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7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 ALEX CHARALAMBOUS and BRIAN
PULLEN, individually and on behalf of all
12 others similarly situated,

13 Plaintiffs,

14 v.

15 LIBERTY MUTUAL INSURANCE
COMPANY, LIBERTY MUTUAL
16 GROUP INC., and DOES 1 through 10,
inclusive,

17 Defendants.
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CASE NO. 4:22-cv-00216-EMC

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

DATE: February 22, 2024
TIME: 1:30 p.m.

Judge: Hon. Edward M. Chen
Courtroom: 5, 17th Floor

TABLE OF CONTENTS

I.	INTRODUCTION	2
II.	PROCEDURAL BACKGROUND.....	2
III.	SETTLEMENT TERMS.....	3
A.	Class Definition.....	3
B.	Definition of Aggrieved Employees	4
C.	Settlement Fund and Plan of Allocation	4
D.	Class Representatives and Class Counsel	5
E.	Settlement Administrator	5
F.	Notice Procedure.....	6
G.	Release of Claims.....	6
IV.	CLASS CERTIFICATION FOR PURPOSES OF SETTLEMENT.....	6
A.	The Class Meets the Requirements of Rule 23(e).....	6
1.	Numerosity	7
2.	Commonality.....	7
3.	Typicality	7
4.	Adequacy	8
B.	The Class Meets the Requirements of Rule 23(b)(3).....	8
V.	THE COURT SHOULD GRANT PRELIMINARY APPROVAL	10
A.	The Standard for Preliminary Approval.....	10
B.	The Strength of Plaintiffs' Case and Class Certification Risk.....	12
C.	The Risk, Expense, Complexity and Likely Duration of Further Litigation.....	13
D.	The Amount Offered in Settlement.....	13
1.	The Class Settlement.....	14
2.	The PAGA Settlement.....	14
E.	The Extent of Discovery Completed.....	15
F.	No "Red Flags" of Collusion	15
VI.	THE PROPOSED CLASS NOTICE IS THE BEST NOTICE PRACTICABLE	16
VII.	CLASS ACTION FAIRNESS ACT NOTICE (CAFA)	16
VIII.	CONCLUSION	17

TABLE OF AUTHORITIES

Cases

<i>Abdullah v. U.S. Sec. Assocs., Inc.</i> 731 F.3d 952 (9th Cir. 2013)	7
<i>Allen v. Bedolla</i> 787 F.3d 1218 (9th Cir. 2015)	10
<i>Alvarez v. Farmers Ins. Exch.</i> 2017 U.S. Dist. LEXIS 119127 (N.D. Cal. January 17, 2017)	14
<i>Blandino v. MCM Constr., Inc., Case No. 12-cv-1729 WHO</i> 2014 U.S. Dist. LEXIS 185897 (N.D. Cal. March 6, 2014)	14
<i>Boyd v. Bank of Am. Corp.</i> 300 F.R.D. 431 (C.D. Cal. 2014)	8-9
<i>Churchill Village, LLC v. General Electric</i> 361 F.3d 566 (9th Cir. 2004)	16
<i>Cochran v Schwan's Home Service, Inc.</i> 228 Cal.App.4th 1137 (2014)	4
<i>Drake v. Morgan Stanley & Co.</i> 2010 U.S. Dist. LEXIS 47627 at *23 (C.D. Cal. Apr. 30, 2010)	13
<i>Gautreaux v. Pierce</i> 690 F.2d (7th Cir. 1982)	11
<i>General Tel. Co. of the Southwest v. Falcon</i> 457 U.S. 147 (1982)	7-8
<i>Hanlon v. Chrysler Corp.</i> 150 F.3d 1011 (9th Cir. 1998)	7, 8, 10, 11
<i>Breseno v. Henderson</i> 998 F.3d 1014 (9th Cir. 2021)	11, 15
<i>Hopkins v. Stryker Sales Corp.</i> 2012 U.S. Dist. LEXIS 67101 (N.D. Cal. May 14, 2012)	7
<i>In re GMC Pick-up Truck Fuel Tank Prods. Liab. Litig.</i> 55 F.3d 768 (3rd Cir.1995)	13
<i>In re Traffic Executive Association-Eastern Railroads</i> 627 F.2d 631 (2d Cir. 1980)	11
<i>Lerwill v. Inflight Motion Pictures, Inc.</i> 582 F.2d 507 (9th Cir. 1978)	8

