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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

TRAVIS HOANG, an individual, on behalf of the State of California as a private attorney general, on behalf of all other Aggrieved Employees, PLAINTIFF, v. COGNIZANT TECHNOLOGY SOLUTIONS U.S. CORPORATION, a Delaware Corporation, and DOES 1 to 10, inclusive, DEFENDANTS.	CASE NO: 24CV439846 **DECLARATION OF CRAIG J. ACKERMANN IN SUPPORT OF MOTION TO APPROVE PAGA SETTLEMENT** Date: December 4, 2025 Time: 9:00 a.m. Dept.: 18b Judge: Honorable Shella Deen Complaint Filed: May 24, 2024 Trial Date: None Set

DECLARATION OF CRAIG J. ACKERMANN

I, Craig J. Ackermann, declare as follows:

1. I am an attorney licensed to practice law before this Court and the federal and state courts of California, Washington State, and Texas. I am over 18 years of age. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to them.

2. I am a founding shareholder in the law firm of Ackermann & Tilajef, P.C. ("A&T," "PAGA Counsel" or "Plaintiff's Counsel"), attorneys of record for Plaintiff Travis Hoang ("Plaintiff") and the aggrieved employees in the above-captioned matter. I have no knowledge of the existence of any conflicting interests between my firm and any of its attorneys on the one hand, and Plaintiff or any other aggrieved employee, on the other.

ATTORNEY EXPERIENCE

3. Although PAGA Counsel's adequacy is not an issue that a Court may consider in a PAGA action,[1] I have significant experience with class action and PAGA litigation.

4. In 1994, I received a B.A. with honors and graduated Phi Beta Kappa from the University of Texas at Austin. In 1997, I received a J.D. from the University of Texas, School of Law. I became a member of the Bar of the State of Texas in 1997. I became a member of the Bar of the State of California in 2004. I became a member of the Bar of the State of Washington in 2018.

5. Since 1997, I have exclusively practiced employment law and have amassed a significant amount of experience in complex employment litigation. From 1997 through 2000, I was an associate in the labor and employment law group for Jenkins & Gilchrist, P.C. ("J&G"), in the firm's Dallas, Texas office, where I represented Fortune 1000 companies, including Hartford Insurance, Belo Corporation, and Alcatel, as second-chair in various employment-related matters,

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[1] *See Williams v. Superior Court* (2017) 3 Cal.5th 531, 546-47 ("Marshalls notes, correctly, that PAGA actions and certified class actions have a host of identifiable procedural differences. PAGA does not make other potentially aggrieved employees parties or clients of Plaintiff's Counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect to the ability to represent a large class."); *Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1123 ("a PAGA suit is fundamentally different than a class action" because "the court does not inquire into the named plaintiffs and class counsel's ability to fairly and adequately represent unnamed employees.")

including several class action cases. While employed by J&G, I drafted a number of summary judgment motions in cases where we obtained summary judgment for the defendants, including several that were reported on Westlaw. *See Wayne v. The Dallas Morning News, Inc.*, CIV.A.No.3-98-CV-0711-L, 1999 WL 1146840 (N.D. Tex. Nov. 24, 1999) (with lead counsel, Robert E. Sheeder, Esq.); *Mieritz v. Hartford Fire Insurance Co.*, No. Civ.A.3:99-CV-121-R, 2000 WL 422909 (N.D. Tex. April 17, 2000) (with lead counsel Steve Fox, Esq.).

6. From 2000 through mid-2003, I worked in New York City for a plaintiffs' side employment law firm, Arenson, Ditmar & Karban, where I was involved for several years, *pro hac vice*, in a second-chair capacity representing 150 individually-named plaintiffs in a large sexual harassment case against a major Wall Street bank that was eventually resolved for $23.5 million. In terms of the number of plaintiffs and the size of the ultimate settlement, this sexual harassment case was the second largest sexual harassment case in U.S. history. There were over 60 depositions taken and defended in that case prior to trial. In mid- and late-2003, I worked as an associate in the Labor and Employment Law Section of Mitchell, Silberberg & Knupp, LLP in Los Angeles, where we represented large entertainment companies in various employment-related litigations, including several class actions.

7. From January 2004 through the present, I have been a founding and managing shareholder in the firm of Ackermann & Tilajef, P.C. where we have represented thousands of employees in wage and hour class actions, PAGA cases, and other employment-related matters. In addition to the instant case, we have served as class counsel in over other 300 wage and hour class and/or PAGA actions, many of which have been resolved, and others of which are currently pending in federal and state courts. I, along with the attorneys at my firm, have developed extensive litigation experience in complex employment litigation matters, particularly in California class actions. For example, we have successfully obtained class certification and been appointed as adequate class counsel in numerous cases where <u>contested</u> class certification motions were filed and fully briefed. *See, e.g.,* (1) *Martinez v. Knight Transportation*, Case No. 1:16-cv-01730-DAD (order granting Plaintiff's Motion for Class Certification, dated December 3, 2018) (certifying Class of over 4,000 non-resident drivers with claims of unpaid rest breaks and

