

Jacob N. Whitehead, SBN 266123
jacob@wemploymentlaw.com
W EMPLOYMENT LAW, APC
7700 Irvine Center Drive, Suite 930
Irvine, CA 92618
Telephone: (949) 674-4922

Attorneys for Plaintiffs, and Settlement Class

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' MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA
SETTLEMENT AND MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT**

*[With Concurrently Filed Declaration of Jacob N.
Whitehead; Declarations of Representative
Plaintiffs in Support of Motion for Final Approval
of Class Settlement and (Proposed) Order]*

Date: February 9, 2024
Time: 9:00 a.m.
Dept.: C-60

Filed: February 3, 2022
Trial Date: None Set

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

PLEASE TAKE NOTICE that on February 9, 2024 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 Lyn Uy Tabotabo-Allen (formerly
Charissee Tabotabo), Renae Hillock, Unini Odaibom, Michael Lathe, Brent Miller, Giancarlo
Vellejo, and Benjamin Tacderas (the "Plaintiffs") each individually and on behalf of all
others similarly situated, will and do hereby move this Court for entry of an Order for the

NOTICE OF UNOPPOSED MOTION AND MOTION FOR FINAL APPROVAL
OF CLASS AND PAGA SETTLEMENT

following:

1. Granting Final Approval of the Joint Stipulation of PAGA and Class Action Settlement and Release of Claims (the “Settlement Agreement”);
2. Granting Final Approval of the non-reversionary settlement amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00);
3. Granting Final Approval of the PAGA payment of \$9,375.00 (75%) to the LWDA and \$3,125.00 (25%) to the PAGA Members);
4. Granting Final Approval of Settlement Administration costs to ILYM Group, Inc. as the Settlement Administrator in an amount not to exceed Ten Thousand Dollars (\$10,000.00);
5. Granting Final Approval of the Joint Stipulation of PAGA and Class Action Settlement and Release of Claims, in the amount of \$250,000.00 which is incorporated by reference;
6. Granting Final Approval the concurrently filed application¹ for payment to Class Counsel of attorneys’ fees in the amount of Eighty Thousand Dollars (40%) of the Gross Settlement Amount and reasonable litigation costs;
7. Granting Final Approval of Class Representatives Enhancement Payments in the amount of \$2,500 for each of the named Representative Plaintiffs, Joseph Montague, Michael Dupont, Curtis Moore, Charissee Lyn Uy Tabotabo-Allen (formerly Charissee Tabotabo), Renae Hillock, Unini Odaibom, Michael Lathe, BrTwoent Miller, Giancarlo Vellejo, and Benjamin Tacderas;
8. This motion is made pursuant to California Rule of Court Rule 3.769, this Notice of Motion, the Memorandum of Points and Authorities filed herewith, the Declaration of Attorney Jacob N. Whitehead, the Declaration of named Plaintiffs/ Class Representatives Joseph Montague, Michael Dupont, Curtis Moore, Charissee Lyn Uy Tabotabo-Allen (formerly Charissee Tabotabo), Renae Hillock, Unini Odaibom,

¹ On the same date as the filing of this motion, plaintiffs have concurrently filed their application for approval of attorneys’ fees and costs.

1 Michael Lathe, Brent Miller, Giancarlo Vellejo, and Benjamin Tacderas; and the
2 (Proposed) Final Approval Order, and any other papers and documents filed with this
3 Court, and upon such further oral and/or documentary evidence as may be present to
4 the Court at the time of the hearing of this matter.

5
6 Respectfully submitted,

7 DATED: January 22, 2024

W EMPLOYMENT LAW, APC

8
9 By:



Jacob N. Whitehead
Attorney for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By this unopposed Motion, 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”) seek final approval of the settlement of 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 A** to the concurrently filed Declaration of Jacob N. Whitehead.

Subject to Court approval, Plaintiffs have settled the released claims of the Settlement Class and the PAGA Settlement Members as defined in the Settlement Agreement for a settlement package worth \$250,000 to resolve the individual class and PAGA Claims. No residual will revert to Defendant.

Class counsel has achieved an excellent result in this litigation, embodied in the Settlement Agreement. As discussed herein, Class Counsel has risked and expended significant time and resources litigating this case to a successful outcome.

The proposed Settlement satisfies all of the criteria for final settlement approval under California law because it is fair, adequate and reasonable. (*See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801). The response of the Settlement Class to the Settlement confirms that final settlement approval is appropriate: As of the date of the filing of this motion, out of 217 Class Members, there have been no requests for exclusion and no objections from the participating Class Members. See Declaration of Settlement Administrator, Christina Fowler, the operations manager for ILYM Group, Inc., which was filed with this Court on January 12, 2024, and a true and correct conformed copy of which is attached to the concurrently filed Declaration of Jacob N. Whitehead as **Exhibit B**.