1	<i>Levy v. Medline Indus. Inc.</i>	
2	716 F.3d 510 (9th Cir. 2013)	8
3	<i>Marr v. Bank of Am., No. 09-cv-05978 WHA</i>	
4	2011 U.S. Dist. LEXIS 24868 (N.D. Cal. Mar. 8, 2011)	9
5	<i>Merante v. Am. Inst. For Foreign Study, Case No. 21-cv-3234-EMC</i>	
6	2022 U.S. Dist. LEXIS 131833 *14 (N.D. Cal. July 25, 2022)	10, 15
7	<i>Novak v. Boeing Co</i>	
8	2011 U.S. Dist. LEXIS 83031 (C.D. Cal. July 20)	12
9	<i>Overton v. Hat World, Inc.</i>	
10	2012 U.S. Dist. LEXIS 144116 at *5 (E.D. Cal. October 3, 2012)	16
11	<i>Schofield v. Delta Air Lines, Inc., Case No. 18-cv-382-EMC</i>	
12	2019 U.S. Dist. LEXIS 31535 (N.D. Cal. February 27, 2019)	11, 15
13	<i>Stewart v. Abraham</i>	
14	275 F.3d 220 (3d Cir. 2001)	7
15	<i>Torrise v. Tucson Elec. Power Co.</i>	
16	8 F.3d 1370 (9th Cir. 1993)	11
17	<i>Tsyn v. Wells Fargo Advisors, LLC</i>	
18	2018 U.S. Dist. LEXIS 246223 (N.D. Cal. November 1, 2018)	14
19	<i>Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.</i>	
20	396 F.3d 96 (2nd Cir. 2005)	11
21	<i>Walters v. Reno,</i>	
22	145 F.3d 1032 (9th Cir. 1998)	7
23	Statutes	
24	28 U.S.C. § 1332	3
25	28 U.S.C. § 1715	16
26	Bus. & Prof. Code § 17200 et seq.	2, 3
27	Cal. Labor Code § 1198	<i>passim</i>
28	Cal. Lab. Code § 2698-2699.5	2
	Cal. Labor Code § 2802	<i>passim</i>
	Rules	
	Fed. R. Civ. P. 23	<i>passim</i>
	Other Authorities	
	Herr, <i>Manual for Complex Litigation</i> , Fourth, § 21.632 (2004)	11

1 **NOTICE OF MOTION AND MOTION**

2 TO THE COURT AND ALL INTERESTED PARTIES:

3 PLEASE TAKE NOTICE THAT on February 22, 2024 at 1:30 p.m. or as soon
4 thereafter as counsel may be heard, in Courtroom 5 of the United States District Court for the
5 Northern District of California, located at 450 Golden Gate Avenue, San Francisco, CA
6 94102, 17th Floor, the Honorable Edward M. Chen presiding, Plaintiffs Alex Charalambous
7 and Brian Pullen will move the Court for preliminary approval of the proposed class action
8 and representative action settlement memorialized in the “Settlement Agreement and Release
9 of Class and Representative Action Claims,” attached as Exhibit 1 to the Declaration of
10 Marita M. Lauinger, filed herewith.

11 Plaintiffs respectfully request the Court (1) grant preliminary approval of the
12 proposed class action and representative action settlement; (2) grant conditional certification
13 of the proposed settlement class; (3) authorize the mailing of the proposed class notice; and
14 (4) schedule a final fairness hearing.

15 This motion is based on this Notice, the attached Memorandum of Points and
16 Authorities, the Lauinger Declaration, the pleadings and files in this matter, and on such
17 other evidence and arguments the Court may consider at the hearing.

18
19 Dated: January 10, 2024

Respectfully submitted,

20 CLAPP & LAUINGER LLP

21
22 /s/ Marita Murphy Lauinger

23 JAMES F. CLAPP

MARITA MURPHY LAUINGER

Attorneys for Plaintiffs

24 ALEX CHARALAMBOUS and BRIAN
25 PULLEN
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1 **I. INTRODUCTION**

2 Plaintiffs Alex Charalambous and Brian Pullen (“Plaintiffs”) seek preliminary
3 approval of a proposed \$3,125,000 non-reversionary class and representative action
4 settlement they negotiated with Defendants Liberty Mutual Insurance Company and Liberty
5 Mutual Group Inc. (collectively, “Defendants” or “Liberty Mutual”). (Plaintiffs and
6 Defendants are collectively referred to as the “Parties”.) The Settlement Agreement
7 (“Settlement”) is attached as Exhibit 1 to the Declaration of Marita M. Lauinger, filed
8 concurrently herewith. If approved, the Settlement will fully resolve all the claims between
9 Plaintiffs and Liberty Mutual pending in this Court.

10 Plaintiffs allege that Defendants failed to reimburse Plaintiffs and the class of
11 California-based Liberty Mutual employees for their necessary business expenses incurred
12 while working from home during the pandemic, beginning March 1, 2020 and continuing
13 through February 28, 2023. Plaintiffs have alleged claims under Cal. Labor Code § 2802,
14 Bus. & Prof. Code § 17200 *et seq.*, and PAGA (Cal. Lab. Code § 2698-2699.5). Defendants
15 deny liability and contend they have satisfied their obligations under the law.

16 The Settlement falls within the range of possible approval and should be preliminarily
17 approved. Plaintiffs estimate the Rule 23 portion of the settlement represents between 46.3%
18 and 77.3% of the amount the class members reasonably could expect to recover at trial. In
19 light of the risks and delays associated with further litigation, Plaintiffs and their counsel
20 believe the Settlement is fair, reasonable, and adequate.

