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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

DANIEL KENNEDY, an individual, in his representative capacity, on behalf of the State of California and fellow Aggrieved Employees, Plaintiff, v. HCL AMERICA SOLUTIONS INC., a California corporation; HCL AMERICA INC., a California corporation; and DOES 1-50, Inclusive, Defendants.	Case No. CGC-22-603642 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO APPROVE PAGA SETTLEMENT** Date: March 5, 2026 Time: 10:00 a.m. Dept.: 613

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Daniel Kennedy (hereinafter, "Plaintiff") seeks approval of the Settlement Agreement and Release of PAGA Claim ("Agreement")[1], which if approved, would provide valuable monetary relief for approximately 2,300 Aggrieved Employees, defined as all current and former non-exempt employees who were employed by Defendant HCL America, Inc. ("Defendant") in California for at least one pay period in the period from October 18, 2021 through November 1, 2025 ("PAGA Period"). Agreement at §§ A(4), A(9), A(18). This is only a settlement of Plaintiff's PAGA claim for civil penalties and is not a class settlement and does not release the individual wage claims, if any, of the affected employees other than Plaintiff herself. Cal. Lab. Code § 2699(g)(s); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

If approved, the Aggrieved Employees and the California Labor Workforce and Development Agency ("LWDA") will share in a Gross Settlement Amount of Two Million Five Hundred Sixty Thousand Dollars and Zero Cents ($2,560,000.00). Agreement at §§ A(12), C(2). After deducting any Court-approved PAGA Counsel Award and the Claims Administration Costs, the Net PAGA Settlement Amount shall be distributed 75% to the LWDA and 25% to the Aggrieved Employees. Agreement at §§ A(5), A(14), A(15), C(2)(d).

An objective evaluation of the proposed Settlement confirms that the relief negotiated on behalf of the Aggrieved Employees and the LWDA is fair and reasonable. The Settlement is a product of informed, adversarial, non-collusive and mediated negotiations between experienced counsel. As discussed below, the proposed Settlement satisfies all criteria for PAGA settlement approval. Accordingly, Plaintiff and PAGA Counsel respectfully request this Court grant approval of the Agreement. SOZ Dec., at ¶ 9.

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[1] The Agreement is attached as Ex. "1" to the Declaration of Shani O. Zakay ("SOZ Dec.") at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the SOZ Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Exhaustion of Administrative Remedies Under PAGA And Civil Action Against Defendants

On October 18, 2022, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendant, along with HCL America Solutions Inc. and HCL Technologies Limited. SOZ Dec., at ¶¶ 4; 10.

On December 22, 2022, Plaintiff filed a class action and PAGA complaint against Defendant, HCL America Solutions Inc. and HCL Technologies Limited in the Superior Court of the State of California, County of San Francisco, Case No. CGC-22-603642 (the "Action"). Following meet and confer efforts between the Parties, Plaintiff dismissed the proposed class claims alleged against Defendants without prejudice, dismissed Defendant HCL Technologies Limited, and filed a First Amended Representative Action Complaint on April 14, 2023, asserting a single cause of action for violations of the Private Attorneys General Act [Labor Code §§ 2698 et seq.] SOZ Dec., at ¶ 11.

On August 15, 2023, Plaintiff filed a Second Amended Complaint, which is the operative complaint in this Action, for the purpose of striking all claims in the Action that are individual to the Plaintiff, such that the only claims asserted are for penalties under the PAGA. On August 18, 2023, pursuant to the existence of an arbitration agreement between the Parties, the Court granted the Parties' joint stipulation to submit Plaintiff's individual PAGA claims to binding arbitration and to stay Plaintiff's non-individual representative PAGA claims pending the completion of arbitration. On August 25, 2023, Plaintiff filed an Arbitration Demand with JAMS, Ref. No. 5100001482, alleging individual wage and hour claims against Defendant. SOZ Dec., at ¶ 12

