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

11 **COUNTY OF ALAMEDA**

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

14 Plaintiff,

15 vs.

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

19 Defendants.
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CASE NO. RG20079700

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

Date: June 30, 2023

Time: 9:00 a.m.

Dept.: 21; Hon. Evilio Grillo

On May 19, 2023, the Court issued its Order re: Hearing on Motion for Order Granting Preliminary Approval of Class Action Settlement. The parties have amended the Settlement Agreement and Class Notice in the respects described below, as directed by the Court, attached as **Exhibit 1** hereto.

1. ISSUE #1 – RELEASE OF LWDA’S CLAIMS BY PLAINTIFF UNDER PAGA

The Court stated that the Settlement Agreement “at para 62(b) does not state that the LWDA is releasing its claims. The release does NOT include a release of the LWDA’s claims is by the plaintiff as agent and proxy for the LWDA. This is not adequate.” The parties have amended the Settlement Agreement and the Notice to include a release of the LWDA’s claims by the plaintiff as agent and proxy for the LWDA. See **Exhibit 1**, ¶ 62(b), and **Exhibit A**, p. 5.

2. ISSUE #2 - RELEASE OF LWDA’S CLAIMS BY AGGRIEVED EMPLOYEES.

The Court stated that “The agreement at para 62(b) states that the PAGA Members are releasing claims for violation of the PAGA. That is not the law. That is not adequate. The agreement at para 34 states that the PAGA Members are releasing claims for violation of the PAGA. That is not the law. That is not adequate.” The parties have amended the Settlement Agreement to state the LWDA is releasing its claims for violation of PAGA. See **Exhibit 1**, ¶¶ 34 and 62(b), and **Exhibit A**, p. 5.

3. ISSUE #3 - RELEASE OF CLAIMS BY MEMBERS OF THE CLASS

The Court states that the “release by the members of the class is a release of the class claims. (Para 33, 62(a).) This is adequate.” Accordingly, the parties have not amended the Release of Class Claims.

The parties note that on page 4 of its Order, the Court states that the “scope of the class release is [NOT] appropriate.” However, in light of the Court’s explicit finding on page 3 of the Order that class release *is* adequate, the fact the release of class claims *is* limited by the “factual predicate rule” as required,¹ and the fact that the word “NOT” is left in brackets, the parties believe that this finding on page 4 is a typo.

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¹ The “Released Class Claims” are defined as “all claims and causes of action, arising during the Class Period, that were or could have been alleged based on the allegations in the original and amended complaints in the Action, including: (a) all claims for failure to reimburse for business expenses; (b) all claims for relief under California Business and Professions Code § 17200, et seq.” Settlement Agreement, ¶ 33.

1 **4. ISSUE #4 - RELEASE OF CLAIMS BY NAMED PLAINTIFF**

2 The Court states that the “Agreement properly releases the claims of the named plaintiff, which
3 can include a Civil Code 1542 waiver. (Agt. para 62(c) and (d).) This is adequate.” Accordingly, the
4 parties have not amended the Release of Claims by the Named Plaintiff.

5 **5. ISSUE #5 - RESIDUAL BENEFICIARY**

6 The Court states that the “agreement states that that the residual will go to the Alameda CASA
7 program. Sending funds to the Alameda CASA is consistent with CCP 384. Counsel provided a
8 declaration with the CCP 382.4 information. This is adequate.” Accordingly, the parties have not
9 amended the proposed *cy pres* beneficiary.

10 The parties note that on page 4 of its Order, the Court states that the “Counsel has [NOT] provided
11 a declaration in support of the motion that provides the information required by CCP 382.4.” However,
12 in light of the Court’s explicit finding on page 3 of the Order that Counsel *has* provided a declaration
13 with the CCP 382.4 information (which was filed on April 19, 2023), and the fact that the word “NOT”
14 is left in brackets, it appears to the parties that this finding on page 4 is a typographical error.

15 Dated: June 22, 2023

_____ s/ Ari Cherniak
Ari Cherniak
Julian Hammond
Attorneys for Plaintiff

EXHIBIT 1

JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AGREEMENT

This Joint Stipulation of Class and Representative Action Settlement Agreement and Release (the “Agreement” or the “Settlement”) is entered into by and between Plaintiff Richard Davila (“Plaintiff”) and Defendants Concentrix Solutions Corporation and Concentrix Services U.S., Inc. (“Defendants”) (collectively, “the Parties”). The Parties intend this Agreement to fully, finally, and forever resolve, discharge and settle the “Released Claims” (as defined below) on a class and representative action basis pertaining to the “Released Parties” (as defined below) upon and subject to the terms and conditions contained in this Agreement. This Agreement, which is contingent upon Final Court approval, contains the terms of the Parties’ agreement. Plaintiff and Class Counsel believe that the settlement set forth in this Agreement confers substantial benefits upon the Class Members.

DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

1. “Action” means the Third Amended Class and Representative Action Complaint in *Richard Davila v. Concentrix Solutions Corporation, Concentrix Services U.S., Inc.*, County of Alameda Superior Court Case No. RG20079700, which was filed on March 10, 2023 (the “Third Amended Complaint”). The Parties agree that the Action includes all claims and causes of action alleged in all of the following: (a) the October 30, 2020 letter that Plaintiff filed with the California Labor & Workforce Development Agency (“LWDA”); (b) the Original Complaint filed on November 5, 2020 (*Davila v. Concentrix Services U.S., Inc.*, Case No. RG20079700); (c) the First Amended Class and Representative Action Complaint filed on February 16, 2021 (*Davila v. Concentrix Services US, Inc.*, Case No. RG20079700); (d) the Second Amended Class and Representative Action Complaint filed on October 14, 2021 (*Davila v. Concentrix Services US, Inc.*, Case No. RG20079700); and (e) the Amended LWDA letter filed on October 22, 2021.
2. “Administrator” or “Settlement Administrator” means Simpluris, Inc., the third-party administrator proposed by the Parties and appointed by the Court to administer the Settlement.
3. “Class” means all current and former exempt and non-exempt employees of Defendants who worked at any time in the State of California from November 5, 2016 to January 6, 2023 (the “Class Members”).
4. “Class Counsel” means Hammond Law P.C.
5. “Class Counsel Fees Payment” means the amount to be paid to Class Counsel as approved by the Court to compensate them for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all settlement work, and all post-settlement compliance procedures. Class Counsel is seeking no more than 35% of the Gross Settlement Amount.
6. “Class Counsel Litigation Expenses Payment” means the amount to reimburse Class Counsel for their litigation expenses of no more than \$25,000, subject to proof and as approved by the Court.

7. “Class Data List” means information for each Class Member that Defendants will provide to the Settlement Administrator. To the extent available, the Class Data List will contain each Class Member’s full name; last-known mailing address; telephone number; Social Security number; number of Months Worked (as defined herein) by each individual Class Member during the Class Period and during the PAGA Period.
8. “Class Member” is a member of the Class.
9. “Class Notice” or “Notice” means the Court-approved Notice of Class Action Settlement in a form substantively similar to Exhibit A, to be mailed to Class Members that informs them of the settlement, their rights to request exclusion or to object to the Settlement, their estimated payment to be received without the need to return a claim form, and the date set for the Final Approval Hearing.
10. “Class Period” means the period from November 5, 2016 to January 6, 2023.
11. “Class Representative Service Payment” means the payment approved by the Court to be made to the Plaintiff in his capacity as a Class Representative to compensate him for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses in the event Plaintiff failed in the prosecution of the Action, and for the general release of all claims by him as set forth herein.
12. “Court” means the Superior Court of the State of California for the County of Alameda.
13. “Defendant’s Counsel” means Michael J. Nader and Allison J. Fernandez of Ogletree Deakins.
14. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting final approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
15. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to finally approve the terms of this Agreement and enter the Judgment.
16. “Gross Settlement Amount” or “GSA” means the non-reversionary sum of three hundred eighty-five thousand dollars (\$385,000) which shall be inclusive of the Individual Class Settlement Payment to Participating Class Members, Individual PAGA Payments to PAGA Members, Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Class Representative Service Payment, and the LWDA Payment.
17. “Individual Class Settlement Payment” means the amount paid from the Net Settlement Amount to a Participating Class Member. Any Class Member who submits a request for exclusion pursuant to the procedures set forth herein is not a Participating Class Member and is not eligible to receive an Individual Class Settlement Payment.
18. “Individual PAGA Payment” means the pro rata share of the \$2,500 (25% of the total of \$10,000 PAGA Civil Penalty Payment) amount allocated to alleged aggrieved employees out of the PAGA Civil Penalty Payment that each PAGA Member will receive.

