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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

JOSEPH MONTAGUE, an individual,
MICHAEL DUPONT, an individual, CURTIS
MOORE, an individual, CHARISSEE
TABOTABO, an individual, RENAE
HILLOCK, an individual, UNINI ODAIBOM
an individual, MICHAEL LATHE, an
individual, BRENT MILLER, an individual,
GIANCARLO VELLEJO, an individual, and
BENJAMIN TACDERAS, an individual,

Plaintiffs,

vs.

GLOBAL CONNECTIONS TO
EMPLOYMENT, INC., a Florida corporation,
and DOES 1-50, inclusive,,

Defendants.

Case No.: 37-2022-00004601-CU-OE-CTL

*Assigned for all purposes to
Hon. Matthew C. Braner*

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND PAGA
SETTLEMENT, CONDITIONAL
CERTIFICATION OF THE SETTLEMENT
CLASS, APPOINTMENT OF CLASS
REPRESENTATIVES AND CLASS
COUNSEL, APPROVAL OF CLASS
NOTICE AND SETTING OF FINAL
APPROVAL HEARING AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: October 13, 2023

Time: 9:00 a.m.

Dept.: C-60

Action Filed: February 3, 2022

FAC Filed: May 26, 2023

Trial Date: None Set

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 13, 2023 at 9:00 a.m. or as soon thereafter
as the matter may be heard in Department C-60 of the above-captioned Court located at 330
W. Broadway San Diego, California 92101, class and PAGA Representative Plaintiffs Joseph
Montague, Michael Dupont, Curtis Moore, Charissee Tabotabo, Renae Hillock, Unini
Odaibom, Michael Lathe, Brent Miller, Giancarlo Vellejo, and Benjamin Tacderas (the

1 “Plaintiffs”) each individually and on behalf of all others similarly situated, will and do
2 hereby move this Court for entry of an Order for the following:

- 3 1. Preliminarily certify the proposed class herein for purposes of settlement;
- 4 2. Preliminarily appointing Plaintiffs as class representatives for purposes of settlement;
- 5 3. Preliminarily appointing W Employment Law, APC as Class Counsel for purposes of
6 settlement;
- 7 4. Preliminarily approving the proposed Joint Stipulation of PAGA and Class Action
8 Settlement and Release of Claims, in the amount of \$250,000.00 which is incorporated
9 by reference;
- 10 5. Preliminarily and conditionally approving the application for payment to Class Counsel
11 of attorneys’ fees in the amount of 40% of the Class and PAGA Settlement Amount.
- 12 6. Preliminarily and conditionally approving the application for payment to Class Counsel
13 of reasonable litigation costs and expenses;
- 14 7. Preliminarily approving the Class Representatives Enhancement Payment Award in an
15 amount not to exceed \$2,500 for each of the named Representative Plaintiffs;
- 16 8. Preliminarily approving the appointment of ILYM Group, Inc. as the Settlement
17 Administrator and for payment for administering said class action settlement in an
18 amount not to exceed \$10,000.
- 19 9. Approving as to form and content the proposed Notice of Settlement packet which
20 provides Class Members’ information regarding the settlement, their ability to opt out of
21 or object to the class action settlement and which provides instruction on how to dispute
22 an individual’s number of pay periods worked under the proposed settlement agreement;
- 23 10. Approving the proposed procedures to notify the Class and determining that the
24 proposed notification procedures and process complies with Class Members’ due
25 process rights and directing the Notice of Settlement to be sent by first class mail to the
26 Class Members;
- 27 11. Scheduling a final approval/fairness hearing on the question of whether the proposed
28

1 settlement should be finally approved as fair, reasonable, and adequate;

2 12. Preliminarily and conditionally approving and adopting the Proposed Order and its
3 implementation schedule, which is concurrently filed herewith and incorporated by
4 reference hereto.

