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9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

10 **COUNTY OF ALAMEDA**

11
12 **RICHARD DAVILA**, individually and on
behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 **CONCENTRIX SOLUTIONS**
16 **CORPORATION**, a New York Corporation,
and **CONCENTRIX SERVICES US, INC.**, a
17 Delaware Corporation,

18 Defendants.

CASE NO. RG20079700

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: May 19, 2023

Time: 9:00 a.m.

Dept.: 21

Reservation No. 310867829180

1 **I. INTRODUCTION**

2 Plaintiff Richard Davila (“Plaintiff”) seeks preliminary approval of a non-reversionary
3 \$385,000 settlement of his unreimbursed expense claims against Concentrix Solutions Corporation
4 and Concentrix Services US, Inc. (collectively, “Defendants” or “Concentrix”) on behalf of
5 approximately 256 exempt and non-exempt employees who worked for Defendants in California
6 (“Class Members” or “CMs”) from November 5, 2016, through January 6, 2023 (“Class Period”).
7 The Settlement Agreement is attached as **Exhibit 1** to the Proposed Order, filed herewith. This
8 settlement was reached after a full-day mediation with a well-respected mediator and was preceded
9 by an exchange of formal and informal discovery as well as Plaintiff counsel’s investigation. Plaintiff
10 estimates that the Gross Settlement represents 71% of Defendants’ potential exposure (excluding
11 PAGA), which is an excellent result in light of the many risks posed by continued litigation. If
12 approved, the Settlement will provide CMs with an average gross recovery of \$1,503.91 and net
13 recovery of \$770.51. Declaration of Julian Hammond in Support of Plaintiff’s Motion for Preliminary
14 Approval of Class Action Settlement (“Hammond Decl.”), filed herewith, ¶ 26.

15 The Settlement avoids the risks associated with further litigation, and CMs will obtain a
16 substantial recovery now without the risks and lengthy delays that further litigation would entail. As
17 shown below, the terms of the Settlement are fair and reasonable and satisfy the criteria for judicial
18 approval. Accordingly, the Court should grant preliminary approval, approve the proposed Notice,
19 and set a date for final approval.

20 **II. OVERVIEW OF THE SETTLEMENT**

21 The Settlement resolves all claims asserted by Plaintiff in the operative Third Amended
22 Complaint on behalf of the proposed Class. The key Settlement terms are:

23 1. Settlement Class Definition—The CMs consist of all current and former exempt and
24 non-exempt employees of Defendants who worked at any time in the State of California from
25 November 5, 2016 to January 6, 2023. SA § 3.

26 2. Gross Settlement Amount (“GSA”) – In consideration for the general release of all
27 claims of the CMs against Defendants (described more fully herein), Concentrix agrees to pay a non-
28 reversionary sum of \$385,000 as a full and complete settlement of all claims arising from this lawsuit.
SA § 16.

 3. Attorneys’ Fees, Costs, and Named Plaintiff’s Service Award – Class Counsel will
seek attorneys’ fees of up to \$134,750 (35% of the GSA) and up to \$25,000 to reimburse their out-
of-pocket litigation expenses. SA § 48.b. Class Counsel will seek an Individual Class Settlement

1 Payment of \$10,000 for Plaintiff. SA § 48.a.

2 4. PAGA Penalties – The Settlement allocates \$10,000 to the PAGA claim. SA § 48.c.
3 The LWDA will be paid 75% of that amount (\$7,500) and the remaining \$2,500 will be paid on a
4 *pro rata* basis to all Class Members who worked during the PAGA Period, even if he or she opts out
5 of the class settlement. Id.

6 5. Settlement Administration Costs will not exceed \$8,000. SA § 48.d. The Parties
7 selected Simpluris, Inc. (“Simpluris”) as Administrator. SA § 2.

8 6. Net Settlement Amount (“NSA”) is the GSA less class counsel fees and litigation
9 expenses approved by the Court, the named Plaintiff’s Service Award, the Settlement Administration
10 Costs, and the PAGA Penalties, totaling approximately \$197,250. subject to the Court’s approval.
11 SA § 49. From this amount, each CM who does not timely opt out of the Settlement will receive
12 payment based on the number of months worked during the Class Period. SA § 49.a.