21 **II. PROCEDURAL BACKGROUND**

22 On October 4, 2021, Alex Charalambous submitted a PAGA notice to the California
23 Labor and Workforce Development Agency (LWDA). Charalambous alleged that
24 Defendants violated Labor Code §§ 2802 and 1198 by failing to reimburse him and other
25 aggrieved employees for all necessary expenses incurred in direct consequence of the
26 discharge of their duties.

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1 On October 15, 2021, Brian Pullen and Alex Charalambous filed a Class Action
2 Complaint in the Alameda County Superior Court alleging violations of Labor Code § 2802
3 and Bus. & Prof. Code § 17200 *et seq.*

4 On December 9, 2021, Plaintiffs filed their First Amended Complaint to add
5 Charalambous' PAGA cause of action.

6 On January 12, 2022, Liberty Mutual removed the lawsuit to this Court, alleging
7 diversity jurisdiction under the Class Action Fairness Act (CAFA) 28 U.S.C. § 1332.
8 Plaintiffs did not oppose removal.

9 The Parties engaged in thorough discovery. Plaintiffs took the depositions of three
10 corporate designees of Liberty Mutual. Plaintiffs propounded interrogatories and requests for
11 production and reviewed more than 11,000 pages of documents produced by Liberty Mutual.
12 Liberty Mutual deposed each plaintiff for a full-day and served written discovery on each.
13 (Lauinger Decl. ¶ 3.)

14 On March 1, 2023, the Parties attended a full-day mediation before the Hon. Lisa
15 Cole (Ret.). The Parties were unable to settle the case but continued their discussions. A few
16 days later, with Judge Cole's assistance, the Parties agreed on the amount of the settlement.
17 Over the course of the next several months, the Parties negotiated the terms of the written
18 settlement agreement. The Settlement was signed on October 17, 2023. (Lauinger Decl. ¶ 4.)

19 **III. SETTLEMENT TERMS**

20 The full Settlement is set forth in Exhibit 1 to the Lauinger Declaration. Principal
21 terms of the Settlement are summarized as follows:

22 **A. Class Definition**

23 The class defined in the First Amended Complaint is: "All exempt and non-exempt
24 employees of Liberty Mutual in California who incurred reasonable and necessary business
25 expenses as a result of their performance of duties for Liberty Mutual during the applicable
26 statute of limitations, including without limitation employees who incurred such expenses
27 while working from home during the COVID-19 pandemic." (FAC ¶ 15.)

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1 During the course of their investigation, Plaintiffs determined that *all* Liberty Mutual
2 employees likely incurred at least some unreimbursed business expenses. Plaintiffs
3 contended that employees were required to log-in to Liberty Mutual’s computer system using
4 their home internet, and employees needed electricity to do so. Under California law, an
5 employer must reimburse its employee a reasonable amount for the work-related use of a
6 personal cellphone, even if the employee did not incur an extra expense as a result of the
7 work-related use. *Cochran v Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137, 1144
8 (2014). By analogy, Plaintiffs contended Liberty Mutual must reimburse its California
9 employees a reasonable amount for the work-related use of their home internet service and
10 home utilities during the pandemic. Plaintiffs further contended that because Defendants did
11 not reimburse all California employees the full amount of their home internet expenses and
12 did not reimburse utilities at all, Plaintiffs concluded that all of Defendants’ California
13 employees suffered injury and therefore were members of the class. (Lauinger Decl. ¶ 5.)
14 Although Defendants dispute liability, the Parties agreed to define the Settlement Class
15 broadly as: “All individuals who are or were employed by Defendant and/or any Released
16 Party in California during the Class Period.” (Settlement, ¶ 1.35.)

17 The Settlement Class consists of approximately 2,449 Class Members who worked a
18 total of approximately 240,994 workweeks during the Release Period. (Settlement ¶ 1.35.)

19 **B. Definition of Aggrieved Employees**

20 For purposes of settlement, the Parties have defined the group of PAGA aggrieved
21 employees (referred to in the Settlement as the “PAGA Settlement Class”) as: “All
22 individuals who are or were employed by Defendants and/or any Released Party in California
23 from October 4, 2020 through February 28, 2023.”

24 The PAGA Settlement Class consists of approximately 2,364 employees who worked
25 a total of approximately 97,394 pay periods during the PAGA Period. (Settlement ¶ 1.26.)

26 **C. Settlement Fund and Plan of Allocation**

27 Liberty Mutual will create a non-reversionary \$3,125,000 gross settlement fund,
28 which will pay the settlement payments to the class members, the PAGA payments to the

1 LWDA and the aggrieved employees, and the Court-approved administration expenses,
2 incentive awards, and attorneys' fees and costs to Class Counsel. (Settlement ¶ 5.1.)

3 Absent unforeseen circumstances occurring between now and the final fairness
4 hearing, Class Counsel intends to request attorneys' fees of 30% of the settlement fund, plus
5 reimbursement of actual litigation expenses. The Settlement permits Class Counsel to
6 request up to 33 1/3%. (Settlement ¶¶ 5.1, 5.7.) Class Counsel's current lodestar is
7 approximately \$978,125, and their current expenses are approximately \$25,000. (Lauinger
8 Decl. ¶ 6.)