5 This is being made pursuant to the Code of Civil Procedure section 382, and
6 California Rules of Court 3.769 and 3.764, on the grounds that the proposed class action
7 settlement is fair, reasonable and adequate as to all class members and should be approved
8 by the Court. This motion will be based on this Notice of Motion, the Memorandum of
9 Points and Authorities, the Declaration of Jacob N. Whitehead, the Declarations of Plaintiffs,
10 Joseph Montague, Michael Dupont, Curtis Moore, Charissee Tabotabo, Renae Hillock, Unini
11 Odaibom, Michael Lathe, Brent Miller, Giancarlo Vellejo, and Benjamin Tacderas; the
12 exhibits, the records and files of this case, and any further oral or documentary evidence
13 introduced at the hearing of this motion.

14 Respectfully submitted,

15
16 DATED: August 30, 2023

W EMPLOYMENT LAW, APC

17
18 By:


19 Jacob N. Whitehead
20 Attorney for Plaintiffs
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Joseph Montague, Michael Dupont, Curtis Moore, Charissee Tabotabo (currently known by her married name as “Charissee Allen”), Renae Hillock, Unini Odaibom, Michael Lathe, Brent Miller, Giancarlo Vellejo, and Benjamin Tacderas, each individually, and on behalf of all other similarly situated aggrieved employees, (the “Plaintiffs”) reached a settlement of the class and California Private Attorneys General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claims asserted in this action against Defendant, Global Connections To Employment, Inc. (“Defendant”). In accordance with California Labor Code §2699(l), Plaintiffs now ask this Court to review and preliminarily approve the settlement of Plaintiffs’ class action PAGA claims. The terms of the settlement are set forth in the Joint Stipulation of PAGA and Class Action Settlement and Release of Claims (the “Settlement Agreement”), a true and correct copy of the of which is attached as **Exhibit 1** to the concurrently filed Declaration of Jacob N. Whitehead, (along with **Exhibit A-1** to Exhibit 1 which is the proposed Notice of Class and PAGA Settlement, **Exhibit A-2**, the proposed Eligible Pay Period Dispute Form, **Exhibit A-3**, the proposed Request for exclusion Form/Opt-Out Form, and **Exhibit A-4** the proposed Objection Form, (collectively, the “Notice Packet”) that will be sent to the Class Members if this Court Approves the Settlement).¹ The LWDA has received notice of this Settlement and this motion as set forth in the accompanying proof of service. A (Proposed) Order confirming the Court’s review and preliminary approval of the PAGA settlement is also submitted concurrently herewith.

II. RELEVANT FACTS

Plaintiffs filed their Complaint on February 3, 2022, in the San Diego Superior Court, Case No. 30-2022-00004601-CU-OE-CTL asserting individual breach of contract claims and a PAGA cause of action for violation of Labor Code Section 2802 for unreimbursed work related expenses. The matter was removed to the United States District Court, Southern

¹ Unless otherwise defined herein, all terms that are capitalized herein shall have the meanings ascribed to those terms in the Joint Stipulation of PAGA and Class Action Settlement and Release of Claims, which is attached to the Declaration of Jacob N. Whitehead as **Exhibit 1** and are incorporated by reference hereto.

1 District of California, presiding Judge Michael M. Anello, Case Number: 3:22-cv-00342-
2 MMA-NLS. Thereafter, the Parties met and conferred and agreed to and did attend a private
3 mediation in attempt to resolve the present Action and have conducted a thorough
4 investigation into the facts and claims in the Action. This included the Parties engaging in
5 exchange of informal discovery of class information, which included the provision of relevant
6 data as to the Class and PAGA members employed during the relevant statutory periods and
7 their aggregate number of workweeks in preparation for mediation.

8 On May 17, 2022, the Parties engaged in an all-day private mediation session before
9 Steve Pearl, Esq., a neutral and well-respected mediator who is very knowledgeable regarding
10 class and PAGA claims. Through arm's-length negotiations with the assistance of Mediator,
11 Pearl, the Parties reached a settlement after accepting the mediator's proposal. The settlement
12 was negotiated in light of all known facts and circumstances and the uncertainty associated
13 with litigation – including the risk of Plaintiffs not being able to obtain class certification and
14 or without being able to maintain the representative claims, the difficulty of proving Plaintiff's
15 claims in a manageable trial, the merits of Defendant's potential defenses and the significant
16 delay and potential appellate issues inherent to litigation. The Parties agree that this Settlement
17 Agreement, nor the acts to be performed or judgments to be entered pursuant to the terms of
18 the Agreement, shall be construed as an admission by Defendant of any wrongdoing or
19 violation of any statute or law or liability on the claims or allegations in the Action.