19. “Judgment” means the judgment entered by the Court based upon the final approval.
20. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
21. “LWDA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
22. “Months Worked” means any calendar month in which Settlement Class Members worked at any time at all during that month.
23. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
24. “Non-Participating Class Member” means a Class Member who submits a valid and timely request for exclusion from the Settlement in the manner described in the Notice of Class Action Settlement.
25. “Notice Packet” means the Class Notice, the Change of Address Form approved by the Parties and subject to Court approval, and pre-printed return envelope, which the Settlement Administrator will mail to each Class Member.
26. “PAGA” refers to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2699, *et seq.*
27. “PAGA Civil Penalty Payment” means the sum of \$10,000 to be paid out of the Gross Settlement Amount, designated by the Parties as PAGA civil penalties of which \$75,000 (75%) shall be paid pursuant to the PAGA to the Labor and Workforce Development Agency (“LWDA”), (“LWDA Payment”), and the remaining \$25,000 (25%) shall be paid proportionately to all PAGA Members (the “Individual PAGA Payment”).
28. “PAGA Letters” means the letters Plaintiff filed with the California Labor & Workforce Development Agency (“LWDA”) on October 30, 2020 and on October 22, 2021 alleging that Defendant Concentrix Services U.S., Inc. and Concentrix Solutions Corporation violated the California Labor Code by failing to reimburse the business expenses incurred by employees.
29. “PAGA Members” means all current and former exempt and non-exempt employees of Defendants Concentrix Solutions Corporation and Concentrix Services U.S., Inc. who worked at any time in the State of California during the PAGA Period.
30. “PAGA Period” means that period from October 30, 2019 to January 6, 2023.
31. “Participating Class Member” means a Class Member who does not submit a valid and timely request for exclusion from the Class Settlement.
32. “Preliminary Approval of the Settlement” means the Court’s Order Granting Preliminary Approval of the Settlement.
33. “Released Class Claims” means all claims and causes of action, arising during the Class Period, that were or could have been alleged based on the allegations in the original and

amended complaints in the Action, including: (a) all claims for failure to reimburse for business expenses; (b) all claims for relief under California Business and Professions Code § 17200, *et seq.*

34. “Released PAGA Claims” means the release of the Released Parties by the Labor and Workforce Development Agency, State of California, and by Plaintiff as agent and proxy for the LWDA, of all claims and causes of action, arising during the PAGA Period that were or could have been alleged based on the allegations in the original and amended complaints in the Action, and in all of the PAGA Letters in the Action, including all claims for failure to reimburse for business expenses. Regardless of whether any Class Member opts out of the Class Settlement, they will still be bound by the Released PAGA Claims if they are PAGA Members. The period of the Released PAGA Claims is the PAGA Period.
35. The term “Released Parties” means Concentrix Solutions Corporation and Concentrix Services U.S., Inc. and their past, present and/or future, direct and/or indirect, owners, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, parent companies, subsidiaries, affiliates, successors, and assigns.
36. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement.
37. “Qualified Settlement Fund” or “QSF” means the account established by the Administrator for the Gross Settlement Amount and employer-side payroll taxes and distribution as provided by this Agreement and as ordered by the Court.

RECITALS

38. On October 30, 2020, Plaintiff filed a letter with the California Labor & Workforce Development Agency (“LWDA”) alleging that Defendant Concentrix Services U.S., Inc. violated the California Labor Code by failing to reimburse the business expenses incurred by employees.
39. On November 5, 2020, Plaintiff filed his Complaint (*Davila v. Concentrix Services U.S., Inc.*, Case No. RG20079700) alleging that Defendant Concentrix Services U.S., Inc. violated the California Labor Code by failing to reimburse the business expenses incurred by employees, and violated section 17200 *et seq.* of the California Business and Professions Code by failing to reimburse business expenses.
40. On February 16, 2021, Plaintiff filed a First Amended Class and Representative Action Complaint (*Davila v. Concentrix Services U.S., Inc.*, Case No. RG20079700) alleging that Defendant Concentrix Services U.S., Inc. violated the California Labor Code by failing to reimburse the business expenses incurred by employees, and violated section 17200 *et seq.* of the California Business and Professions Code by failing to reimburse business expenses, and seeking civil penalties under the PAGA for the same violations.
41. On October 22, 2021, Plaintiff filed an amended letter with the California Labor & Workforce Development Agency (“LWDA”) alleging that Defendants Concentrix Services U.S., Inc. and Concentrix Solutions Corporation violated the California Labor Code by failing to reimburse the business expenses incurred by employees.
42. On October 14, 2021, Plaintiff filed a Second Amended Class and Representative Action Complaint in *Richard Davila v. Concentrix Solutions Corporation, Concentrix Services U.S., Inc.*, County of Alameda Superior Court Case No. RG20079700, alleging that Defendants Concentrix Services U.S., Inc. and Concentrix Solutions Corporation violated

the California Labor Code by failing to reimburse the business expenses incurred by employees, and violated section 17200 et seq. of the California Business and Professionals Code by failing to reimburse business expenses, and seeking civil penalties under the PAGA for the same violations.

43. On March 10, 2023, Plaintiff filed a Third Amended Complaint, seeking PAGA Penalties based on the allegation that Defendant Concentrix Solutions Corporation violated the California Labor Code by failing to reimburse the business expenses incurred by employees.
44. In advance of the mediation on October 27, 2022, Defendants provided to Class Counsel the total number of current and former employees in the putative class and their total Months Worked in the Class Period, as well as policies and practices related to the claims in the Action.
45. This Agreement represents a compromise and settlement of highly disputed claims. The Parties agree that nothing in this Agreement is an admission by the Defendants that the claims in the Action have merit or that Defendants bear any liability to Plaintiff or the Class on those claims or any other claims. The Parties stipulate to certification of the Class for purposes of this Settlement only. If the Settlement does not become effective for any reason, the Parties agree that: (a) the stipulation regarding class certification will become null and void; and (b) Defendants reserve the right to contest certification of the Class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

SETTLEMENT TERMS AND CONDITIONS

46. **Gross Settlement Amount.** Subject to the terms and conditions hereof, the Parties agree that Defendants shall pay a Gross Settlement Amount of Three Hundred Eight-Five Thousand U.S. Dollars (\$385,000) to fully and finally settle all claims in the Action. The Gross Settlement Amount includes all payments contemplated under this Agreement and shall be disbursed pursuant to its terms without the need to submit a claim form. The Parties further agree that none of the Gross Settlement Amount will revert to Defendants under any circumstances.
47. **Modification of Gross Settlement Amount.** The settlement is based on Defendants' good faith representation at Mediation that there were 6,882 Months Worked by the Class from November 6, 2016 to October 27, 2022 (the "Mediation Period"). If the Administrator determines that the actual Months Worked during the Mediation Period surpasses 6,882 by more than ten percent (10%) (e.g., if the number of Months Worked is greater than 7,570), then Defendants agree to pay an additional pro rata amount of \$55.94 for each Month Worked that exceeds 7,570. For example, if the actual number of Months Worked by the Class during the Mediation Period is 7,580 months, then Defendants shall pay an additional \$559.40 to the Gross Settlement Amount.
48. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Administrator will make the following payments from the Gross Settlement Amount:
 - a) **To Plaintiff:** Plaintiff will apply to the Court for a Class Representative Service Payment of not more than \$10,000.00 (exclusive of Plaintiff's Individual Class Settlement Payment). The Administrator will pay the Class Representative Service Payment in the amount ultimately approved by the Court. No payroll tax

withholding and deductions will be taken from this payment. The Administrator shall issue an IRS Form 1099 to the Plaintiff with respect to the Class Representative Service Payment. To receive the payment, the Plaintiff agrees to a Code of Civil Procedure section 1542 waiver and a general release of all claims, excluding any claims that the Plaintiff cannot release as a matter of law, such as claims for workers' compensation and for social security benefits.