On June 13, 2025, the Parties participated in an all-day mediation presided over by Monique Ngo-Bonnici, Esq., an experienced mediator of wage and hour representative actions, which ultimately led to this Settlement. In advance of the mediation, Defendant provided Plaintiff with sufficient information to properly evaluate Defendant's liability exposure for civil penalties to the Aggrieved Employees. SOZ Dec., at ¶ 13. The data and documents Defendant produced included, among other things, the total number of Aggrieved Employees, pay periods, written wage and hour policies, and a sampling of time and payroll records for the Aggrieved Employees. The mediation did not result in an immediate settlement. However, the Parties continued settlement negotiations with the assistance of the mediator and eventually reached a settlement by accepting a mediator's proposal. This settlement was subsequently memorialized in the form of a long-form Settlement Agreement which is the subject of the instant motion. The Settlement was negotiated in light of all known facts and circumstances and the uncertainty associated with litigation – including the risk of Plaintiff not being able to maintain representative claims, the difficulty of proving Plaintiff's claims in a manageable trial, the merits of Defendant's potential defenses, and the significant delay and potential appellate issues inherent to litigation – and was reached after extensive arm's length negotiations, with the assistance of the mediator. SOZ Dec., at ¶ 14.

On July 10, 2025 and July 11, 2025, Plaintiff dismissed HCL America Solutions, Inc. from his operative complaint and from his arbitration demand, respectively. SOZ Dec., at ¶ 15.

The Settlement is intended to fully and finally resolve the Released PAGA Claims asserted by Plaintiff on behalf of the Aggrieved Employees and the State of California. This is only a settlement of the PAGA claims for civil penalties and is not a class settlement and does not release the individual claims, if any, of the Aggrieved Employees other than those of Plaintiff. This Settlement does not release any claim that is not a PAGA claim.[2] Nor does this Settlement waive Defendant's right to assert *res judicata* or other available defense to any asserted claim or lawsuit. SOZ Dec., at ¶ 16.

Pursuant to California Labor Code Section 2699(s), Plaintiff is providing a copy of the Agreement and this motion to the LWDA concurrently with the filing of the instant motion for settlement approval as set forth in the accompanying proof of service. Additionally, Plaintiff will submit to the LWDA a copy of the Court's judgment and order approving the Agreement within ten (10) days after entry of judgment or order. SOZ Dec., at ¶¶ 5, 17.

III. TERMS OF THE PAGA SETTLEMENT

A. <u>The Gross Settlement Amount</u>

This PAGA Settlement is subject to Court approval consistent with Labor Code § 2699(s)(2). The Agreement negotiated by the Parties provides for a "Gross Settlement Amount" payment in the

[2] As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th 175 at 196: "Nonparty employees are bound by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties."

amount of Two Million Five Hundred Sixty Thousand Dollars and Zero Cents ($2,560,000.00) to resolve the Released PAGA Claims. From the Gross Settlement Amount, there is a deduction of the PAGA Counsel Award consisting of attorneys' fees not to exceed 35% of the Gross Settlement Amount (currently estimated to be Eight Hundred Ninety-Six Thousand Dollars and Zero Cents ($896,000.00) ***and*** costs and expenses supported by declaration not to exceed Thirty-Five Thousand Dollars and Zero Cents ($35,000.00), and payment of Settlement Administration Costs in an amount not to exceed Thirteen Thousand Nine Hundred Fifty Dollars and Zero Cents ($13,950.00). Agreement at § C(2)(a). After these deductions, the amount remaining is the Net PAGA Settlement Amount currently estimated to be One Million Six Hundred Fifteen Thousand Fifty Dollars and Zero Cents ($1,615,050.00). Agreement at § C(2)(d).