non-productive time on California routes); (2) *Moss v. USF Reddaway, Inc.,* No. 5:15-CV-01541-JAK-FFM, (C.D. Cal June 30, 2017) (Hon. Judge John A. Kronstadt) Order Granting Plaintiff's Motion for Class Certification (Dkt. No. 80); (3) Jack *Morrison v. Knight Transportation, Inc*., Tulare County Superior Court, Case No. 228016, Nov. 13, 2009 Order Granting Plaintiff's Motion for Class Certification (Hon. Lloyd Hicks) (granting certification of class of over 2,000 truck drivers, which later grew to 4,111 drivers, with claims for, inter alia, failing to provide duty-free meal breaks); (4) Order Adopting Findings and Recommendations, *Clayton v. Knight Transportation, Inc.,* No. 1:11cv0735 LJO DLB, 2012 WL 3638026 (E.D. Cal. Aug. 21, 2012) (Hon. Lawrence O'Neil); Findings and Recommendations Regarding Plaintiff's Motion for Class Certification, *Clayton v. Knight Transportation, Inc*., No. 1:11cv0735 LJO DLB, 2012 WL 2912395 (E.D. Cal. July 16, 2012) (U.S. Magistrate Judge Dennis L. Beck) (recommending certification of class action for 2,000 truck drivers alleging claims for unpaid orientation time); (5) *Anderson v. Andrus Transportation*, San Bernardino County Superior Court, Case No. CIV DS 915878, August 16, 2011 Order Granting In Part Plaintiff's Motion for Class Certification (class certification granted to class of over 550 truck drivers with claims for unpaid minimum wages and derivative claims); and (6) *Trujillo v. WinCo Foods, LLC*, Stanislaus County Superior Court, Case No. 622364, March 16, 2011 Order Granting Plaintiff's Motion for Class Certification (granting class certification of missed meal and rest break claims and derivative claims to class of 150 truck drivers). In each of these cases, the trial court judges determined that my firm and I were competent and adequate class counsel, or co-class counsel, following a contested motion for class certification.

8. Notably, in early 2016, after 7 years of hotly contested litigation, including class certification, multiple summary judgment motions, decertification, and preparation for the phase 1 liability trial, the case of *Jack Morrison v. Knight Transportation, Inc*., Tulare County Superior Court, Case No. 228016, was resolved for an amount of $2.25 million to the class of 4,100 drivers, and attorney's fees were then decided on a contested motion. On a contested fees motion, the Tulare County Superior Court awarded our firm over $1.1 million in fees for our work on that case.

9. Since 2004, our firm has also represented more than 500 individual employees in cases brought under various state and federal statutes, including the California Labor Code, and we have obtained favorable results in numerous cases. In December 2012, for example, we obtained a Final Judgment in the amount of $318,913.09 in a Title VII and FEHA retaliation case after a general jury verdict for the Plaintiff and a successful appeal to the Ninth Circuit from the district court's denial of Plaintiff's motion for attorneys' fees. *See* Final Judgment, *Barrios v. Diamond Contract Services, Inc.*, Case No. 2:07-cv-03500-CBM-FMO (C.D. Cal. Dec. 20, 2012), ECF No. 138 (final judgment entered for Plaintiff in the amount of $318,913.09); *see also Barrios v. Diamond Contract Services, Inc.*, 461 F. App'x 571 (9th Cir. Dec. 13, 2011) (reversing original district court judge's denial of motion for attorneys' fees).

10. We have also been appointed PAGA counsel or PAGA co-counsel in numerous cases, including several that resolved for substantial amounts, including: (1) *Jernigan, et al. v. Pro Unlimited, Inc.*, Los Angeles County Superior Court Case No. 21STCV10027, approved by the Honorable Bruce G. Iwasaki on June 7, 2022 in the gross amount of $1,047,000; (2) *Smith, et al. v. Burlington Merchandising Corporation, et al.* San Bernardino County Superior Court Case No. CIVDS1929684, approved by the Honorable David Cohn on October 23, 2020 in the gross amount of $2,000,000; (3) *Miller, et al v. Mattress Firm, Inc.*, Santa Clara County Superior Court Case No. 17CV313148, approved by the Honorable Thomas E. Kunle on December 17, 2018 in the gross amount of $3,750,000; and (4) *Myers v. Mor Furniture for Less, Inc.*, San Diego County Superior Court Case No. 37-2018-00055055-CU-OE-NC, approved by the Honorable Ronald Frazier on November 27, 2018 in the amount of $1,062,000. Based upon my experience and after factoring in the risks of litigation, I believe the proposed PAGA settlement is fair and reasonable. As such and for the reasons stated forth below, I believe that Plaintiff's proposed PAGA Settlement should be approved.

PROCEDURAL AND FACTUAL HISTORY

11. On March 19, 2024, Plaintiff submitted his PAGA letter to the Labor and Workforce Development Agency ("LWDA") and to Defendant Cognizant Technology Solutions U.S. Corporation ("Defendant"), wherein he asserted claims for civil penalties under PAGA

against Defendant, namely, that Defendant violated Labor Code §2802 based on its non-reimbursement of all work-related personal cell phone expenses incurred by Aggrieved Employees. On May 24, 2024, Plaintiff filed a PAGA Complaint in the Santa Clara County Superior Court. The Parties then agreed to explore settlement through mediation after an exchange of informal discovery.

12. As part of its informal discovery production, Defendant produced, among other things, data and information related to the Aggrieved Employees, including the number of monthly pay periods worked by Aggrieved Employees during the PAGA Period; Plaintiff's personnel file; Defendant's Acceptable Use Standard Policy, Global Acceptable Use Policy, Travel and Expense Policy, Global Work Model Policy, Mobile Phone Guidelines for North America, and Telecommunication Policy; and correspondence regarding Defendant's implementation of Windows Hello for Business.

13. On February 11, 2025, the Parties, through their counsel attended a mediation via Zoom presided over by experienced wage and hour mediator, Steve Pearl. The negotiations at the mediation were non-collusive and conducted at arms' length. At the mediation, the Parties resolved the action and entered into a Memorandum of Understanding shortly thereafter. The terms of the Memorandum of Understanding were then memorialized in the PAGA Settlement Agreement now conditioned on Court approval. The Parties' PAGA Settlement Agreement (the "Settlement Agreement" or "Agreement") is attached hereto as **Exhibit 1**.