9 The settlement administration expenses will be approximately \$19,500. (Lauinger
10 Decl. ¶ 7) Five percent (5%) of the settlement fund has been allocated to settle the PAGA
11 penalty claims. The remaining amount will be distributed to the class members on a pro rata
12 basis based upon the number of workweeks they worked during the class period. (Settlement
13 ¶ 8.1.)

14 **D. Class Representatives and Class Counsel**

15 For settlement purposes only, the Parties have stipulated that Plaintiffs Alex
16 Charalambous and Brian Pullen will be appointed class representatives, and their counsel
17 Clapp & Lauinger LLP will be appointed as Class Counsel. (Settlement ¶¶ 1.4, 1.9.)

18 **E. Settlement Administrator**

19 The proposed settlement administrator, ILYM Group, Inc. has agreed to administer
20 the settlement for a reduced fee of \$19,500. Plaintiffs' counsel obtained bids from three
21 potential settlement administrators. Liberty Mutual expressed a preference for ILYM
22 because that firm had handled the settlement of *Marano v. Liberty Mutual Group, Inc.*, Case
23 No. 8:20-cv-2215-CJC-ADS, which included overlapping claims that are excluded from the
24 Settlement. (Settlement ¶ 8.3.) ILYM agreed to match the lowest bid. During the last two
25 years, Plaintiffs' counsel have engaged ILYM to perform settlement administration or
26 *Belaire* opt-out procedures in three cases. (Lauinger Decl. ¶ 7.)

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1 **F. Notice Procedure**

2 The settlement administrator will mail the Class Notice and Share Form to each class
3 member (Settlement, Exhibits 1 and 2). The Share Form will state (1) the number of
4 workweeks worked by the class member based upon Defendants’ records, and (2) an estimate
5 of the total settlement payment to that class member. The Share Form will also include space
6 for the class member to dispute the number of workweeks stated on the form. (A class
7 member need not return the Share Form to receive a settlement payment; the sole purpose of
8 the form is to allow the class member to dispute the number of workweeks.)

9 Before mailing the Class Notice and Share Form, the settlement administrator will
10 verify the class members’ addresses through the NCOA database and perform a skip trace for
11 any class member whose settlement documents are returned as undeliverable. The settlement
12 administrator will also maintain the settlement funds in an interest-bearing account and
13 distribute the fund according to the Settlement and the Court’s orders. (Settlement ¶ 7.1)

14 Class members will have 45 days following the date of the initial mailing by the
15 settlement administrator to dispute their workweeks (by returning the Share Form), request
16 exclusion, or object to the settlement. (Settlement ¶¶ 1.33, 7.1-7.4.)

17 **G. Release of Claims**

18 The release of claims is fully set forth in the Settlement. (Settlement ¶¶ 1.29-1.32;
19 11.1-11.2). Class members who do not opt out of the Settlement will release those claims
20 arising out of or related to the allegations set forth in the Complaint and/or PAGA notice to the
21 LWDA. PAGA aggrieved employees (referred to as the PAGA Settlement Class) will have no
22 right or ability to opt out of the portion of the Settlement releasing PAGA claims. (Settlement
23 ¶ 7.3.)

24 **IV. CLASS CERTIFICATION FOR PURPOSES OF SETTLEMENT**

25 **A. The Class Meets the Requirements of Rule 23(e)**

26 For purposes of settlement only, the Parties agree to conditional certification of the
27 Settlement Class. Under Fed. R. Civ. P. 23, a court should certify a class if the following
28 prerequisites are met: “(1) the class is too numerous, making joinder of the parties

1 impracticable; (2) common questions of law or fact exist among the class members; (3) the
2 claims of the class representatives are typical of the claims of the class; and (4) the class
3 representatives will adequately represent the interest of the class.” *Walters v. Reno*, 145 F.3d
4 1032, 1045 (9th Cir. 1998). Plaintiffs contend that each of these requirements is met.
5 Defendants believe that conditional certification is appropriate for purposes of this
6 Settlement only. (Settlement ¶ 3.)

7 **1. Numerosity**

8 Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is
9 impracticable.” In *Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001), the court
10 observed that if a class exceeds 40 members, the numerosity requirement is satisfied. Here
11 there are approximately 2,449 class members.

12 **2. Commonality**

13 Rule 23(a)(2) requires the presence of a single significant common question that is
14 capable of class-wide resolution. *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 957 (9th
15 Cir. 2013). Judge Koh has observed, “District courts throughout this circuit have found that
16 commonality is met when, as here, the proposed class of plaintiffs asserts that an employer
17 adopted a policy of not reimbursing its employees’ necessary business expenses in violation
18 of Cal. [Labor] Code § 2802.” *Hopkins v. Stryker Sales Corp.*, 2012 U.S. Dist. LEXIS
19 67101, *16-17 (N.D. Cal. May 14, 2012). Here, whether Defendants’ business expense
20 reimbursement policies during the COVID-19 pandemic violated Cal. Labor Code § 2802 is
21 a common question that unites the class.

