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6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
7
8 **COUNTY OF SANTA CLARA**
9 **UNLIMITED JURISDICTION**

10 SANDRA S. WENZEL, on behalf of
11 herself and other aggrieved employees,

12 Plaintiffs,

13 v.

14 ZSCALER, INC.; and DOES 1 through 10,
15 inclusive,

16 Defendants.

Case No. 23CV416842

ASSIGNED FOR ALL PURPOSES TO
HONORABLE THEODORE C. ZAYNER
DEPARTMENT 19

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
UNOPPOSED MOTION TO APPROVE
PAGA SETTLEMENT**

Date: January 29, 2025
Time: 1:30 PM
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Complaint Filed: June 2, 2023

TABLE OF CONTENTS

I.	INTRODUCTION	6
II.	FACTUAL AND PROCEDURAL BACKGROUND.....	6
III.	SUMMARY OF SETTLEMENT TERMS.....	7
A.	THE AGGRIEVED EMPLOYEES.....	7
B.	MONETARY TERMS.....	8
C.	DISMISSAL OF RETALIATION CLAIMS.....	8
D.	SCOPE OF RELEASE	8
E.	SETTLEMENT ADMINISTRATOR.....	9
F.	SETTLEMENT IMPLEMENTATION	9
G.	UNCASHED CHECKS	10
H.	PLAINTIFF’S INDIVIDUAL SETTLEMENT	10
I.	IMPACT ON OTHER PENDING LITIGATION	10
IV.	ARGUMENT	10
A.	THE PRESUMPTION OF FAIRNESS APPLIES	11
1.	The Settlement Was Reached Through Arm’s-Length Negotiations	11
2.	The Negotiations Were Adequately Informed.....	11
3.	The Settlement Does Not Improperly Grant Preferential Treatment.....	12
4.	Plaintiff’s Counsel Support the Settlement.....	12
B.	THE SETTLEMENT FALLS WITHIN THE RANGE OF APPROVAL	13
1.	The Settlement Is Fair and Reasonable Considering the Strengths and Weaknesses of the Claims and Risks of Continued Litigation	13
2.	The Proposed Award of Attorneys’ Fees and Costs Is Reasonable.....	14
C.	THE COVER LETTER TO ACCOMPANY THE CHECKS IS ADEQUATE.....	17
V.	CONCLUSION.....	17

TABLE OF AUTHORITIES

California Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	13
<i>Atempa v. Pedrazzani</i> (2018) 27 Cal.App.5th 809	15
<i>Betancourt v. OS Rest. Servs.</i> (2022) 83 Cal.App.5th 132	14
<i>Concepcion v. Amscan Holdings, Inc.</i> (2014) 223 Cal.App.4th 1309	16
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	11, 13
<i>Folsom v. Butte County Assn. of Governments</i> (1982) 32 Cal.3d 668	14
<i>Harrington v. Payroll Entertainment Services, Inc.</i> (2008) 160 Cal.App.4th 589	15
<i>In re Consumer Privacy Cases</i> (2009) 175 Cal.App.4th 545	15
<i>Karton v. Ari Design & Constr.</i> (2021) 61 Cal.App.5th 734	15
<i>Moniz v. Adecco U.S., Inc.</i> (2021) 72 Cal.App.5th 56	6, 10, 12, 17
<i>PLCM Group, Inc. v. Drexler</i> (2000) 22 Cal.4th 1084	15
<i>Steiny & Co. v. Cal. Elec. Supply Co.</i> (2000) 79 Cal.App.4th 285	16

Federal Cases

<i>Acosta v. Frito-Lay, Inc.</i> (N.D. Cal., May 4, 2018, No.15-cv-02128-JSC) 2018 WL 2088278	13
<i>Aguirre v. Genesis Logistics</i> (C.D. Cal., Dec. 30, 2013) 2013 WL 10936035	14
<i>Cabiness v. Educ. Fin. Solutions, LLC</i> (N.D. Cal., Mar. 26, 2019, No. 16-cv-01109-JST) 2019 WL 1369929	13
<i>Carter v. Jai-Put Enter. Inc.</i> (N.D. Cal. Sept. 21, 2022, No. 18-CV-06313-DMR) 2022 WL 4371503	12
<i>Chun-Hoon v. McKee Foods Corp.</i> (N.D. Cal. 2010) 716 F.Supp.2d 848	16