14. During the exchange of information and attendant discussions between the Parties, Plaintiff and PAGA Counsel learned that there were approximately 3,978 Aggrieved Employees who worked approximately 71,489 monthly pay periods during the PAGA Period. Plaintiff asserts that the maximum potential exposure for the PAGA claims for PAGA Aggrieved Employees assuming a 100% violation rate for all monthly pay periods is $7,148,900 (71,489 initial monthly pay periods * $100 initial penalty), an allegation and number that Defendant vigorously disputes for multiple reasons.

THE AGGRIEVED EMPLOYEES AND SETTLEMENT CONSIDERATIONS

15. For purposes of this settlement, the PAGA Aggrieved Employees are defined as:

Plaintiff and all other California residents who are or were employed by Defendant for at least one pay period during the time period from March 19, 2023 through April 11, 2025 (the "PAGA Period"). According to Defendant, there are approximately 3,978 Aggrieved Employees in the PAGA Period.

16. Plaintiff brings this action on behalf of himself and all other Aggrieved Employees, as a representative action pursuant to Labor Code § 2699, et seq., against Defendant for PAGA penalties based on Defendant's failure to affirmatively reimburse Plaintiff and the Aggrieved Employees for work-related personal cell phone usage related to the download and use of cell phone applications required by Defendant's two factor authentication requirement. As a result of the foregoing, Defendant has violated California statutory laws as described below. Plaintiff's claims are summarized below:

17. Plaintiff alleged Defendant failed to affirmatively reimburse Plaintiff and the Aggrieved Employees for work-related personal cell phone usage related to the download and use of cell phone applications required by Defendant's two factor authentication requirement in violation of Labor Code §2802. Specifically, Plaintiff alleges Defendant required Plaintiff and Aggrieved Employees to download the Microsoft Authenticator application on their personal cell phones to log into Cognizant's systems and resources or Cognizant's clients' systems and resources through two factor authentication. Aggrieved Employees could not perform their work for Cognizant or Cognizant's clients without performing two factor authentication on their personal cell phones. Plaintiff alleges that despite requiring application downloads on Aggrieved Employees' personal cell phones, Cognizant did not affirmatively reimburse employees for a reasonable portion of their personal cell phone expenses. *See Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (In evaluating claims for reimbursements under Section 2802, courts in California have adopted a "knew or should have known" standard for employer liability—that is, when an "employer either knows or has reason to know that the employee has incurred a reimbursable expense ... it must exercise due diligence to ensure that each employee is reimbursed."); *see also Abdullah et al. v. U.S. Security Associates,* 09-CV-9554-GHK (C.D. Cal. 2011) (Hon. George King) (adopting the standard set forth in *RadioShack*: "the law requires that

once an employer knows or has reason to know that the employee has incurred an expense, then it has the duty to exercise due diligence and take any and all reasonable steps to ensure that the employee is reimbursed for the expense"); *Marr v. Bank of America*, 2011 WL 845914 (N.D. Cal. 2011) (Hon. William Alsup) (adopting "knew or should have known standard"). Knowledge of expenses being incurred by employees triggering reimbursement obligations can be inferred. *See e.g., Tan v. Grubhub, Inc.,* 171 F. Supp. 3d 998, 1005 (N.D. Cal. 2016) (rejecting Grubhub's motion to dismiss argument that plaintiffs failed to allege it knew or had reason to know of business expenditures, and finding that the plaintiffs' allegations that they were required to bear expenses related to "their vehicles, gas, parking, phone data, and other expenses" suffice because "[i]t is plausible to infer that Defendants were aware that class members incurred these expenses from the nature of their business—an app based food delivery service that requires drivers to use their cars and cell phones."); *see also Taylor v. W. Marine Prod., Inc.*, 2014 WL 1778279, * 6 (N.D. Cal. May 3, 2014) (the court *inferred* notice of expenses for 2802 purposes where employees had to drive long distances for work that was not walkable, and were not reimbursed for gas mileage, which was sufficient to trigger a reimbursement obligation).

18. Furthermore, under Labor Code section 2802, employers must reimburse employees for all necessary and/or reasonable work-related expenses, regardless of whether or not the employees incurred any *additional* out-of-pocket expense from that work-related use. *See Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137 (Cal. Aug. 12, 2014) ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code Section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."); *Aguilar v. Zep, Inc.,* 2014 US Dist. LEXIS 120315, *54 (N.D. Cal. Aug. 27, 2014) (Hon. Edward Chen) (where outside sales reps used home internet and computers for work, and even admitted that they would have incurred the same expenses without work duties, the court nevertheless held that the employer was obligated to reimburse some reasonable portion of these expenses); *Richie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of home office claims

processors with 2802 phone reimbursement claims for landline reimbursements where company required claims processors working from home to have a landline, but rejecting certification of claims for home office supplies as individualized); *See also Krauss v. Wal-Mart, Inc.,* 2020 U.S. Dist. LEXIS 66535, *18-19 (E.D. Cal. Apr. 14, 2020) ("The Court previously found this allegation also failed because Plaintiff did not provide a 'single instance when such a cost was actually incurred and not reimbursed.' Order at 11. In light of Cochran, the Court no longer finds Plaintiff needs to allege such an instance. The Court therefore now finds Plaintiff has properly plead the reimbursement claim as to her phone app allegation.")

19. In a PAGA action, the Court has the same discretion "to assess a civil penalty" that the Labor Commissioner would have, as well as complete discretion to "award a lesser amount than the maximum civil penalty amount specified by PAGA if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Lab. Code§ 2699(e)(2). It is possible that at trial Defendant could have convinced the Court that it should exercise its discretion under PAGA to significantly reduce any penalties awarded.