22 **3. Typicality**

23 A class representative’s claims are typical if they are “reasonably co-extensive with
24 those of absent class members; they need not be substantially identical.” *Hanlon v. Chrysler*
25 *Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). “The commonality and typicality requirements
26 of Rule 23(a) tend to merge. Both serve as guideposts for determining whether under the
27 particular circumstances maintenance of a class action is economical and whether the named
28 plaintiff’s claim and the class claims are so interrelated that the interests of the class

1 members will be fairly and adequately protected in their absence.” *General Tel. Co. of the*
2 *Southwest v. Falcon*, 457 U.S. 147, 157 n.13 (1982). Plaintiffs were employed by Liberty
3 Mutual in California during the class period and, like the other class members, incurred home
4 internet, utilities, and other expenses for work-related purposes as a result of Liberty
5 Mutual’s direction they work from home. Their claims are typical.

6 **4. Adequacy**

7 “[T]wo criteria for determining the adequacy of representation have been recognized.
8 First, the named representatives must appear able to prosecute the action vigorously through
9 qualified counsel, and second, the representatives must not have antagonistic or conflicting
10 interests with the unnamed members of the class.” *Lerwill v. Inflight Motion Pictures, Inc.*,
11 582 F.2d 507, 512 (9th Cir. 1978). Plaintiffs have no interests that are antagonistic to those of
12 the other class members because they have not brought any individual non-class claims in
13 this action. (Lauinger Decl. ¶ 8.) Also, Plaintiffs have retained counsel who are highly
14 experienced in employment class actions including class actions involving alleged violations
15 of Cal. Lab. Code § 2802. (Lauinger Decl. ¶¶ 9-10.)

16 **B. The Class Meets the Requirements of Rule 23(b)(3)**

17 Plaintiffs contend that the requirements of Rule 23(b)(3) are satisfied because: (1)
18 questions of law or fact common to class members predominate over any questions affecting
19 only individual members, and (2) a class action is superior to other available methods for
20 fairly and efficiently adjudicating the controversy. Rule 23(b)(3) tests whether “common
21 questions present a significant aspect of the case and they can be resolved for all members of
22 the class in a single adjudication.” *Hanlon*, 150 F.3d at 1022 (quoting 7A Charles Alan
23 Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* § 1778 (2d ed.
24 1986)). The presence of some individualized issues, such as damages, does not preclude a
25 finding that common issues predominate. *Levy v. Medline Indus. Inc.*, 716 F.3d 510, 513
26 (9th Cir. 2013). In wage and hour cases, courts have found that predominance is satisfied
27 where, as shown here, liability will be determined based on the lawfulness of class-wide,
28 written policies. *Boyd v. Bank of Am. Corp.*, 300 F.R.D. 431, 442 (C.D. Cal. 2014) citing *In*

1 *Re Wells Fargo Home Mortg.*, 571 F.3d 953, 958–59 (9th Cir. 2009) (“uniform corporate
2 policies will often bear heavily on questions of predominance and superiority”).

3 California law provides: “An employer shall indemnify his or her employee for all
4 necessary expenditures or losses incurred by the employee in direct consequence of the
5 discharge of his or her duties...” Labor Code § 2802(a). The elements of a claim under
6 Labor Code § 2802 are: (1) the employee made expenditures or incurred losses; (2) the
7 expenditures or losses were incurred in direct consequence of the employee's discharge of his
8 or her duties, or obedience to the directions of the employer; and (3) the expenditures or
9 losses were reasonable and necessary. *Marr v. Bank of Am.*, No. 09–cv–05978 WHA, 2011
10 U.S. Dist. LEXIS 24868, at *3 (N.D. Cal. Mar. 8, 2011) citing *Gattuso v. Harte-Hanks*
11 *Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007). “In addition, the employer ‘must either know or
12 have reason to know that the employee has incurred [the] expense.’” *Id. citing Stuart v.*
13 *RadioShack Corp.*, 641 F.Supp.2d 901 (N.D. Cal. 2009).

14 Plaintiffs contend that when Defendants closed their California offices in response to
15 the pandemic, Plaintiffs and the other class members were required to use their home internet
16 and home utility services to log-in to Defendants’ computer network, and that Defendants did
17 not fully reimburse the cost of these services. Plaintiffs also allege Defendants are liable to
18 pay a reasonable amount for the use of other home office equipment the class members may
19 have used or purchased during the pandemic, such as a larger or second computer monitor,
20 printers, and office supplies.

21 Liberty Mutual denies liability and contends that it fulfilled its legal obligations under
22 Labor Code § 2802. (Settlement ¶ 2.4.) Liberty Mutual contends that it maintains a policy to
23 reimburse California employees for a portion of their monthly internet expenses if they
24 submit a reimbursement request. Liberty Mutual also contends that employees working from
25 home are issued the equipment they need to do their jobs or can purchase additional items at
26 Defendants’ expense. Defendants also contend that most employees do not need cellphones
27 because they use a computer-based application to place calls, and that employees whose jobs

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1 require cellphone use are provided with cellphones and a data plan. Defendants also contend
2 that California law does not require reimbursement for home utility bills.