1	<i>Cicero v. DIRECTV, Inc.</i> (C.D. Cal., July 27, 2010, No. EDCV 07-1182)	
2	2010 WL 2991486	15
3	<i>Covillo v. Specialtys Café</i> (N.D. Cal. Mar. 6, 2014, No. C-11-00594 DMR)	
4	2014 WL 954516	16
5	<i>Craft v. County of San Bernardino</i> (C.D. Cal. 2008)	
6	624 F.Supp.2d 1113	15
7	<i>Ebarle v. Lifelock, Inc.</i> (N.D. Cal. Jan. 20, 2016)	
8	2016 WL 234364	14
9	<i>Fleming v. Covidien, Inc.</i> (C.D. Cal., Aug. 12, 2012)	
10	2011 WL 7563047	14
11	<i>Foster v. Adams and Assocs., Inc.</i> (N.D. Cal., Feb. 11, 2022, No. 18-CV-02723-JSC)	
12	2022 WL 425559	12
13	<i>Gong-Chun v. Aetna Inc.</i> (E.D. Cal., July 12, 2012, No. 1:09-CV-01995-SKO)	
14	2012 WL 2872788	11
15	<i>Hudson v. Libre Tech. Inc.</i> (S.D. Cal., May 13, 2020, No. 3:18-CV-1371-GPC-KSC)	
16	2020 WL 2467060	12
17	<i>Human Rights Defense Center v. County of Napa</i> (N.D. Cal., Mar. 28, 2021, No. 20-CV-01296-JCS)	
18	2021 WL 1176640	16
19	<i>In re Animation Workers Antitrust Litig.</i> (N.D. Cal., Nov. 11, 2016, No. 14-CV-4062-LHK)	
20	2016 WL 6663005	16
21	<i>In re Linkedin User Privacy Litig.</i> (N.D. Cal. 2015)	
22	309 F.R.D. 573.....	14
23	<i>In re Omnivision Techs., Inc.</i> (N.D. Cal. 2008)	
24	559 F.Supp.2d 1036	13
25	<i>In re Portal Software, Inc. Securities Litigation</i> (N.D. Cal., Nov. 26, 2007, No. C-03-5138 VRW)	
26	2007 WL 417120	16
27	<i>In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig.</i> (N.D. Cal., Mar. 17, 2017, MDL No. 2672 CRB (JSC))	
28	2017 WL 1047834	16
29	<i>Kelley v. City of San Diego</i> (S.D. Cal., Feb. 8, 2021, No. 19-CV-622-GPC-BGS)	
30	2021 WL 424290	11
31	<i>Magadia v. Wal-Mart Assocs.</i> (N.D. Cal. 2019)	
32	384 F.Supp.3d 1058	14
33	<i>Mejia v. Walgreen Co.</i> (E.D. Cal., Nov. 24, 2020, No. 2:19-CV-00218 WBS AC)	
34	2020 WL 6887749	12, 7
35	<i>Moreno v. Sacramento</i> (9th Cir. 2008)	
36	534 F.3d 1106	16

1	<i>National Rural Telecomms. Co-op. v. DIRECTV, Inc.</i> (C.D. Cal. 2004)	
2	221 F.R.D. 523.....	13
3	<i>Sakkab v. Luxottica Retail N. Am., Inc.</i> (9th Cir. 2015)	
4	803 F.3d 425	17
5	<i>t'Bear v. Forman</i> (N.D. Cal., June 8, 2020, No. 17-cv-00796-JSC)	
6	2020 WL 3050772	16
7	<i>Wakefield v. Mathews</i> (9th Cir. 1988)	
8	852 F.2d 482	15
9	<i>Wynn v. Chanos</i> (N.D. Cal. June 19, 2015, No. 14-cv-04329-WHO)	
10	2015 WL 3832561	16
11	<u>Statutes</u>	
12	Code Civ. Proc., § 1032	14
13	Lab. Code, § 2699	10, 14
14	Lab. Code, § 2751	6
15	<u>Other Authorities</u>	
16	ALI, Principles of the Law of Aggregate Litigation (2010)	15
17	Manual for Complex Litigation, Second (1985).....	11
18	Newberg on Class Actions (4th ed. 2002)	11, 13

1 **I. INTRODUCTION**

2 Plaintiff Sandra Wenzel hereby respectfully requests that the Court approve the proposed
3 \$273,347.17 settlement of the Private Attorneys General Act (“PAGA”) claims asserted in this
4 case against Defendant Zscaler, Inc. This is a PAGA-only representative action involving
5 Zscaler’s alleged violations of Labor Code section 2751’s requirements for commission contracts
6 as well as Zscaler’s failure to pay former employees their final wages within the time frames set
7 out in Labor Code sections 201 and 202.¹

8 The Court should grant the motion because the settlement is fair and adequate. (See *Moniz*
9 *v. Adecco U.S., Inc.* (2021) 72 Cal.App.5th 56, 77.) The parties reached the proposed settlement
10 after extensive arms’ length negotiations during which they informally exchanged information
11 enabling Plaintiff to evaluate the scope of Zscaler’s liability. The settlement achieves an excellent
12 result given the risks inherent in the claims and the Court’s discretion to reduce civil penalties.
13 The Court, therefore, should approve the settlement and enter judgment thereon.