20 On June 2, 2022, the Parties stipulated to remand the case back to San Diego Superior
21 Court. The USDC - Southern District of California, granted the Parties' stipulation and
22 remanded the Action back to the above-captioned Court. This Court now has exclusive
23 jurisdiction over Plaintiff's Class and PAGA claims.

24 On May 26, 2023 Plaintiff filed the First Amended Complaint alleging only violation of
25 Labor Code Section 2802 class claims and a PAGA Cause of Action for PAGA penalties based
26 the facts and California Labor Code provisions asserted in the action. It is well within the
27 discretion of this Court to grant preliminary and conditional approval of the Settlement
28 Agreement, which has satisfied all of the criteria for preliminary settlement approval under
California law. Accordingly, the Parties now request the Court to preliminarily and

1 conditionally certify the proposed settlement class; grant preliminary and conditional approval
2 of the proposed Settlement Agreement; approve the proposed form and content of the Notice
3 of Proposed Class and Representative Action and the proposed method for providing notice to
4 the Class and PAGA members forth in the Settlement Agreement; and adopt the
5 implementation schedule contained in the proposed order, including the scheduling of a final
6 approval hearing.

7 **III. OVERVIEW AND TERMS OF THE PROPOSED SETTLEMENT**

8 As the Court may observe from the papers submitted herewith, the Parties have conducted
9 significant investigation of the facts and law during the prosecution of this action and have
10 vigorously litigated this action and negotiated the terms of the proposed settlement. The
11 proposed Settlement Class includes approximately 223 class members who were employed by
12 Defendant in California during the Class Period as specified below. The Settlement
13 Agreement negotiated by the Parties provides for a Gross Fund Value (“GFV”) payment in an
14 amount not to exceed \$250,000 to resolve the individual class and PAGA Claims (hereinafter
15 referred to as the “Class and PAGA Settlement”). (*Id.* at §4.1). From this amount, subject to
16 court approval the following will be deducted: 1.) An amount equal to \$50,000 shall be
17 allocated for the settlement of each of the Plaintiff’s individual claims, (*Id.* at § 4.2(b) and the
18 remaining \$200,000 shall be allocated to resolving the Class and PAGA claims (“Class and
19 PAGA Settlement”). From this Class and PAGA Settlement of \$200,000, Twelve Thousand,
20 Five Hundred Dollars (\$12,500.00) shall be allocated as PAGA Penalties. Of the PAGA
21 Payment amount, seventy-five percent (75%) (\$9,375.00) will be paid to the Labor and
22 Workforce Development Agency (“LWDA”) and the remaining twenty-five percent (25%)
23 (\$3,125.00) will be paid to the alleged Aggrieved Employees (“Individual PAGA Payment”).
24 (*Id.* at §4.7) This allocation is required by Labor Code §2699 as explained by *ZB, N.A. v.*
25 *Superior Court*, 8 Cal.5th 175 (2019).

26 Further, subject to the Court’s further approval, there shall be an award of attorneys’ fees
27 not to exceed 40% of the Class and PAGA settlement, plus reimbursement of attorney’s
28 reasonable costs and expenses. (*Id.* at §4.5), plus a Service Payment award in an amount not
to exceed, Two Thousand, Five Hundred Dollars (\$2,500.00) for each of the Plaintiffs’ in

1 exchange for the services they performed on behalf of the Class. (*Id.* at §4.6); and claims
2 administration costs in an amount not to exceed Ten Thousand Dollars (\$10,000) to be paid to
3 the Third Party Administrator, for administration of the Class and PAGA Settlement. (*Id.* at §
4 4.8)