13 7. Class Notice – Within 10 business days of preliminary approval, Defendants will
14 provide Simpluris with (a) the names, employment identification number, last known addresses, last
15 known telephone numbers, and Social Security numbers of each Class Member to the extent
16 available; and (b) the number of months worked by each Class Member during the Class Period to
17 the extent available. SA § 52.a. Within 20 days of preliminary approval, after updating the addresses,
18 Simpluris will mail each CM a Notice substantially in the form attached to the Settlement Agreement
19 as **Exhibit A**. SA § 52.b.

20 8. Automatic Participation – The Settlement is non-reversionary, and each CM will
21 automatically receive his or her share of the NSA, unless he or she opts out. SA § 49.c.

22 9. Opting Out or Objecting – CMs who wish to opt out of the Settlement must send a
23 written Request for exclusion to Simpluris requesting to opt out within 45 calendar days of the date
24 the Notices are mailed out. SA § 53.c. Any CM who properly requests to opt out will not be entitled
25 to receive any payment under the Settlement and will not be bound by the Settlement, except that
26 they will still receive their share of PAGA Penalties and be bound by the release of PAGA claims.
27 Id. Alternatively, a CM may object to the Settlement by sending a written statement objecting to the
28 Settlement. SA § 53.a.

10. Tax Consequences of Settlement Payments – For tax purposes, Settlement payments
will be treated as reimbursed expenses and reported on an IRS Form 1099. SA § 49.b.

11. Uncashed Checks – Settlement checks not cashed within 180 days of the date of
mailing by Simpluris will be voided and funds will be tendered to the Alameda County Court
Appointed Special Advocates as *cy pres* recipient under Cal. Code of Civ. Proc. § 384. SA § 60.

Neither Plaintiff nor Class Counsel have any interest, financial or otherwise, in the proposed *cy pres* recipient. Hammond Decl., ¶ 39.

12. Scope of Release and Final Judgment – The class release in the SA is limited to claims arising during the Class Period, that were or could have been alleged based the facts alleged in the original and amended complaints in the Action. SA § 33. The named Plaintiff will also give a general release of all claims, known or unknown, that he has or may have had against Defendants.

III. OVERVIEW OF THE LITIGATION

A. Factual and Procedural Background

Plaintiff worked for Concentrix as a Customer Product Support Representative from approximately June of 2016 through approximately August of 2020. Hammond Decl. ¶ 12. Plaintiff filed his original complaint on November 5, 2020, asserting class claims for Concentrix’s alleged failure to reimburse its employees for necessary business expenses associated with working remotely in violation of Labor Code § 2802, and a claim for unfair competition under Business and Professions Code §§ 17200 *et seq.* Hammond Decl. ¶ 13. On October 20, 2020, Plaintiff provided notice to the California Labor & Workforce Development Agency (“LWDA”) and Defendant of the violations described above pursuant to Labor Code § 2699.3(a)(1). *Id.* ¶ 12. On February 16, 2021, Plaintiff filed a First Amended Complaint adding a claim for civil penalties under Labor Code § 2698 *et seq.* (“PAGA”). *Id.* ¶ 14. On October 14, 2021, pursuant to stipulation of the Parties, Plaintiff filed his Second Amended Complaint adding Concentrix Solutions Corporation as a defendant and clarifying the Class definition. *Id.* ¶ 16. On October 22, 2021, Plaintiff filed an amended letter with the LWDA adding Concentrix Solutions Corporation. *Id.* On March 10, 2023, Plaintiff filed his operative Third Amended Complaint adding a PAGA claim against Concentrix Solutions Corporation. *Id.* ¶ 21.

Concentrix denied Plaintiff’s class claims, asserted that it maintained compliant policies and practices, and vigorously contested liability, the amount of claimed damages, Plaintiff’s alleged entitlement to damages and penalties, and the propriety of class certification due to the alleged predominance of individualized issues and the unmanageability of the claims. SA ¶ 67.