3 Defendants' liability for these home office expenses under Labor Code § 2802 is a
4 common question that warrants certification under Rule 23 for purposes of the Settlement.
5 Defendants agree that conditional certification is appropriate for settlement purposes only
6 because the claims are being compromised without the need to establish the elements on
7 which liability turns. (Settlement ¶ 2.4.)

8 **V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL**

9 **A. The Standard for Preliminary Approval**

10 In deciding whether to approve a proposed class action settlement, the Court must
11 determine whether the proposed settlement is "fair, adequate and reasonable." *Merante v.*
12 *Am. Inst. For Foreign Study*, Case No. 21-cv-3234-EMC, 2022 U.S. Dist. LEXIS 131833
13 *14 (N.D. Cal. July 25, 2022) citing *Officers for Justice v. Civil Service Comm'n*, 688 F.2d
14 615, 625 (9th Cir. 1982). Courts must apply "a high procedural standard" for settlements that
15 occur before class certification. *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015). "A
16 difficult balancing act almost always confronts a district court tasked with approving a class
17 action settlement. On the one hand, we have repeatedly noted that 'there is a strong judicial
18 policy that favors settlements, particularly where complex class action litigation is
19 concerned.'" *Id. quoting In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008).
20 "[O]n the other hand, 'settlement class actions present unique due process concerns for
21 absent class members,' and the district court has a fiduciary duty to look after the interests of
22 those absent class members." *Id. quoting Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026
23 (9th Cir. 1998).

24 Court approval of a class action settlement is a two-step process. First, counsel
25 submits the proposed terms of the settlement to the court, and the court makes a preliminary
26 fairness evaluation. If the preliminary evaluation of the settlement does not disclose a basis to
27 doubt its fairness or other obvious deficiencies, the court directs that notice be given to the

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1 class and sets a final fairness hearing. Herr, *Manual for Complex Litigation*, Fourth, § 21.632
2 (2004).

3 Preliminary approval should be granted if the proposed settlement falls “within the
4 range of possible final approval.” *Gautreaux v. Pierce*, 690 F.2d at 616, 621 n.3 (7th Cir.
5 1982). Preliminary approval is “a determination that there is what might be termed ‘probable
6 cause’ to submit the proposal to class members and hold a full-scale hearing as to its
7 fairness.” *In re Traffic Executive Association-Eastern Railroads*, 627 F.2d 631, 634 (2d Cir.
8 1980).

9 A proposed settlement is presumed to be fair when: it is reached through arm’s-length
10 negotiations; the putative class is represented by experienced counsel; and the parties have
11 conducted sufficient discovery. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116
12 (2nd Cir. 2005). Here, all of the factors giving rise to a presumption of fairness exist. As
13 detailed above, the proposed settlement was the product of extensive arm’s-length, non-
14 collusive negotiations, overseen by an experienced mediator; the class and aggrieved
15 employees are represented by experienced counsel; and the Parties have conducted sufficient
16 discovery. Thus, the settlement is presumed to be fair.

17 The Ninth Circuit has also suggested that district courts consider the following factors
18 in evaluating the fairness of a class action settlement: the strength of the plaintiff’s case; the
19 risk, expense, complexity, and likely duration of further litigation; the risk of maintaining
20 class action status throughout the trial; the amount offered in settlement; the extent of
21 discovery completed and the stage of the proceedings; the experience and views of counsel;
22 the presence of a governmental participant; and the reaction of the class members to the
23 proposed settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998);
24 *Schofield v. Delta Air Lines, Inc.*, Case No. 18-cv-382-EMC, 2019 U.S. Dist. LEXIS 31535,
25 *13-14 (N.D. Cal. February 27, 2019). The relative degree of importance to be attached to
26 any particular factor depends upon the circumstances of each case. *Torrisi v. Tucson Elec.*
27 *Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993). Courts should also scrutinize agreements for
28 signs of collusion. *Breseno v. Henderson*, 998 F.3d 1014, 1023 (9th Cir. 2021); Fed Rule

1 Civ. Proc., Rule 23(e)(2)(C). Here, the pertinent factors weigh in favor of granting
2 preliminary approval.

3 **B. The Strength of Plaintiffs' Case and Class Certification Risk**

4 When Plaintiffs originally filed this case, they were informed Liberty Mutual did not
5 provide employees with cellphones, telephone service, or a means of communicating with
6 Liberty Mutual's offices. During discovery, though, Plaintiffs' counsel determined that
7 Liberty Mutual provided employees with an application, Microsoft Teams, that allowed
8 employees to communicate as needed using internet calling (VOIP) that does not require the
9 use of a phone. Liberty Mutual provided some employees with cellphones and data plans if
10 required for a particular job. While some employees may have continued to use their
11 personal cellphones for business calls, the availability of Microsoft Teams allowed Liberty
12 Mutual to argue that the use of personal cellphones was voluntary and therefore not
13 reimbursable. *Novak v. Boeing Co*, 2011 U.S. Dist. LEXIS 83031, *9-10 (C.D. Cal. July 20,
14 2011 (expenses voluntarily incurred are not reimbursable under Labor Code § 2802).
15 Similarly, Liberty Mutual produced evidence to Plaintiffs' counsel that Liberty Mutual
16 provided employees with equipment necessary to work from home, including a laptop
17 computer, headset, and monitor, and employees could order additional equipment through the
18 company to be delivered to their homes. (Lauinger Decl. ¶ 11.)