20. The period covered by this settlement is the period from March 19, 2023 to April 11, 2025.

THE PROPOSED SETTLEMENT

21. As detailed fully in the PAGA Settlement Agreement, the settlement provides for Defendants to pay a Gross Settlement Amount of $600,000.00.

22. Pursuant to the Settlement Agreement, PAGA Counsel proposes the following allocation of the Settlement to determine the Net Settlement Sum:

Gross Settlement Sum:	$600,000.00
Attorneys' Fees (1/3):	$200,000.00
Actual Litigation Costs:	$11,590.02
Plaintiff Service Award:	$7,500.00
Administrator Fee:	$17,750.00
PAGA Penalties:	$363,159.98

23. The PAGA Penalties ($363,159.98) consists of the Gross Settlement Amount minus court-approved PAGA Counsel's attorneys' fees, actual litigation costs, and administrator fee, as well as the named Plaintiff's service award.

24. The anticipated total PAGA Penalty Fund will be approximately $363,159.98. Seventy-five percent of the PAGA Penalty Fund ($272,369.99) will be paid to the LWDA as required by Labor Code section 2699(i). The remaining 25% of the PAGA Penalty Fund ($90,789.99) will be distributed via the individual PAGA payments.

25. In evaluating the reasonableness of the settlement offers, my Co-Counsel and I considered both my own experience with other similar PAGA settlements as well as PAGA settlements obtained by other firms. Here, it was also very possible that the Court would have exercised its discretion under PAGA to reduce the amount of estimated PAGA penalties of $7,138,900. See Par. 14, above. Under Labor Code section 2699(e)(2), a court may award a lesser amount than the maximum civil penalty specified under PAGA, if based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive or confiscatory. Courts often exercise their discretion to reduce the amount of PAGA penalties awarded to as little as $5.00 per pay period or 18% (or less) of the available PAGA penalties.[2] Here Defendant's violation of Labor Code §2802, specifically failing to affirmatively reimburse for Aggrieved Employees' work-related personal cell phone expenses associated with Defendant's two-factor authentication requirement, is no longer a practice of Defendant since Defendant has since issued laptops to Aggrieved Employees that are equipped with Windows Hello for Business which negate the use of personal cell phones for two factor authentication to log into Cognizant's or Cognizant's clients' systems and resources. Further, would this case not have settled, it is likely that by the time this case reached trial, all of Cognizant's California employees would have already received Cognizant-issued laptops and use of personal cell phones for work-related reasons would no longer exist. Therefore, any settlement

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[2] *See e.g., Kileigh Carrington v. Starbucks Corporation, et al.*, San Diego Superior Court Case No. 37-2014-00018637-CU-OE-CTL (Apr. 3, 2017) (holding that the plaintiff was only entitled to collect the reduced penalty amount of $5.00 for each pay period in which a meal period violation occurred or 5% of the PAGA penalties at issue); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *4 (reducing PAGA penalties by 82%).

obtained here will provide significant benefits to PAGA Aggrieved Employees. Furthermore, the amount recovered, approximately $8.39 per monthly pay period on a gross basis ($600,000 / 71,489 pay periods), is consistent with previously cited PAGA awards in *Carrington* and *Covidien* where the Court utilized its discretion and awarded a lesser amount than the maximum civil penalties specified under PAGA. Further, Defendant represented that of the 71,489 total monthly pay periods during the PAGA Period, approximately 55% of monthly pay periods arguably had no violations due to Defendant's implementation of Windows Hello for Business on Cognizant-issued laptops which began to roll out in 2023. Accordingly, the total "violative" monthly pay periods at issue are approximately 32,170 (71,489 monthly pay periods * 45% of monthly pay periods without company-issued laptops equipped with Windows Hello for Business) with an amount recovered per "violative" monthly pay period of $18.65 ($600,000 / 32,170 "violative" monthly pay periods). These figures are comparable to other PAGA settlements obtained by Plaintiff's counsel alleging similar PAGA claims for unreimbursed work-related personal cell phone expenses:

a. *Jernigan, et al. v. Pro Unlimited, Inc., et al.*, Los Angeles County Superior Court, Case No. 21STCV10027, PAGA settlement approval granted on June 7, 2022 by the Honorable Bruce G. Iwasaki. $1,047,000 PAGA settlement for 4,128 aggrieved employees that worked 76,000 months during the relevant time period. $1,047,000 / 76,000 months = $13.77 per monthly pay period;

b. *Geary v. Deloitte Services, LP*, San Francisco County Superior Court, Case No. CGC-22-598662, PAGA settlement approval granted on May 26, 2022 by the Honorable Richard B, Ulmer Jr. $137,900 PAGA settlement for 850 aggrieved employees that worked 10,700 months during the relevant time period. $137,900 / 10,700 months = $12.88 per monthly pay period; and

c. *Aranda v. Saladino's Inc.*, Sacramento County Superior Court, Case No. 34-2020-00280800-CU-OE-GDS, PAGA settlement approval granted on August 20, 2022 by the Honorable Christopher E. Krueger. $45,000 PAGA settlement for 189 aggrieved employees that worked 4,822 months during the relevant time period. $45,000 / 4,822 months = $9.33 per monthly pay period.

26. In evaluating the reasonableness of the settlement offers, my Co-Counsel and I also considered Defendant's legal and factual arguments, which are summarized below.