- b) **To Class Counsel:** Class Counsel will apply to the Court for an award of: (a) up to 35% of the Gross Settlement Amount as their Class Counsel Fees Payment; (b) no more than \$25,000 for all costs and litigation expenses incurred, subject to proof, as the Class Counsel Litigation Expenses Payment. Defendants will not oppose requests for a Class Counsel Fees Payment and a Class Counsel Litigation Expenses Payment consistent with this Agreement and approved by the Court. For these payments, the Administrator will issue one or more IRS Forms 1099.
- c) **To the LWDA.** The Parties will seek approval from the Court for the PAGA Civil Penalty Payment of \$10,000, allocated 75% (\$7,500.00) for the LWDA Payment as its share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA and 25% (\$2,500) to be distributed to all PAGA Members based on their number of Months Worked during the PAGA Period, in relation to the aggregate number of Months Worked during the PAGA Period. Because there is no right to opt out of a PAGA settlement, all PAGA Members will receive a proportionate share of the 25% portion of the PAGA Civil Penalty Payment, i.e., their Individual PAGA Payment, irrespective of a valid and timely request for exclusion from the Class Settlement.
- d) **To the Administrator.** The Administrator will pay to itself its reasonable fees and expenses documented and approved by the Court in an amount not to exceed \$8,000.00 ("Administration Expenses").

If the Court approves any payment described in this section in an amount less than requested, the Parties agree to retain the remainder in the Net Settlement Amount for distribution to Class Members.

49. **Settlement Payments to the Class.** Following the deduction of the Court-approved sums from the Gross Settlement Amount for the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payment, Administration Expenses, the LWDA Payment, and the collective Individual PAGA Payments, the remaining Net Settlement Amount (estimated at \$197,250.00) shall be distributed to Participating Class Members based upon their number of Months Worked in the Class Period in relation to the total number of Months Worked by all Participating Class Members during the Class Period. The Net Settlement Amount is determined by deducting the anticipated Court-approved payments as follow:

Gross Settlement Amount:	\$ 385,000
• Class Representative Service Payment	\$10,000
• Class Counsel Fees Payment	\$134,750
• Class Counsel Litigation Expenses	\$25,000
• LWDA Payment	\$ 7,500
• Individual PAGA Payments	\$ 2,500
• Administration Expenses	<u>\$8,000</u>
Net Settlement Amount:	<u>\$197,250.00</u>

- a) **Individual Class Settlement Payment.** The Individual Class Settlement Payment will be paid from the Net Settlement Amount and paid pursuant to the formula as follows: (i) First, using the Class Data List, the Administrator will compute the total number of Months Worked by all Participating Class Members collectively during the Class Period; this sum shall be known as the “Total Months Worked”; (ii) Second, the Administrator will divide the Net Settlement Amount by the Total Months Worked to determine the settlement value of each eligible Month Worked, and this shall be known as the “Month Worked Value”; (iii) the Administrator will multiply the number of Months Worked of a Participating Class Member during the Class period by the Month Worked Value to determine the Participating Class Member’s Individual Class Settlement Payment.
- b) **Allocation of the Settlement Payment, and Tax Forms.** The Administrator shall allocate 100% of each Participating Class Member’s Individual Class Settlement Payment to reimbursed expenses. The Settlement Administrator will be responsible for issuing the proper IRS Form to report these payments.
- c) **Effect of Non-Participating Class Members.** Non-Participating Class Members are those who returned a valid and timely request for exclusion, and they will not receive an Individual Class Settlement Payment share of the Net Settlement Amount. Their exclusion from the Class will neither affect the Gross Settlement Amount nor affect the Net Settlement Amount. Their respective Individual Class Settlement Payment shares will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis relative to their Months Worked during the Class Period. However, since there is no right to opt out of a PAGA settlement, each Non-Participating Class Member who is also a PAGA Member shall receive a pro-rata share of the 25% portion of the PAGA Civil Penalty Payment allocated to them, and they will be bound to the release of all of the claims for civil penalties under the PAGA that are included in the Released Claims.

50. **Appointment of Administrator.** The Parties agree that Simpluris shall serve as the Administrator which, as a condition of appointment, will be required to follow this Agreement with respect to the performance of its duties and its compensation. The Administrator’s duties will include formatting, printing, and mailing the Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Notice Packets; re-mailing Notice Packets that are returned to the Class Member’s new address as located upon skip-tracing or as provided by Counsel for the Parties; setting up a toll-free telephone number to receive calls from Class Members, and an e-mail address and post office box to receive communications from Class Members which include for instance, disputed claims, change of address forms, requests for exclusion, and objections, providing the Parties with weekly status reports, calculating Individual Class Settlement Payments and Individual PAGA Payments; issuing the checks to effectuate the payments due under the Settlement; issuing the proper tax reports and filings required under this Settlement and to administrate the Settlement; handling uncashed checks, and providing declarations as requested by the Parties, and otherwise administering the Settlement pursuant to this Agreement. The Administrator will have the authority to resolve all disputes concerning the calculation of a Participating Class Member’s Individual Class Settlement Payment and/or Individual PAGA Payment. The Settlement Administration Expenses, including the cost of printing and mailing the Notice Packet, will come from the Gross Settlement Amount. Defendants and their Counsel shall have no responsibility for validating or ensuring the accuracy of the Settlement Administrator’s calculations and work. Plaintiff, Class Counsel, Defendants and Defendants’ Counsel shall not bear any responsibility for errors or omissions in the

calculation or distribution of the Individual Settlement Payments or any other distribution of monies contemplated by this Agreement.

51. **Procedure for Approving Settlement.**

a. **Motion for Preliminary Approval of Settlement.**

- i After execution of this Agreement, Plaintiff will file a Motion for Preliminary Approval that seeks the preliminary approval of the proposed Settlement, conditional class certification, proposed Notice of Settlement, appointment of Class Counsel, designation of Plaintiff as the Class Representative, Simpluris as the Administrator, and setting a date for the Final Approval Hearing. Class Counsel shall be responsible for preparing the Motion for Preliminary Approval, supporting declarations, and exhibits thereto. Class Counsel agrees to provide Defendants' Counsel with drafts of the Motion for Preliminary Approval and any other documents they intend to submit in support of their Motion for Preliminary Approval at least five (5) business days in advance of the filing of such documents to allow Defendants' Counsel reasonable time to review and comment on such papers, and Class Counsel further agrees to reasonably incorporate the comments from Defendants' Counsel.
- ii At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the Motion for Preliminary Approval, and submit an Order Granting Preliminary Approval of the Settlement.
- iii Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of the Released Claims, or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Agreement for the Court's approval.