1 According to the Settlement Agreement Defendant is required to pay an amount not
2 to exceed \$250,000.00 to settle the matter. The Parties have agreed to a Settlement Class
3 composed of all persons employed by Defendant in California at any time between February
4 3, 2019 through April 1, 2022. [See Whitehead Decl. **Exhibit A** - Settlement Agreement at
5 Section 4.0] Based on the current participating Class Members and calculations, as of the
6 date of the filing of this motion, 217 Participating Settlement Class members will be paid, on
7 average, approximately \$290.22 each, the *highest* gross Individual Settlement Payment to be
8 paid is about \$486.96, and *lowest* gross Individual Settlement Payment to be paid is around
9 \$ 5.87 [**Exhibit B** to Whitehead Decl. at ¶ 15]

10 Pursuant to PAGA, the Parties have agreed that Twelve Thousand, Five Hundred Dollars
11 (\$12,500.00) shall be allocated to settle the claims brought under Labor Code § 2699 *et. seq.*
12 Pursuant to Labor Code § 2699(i), “civil penalties recovered by aggrieved employees shall be
13 distributed as follows: 75 percent to the Labor and Workforce Development Agency and 25
14 percent to the aggrieved employees.” As such, 75 percent of the apportioned PAGA settlement
15 amount – or \$9,375.00 – shall be payable to the Labor and Workforce Development Agency. The
16 remaining 25 percent, or \$3,125.00 shall be distributed to the 174 PAGA Group Employees who
17 were employed by Defendant during the PAGA Period (from February 3, 2021 through April 1,
18 2022) as part of the Settlement proceeds. [Whitehead Decl. ¶ 25 and **Exhibit A**- Settlement
19 Agreement Section 4.7]

20 Because the Settlement achieves outstanding results for the Settlement Class,
21 Defendant’s past and current employees, and the State of California, Plaintiffs respectfully
22 request, on behalf of the Class and without opposition from Defendant, that the Court approve
23 the Settlement as fair, adequate, and reasonable, and enter judgment in accordance therewith.

24 **II. STATEMENT OF FACTS**

25 **A. Background and Procedural History**

26 On February 14, 2022, Plaintiffs filed a notice with the California Labor & Workforce
27 Development Agency (“LWDA”) stating the facts and theories underlying the claims alleged
28 against Defendant, in compliance with the California Labor Code’s Private Attorneys

General Act of 2004 (“PAGA”), Labor Code §2698 et seq. [See Whitehead Decl. at ¶ 7]

On February 3, 2022, Plaintiffs filed their Complaint in the San Diego Superior Court, Case No. 30-2022-00004601-CU-OE-CTL, alleging (1) Violation of the Private Attorney Generals Act of Labor Code § 2698 et seq.; (2) Negligent Misrepresentation & Fraud (in Violation of Civ. Code §§ 1572 & 1710 et seq.); (3) Intentional Misrepresentation & Fraud (in Violation of Civ. Code §§ 1710 & 3294 et seq.); (4) False Promise (in Violation of Civ. Code § 1710 (4)); (5) Breach of Contract; (6) Breach of Covenant of Good Faith and Fair Dealing; (7) Misrepresentation Inducing Employee to Change Residence (in Violation of Labor Code § 970 et seq.); and (8) Unfair Business Practices (in Violation of Bus. & Prof. Code § 17200). [Whitehead Decl. ¶ 8]

The matter was subsequently removed by Defendant to the United States District Court, Southern District of California, presiding Judge Michael M. Anello,² Case Number: 3:22-cv-00342-MMA-NLS.

The Parties met and conferred and agreed to and did attend a private mediation in attempt to resolve the action and conducted a thorough investigation into the facts and claims in the action. This included in the Parties engaging in exchange of informal discovery of class information, which included relevant data as to the Class and PAGA members employed during the relevant statutory periods and their aggregate number of workweeks in preparation for mediation. On May 17, 2022, the Parties engaged in an all-day private mediation session before Steve Pearl, Esq., a neutral and well-respected mediator who is very knowledgeable regarding class and PAGA claims. Through arms-length negotiations with the assistance of Mediator, Pearl, the Parties reached a settlement after accepting the mediator’s proposal which was issued on May 17, 2022. At all times, the Parties’ negotiations were adversarial, non-collusive, and at arm’s length. On June 2, 2022, the Parties stipulated to remand the case back to San Diego Superior Court. The United States District Court, Southern District of California, granted the Parties’ stipulation and remanded the Action back to the Superior Court of

² Pursuant to stipulation of the Parties the action was subsequently remanded back to San Diego County Superior Court.

1 California, County of San Diego. This Court now has exclusive jurisdiction over Plaintiff's
2 Class and PAGA claims.

3 The settlement was negotiated in light of all known facts and circumstances and the
4 uncertainty associated with litigation – including the risk of Plaintiffs not being able to obtain
5 class certification and or without being able to maintain the representative claims, the
6 difficulty of proving Plaintiff's claims in a manageable trial, the merits of Defendant's
7 potential defenses and the significant delay and potential appellate issues inherent to
8 litigation.

9 On May 26, 2023 Plaintiffs filed the First Amended Complaint alleging only violation of
10 Labor Code Section 2802 class claims and a PAGA Cause of Action for PAGA penalties based
11 on any and or all facts and California Labor Code provisions asserted in the action.

