

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

MAY 05 2023

BY RAFAEL HERNANDEZ, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO**

STEVEN DELCORSO, individually, and on  
behalf of aggrieved employees pursuant to  
the Private Attorneys General Act  
("PAGA");

Plaintiff,

v.

ITS TECHNOLOGIES & LOGISTICS, LLC,  
an Illinois limited liability company;  
CONGLOBAL INDUSTRIES, LLC, a  
Delaware limited liability company;  
CONGLOBAL TRANSPORT, LLC, a  
Delaware limited liability company; and DOES  
1 through 100, inclusive;

Defendants.

Case No.: CIVSB2128129

Assigned for All Purposes to:  
Honorable David Cohn  
Department S-26

**CLASS ACTION**

**[PROPOSED] ORDER OF FINAL  
APPROVAL AND JUDGMENT**

Hearing Date: May 5, 2023  
Hearing Time: 10:00 a.m.  
Hearing Place: Department S-26

Complaint Filed: September 30, 2021  
FAC Filed: November 23, 2022  
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiffs Raul Ortega, Steven  
2 DelCorso, and Clemente Sandoval's ("Plaintiffs") Motion for Final Approval of Class Action  
3 and PAGA Settlement, and considering the papers submitted in support of the motion, including  
4 the Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement,"  
5 "Settlement," or "Agreement"), hereby **FINDS AND ORDERS**:

6 Plaintiffs and Defendants ITS Technologies & Logistics, LLC, Conglobal Industries,  
7 LLC, and Conglobal Transport, LLC ("Defendants") entered into the Settlement Agreement on  
8 or about September 22, 2022 to settle this lawsuit.

9 The Court entered an order dated December 20, 2022 preliminarily approving the  
10 Settlement ("Preliminary Approval Order"), consistent with the Code of Civil Procedure section  
11 382 and California Rule of Court 3.769, ordering notice to be sent to Class Members, providing  
12 Class Members with an opportunity to object to the Settlement or opt-out of the Class. The  
13 notice also advised Eligible Aggrieved Employees that they will receive their Individual Private  
14 Attorneys General Act of 2004 ("PAGA") Payment from the net PAGA Payment regardless of  
15 their decision to participate in the class Settlement.

16 The Court held a Final Approval Hearing on May 5, 2023 to determine whether to give  
17 final approval to the Settlement of this lawsuit.

18 1. Incorporation of Other Documents. This Order of Final Approval and Judgment  
19 ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise provided  
20 herein, all capitalized terms in this Order and Judgment shall have the same meaning as set forth  
21 in the Settlement Agreement.

22 2. Jurisdiction. Because adequate notice has been disseminated and the Class has  
23 been given the opportunity to opt-out of the Settlement, the Court has personal jurisdiction with  
24 respect to the claims of all Class Members. The Court has subject matter jurisdiction over this  
25 lawsuit, including jurisdiction to approve the Settlement and grants certification of the Class for  
26 Settlement and approval purposes only.

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1           3.    Class Certification for Settlement Purposes. For settlement purposes only, the  
2 Court finds the Class satisfies all applicable requirements of Code of Civil Procedure section  
3 382, California Rule of Court 3.769, and Due Process. The Court certifies the Class consisting of  
4 all individuals who have previously been or currently are employed by Defendants as an hourly  
5 paid and/or non-exempt employee within the State of California during the time period from  
6 August 16, 2016 through July 29, 2022 (“Class,” “Class Members,” and “Class Period”). There  
7 are one thousand seven hundred thirty-eight (1,738) Class Members who did not submit valid  
8 and timely requests to exclude themselves from the Settlement (“Participating Class Members”).<sup>1</sup>

9           4.    Adequacy of Representation. Class Counsel fully and adequately represented the  
10 Class for the purposes of entering and implementing the Settlement and satisfied the  
11 requirements of Code of Civil Procedure section 382.

