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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.
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CASE NO. RG20079700

**DECLARATION OF JULIAN HAMMOND IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: May 19, 2023

Time: 9:00 a.m.

Dept.: 21

Reservation No. 310867829180

I, Julian Hammond, declare as follows:

I. INTRODUCTION

1. I am over the age of 18 and have personal knowledge of the facts set forth in this declaration and could and would testify competently to them.

2. I am a member in good standing of the Bar of the State of California. I am licensed to practice before all courts in the State of California.¹

3. I am the founding shareholder of the law firm HammondLaw, P.C. (“HammondLaw”) and counsel (“Class Counsel”) for Plaintiff Richard Davila and approximately 256 employees who worked for Concentrix Solutions Corporation and Concentrix Services US, Inc. (“Defendants” or “Concentrix”) in California (“Class Members” or “CMs”) from November 5, 2016 through January 6, 2023 (“Class Period”). I have no knowledge of the existence of any conflict of interest between Class Counsel, Plaintiff, and any Class Member.

II. ATTORNEY EXPERIENCE

4. HammondLaw has been certified as Class Counsel or Co-Class Counsel in at least 60 class action lawsuits, representing thousands of class members, in the Superior Courts for the Counties of Alameda, Los Angeles, Sacramento, San Diego, San Francisco, Solano, Santa Clara, Monterey, San Joaquin, Placer, Orange, Contra Costa, San Bernardino, and in federal District Courts in California in diversity jurisdiction cases based on state law, over the last ten years. In addition, HammondLaw is putative Class Counsel in at least 40 pending actions in California Superior Courts, some of which have been tentatively settled and/or preliminarily approved by the Courts.

5. I graduated from the University of South Wales with a Bachelor of Commerce in 1995, from the University of Technology in Sydney with a Bachelor of Law *summa cum laude* in 1999, and from New York University School of Law with a Masters of Law in 2001. I founded HammondLaw in 2010. Since the founding of HammondLaw, I have devoted a substantial percentage of my practice to litigating cases involving consumer, employment, and other class actions. My firm has represented tens of thousands of consumers in class actions under California law and in California courts.

6. Four associate attorneys - Adrian Barnes, Polina Brandler, Ari Cherniak, and Arie Michelsohn - played an active role in this case.

7. Mr. Barnes earned his B.A in Rhetoric from the University of California at Berkeley in 2001, his M.A. in English Literature from University College London in 2003, and his J.D. from

¹ I am also admitted to practice as a Barrister-at-Law in both the New South Wales and Victorian Supreme Courts, located in Australia.

1 Columbia Law School in 2007. While at law school, Mr. Barnes was a James Kent Scholar and a member
2 of the Columbia Law Review editorial board. He also won Columbia's Emil Schlesinger prize for the
3 student most proficient in labor law. Since graduation, Mr. Barnes' practice has focused on traditional
4 labor law and wage and hour and consumer class actions.

5 8. Polina Brandler is a twelfth-year associate. She received her B.A. in history *cum laude*
6 from the Macaulay Honors College at the City University of New York in 2005, and her J.D. from the
7 Benjamin N. Cardozo School of law in 2009. After graduating from law school, MS. Brandler clerked
8 for the Honorable Anita H. Dymant of the Appellate Division of the Los Angeles Superior Court from
9 2009 to 2012, and joined HammondLaw shortly thereafter. During her time at HammondLaw, her
10 practice has focused on wage and hour and consumer class actions. Ms. Brandler is admitted to practice
11 law in California and New York.

12 9. Mr. Cherniak received his B.S. in Philosophy *cum laude* from Towson University in 2007,
13 and his J.D. from Tulane Law School in 2011. Since 2012, Mr. Cherniak's practice has focused on wage
14 and hour and consumer class actions. Mr. Cherniak is admitted to practice law in California, Washington,
15 and Maryland.

16 10. Dr. Michelsohn received his B.A. from Columbia University in 1982, his Ph.D. from the
17 California Institute of Technology in 1992, and his J.D., with High Honors, Order of the Coif, from the
18 George Washington University Law School in 1998. He is a former law clerk to the Honorable Raymond
19 C. Clevenger, III, Circuit Judge, United States Court of Appeals for the Federal Circuit.

20 11. Class Counsel's broad collective experience in the prosecution and resolution of wage and
21 hour class action litigation on behalf of California employees enabled Counsel to efficiently assess the
22 value of the claims of Class Members and to obtain an efficient settlement.