12 On October 13, 2023, this Court granted preliminary approval of the Settlement
13 Agreement, a true and correct copy of which is attached to the concurrently filed Declaration
14 of Jacob Whitehead as **Exhibit A** thereto.

15 **B. Investigation And Settlement Discussions**

16 As mentioned above, on May 17, 2022, the Parties engaged in an all-day mediation
17 with experienced, class action mediator, Steven Pearl, Esq., and were ultimately able to reach
18 a fair, reasonable and adequate settlement for the Plaintiffs and the putative class and PAGA
19 Employees. From that point forward, the Parties jointly engaged in the drafting and finalization
20 of the Settlement Agreement, which is intended to fully and finally resolve all Released Claims
21 as to all Class Members who do not request to be excluded from the Settlement. [See Whitehead
22 Decl. at ¶11 and **Exhibit A** thereto]

23 Class Counsel represents that they have conducted a thorough investigation into the
24 facts underlying this class action and have diligently pursued an investigation of the Settlement
25 Class members' claims against Defendant. This investigation included an extensive review of
26 relevant documents, including, but not limited to, the employee handbook, timesheets and
27 payroll records for Plaintiffs and data for Settlement Class and PAGA Employees. [Whitehead
28 Decl. at ¶ 7-8, 16 and 28]

1 Class Counsel are of the opinion that the Settlement Agreement with Defendant for the
2 consideration and on the terms set forth therein is fair, reasonable, and adequate and is in the
3 best interest of the Settlement Class and PAGA Employees in light of all known facts and
4 circumstances, including the risk of significant delay, the risk associated with defenses
5 asserted by Defendant, and the risk of potential appellate issues. [Whitehead Decl. at ¶¶ 11,
6 21- 23, 26]

7 Defendant, Global Connections to Employment, Inc. (“GCE”) has denied and continues
8 to deny each and all of the claims and allegations in the Action. GCE has asserted and continues
9 to assert many defenses thereto and has expressly denied and continues to deny any fault,
10 wrongdoing, or liability whatsoever arising out of the conduct alleged in the Action. GCE
11 strongly contends that it has complied at all times with the provisions of the California Labor
12 Code, the California Business and Professions Code, and all applicable federal and California
13 regulations, and that all employees were provided with proper wages, wage statements in
14 compliance with Labor Code Section 226(a). [See Whitehead Decl. at ¶ 21]

15 Discussions between counsel for the Parties, discovery, as well as the investigation and
16 evaluation of the claims of Plaintiffs by the Parties, have permitted each side to assess the relative
17 merits of the claims and the defenses to those claims. Class Counsel represents that the above-
18 described investigation and evaluation, as well as the information exchanged during settlement
19 negotiations and at mediation, are more than sufficient to assess the merits of the respective Parties’
20 positions and to compromise the issues on a fair and equitable basis.

21 Based on their own independent investigation and evaluation, Class Counsel is of the
22 opinion that the Settlement Agreement with Defendant for the consideration and on the terms
23 set forth therein is fair, reasonable, and adequate and is in the best interest of the Settlement
24 Class in light of all known facts and circumstances, including the risk of significant delay, the
25 risk associated with defenses asserted by Defendant, and the risk of potential appellate issues.
26 [Whitehead Decl. at ¶¶ 11, 21- 23, 26]

1 **C. Summary of Settlement Terms**

2 **1. Benefits to the Class and the Public**

3 The settlement provides that (a) the Court may certify the Settlement Class Members
4 as described in Settlement Agreement on a provisional, non-mandatory basis for the purposes
5 of this settlement only, conditioned upon the Court granting final approval of the Settlement.
6 The settlement is for Two Hundred and Fifty Thousand Dollars and Zero Cents
7 (\$250,000.00) (the “Gross Settlement Amount” also referred to as the “GSA”). The total
8 settlement is divided as follows, with approval by this Court:

9 Plaintiffs’ individual claims:	\$50,000; 25% of which shall be allocated 10 as wages. [Whitehead Decl. Exhibit A , Settlement Agreement ¶4.3]
11 Claims Administration Costs:	An amount not to exceed Ten Thousand 12 Dollars (\$10,000) [Whitehead Decl. Exhibit A , Settlement Agreement ¶ 4.8]
13 PAGA Payment:	\$12,500.00 (\$9,375.00 (75%) to the 14 LWDA and \$3,125.00, (25%) to the PAGA 15 Employees [Whitehead Decl. Exhibit A , Settlement Agreement ¶ 4.7]
16 Attorneys’ Fees and Costs:	<u>Attorneys’ Fees</u> : \$80,000 (40% of the 17 GSA) [Whitehead Decl. Exhibit A , Settlement Agreement ¶ 4] 18 <u>Attorneys’ Costs</u> : Reasonable litigation 19 costs in the amount of \$9,521.88 20 [Whitehead Decl. Exhibit A , Settlement Agreement ¶ 4.5]
21 Service Enhancement Payment to 22 Representative Plaintiffs:	\$2,500.00 each to each of the Class Representatives [Whitehead Decl. Exhibit A , Settlement Agreement ¶ 4.6]