19 On the other hand, during discovery, Plaintiffs developed evidence that Defendants'
20 California employees were incurring home internet expenses of approximately \$50 per
21 month on average, yet not all employees submitted reimbursement requests or were
22 reimbursed that amount each month. Plaintiffs also confirmed that Liberty Mutual never
23 reimbursed electricity expenses associated with operating a home office. (Lauinger Decl. ¶
24 12.) Liberty Mutual contends that California law does not require reimbursement of
25 electricity expenses.

26 As for Plaintiffs' claim that Liberty Mutual should have reimbursed its employees a
27 fair rental amount for the business-related use of their home office space, after taking
28 discovery, Plaintiffs' counsel determined this would be a difficult claim to certify. Plaintiffs'

1 counsel analogized the claim to the tax deduction for a home office. Although the tax code
2 recognizes the employee/taxpayer incurs expenses while operating a home office, the
3 employee cannot claim the deduction unless the space is used “regularly and exclusively for
4 business purposes.” (FTB Publication 984, Business Expenses, March 2017.) Absent a
5 policy by Liberty Mutual requiring the employee to set aside space in his or her home to use
6 exclusively for Liberty Mutual business (which policy does not exist), Plaintiffs’ counsel
7 concluded it would be very difficult to decide this claim on a classwide basis. *See, e.g.,*
8 *Drake v. Morgan Stanley & Co.*, 2010 U.S. Dist. LEXIS 47627 at *23 (C.D. Cal. Apr. 30,
9 2010) (denying class certification of claims concerning employer’s expense reimbursement
10 practices because liability under § 2802 requires individual factual determinations).

11 **C. The Risk, Expense, Complexity and Likely Duration of Further Litigation**

12 To assess the fairness, adequacy and reasonableness of a class action settlement, the
13 Court must weigh the immediacy and certainty of substantial settlement proceeds against the
14 risks inherent in continued litigation. *In re GMC Pick-up Truck Fuel Tank Prods. Liab.*
15 *Litig.*, 55 F.3d 768, 806 (3rd Cir.1995) (“The present value of the damages plaintiffs would
16 likely recover if successful, appropriately discounted for the risk of not prevailing, should be
17 compared with the amount of the proposed settlement.”) This factor supports preliminary
18 approval here. Liberty Mutual denies liability and intends to assert all defenses to class
19 certification, the merits of the case, and damages. Even if Plaintiffs had prevailed in this
20 Court, Defendants would appeal, delaying payments to the settlement class for many years, if
21 ever. The benefits of settling now substantially outweigh the risks of continuing the
22 litigation. (Lauinger Decl. ¶ 13.)

23 **D. The Amount Offered in Settlement**

24 Liberty Mutual will pay the agreed upon non-reversionary settlement amount of
25 \$3,125,000. There are approximately 2,449 members of the settlement class who worked a
26 total of approximately 240,994 workweeks during the release period, from March 1, 2020
27 through June 1, 2023. There are approximately 2,364 members of the PAGA settlement

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1 class who worked a total of approximately 97,394 pay periods during the PAGA period from
2 October 4, 2020 through June 1, 2023.

3 **1. The Class Settlement**

4 Class members will receive a gross settlement payment of approximately \$56.00 per
5 work month. If the Court approves the requested fees, costs, and enhancements, the net
6 settlement payment will be approximately \$33.50 per month.

7 This amount compares favorably to the actual damages the class could have expected
8 to recover at trial. The average cost of high-speed home internet service in California during
9 the class period was \$64.43 per month, and some class members received reimbursement for
10 a portion of their monthly home internet expense. Plaintiffs also estimated additional
11 electricity charges associated with home office use to be approximately \$8.00 per month.
12 (*Id.*) These estimates are similar to those used by Liberty Mutual in its removal petition (i.e.,
13 \$49.99 per month for home internet and \$15.00 for utilities). (*See* Docket No. 1-1 at ¶ 18.)
14 The gross settlement of \$56.00 per month represents 77.3% (\$56/\$72.43) of Plaintiffs'
15 estimated exposure, and the net settlement of \$33.50 represents 46.3% of Plaintiffs'
16 estimated exposure. (Lauinger Decl. ¶ 14.)