B. Discovery and Investigation

On March 10, 2021, Plaintiff served written discovery on Defendant Concentrix Services US, to which it responded, and produced documents including an employee handbook and policy documents related to requirements for specific telephone hardware and internet and phone connections applicable to individuals working remotely. *Id.* ¶ 15. Upon agreeing to schedule mediation, the parties engaged in informal discovery and exchanged details regarding Plaintiff’s claims and Concentrix’s defenses. Specifically, Defendants produced relevant data points including

1 Class size, months worked during the Class Period, PAGA group size, and the total number of months
2 worked during the PAGA Period, as well as other documentary evidence regarding the claims
3 asserted in the case. Id. ¶ 19. Additionally, Plaintiff's counsel gathered information from Defendants'
4 website, emails, and employee manuals, concerning Concentrix's response to COVID-19 and
Concentrix's policies and procedures concerning remote work. Id.

5 **C. Mediation**

6 On October 27, 2022, the Parties attended a full-day mediation with Louis Marlin, an
7 experienced mediator. Hammond Decl. ¶ 20. Prior to the mediation, Plaintiff submitted a detailed
8 mediation brief which described the facts and law, summarized the informal discovery exchanged in
9 aid of mediation, and presented a calculation of damages for the underlying unreimbursed expense
10 claims if the case were to be certified as a class action and go to trial. Id. During the mediation, the
11 parties discussed all aspects of the case, including the risks of litigation to both parties as well as the
12 risks to both parties of proceeding with a motion for class certification in addition to the law relating
13 to reimbursement of business expenses under Labor Code section 2802. At the end of mediation and
14 following extensive arms' length negotiations at the mediation, Mr. Marlin made a mediator's
proposal, which was accepted by the Parties, and is memorialized in the Settlement Agreement now
presented to the Court for approval. Id.

15 **IV. PROVISIONAL CERTIFICATION FOR SETTLEMENT PURPOSES IS MERITED**

16 When a negotiated class action settlement is reached prior to certification, the Court may
17 approve certification of a provisional settlement class. Cal. Rules of Court, Rule 3.769(d). A class
18 is certifiable if (1) it is ascertainable and sufficiently numerous; (2) there is a well-defined
19 community of interest; and (3) a class action would be a superior method of adjudication. *See id.* at
20 435; *see also Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012).

21 Defendants do not dispute, for settlement purposes only, that all of the elements for
22 provisional class certification are met here. Defendants do not concede that certification is
23 appropriate outside of this Settlement and preserve all rights to oppose certification if, for any reason,
the settlement does not become effective.

24 **A. The Class Is Ascertainable and Sufficiently Numerous**

25 Whether a class is ascertainable is determined by examining the class definition, the size of
26 the class, and the means available for identifying CMs. *See Reyes v. Bd. of Supervisors*, 196 Cal.
27 App. 3d 1263, 1271 (1987). CMs are "ascertainable" because they may be readily identified from
28 CONCENTRIX's records. *See Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 986 n.15 (2019). For
settlement purposes only, Defendants do not dispute that the Class is sufficiently numerous because

1 it has approximately 256 members. Hammond Decl. ¶ 3.

2 **B. A “Community of Interest” Exists Among CMs**

3 The “community of interest” requirement has three factors: (1) common questions of law or
4 fact that predominate; (2) class representatives with typical claims; and (3) class representatives who
5 can adequately represent the class. *Fireside Bank v. Super. Ct.*, 40 Cal. 4th 1069, 1089 (2007).

6 **1. Common Questions of Law and Fact Predominate**

7 The ultimate question of predominance is whether “the issues which may be jointly tried,
8 when compared with those requiring separate adjudication, are so numerous or substantial that the
9 maintenance of a class action would be advantageous to the judicial process and to the litigants.”
10 *Brinker*, 53 Cal. 4th at 1021 (citations omitted). Whether common questions predominate depends
11 on whether plaintiff’s theory of recovery is “as an analytic matter, likely to prove amenable to class
12 treatment.” *Id.* (citation omitted). If liability can be determined by common facts, the need to
13 individually prove damages does not prevent certification. *Id.* at 1022.