14 **II. FACTUAL AND PROCEDURAL BACKGROUND**

15 Plaintiff filed her representative PAGA action against Zscaler on June 2, 2023. (Valerian
16 Decl., ¶ 3.) The complaint alleged a single cause of action that Zscaler failed to comply with
17 Labor Code section 2751, subdivisions (a) and (b).² (*Ibid.*) Plaintiff had given Zscaler and the
18 LWDA notice of this and other violations on April 6, 2023.³ (*Ibid.*)

19 Once the other violations in the PAGA notice were exhausted, Plaintiff filed a first
20 amended complaint on July 3, 2023. (Valerian Decl., ¶ 4.) The FAC added two causes of action,

21 _____
22 ¹ The operative complaint also alleges causes of action for violation of Labor Code sections 232.5
23 and 1102.5 arising from Zscaler’s alleged retaliation against Plaintiff and her coworkers. The
24 settlement calls for these causes of action to be dismissed without prejudice.

25 ² Labor Code section 2751, subdivision (a), requires that whenever an employer enters a contract
26 of employment with an employee for services to be rendered within California, and the
27 contemplated method of payment of the employee involves commissions, “the contract shall be in
28 writing and shall set forth the method by which the commissions shall be computed and paid.”
(Lab. Code, § 2751, subd. (a).) Subdivision (b) requires that the employer provide the employee
with a signed copy of the contract. (Lab. Code, § 2751, subd. (b).)

³ Labor Code section 2751 is not listed in Labor Code section 2699.5 and therefore is subject to
the shorter 33-day exhaustion period. Plaintiff filed her complaint after it became clear that
Zscaler had not attempted any cure of the alleged violations.

1 one for the claim that Zscaler unlawfully retaliated against Plaintiff and other employees who
2 disclosed the leak of private, proprietary information in public fora (the “Project Vail leak”) in
3 violation of Labor Code sections 232.5 and 1102.5, and a second for the claim that Zscaler
4 violated Labor Code sections 201 and 202 by failing to timely pay separated employees their final
5 wages. (*Ibid.*)

6 Zscaler demurred to the first and second causes of action in the first amended complaint
7 on November 1, 2023. (Valerian Decl., ¶ 5.) Plaintiff thereafter filed a second amended complaint
8 alleging additional facts regarding the claims for retaliation and splitting the second cause of
9 action into separate causes of action, one for violation of Labor Code section 1102.5 and one for
10 violation of Labor Code section 232.5. (*Ibid.*)

11 Zscaler again demurred on January 8, 2024, this time, to the first cause of action for
12 violation of Labor Code section 2751 in its entirety and to the representative portions of
13 Plaintiff’s second and third causes of action for the alleged violations of Labor Code sections
14 232.5 and 1102.5. (Valerian Decl., ¶ 6.) The court overruled the demurrer on February 23, 2024.
15 Zscaler answered the second amended complaint on March 5, 2024, denying that it committed
16 any Labor Code violations. (*Ibid.*)

17 With the pleadings settled, the parties explored informal resolution of the claims in the
18 case. (Valerian Decl., ¶ 7.) The parties first agreed to settle the fourth cause of action after Zscaler
19 informally produced information from which the scope of its alleged liability could be
20 determined. (*Ibid.*) The parties thereafter reached an agreement to settle the remaining claims
21 after Zscaler informally produced more information establishing its defenses and the potential
22 exposure related to the remaining claims. (*Ibid.*) The parties eventually reduced the terms of the
23 agreement to the settlement agreement attached as Exhibit 1 to the declaration of Xinying
24 Valerian filed in support of this motion. (*Ibid.*)

25 **III. SUMMARY OF SETTLEMENT TERMS**

26 **A. THE AGGRIEVED EMPLOYEES**

27 The settlement involves two groups of aggrieved employees: (1) “Final Pay Covered
28 Employees” consisting all Zscaler employees who separated their employment during the PAGA

1 Period and who were not paid their final wages upon their date of separation (or in the case of an
2 employee who quit without prior notice, was not paid final wages within 72 hours of his or her
3 resignation), other than employees who already received waiting time penalties; and
4 (2) “Commission Agreement Covered Employees” consisting all Zscaler employees in California
5 who received commission or incentive plan agreements during the PAGA Period. (S.A., ¶ 1.6.)
6 There are 59 Final Pay Covered Employees, and 74 Commission Agreement Covered Employees.
7 (Valerian Decl. ¶ 13.)