5 **A. Relief to Participating Class Members and Method of Distribution**

6 If the above deductions are approved, the Net Settlement Amount remaining is estimated to
7 be \$134,494.68 and shall be distributed on a pro-rata, basis to the Participating Class
8 Members. The Parties propose that the amounts allocated to Participating Class Members be
9 distributed based upon the number of pay periods worked by each such Participating Class
10 Member during the Class Period (February 3, 2019 to April 1, 2022) (*Id.* at §1.6). The dollars
11 per compensable pay period will be calculated by dividing the total pay periods worked by the
12 Participating Settlement Class Members into the Net Settlement Amount to determine a Per
13 Pay Period Value. (*Id.* at §4.4). In the event that the Court reduces the attorneys' fees,
14 litigation costs, expenses or Service Award payments, or either increases or decreases the
15 amount allocated for the PAGA Penalties, the Net Settlement Amount shall be increased or
16 decreased accordingly.

17 The Parties propose that the Individual PAGA Settlement payment for each Aggrieved
18 Employee (the "PAGA Employee Payment") shall be based on the number of pay periods
19 each Aggrieved Employee worked during the PAGA Period in California as a percentage of
20 the total pay periods worked by all alleged Aggrieved Employees during the PAGA Period in
21 California. (Settlement Agreement at §4.7). The PAGA Employee Payment shall be deemed
22 100% miscellaneous income, and shall be reported as required on IRS Form 1099. The PAGA
23 Period is the time period from February 3, 2021 through April 1, 2022. (*Id.* at §1.30, §1.31
24 and §4.7)

25 **B. Uncashed Checks**

26 Within ten (10) calendar days after the deposit of the Qualified Settlement Funds
27 ("QSF"), the Claim Administrator will mail the payments to the Participating Class Members,
28 the payment for the attorneys' fees and costs to Class Counsel and any Service Payment
awards to the Class Representatives as well as the payment for Plaintiffs' individual settlement

1 claims, the payment to the LWDA for payment of the PAGA penalties and will pay itself the
2 Claim Administration Costs. To the extent there are any uncashed checks, Participating Class
3 Members shall have 180 calendar days within which to negotiate (cash or deposit) their
4 settlement checks from the date on which they are mailed. Any checks not cashed within the
5 180 day time period will be void; a stop payment will be issued and the Claim Administrator
6 will remit the unclaimed funds to the California State Controller's Office, Unclaimed Property
7 Division in the name of the applicable Class Member or Aggrieved PAGA Employee.

8 **C. Scope of Release**

9 Defendants have represented that the Class consists of roughly 223 employees who
10 collectively worked approximately 10,691 pay periods during the Class Period, from February
11 3, 2019, to April 1, 2022. Upon entry of judgment, the Released Parties shall be entitled to a
12 release of the Class and PAGA Released Claims set forth in §§6.2 - 6.3 of the Settlement
13 Agreement.

14 **D. The Notice Packet**

15 Notice shall be provided to the Participating Class and PAGA Members. Defendants will
16 provide the Class Data to the Claim Administrator (subject to the Court's approval, the Parties
17 recommend ILYM Group, Inc. as the Claim Administrator) within fifteen (15) calendar days
18 after entry of the Preliminary Approval Order (Id. at § 9.3). The Notice shall be sent by the
19 Claim Administrator to Settlement Class Members, by first class mail, in English only, within
20 ten (10) calendar days following the Claim Administrator's receipt of the Class Data (Id. at §
21 9.4) from Defendant. The Claim Administrator shall use standard devices, including a skip
22 trace, to obtain forwarding addresses of Settlement Class Members if any envelopes are
23 returned and will take steps to ensure that the Notice is received by all Settlement Class
24 Members, including utilization of the National Change of Address Database maintained by the
25 United States Postal Service to review the accuracy of and, if necessary, update a mailing
26 address. Returned notices will be re-mailed to any Class Member for whom an updated
27 address is located within ten (10) calendar days following both the Claim Administrator's
28 learning of the failed mailing and its receipt of the updated address. The re-mailed Notice shall
be identical to the original Notice, except that it shall notify the Class Member that the

1 exclusion (opt-out) request or objection must be returned by the later of the Notice Response
2 Deadline or fifteen (15) calendar days after the re-mailing of the Notice. It will be conclusively
3 presumed that if an envelope has not been returned within thirty (30) calendar days of the
4 mailing that the Settlement Class Member received the Notice. (Id. at § 9.5).