Of the Net PAGA Settlement Amount, seventy-five percent (75%) shall be paid to the LWDA as the LWDA Payment, and the remaining twenty-five percent (25%) shall be paid to the Aggrieved Employees as the Aggrieved Employee Payment. § A(5). This allocation is required by Labor Code § 2699[3] as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

B. <u>Allocation of the Aggrieved Employee Payment</u>

The Claims Administrator will calculate each Aggrieved Employee Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of the Net PAGA Settlement Amount by the total number of Eligible Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's Eligible Pay Periods. Agreement at § C(2)(d).

At the time of mediation, Defendant estimated that there were 2,060 Aggrieved Employees who worked 100,000 Eligible Pay Periods during the PAGA Period. The Parties agreed that if the actual number of Pay Periods worked during the PAGA Period exceeded the above number by more than 10%, Defendant would have the option to either: (i) increase the Gross Settlement Amount proportionally by the same percentage as the increase in pay periods above 10% (e.g. if the number of PAGA pay periods increases by 11%, the Gross PAGA Settlement Amount will increase by 1%); or (2) end the PAGA Period on the last day on which the Eligible Pay Periods do not exceed 110,000 rather than increase the Gross Settlement Amount. Agreement at § F(1).

[3] This allocation is required by the former version of Labor Code § 2699, which governs the Action.

C. Funding and Distribution

Defendant shall fund the Gross Settlement Amount to the Claims Administrator within sixty (60) calendar days of the Effective Date (the "Funding Date"). Agreement at § A(11). The Effective Date means the date upon which approval of the Settlement is granted by the Court and the Final Order and Judgment is no longer subject to further judicial review. Agreement at § A(2).

Within sixty (60) days of the Effective Date, Defendant will deliver to the Claims Administrator a list of each Aggrieved Employee's full name; last known address; Social Security Number; and the number of Eligible Pay Periods each he or she worked. Agreement at § E(4).

Aggrieved Employee Payments shall be mailed by regular First-Class U.S. Mail to each Aggrieved Employee's last known mailing address no later than thirty (30) calendar days Defendant fully funds the Gross Settlement Agreement. Agreement at § E(8). Any checks issued to Aggrieved Employees shall remain valid and negotiable for one hundred eighty (180) days from the date of their issuance. Agreement at § E(9). In the event an Aggrieved Employee's check has not been cashed within one hundred eighty (180) days, all funds represented by such uncashed checks shall be transmitted to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. *Id.*

D. Release of Claims

Following the Court's approval of the Settlement and the Claims Administrator's receipt of the Gross Settlement Amount, in exchange for the consideration set forth in this Agreement, Plaintiff, in his individual and representative capacity on behalf of the LWDA, and all Alleged Aggrieved Employees will release the Released Parties from the Released PAGA Claims for the PAGA Period. Agreement at § D(1). The Released Parties are defined as Defendant and its parent, subsidiary, related, affiliated, predecessor, and successor companies/entities (including, but not limited to HCL America Solutions Inc. and HCL Technologies Limited) and each of their respective past, present, and future agents, employees, clients, officers, directors, managing agents, members, owners (whether direct or indirect), principals, fiduciaries, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, common law employers, contractors, affiliates, service providers, alter-egos, vendors, staffing agencies, payroll agencies, service providers, affiliated organizations, and any person and/or entity with potential or alleged to have joint liability. Agreement at § A(20). The Released PAGA Claims include any and all PAGA claims made in the operative and amended Complaints, LWDA letter(s), or all PAGA claims that reasonably could have been alleged based on the factual allegations contained in the operative and amended Complaint or LWDA letter(s), including claims, debts, liabilities, demands, actions, or causes of action for civil penalties under the PAGA that were alleged or which could have been alleged based on the factual allegations in the PAGA Notice, Demand, and Complaint that occurred during the PAGA Period including all PAGA claims for civil penalties for failure to accurately record and pay for all time worked, including minimum wages and overtime and/or unlawful deductions; failure to accurately calculate the regular rate of pay; failure to provide compliant meal and rest periods and premiums in lieu thereof; failure to timely pay all wages due; failure to accurately pay meal/rest premiums and/or sick wages; failure to pay all wages due at termination and during employment; failure to keep accurate payroll records; failure to provide personnel files; failure to reimburse necessary business expenses; and failure to provide accurate itemized wage statements, including alleged violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1198.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 2802, 2804, 2699 et seq., and the applicable Wage Order(s). Agreement at § D(1).