27. First, Defendant argued that the amount of reimbursement owed to each individual Aggrieved Employee who used their personal cell phone to perform two factor authentications is minimal because minimal data is used for purposes of performing two factor authentications and logging into Cognizant's or Cognizant's clients' resources and systems. Specifically, Defendant argued that no more than 10% of any Aggrieved Employees total monthly cell phone bill was attributed to work-related tasks. Accordingly, Defendant argued that a Court would take that into account and not award significant PAGA Penalties. Further, the function of PAGA penalties is almost punitive in nature and given the minimal damages owed to Aggrieved Employees due to the small amount of data used for Defendant's two factor authentication protocols, Plaintiff believes a Court may borrow a penalty analysis from the punitive damage context. *See Gober v. Ralphs Grocery Co.*, 137 Cal. App. 4th 204 (Mar. 1, 2006) (Court of Appeal concluded that a six to one ratio of punitive to compensatory damages is sufficient to punish and deter from similar future conduct); *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003) (SCOTUS suggested that the ratio between compensatory and punitive damages to be no higher than four to one and almost never more than nine to one).

28. Second, Defendant argued that approximately 55% of California employees have Cognizant-issued laptops which are equipped with Windows Hello for Business and that all monthly pay periods associated with those employees have no violation for the months where a Cognizant-issued laptop was provided. Significantly, the Windows Hello for Business implementation began in 2023 and will be fully implemented by April 2025 and ultimately negate Aggrieved Employees' need to use personal cell phones to perform two factor authentications for logging into Cognizant's or Cognizant's clients' resources and systems.

29. Third, Defendant argued that it has robust policies and practices governing

reimbursement which several Aggrieved Employees utilized. Specifically, Defendant implemented policies during the COVID-19 pandemic that allowed Aggrieved Employees to require reimbursement for home utilities associated with remote work, including personal cell phone expenses. Accordingly, Defendant argued that the monthly pay periods where reimbursements were provided are not violative and Defendant would not owe PAGA penalties associated with those monthly pay periods.

30. Plaintiff also recognized PAGA penalties may not be awarded at all because the Labor Commissioner has specifically stated recently that the main purpose for assessing PAGA penalties by the Labor and Workforce Development Agency is to enforce California's Labor Code, and obtain compliance. Specifically, with regard to assessing the adequacy of settlements, the penalty amounts to "promote PAGA's compliance and deterrence goals." See the Amicus Curiae Brief Submitted by the State Labor Commissioner in *Price v. Uber Technologies*, June 16, 2017, Case No. BC544512 (Los Angeles County Superior Court) attached hereto as **Exhibit 2**. According to the LWDA, who is the real party in interest in PAGA cases, since they are essentially qui tam actions, the PAGA penalties obtained are irrelevant if Labor Code compliance is obtained. *Id.* Here, it is no longer a practice of Defendant to require personal cell phone use to log into Cognizant's or Cognizant's clients' systems and resources due to Defendant's implementation of Windows Hello for Business, therefore, there is no doubt as to Defendant's Labor Code compliance.

31. As a result, my Co-Counsel and I believe that this settlement is fair, reasonable, and in the best interests of the Aggrieved Employees and the State of California.

32. None of the Aggrieved Employees will relinquish any of their individual rights as part of this settlement, except that all Aggrieved Employees, which includes Plaintiff, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from any and all claims, rights, demands, liabilities, including without limitation statutory, constitutional, contractual or common law claims for actual damages, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, equitable relief for all PAGA claims

alleged in the PAGA Notice and/or operative Complaint in the Action, or which could have been alleged based on the facts and allegations contained in the PAGA Notice and/or operative Complaint, which occurred during the PAGA Period, including but not limited to any claims based on, or that could be based on violations of Labor Code section 2802, penalties resulting from any alleged violation of Labor Code 2802, the legal rights and interests the State of California seeks to protect through PAGA, and the PAGA penalty claims described in the PAGA Notice. *See Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.,* 46 Cal.4th 993, 1003 (2009); (holding that "[PAGA] does not create property rights or any other substantive rights" and that "an aggrieved employee cannot assign a claim for statutory penalties because the employee does not own an assignable interest."); *Medina v. Vander Poel,* 523 B.R. 820, 825 (E.D. Cal. 2015) (a bankruptcy court finding that "PAGA plaintiffs do not have property rights in their cases."); *Villacres v. ABM Industries Inc.,* 189 Cal. App. 4th 562,579 (2010).

ATTORNEYS' FEES AND COSTS

33. This declarant is familiar with the contingent fee market throughout California, particularly as it pertains to complex employment, wage and hour, PAGA and class action litigation. During this litigation, PAGA Counsel litigated this case without receiving any payment for their services or reimbursement of their costs incurred for the benefit of the state of California and the Aggrieved Employees.

34. On behalf of my firm, I have negotiated numerous contingency fee agreements with plaintiffs, both as individuals and as representatives in class action suits. Many of those agreements provided that counsel will receive a fee that is 33.33% of any recovery that is obtained, and, in addition, that counsel be reimbursed for the costs they incurred out of the recovery amount.

35. Ackermann & Tilajef, P.C. has never been paid any money for attorneys' fees in this case and have advanced costs amounting to $11,590.02.

36. There are always risks attendant to billing cases on a contingency basis. Those risks are even higher in the current economic climate. Ackermann & Tilajef, P.C. bills the vast majority of its cases on contingency. As with every contingency case, there is always the

possibility that the Plaintiff will not prevail and PAGA Counsel will not receive any compensation for its services and/or that the Defendant will lack the assets necessary to satisfy any judgment obtained against it.