23 The Parties have agreed to a Settlement Class composed of all Class Members and PAGA
24 Employees who were employed by Defendant in California at any time during the Class Period
25 (the time period between February 1, 2019 through April 1, 2022) and PAGA Period (the period
26 from February 3, 2021 through April 1, 2022). [See Whitehead Decl. **Exhibit A** - Settlement
27 Agreement at § 1.6 and 1.30]

28 The settlement share for each Participating Settlement Class Member was calculated using

1 a formula that awards a proportional share by number of pay periods worked during the Class
2 Period. Based on the allocations 217 Participating Class Members, who have not opted out will
3 be paid on average, an estimated average gross payment of \$290.22 with an estimate highest
4 gross individual settlement payment of \$486.96 and a lowest gross individual settlement payment
5 of approximately \$5.87 [**Exhibit B** to Whitehead Decl. at ¶ 15]

6 The State of California and the public will receive a significant benefit in the distribution
7 of \$9,375.00 (75%) to the LWDA. The amount payable to the LWDA is required to go to
8 education of employers and employees about their obligations and rights under the Labor Code,
9 the enforcement of the State’s labor laws, and as supplementary funds to operate the LWDA. Cal.
10 Lab. Code § 2699(i). This is a significant value to the State of California and its employers and
11 employees.

12 **2. Preliminary Approval, Notice and the Claims Process**

13 On October 13, 2023, this Court granted Plaintiffs’ unopposed motion for preliminary
14 approval of the Settlement and provisionally certified the Settlement Class, finding that the
15 Settlement appeared to be within the range of reasonableness of settlement that could
16 ultimately be given final approval. The Court also approved the distribution of the Notice
17 of Pendency of Class Action and Proposed Class Settlement (the “Notice”).

18 Pursuant to the Court’s Preliminary Approval Order, on November 7, 2023, the
19 settlement claims administrator ILYM Group, Inc., mailed the Notice Packets containing
20 the notice of the terms of the Settlement — including the terms relating to attorneys’ fees
21 and costs — requests for exclusion from class action settlement forms, to all 217 Class
22 Members. Only one of the Notices were remailed. Ultimately there were no undelivered
23 Notice Packets. [**Exhibit B** to Whitehead Decl. at ¶¶ 7-10] Class Members were given 45
24 calendar days after the Notice was mailed (or 15 calendar days from a re-mailed notice) to
25 participate in, opt out of, or object to the Settlement. [**Exhibit B** to Whitehead Decl. and
26 **Exhibit A** (the “Notice Packet”) attached thereto]. As of the date of this motion, there are
27 217 Participating Settlement Class Members. No Class Members have objected to the
28 Settlement, and no Class Members have validly opted out. [**Exhibit B** to Whitehead Decl. at

¶¶ 11-12].

D. Final Settlement Approval is Appropriate

California Rule of Court 3.769 (a) states that “a settlement of compromise of an entire class action, or a cause of action in a class action, or as to a party, requires the approval of the court after a hearing.” In approving a proposed settlement, the Court must determine whether the class settlement is fair, reasonable and adequate. *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801. The Court has broad discretion in making this determination (Id.)

The Settlement is fair, adequate, and reasonable because it provides substantial benefits to Class Members and the general public. The fairness, adequacy, and reasonableness of the Settlement are illustrated by the fact that, as stated *supra*, not one of the 217 Class Members objected to the Settlement and zero Class Members requested exclusion from the Settlement. [Exhibit B to Whitehead Decl. at ¶¶ 11-12] In addition, the State of California will receive \$9,375.00 for education and enforcement purposes pursuant to Labor Code Sections 2699(i) and (j). Under the legal standards used by California courts to determine whether class action settlements should be approved, this Settlement warrants approval.

The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See 4 Newberg on Class Actions* 4th (4th ed. 2002) § 11.41 (and cases cited therein); *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950; *see also, Potter v. Pacific Coast Lumber Co.* (1951) 37 Cal.2d 592, 602.

We are now at the third and last step in the class action settlement approval process – the final approval hearing at which the Court shall determine whether the Settlement is fair, adequate, and reasonable. At the final approval hearing, scheduled for February 9, 2024, Class Members will have the opportunity to be heard regarding the Settlement, and Class Counsel will present evidence and argument in support of the Settlement. At the conclusion of the final approval hearing, this Court will decide whether to grant final approval of the

1 Settlement and whether to enter a final order and enter judgment in accordance with the
2 settlement.

3 **E. The Settlement is Entitled to a Presumption of Fairness**

4 A presumption of fairness exists where 1.) The settlement is reached through arm's
5 length bargaining; 2.) investigation and discovery are sufficient to allow counsel and the Court
6 to act intelligently; 3.) Counsel is experienced in similar litigation; and 4.) the percentage of
7 objectors is small. *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801.

