IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
GEORGIA NEWNAN DIVISION

JORGE OSWALDO AQUINO MARTINEZ, ELVIS NAHUM CRUZ VASQUEZ, HEBER ALFONSO ZAPATA CONTRERAS, ISIDRO ARELLANO CHIHUAHUA, JOSE MARIA RAMIREZ MORALES, and LUIS ADRIAN SALAZAR LOZANO, VERONICA OLAN CASTILLO, and AARON HERNAN PEREZ SALAZAR, individually and on behalf of all others similarly situated, Plaintiffs, v. MOBIS ALABAMA, LLC d/b/a HYUNDAI MOBIS; KIA GEORGIA, INC.; GB2G, INC. d/b/a ALLSWELL; SPJ CONNECT, INC.; YOUNGJIN LEE, individually; and JOB KNOWLEDGE, LLC, Defendants.	Case No. 3:22-cv-00145-LMM

AMENDED JOINT MOTION AND INCORPORATED MEMORANDUM OF LAW FOR ORDER PRELIMINARILY APPROVING AMENDED CLASS ACTION SETTLEMENT, PRELIMINARILY APPROVING FAIR LABOR STANDARDS ACT SETTLEMENT, AND DIRECTING NOTICE AND OTHER RELIEF

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COME NOW, Plaintiffs Jorge Oswaldo Aquino Martinez, Elvis Nahum Cruz Vasquez, Heber Alfonso Zapata Contreras, Isidro Arellano Chihuahua, Jose Maria Ramirez Morales, Luis Adrian Salazar Lozano, and Veronica Olan Castillo (the "Plaintiffs"), and Defendants Mobis Alabama, LLC d/b/a Hyundai Mobis; Kia Georgia, Inc.; GB2G, Inc. d/b/a Allswell; SPJ Connect, Inc.; and Youngjin Lee, Individually (together the "Defendants") and jointly submit this amended motion for an Order preliminarily approving the amended class action settlement, preliminarily approving their Fair Labor Standards Act ("FLSA") settlement, directing notice, and other relief.[1]

The Court convened a status conference on December 16, 2025 to review the Parties' initial preliminary approval motion papers. Docs. 163, 165. This amended motion and the amended attachments hereto reflect the matters discussed during that status conference. Among other things, the Parties have simplified and made consistent the process for Class Members to submit objections or requests for exclusion (if any). Both are now to be directed to the Settlement Administrator, Atticus Administration ("Atticus" or the "Settlement Administrator"), which the Parties had agreed in their Amended Class Action Settlement Agreement could administer the distribution of class notice, communications with Class Members, and the distribution of class settlement proceeds. Doc 163-1 at ¶¶ 11.3, 11.8. Counsel for the Parties subsequently have agreed that Atticus may receive Objections and Requests for Exclusion, if any, on Counsels' behalf. Consistent with

[1] The Court dismissed Plaintiffs' claims against former Defendant Total Employee Solution Support, LLC ("TESS"). Doc. 129. The only surviving claims against Defendant Job Knowledge, LLC ("JKL") are by plaintiff Aaron Hernan Perez Salazar and four opt-in claimants ("JKL Plaintiffs") for unpaid overtime under the Fair Labor Standards Act. The JKL Plaintiffs and JKL have reached a separate non-class settlement of these claims, which are not a part of this settlement; and will submit a motion for approval of the Fair Labor Standards Act settlement.

Paragraph 29.17 of the Settlement Agreement (Doc. 163-1, p. 51), which states in pertinent part "[p]rior to the entry of the Final Order and Judgment, the terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court", the Parties agree to the modifications to the Settlement. The Parties agree that the prior signature pages may be attached to the Amended Class Action Settlement Agreement. Attachment 1, Amended Class Action Settlement Agreement. The Parties have also addressed the Court's directives by amending this Motion, the corresponding Long Form Notice (Attachment 2), and the proposed Order (Attachment 3). Consistent with the Court's request, redline versions of the Motion, Long Form Notice, and Proposed Order have been submitted to the Court via email for ease of the Court's review.