The Alleged Aggrieved Employees do not release any other claims, including class claims, claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the PAGA Period. Agreement at § D(1).

In addition to the Gross Settlement Amount, Defendant has agreed to separately settle Plaintiff's individual claims set forth in his JAMS Arbitration Demand pursuant to a separate confidential Individual Settlement Agreement ("Individual Settlement Agreement"). Agreement at § D(3). Plaintiff's release of his individual claims via the Individual Settlement. The Parties are unaware of any other cases, including class, individual and PAGA, that might be affected by this Settlement.

IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT

Labor Code § 2699(s) requires that the Court "shall review and approve any settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." Further, the Court in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77 stated that "the trial court must review and approve a PAGA settlement (§ 2699, subd.(l)(2)), and the Supreme Court has in dictum referred to this review as a safeguard." (Citing *Kim v. Reins International California, Inc*. (2020) 9 Cal.5th 73, 88; internal quotations omitted.) "The Supreme Court has also observed that trial court approval ensures that any negotiated resolution is fair to those affected," leading the Court in *Moniz* to determine that "adoption of a standard of review for settlements that prevents fraud, collusion or unfairness, and protects the interests of the public and the LWDA in the enforcement of state labor laws is warranted." (*Moniz, supra*, 72 Cal.App.5th at 77; citing *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-1801; internal citations omitted.) In other words, "[i]n review and approval of a proposed settlement under section 2699, subd. (l)(2), a trial court thus must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the state's interests, and hence the public interest." (*Moniz, supra,* 72 Cal.App.5th at 88.) Consequently, the Parties respectfully ask the Court to review and approve the Settlement of the PAGA claims and the amount to be paid as part of the proposed Settlement.

A. <u>The Gross Settlement Amount is Fair and Reasonable</u>

The Gross Settlement Amount of $2,560,000.00 is fair and reasonable considering the nature and magnitude of the being settled and the various potential impediments to recovery. The various models were informed by PAGA Counsel's investigation, including the analysis of a sample of time and payroll data. PAGA Counsel projected Defendant's liability exposure to up to $15,415,830 in PAGA penalties, as detailed below:

Labor Code Section	Penalty Amount	Pay Periods	Discount Applied	Realistic Penalties
Meal Period Violations Cal. Lab. Code §§ 226.7 and 512	$50	82,240	0%	$4,112,004
Rest Period Violations Cal. Lab. Code §§ 226.7 and 512	$50	82,240	50%	$2,056,002

Unpaid Wages Cal. Lab. Code §§ 201, 202, 203, 204, 510, 1194, 1197, 1997.1 1198 and 558	$100	91,000	50%	$4,550,000
Business Reimbursement Violations Cal. Lab. Code § 2802	$100	45,500	50%	$2,275,000
Wage Statement Violations Cal. Lab. Code § 226(a)	$100	91,000	75%	$2,275,000
Waiting Time Penalties Cal. Lab. Code § 203	$100	1,039	75%	$25,975
Regular Rate Violations Cal. Lab. Code §510	$100	1,218	0%	$121,849

SOZ Dec., ¶ 18.

i. Estimated Penalties for Meal Period Violations

Plaintiff alleges that Defendant failed to provide meal periods in violation of Cal. Lab. Code § 512. Specifically, Plaintiff alleges that Defendant's timekeeping data reveals systemic noncompliance, with approximately 80% of shifts lasting more than six hours showing <u>no</u> recorded meal break. Among the remaining shifts where a meal break was recorded, 73.1% were logged as exactly 30 minutes, a statistical improbability. Plaintiff further alleges that as an on-site IT administrator, he was regularly required to remain available to resolve urgent support tickets and technical issues, leaving little to no opportunity to step away for an uninterrupted meal. SOZ Dec., ¶ 19.