5 At least twenty-five (25) calendar days prior to the Final Approval hearing, the Claim
6 Administrator shall provide counsel for the Parties a declaration of due diligence and proof of
7 mailing with regard to the mailing of the Notice. (Id. at § 9.8). Any Settlement Class Member,
8 other than Plaintiffs, may request to be excluded from the Settlement Class by submitting a
9 “Request for Exclusion” to the Settlement Administrator, postmarked on or before the Notice
10 Response Deadline. Any such Request must be made in accordance with the terms set forth in
11 the Notice. A Request for Exclusion will be timely only if postmarked by the Notice Response
12 Deadline, unless the Parties otherwise agree in writing. Any Settlement Class Member who
13 timely requests exclusion in compliance with these requirements: (i) will not have any rights
14 under this Agreement, including the right to object, appeal or comment on the Settlement; (ii)
15 will not be entitled to receive any Individual Settlement Payment under this Agreement; and
16 (iii) will not be bound by this Agreement, or the Judgment with respect to the Released Class
17 Claims.

18 **IV. THE RELEVANT FACTORS WEIGH IN FAVOR OF PRELIMINARY APPROVAL**

19 Courts presume the absence of fraud or in the negotiation of a settlement unless evidence
20 to the contrary is offered. In short, there is a presumption that the negotiations were conducted
21 in good faith. (*Newberg on Class Actions*, 3rd Ed. §11.51. While the recommendations of
22 counsel proposing the settlement are not conclusive, the Court can properly take them into
23 account, particularly where, as here, they have been involved in litigation for some period of
24 time, appear to be competent, have experience with this type of litigation, and have obtained
25 substantial evidence from the opposing party. (See *Newberg*, 3rd Ed. §11.47.) Here, the
26 proposed Class Counsel involved in the case has a great deal of experience in wage and hour
27 class action litigation. [See, Whitehead Decl. ¶’s 4 and 30].

28 **A. The Terms of the Proposed Settlement Are Fair and Within the Range of Reasonableness**

1 If the Court finds the proposed Settlement Agreement falls within the range of
2 reasonableness, it should grant preliminary approval of the Settlement Agreement. (See, *North*
3 *County Contr. 's Assn. Inc. v. Touchstone Ins. Svcs.* 27 Cal. App.4th 1085, 1089-90; *Kullar v.*
4 *Foot Locker Retail, Inc.* (2008) 168 Cal. App.4th 116, 133. The proposed Class and PAGA
5 settlement amount in this case is Two Hundred Thousand Dollars (\$200,000) (after the
6 deduction of \$50,000 from the GFV to resolve the individual claims of the individual
7 Plaintiffs). Based on this amount, each Participating Class Member will receive on average
8 approximately \$18.70 per pay period worked during the Class and PAGA liability periods,
9 *before deductions* for attorney's fees, litigation costs, administration costs, PAGA payment,
10 Class Representative and Class Member Service Enhancement awards. Further for the reasons
11 set forth in the accompanying Declaration of Jacob N. Whitehead [Whitehead Decl. ¶'s 15-29]
12 the settlement that has been reached, (subject to this Court's approval), is the product of
13 tremendous efforts and expense expended by all the Parties.