I. INTRODUCTION

The amended class action settlement ("Settlement") should be approved because it is a fair and reasonable compromise of claims alleged by Plaintiffs. Plaintiffs' Third Amended Class Action Complaint ("TAC") alleges collective action claims for violations of the Fair Labor Standards Act ("FLSA"), and class action claims alleging Defendants violated the federal and Georgia Racketeer Influenced and Corrupt Organizations Acts.[2] The Amended Settlement Agreement between Plaintiffs and Defendants is attached hereto as Attachment 1.

Plaintiffs believe that the claims asserted in the Action have merit and that there is evidence to support their claims. Defendants continue to deny that they are liable under these statutes or any other law or regulation for any violation, or that this case is properly certifiable as a class action. Both Plaintiffs and Defendants

[2] The TAC included other claims that have been dismissed. Doc. 129.

recognize and acknowledge the expense and length of continued litigation and legal proceedings necessary to prosecute, and defend, the lawsuit through class certification proceedings, at trial and through any appeals.

II. THE SETTLEMENT

Plaintiff Martinez filed this lawsuit on August 11, 2022. Doc. 1. Plaintiffs have since filed three amended complaints, Docs. 25, 29, and 74, adding plaintiffs, defendants, and claims. The Third Amended Complaint has 925 paragraphs and includes detailed allegations relating to an alleged international RICO scheme involving mail fraud, wire fraud, fraud in foreign labor contracting, visa fraud, and violations of the FLSA. Doc. 74.

Defendants filed multiple rounds of motions to dismiss, Docs. 19, 21, 51, 52, 65, 78, 79, and 82, which Plaintiffs opposed, Docs. 70, 71, 87, 88, 89, and 90. The Magistrate Judge recommended that the Court grant in part and deny in part Defendants' motions. Doc. 105. The parties filed separate objections to the Magistrate Judge's Report and Recommendation and responses to the objections. Docs. 111-127. The Court overruled in part and sustained in part the Defendants' objections, Doc. 129, and later denied a limited motion to reconsider the dismissal of the Plaintiffs' employment discrimination claims. Doc. 137.

Defendants timely filed Answers to the TAC. Docs. 139-142.

The parties exchanged Initial Disclosures, attended the Rule 26(f) conference, and filed their Local Rule 16.1 Report. At the Rule 26(f) conference, the parties held initial discussions about a framework for mediating a settlement of the class and collective action.

The Court issued its Initial Case Management Order on September 10, 2024. Doc. 146. Plaintiffs filed a Motion for Conditional Certification of an FLSA

Collective Action on October 22, 2024. Doc. 150.

Preliminary settlement discussions continued, and the parties agreed to mediation with Chris Parker. On November 7, 2024, the parties filed a joint motion requesting that the Court stay the lawsuit and consideration of the Conditional Certification Motion so the parties could focus on exchanging documents and information to prepare for the mediation. Doc. 154. The Court granted the motion and entered a stay on November 14, 2024. Doc. 155.

The parties engaged in extensive pre-mediation informal discovery, including the production of approximately 2,500 pages of documents and spreadsheets relating to Plaintiff's claims. Declaration of Christopher Hall ¶ 6. The discovery included production of relevant documents, emails from identified custodians, and extensive recruitment, visa processing, payroll, and employment data. *Id.* ¶ 7. Plaintiffs analyzed multiple permutations of class certification, individual trial, class trial, and damages outcomes, and Plaintiffs made a detailed demand. The parties submitted mediation statements to Mr. Parker. *Id.* ¶ 7.

On April 21-22, 2025, the parties attended a two-day mediation conducted by Mr. Parker and reached a tentative settlement in principle at approximately 9:00 p.m. on the second day. *Id.* ¶ 9. The parties negotiated a detailed term sheet, Settlement Agreement, distribution plan, and notice documents, over the following weeks. *Id.* ¶ 10.