Plaintiff estimated the penalties for this claim at $4,112,004. This number was calculated by multiplying the number of affected pay periods by a penalty of $50. In assigning $50 per meal break violation when calculating Defendant's exposure under PAGA, Plaintiff considered Defendant's argument that increased civil penalties for subsequent violations do not apply unless the plaintiff can present evidence that the Labor Commissioner or a court notified the employer that it was in violation of the Labor Code. (*Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 355-356, citing *Bernstein v. Virgin America, Inc.* (2021) 3 F.4th 1127, 1144; see *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 ["Until the employer has been notified that it is violating a Labor Code provision … the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties."].) Separately, Defendant argued that courts have considerable discretion to reduce the penalty awards under PAGA. In *Carrington v. Starbucks Corp.*

(2018) 30 Cal.App.5th 504, the trial court reduced the maximum PAGA penalty amount by 90%. The Court of Appeal affirmed a judgment after trial which only provided for a PAGA penalty of **$5** per pay period. In *Magadia v. Wal-Mart Associates, Inc.* (2019) 384 F.Supp.3d 1058, a federal court reduced PAGA penalties by 66.4%. In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from $2,800,000 to $500,000, a reduction of 82.2% because the court found maximum penalties "unjust" because the employees had suffered no injuries. Some trial courts have even awarded no civil penalties, even when Labor Code violations are established. (*See In re Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589 (affirming an award of $0 in PAGA penalties in a wage and hour class action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).) Accordingly, it is unlikely that Plaintiff would recover full penalty amounts even if they prevailed in establishing the underlying Labor Code violations. SOZ Dec., ¶ 20.

ii. Estimated Penalties for Rest Period Violations

Plaintiff further alleges that Defendant failed to provide rest breaks in violation of Cal. Lab. Code § 226.7. Specifically, Plaintiff alleges that due to the constant demands of his role and the lack of backup coverage, he was rarely able to step away from his duties. He was routinely expected to remain available to respond to support tickets and urgent technical issues. As a result, his rest breaks were frequently late, interrupted, or missed altogether. Plaintiff also argued that Defendant's rest period policy improperly informed Aggrieved Employees that they were not permitted to leave the premises. Defendant argued Plaintiff's rest break claim would have mainly relied on the testimony of Aggrieved Employees, making it a riskier claim. Establishing liability likely would have entailed competing testimony stating either rest breaks were taken, or rest breaks were voluntarily waived. Considering Defendant's defenses, and because time records do not monitor rest breaks, Plaintiff estimates Defendant's exposure for this claim to be approximately $2,056,002. This number was calculated by mirroring the liability assigned to the meal break claim (with the idea that an Aggrieved Employee that is unable to take a compliant meal breaks is likely unable to take all compliant rest breaks during that shift), with a 50% discount applied to account for the obstacles described above. SOZ Dec., ¶ 21.

iii. Estimated Penalties for Unpaid Wages

Plaintiff alleges that Defendant failed to pay for all hours worked. Specifically, Plaintiff alleges that Defendant utilized an electronic timekeeping system that required Aggrieved Employees to manually enter their time worked. However, this system did not function as a true contemporaneous time-tracking tool. Instead of clocking in and out in real time, employees were instructed to use their laptops to log into Defendant's portal—often from home, once their shift was complete, and input their scheduled hours. The system did not prompt employees, nor were employees instructed, to report actual start and end times. The timekeeping data produced by Defendant shows that nearly 85% of shifts were recorded as exactly eight hours and 99.7% of all entries were rounded to a quarter-hour interval—indicators of schedule-based reporting rather than actual timekeeping. Further, Defendant maintained a written policy that required Aggrieved Employees to have prior authorization from their supervisor before working any overtime or face discipline. The result was a systemic failure to capture off-the-clock work. SOZ Dec., ¶ 22.