14 **B. The Class Representatives and Class Counsel Have Adequately Represented the**
15 **Class**

16 Plaintiffs have diligently represented the Class and Aggrieved PAGA Members. They
17 actively participated by providing documentation, submitting to interview and answering
18 questions by Class Counsel to fill in factual gaps. [Whitehead Decl. ¶'s 15, 31, 37(e),]; [See
19 also, concurrently filed Declarations of each of the named Plaintiffs.] Throughout, they have
20 remained in contact with Class Counsel, stayed apprised of the litigation and have acted with
21 the interests of the class in mind. Correspondingly, Plaintiffs' Counsel conducted a thorough
22 investigation of the facts in the action. In addition to the review of documents provided by
23 Plaintiffs and facts developed in attorney-client interviews, informal pre-mediation discovery
24 was conducted and personnel records, documents, and data files related to the putative class
25 were exchanged by the Parties prior to mediation. Plaintiff's counsel reviewed and examined
26 electronic time and payroll records, wage statement, and personnel files for the named
27 Representative Plaintiffs. Clearly, this litigation has reached a stage where the Parties have a
28 clear view of the strengths and weaknesses of their respective positions to support a finding
that the settlement should be preliminarily approved.

1 **C. The Proposed Settlement Was Negotiated at Arm’s Length**

2 The proposed Settlement was “reached through arm’s-length bargaining.” “The
3 involvement of a neutral or facilitator in [settlement] negotiations may bear on whether those
4 negotiations were conducted in a manner that would protect and further the class interests.”
5 *Dunk v. Ford Motor Co.*, (1996) 48 Ca1.App.4th 1794, 1802. As stated *supra*, the Parties
6 participated in a full day of mediation under the supervision of mediator, Steven Pearl in May
7 of 2022, during which they were able to reach agreement on the material terms of the proposed
8 Settlement. The Court can be confident of the arm’s length nature of the process and that the
9 Settlement was not the product of collusion.

10 **D. The Settlement Provides Strong and Immediate Relief for the Class**

11 The relief to be provided to the settlement class is strong. Defendant is offering an all-in,
12 non-reversionary Class and PAGA Settlement amount of \$200,000 to compromise Defendant’s
13 alleged violation of the Labor Codes as set forth in the First Amended Complaint. Subject to
14 this Court’s approval, and this Court’s approval of the deductions enumerated herein, at least
15 \$134,494.68 will be allocated and proportionally distributed to pay Class Members for alleged
16 wage and hour violations during the Class Period. While there can always be theoretical room
17 for improvement, this settlement provides substantial benefits to the Class, especially when
18 measured against the risks of further litigation.

19 The settlement amount is, of course a compromise figure. Plaintiffs took into account the
20 risks of maintaining a manageable class and PAGA action and risks related to proof of
21 damages and the strengths and weaknesses of Defendants’ other defenses. Plaintiffs also took
22 into account the possibility that if a settlement were reached after additional years of litigation,
23 the great expenses and attorney’s fees of litigation would likely reduce the amount of funds
24 available to the class. Furthermore, Plaintiffs also took into consideration the possibility of an
25 appeal by Defendant. It should be noted that the original PAGA penalty calculations were
26 performed at the maximum rate for civil PAGA penalties, when in fact, it is likely that any
27 PAGA civil penalties awarded would be at a lower rate. Under the PAGA, Courts have
28 considerable discretion to reduce the penalty award. In fact, some trial courts have awarded no
civil penalties, even when Labor Code violations are established. See *In re Taco Bell Wage &*

1 *Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA
2 penalties denied after trial). In order to recover any PAGA penalties, Plaintiffs would be
3 required at trial to prove each of the underlying alleged Labor Code violations (See *Cardenas*
4 *v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011)) and that
5 each Aggrieved Employee suffered a violation for each period the employee worked in relation
6 to Defendant's failure to reimburse for required expenses.

7 Moreover, Defendant has denied and continues to deny all the claims and contentions
8 alleged by the Representative Plaintiffs in the lawsuit. Defendant also maintains that they did
9 not violate Section 2802 of the Labor Code. Nonetheless, Defendant has concluded that
10 further litigation would be protracted and expensive, and would also divert management and
11 employee time. Defendant has therefore concluded that it is desirable that the lawsuit be fully
12 and finally settled in the manner and upon the terms and conditions set forth in the Settlement
13 to eliminate the burden and expense of further litigation. As in any class action case—
14 establishing liability and damages on a class wide basis is rife with uncertainty, making
15 settlement the more prudent course when a reasonable deal is available. All of these
16 considerations favor the present Settlement; the Class will receive meaningful relief now- and
17 not years down the road.