8 **B. MONETARY TERMS**

9 The proposed settlement provides for a fund totaling \$273,347.17 that consists of
10 \$119,447.17 to be paid entirely to the Final Pay Covered Employees as statutory waiting time
11 penalties, \$53,900 in civil penalties, \$98,250 in attorneys’ fees, and \$1,750.00 in litigation costs
12 and expenses. Zscaler has agreed to separately pay the settlement administrator’s fees and
13 expenses. (S.A., ¶¶ 3.1, 3.2.)

14 Of the civil penalties, \$40,425 will be paid to the LWDA (75% of \$53,900); \$2,225 will
15 be paid to the Final Pay Covered Employees in proportion to the number of pay periods that
16 transpired before each employee received his/her final wages; and \$11,250 will be paid to the
17 Commission Agreement Covered Employees in equal shares. (S.A., ¶ 3.2.1, 3.2.2, & 3.2.4.)

18 **C. DISMISSAL OF RETALIATION CLAIMS**

19 The parties’ informal information exchange demonstrated that Plaintiff was the only
20 Zscaler employee terminated due to her alleged involvement in the Project Vail leak. (Valerian
21 Decl., ¶ 15.) Given this information, the parties agreed that the second and third causes of action
22 be dismissed without prejudice. (*Ibid.*) Plaintiff negotiated a separate settlement regarding her
23 individual claims after the key terms of the PAGA settlement had already been negotiated. (*Ibid.*)
24 Zscaler contends the claims have no merit. However, nothing in the settlement precludes the
25 LWDA from investigating claims that it already elected not to pursue after receiving Plaintiff’s
26 notice. (*Ibid.*)

27 **D. SCOPE OF RELEASE**

28 The settlement provides the following releases:

- 1.1. By Final Pay Covered Employees: As of the date the Settlement is Effective and becomes fully funded, the Final Pay Covered Employees fully release and discharge Defendant and the Released Parties from any and all individual and representative claims for relief under PAGA alleging violations of Labor Code sections 201, 202, and 203 that arise out of or reasonably relate to the allegations in the Operative Complaint and PAGA Notice, of whatever kind or nature, whether known or unknown, and any resulting claim for attorneys' fees and costs under PAGA. (SA, ¶ 5.1.)
- 1.2. By Commission Agreement Covered Employees: As of the date the Settlement is Effective and becomes fully funded, the Commission Agreement Covered Employees fully release and discharge Defendant and the Released Parties from any and all individual and representative claims for relief under PAGA alleging violations of Labor Code section 2751 that arise out of or reasonably relate to the allegations in the Operative Complaint and PAGA Notice, of whatever kind or nature, whether known or unknown, and any resulting claim for attorneys' fees and costs under PAGA. (SA, ¶ 5.2.)
- 1.3. By PAGA Counsel: PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice. (SA, ¶ 5.3.)

E. SETTLEMENT ADMINISTRATOR

Defendant has selected Rust Consulting, Inc. to administer the settlement. (Valerian Decl., ¶ 14.) The administrator's fees and costs will be solely borne by Defendant separately and apart from the settlement fund. Rust Consulting is a well-known and respected settlement administrator that provides proven settlement administration services. (Valerian Decl., ¶ 14.)

F. SETTLEMENT IMPLEMENTATION

The Settlement obligates Zscaler to (i) fully fund the Gross Settlement Amount, (ii) provide the Covered Employee Data to the Administrator, and (iii) pay the Administrator's costs and expenses within 30 days after the Court enters the accompanying Approval Order and Final Judgment. Within 14 days after Zscaler funds the Gross Settlement Amount, the Administrator will mail checks via U.S. Mail postage paid for all Individual PAGA Payments, Individual Waiting Time Penalty Payments, the LWDA PAGA Payment, and the PAGA Counsel Expenses Payment as approved by the Court. Checks to the Covered Employees will be accompanied by the cover letter attached as Exhibit B to the settlement agreement. The

1 Administrator will update the address for each Covered Employee using the National Change of
2 Address database prior to mailing the checks. Checks will be valid for 90 days.

3 **G. UNCASHED CHECKS**

4 None of the gross settlement fund reverts to Defendant. (See SA, ¶ 4.2.3.) Checks that are
5 not cashed after 90 days will escheat to the California Controller’s Unclaimed Property Fund in
6 the name of the aggrieved employee who did not cash their check. (*Ibid.*)

7 **H. PLAINTIFF’S INDIVIDUAL SETTLEMENT**

8 As indicated above, Plaintiff has settled her individual claims and agreed to a general
9 release. (Valerian Decl., ¶ 15.) The individual settlement was negotiated separately from the
10 representative PAGA claims, after the parties already had negotiated the key terms of the PAGA
11 settlement. (*Ibid.*) The representative PAGA claims were separately analyzed in accordance with
12 the different set of variables applicable to the PAGA litigation. (Valerian Decl., ¶¶ 8-11.)

