agreement has been revised so “Class Counsel” means Cohelan Khoury & Singer
8 and the Majarian Law Group, APC. Sahag Majarian, on behalf of the Majarian Law Group, has
9 signed the Agreement. SA ¶1.8; Supp. Manus Decl. ¶9.

10 **2. Counsel to provide a copy of the LWDA letter for review.**

11 The letter to the Labor and Workforce Development Agency (“LWDA”), and mailed to
12 Defendant on April 29, 2022, and confirmation of receipt by the LWDA, are attached to the
13 Settlement Agreement as Exhibit B. SA ¶1.35; Supp. Manus Decl. ¶10.

14 **3. Notice of Class Action Settlement. If notice will be given in English**
15 **only, explain why this is sufficient.**

16 Class members perform duties which require reading instructions in English and
17 communicating in English. The Parties agree class members are able to read and understand
18 English and translation is unnecessary. *Id.* at ¶11.

19 **4. Provide information regarding any fee splitting agreement and**
20 **whether the client has given written approval. (*Mark v. Spencer* (2008)**
21 **166 Cal.App.4th 219; Rules Prof. Conduct, rule 1.5.1; Cal. Rules of**
22 **Court, rule 3.769.)**

23 On April 13, 2022, Plaintiff executed an Agreement for Services of Attorneys, consenting
24 to an apportionment of attorney’s fees to be split between Cohelan Khoury & Singer (50%) and
25 Majarian Law Group, APC (50%). *Id.* at ¶12.

26 **II. SETTLEMENT AGREEMENT**

27 **A. The Basics**

28 **1. Is “Class I” not limited in time to the Class Period?**

“Class I” Members are now limited to the Class Period and defined as: all persons
employed by Defendants (exempt and nonexempt) in California who worked from home pursuant
to Defendants’ alleged policy or practice requiring them to do so at any time during the Class

Period. SA ¶1.6; Supp. Manus Decl. ¶13.

2. Clarify under what circumstances Defendant may shorten the date for the Class Period and PAGA Period. (¶¶1.14, 1.37)

Both the Class Period and PAGA Period have been given a definitive end date of May 17, 2023. SA ¶¶1.14, 1.37; Supp. Manus Decl. ¶14.

B. Release of Claims

1. Release by Participating Class Members (¶5.2)

The release language has been revised to better detail the claims being released and has been limited to those claims alleged in the operative Second Amended Complaint. SA ¶¶5.2; Supp. Manus Decl. ¶15.

2. Release by Aggrieved Employees (¶5.3)

The release language has been revised to better detail the claims being released and has been limited to those claims alleged in the operative Second Amended Complaint and PAGA Notices. SA ¶¶5.3; Supp. Manus Decl. ¶15.

C. Monetary Terms of Settlement

1. If there are subclasses, explain why the monetary distribution is fair to each subclass. Ensure there is a class representative who fits the definition of each subclass. (¶3.2.4)

Plaintiff worked for Defendant in an exempt salaried position until July 2020 and then moved into a non-exempt position until his employment ended in February 2022. Therefore, Plaintiff is a member of both Class I and Class II and fits the definition of each of the two classes (i.e. subclasses). Supp. Manus Decl. ¶16; Declaration of Anthony Morris in Support of Preliminary Approval filed on May 31, 2023, ¶ 3.

Class I includes approximately 231 *exempt and non-exempt* employees who worked from home during the Class Period. Supp. Manus Decl. ¶17. Plaintiff contends Defendant failed to reimburse employees who worked from home for reasonably incurred business expenses such as high-speed internet, office supplies, cell phone usage, and office furniture. *Id.* at ¶18. Class II includes approximately 69 non-exempt employees, who are also included in Class I for the expense reimbursement claim. *Id.* at ¶19. Plaintiff contends these 69 non-exempt employees who comprise Class II have claims for failure to pay all wages due, failure to provide meal and rest

1 periods, failure to provide accurate itemized wage statements, and failure to timely pay all wages
2 due upon termination. *Id.* at ¶20.