37. Courts have recognized our firm's expertise and skill in litigating complex employment cases and our 2024 and earlier yearly rate have been approved by numerous Courts. *See, e.g., Valdez v. Sysco Los Angeles, Inc.*, Los Angeles Cty. Sup. Ct., Case No. 23STCV00084, Order Granting Final Approval of Class Action Settlement, dated April 16, 2024 ("The Court find Class Counsel's hourly rates to be reasonable."); *Chachavac v. Kumar Management Corporation*, San Mateo Cty. Sup. Ct., Case No. 22-CIV-03110, Order Granting Final Approval of Class Action Settlement and Final Judgment, dated April 16, 2024 ("The Court approves of the hourly rates of Class Counsel and finds them to be reasonable."); *Torres v. GTM Wholesale Liquidators, Inc.*, San Diego Cty. Sup. Ct., Case No. 37-2021-00051013-CU-OE-CTL, Order of Final Approval and Judgment, dated April 5, 2024 (approving Claimant's Counsel's hourly rates); *Torres v. Fox Broadcasting Company, LLC*, Los Angeles Cty. Sup. Ct., Case No. 22STCV06823, Order Granting Final Approval of Class Action Settlement, dated May 9, 2023 (approving my hourly rate of $919 and Mr. Kreitenberg's hourly rate of $764 and stating that the total amount of fees requested "is fair and reasonable in light of the benefit obtained for the class."); *Pagh v. Wyndham Vacation Ownership, Inc.*, Case No. 8:19-cv-00812-JWH-ADSx, Docket No. 52 (Order Granting Plaintiffs' Motion for Attorneys' Fees and Costs [ECF No. 46], dated March 23 2021), the Honorable John W. Holcomb, p. 6 (noting Mr. Ackermann's "extensive experience in labor and employment litigation" and finding that "Mr. Ackermann's hourly rate of $800 is reasonable"); *Moss v. USF Reddaway, Inc.,* Case No. 5:15-cv-01541-JAK-FFM, Docket No. (Order Granting Final Approval, dated July 25, 2018), the Hon. Judge John Krondstadt, 124 at p. 13 of 15 (noting that "The attorneys and paralegals who worked on this matter have substantial experience in complex employment litigation … For example, Craig Ackermann has served as lead counsel or co-lead counsel in more than 200 class actions during his 21-year career, and the court approved my hourly rates of $660 to $715 for each respective year of the litigation, including $715 for work in 2018, as "within the range of reasonableness" for the "hourly rates

charged in this District"); *Santamour v. UPS Freight, Inc.,* Case No. 2:17-cv-00196, ECF No. 33 (Order Granting Final Approval, dated June 26, 2018) (the Hon. Chief Judge Thomas Rice of the Eastern District of Washington) ("The Court, based on its independent review as well as its review of the supporting documents submitted by Plaintiffs, finds the rates billed by Plaintiffs' counsel and paralegals are commensurate with the prevailing rates for similar representation in the relevant market", and approving my rate at $717 per hour).

38. A shareholder at my firm, Avi Kreitenberg, has 15 years of experience. Mr. Kreitenberg graduated from the University of West Los Angeles School of Law and has been licensed to practice law in the State of California since 2009. His yearly hourly rates have been approved by district and state courts throughout California in several class and PAGA action settlements. Mr. Kreitenberg participated in, among other things, drafting the PAGA Notice, PAGA Complaint, mediation brief, settlement agreement, and PAGA approval papers. A shareholder at my firm, Brian Denlinger, has 12 years of experience. Mr. Denlinger graduated from the University of Iowa College of Law in 2012, and is licensed to practice law in Washington State and Colorado. His yearly hourly rates have been approved by district and state courts throughout California in several class and PAGA action settlements. Mr. Denlinger participated in, among other things, reviewing the PAGA approval motion papers. My paralegal/legal assistant, Jaclyn Blackwell, is a legal assistant/paralegal with significant experience with class and PAGA actions. Her hourly rate has also been approved by several California courts in similar class action settlements.

39. The California Supreme Court approved trial courts' usage of the common fund method of awarding attorneys' fees in cases like this one, and upheld a fee awarded of 1/3 of the total settlement amount obtained for the class. *See Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5^{th} 480, 506 (2016); *see also,* 4 Newberg on Class Actions, § 14:6 at 552 ("fee awards in class actions average around one-third of the recovery"). Specifically, in *Laffitte*, the Court wrote: "[w]e 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"). *Id.* at 503. The California Supreme Court also noted that trial courts have the discretion to award fees as a percentage of the common fund, with or without the necessity to conduct a lodestar cross-check. *Id.* ("…[Courts] … retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.").

40. The California Supreme Court's *Laffitte* decision was consistent with its prior rulings recognizing that "when a number of persons are entitled in common to a specific fund, and an action brought by … plaintiffs for the benefit of all results in the creation or preservation of that fund, such … plaintiffs may be awarded attorneys' fees out of the fund." *Serrano III v. Priest*, 20 Cal.3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[A] lawyer who recovers a common fund . . . is entitled to reasonable attorneys' fees from the fund as a whole"). Notably, when fees are calculated as a percentage of the common fund, they should be calculated based on the amount that was available to be claimed, rather than as a percentage of the actual amount claimed. *See Boeing Co.,* 444 U.S. at 475-6, 480-1 (the SCOTUS held that attorneys for a successful class may recover a fee based on the fund created for the class, even if some class members make no claims against the fund, so that money remains in it that will be returned to the defendant, explaining: "[t]heir [class members'] right to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel." *See also Williams v. MGM-Pathe Communs. Co*., 129 F.3d 1026, 1027 (9th Cir. 1997) (trial court "abused its discretion by basing the fee on the class members' claims against the fund rather than on a percentage of the entire fund or on the lodestar").