12           5.    Notice Packet. The Court finds the Notice of Class Action and PAGA Settlement  
13 (“Class Notice”) and Election Not To Participate In Settlement (“Opt-Out Form”) (collectively,  
14 the “Notice Packet”) and its distribution to Class Members were implemented pursuant to the  
15 Settlement and this Court’s Preliminary Approval Order. The Court finds the Notice Packet:

16               a.       constitutes notice reasonably calculated to apprise Class Members of: (i)  
17 pendency of this lawsuit; (ii) material terms and provisions of the Settlement and their rights;  
18 (iii) their right to object to any aspect of the Settlement; (iv) their right to opt-out of the  
19 Settlement; (v) their right to receive an Individual Settlement Share; (vi) their right to appear at  
20 the Final Approval Hearing; and (vii) binding effect of the orders and judgment in this lawsuit on  
21 all Participating Class Members;

22               b.       constitutes notice that fully satisfied the requirements of Code of Civil  
23 Procedure section 382, California Rule of Court 3.769, and Due Process;

24               c.       constitutes the best practicable notice to Class Members under the  
25 circumstances of this lawsuit; and

26               d.       constitutes notice reasonable, adequate, and sufficient to Class Members.  
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28   <sup>1</sup>       The Settlement Administrator mailed Notice Packets to one thousand seven forty-seven  
          (1,747) Class Members and received nine (9) requests for exclusion. So, there are one

1           6.   Final Settlement Approval. The terms and provisions of the Settlement  
2 Agreement have been entered into in good faith and are the product of arm's-length negotiations  
3 via a respected mediator experienced in these types of representative wage and hour actions by  
4 experienced counsel who have done a meaningful investigation of the claims. The Settlement  
5 Agreement and all its terms and provisions are fully and finally approved as fair, reasonable,  
6 adequate, and in the best interests of the Parties.

7           7.   Binding Effect. The terms and provisions of the Settlement Agreement and this  
8 Order and Judgment are binding on Plaintiffs, Participating Class Members, Eligible Aggrieved  
9 Employees, and their spouses, heirs, registered domestic partners, executors, administrators,  
10 successors, and assigns. In addition, those terms shall have res judicata and other preclusive  
11 effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf  
12 of any such persons as to any of the Defendants and/or Released Parties to the extent those  
13 claims, lawsuits, or other proceedings involve matters that were or could have been raised in this  
14 lawsuit and are encompassed by the Released Claims and PAGA Released Claims. The  
15 Settlement Agreement, including the Release(s) of Claims, set forth in Paragraph 9 of this Order  
16 and Judgment, will have no binding effect upon, and provide no res judicata preclusion to, those  
17 non-participating Class Members who validly and timely opted-out of the Settlement. The  
18 Settlement will still have binding effect upon, and provide res judicata preclusion to, all Eligible  
19 Aggrieved Employees for the PAGA Released Claims, regardless of whether they are a Class  
20 Member who validly and timely opted-out of the Settlement.

21           8.   Enforcement of Settlement. Nothing in this Order and Judgment shall preclude  
22 any action to enforce the terms and provisions of the Settlement Agreement.

23           9.   Release of Claims. As of the Effective Final Settlement Date, in exchange for the  
24 consideration set forth in the Agreement:

- 25           a.   Class Release. Plaintiffs and the Participating Class Members release the  
26 Released Parties from the Released Claims for the Class Period;

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28           thousand seven hundred thirty-eight (1,738) Participating Class Members.

b. PAGA Release. As of the Effective Final Settlement Date, the California Labor and Workforce Development Agency (“LWDA”) and each Eligible Aggrieved Employee, including Plaintiffs, individually and on behalf of their heirs, executors, administrators, representatives, attorneys, successors and assigns voluntarily and knowingly are barred from bringing any action for the PAGA Released Claims during the PAGA Period; and

c. Plaintiffs’ Release of Claims and General Release. As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payments to Plaintiffs, Plaintiffs each provide a general release of claims for himself and his spouse, heirs, successors, and assigns. Plaintiffs’ general release of claims includes a waiver of Civil Code section 1542 as to the Released Parties, which include Defendants and any and all of their past, present and future direct or indirect parents, sister or related entities, acquired companies, subsidiaries, predecessors, successors and affiliates as well as each of its or their past, present and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, heirs, representatives, accountants, auditors, consultants, and any individual or entity which could be jointly liable with Defendants.