14 Plaintiff contends, and Defendants do not dispute for settlement purposes only, that common
15 questions of law and fact predominate. Plaintiff contends that CMs performed their work remotely
16 either because they were assigned to work from home or as a result of the Covid-19 pandemic.
17 Hammond Decl. ¶ 13. Plaintiff further contends that whether Concentrix’s alleged failure to
18 reimburse CMs for remote-work expenses violated Labor Code § 2802 is a common legal question.
19 While Defendants maintain otherwise, Plaintiff alleges that common factual questions include
20 whether CMs performed work duties remotely during the Class Period and whether CMs reasonably
21 incurred remote work expenses in performing their job duties for Defendants.

22 **2. Plaintiff’s Claims Are Typical**

23 Plaintiff contends and Defendants do not dispute, for settlement purposes only, that his claims
24 are typical because, like the Class, he worked remotely and incurred remote work expenses. *Seastrom*
25 *v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007). Plaintiff contends that he was subject to the
26 same alleged unlawful practice by Defendants as alleged by the rest of the Class, and he seeks the
27 same relief as the Class.

28 **3. Plaintiff and His Attorneys Will Adequately Represent the Class**

“Adequacy of representation depends on whether the plaintiff’s attorney is qualified to
conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the interests of the
class.” *Caro v. Procter & Gamble Co.*, 18 Cal. App. 4th 644, 669 n.21 (1993) (citations omitted).
Class Counsel has extensive class action litigation experience. Hammond Decl. ¶¶ 5-11. Plaintiff

1 has undertaken to represent the Class, his interests are coextensive with the Class, and he has no
2 conflict with the Class. Id. ¶ 4.

3 **C. A Class Action Is a Superior Method of Adjudication**

4 Plaintiff alleges that his claims depend on common evidence, including the contention that
5 all CMs were required to pay out of pocket for home office expenses to perform their duties for
6 Defendant, and that Defendants allegedly failed to provide sufficient reimbursements. Hammond
7 Decl. ¶ 13. It would be inefficient to resolve these claims at separate trials. *Bufl v. Dollar Fin. Grp.,*
8 *Inc.*, 162 Cal. App. 4th 1193, 1208 (2008). Thus, Plaintiff alleges that a class action is the superior
9 method of adjudication.

10 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

11 **A. The Two-Step Settlement Approval Process**

12 Court approval of a class settlement is a two-step process: first, a preliminary review of the
13 reasonableness of the settlement, and second, after notice has been distributed to the Class, a final
14 approval analysis taking into account the Class's response. *See* Cal. Rule of Court, Rule 3.769; *Dunk*
15 *v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-01 (1996). Courts analyzing whether a settlement
16 is fair and reasonable (either at the preliminary or final approval step) consider a number of factors:
17 (1) the strength of Plaintiff's case balanced against the settlement amount; (2) the risk, expense,
18 complexity, and likely duration of further litigation and the risk of maintaining class action status
19 through trial; (3) the extent of discovery completed and stage of the proceedings; (4) the experience
20 and views of counsel; and (5) the reaction of the Class to the proposed settlement. *Kullar v. Foot*
21 *Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128, 130 (2008).

22 **1. The Gross Settlement Amount Is Reasonable Compared to the Potential Recovery**

23 Comparison of the recovery achieved by the Settlement in relation to the strength of the
24 Class's claims is the most important factor in analyzing the fairness of the Settlement. *Kullar*, 168
25 Cal. App. 4th at 130. Plaintiff calculated Defendants' maximum exposure (including interest and
26 excluding PAGA) as \$963,430. Hammond. Decl. ¶ 22.

27 Plaintiff then applied discounts to account for the strength of Defendants' foreseeable
28 defenses and risks of continued litigation. For example, Defendants would have contended that
Plaintiff would be unable to certify a class and that Plaintiff would lose on the merits. As to class
certification, Defendants maintain that individualized issues would predominate, given that CMs had
a wide variety of different expenses and different work circumstances in that the expenses that were
reasonable or necessary for one CM might not have been reasonable or necessary for another based

1 on a multitude of highly individualized factors. Id. ¶ 23. Id. ¶ 23. Accordingly, Plaintiffs applied a
2 25% discount for this risk. Id.