52. **Notice to Class Members.** After the Court enters an Order Granting Preliminary Approval of the Settlement, the Notice Packet will be mailed to all members of the Class as follows:

- a. No later than ten (10) business days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendants will, to the extent possible, provide the Class Data List to the Administrator. The Administrator shall maintain the Class Data List as private and confidential and shall not disclose such data to any persons or entities other than Defendants' Counsel. The Class Data List is being supplied solely to be used for settlement notification and settlement administration purposes and shall not be used for any other purpose by the Administrator or Class Counsel. The Parties agree that the Class Data List will not be used to solicit Class Members to file any claim, charge or complaint of any kind whatsoever against Defendants or any other Released Parties and will only be used to administer the Settlement under the terms provided herein. No later than three (3) days after receipt of the Class Data List, the Administrator shall notify counsel for the Parties that the information in the Class Data List has been received.
- b. Upon receipt of the Class Data List, the Administrator will perform a search of the United States Post Office's National Change of Address database to update and correct any known or identifiable changes to Class Member addresses before mailing the Notice Packets. Using best efforts to mail it as soon as possible, and

in no event later than ten (10) calendar days following receipt of the Class Data List, the Administrator will mail the Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendants, unless modified by any updated address information that the Administrator obtains in the course of administration of the Settlement. The Administrator shall exercise its best judgment to determine the current mailing address for each Class Member, including performing a skip-trace to identify any updated addresses. The content of the Notice Packet shall include a Notice of Class Action Settlement, subject to Court approval and modification as necessary to fulfill the Parties' desire to resolve the case.

- c. The exterior of the mailing envelope containing the Notice Packet, shall include the following language on the left side of the envelope below the Administrator's mailing address:

IMPORTANT LEGAL DOCUMENT: You may get Money from a Class Action Settlement; your prompt reply to correct a bad address is required.

- d. If a Notice Packet is returned because of an incorrect address, the Administrator will promptly (within ten (10) days from receipt of the returned Notice Packet) search for a more current address and re-mail the Notice Packet to the Class Member. The Administrator will use the Class Data List and otherwise work with Defendants to find the most current address. The Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Notice Packet is re-mailed, the Administrator will note for its own records and notify Counsel for the Parties of the date of each such re-mailing as part of a weekly status report provided to the Parties.
- e. As part of its weekly status report, the Administrator will inform Class Counsel and Defendants' Counsel of the number of requests for exclusions, number of disputed claims, and number of objections received, and will provide all written objections upon receipt to Class Counsel and Defendants' Counsel.
- f. No later than twenty (20) days before the date that the Plaintiff will file the Motion for final approval of the Settlement, the Administrator will provide its declaration of due diligence attesting to compliance with its obligations arising under this Agreement and detailing the requests for exclusions, disputed claims, and objections received. Prior to the Final Approval Hearing, the Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

53. **Objections to Settlement; Disputes as to the Number of Months Worked; and Requests for Exclusion.** Class Members may submit objections as to any term of the Settlement, dispute the number of Months Worked allocated to them, and request exclusion pursuant to the following procedures:

- a. **Object to Settlement.** The Class Notice will provide that only Participating Class Members may object to the Settlement. Participating Class Members may submit a written objection to the Administrator no later than forty-five (45) days after the Administrator mails the Notice Packets. The date of mailing on the envelope shall

be deemed the exclusive means for determining if an objection was timely received. Any written objection must be signed by the Class Member and must set forth: (1) the full name and address of the objecting Class Member; (2) the grounds for each objection made; and (3) whether the Class Member intends to appear at the Final Approval Hearing. Any of the Parties may file a response to any objection before the Final Approval Hearing. Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Court and serve Class Counsel and Defendants' Counsel with this notice no later than forty-five (45) days after the Administrator mailed the Notice Packets. Class Members may also appear at the Final Approval Hearing to orally object, even if they have not submitted a written objection. Any Class Member who fails to submit a timely written objection or to present an objection at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement whether by appeal or otherwise. Class Members who receive a re-mailed Class Notice shall have an additional twenty (20) days from their original deadline to object in writing.

- b. **Dispute Regarding Number of Months Worked.** Class Members may dispute the number of Months Worked that the Class Notice allocates to them during the Class Period, and they must do so no later than forty-five (45) days after the Administrator mails the Notice Packets. The date of mailing on the envelope shall be deemed the exclusive means for determining if a dispute was timely received. If there is a dispute, the Administrator shall consult with the Parties to determine whether an adjustment is warranted. In the absence of circumstances indicating fraud, manipulation or destruction, Defendants' records will be given a rebuttable presumption of accuracy. Class Members who receive a re-mailed Class Notice shall have an additional twenty (20) days from their original deadline to dispute in writing the number of Months Worked that are allocated to them during the Class Period.
- c. **Requests for Exclusion.** The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must postmark and mail to the Administrator a written request for exclusion no later than forty-five (45) days after the Administrator's mailing of the Notice Packets. The date of mailing on the envelope shall be deemed the exclusive means for determining if a request for exclusion was timely received. Class Members who receive a re-mailed Class Notice shall have an additional twenty (20) days from their original deadline to request in writing an exclusion from the Settlement.
 - i To be valid, a request for exclusion must be timely and must comply with the instructions detailed in the Class Notice, including providing: (1) the name and address of the Class Member requesting exclusion; (2) a statement expressing that the Class Member elects to be excluded from the Settlement; and (3) a signature by the Class Member. If a question is raised about the authenticity of a signed request for exclusion, the Administrator will have the right to demand additional proof of the Class Member's identity.
 - ii A Non-Participating Class Member shall not participate in or be bound by the Released Claims and the Judgment. However, a Non-Participating Class Member who is also a PAGA Member will be bound by the Release of PAGA Claims. Defendants will remain free to contest any claim brought by the Class Member that would have been barred by this

Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendants has or could assert against such a claim. However, even if a Class Member opts out of the Settlement, the Class Member will still receive a proportionate share of the PAGA Civil Penalty Payment allocated to the PAGA Members. The Administrator will determine the Individual PAGA Payment by comparing the number of Months Worked the PAGA Member was employed during the PAGA Period to the total number of Months Worked by all PAGA Members were employed during the PAGA Period. In this instance, any Class Member who is also a PAGA Member will only be bound by the Release of PAGA Claims.

- iii A Class Member who does not complete and mail a timely request for exclusion in the manner and by the deadline specified above will automatically become a Participating Class Member, will receive a Settlement Payment, and be bound by all terms and conditions of the Settlement, including the Released Claims if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or he has objected to the Settlement.
 - iv Persons who submit a request for exclusion shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement because the Settlement no longer concerns them.
 - v All Participating Class Members who do not submit a valid and timely request for exclusion will receive an Individual Class Settlement Payment without the need to file a claim form, and the terms of the Released Claims and Judgment will bind them.
- d. **Report.** No later than ten (10) days after the deadline for submission of requests for exclusions, the Administrator will provide Class Counsel and Defendants' Counsel with a complete and accurate count of Participating Class Members and Non-Participating Class Members.
- 54. **Right of Defendants to Reject Settlement.** If more than ten percent (10%) of the Class Members return valid and timely requests for exclusion, Defendants will have the right, but not the obligation, to void the Settlement and the Parties will have no further obligations under this Agreement, including any obligation by Defendants to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed hereunder, except that Defendants will pay the Settlement Administration Expenses incurred as of the date that Defendants exercise the right to void the Settlement. Defendants will notify Class Counsel and the Court whether they are exercising this right to void by not later than ten (10) business days after the Administrator notifies the Parties, for the final time, of the number of valid requests for exclusion received. If Defendants exercise this right, the Settlement will become void and unenforceable in its entirety and the Parties shall be returned to their status as if this Agreement had not been executed.
- 55. **No Solicitation.** The Parties and their counsel represent that neither the Parties nor their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement.
- 56. **Additional Briefing and Final Approval Hearing.**