23 **Factual and Procedural Background**

24 12. Plaintiff worked for Concentrix as a Customer Product Support Representative from
25 approximately June of 2016 through approximately August of 2020. On October 30, 2020, Plaintiff
26 submitted a PAGA Notice to the LWDA and Defendant Concentrix Services US alleging a violation of
27 Labor Code § 2802 on behalf of all employees of Defendant Concentrix Services US in California during
28 the PAGA Period (October 30, 2019 to January 6, 2023).

13. On November 5, 2020, Plaintiff filed this lawsuit in Alameda County Superior Court
asserting two causes of action: (i) failure to reimburse business-related expenses in violation of Labor
Code § 2802; and (ii) a UCL claim. Plaintiff alleged that during the Class Period, Class Members who
were assigned to work remotely were required to have, *inter alia*: high speed internet service, landline

1 phones, corded phones and corded headsets. Plaintiff further alleged that, as a result of the Covid-19
2 pandemic, all of Defendant's non-essential employees were required to work remotely, and to provide
3 hardware, internet and phone service. Plaintiff alleged that, despite requiring Class Members to incur
4 business expenses in order to work remotely and carry out their job duties, Concentrix did not reimburse
5 Class Members for such expenses

6 14. On February 16, 2021, Plaintiff filed a First Amended Complaint ("FAC") adding a claim
7 for civil penalties under PAGA based on his October 30, 2020 PAGA Notice.

8 15. On March 10, 2021, Plaintiff served written discovery on Defendant Concentrix Services
9 US, to which it responded, and produced documents including an employee handbook and policy
10 documents related to requirements for specific telephone hardware and internet and phone connections
11 applicable to individuals working remotely.

12 16. On October 14, 2021, Plaintiff filed his Second Amended Complaint which clarified the
13 class definition, and added Concentrix Solutions Corporation as a defendant. On October 22, 2021,
14 Plaintiff submitted an amended PAGA Notice to the LWDA and Defendants alleging a violation of Labor
15 Code § 2802 on behalf of all employees of Defendant Concentrix Solutions Corporation in California
16 during the PAGA Period.

17 17. On November 1, 2021, Plaintiff served written discovery on Defendant Concentrix
18 Solutions Corporation, which it responded to on January 10, 2022.

19 18. On November 23, 2021, Defendant filed its answer to Plaintiff's SAC, asserting 29
20 affirmative defenses.

21 19. Subsequently, the Parties agreed to stay formal discovery, engage in informal discovery,
22 and to attend mediation. Prior to the mediation, Defendant produced data for the Class and PAGA
23 Periods, including: the total number of employees in the Class (256); the total number of months worked
24 in the Class Period (7,027);² the number total number of employees in the PAGA group (137); and the
25 total number of months worked in the PAGA Period (3,008),³ as well as other documentary evidence
26 regarding the claims asserted in the case. Additionally, Plaintiff's counsel gathered information from
27 Defendants' website, emails, and employee manuals, concerning Concentrix's response to COVID-19
28 and Concentrix's policies and procedures concerning remote work.

² Defendant calculated 6,882 months worked by the Class between the start of the Class Period through to mediation; Plaintiff extrapolated out to the end of the Class Period.

³ Defendant calculated 2,936 months worked by the Aggrieved Employees between the start of the PAGA Period through to mediation; Plaintiff extrapolated out to the end of the PAGA Period.

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

11 21. On March 10, 2023, Plaintiff filed his operative Third Amended Complaint, adding a
12 PAGA claim against Concentrix Solutions Corporation based on his October 21, 2022 amended PAGA
13 Notice.

14 **The Settlement Is Fair and Reasonable**

15 22. Plaintiff calculated Defendant's maximum exposure as follows: Based on conversations
16 with Plaintiff, and Defendants' remote work equipment and technology requirements, Plaintiff assumed
17 \$100 per month was a "reasonable percentage" of internet and phone expenses incurred by the Class; and
18 \$150 was a reasonable one-time hardware cost incurred by the Class. Thus, Plaintiff calculated that the
19 Class incurred $(\$100 * 7,174 \text{ months}) + (\$150 * 256 \text{ Class Members})$, or \$741,100 in unreimbursed
20 expense during the Class Period. Interest at 10% adds \$222,430 for a total of \$963,430. Plaintiff then
21 applied discounts for the strength of Defendants' foreseeable defenses and risks of continued litigation.
22 For example, Defendants would have contended that Plaintiff would be unable to certify a class, or would
23 lose on the merits.