3 As to the merits, Defendants contended that a fact-finder would find that Plaintiff's estimate
4 of \$100 per month was far more than the "reasonable percentage" of expenses incurred by any CM,
5 and Plaintiff's estimate of \$150 for equipment was also inflated, given that many CMs may have
6 purchased cheaper equipment, and/or that many alleged expenses were neither reasonable nor
7 necessary for purposes of a claim under Labor Code § 2802. Id. ¶ 24. Plaintiffs applied a further 25%
8 discount for the risks of losing on the merits. Id. After discounts, . After discounts, Plaintiff estimates
9 Defendants' realistic liability is \$541,929. Id.

10 Given the risk posed on the merits and certification/manageability, Plaintiff views the
11 outcome as an excellent result. The gross share per Class Member is \$1,503.91 and the net share is
12 \$770.51. Id. ¶ 26. A Class Member who worked for the entire Class Period will receive \$2,091.24,
13 in addition to his or her share of PAGA penalties. Id. Accordingly, the Settlement provides an
14 efficient resolution of this dispute, and CMs will obtain a substantial recovery now without the risks
15 and lengthy delays that further litigation would entail. Id. ¶ 26-27.

14 **2. The PAGA Allocation is Fair and Adequate**

15 Plaintiff calculates Defendants' maximum liability for PAGA Penalties, using \$100 per pay
16 period (because Defendants never received notice from the Labor Commissioner or the Court so
17 there are arguably no "subsequent" violations) as \$601,600. *Bernstein v. Virgin Am., Inc.*, Nos. 19-
18 15382, 20-15186, 2021 U.S. App. LEXIS 6641, *35-36 (9th Cir. Mar. 8, 2021) (holding that
19 "subsequent" violations for purposes of PAGA do not occur until employer has been notified that it
20 is violating a Labor Code provision). Hammond Decl. ¶ 28.

21 The \$10,000 allocated to PAGA penalties represents approximately 1.6% of Defendants'
22 potential exposure to PAGA penalties, which is comparable to PAGA allocations in similar cases
23 that received final approval from California Superior Courts. Hammond Decl. ¶ 29. This allocation
24 is fair and reasonable for several reasons.

25 First, the overall settlement resulted in significant relief, which is what courts look at when
26 assessing the amount attributed to PAGA penalties. *O'Connor v. Uber Techs., Inc.*, No. 201 F. Supp.
27 3d 1110, 1134 (N.D. Cal. Aug. 18, 2016) (where settlement for the class claims is robust, the purpose
28 of PAGA may be fulfilled because by providing fair compensation to class members, the settlement
has a deterrent effect on Defendants and other employers, thus fulfilling the purpose of PAGA).
Hammond Decl. ¶ 30.

Second, Defendant would have argued that the Court should reduce any award of PAGA

penalties as “unjust, arbitrary and oppressive, or confiscatory” under Labor Code § 2699(e)(2), especially because the \$601,600 in PAGA penalties are 62% of the maximum \$963,430 in unreimbursed expenses allegedly incurred by the Class. Hammond Decl. ¶ 31.

Third, in order to recover any PAGA penalties, Plaintiff would be required at trial to prove that each employee suffered a violation for each pay period the employee worked, which would be difficult in light of Defendants’ anticipated defenses discussed above. *Id.* ¶ 32.

Fourth, although class certification requirements do not apply to PAGA claims, “such claims can be stricken if they are found to be ‘unmanageable.’” *See, e.g., Raphael v. Tesoro Ref & Mktg. Co.*, No. 2:15-cv-02862-ODW, 2015 U.S. Dist. LEXIS 130532, at *5 (C.D. Cal. Sept. 25, 2015). Hammond Decl. ¶ 33. Because only CMs who actually incurred unreimbursed expenses during a particular pay period could recover PAGA penalties for those violations, Defendants would have disputed that there is a manageable way to determine who was entitled to such penalties. As such, the PAGA allocation is fair and reasonable.