13 **I. IMPACT ON OTHER PENDING LITIGATION**

14 Plaintiff has conducted due diligence to investigate whether any overlapping class actions
15 or other cases asserting claims like those asserted in the complaint will be impacted by the
16 settlement. (Valerian Decl., ¶ 12.) None were found. (*Ibid.*)

17 **IV. ARGUMENT**

18 The settlement of a PAGA action requires court approval. (Lab. Code, § 2699, subd.
19 (l)(2).) When considering whether to approve a proposed PAGA settlement, the Court should
20 evaluate the settlement “to determine whether it is fair, reasonable, and adequate in view of
21 PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize
22 enforcement of state labor laws.” (*Moniz, supra*, 72 Cal.App.5th at p. 77.) Though PAGA actions
23 do not need to satisfy the requirements of a class action, the factors courts use to evaluate class
24 action settlements—such as the strength of the plaintiff’s case, the risks involved, the stage of the
25 proceeding, and the complexity and likely duration of further litigation—“can be useful in
26 evaluating the fairness of a PAGA settlement.” (*Ibid.*) In this context, “a presumption of fairness
27 exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and
28 discovery are sufficient to allow counsel and the court to act intelligently; [and] (3) counsel is

1 experienced in similar litigation.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.)
2 “If the proposed settlement appears to be the product of serious, informed, non-collusive
3 negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to
4 class representatives or segments of the class, and falls within the range of possible approval, then
5 the court should direct that the notice be given to the class members of a formal fairness hearing.”
6 (Manual for Complex Litigation, Second (1985) § 30.44.)

7 This standard is easily met here. Accordingly, the Court should grant Plaintiff’s
8 unopposed motion.

9 **A. THE PRESUMPTION OF FAIRNESS APPLIES**

10 As noted above, a presumption of fairness exists where a settlement is reached through
11 arm’s-length negotiation that was adequately informed and where there is no evidence of fraud or
12 collusion. That presumption applies here.

13 **1. The Settlement Was Reached Through Arm’s-Length Negotiations**

14 The settlement in this case was reached between experienced counsel through hard-fought
15 negotiations that spanned more than six months and were supported by numerous rounds of
16 informal discovery. (Valerian Decl., ¶ 8.) The settlement, therefore, is the result of arm’s-length
17 negotiation. (*Gong-Chun v. Aetna Inc.* (E.D. Cal., July 12, 2012, No. 1:09-CV-01995-SKO) 2012
18 WL 2872788, at *12 [settlement reached through efforts of counsel . . . was the result of arm’s-
19 length negotiation]; accord *Kelley v. City of San Diego* (S.D. Cal., Feb. 8, 2021, No. 19-CV-622-
20 GPC-BGS) 2021 WL 424290, at *7 [settlement resulted from arm’s-length negotiation where the
21 parties conducted several telephonic and in-person settlement conferences]; see also Newberg on
22 Class Actions, *Class Actions in State Courts, Preliminary Approval* (4th ed. 2002) § 13:14.)

23 **2. The Negotiations Were Adequately Informed**

24 Plaintiff obtained and reviewed information that Zscaler informally produced that
25 provided Plaintiff with the ability to estimate Zscaler’s liability. (See Valerian Decl., ¶ 9.) This
26 information included declarations, for instance, attesting to Zscaler correcting the issue with the
27 late final wage payments. (Valerian Decl., ¶ 8.) The parties also exchanged lengthy emails
28 detailing the strengths and weaknesses of each claim. (*Ibid.*) Plaintiff’s review determined the

1 extent of the violations, the penalties that would arise under different accrual scenarios, the likely
2 outcomes after the anticipated trial evidence was considered by the court in a bench trial, and the
3 likelihood that the Court might exercise its discretion to reduce any civil penalties under PAGA,
4 even if Plaintiff prevailed, given the alleged violations and Zscaler’s defenses. (*Ibid.*) As a result
5 of this analysis, Plaintiff was fully informed during the negotiations. In fact, Plaintiff was
6 prepared to seek summary adjudication of various issues (and Zscaler indicated that it would file a
7 cross motion for summary adjudication) if the negotiations had failed. (*Ibid.*) The negotiations,
8 therefore, were fully informed. (See *Foster v. Adams and Assocs., Inc.* (N.D. Cal., Feb. 11, 2022,
9 No. 18-CV-02723-JSC) 2022 WL 425559, at *6.)