8 A preliminary review of the terms of the proposed Settlement shows that it is fair. As
9 set forth in the Preliminary Approval documents, the procedural history and attorney
10 Declaration, the settlement that has been reached is the product of diligent efforts by experienced
11 class action counsel. During the course of this litigation, the Parties engaged in significant
12 investigation into the factual and legal claims presented in the complaint. Informal, pre-
13 mediation interviews, examination of records and informal discovery production into the
14 merits of Plaintiffs' claims and the nature of Defendant's policies and compensation practices
15 took place between the Parties. Defendant and Plaintiffs conferred and exchanged a
16 considerable amount of information and further apprised each other of their respective factual
17 contentions, legal theories, and defenses. In short, the Parties have engaged in extensive good
18 faith, arms-length negotiations, telephone conferences, and correspondence further aimed at
19 settling their disputes. [Whitehead Decl. at ¶¶ 17-18]

20 The Settlement reached by the Parties provides substantial payments to the Class
21 Members, particularly in relation to the harms alleged. The presumption of fairness and
22 adequacy is especially appropriate here because the reaction of Class Members has been
23 uniformly positive. Accordingly, because the four circumstances identified in *Dunk* are
24 present here, it is appropriate for the Court to presume that the Settlement is worthy of final
25 approval. *See Dunk, supra*, 48 Cal.App.4th at 1802; *see also, Kullar v. Foot Locker Retail,*
26 *Inc.* 168 Cal.App.4th 116 at 129-30.

1 **F. Each of the Relevant Criteria Supports Final Approval of the Settlement**

2 In deciding whether to grant final approval to a class action settlement, California
3 courts consider several factors, including the following: (1) the value of the settlement;
4 (2) the risks inherent in continued litigation; (3) the extent of discovery completed and the
5 stage of the proceedings when settlement was reached; (4) the complexity, expense, and
6 likely duration of the litigation in the absence of settlement; (5) the experience and views of
7 class counsel; and (6) the reaction of class members. *See Wershba v. Apple Computer, Inc.*
8 (2001) 91 Cal. App.4th 224 at 244-45; *Dunk, supra*, 48 Cal.App.4th at 1801. As described
9 below, each of these criteria supports final approval of the Settlement.

10 **i. The Value of the Settlement Favors Final Approval**

11 The settlement amount is of course a compromise figure. Under the Settlement,
12 Defendant has agreed to a settlement package with a gross settlement value at an amount not
13 to exceed Two Hundred and Fifty Thousand Dollars and Zero Cents (\$250,000.00), which
14 includes the individual settlement of Plaintiffs' claims, the PAGA and Class Settlements;
15 Attorneys' fees and costs; Plaintiffs' service enhancement awards and the Settlement
16 Administrator costs to settle this action. This Settlement provides for substantial benefits in
17 terms of a cash settlement. The amounts are commensurate with the value of the claims
18 adjusted for risk; the amounts to be paid are not nominal or symbolic. Based on the
19 allocations paid to date, the Participating Class Members shall be paid, on average, about
20 \$290.22 each [*See, Exhibit B* to Whitehead Decl. at ¶15] This is an exceptional result.

21 Plaintiffs maintain individual and Class claims against GCE involving unpaid wages,
22 and for unreimbursed expenses, and a claim under PAGA. Plaintiffs' counsel conducted an
23 extensive investigation of the factual allegations involved in this case. They reviewed
24 relevant documents, analyzed information regarding the composition of the Class during the
25 applicable Class and PAGA Periods, and engaged in meaningful discussions with
26 Defendant's counsel regarding the facts of this case and the legal merits of the class claims.
27 [*See Whitehead Decl. at ¶¶ 6-8, 10-11, 16-18*]

28 Plaintiffs and their counsel took into account the risks of trial, and risks related to

1 proof of the claims and the strengths and weaknesses of GCE's defenses. They also took
2 into account the possibility that if a settlement were reached after additional years of
3 litigation, the great expense of attorneys' fees of litigation would reduce the amount of funds
4 available to the class and PAGA members for settlement. Furthermore, Plaintiffs' Counsel
5 also took into consideration the time delay and financial repercussions of trial and the
6 possibility of an appeal by GCE. [Whitehead Decl. ¶¶ 22-23]

7 There is no guarantee that Plaintiffs can prove the aforementioned violations.
8 Defendant has raised defenses to the underlying merits of Plaintiffs' claims which, if
9 successful, could defeat Plaintiffs' claims in their entirety. GCE strongly contends that its
10 policies and compensation and reimbursement practices do not violate any aspect of
11 California laws. [See Whitehead Decl. ¶ 21]

12 When the costs and risks of non-certification and loss on the merits are considered,
13 Plaintiffs' counsel is of the opinion that the settlement reached is clearly a favorable one.
14 The settlement for each participating Class Member is fair, reasonable and adequate, given
15 the inherent risk of litigation, the risk relative to class certification and the costs of pursuing
16 such litigation. The settlement shall finally resolve all claims of the Class Members arising
17 out of Defendant's alleged violations of the Labor Code and associated penalties, attorneys'
18 fees, and costs. [Whitehead Decl. at ¶¶ 19, 24]