- a. Upon the expiration of the deadline for submission of requests for exclusions, objections, and disputes, and with the Court's permission, a Final Approval Hearing shall be conducted.
 - b. As directed by the Court after preliminary approval, the Plaintiff will file with the Court a Motion for Final Approval of the Settlement that shall include Class Counsel's application for the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payments, the Class Representative Service Payment, as well as the Administration Expenses and the PAGA Civil Penalty Payment. Class Counsel shall be responsible for preparing the Motion for Final Approval, and any supporting declarations, and exhibits thereto. Class Counsel agree to provide Defendants' Counsel with drafts of all documents they intend to submit in support of the Motion for Final Approval at least ten (10) business days in advance of the filing to allow Defendants' Counsel reasonable time to review and comment on such papers and further agree to reasonably incorporate proposed revisions by Defendants' Counsel. Further, the Parties agree to work together in good faith to modify this Agreement for purposes of addressing and/or curing any issues identified by the Court necessary to obtain a for final approval order.
 - c. If any opposition is filed, then no later than five (5) business days before the Final Approval Hearing, both Parties may file a reply in support of the Motion for Final Approval of the Settlement.
 - d. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of the Released Claims), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Agreement for the Court's approval. The Parties agree that an award by the Court of lesser amounts than those sought by Class Counsel for the Class Representative Service Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment will not constitute a material modification to the Agreement within the meaning of this paragraph.
 - e. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, Class Counsel will present for the Court's approval an entry of Judgment. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of: (i) enforcing this Agreement, (ii) addressing settlement administration matters; and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.
57. **Waiver of Right to Appeal.** Plaintiff and Participating Class Members who did not timely submit an objection to the Settlement to the Administrator shall waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding such as, but not limited to, a motion to vacate the judgment, a motion for a new trial, and any extraordinary writ. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If there is an appeal from the Judgment, it suspends the time for consummation of the Settlement (including, but not limited to, the provision of payments under this Agreement) until the appeal is finally resolved and the Judgment becomes final.
58. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, a reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of the Released Claims), and a higher Court does not completely reverse that decision and fully affirm the

Judgment on review, then the Parties shall work together in good faith to address the reviewing Court's concerns. The Parties shall propose a revised Settlement for the approval of the Court no later than 21 days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Class Representative Service Payment or the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendants' obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount (or additional amounts if applicable under the "Modification of Gross Settlement Amount" section herein).

59. **Funding and Other Payments.** No later than ten (10) calendar days after the Effective Date as defined herein, the Administrator shall send Defendants' Counsel electronic wiring instructions for paying the Gross Settlement Amount (\$385,000) into the QSF (and, if applicable, any additional amount that may be required under the "Modification of Gross Settlement Amount"). Defendants shall fund the QSF with the Gross Settlement Amount no later than forty-five (45) calendar days after the Effective Date. Within fourteen (14) days after Defendants funds the QSF, the Administrator will pay to Participating Class Members their Individual Class Settlement Payments via first-class regular U.S. Mail; to all PAGA Members, their Individual PAGA Payments; to Plaintiff, the Class Representative Service Payment; to Class Counsel, the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment; to the LWDA, their LWDA Payment; and to the Administrator, the Settlement Administration Expenses.
60. **Uncashed Settlement Share Checks.** A Class Member must cash his or her Settlement Payment check within one-hundred and eighty (180) days of the Administrator's mailing of the checks. If the Administrator receives a returned check, it will make all reasonable efforts to re-mail it to the Class Member at him or her correct address. If Class Member's Settlement Payment check is not cashed within thirty (30) days after its initial mailing, the Administrator will send a postcard notifying the Class Member that unless the check is cashed by the 180th day, it will expire and become non-negotiable, and the Administrator will offer to replace the check if it was lost or misplaced and not cashed. If the check remains uncashed after one-hundred and eighty (180) days since the Administrator's mailing of the checks, the Administrator will void the checks, and transmit the funds to the Alameda County Court Appointed Special Advocates, an IRS Section 501(c)(3) corporation, for further handling on behalf of the Class Member.
61. **Final Report by Administrator to Court.** Within ten (10) calendar days after final disbursement of all funds from the Gross Settlement Amount, the Administrator will serve on the Parties a declaration as a final report on the disbursements of all funds from the Gross Settlement Amount.
62. **Released Claims.**
 - a. **By Participating Class Members.** As of the date the Defendants remit the Gross Settlement Amount, the Released Parties shall be entitled to a full and final accord, satisfaction, settlement, and release of the Released Claims for the Class Period from Participating Class Members, including the Plaintiff.
 - b. **By PAGA Members.** As of the date the Defendants remit the Gross Settlement Amount, the Labor and Workforce Development Agency, State of California, and Plaintiff as agent and proxy for the LWDA, are bound by the Release of PAGA Claims.

- c. **By Plaintiff.** As of the date the Defendants remit the Gross Settlement Amount, the Plaintiff fully and finally releases Defendants and the Released Parties from any and all claims, losses, debts, charges, damages, demands, obligations, causes of action, lawsuits, liabilities, breaches of duty, misfeasance, malfeasance, promises, controversies, contracts, judgments, awards, penalties, costs, and expenses of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any local, state, or federal statute, rule, regulation, ordinance or common law including, but not limited to, those claims raised in the Action and/or that could have been raised in the Action, and those arising from or related to his employment with Defendants and the termination of that employment, arising on or before the date Plaintiff executes this Agreement (“Plaintiff’s Released Claims”). Plaintiff’s Released Claims include all of the Released Claims defined herein as well as all other wage and hour claims, claims under the California Business and Professions Code section 17200, claims under the Labor Code, including, but not limited to, claims under the PAGA, claims under the Fair Labor Standards Act, and all claims for indemnity or reimbursement of business expenses, overtime compensation, minimum wages, penalties, liquidated damages, and interest, as well as all other claims under state, federal, and local laws, including, without limitation, Title VII of the Civil Rights Act of 1964, the Family Medical Leave Act, the Americans with Disabilities Act, the Fair Credit Reporting Act, the Employee Retirement Income Security Act of 1974, and all of their implementing regulations and interpretive guidelines, as well as the common law, including laws related to discrimination, harassment, or retaliation, arising from or relating to the Plaintiff’s relationship, or termination of relationship, with any Released Party arising on or before the date Plaintiff execute this Agreement. Plaintiff further covenants that he will not become a member of any other legal action against the Released Parties, as that term is defined in this Agreement, asserting any of Plaintiff’s Released Claims, and will opt out of any such actions if necessary. For the avoidance of doubt, Plaintiff intends: (a) this release to constitute a complete and general release to the maximum extent permitted by law; and (b) this release to exclude only claims that cannot be released by law.
- d. **Plaintiff’s Waiver of Rights Under California Civil Code Section 1542.** As partial consideration for the Class Representative Service Payment, Plaintiff’s Released Claims shall include all such claims, whether known or unknown by the releasing party. Thus, even if Plaintiff discovers facts and/or claims in addition to or different from those that he now knows or believes to be true with respect to the subject matter of the Plaintiff’s Released Claims, those claims will remain released and forever barred. Therefore, with respect to Plaintiff’s Released Claims, Plaintiff expressly waives and relinquishes the provisions, rights and benefits of California Civil Code section 1542, which reads:
- A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in him or him favor at the time of executing the release and that, if known by him or her, would have materially affected him or him settlement with the debtor or released party.**
- e. **Class Counsel.** As of the date the Defendant remits the Gross Settlement Amount, and except as otherwise provided by this Agreement and the Judgment, Class Counsel waive any claim to costs and attorneys’ fees and expenses against Defendants arising from or related to the Action.