24 23. As to class certification, Defendant contended that individualized issues would
25 predominate, given that CMs had different expenses and different work circumstances in that the
26 expenses that were reasonable or necessary for one CM might not have been reasonable or necessary for
27 another based on a multitude of highly individualized factors. Plaintiffs applied a 25% discount for this
28 risk which reduced Defendant's liability to \$722,572.

 24. As to the merits, Defendant contended that a fact-finder would find that Plaintiff's
estimate of \$100 per month was far more than the "reasonable percentage" of expenses incurred by any
CM, and Plaintiff's estimate of \$150 for equipment was also inflated, given that many CMs may have
purchased cheaper equipment, and/or that many alleged expenses were neither reasonable nor necessary.

1 Plaintiffs applied a further 25% discount for the risks of losing on the merits, which reduced Defendant's
2 liability to \$541,929.

3 25. The \$385,000 Settlement represents 40% of Concentrix's maximum exposure of \$963,430
4 (including interest but excluding PAGA), and 71% of its realistic exposure of \$541,929 (after taking
5 discounts).

6 26. Given the risk posed on the merits and certification/manageability, Plaintiff views the
7 outcome as an excellent result. The gross share per Class Member is \$1,503.91⁴ and the net share is
8 \$770.51.⁵ The gross value per month is \$54.79⁶ and the net value is \$28.07.⁷ A Class Member who
9 worked for the entire Class Period will receive \$2,091.24,⁸ in addition to his or her share of PAGA
10 penalties.

11 27. Absent a settlement, the case could take years to resolve, as Plaintiff's Counsel know from
12 litigating similar wage and hour cases. If litigation were to proceed, Plaintiff would have faced arguments
13 that class certification was not appropriate, given that CMs incurred different expenses and different work
14 circumstances, and the expenses that were reasonable for one CM might not have been reasonable for
15 another. Even if this matter proceeded to trial, voluminous evidence would be needed to prove damages;
16 expert testimony and expert discovery could be required to prove the damage calculations; and trial would
17 be complex given the number of employees involved. Regardless of which side prevailed on class
18 certification, or at trial, an appeal would be likely, creating additional delay and uncertainty for the
19 employees' receipt of any recovery. This Settlement provides an efficient resolution of this dispute, and
20 CMs will obtain a substantial recovery now without the risks and lengthy delays that further litigation
21 would entail.

22
23 **PAGA Penalties Allocation is Reasonable**

24 28. Plaintiff calculated Defendant's exposure on PAGA penalties as follows: There were
25 approximately 3,008 months during the PAGA Period, or 6,016 semi-monthly pay periods.⁹ Using a
26

27 ⁴ \$385,000 / 256 employees

28 ⁵ \$197,250 / 256 employees. The Net Settlement is the amount remaining after deduction of attorneys' fees (\$134,750), expenses (\$25,000), service award (\$10,000), PAGA Penalties (\$10,000), and administration costs (\$8,000).

⁶ \$385,000 / 7,027 months.

⁷ \$197,250 / 7,027 pay periods.

⁸ 74.5-month Class Period * \$28.07 per month

⁹ 3,008 months * 2 pay period per month

1 penalty of \$100 per pay period (because Defendant never received notice from the Labor Commissioner
2 or the Court so there are arguably no “subsequent” violations), Defendant’s maximum exposure is
3 **\$601,600.**