19 **ii. The Risks Inherent in Continued Litigation Are Substantial**

20 Of relevance to the proposed Settlement's reasonableness is the fact that the
21 Defendant has legal and factual grounds for defending this action. As stated, GCE
22 consistently asserted that, throughout the relevant time period, its policies, including their
23 compensation and reimbursement policies and practices adhered to California's legal
24 requirements at all times. Moreover, the areas of law at issue in this lawsuit are
25 dynamically changing. An adverse appellate court decision or change in law by the
26 legislature could defeat certification of the claims alleged in Plaintiffs' complaint. *See Keller*
27 *v. Tuesday Morning, Inc.* (2009) 179 Cal. App. 4th 1389 (affirming the decertification of a
28 class two years after it was originally certified). Plaintiffs' counsel are familiar with class

1 action cases where certification and/or liability were defeated as a result of an adverse
2 appellate court ruling, or a change in law by the California legislature. In short, the risks
3 inherent in continued litigation here, including the risks of maintaining class certification in
4 the event it was obtained, are substantial.

5 Even though Class Counsel is confident that they could have proven that this case is
6 appropriate for class certification; Defendant, in contrast, adamantly opposed certification.

7 C.C.P. § 382 sets forth the class certification criteria: “[W]hen the question is one of
8 a common or general interest, of many persons, or when the parties are numerous, and it is
9 impracticable to bring them all before the court, one or more may sue or defend for the
10 benefit of all.” As interpreted by the California Supreme Court, C.C.P. § 382 requires the
11 existence of an “ascertainable class” whose members share a “well-defined community of
12 interest” in the basic issues of the suit. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435;
13 *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470; *Vasquez v. Superior Court*
14 (1971) 4 Cal.3d 800, at 808. The “community of interest” requirement embodies three
15 factors: “(1) predominant common question of law or fact; (2) class representatives with
16 claims or defenses typical of the class; and (3) class representatives who can adequately
17 represent the class.” *Linder (supra)* at 435, quoting *Richmond (supra)* at 470. “Other relevant
18 considerations include the probability that each class member will come forward to prove his
19 or her separate claim to part of the total recovery and whether the class approach would
20 actually serve to deter and redress alleged wrongdoing.” *Id.* Lastly, as a general rule, if a
21 defendant’s liability can be determined by facts common to the class members, a class will
22 be certified even if such members must individually prove their damages. *Employment*
23 *Development Dept. v. Superior Court* (1981) 30 Cal.3d 256, 266.

24 **a.) The Proposed Class is Ascertainable.** Plaintiffs believe the proposed Settlement
25 Class is clearly ascertainable as it is defined by concrete factors – whether the class members
26 were exempt or non-exempt California employees of Defendant during a specified time frame.
27 In fact, Defendant has identified 217 individual members of the Settlement Class. [See **Exhibit**
28 **B** to Whitehead Decl. at ¶ 5]

1 **b.) Numerosity is Satisfied.** A class will be certified when it is impracticable to
2 join all class members in the case. “Impracticability means difficulty or
3 inconvenience of joinder; the rule does not require impossibility of joinder.”
4 *German v. Federal Home Loan Mortgage Corp.* (S.D.N.Y. 1995) 885 F. Supp.
5 537, 552. The numerosity requirement has been liberally construed, ranging
6 from approved classes of forty-two individuals to a vast group of five million
7 members.³ According to Defendant’s records, the Participating Settlement Class
8 contains 217 members. It is sufficiently numerous so that it would be
9 “impracticable” to bring all Class Members before the Court. [See **Exhibit B** to
10 Whitehead Decl. at ¶ 5]

11 **c.) Common Issues of Law and Fact Predominate.** In determining whether
12 sufficient common questions of law and fact predominate, for the purposes of
13 meeting the commonality criterion, the Court’s inquiry is directed towards a
14 review of “what type of questions - common or individual - are likely to arise
15 in the action” in considering “whether the theory of recovery advanced by the
16 proponents of certification is, as an analytical matter, likely to prove amenable
17 to class treatment.” *Sav-On Drug Stores v. Superior Court* (2004) 34 Cal.4th
18 319, 327. Here, the evidence overwhelmingly shows that common issues of law
19 or fact predominate.

20 Plaintiffs allege, and discovery revealed, that during the relevant Class Period Defendant
21 applied the same policies and procedures pertaining to the reimbursement of expenses incurred in
22 the discharge of job duties to all members of the settlement class. *See Sav-On, supra*, 34 Cal. 4th
23 at 329-331 (finding trial court did not err in certifying the class where common employment
24 practices and uniform policies were at issue). The same Labor Code violations are alleged on
25 behalf of all employees encompassed in the Settlement Class, and all relate to an all stem from a
26

27 ³ *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932 (42-member class “quantitatively
28 sufficient for a class action”); *Lazar v. Hertz Corp.* (1983) 143 Cal.App.3d 128, 138 (class of 5
million).