Defendant argued that Aggrieved Employees are responsible for recording their own hours and were instructed to record all time worked, thus to the extent time worked was not captured, this was the responsibility of the individual Aggrieved Employee. Plaintiff estimated Defendant's liability for this claim to be $4,550,000. This number was calculated by assuming each Aggrieved Employee worked some off-the-clock work each pay period during the PAGA Period (91,000). This number was then multiplied by a $100 penalty. Taking Defendant's defenses into account, Plaintiff then applied a 50% discount. SOZ Dec., ¶ 23.

iv. Estimated Penalties for Defendant's Alleged Business Expense Violations

Plaintiff alleges that Defendant failed to reimburse necessary business expenses in violation of Cal. Lab. Code § 2802. Specifically, Plaintiff alleges that Defendant required Plaintiff and Aggrieved Employees to use their personal cellular phones and home internet for work purposes without providing reimbursement. Defendant's policy acknowledged that employees may be required to use personal phones for work-related communications and asserted the right to delete data from employees' personal devices upon termination, demonstrating Defendant's control over and benefit from employees' personal devices. Plaintiff estimates Defendant's exposure for this claim to be approximately $2,275,000. This number was calculated by multiplying half of the total pay periods

(45,500) by a penalty of $100, as reimbursement was not required each pay period, but each month. Plaintiff then discounted that number by 50% to account for Aggrieved Employees that occupied roles that did require use of their personal cell phones. SOZ Dec., ¶ 24.

v. Estimated Penalties for Defendant's Alleged Regular Rate Violations

Plaintiff alleges that Defendant failed to include non-discretionary bonuses in the regular rate of pay when calculating overtime in violation of Cal. Lab. Code § 510. Specifically, Plaintiff alleges that he and other Aggrieved Employees regularly received non-discretionary compensation under various earnings codes, including PBN ENGAGE BON (Code 240), KPP BONUS (Code 15), RET RETENTION BON (Code 55), CIB CLIENT BONUS (Code 30), and INC INCENTIVE PAY (Code 25). Payroll data shows these payments were not properly factored into the regular rate when calculating overtime. Plaintiff estimates Defendant's exposure for this claim to be approximately $121,849. This number was calculated by multiplying the number of pay periods affected (1,218) by a penalty of $100. SOZ Dec., ¶ 25.

a. **Estimated Derivative Penalties for Wage Statement Violations and Defendant's Violations Pursuant to Labor Code § 203**

Plaintiff alleges that Defendant's labor code violations for non-compliant meal and rest breaks, unpaid wages, and failure to calculate the proper regular rate of pay result in derivative liability for penalties resulting from inaccurate wage statements. Defendant argued that even if they failed to furnish accurate wage statements, Plaintiff cannot establish that their failure was knowing and intentional or that such failure resulted in actual harm to the Aggrieved Employees. Accordingly, Plaintiff applied a 75% discount to this claim and assigned $100 per violation. Plaintiff estimated that Defendants' exposure for this claim to be approximately $2,275,000. SOZ Dec., ¶ 26.

Further, Plaintiff alleges that Defendant's Labor Code violations resulted in derivative liability for waiting time penalties. Defendant argued that Plaintiff cannot prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, for the reasons stated above, *Naranjo v. Spectrum Security Services, Inc.*, 15 Cal. 5th 1056 (2024), creates difficulty in Plaintiff succeeding in a purely derivative waiting time penalty claim. Notwithstanding the uncertain nature of the claims, PAGA Counsel's Conservative Model discounted the waiting time penalty claim by 75% and estimated Defendants' exposure for this claim to be approximately $25,975.00. SOZ Dec., ¶ 27.