17 **2. The PAGA Settlement**

18 The PAGA payment of \$156,250.00 represents 5% of the settlement amount. This is
19 consistent with other amounts approved by courts in this this District. For example, in *Tsyn*
20 *v. Wells Fargo Advisors, LLC*, 2018 U.S. Dist. LEXIS 246223 (N.D. Cal. November 1,
21 2018), Magistrate Judge Beeler approved a \$20,000 payment to the LWDA, which was
22 0.021% of the \$9.5 million settlement amount. *Id.* at *7. In *Alvarez v. Farmers Ins. Exch.*
23 2017 U.S. Dist. LEXIS 119127 (N.D. Cal. January 17, 2017), Judge Orrick approved a
24 \$30,000 payment to the LWDA in the \$4.9 million settlement of an FLSA case representing
25 0.6% of the total settlement amount. In *Blandino v. MCM Constr., Inc.*, Case No. 12-cv-
26 1729 WHO, 2014 U.S. Dist. LEXIS 185897 (N.D. Cal. March 6, 2014), Judge Orrick also
27 approved a \$25,000 payment to the LWDA from a \$865,000 settlement representing 2.8% of
28 the total settlement.

1 The PAGA payment of \$156,250.00 represents approximately 1.6% of Defendants’
2 maximum PAGA exposure (assuming Defendants committed a § 2802 violation during each
3 of the 97,394 pay periods occurring during the statute of limitations). In *Merante, supra*, this
4 Court approved a PAGA settlement representing between 0.27% and 2% of the maximum
5 PAGA liability. 2022 U.S. Dist. LEXIS at *19. As in *Merante*, the Settlement here is
6 reasonable in light of “the significant recovery for the Rule 23 class.” *Id.*

7 **E. The Extent of Discovery Completed**

8 As described in Section II above, Plaintiffs served written discovery, reviewed 11,000
9 pages of Liberty Mutual documents, interviewed approximately 100 class members, and took
10 the depositions of three corporate witnesses. Plaintiffs also responded to written discovery
11 and sat for full-day depositions. The Parties had sufficient information to negotiate a fair
12 settlement. (Lauinger Decl. ¶ 3.)

13 **F. No “Red Flags” of Collusion**

14 Finally, the Court should satisfy itself that Class Counsel have not allowed their own
15 interests to affect the negotiations. *Briseno*, 998 F.3d at 1023. “Red flags” of collusion exist
16 when (1) counsel receive a disproportionate distribution of the settlement, (2) the Parties
17 negotiate a “clear sailing arrangement” regarding fees, or (3) the agreement contains a
18 reverter that returns unawarded fees to the defendant. *Id.*

19 Class Counsel’s fees and costs will be determined by the Court. (Settlement ¶ 1.3,
20 5.7.) There is no clear-sailing provision regarding fees, and unawarded fees revert to the
21 class, not to Liberty Mutual. (*Id.*)

22 Moreover, the Settlement was the product of arm’s length negotiations with a
23 mediator, retired judge Lisa Cole. The participation of an experienced mediator in the
24 negotiations confirms the settlement is non-collusive. *Schofield*, 2019 U.S. Dist. LEXIS
25 31535, *18.

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1 **VI. THE PROPOSED CLASS NOTICE IS THE BEST NOTICE PRACTICABLE**

2 Pursuant to Fed. R. Civ. P. 23(e)(1), “[t]he court must direct notice in a reasonable
3 manner to all class members who would be bound by the proposal.” Under Fed. R. Civ. P.
4 23(c)(2)(B), “[t]he notice must clearly and concisely state in plain, easily understood
5 language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class
6 claims, issues, or defenses; (iv) that a class member may enter an appearance through an
7 attorney if the member so desires; (v) that the court will exclude from the class any member
8 who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the
9 binding effect of a class judgment on members under Rule 23(c)(3).” Notice is satisfactory if
10 it “generally describes the terms of the settlement in sufficient detail to alert those with
11 adverse viewpoints to investigate and come forward and be heard.” *Churchill Village, LLC v.*
12 *General Electric*, 361 F.3d 566, 575 (9th Cir. 2004).

13 The Parties have agreed, subject to Court approval, to have the Settlement
14 Administrator mail notice via first class mail, postage prepaid, to the last-known addresses of
15 the class members as updated through the U.S. Postal Service’s NCOA database. This
16 method meets the requirements of due process. *Overton v. Hat World, Inc.*, 2012 U.S. Dist.
17 LEXIS 144116 at *5 (E.D. Cal. October 3, 2012). The Settlement Administrator will skip
18 trace any returned mail that is undeliverable. The Settlement Administrator will also
19 maintain a website that links to the Settlement Agreement, Notice, motions for approval and
20 for attorneys’ fees, and other important publicly filed documents in the case. The website
21 will also allow class members to update their contact information. The Notice will also
22 include Class Counsel’s contact information.

23 **VII. CLASS ACTION FAIRNESS ACT NOTICE (CAFA)**

24 Liberty Mutual will be responsible for providing CAFA notice to the appropriate
25 federal and California officials within 10 days of the filing of this motion. (28 U.S.C. §
26 1715(b).)

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1 **VIII. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that the Court grant their
3 motion for preliminary approval, certify the proposed settlement class, and set a final fairness
4 hearing. A proposed order has been submitted herewith.

5 Dated: January 10, 2024

Respectfully submitted,

6 CLAPP & LAUINGER LLP

7
8 /s/ Marita Murphy Lauinger

9 JAMES F. CLAPP

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