18 **V. THE SETTLEMENT PROVIDES FOR AN EFFECTIVE DISTRIBUTION OF**
19 **PROCEEDS TO THE CLASS AND PAGA MEMBERS**

20 The proposed Settlement provides for an efficient and effective distribution of funds to
21 the Class and PAGA Members. As long as they do not opt out, Class Members will receive an
22 individual settlement member payment. That is, Class Members do not have to submit a claim
23 at all to receive payment. Thus, the claims process in this Settlement poses no artificial
24 hurdles and should encourage class member participation in the Settlement. This factor also
25 weighs in favor of preliminary approval.

26 **VI. THE ATTORNEY'S FEES AND COSTS ARE FAIR AND REASONABLE**

27 Nothing about the negotiated attorney's fee award should detract from the fairness of the
28 Settlement. The Parties, under mediator Pearl's supervision and guidance, finalized the
material terms of the class wide relief under the Settlement before broaching the subject of

1 attorney's fees [Whitehead Decl. ¶ 32] so there is no risk that the attorney's fee agreement
2 impacted the nature of the class relief achieved and which of course, remains subject to this
3 Court's approval. Plaintiffs' Counsel seeks approval of attorneys' fees from the Class and
4 PAGA Settlement in the amount of \$80,000.00 which represents forty percent (40%) of the
5 \$200,000 Class and PAGA Settlement amount. The requested fees and costs are reasonable.
6 The requested percentage is within the standard contingent recovery percentage range of 33%
7 to 50%, and this percentage is what was expressly approved by the Supreme Court in *Laffitte*
8 *v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016). Second, the fee award is justified by the
9 work performed, as detailed in the accompanying Declaration of Jacob Whitehead at ¶'s 31-33.
10 Class Members will also have an opportunity to object before any such fees are paid to
11 proposed Class Counsel. Thus, this Court will have an opportunity to consider their objections,
12 if any, and adjust the amount requested if warranted. Accordingly, this factor also weighs in
13 favor of preliminary approval. Finally, as to litigation expenses, Plaintiffs' Counsel will also
14 seek to recover actual reasonable litigation expenses.

15 **VII. THE SETTLEMENT TREATS ALL CLASS MEMBERS EQUITABLY**

16 The proposed Settlement Agreement treats all the Class and PAGA members the same.
17 All Participating Class Members will be paid their proportionate share, based on the number of
18 pay periods worked by each Participating Class Member during the Class Period. Thus, the
19 proposed Class and PAGA Settlement treats all the Class and PAGA members equitably,
20 further supporting preliminary approval. Although the named Class Representatives will
21 receive additional compensation commensurate with their participate in the action, the
22 requested service enhancement awards are in recognition for the service each of them have
23 performed on behalf of the Class and PAGA Members and a broader release of claims. For
24 these reasons also, the proposed settlement merits preliminary approval.

25 **VIII. THE PARTIES REQUEST THE COURT TO PROVISIONALLY CERTIFY THE** 26 **CLASS**

27 For purposes of settlement only, the Parties request the Court to provisionally certify the
28 following Class as defined in the Settlement Agreement. This Court has the authority to certify a
provisional settlement class at the time preliminary approval. See *Amchem Prods., Inc., v.*