4 29. The \$10,000 allocated to PAGA penalties represents 1.6% of Defendant’s PAGA
5 exposure and is comparable to (or more than) PAGA allocations in other wage and hour cases that
6 received final approval from California Superior Courts including *Glor v iHeart Media + Entertainment*,
7 Case No. 22CV005286 (Alameda County Superior Court) (February 14, 2023) (finally approving
8 \$30,000 allocated to PAGA penalties representing 1.8% of Defendant’s total exposure to PAGA penalties
9 of \$1,659,300); *Burleigh v. Brandman University*, Case No. 30-2020-01172801-CU-OE-CXC (Orange
10 County Superior Court) (January 27, 2023) (finally approving \$35,000 allocated to PAGA penalties
11 representing 1.7% of Defendant’s total exposure to PAGA penalties of \$2,024,233); *Sweetland-Gil v*
12 *University of the Pacific*, Case No. STK-CV-UOE-2019-0014682 (San Joaquin County Superior Court)
13 (March 4, 2022) (finally approving \$30,000 allocated to PAGA penalties representing 1.6% of
14 Defendant’s total exposure to PAGA penalties of \$1,517,700); *Pillow et al. v. Pepperdine University*,
15 Case No. 19STCV33162 (Los Angeles Superior Court)(July 28, 2021) (finally approving PAGA
16 allocation of \$15,000, representing 1% of the maximum \$1,619,200 in PAGA penalties); *Moore et al v*
17 *Notre Dame De Namur University*, Case No. 19-CIV-04765 (San Mateo County Superior Court) (July 1,
18 2021) (finally approving PAGA allocation in the amount of \$12,000, representing 1.9% of the maximum
19 \$631,300 in PAGA penalties); *Mooiman et al. v Saint Mary’s College of California*, Case No. C19-02092
20 (Contra Costa County Superior Court) (June 10, 2021) (finally approving \$30,000 PAGA allocation
21 representing 1% of the maximum \$649,200 in PAGA penalties, and explaining that “the record indicates
22 that defendant changed many of the policies at issue before the action was brought, that there is a
23 substantial monetary award which in part serves the deterrent function of a penalty, and that defendant
24 had some arguments of “good faith,” that would mitigate penalties”); and *Harris-Foster v. University of*
25 *Phoenix*, Case No. RG19019028 (Alameda County Superior Court) (March 17, 2021) (finally approving
26 \$50,000 PAGA allocation, representing 1.5% of maximum \$3,173,200 in PAGA penalties).

27 30. This allocation is fair and adequate for several reasons. First, the overall settlement is
28 robust, which is what courts look at when assessing amount attributed to PAGA penalties.

31 31. Second, Defendant would have argued that the Court would reduce any award of PAGA
32 penalties as “unjust, arbitrary and oppressive, or confiscatory” under Labor Code § 2699(e)(2), especially
33 because the \$601,600 in PAGA penalties are 62% of the maximum \$963,430 in unreimbursed expenses
34 allegedly incurred by the Class.

1 32. Third, in order to recover any PAGA penalties, Plaintiff would be required at trial to prove
2 that each employee suffered a violation for each pay period the employee worked, which would be
3 difficult in light of Defendant's anticipated defenses discussed above.

4 33. Fourth, PAGA claims can be stricken if they are found to be unmanageable, and because
5 only CMs who actually incurred unreimbursed expenses during a particular pay period could recover
6 PAGA penalties for those violations, Defendant could have disputed that there is a manageable way to
7 determine who was entitled to such penalties.

8 **The Class Representative Service Award Is Preliminarily Reasonable**

9 34. In conjunction with seeking final approval, Plaintiff will move for approval of a Class
10 Representative Service Award of \$10,000 to recognize the time and effort he expended for the Class, as
11 well as the general release he is giving Defendants. The requested award falls well within the range of
12 incentive payments typically awarded to Class Representatives in similar class actions.

13 **The Requested Attorneys' Fees and Costs Are Preliminarily Reasonable**

14 35. The Settlement Agreement provides that Defendant will not oppose a request for
15 attorney's fees of up to 35% of the Gross Settlement Amount (i.e., \$142,450). This is fair, reasonable and
16 adequate to compensate Class Counsel for the substantial work they have already done to prosecute this
17 Action, the risk they assumed to agree to take the case in the first place, the great expense spared to the
18 Class by Class Counsel having achieved a successful resolution, and the continued time and expense that
19 Class Counsel will incur by administering the fair distribution of the settlement fund should this Court
20 grant the settlement's approval.

21 36. The Settlement Agreement's award of litigation costs of up to \$25,000 is intended for
22 commonly reimbursed out-of-pocket cost incurred by my firm, including filing fees, process serving fees,
23 research charges, and the professional fees paid for a full-day mediation session, which were essential in
24 reaching the Settlement.

25 37. If the Court grants preliminary approval, Class Counsel will file a fully-briefed motion for
26 attorneys' fees and costs, supported by detailed lodestar information, to be heard after the completion of
27 the Notice process.

28 **Cy Pres Beneficiary**

38. The Settlement designates Alameda County Court Appointed Special Advocates as *cy*
pres recipient under Cal. Code of Civ. Proc. § 384. Alameda County Court Appointed Special Advocates
is a non-profit dedicated to recruiting, training, and supporting dedicated volunteers to be the constant in
a child's life.

39. In compliance with Code of Civil Procedure § 382.4, I, my firm, and Plaintiff have no connection to, relationship with, or any interest, financial or otherwise, in Alameda County Court Appointed Special Advocates that could reasonably create the appearance of impropriety as between the selection of the recipient of the money or thing of value and the interests of the class.

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

Dated: April 19, 2023

s/ Julian Hammond
Julian Hammond