10. Class Representative Enhancement Payments. The Court finds the Class Representative Enhancement Payments of \$10,000, to be paid to each Plaintiff (totaling \$30,000) out of the Gross Settlement Amount, to be reasonable and appropriate. The Class Representative Enhancement Payments are to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

a. The rationale for making enhancement payments is class representatives should be compensated for the expense and risk they incurred in conferring a benefit on the Class. Criteria courts consider include: (1) risk to the class representatives in commencing suit; (2) notoriety and personal difficulties; (3) amount of time and

1 effort spent by the class representatives; (4) duration of the litigation; and (5)  
2 personal benefit (or lack thereof) enjoyed by class representatives.

3 b. The Court reviewed Plaintiffs' declarations outlining their involvement. Given the  
4 risks inherent in the services as the class representatives, duration of the case and  
5 time involved, and benefits created for the Class, the Court approves the payment  
6 of the Class Representative Enhancement Payments of \$10,000 to each Plaintiff.

7 11. Attorney Fee Award and Cost Award. The Court finds the Attorney Fee Award  
8 of \$500,000, to be paid out of the Gross Settlement Amount to Class Counsel, to be reasonable  
9 and appropriate. In addition, the Court finds the Cost Award as reimbursement for actual  
10 litigation costs incurred of \$15,748.29, to be paid to Class Counsel out of the Gross Settlement  
11 Amount, to be reasonable and appropriate. Such fees and costs are to be paid pursuant to the  
12 terms and provisions set forth in the Settlement Agreement. Defendants shall not be required to  
13 pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Class  
14 Counsel or any other counsel representing Plaintiffs or Class Members. Defendants shall also not  
15 be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by  
16 Plaintiffs or Class Members in connection with or related in any manner to this case, Settlement  
17 Agreement, settlement administration, and/or Released Claims and PAGA Released Claims.

18 a. The Court has an independent right and responsibility to review the Attorney Fee  
19 Award and only award so much as it determines reasonable. (See *Garabedian v.*  
20 *Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-28.) The  
21 Attorney Fee Award of \$500,000 is one-third (1/3) of the common fund created  
22 for the benefit of the Class and is supported by use of the percentage-fee method.  
23 (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 504.)  
24 Considering the results achieved, financial risk undertaken, difficulty and novelty  
25 of this litigation, skills required, percentage fees award in previous and other  
26 cases, and contingent fees charged in the marketplace, the Court finds the  
27 Attorney Fee Award is consistent with the marketplace, is reasonable, and is  
28 approved.

b. The Court reviewed the declaration of Douglas Han regarding the costs expended by Class Counsel in prosecuting this case. Under the terms of the Settlement, Class Counsel may seek reimbursement of up to \$25,000 in litigation costs. The Court finds Class Counsel expended \$15,748.29 in litigation costs, and such costs were reasonable. Thus, the Court approves the payment of the Cost Award of \$15,748.29 from the Gross Settlement Amount for the reimbursement of Class Counsel's litigation costs.

12. Administration Costs. The Court finds Administration Costs of \$19,000, to be paid to the Settlement Administrator out of the Gross Settlement Amount, to be reasonable and appropriate. The Administration Costs are to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

a. The Court reviewed the declaration of Veronica Olivares from CPT Group, Inc., the Settlement Administrator. The Court finds notice was provided to the Class pursuant to the Preliminary Approval Order, constitutes the best practicable notice to the Class, and satisfies Due Process. Thus, the Court approves the payment of the Administration Costs of \$19,000 for the Settlement Administrator's services in administering the Settlement.

13. PAGA Payment. The Court finds the PAGA Payment of \$75,000, seventy-five percent (75%) of which (\$56,250) will be paid to the LWDA out of the Gross Settlement Amount and twenty-five percent (25%) of which (\$18,750) shall be distributed to Eligible Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA Payment is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

14. Funding the Settlement. No later than fourteen (14) calendar days after Effective Final Settlement Date, Defendants shall deposit the Gross Settlement Amount of \$1,500,000 to the Settlement Administrator. Within ten (10) business days after the Settlement Administrator receives the entire Gross Settlement Amount, the Settlement Administrator shall calculate and disburse all payments due under the Settlement Agreement.

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1           15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the  
2 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiffs contend the  
3 Settlement was the product of arm's-length negotiations following extensive litigation,  
4 discovery, and exchange of documentation. The negotiations were facilitated with the aid of  
5 David Phillips, an experienced and well-respected mediator.