10 **3. The Settlement Does Not Improperly Grant Preferential Treatment**

11 There was no collusion in settling this case. The settlement is non-reversionary. (SA,
12 ¶ 3.1.) Moreover, the allocation of the civil penalties in proportion to the number of pay periods
13 before final wages were paid guarantees fair and equitable treatment among the Final Pay
14 Covered Employees. The allocation of the civil penalties for the Commission Agreement Covered
15 Employees is also equitable given that the Court would likely limit the accrual of the claim to a
16 single pay period.⁴ (*Hudson v. Libre Tech. Inc.* (S.D. Cal., May 13, 2020, No. 3:18-CV-1371-
17 GPC-KSC) 2020 WL 2467060), at *9 [“the Settlement does not improperly discriminate between
18 any segments of the Settlement Class as the Settlement Class Members are entitled to the same
19 relief from the same formula”]; *Mejia v. Walgreen Co.* (E.D. Cal., Nov. 24, 2020, No. 2:19-CV-
20 00218 WBS AC) 2020 WL 6887749, at *11 [no discrimination where relief is proportionately
21 based on compensable workweeks].)

22 **4. Plaintiff’s Counsel Support the Settlement**

23 Plaintiff’s Counsel has extensive experience litigating wage and hour class and
24 representative actions and recommend approval. (Valerian Decl., ¶¶ 16–24.) Such a
25

26 ⁴ E.g., *Carter v. Jai-Put Enter. Inc.* (N.D. Cal. Sept. 21, 2022, No. 18-CV-06313-DMR) 2022 WL
27 4371503, at *5 [rejecting argument that penalties continue to accrue until the employer corrected
28 the underlying underpayment]; *Moniz, supra*, 72 Cal.App.5th at p. 88 [adopting trial court’s
assumption that only one violation of sections 232, 232.5, and 432.5 accrued “given that
employees signed the allegedly offending employment agreements once.”].)

1 recommendation weighs in favor of approval. (*Cabiness v. Educ. Fin. Solutions, LLC* (N.D. Cal.,
2 Mar. 26, 2019, No. 16-cv-01109-JST) 2019 WL 1369929, at *6; *Acosta v. Frito-Lay, Inc.* (N.D.
3 Cal., May 4, 2018, No.15-cv-02128-JSC), at *9; see also *In re Omnivision Techs., Inc.* (N.D. Cal.
4 2008) 559 F.Supp.2d 1036, 1043 [“The recommendations of plaintiffs’ counsel should be given a
5 presumption of reasonableness.”].)

6 **B. THE SETTLEMENT FALLS WITHIN THE RANGE OF APPROVAL**

7 A settlement is not required to meet a minimum dollar or percentage threshold to be
8 deemed adequate. (See *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
9 Cal.App.4th 1135, 1150.) Rather, the adequacy of a settlement is evaluated considering litigation
10 uncertainties. (See *Dunk, supra*, 48 Cal.App.4th at p. 1801.) “In most situations, unless the
11 settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and
12 expensive litigation with uncertain results.” (*National Rural Telecomms. Co-op. v. DIRECTV, Inc.*
13 (C.D. Cal. 2004) 221 F.R.D. 523, 526; Newberg on Class Actions, *supra*, § 11:50.)

14 **1. The Settlement Is Fair and Reasonable Considering the Strengths and**
15 **Weaknesses of the Claims and Risks of Continued Litigation**

16 Plaintiff estimated during negotiations that the best-case scenario would yield \$482,700 in
17 civil penalties. (Valerian Decl., ¶ 8.) This valuation, however, was keyed on Plaintiff not only
18 prevailing at trial on the merits but also prevailing on unresolved questions regarding how
19 penalties accrue for the Labor Code violations at issue that occur “once” but with consequences
20 over time until cured. (*Ibid.*) In this connection, there was substantial risk that even if the Court
21 found at trial that Zscaler violated Labor Code section 2751, subdivision (b), by failing to provide
22 employees signed copies of their commission plan, the Court could nonetheless decide that such a
23 violation warrants only a single penalty rather than a penalty accruing in each pay period until the
24 violation is cured, in this case, the provision of a signed commission plan. (*Ibid.*) The same
25 concern applied to the claim for violation of Labor Code section 2751, subdivision (a). (*Ibid.*)
26 Notably, even if Plaintiff prevailed at trial on these novel issues, there was also the risk of a costly
27 trial and delayed justice through appeals. (*Id.* ¶ 11.) Significantly, expert costs that would have
28

1 diminished the net recovery of the State and employees had not yet been incurred at the time the
2 case settled. (*Ibid.*)