3 Seventy percent (70%) of the Net Settlement Amount is allocated to Class I and thirty
4 percent (30%) is allocated to Class II. SA¶ 3.2.4; Supp. Manus Decl. ¶21. The monetary
5 distribution is allocated as such in part based on the size of the Classes (Class I is over three times
6 the size of Class II), the strength of the claims asserted on behalf of each Class and the fact that
7 the non-exempt employees in Class II are also receiving a portion of the amount allocated to Class
8 I because they are members of both Classes. *Id.* at ¶22. The claim for failure to reimburse business
9 expenses brought only on behalf of Class I (exempt and non-exempt employees) is arguably the
10 strongest claim in the case because Plaintiff contends that Defendant did not reimburse remote
11 employees for many of the business expenses for which Plaintiff sought reimbursement. *Id.* at
12 ¶23. For mediation, Defendant provided Plaintiff's counsel with detailed expense reimbursement
13 data showing precise amounts paid for various expenses incurred, which allowed Plaintiff's
14 expert to readily assess the additional amounts Plaintiff contends were owed. *Id.* at ¶24. Plaintiff
15 contends Defendant maintained a uniform, company-wide expense reimbursement policy
16 providing for reimbursement of specific business-related expenses, which supports certification
17 of Class I given that all members of this Class were subject to the same written policy and uniform
18 practice, making Class I's expense reimbursement claim more likely to be certified. *Id.* at ¶25.

19 The claims alleged on behalf of Class II (non-exempt employees) were significantly more
20 challenging to prove on a class wide basis. *Id.* at ¶26. Plaintiff's claim for unpaid wages was based
21 on Defendant's alleged practice of rounding (or self-rounding) rather than recording the actual
22 hours worked, a practice that Defendant changed in January 2023. *Id.* at ¶27. Whether employers
23 are permitted to use a neutral time-rounding practices was unresolved at the time of Settlement
24 and is currently pending review.² The claim for failure to unpaid overtime wages due to
25

26 ² On February 1, 2023, the California Supreme Court granted a petition to review the California Court of
27 Appeal's decision in *Camp v. Home Depot U.S.A., Inc.* to decide whether "Under California law ...
28 employers [are] permitted to use neutral time-rounding practices to calculate employees' work time for
payroll purposes." *Camp v. Home Depot U.S.A., Inc.*, No S277518, 2023 Cal. LEXIS 530, at *1 (Feb. 1,
2023) (reviewing *Camp v. Home Depot U.S.A., Inc.* 84 Cal.App.5th 638 (2022)).

1 miscalculation of the regular rate of pay was based on Plaintiff's contention that Defendant should
2 have included non-discretionary compensation such as annual incentive income payments into
3 the regular rate of pay when calculating the overtime rate. Although Plaintiff contends Defendant
4 did not include these payments in the regular rate, the court could find that the incentive payments
5 were (1) based on a percent of total earnings that already included overtime or (2) discretionary
6 and thus not required to be included in the regular rate. See 29 C.F.R. §§ 778.210, 778.211. This
7 claim amounted to a total of \$1,754.00 in underpaid overtime wages. *Id.* at ¶28. Lastly, Plaintiff's
8 meal and rest period claim brought on behalf of Class II was based on the allegation that due to
9 the requirement to meet daily quotas, Plaintiff, at times, worked through and had to forego
10 uninterrupted meal and rest periods. *Id.* at ¶29. This claim could prove to be challenging on a
11 class-wide basis given that Defendant maintained compliant written meal and rest period policies.
12 Proving liability would require anecdotal evidence in the form of declarations from putative class
13 members and the court could find that these claims were not amenable to class treatment because
14 whether class members had similar challenges meeting daily quotas and taking uninterrupted
15 meal and rest breaks would require an individualized inquiry. Thus, the claims asserted by
16 Plaintiff on behalf of Class II were the most challenging claims for liability and class certification
17 purposes, supporting the monetary distribution allocated to Class I and Class II. *Id.* at ¶30.

18 **D. Notice Administration**

19 **1. Provide Case Name and Number.**

20 The Class Notice has been revised to be consistent with the revisions made to the releases
21 in the Agreement, as well as to include the case name and number. *Id.* at ¶31.

22 **G. MISCELLANEOUS**

23 **1. The Settlement Agreement appears to be unsigned by co-counsel for Plaintiff.**

24 Sahag Majarian, on behalf of the Majarian Law Group, has signed the Amended
25 Agreement, which supersedes and replaced the unsigned Settlement Agreement.

26 COHELAN KHOURY & SINGER
MAJARIAN LAW GROUP, APC

27 Dated: October 10, 2023

28 By: 
Marta Manus

Attorneys for Plaintiff Anthony Morris