6           a. The fairness of the Settlement is demonstrated by there being no objections to and  
7 only nine (9) opt-outs from the Settlement.

8           b. The fairness of the Settlement is further illustrated by the gross *average*  
9 Individual Settlement Share being approximately \$489.64, and the gross *highest*  
10 Individual Settlement Share being about \$1,861.76.

11          16. Uncashed Checks. Participating Class Members and Eligible Aggrieved  
12 Employees must cash or deposit their Individual Settlement Share and Individual PAGA  
13 Payment checks within one hundred eighty (180) calendar days after the checks are mailed to  
14 them. Uncashed settlement checks will be paid to the California State Controller's Office in  
15 accordance with California Unclaimed Property Law so that Participating Class Member and/or  
16 Eligible Aggrieved Employee will have their Individual Settlement Share and/or Individual  
17 PAGA Payment available to them per the applicable claim procedure to request that money from  
18 the State of California.

19          17. Modification of Settlement Agreement. The Participating Class Members are  
20 hereby authorized, upon approval of the Court, to agree to and adopt amendments to or  
21 modifications of the Settlement Agreement by an express written instrument signed by counsel  
22 for all Parties or their successors-in-interest and if approved by the Court. Such amendments or  
23 modifications shall be consistent with this Order and Judgment and cannot limit the rights of  
24 Participating Class Members under the Settlement Agreement.

25          18. No Admission. The Settlement Agreement is not an admission by Defendants or  
26 by any other Released Parties, nor is this Order and Judgment a finding of the validity of any  
27 allegations or of any wrongdoing by Defendants or any other Released Parties. Neither this  
28 Order and Judgment, the Settlement Agreement, nor any document referred to herein, nor any

1 action taken to carry out the Settlement Agreement, may be construed as, or may be used as, an  
2 admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or against  
3 Defendants or any of the other Released Parties. Nor should this Order and Judgment or the  
4 Settlement Agreement be construed as an admission that Plaintiffs can serve as adequate Class  
5 Representatives or that an ascertainable class exists. There has been no determination by any  
6 court as to the merits of the claims asserted by Plaintiffs against Defendants or as to whether a  
7 class or classes should be certified, other than for settlement purposes only.

8 19. Final Accounting and Compliance. The Court sets a nonappearance case review  
9 for December 20, 2023 in Department S-26. Within five (5) court days before this hearing,  
10 Plaintiffs shall file a compliance status report. Pursuant to Code of Civil Procedure section 384,  
11 the compliance status report shall specify the total amount paid to Participating Class Members  
12 and the residual of the unclaimed settlement funds that will be paid to the entity identified as the  
13 recipient of such funds in the Settlement Agreement.

14 20. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and  
15 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,  
16 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,  
17 and for any other necessary purpose, including, without limitation:

- 18 a. enforcing the terms and provisions of the Settlement and resolving any disputes,  
19 claims, or causes of action in this lawsuit that, in whole or in part, are related to or  
20 arise out of the Settlement or this Order and Judgment;
- 21 b. entering such additional orders as may be necessary or appropriate to protect or  
22 effectuate this Order and Judgment approving the Settlement, and permanently  
23 enjoining Plaintiffs from initiating or pursuing related proceedings, or to ensure  
24 the fair and orderly administration of the Settlement; and
- 25 c. entering any other necessary or appropriate orders to protect and effectuate this  
26 Court's retention of continuing jurisdiction.

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1 The Motion for Final Approval of Class Action and PAGA Settlement, Attorney Fee  
2 Award, Cost Award, and Class Representative Enhancement Payments is GRANTED. The  
3 Settlement Administrator is directed to carry out the terms of the Settlement Agreement  
4 forthwith.

5 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF  
6 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT  
7 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS  
8 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE  
9 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING  
10 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND  
11 THE JUDGMENT THEREON.

12 IT IS SO ORDERED.

13  
14 DATED: 5/5/23

  
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HONORABLE DAVID COHN **DAVID COHN**  
SUPERIOR COURT JUDGE

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On May 9, 2023, I served the foregoing document described as

## PROOF OF SERVICE