3 The settlement, on the other hand, pays the Final Pay Covered Employees 100% of their
4 statutory waiting time penalties. (Valerian Decl., ¶ 9.) As for the civil penalties recovered, though
5 they only represent approximately 11% of the maximum civil penalties had Plaintiff run the
6 board, it was not very likely that Plaintiff would do so, especially considering risks regarding the
7 penalty's continual accrual, the law about when higher subsequent penalties arise, Zscaler's
8 defenses, and the Court's ability to reduce civil penalties at its discretion. (Valerian Decl., ¶ 8.)
9 The result achieved compares favorably to other judgments in PAGA cases. (See, e.g., *Aguirre v.*
10 *Genesis Logistics* (C.D. Cal., Dec. 30, 2013) 2013 WL 10936035, at *2–3; *Fleming v. Covidien,*
11 *Inc.* (C.D. Cal., Aug. 12, 2012) 2011 WL 7563047, at *3-4. See generally *Magadia v. Wal-Mart*
12 *Assocs.* (N.D. Cal. 2019) 384 F.Supp.3d 1058.) In this context, “the tangible, immediate benefits
13 of . . . [s]ettlement outweigh continued litigation and the uncertainty of a trial.” (*Ebarle v.*
14 *Lifelock, Inc.* (N.D. Cal., Jan. 20, 2016) 2016 WL 234364, at *8; *In re LinkedIn User Privacy*
15 *Litig.* (N.D. Cal. 2015) 309 F.R.D. 573, 587 [“Immediate receipt of money through settlement,
16 even if lower than what could potentially be achieved through ultimate success on the merits, has
17 value to a class, especially when compared to risky and costly continued litigation.”].)

18 **2. The Proposed Award of Attorneys' Fees and Costs Is Reasonable**

19 PAGA provides that “any employee who prevails in any action shall be entitled to an
20 award of reasonable attorney's fees and costs.” (Lab. Code, § 2699, subd. (g)(1).) Plaintiffs, who
21 successfully litigated and negotiated a net monetary recovery on behalf of LWDA and the
22 aggrieved employees, have prevailed. (See Code Civ. Proc., § 1032, subd. (a)(4).); see also
23 *Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668, 685 fn. 31 [“the appropriate
24 benchmarks in determining which party prevailed are (a) the situation immediately prior to the
25 commencement of suit, and (b) the situation today, and the role, if any, played by the litigation in
26 effecting any changes between the two”]; see also *Betancourt v. OS Rest. Servs.* (2022) 83
27 Cal.App.5th 132, 141 [plaintiff was “prevailing party” where defendant agreed to a stipulated
28 settlement and judgment in plaintiff's favor]; accord *Wakefield v. Mathews* (9th Cir. 1988) 852

1 F.2d 482, 483 [“Prevailing plaintiffs include those who have negotiated successful settlements.”].)
2 An award of attorneys’ fees and costs, therefore, is mandatory. (*Atempa v. Pedrazzani* (2018) 27
3 Cal.App.5th 809, 829; accord *Harrington v. Payroll Entertainment Services, Inc.* (2008) 160
4 Cal.App.4th 589, 594 [“Because section 2699, subdivision (g), provides that Harrington ‘shall be
5 entitled’ to an award of fees, an award is a matter of right.”].)

6 In the present case, an attorneys’ fee that is 36% of the gross settlement fund is
7 reasonable. As an initial matter, “[t]he choice of a fee calculation method is generally one within
8 the discretion of the trial court.” (*Laffitte, supra*, 1 Cal.5th at p. 504.) “[T]he goal . . . being the
9 award of a reasonable fee to compensate counsel for their efforts.” (*Ibid.*) “Although many courts
10 in common-fund cases permit use of either a percentage-of-the-fund approach or a lodestar
11 (number of hours multiplied by a reasonable hourly rate), most courts and commentators now
12 believe that the percentage method is superior.” (ALI, Principles of the Law of Aggregate
13 Litigation (2010) § 3.13, com. b.; accord *Laffitte, supra*, 1 Cal.5th at p. 494.)

14 Empirical studies show that fee awards in class and representative actions in California
15 average around one-third of the recovery. (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th
16 545, 558.) This is particularly true in the present case given the size of the settlement fund.
17 (*Cicero v. DIRECTV, Inc.* (C.D. Cal., July 27, 2010, No. EDCV 07-1182) 2010 WL 2991486, at
18 *6 [“a review of California cases in other districts reveals that courts usually award attorneys’
19 fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund
20 under \$10 million”]; accord *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d
21 1113, 1127 [“Cases of under \$10 Million will often result in result in fees above 25%.”].)