41. The requested fees and costs of up to one-third of the Settlement Amount are also on point with awards obtained in similar cases granted approval by courts in California. *See e.g., Stuart v. RadioShack Corp*., No. C-07-4499 EMC, 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010) (approving fee award of 1/3 of the total maximum settlement amount of $4.5 million) (the court noted that the fee award of 1/3 of the total settlement was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits"); Memorandum & Order;

Wilson v. Kiewit Pacific Co., No. 09-cv-03630, ECF No. 119 (N.D. Cal. 2012) (approving fee award of 1/3 of the common fund and noting that such award is fair, reasonable and appropriate); *Singer v. Becton Dickinson and Co.*, No. 08-cv-821-IEG (BLM), 2010 WL 2196104, at * 8 (S.D. Cal. June 1, 2010) (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.*, No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (E.D. Cal. Nov. 14, 2007) (awarding fees of 1/3 of common fund in a wage and hour class action, noting: "[f]ee awards in class actions average around one-third of the recovery."); *Martin v. FedEx Ground Package System, Inc.*, No. C 06-6883 VRW, 2008 WL 5478576, at *8 (N.D. Cal. Dec. 31, 2008) (approving attorneys' fees of 1/3 of common fund).

42. Indeed, Courts have approved 1/3 of the fund created as fees in PAGA settlements, including this one. *See e.g.*, *Miller, et al. v. Mattress Firm, Inc.*, Santa Clara County Superior Court Case No. 17CV313148, Order Re: Motion to Approve PAGA Settlement, December 17, 2018 (the Honorable Thomas E. Kuhnle granted approval to a PAGA settlement and awarded PAGA Counsel's attorneys' fees in the amount of one-third of the total settlement); *Jernigan, et al. v. Pro Unlimited, Inc.*, Los Angeles County Superior Court Case No. 21STCV10027, Order Approving PAGA Settlement and Judgment, June 7, 2022 (the Honorable Bruce G. Iwasaki granted approval to a PAGA settlement and awarded PAGA Counsel's attorneys' fees in the amount of one-third of the total settlement); *Smith, et al. v. Burlington Merchandising Corporation, et al.*, San Bernardino County Superior Court Case No. CIVDS1929684, Order Approving PAGA Settlement and Judgment, October 23, 2020 (the Honorable David Cohn granted approval to a PAGA settlement and awarded PAGA Counsel's attorneys' fees in the amount of one-third of the total settlement); *Singletary v. Guard Management, Inc.*, San Diego County Superior Court Case No. 37-2018-00017663-CU-OE-NC, Order Approving Representative Action Settlement, June 21, 2018 (the Honorable Timothy M. Casserly granted approval to a PAGA settlement and awarded PAGA Counsel's attorneys' fees in the amount of one-third of the total settlement); *Peysakhovich v. Perry Automotive Group, Inc., et al.*, San Diego County Superior Court Case No. 37-2018-00025183-CU-OE-NC, Final Judgment, November 15, 2018 (the Honorable Ronald Frazier granted approval to a PAGA settlement and

awarded PAGA Counsel's attorneys' fees in the amount of one-third of the total settlement); *Dominguez v. Scandinavian Designs, Inc., et al.*, Sonoma County Superior Court Case No. SCV-263531, Final Judgment, January 22, 2019 (the Honorable Patrick M. Broderick granted approval to a PAGA settlement and awarded PAGA Counsel's attorneys' fees in the amount of one-third of the total settlement); *Freeman v. Redwood Wise Riders, Inc., et al.*, Solano County Superior Court Case No. FSC050140, Order Approving Representative Action Settlement, December 3, 2018 (the Honorable Wendy G. Getty granted approval to a PAGA settlement and awarded PAGA Counsel's attorneys' fees in the amount of one-third of the total settlement).

43. Additionally, PAGA Counsel's fee request is reasonable under the lodestar method. The following table summarizes the time each timekeeper at our firm expended on this case, their respective years of experience, and hourly billing rates, which have been approved by California state and federal Courts in other wage and hour class and representative actions:

Ackermann & Tilajef, P.C. Lodestar Summary				
	Yrs.	**Hours**	**Rate**	**Amount**
Craig Ackermann, Esq.	26	11.83	$1,141	$13,501.83
Avi Kreitenberg, Esq.	15	65.13	$948	$61,746.40
Brian Denlinger, Esq.[3]	12	7.93	$948	$7,505.00
Milton Gao, Esq.	2	4.54	$473	$2,144.26
Amanda Lutsock, Esq.[4]	1	0.03	$473	$15.77
Jaclyn Blackwell	12	13.70	$258	$3,534.60
TOTAL		**103.16**		**$88,447.86**

44. Authenticated copies of the contemporaneous time records maintained by Ackermann & Tilajef, P.C. for the services performed in this case are attached hereto as **Exhibit 3**. The hourly billing rate for each attorney who worked on the case is the reasonable and usual hourly rate charged by that attorney for services. The chart above does not include time that we anticipate spending on further proceedings, as may be necessary, including preparing for, and appearing at the PAGA approval hearing, corresponding with our client, writing tax letters to our client, and other typical and reasonably necessary tasks that arise post-final approval. The total number of hours spent on this matter by counsel and their staff is reasonable in light of the

[3] Not admitted to practice law in California. Admitted to practice law in Colorado and Washington State.
[4] Not admitted to practice law in California. Admitted to practice law in Washington State.

average time required in litigating similar cases

45. PAGA Counsel's total lodestar to date collectively amounts to $88,447.86, which represents a lodestar multiplier of 2.2.