B. The Gross Settlement Compares Favorably to The Likely Recover

Given the substantial litigation risks outlined above—including Defendant's defenses regarding notice requirements under *Amaral*, the court's discretion to reduce penalties under *Carrington*, challenges to proving off-the-clock work, competing testimony regarding rest breaks, and the difficulty of establishing reimbursement violations across all employees—the Gross Settlement Amount represents a fair and reasonable compromise. The Gross Settlement Amount, which is 16.6% of Defendant' of Defendant's estimated liability, appropriately balances the value of the claims against the significant risks and costs of continued litigation and provides meaningful relief to the Aggrieved Employees and the LWDA while avoiding years of additional litigation with uncertain results. The Gross Settlement Amount also compares favorably to the likely recovery of PAGA penalties through continued litigation.

Defendant's maximum exposure to PAGA penalties is not a realistic outcome of the litigation because it fails to account for the risks of continued litigation including, but not limited to, Defendant's defenses. Here, Defendant argues that it can only be assessed civil penalties for actual violations of the Labor Code. *See* Cal. Lab. Code § 2699, subd. (f)(2). In other words, to recover any civil penalties, Plaintiff would be required to prove the underlying Labor Code violations. (*Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ["Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."].) To do this, Plaintiff would need to prove each Aggrieved Employee was subject to the alleged Labor Code violation. Thus, Defendant contends that Plaintiff would be required to "prove Labor Code violations with respect to each and every individual on whose behalf plaintiff seeks to recover civil penalties under PAGA." *Hibbs-Rines v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009).

Lastly, the maximum penalty figure does not consider that Courts have 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. Cal. Lab. Code § 2699, subd. (e)(2). In fact, courts routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g. Carrington v. Starbucks Corp*., 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to $5 per pay period; "Although the trial court may have disagreed with Starbucks regarding the issue of liability, it clearly took the circumstances proffered by Starbucks into consideration when it imposed the penalty … only $5 per initial violation"); *Kaanaana v. Barrett Bus. Servs., Inc*., 29 Cal. App. 5th 778, 788 (2018), review granted on other grounds (noting that the trial court "exercised its discretion to reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average, plaintiffs were deprived of 13 percent of the 30-minute meal period"); *Fleming v. Covidien, Inc*., 2011 WL 7563047, *4 (C.D. Cal. 2011) (exercising discretion to reduce the maximum amount of PAGA civil penalties for plaintiffs' section 226 claims from $2,800,000 to $500,000 because the employees suffered no injuries as a result of the erroneous wage statements and made no complaints about the errors or omissions in the wage statements, thus reducing the maximum penalty by 82%); *see also*, *Gola v. Univ. of San Francisco,* 90 Cal. App. 5th 548, 307 Cal. Rptr. 3d 273 (2023), *as modified* (May 9, 2023), *and disapproved of by Naranjo v. Spectrum Sec. Servs., Inc.,* *15 Cal. 5th 1056, 547 P.3d 980 (2024)* (concluding after a full-blown bench trial that a penalty of 15% of the maximum PAGA penalties was the appropriate penalty). The gross amount obtained by PAGA Counsel is reasonable in light of Defendant's arguments.

Given Defendant's defenses to the claimed Labor Code violations at issue, and the risks and costs of continued litigation, Plaintiff and PAGA Counsel believe that the Gross Settlement Amount is fair and reasonable. This Settlement was negotiated by experienced counsel at arm's length. The LWDA has been provided notice of this motion and the PAGA Settlement, and the decision of LWDA to accept the PAGA Settlement and not oppose the motion should be given considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and protect its own rights. SOZ Dec., ¶ 28.

C. The Remaining Settlement Terms Are Fair and Reasonable

Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code § 2699(s) does not require that a court approve any other elements of the proposed settlement. Because there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the Court only needs to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are reasonable.