63. **Limitation on Public Statements About Settlement.** Prior to final approval, the Parties agree not to disclose the terms of this Settlement except in court papers filed to seek approval and any other disclosures agreed by the Parties that are necessary to effectuate the Settlement. Plaintiff and Class Counsel shall not issue press releases, hold press conferences, or divulge information about the Settlement or this Agreement. However, Class Counsel may (in future declarations submitted in Court) refer to the fact that this matter settled on a class and representative action basis for purposes of detailing the experience of counsel. Plaintiff and Class Counsel agree not to respond to any media inquiries except to refer reporters to the papers filed with the Court. Notwithstanding the foregoing, the Parties agree that nothing in this paragraph is intended, shall be construed, or will be enforced by Defendants to restrict the Plaintiff or the Class from engaging in rights guaranteed under the National Labor Relations Act.
64. **Neutral Reference.** Plaintiff agrees that he will instruct potential future employers to contact the Work Number® (an online employment verification tool owned by Equifax) to verify his past employment with the Company. Specifically, Plaintiff will advise future employers to: (1) log-on to www.theworknumber.com; (2) input the Company's employer code (10274); and (3) enter Plaintiff's social security number. Plaintiff agrees that the Work Number® is the exclusive means of verifying his past employment with the Company and further agrees that he will not direct potential future employers to contact the Company directly.
65. **Representation.** Both Parties have been represented by counsel throughout all negotiations which preceded the execution of this Settlement, and the Parties have been advised by counsel prior to entering into this Settlement. Class Counsel represents that they do not currently represent any current or former employees of the Defendants in connection with any other filed or anticipated claims, charges, grievances, or complaints against Defendants. Class Counsel also represents that Class Counsel have not used any information obtained in this Action to solicit or assist any other persons or attorneys to commence a claim or proceeding against Defendants.
66. **Additional Mediation.** If this Agreement is not approved by the Court for any reason, the Parties agree to attend mediation again and participate in good faith to reach a settlement approved by the Court.
67. **Miscellaneous Terms.**
- a. **No Admission of Liability or Class Certification for Other Purposes.**
 - i Defendants and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to the Class or any person under the claims asserted in the Action or that, but for this Settlement, a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended, shall constitute, or be construed as an admission of liability or wrongdoing by Defendants or the Released Parties. This Settlement and the fact that Plaintiff and Defendants were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement).
 - ii Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the

Settlement or the Agreement, nor any reports or accounting of those matters, shall be: (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to the Plaintiff, Defendants or any of the Released Parties including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.

- iii This section and all other provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings for the sole and limited purpose of enforcing the terms of this Agreement or defending any claims released or barred by this Agreement.

- 68. **Integrated Agreement.** Once signed and delivered by the Parties and their counsel, this Agreement and its exhibits shall constitute the entire agreement between them regarding Settlement of the Action. The Parties agree that they have not made or relied upon any representations, warranties, covenants, or inducements in connection with their decision to sign this Agreement other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- 69. **Attorney Authorization.** Class Counsel and Defendants' Counsel warrant and represent that they are authorized by the Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effectuate the implementation of the Settlement. In the event the Parties are unable to reach an agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties may seek the assistance of the Court for resolution.
- 70. **No Prior Assignments:** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.
- 71. **No Tax Advice:** Neither Class Counsel nor Defendants' Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 72. **Agreement Binding on Successors.** This Agreement is binding upon, and inures to the benefit of, the successors of each of the Parties. The Parties warrant that they understand and have full authority to enter this Agreement, and intend it to be fully enforceable and binding on all Parties, pursuant to California Code of Civil Procedure section 664.6, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any Settlement Conference confidentiality provisions which might otherwise apply under federal or state law.

73. **Enforcement Action.** In the event that any Party institutes any legal action or other proceeding against another Party or Parties to enforce any provision of this Agreement or to declare rights and/or obligations under this Agreement, the prevailing Party or Parties to any such enforcement action will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees, incurred in connection with the enforcement action.
74. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
75. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
76. **Fair and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations facilitated by an experienced and respected wage and hour class action mediator, taking into account all relevant factors, current and potential.
77. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendants in connection with the mediation and other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within sixty (60) days after the Effective Date, Class Counsel agree to return or destroy all such documents and data and provide written confirmation of same to Defendants.
78. **Exhibits and Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement. The terms of this Agreement include the terms set forth in any attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement.
79. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiff and the Class:

HAMMONDLAW, P.C.
Julian Hammond (SBN 268489)
jhammond@hammondlawpc.com
Polina Brandler (SBN 269086)
pbrandler@hammondlawpc.com
Ari Cherniak (SBN 290071)
acherniak@hammondlawpc.com
1201 Pacific Ave Suite 600
Tacoma WA 98402
Tel: (310) 601-6766
Fax: (310) 295-2385

To Defendants:

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

Michael J. Nader, Esq.
Email: Michael.nader@ogletree.com
500 Capitol Mall, Suite 2500
Sacramento, CA 95814
Telephone: (916) 840-3150 / Fax: (916) 840-3159

80. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically, or by email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
81. **Stay of Litigation.** The Parties agree that upon the signing of this Agreement, the Parties agree to jointly request the Court to stay all proceedings with this Action, except for such proceedings needed to secure approval of this settlement, and the time to bring the Action to trial shall be extended pending the outcome of the settlement process.
82. **Continuing Jurisdiction.** Pursuant to California Code of Civil Procedure section 664.6, The Alameda County Superior Court shall retain continuing jurisdiction over the Action to ensure the continuing implementation of this Agreement.
83. **Court Filings.** The Parties agree not to object to any Court filings consistent with this Agreement.
84. **Invalidity of Any Provision.** Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by and on behalf of the Parties, as follows:

Plaintiff and Proposed Class Representative

6/20/2023
Dated: _____, 2023 By: Richard Davila
Richard Davila

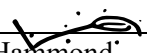
Concentrix Solutions Corporation and Concentrix Services U.S., Inc.

6/22/2023
Dated: _____, 2023 By: Angela Grant
Name: Angela Grant
Title: Vice President, Legal Counsel

[additional signatures on following page]

APPROVED AS TO FORM:

Counsel for Plaintiff and Proposed Class Counsel

Dated: June 21, 2023 By: 
Julian Hammond
HammondLaw, P.C.

Counsel for Defendant

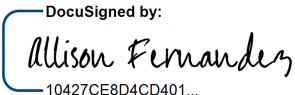
Dated: 6/22/2023, 2023 By: 
Michael J. Nader Allison Fernandez
Ogletree Deakins

EXHIBIT A

Superior Court of California, County of Alameda
Richard Davila v. Concentrix Solutions Corporation, Concentrix Services US, Inc.,
(Case No. RG20079700)

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you, and you are not being sued.
However, your legal rights are affected whether you act or don't act.*

NOTICE OF SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION

To: **Class Members:** All current and former California employees of Defendants Concentrix Solutions Corporation and Concentrix Services US, Inc. who worked at any time during the period from November 5, 2016 to January 6, 2023.

PAGA Members: All current and former California employees of Defendants Concentrix Solutions Corporation and Concentrix Services US, Inc. who worked at any time during the period from October 30, 2019 to January 6, 2023.

A putative class action and representative action under the California Private Attorneys General Act of 2004 (“PAGA”), which was brought on behalf of the Class and PAGA Members (defined above) and against Defendants Concentrix Solutions Corporation and Concentrix Services U.S., Inc. (the “Defendants”) has been settled for \$385,000. As explained in this Notice, if the Court approves the Class and PAGA Settlement, then you may receive payments under this Settlement. You are receiving this Notice because the Defendants’ records indicate that you are a Class Member and/or a PAGA Member.

If you are a Class Member and/or a PAGA Member, then you are eligible for payment from the Settlement described in this Notice without taking any action. In other words, there is no need to return a claim form.

PLEASE READ THIS NOTICE CAREFULLY.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE YOUR SETTLEMENT CHECK	If you want to participate and receive your share of the money from the Class and PAGA settlement, you do <u>not</u> need to do anything. If you do nothing, you will be mailed a settlement payment and you will release certain claims. <i>[You must, however, keep a current address on file with the Settlement Administrator identified in this Notice to ensure receipt of your check.]</i>
EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT	If you ask to be excluded from the Class portion of the settlement, then you will not receive any money from the Class Settlement. But if you exclude yourself, you keep any rights as an individual to sue Defendants separately about the same legal claims that are being settled here. You may exclude yourself from the settlement by submitting a written Request for Exclusion according to the instructions contained in this Notice. The deadline to submit a Request for Exclusion is [45 calendar days from date of mailing]. If you are a PAGA Member, then even if you exclude yourself from the Class Settlement, you will still receive a portion of the PAGA settlement money and be bound by the release of PAGA claims.