1 common source: all Class Members allege that Defendant violated the same Labor Code provisions
2 in connection with their employment in same or substantially similar job positions at GCE as
3 electronic health specialists and training specialists under uniform corporate policies. The same
4 Labor Code violations are alleged on behalf of all employees encompassed in the Settlement Class,
5 and all relate to an identical fact patterns involving necessary but unreimbursed expenses incurred
6 in the discharge of work related duties and/or at the direction of Defendant. Under these
7 circumstances, the commonality requirement is satisfied for purposes of certifying the Settlement
8 Class for settlement. All members of the settlement class seek the same legal remedies under the
9 same state laws. [See Whitehead Decl. at ¶ 27, 30 (c)(d)]

10 **d.) The Proposed Class Representatives' Claims are Typical of the Class Claims.**

11 Plaintiffs assert that their claims are typical of the Class Members' claims. The class
12 representatives' claims need not be identical to the claims of other class members and it is only
13 required that the representative be similarly situated so that he or she will have the motive to
14 litigate on behalf of all class members. *Classen v. Weller* (1983) 145 Cal.App.3d 47. In this case,
15 the named Plaintiffs and proposed Class Representatives are former employees of Defendant and
16 were employed in California. Each of the proposed Representative Plaintiffs maintain claims
17 against GCE involving unreimbursed expenses, and a claim under PAGA. Plaintiffs have the
18 same claims as those that the members of the Settlement Class would reasonably be expected to
19 bring based on the course of conduct alleged in the action. [See Whitehead Decl. at ¶¶ 27, 30 (c)
20 (d)] Plaintiffs have also demonstrated that they aggressively and competently asserted the
21 interests of the proposed Settlement Class; Plaintiffs have taken an active role in this litigation
22 and have no apparent conflicts with any other class members. [See Whitehead Decl. at ¶ 30(f)]
23 *See also*, the concurrently filed Declarations of the Plaintiffs/ proposed Class Representatives,
24 Joseph Montague, Michael Dupont, Curtis Moore, Charissee Lyn Uy Tabotabo-Allen (formerly
25 Charissee Tabotabo), Renae Hillock, Unini Odaibom, Michael Lathe, Brent Miller, Giancarlo
26 Vellejo, and Benjamin Tacderas, respectively.

27 **e.) Class Treatment is the Superior Method of Adjudicating the Claims Asserted**
28 **in this Case.** As outlined above, Defendant's common employment policies applicable to all

1 Class Members are at the root of determining the merits – both factually and legally – of Class
2 Members’ claims. Accordingly, there exist significant common questions of law and fact which
3 may be tried by the Court in one proceeding. Judicial efficiency mandates that the class action
4 procedure be utilized to resolve these common issues.

5 The only alternative to certifying a case like this as a class action would be to force more
6 than 200 current and former employees to file individual actions. As the Supreme Court has
7 stated, “[t]he relevant comparison lies between the costs and benefits of adjudicating Plaintiffs’
8 claims in a class action and the costs and benefits of proceeding by numerous separate actions –
9 not between the complexity of a class suit that must accommodate some individualized inquiries
10 and the absence of any remedial proceeding whatsoever.” *Sav-On, supra*, 34 Cal.4th at 339, fn.
11 10. Finally, California courts favor class certification in wage and hour cases. The California
12 Supreme Court has expressly endorsed the use of the class action procedure in cases examining
13 the legality of a uniform exemption of an entire category of employees from California’s
14 overtime laws. In *Sav-On*, the Court reasoned that, because there exists a “clear public policy ...
15 that is specifically directed at the enforcement of California’s minimum wage and overtime laws
16 for the benefit of workers” *Sav-On (supra)* at 340, the class action device should be used to
17 enforce these laws wherever this device “would be the most efficient way of adjudicating the
18 class members’ overtime claims.” *Id* at 330. Continuing this trend, in *Prince v. CLS Transp., Inc.*
19 (2004) 118 Cal.App.4th 1320, 1328, the appellate court noted, “wage and hour disputes (and
20 others in the same general class) routinely proceed as class actions.”

21 Although Class Counsel believes the Class Members’ claims are meritorious, that the
22 Class would have been certified, and that substantial damages could have been proven at
23 trial, they are experienced counsel who understand that liability, class certification, and
24 damage issues — and the outcome of any appeals that would likely follow if the Class were
25 successful at trial — present substantial risks for Class Members. Those risks must be
26 considered in assessing the fairness of this Settlement, which guarantees a substantial and
27 immediate recovery for Class Members and eliminates the risk that Class Members would be
28

1 left without any recovery. Because the Settlement provides immediate and substantial relief
2 without requiring the Class Members either to undergo the risks of losing at trial or to pay
3 additional attorneys' fees and costs to continue to prosecute this action, it warrants this
4 Court's approval. [See Whitehead Decl. at ¶ 23, 26]

5 **G. Disclosure of Documents and Data Demonstrating the Strengths and**
6 **Weaknesses of this Action Was Completed Prior to Entering into the Settlement**