46. Lodestar multipliers typically range between 1.5 to 4 times the lodestar amount or even higher where appropriate. *See e.g., Steiner v. American Broadcasting Co., Inc.* (9th Cir. 2007) 248 Fed. Appx. 780, 783 (multiplier of 6.85 "falls well within the range of multipliers that courts have allowed"); *Sternwest Corp. v. Ash* (1986) 183 Cal.App.3d 74, 76 (directing the trial court "to enhance the lodestar award by such factor (two, three, four or otherwise) that the court, in its discretion shall deem proper"); *Van Vraken v. Atlantic Richfield Co.,* 901 F. Supp. 294, 298 (N.D. Cal. 1995) (multipliers in the 3-4 range are common in lodestar awards); *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1052 (appendix listing numerous cases with multipliers exceeding the multiplier at issue here, and even up to a multiplier of 19.6); *Wershba,* 91 Cal. App. 4th at 255 ("[m]ultipliers can range from 2 to 4 or even higher"); *Amaral v. Cintas Corporation No. 2*, 163 Cal. App.4th 1157, 1174 (2008) (approving lodestar with a 1.65 multiplier in a fee-shifting case); Newberg on Class Actions, 3d Ed. 1992 § 14.03, 614-5 ("[m]ultipliers ranging from one to four are frequently awarded in common fund cases when the lodestar is applied. A large common fund award may warrant an even larger multiplier."); *City of Oakland v. Oakland Raiders*, (1988) 203 Cal. App. 3d 78, 83 (affirming 2.34 multiplier); *Bell v. Farmers Ins. Exchange* (2004) 115 Cal. App. 4th 715 (common fund award resulted in a multiplier of 6.15); *Glendora Community Redev. Agency v. Demeter* (1984) 155 Cal. App. 3d 465 (affirming multiplier in the amount of 12).

47. My firm has routinely been awarded lodestar multipliers of up to 2.01 in other cases, including a PAGA case in this Court. In 2021, Judge Brian C. Walsh of the Santa Clara County Superior Court found that a lodestar multiplier of 2.01 is a "reasonable multiplier". *See Cruz v. Island Hospitality Management III LLC*, Santa Clara County Superior Court, Case No. 19CV353766, Order After Hearing on August 7, 2020 and Judgment dated August 7, 2020; *see also*, *Wilson, et al. v. DGDG 1, LLC, et al.*, Santa Clara County Superior Court, Case No. 18CV331434, Tentative Ruling Re: Motion for Final Approval of Class Action Settlement;

Judgment, dated January 15, 2020 (Court approved a lodestar multiplier of 1.8 finding it "reasonable in light of the recovery"); *Zirpolo v. UAG Stevens Creek II, Inc.*¸ Santa Clara County Superior Court, Case No. 17CV313457, Order After Hearing on July 6, 2018 ("The fee request results in a multiplier of 1.9. As a cross-check, the lodestar supports the 1/3 percentage fee requested, particularly given the good result achieved by the settlement and the lack of objections to the attorney fee request."). In 2017, Judge Goode awarded us a 1.7 multiplier in *Haynes v. Reliable Trucking, Inc.*, Contra Costa Superior Court Case No. C16-01237 (May 26, 2017 Order Granting Final Approval); *See also Bond v. Ferguson Enterprises, Inc.,* 2011 WL 26488879, *13-14 (E.D. Cal. 2011) (Court approved a lodestar multiplier of 1.75 for same counsel here in a class action when performing a lodestar cross-check).

48. PAGA Counsel also seeks cost reimbursement in the amount of $11,590.02. As of the timing of this filing, the costs incurred in this case are estimated to be at least $11,395.85, including anticipated costs. Attached hereto as **Exhibit 4** is an itemized list of the costs incurred to date and anticipated to be incurred by our firm.

<u>THE PROPOSED EMPLOYEE LETTER TO ACCOMPANY THE PAGA PENALTY CHECKS</u>

49. The Parties have agreed that CPT Group, Inc. ("CPT") will administer the settlement. Although the aggrieved employees do not possess property rights in a PAGA action, and this action is not subject to the class action approval process, Plaintiff and Defendant have nevertheless agreed to provide an explanatory Employee Letter to the aggrieved employees. *See Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.,* 46 Cal.4th 993, 1003 (2009); (holding that "[PAGA] does not create property rights or any other substantive rights" and that "an aggrieved employee cannot assign a claim for statutory penalties because the employee does not own an assignable interest."); *Medina v. Vander Poel,* 523 B.R. 820, 825 (E.D. Cal. 2015) (holding "PAGA plaintiffs do not have property rights in their cases."); *Villacres v. ABM Industries Inc.,* 189 Cal. App. 4th 562, 579 (20 10); *see also Arias v. Superior Court,* 46 Cal.4th 969 (2009) (holding that a PAGA action is not governed by the class action procedural rules and therefore PAGA Plaintiffs need not obtain approval of the PAGA settlement thorough a motion

for preliminary or final approval); *accord Mendoza vs. Nordstrom, Inc.* 2017 Cal. Lexis 3171 (Cal. Supreme Court May 8, 2017) ("PAGA authorizes a representative action without the need for class certification."). Attached hereto as **Exhibit 5** is a true and correct copy of the proposed Employee Letter. Attached hereto as **Exhibit 6** is a true and correct copy of CPT's bid.

50. The LWDA was provided with a copy of the settlement documents and approval papers concurrently with the filing as required by PAGA. A copy of the email confirmation is attached hereto as **Exhibit 7**.

51. Plaintiff's PAGA Notice to the LWDA is attached hereto as **Exhibit 8**. A copy of the email confirmation to Plaintiff's PAGA Notice submission to the LWDA is attached hereto as **Exhibit 9**.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 8th day of April, 2025, in Beverly Hills, California.

/s/Craig J. Ackermann
CRAIG J. ACKERMANN