OBJECT	You have the right to object to the Settlement if you think it is unfair by mailing your written objection to the Settlement Administrator. You also have the right to appear at the Final Approval Hearing. However, if you submit a Request for Exclusion from the Settlement, you cannot object to it. The deadline to submit an objection is [45 calendar days from date of mailing].
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- **Your rights and options – and the deadlines to exercise them – are explained in this Notice.**
- **Defendants support the Settlement and will not retaliate against any Class Member for any reason, regardless of whether the Class Member remains in the Class and receives a portion of the Settlement or chooses another option provided in this Notice.**

BASIC INFORMATION

1. **Why was this Notice issued**

A Court authorized this Notice because you have a right to know about the proposed Settlement of this Class and representative PAGA action lawsuit, and about all of your options, before the Court decides whether to approve it. This notice explains the lawsuit, the Settlement, your legal rights, the payments that are available, who is eligible to receive them, and how to get them.

The Court in charge of the case is the Superior Court of the State of California, County of Alameda, and the case is titled *Richard Davila v. Concentrix Solutions Corporation, Concentrix Services U.S., Inc.*, (Case No. RG20079700) (the “Action” or the “Lawsuit”).

2. **What is the Lawsuit about?**

On October 14, 2021, Plaintiff Richard Davila filed a Second Amended Class and Representative Action Complaint in *Richard Davila v. Concentrix Solutions Corporation, Concentrix Services U.S., Inc.*, County of Alameda Superior Court Case No. RG20079700, alleging that Defendants violated Section 2802 of the California Labor Code by failing to reimburse necessary business expenses incurred by employees, and violated Section 17200 et seq. of the California Business and Professionals Code by failing to reimburse business expenses.

Defendants deny all of the claims in the Lawsuit. However, Defendants have agreed to settle the Lawsuit to avoid continued litigation. The Settlement is not an admission of any wrongdoing by Defendants or an indication that any law was violated.

3. **What is a class action?**

In a class action lawsuit, a Plaintiff who is called a Class Representative (in this case, Richard Davila) sues on behalf of others (called a class or class members) who may have similar claims.

4. **Why is there a Settlement?**

The Court did not decide in favor of the Plaintiff or of the Defendants. Instead, both sides agreed to a no-fault settlement of the Lawsuit (“Settlement”). That way, the Parties avoid the cost of further litigation including a trial, and class members receive money from the Settlement.

5. Who are the Parties in this Lawsuit?

Plaintiff Richard Davila is a former employee of Defendants Concentrix Solutions Corporation and Concentrix Services U.S., Inc.

6. Who are the Attorneys representing the Plaintiff and the Class?

HAMMONDLAW, P.C.
 Julian Hammond
 jhammond@hammondlawpc.com
 Polina Brandler
 pbrandler@hammondlawpc.com
 Ari Cherniak
 acherniak@hammondlawpc.com
 1201 Pacific Ave Suite 600
 Tacoma WA 98402
 Tel: (310) 601-6766
 Fax: (310) 295-2385

You also have the right to hire an attorney (at your own cost) to represent you, or to enter an appearance and represent yourself.

THE TERMS OF THE SETTLEMENT**7. What is the Settlement Amount?**

The proposed Settlement provides for a maximum payment of \$385,000 to resolve all claims fully and finally in the Lawsuit (referred to as the “Total Settlement Amount”). Class Counsel will apply to the Court for attorneys’ fees of up to 35% of the Total Settlement Amount; litigation costs estimated a \$25,000.00; a “Class Representative Enhancement Payment” of up to \$10,000 for the Plaintiff’s work and effort in prosecuting this Lawsuit, risks taken for the payment of costs in the event of a loss to the Defendants, and in exchange for a general release of all claims; settlement administration expenses to Simpluris (“Settlement Administrator”), estimated at \$8,000; and a \$10,000 “PAGA Payment” to the California Labor Workforce and Development Agency (“LWDA”) and PAGA Members in settlement of claims for penalties under PAGA. The exact amounts of these payments will be determined by the Court at the Final Approval hearing if the Settlement is approved.

Following the Court-approved deductions, the remaining portion of the Settlement, the Net Settlement Amount (“NSA”), is estimated to be \$197,250. The NSA will be apportioned and paid out entirely, automatically, to all “Participating Class Members” who are the Settlement Class Members who have not asked to be excluded from the Settlement. They each will receive an “Individual Settlement Payment.”

No portion of the Total Settlement Amount will revert to Defendants under any circumstances.

8. How will the Individual Settlement Payments be calculated and how much will I receive?

Participating Class Members will receive a pro-rata share of the NSA based on the number of Months they worked for Defendants during the time period from November 6, 2016 to January 6, 2023 (the “Class Settlement Period”).

Here is how it works – the NSA will be distributed to Participating Class Members. The NSA allocated to each individual Participating Class Member will be based on the individual’s total number of months worked during

the Class Settlement Period, in relation to the total number of months worked by all Participating Class Members. The number of months worked will be calculated according to Defendants' records, which will be verified by the Settlement Administrator.

Based on Defendants' records, you worked ____ months during the Class Settlement Period and your estimated Individual Settlement Payment is \$ _____. Although the actual amount that is paid may be lower or higher than the amount estimated. If you wish to dispute your number of workweeks during the Class Settlement Period, you must notify the Settlement Administrator in writing, no later than forty-five (45) days after the mailing of this Notice. You must provide proof that you were employed by one or both of the Defendants for a different number of weeks during the Class Settlement Period.

Individual Settlement Payments are allocated as expense reimbursements. You will be responsible for the tax consequences of your Individual Settlement Payment, for filing your own returns, for reporting all income received to state and federal taxing authorities, and for payment of any other applicable taxes due. You should consult with a tax advisor concerning the tax consequences of the Individual Settlement Payment you could receive under the Settlement.

9. How will the PAGA Payment be distributed?

The Parties will seek approval from the Court to designate \$10,000 of the Total Settlement Amount as penalties recoverable under the PAGA. 75% of this amount, or \$7,500, will be paid to the LWDA, as required by law. The remaining 25% of this amount, or \$2,500, will be distributed to the PAGA Members as "Individual PAGA Payments." The Individual PAGA Payments are paid in addition to any Individual Settlement Payments (the Individual Settlement Payment and the Individual PAGA Payments are the "Settlement Payment"). 100% of the PAGA Payment will be treated as civil penalties. You should consult with a tax advisor concerning the tax consequences of the Individual PAGA Payment you could receive under the Settlement.

Not all Class Members also qualify as PAGA Members entitled to an Individual PAGA Payment. You are only a PAGA Member if you worked for Defendants during the period from October 30, 2019 to January 6, 2023 (the "PAGA Settlement Period"). The Individual PAGA Payments will be calculated on a pro-rata basis based on the number of months that you worked during the PAGA Settlement Period. Based on Defendants' records, your total months worked during the PAGA Settlement Period is _____. Based on that, your anticipated approximate Individual PAGA Payment is \$ _____. If you wish to dispute your number of months worked during the PAGA Settlement Period, you must notify the Settlement Administrator in writing, no later than forty-five (45) days after the mailing of this Notice. You must provide proof that you were employed by one or both of the Defendants for a different number of months during the PAGA Settlement Period.