3. The Risk of Further Litigation Support the Reasonableness of the Settlement

If litigation were to proceed, Plaintiff would have faced arguments that class certification was not appropriate, given that CMs incurred different expenses and different work circumstances, and the expenses that were reasonable for one CM might not have been reasonable for another. Even if this matter proceeded to trial, voluminous evidence would be needed to prove damages; expert testimony and expert discovery could be required to prove the damage calculations; and trial would be complex given the number of employees involved. Regardless of which side prevailed on class certification, or at trial, an appeal would be likely, creating additional delay and uncertainty for the employees’ receipt of any recovery. Hammond Decl. ¶ 27.

This Settlement provides an efficient resolution of this dispute, and CMs will obtain a substantial recovery now without the major risks and lengthy delays that further litigation would entail.

4. Extent of Discovery Completed and The Stage of the Proceedings

The Settlement is the result of arm’s-length negotiations between the Parties, reached after a full-day mediation with an experienced mediator. Hammond Decl. ¶ 20. Plaintiff engaged in formal and informal discovery, located relevant publicly available information from Defendants’ website, and calculated Defendants’ exposure as if the case were to be certified as a class action and go to trial. *Id.* ¶ 15, 19-20. Plaintiff was well-informed about the strengths and weaknesses of the Class’s claims, and well-positioned to conclude that this Settlement was an excellent outcome for the Class.

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5. Views of Experienced Counsel Support the Settlement

As discussed above, Class Counsel has extensive experience in class action litigation, and, in particular wage-and-hour class actions, and have been determined by numerous courts to be adequate class counsel. Hammond Decl. ¶¶ 4-11. Class Counsel considers the settlement to be fair, reasonable and adequate. The gross share per Class Member is \$1,503.91 and the net share is \$770.51. Id. ¶ 26. A Class Member who worked for the entire Class Period will receive \$2,091.24, in addition to his or her share of PAGA penalties. Id. These are excellent results when considering the major risks posed by Defendants' contentions, discussed above, and lengthy delays that further litigation would entail.

B. The Proposed Class Notice Content and Procedure Are Adequate

Constitutional due process requires that CMs be provided with notice sufficient to give them an opportunity to be heard. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). Proper notice must provide information to allow CMs to make an informed decision to accept or object to the settlement. *Id.*; *see also Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 251-52 (2001). Here, the proposed Notice provides: (1) the material terms of the Settlement, (2) the CM's anticipated Settlement share, (3) how to object or opt out, (4) how to obtain more information about the claims, (5) the proposed fees and costs of Class Counsel and for settlement administration, (6) the proposed service award to the Class Representative, and (7) the date and time of the final approval hearing. *See Exhibit A* to the SA (Class Notice); *see also* Cal. Rules of Court, Rule 3.766.

The procedure for distribution of Notice has "a reasonable chance of reaching a substantial percentage of the [CMs]." *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 974 (1975). The Notice will be sent by first class mail to the most recent address of each CM. SA §§ 52.a-b. If a Notice is returned as undeliverable, Simpluris will use skip tracing and resend it if a new address is identified. SA § 52.d. As such, the Notice is likely to reach most, if not all, CMs.

C. The Class Representative Service Award Is Preliminarily Reasonable

In conjunction with seeking final approval, Plaintiff will move for approval of a Class Representative Service Award of \$10,000 to recognize the time and effort he expended for the Class, as well as the general release he is giving Concentrix. Hammond Decl. ¶ 34. The requested award falls well within the range of incentive payments typically awarded to Class Representatives in similar class actions. *See, e.g., Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming awards of \$10,000).