7 The extent of discovery that has been completed and the stage of the litigation are
8 factors that courts consider in determining the fairness of a settlement. *See Dunk, supra*, 48
9 Cal.App.4th at 1801. Class Counsel conducted a thorough investigation into the claims
10 alleged in the operative complaint prior to commencing (and following the commencement
11 of) settlement discussions. Discovery took place between the Parties in which Defendant and
12 Plaintiffs exchanged information and documentation and further apprised each other of their
13 respective factual contentions, legal theories, and defenses. [See Whitehead Decl. at ¶10]
14 Thereafter, the Parties negotiated the proposed Settlement with knowledge of the strengths
15 and weaknesses of this case and the amounts necessary to compensate Class Members for
16 their estimated damages.

17 The Settlement avoids the need for a contested class certification motion that would
18 be time consuming and costly for Plaintiffs to file, Defendant to oppose, and the Court to
19 decide. In addition, if the Court were to deny such a motion for class certification, Class
20 Members would be left without a group remedy for their claims. The issues presented here
21 would need to be litigated individually in Superior Courts in a piecemeal, costly, and time-
22 consuming fashion. The Settlement also avoids a lengthy trial or trials that likely would have
23 involved testimony by numerous witnesses and experts.

24 **H. The Experience and Views of Counsel Favor Final Approval**

25 Class Counsel support the Settlement as fair, adequate, reasonable, and in the best
26 interests of the Class as a whole. The endorsement of qualified and well-informed counsel of
27 the settlement as fair is entitled to significant weight. *See Dunk, supra*, 48 Cal.App.4th at
28 1802; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18. In addition

1 Class Counsel has over a decade of litigation experience, dedicated exclusively to labor and
2 employment law, and in particular, the great majority of which has been devoted to wage and
3 hour cases in the context of class and PAGA representative actions. Accordingly, Class
4 Counsel is particularly well-suited to gauge the value of the class members' claims here.
5 Class Counsel have litigated many wage and hour class actions addressing the issues
6 presented in this lawsuit, including wage statement claims and PAGA claims. Class
7 Counsel's experience provides a strong basis for their conclusion that the settlement terms
8 here are fair and reasonable. [See, Whitehead Decl. at ¶¶'s 4-5]

9 **I. Class Members' Positive Reaction to the Settlement Favors Final Approval**

10 Finally, courts look at the reaction of class members to determine if a settlement that
11 directly affects their interests should be approved as fair, adequate, and reasonable. Of great
12 relevance is the fact that no Class Member has objected to the Settlement. [See, **Exhibit B** to
13 Whitehead Decl. at ¶ 12] Such a positive reaction of the Class Members affected by the
14 Settlement supports its approval. A court may properly infer that a class action settlement is
15 fair, adequate, and reasonable even when class members object to it. Indeed, a court may
16 approve a class action settlement as fair, adequate, and reasonable even over the objections
17 of a significant percentage of class members. *See Reed v. General Motors* (5th Cir. 1983)
18 703 F.2d 170, 174; *In re Wash. Pub. Power Supply System Sec. Litig.* (D. Ariz. 1989) 720 F.
19 Supp. 1379, 1394 ("settlement is not to be deemed unfair or unreasonable simply because a
20 large number of class members oppose it"). In this action, the Court should construe the
21 overwhelming *non-opposition* to the Settlement as a strong indication of Class Members'
22 support for the Settlement as fair, adequate, and reasonable.
23

24 **J. Court Approval of the PAGA Penalty Portion of the Settlement**

25 Pursuant to *Cal. Lab. Code* § 2699(1), the Superior Court shall review and approve the
26 settlement of penalties sought under that Labor Code Section. *Cal. Lab. Code* § 2699(1). For
27 all of the foregoing reasons stated above, the Settlement is fair, reasonable and adequate, and
28 should be approved. As part of the Settlement, Defendant has agreed to pay \$12,500.00 to

1 settle the claims of the Settlement Class brought pursuant to PAGA, of which the payment of
2 \$9,375.00 (75%) will be paid to the LDWA for education and enforcement purposes. This
3 portion of the Settlement should be approved.

4 **III. THE LWDA HAS RECEIVED A COPY OF THIS MOTION**

5 On the same day this motion was filed with the Court, a copy was submitted to the
6 LWDA per requirement set forth in *Cal. Lab. Code* § 2699.5. [Whitehead Decl. **Exhibit C**,
7 thereto]

8 **IV. CONCLUSION**

9 For all of the foregoing reasons, Plaintiffs request that the Court grant final approval
10 of this Settlement and approve distribution of the settlement funds to the State of California
11 and the Settlement Class Members as set forth in the Joint Stipulation of PAGA and Class
12 Action Settlement and Release of Claims.

13 Respectfully Submitted,

14
15 Dated: January 22, 2024

W EMPLOYMENT LAW, APC

16
17 By:

18 
19 Jacob N. Whitehead
20 *Attorney for Plaintiffs*