HOW TO GET PAYMENT

10. How can I get my Settlement Payment?

If the Court approves the Settlement, you do not need to take any action to receive a Settlement Payment – your Settlement Payment will be mailed to you by the Settlement Administrator. **It is your responsibility to keep the Settlement Administrator informed of any change in your address, as your Settlement Payment will be mailed to the last known address it has on file for you if the Court approves the Settlement.**

11. When can I expect to receive my Settlement Payment?

If the Court approves the Settlement, and there are no pending objections, your share of the Settlement will be paid approximately 60 days after the Court grants final approval of the Settlement. ***Your share of the Settlement***

will be mailed to the address on file for you. Again, if this address is not correct, or if you move after you receive this Notice, you should notify the Settlement Administrator by mail or by calling the Settlement Administrator at 800-_____.

12. What am I giving up to get a Settlement Payment?

Participating Class Members will be giving up or “releasing” the claims described below:

Release of Class Claims: After the Defendant remits the Gross Settlement Amount, each Participating Settlement Class Member will be bound by the approval and the Court’s judgment, thus releasing Defendants (Concentrix Solutions Corporation and Concentrix Services U.S., Inc.) and their past, present and/or future, direct and/or indirect, owners, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, parent companies, subsidiaries, affiliates, successors, and assigns (“Released Parties”) fully and forever from all claims and causes of action arising during the Class Period that were or could have been alleged based on the allegations in the original and amended complaints in the Action, including: (a) all claims for failure to reimburse for necessary business expenses under Section 2802 of the California Labor Code; and (b) all claims for relief under California Business and Professions Code § 17200, et seq. The period of the Released Class Claims is the Class Period, November 5, 2016 to January 6, 2023.

The Labor and Workforce Development Agency (“LWDA”), the State of California, and Plaintiff as agent and proxy for the LWDA, will be giving up or “releasing” claims for civil penalties under PAGA:

Release of PAGA Claims: After the Defendant remits the Gross Settlement Amount, the LWDA, the State of California, and Plaintiff as agent and proxy of the state, will fully and finally release the Released Parties from all claims and causes of action, arising during the PAGA Period, that were or could have been alleged based on the allegations in the original and amended complaints in the Action, and in all of the PAGA Letters in the Action, that seek civil penalties and other relief under the PAGA, including all claims for failure to reimburse for business expenses. Regardless of whether any Class Member opts out of the Class Settlement, they will still be bound by the Released PAGA Claims if they are PAGA Members. The period of the Released PAGA Claims is the PAGA Period, October 30, 2019 to January 6, 2023.

EXCLUDING YOURSELF FROM THE CLASS SETTLEMENT

13. Can I exclude myself from the class settlement?

If you do not wish to participate in the class settlement for whatever reason, you can exclude yourself from the class settlement (that is, “opt out” of the Settlement). If you opt out, you keep your right to sue the Defendants for the same claims on an individual basis. However, you cannot opt out of the PAGA portion of the Settlement. To opt out and exclude yourself from the Class and this Settlement so that you do not become a Participating Settlement Class Member, you must provide a signed and dated letter to the Administrator requesting to be excluded from the Class. The letter must state in substance:

“I have read and understand the Notice of Settlement of Class and Representative Action, and I wish to exclude myself from the Settlement described in the Notice.”

Your letter requesting to exclude yourself must include the case name, *Richard Davila v. Concentrix Solutions Corporation, Concentrix Services U.S., Inc.*, (County of Alameda Superior Court Case No. RG20079700), your full name, current address and telephone number. It must be addressed to the Administrator at [address], postmarked on or before _____, 2022. [45 days from mailing of Notice] Requests for exclusion postmarked after this date may be disregarded.

14. If I don't exclude myself from the class settlement, can I sue Defendants for the same thing later?

No. Unless you exclude yourself from the class settlement, you are giving up any right to sue Defendants for the claims that this Settlement resolves. *If you have a separate arbitration or lawsuit already against any of the Defendants, you should speak to your lawyer in that case immediately.* You may need to exclude yourself from the Class and this Action by the above deadline to continue your separate arbitration or lawsuit.

15. If I exclude myself from the class settlement, can I get money from this settlement?

No, if you exclude yourself from the Class, you cannot get money from the Class Settlement. In other words, if you "opt out," you will not receive an Individual Settlement Payment. You also will not be able to object to the Settlement as explained below. If you request to exclude yourself or "opt out" of the Class, your Individual Settlement Payment will be redistributed to the Participating Class Members.

However, if you are a PAGA Member, you will receive an Individual PAGA Payment regardless of whether you exclude yourself from the class settlement.

No portion of the Total Settlement Amount will go back to Defendants as a result of any person opting out of the Settlement.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I don't like the Settlement?

If you do not think the Settlement is fair, and you do not request to be excluded from the Class Settlement, you can object to the Settlement and tell the Court that you do not agree with the Settlement, or some part of it, before the Court decides whether to grant final approval of the Settlement.

To object in writing, you must submit a timely written objection to the Settlement Administrator. Your objection must state that you object to the proposed Settlement of the case entitled *Richard Davila v. Concentrix Solutions Corporation, Concentrix Services U.S., Inc.*, (County of Alameda Superior Court Case No. RG20079700). Be sure to include your name, address, telephone number, and signature, and the specific reasons you object to the Settlement. You must mail your written objection to the Administrator at [address], postmarked on or before _____, 2022. *[45 days from mailing of Notice Packet]* Requests for exclusion postmarked after this date may be disregarded.

If you have questions regarding this Settlement, you should contact attorneys for the Plaintiff and the Class (see Paragraph 6 above) or the Settlement Administrator. Please **DO NOT** contact attorneys for the Defendants or any of the Defendants' managers, supervisors, or owners.

THE COURT'S FINAL FAIRNESS HEARING

17. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval hearing in Department __ of the Superior Court of California, County of Alameda, located at the _____ on _____, 2023, at ____ a.m. At this hearing, the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and litigation costs, the Class

Representatives' Enhancement Awards, and the Settlement Administrator's fees and expenses. The Court may reschedule the Final Approval hearing without further notice to Class Members. However, any Class Member who has submitted an objection and indicated an intention to speak at the Final Approval Hearing will be notified by Class Counsel of any rescheduling of the date and time of the Final Fairness hearing.

18. Do I have to come to the hearing?

No. Class Counsel will appear and answer any questions from the Judge, but you are welcome to come at your own expense to support or object to the Settlement. If you send your timely written objection to the Settlement Administrator, you do not have to come to Court to object, but you can attend if you wish to attend. If you mailed your written objection on time, the Court will consider it. You may also hire and, if required, pay your own lawyer to attend if you so desire.

19. May I speak at the hearing?

You may appear at the Final Approval Hearing and ask the Court for permission to speak; however, to be sure that the Court will consider any objection, you should submit a timely written objection, or a notice of intent to appear at the hearing. To do so, please timely submit the objection or notice of intent to appear to the Settlement Administrator listed in section 15 no later than *[45 days after mailing of postcard.]* Any notice of intent to appear should include a description of any arguments you intend to make.

GETTING MORE INFORMATION

20. Who may I contact if I have questions about the settlement?

This Notice is only a summary of the Lawsuit and proposed Settlement. For more information, you may personally inspect the files and the Settlement Agreement at the Superior Court of California, County of Alameda located at the _____, during regular Court hours. You may also contact Class Counsel if you need more information or have questions. You may also contact the Settlement Administrator by calling toll free 1-_____, or you can write to Settlement Administrator, at **[insert address]**.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANTS OR ANY OF THEIR MANAGERS, SUPERVISORS, OWNERS OR ATTORNEYS FOR INFORMATION.

ADDITIONAL IMPORTANT INFORMATION

A. **It is your responsibility to ensure that the Settlement Administrator** has your current mailing address and telephone number on file, as this will be the address to which your Settlement Payment will be sent if the Settlement is approved.

B. **Settlement Payment checks should be cashed promptly upon receipt.** Proceeds of checks which remain uncashed after 180 days from the date of issuance will be forwarded to the Alameda County Court Appointed Special Advocates, an IRS Section 501(c)(3) corporation, in the name of each Settlement Class Member and/or PAGA Member who did not cash his or her Settlement Payment check. If your Settlement Payment check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.