1 Windsor (1997) 521 U.S. 591, 620 (1997). All the class requirements are met here – numerosity,
2 commonality, typicality and adequacy: 1.) **The numerosity requirement** is easily satisfied as the
3 Class consists of approximately 223 individuals. 2.) **The commonality requirement** requires that
4 class members’ claims depend upon a common contention of such a nature that a determination of
5 its truth or falsity will resolve an issue the is central to the validity of each claims in one stroke is
6 also met. Here the crux of the Class Members’ Labor Code Section 2802 claims turn on whether
7 Defendant properly indemnified and reimbursed them for their significant work-related expenses
8 incurred in the discharge of their job duties during the Class Period. The resolution of that inquiry
9 revolves around common evidence and so can be fairly resolved for all Class Members at once.
10 The commonality requirement is thus satisfied; and 3.) **The typicality requirement** is also easily
11 met here. Plaintiffs have alleged that they, like the Class Members were not reimbursed for
12 routinely incurred business expenses pursuant to employer mandates that they download and
13 utilize mobile apps onto their personal cell phones and respond to text messages and phone calls
14 from clients and supervisors; that they use their own personal computers and laptops, that they use
15 their own personal vehicles for work-related travel; and other work related costs necessarily
16 incurred as they related to the necessary discharge of their job duties. The claims that Plaintiffs
17 pursued are based on the same legal theories and course of conduct that equally impacted all the
18 Class Members. Accordingly, the typicality requirement is also satisfied; and 4.) **The Adequacy**
19 **of Representation requirement** is also satisfied here. None of the representative plaintiffs have
20 any conflicts of interest with the putative class and they are represented by qualified, competent
21 and experienced Class Counsel. Throughout the litigation the representative plaintiffs have
22 demonstrated their willingness and ability to prosecute the lawsuit vigorously on behalf of the
23 putative class. Plaintiffs’ counsel is a highly experienced PAGA Representative and class-action
24 attorney who has successfully handled complex class actions in both state and federal courts.
25 [Whitehead Decl. ¶’s 3-4, 30] and thus qualified and experienced to make educated assessments
26 about the risks and possible recoveries in the current dispute. There is no reason to doubt the
27 adequacy of this representation; and 5.) **The class device is the superior method of adjudicating**
28 **the Class Members’ claims.** As common questions predominate over any questions affecting
only individual members, class resolution is superior to other available methods for a fair and

efficient resolution of the controversy. Liability and damages can be resolved using the same evidence for all the Class members and thus the action provides the precise the of predominant questions that makes a class wide adjudication worthwhile. There can be little doubt that resolving all the settlement Class Members' claims through a single class action is superior than a series of individual lawsuits. Based on the foregoing, the proposed Class satisfies all class certification requirements.

IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS

The Parties have proposed the following schedule for the fairness and final proceedings:

EVENT	TIMING
Last day for Defendant to provide to Claims Administrator a list containing the name and last known address, telephone number, social security number, e-mail address and number of weeks worked in a covered position issued during the Class Period for each member of the Settlement Class (the "Class Data")	Fifteen (15) calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Claims Administrator to mail Notice and Request for Exclusion Form in English only to Settlement Class Members	Within Ten (10) calendar days after receipt of Class Data from Defendant
Last day for Claims Administrator to notify Parties of the total number of valid Request for Exclusion Forms	25 calendar days prior to the Final Approval Hearing
Last day for exclusion requests by Settlement Class Members to be postmarked to Claims Administrator	Within 45 days of mailing of the Notice Packet or within fifteen days of re-mailed Notice Packets.
Last day for objections to be filed with the Court and served on Plaintiffs' counsel and Defendant's counsel	Within 45 days of mailing of the Notice Packet (the "Notice Response Deadline") or within fifteen days of re-mailed Notice Packets.
Last day for Class Counsel to file and serve moving papers in support of final settlement approval	16 Court days before the final approval hearing, <i>plus 2-5 calendar days per code (CCP §1005) for notice.</i>
Last day for Class Counsel to file with the Court and serve declaration by Claims Administrator specifying the due diligence undertaken with regard to the mailing of the Notice	25 calendar days prior to the final settlement approval hearing date
Final Settlement Approval Hearing	_____, 2023 at ____ a.m.
Final Settlement Date	_____, 2024 at ____ a.m. [Approximately 65 calendar days after date of entry of Judgment.]

X. CONCLUSION

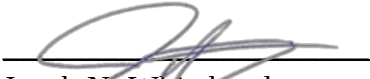
Based on the foregoing, Plaintiffs and their counsel respectfully request that the Court
Based on the foregoing, Plaintiffs respectfully request this Court enter an conditionally

certifying the Class for Settlement Purposes and for an Order approving the motion for Preliminary Approval of the Class and PAGA Settlement.

Dated: August 30, 2023

W EMPLOYMENT LAW, APC

By:



Jacob N. Whitehead
Attorney for Plaintiffs