V. THE PAGA COUNSEL AWARD IS FAIR AND REASONABLE

PAGA Counsel seeks approval of not more than 35% of the Gross Settlement Amount (currently estimated to be Eight Hundred Ninety-Six Thousand Dollars and Zero Cents ($896,000.00)) and attorneys' expenses not to exceed $35,000.00[4] for reimbursement of actually incurred litigation expenses. PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this Settlement is a matter of contract for a contingent representation. Nevertheless, should this Court review the requested attorneys' fees, the requested fees and costs are reasonable for experienced wage and hour counsel.

A. <u>The Requested Attorneys' Fees are Fair and Reasonable</u>

The requested attorneys' fees of 35% of the Gross Settlement Amount and reimbursement of attorneys' expenses of up to $35,000.00 are fair, reasonable, and justified by the result achieved. PAGA Counsel negotiated a recovery of $2,560,000.00, and this result justifies the requested fees equal to 35% of this recovery. At the time this case was brought, the result was far from certain. Defendant's defenses to the merits of the case created difficulties with proof and complex legal issues for PAGA Counsel to overcome. Here, as noted above in section IV(A), several defenses asserted by Defendant present serious threats to the claims of Plaintiff and the Aggrieved Employees. While Plaintiff believes that these defenses could be overcome, Defendant maintains that these defenses have merit and therefore present a serious risk to recovery. The Settlement was possible because, in PAGA Counsel's eyes, PAGA Counsel was able to persuade Defendant that there was an appreciable risk that Plaintiff would prevail on the factual and legal issues underlying liability and overcome difficulties in proof as to monetary relief. SOZ Dec., ¶ 29.

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[4] As detailed *infra*, PAGA Counsel incurred $18,661.09 litigating this matter, including $250.00 in anticipated costs to file this motion.

Further, the fee award is justified by the work performed. Generally, the Ninth Circuit and California courts award multipliers between 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the "majority" range for risk multipliers).

PAGA Counsel's current combined loadstar is $319,097.50, ***including*** all attorneys' fees incurred in litigating the related arbitration opened by Plaintiff. SOZ Dec., ¶ 7; Declaration of Jean Claude Lapuyade ("JCL Dec.") at ¶ 14. The work performed by PAGA Counsel in arbitration benefited the PAGA Action. Specifically, the information and documents obtained in the course of this arbitration strengthened Plaintiff's claims that his standing to assert PAGA claims on behalf of the Aggrieved Employees was proper, that Plaintiff was in fact an "aggrieved employee", that a PAGA trial would be manageable, and that Defendant had PAGA-wide liability. Plaintiff believes the worked performed in the arbitration was critical to the settlement of the PAGA Action. SOZ Dec. ¶ 30. Thus, PAGA Counsel's fee request is equal to PAGA Counsel's total combined loadstar with a multiplier of 2.81, comparable to the 2.13 multiplier approved in *Laffitte.* See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte,* approved 30% fee award with cross-check lodestar multiplier of 2.26).

B. PAGA Counsel Are Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs.

Attorneys who create a common fund for the benefit of a group of individuals are entitled to payment from the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include counsel's incurred expenses because those who benefit from their effort should share in the cost. *See Rider v. City of San Diego,* 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *see also Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded litigation costs for consultants, online legal research, copying, postage, long distance charges, travel expenses, filing fees, mediation fees and investigation fees). PAGA Counsel collectively expended $18,661,09 prosecuting this action (JCL Law Firm, APC - $8,558.63; Zakay Law Group, APLC - $10,102.46, including $250 in anticipated costs to file this motion). JCL Dec. ¶¶ 4, 15; SOZ Dec., ¶ 6. PAGA Counsels' out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; postage; mediation fees; and expert costs, which were all incurred during, and were necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed. SOZ Dec., ¶ 31; JCL Dec., ¶16.

VI. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests this Court approve the PAGA Settlement as set forth in the Agreement and enter the proposed order and judgment submitted herewith.

Dated: January 30, 2026

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