22 A lodestar cross check in the present case confirms that the fee request is substantially less
23 than counsel’s lodestar.⁵ Plaintiff counsel’s billing-judgment adjusted lodestar through

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25 ⁵ The California Supreme Court has concluded that, in common fund cases, “trial courts have
26 discretion to begin with a percentage approach and then to use the lodestar approach to cross-
27 check the reasonableness of the percentage.” (*Karton v. Ari Design & Constr.* (2021) 61
28 Cal.App.5th 734, 745.) The “lodestar” is simply “the number of hours reasonably expended
multiplied by the reasonable hourly rate.” (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,
1095.) In the present case Plaintiffs’ counsels’ hourly rates are comparable to prevailing rates in
the Bay Area for lawyers and legal staff of similar experience, skill, and reputation. (Valerian
Decl., ¶¶ 27-33.) These rates are based on counsel’s 2024 rates, which several hourly-paying

1 November 30, 2024, with an additional across the board 10% cut, is more than \$118,000.⁶ After
2 the hours expended in December 2024 and later for settlement implementation are included, the
3 fee request will represent less than 80% of Plaintiff’s already reduced lodestar—a so-called
4 “negative multiplier” that renders the fee request “presumptively reasonable.” (*Chun-Hoon v.*
5 *McKee Foods Corp.* (N.D. Cal. 2010) 716 F.Supp.2d 848, 854 [multiplier of less than one
6 “suggests that the negotiated fee award is a reasonable and fair valuation of the services rendered
7 to the class by class counsel”]; accord *Covillo v. Specialtys Café* (N.D. Cal. Mar. 6, 2014, No. C-
8 11-00594 DMR) 2014 WL 954516, at *7 [“so-called negative multiplier” suggests that the
9 requested percentage of the fund is reasonable and fair”]; *In re Portal Software, Inc. Securities*
10 *Litigation* (N.D. Cal., Nov. 26, 2007, No. C-03-5138 VRW) 2007 WL 4171201, at *16.)

11 Plaintiff’s request that she also be awarded \$1,750 in out-of-pocket costs is also reasonable.
12 These out-of-pocket costs reflect a careful and frugal approach to litigation expenditures and were
13 reasonably necessary for the prosecution of this action. (Valerian Decl., ¶ 41, Exhibit 2.). Failing to
14 reimburse Plaintiff and her counsel for these outlays would undermine the ability of employees to
15 pursue Labor Code enforcement actions.

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17 clients have paid, and which have been approved as reasonable by courts and arbitrators.
18 (Valerian Decl., ¶ 29.) If anything, these rates are likely below current market rates. (E.g., *Human*
19 *Rights Defense Center v. County of Napa* (N.D. Cal., Mar. 28, 2021, No. 20-CV-01296-JCS)
20 2021 WL 1176640, at *11 [finding rates of \$950-\$1,100 reasonable for partners]; *In re Animation*
21 *Workers Antitrust Litig.* (N.D. Cal., Nov. 11, 2016, No. 14-CV-4062-LHK) 2016 WL 6663005, at
22 *6 [finding rates up to \$1,200 and paralegal rates up to \$290 fair and reasonable]; *t’Bear v.*
23 *Forman* (N.D. Cal., June 8, 2020, No. 17-cv-00796-JSC) 2020 WL 3050772, at *9 [up to \$1,425];
24 *Wynn v. Chanos* (N.D. Cal., June 19, 2015, No. 14-cv-04329-WHO) 2015 WL 3832561, at *2
25 [approving 2015 rates of up to \$1,085]; *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., &*
26 *Prod. Liab. Litig.* (N.D. Cal., Mar. 17, 2017, MDL No. 2672 CRB (JSC)) 2017 WL 1047834, at
27 *5 [up to \$1,600 for partners, \$790 for associates, and \$490 for paralegals.]) Class Counsel’s
28 declaration attesting 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.” (*Steiny & Co. v.*
Cal. Elec. Supply Co. (2000) 79 Cal.App.4th 285, 293; *Concepcion v. Amscan Holdings, Inc.*
(2014) 223 Cal.App.4th 1309, 1324 [“It is not necessary to provide detailed billing timesheets to
support an award of attorney fees under the lodestar method.”]). “By and large, the court should
defer to the winning lawyer’s professional judgment as to how much time he was required to
spend on the case; after all, he won, and might not have, had he been more of a slacker.” (*Moreno*
v. Sacramento (9th Cir. 2008) 534 F.3d 1106, 1112.) “[L]awyers are not likely to spend
unnecessary time on contingency fee cases in the hope of inflating their fees.” (*Ibid.*) “The payoff
is too uncertain, as to both the result and the amount of the fee.” (*Ibid.*) “It would therefore be the
highly atypical . . . case where plaintiffs [sic] lawyer engages in churning.” (*Ibid.*)

⁶ Valerian Decl., ¶ 37.

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