D. The Requested Attorneys' Fees and Costs Are Preliminarily Reasonable

Also in conjunction with final approval, Plaintiff will move for an award of attorneys' fees of 35% of the GSA. Hammond Decl. ¶ 35. This fee amount is fair, reasonable and adequate to

1 compensate Class Counsel for the substantial work they have already done to prosecute this Action,
2 the risk they assumed to agree to take the case in the first place, the great expense spared to the Class
3 by Class Counsel having achieved a successful resolution, and the continued time and expense that
4 Class Counsel will incur by administering the fair distribution of the settlement fund should this
5 Court grant the settlement's approval. *Id.* It is also within the range that courts routinely award. See,
6 e.g., *Mayton et al. v. Konica Minolta Business Solutions USA, Inc.*, No. RG12657116 (Alameda Cty.
7 Super. Ct. June 22, 2015) (awarding fees representing 40% of the settlement in a Labor Code § 2802
8 class action settlement). Plaintiff will also request reimbursement for out-of-pocket litigation
9 expenses up to \$25,000. Hammond Decl. ¶ 36.

10 The Court need not decide now the attorneys' fees and expenses to approve – if the Court
11 grants preliminary approval, Class Counsel will file a fully-briefed motion for attorneys' fees and
12 costs, supported by detailed lodestar information, to be heard after the completion of the Notice
13 process. Hammond Decl. ¶ 37.

14 **E. The Cy Pres Designee is Appropriate**

15 A *cy pres* award allows for “aggregate calculation of damages, the use of summary claim
16 procedures, and distribution of unclaimed funds to indirectly benefit the entire class.” *Six Mexican*
17 *Workers v. Arizona Citrus Growers* (9th Cir. 1990) 904 F.2d 1301, 1305. “To ensure that the
18 settlement retains some connection to the plaintiff class and the underlying claims, however, a *cy*
19 *pres* award must qualify as ‘the next best distribution’ to giving the funds directly to class members.”
20 *Dennis v. Kellogg Co.* (9th Cir. 2012) 697 F.3d 858, 865, quoting *Six Mexican Workers*, 904 F.2d at
21 1308. Moreover, in the class action context, the California Code of Civil Procedure permits unpaid
22 cash residues in a class action settlement to be distributed to a *cy pres* recipient “in a manner designed
23 either to further the purposes of the underlying class action or causes of action, or to promote justice
24 for all Californians.” Code Civ. Proc., § 384. The Settlement designates Alameda County Court
25 Appointed Special Advocates as *cy pres* recipient under Cal. Code of Civ. Proc. § 384. SA § 60.
26 Alameda County Court Appointed Special Advocates is dedicated to recruiting, training, and
27 supporting dedicated volunteers to be the constant in a child's life. Hammond Decl. ¶ 38.

28 **VI. CONCLUSION**

The Settlement is well within the range of acceptable settlements and provides substantial
monetary relief to the Class. Plaintiff requests that the Court conditionally certify the Class for
settlement purposes, preliminarily approve the Settlement, and order that Notice be provided to the
Class as set forth in the proposed Order.

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DATED: April 19, 2023

Respectfully submitted,

HAMMONDLAW, P.C.

 s/ Julian Hammond
Julian Hammond
Attorneys for Plaintiff and the Putative Class



Superior Court of Alameda County Public Portal

Make a Reservation

Davila VS Concentrix Services US, Inc.

Case Number: RG20079700 Case Type: Unlimited Civil Category: Other Complaint (non-tort/non-complex)

Date Filed: 2020-11-05 Location: Rene C. Davidson Courthouse - Department 21

Reservation

Case Name: Davila VS Concentrix Services US, Inc.	Case Number: RG20079700
Type: Motion for Order (Granting Preliminary Approval of Class Action Settlement)	Status: RESERVED
Filing Party: Richard Davila (Plaintiff)	Location: Rene C. Davidson Courthouse - Department 21
Date/Time: 05/19/2023 9:00 AM	Number of Motions: 1
Reservation ID: 310867829180	Confirmation Code: CR-8ESFLEU8TUPMUTVNP

Fees

Description	Fee	Qty	Amount
Motion for Order (name extension)	0.00	1	0.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount: \$1.00	Type: Visa
Account Number: XXXX6359	Authorization: 00660G
Payment Date: 1969-12-31	

[Print Receipt](#)

[+ Reserve Another Hearing](#)

[View My Reservations](#)