Negotiation of final settlement papers was delayed due to the number of parties (including interested insurers), complexities relating to distribution to international class members, and the process of identifying class members and the dates they worked before settlement finalization (which depended on cross-referencing payroll and attendance data from multiple parties). There were issues

relating to which parties had (often international) contact information relating to class members, and identification of the same. And before agreeing on procedures for identification of class members, Class Counsel had to assure themselves that such procedures in fact were sufficient. This process was very time consuming. The parties cooperated during this endeavor and were able to resolve these issues with substantial (but time consuming) effort. *Id.* ¶ 12.

The material terms of the Settlement Agreement follow:

A. Class Definitions.

The Settlement Agreement provides relief for the classes identified in the lawsuit and described as follows, which classes are agreed to for purposes of settlement only and for no other purpose pursuant to 29 U.S.C. § 216(b) or Federal Rule of Civil Procedure 23(b)(3). Collectively, the following classes are referred to as the "Settlement Class:"

> **1.** **FLSA Collective Action Class:**
> All individuals who, between August 11, 2019 and the present, (1) were recruited by TESS, SPJ, or Allswell, (2) were assigned by Allswell to work at Defendant Kia Georgia's or Defendant Mobis' West Point, Georgia locations, (3) received wages from Allswell; and (4) were TN visa holders.
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> **2.** **Rule 23 Class:**
> All individuals who, between August 11, 2018 and the present, (1) were recruited by TESS, SPJ, or Allswell, (2) were assigned by Allswell to work at Defendant Kia Georgia's or Defendant Mobis' West Point, Georgia locations, (3) received wages from Allswell; and (4) were TN visa holders.

Attach. 1, ¶ III.9.

The parties agree that there are (including the named Plaintiffs) approximately 614 members of the FLSA Collective and the Rule 23 Class (collectively, the "Settlement Class Members").[3] *Id.*

[3] All FLSA Collective Action Members also are Class Members.

B. Gross Settlement Fund.

Subject to final court approval, Class Counsel has secured a settlement of Plaintiffs' claims on a class wide basis for $11,500,000.00 (the "Gross Settlement Fund") inclusive of all attorney's fees, expenses and costs as discussed below. *Id.* ¶ III.17.2. If the Court approves Class Counsel's request for attorneys' fees, each Settlement Class Member who provides information confirming that they have not received Medicare benefits and providing the information required by the Long Form Settlement Notice, including where and how to send payment, will receive monetary compensation. *Id.* ¶¶ III.11.1, 28.

Payment to RICO claimants is distributed based on number of days worked. *Id*. ¶ III.17.4. A linear pro rata distribution does not apply. Those employees in Group 1, who worked less, allegedly suffered less damages, but allege that they still suffered substantial losses relating to travelling to the United States for non-existent jobs. Those employees in Group 2 allege that they suffered similar damages relating to the relocation to the United States, but had greater opportunity costs, and greater losses relating to the alleged fraud by Defendants in failing to pay what they were promised. Group 3 allegedly suffered even greater damages because they suffered more due to the failure to pay what was promised over a longer period. *Id*.; Hall Decl. ¶ 17.

Distribution of recovery is not an exact science, and the methodology is fully explained in the notice.[4] Attach. 2, Notice § 7. The large majority of Settlement

[4] Plaintiffs submit that the damages distribution model is well reasoned and fair. It need not be perfect, especially here where the settlement provides recovery that is so strong on uncertain claims. *See generally, Ewert v. eBay, Inc.*, No. C-07-02198 RMW, 2010 WL 4269259, at *10 (N.D. Cal. Oct. 25, 2010) (finding though estimates did not perfectly capture the exact delay time for each individual listing, plaintiffs have shown that there is sufficient data to reasonably estimate damages); *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1175 JG VVP, 2014 WL 7882100, at *61 (E.D.N.Y. 2014), *report and recommendation adopted,* 2015 WL 5093503

Class Members are in Groups 3 (45.36 percent) and 4 (35.26 percent) (total in both groups 80.62 percent).

Rule 23 Settlement Groups:

1. Group 1: Group of 82 Plaintiffs and Settlement Class Members who were assigned by Allswell to work at Mobis and/or Kia Georgia's West Point locations during the class period for at minimum one day but no more than 60 days each shall receive $4,112.50 (4.19 percent of the Gross Settlement Fund minus attorneys' fees, costs, and expenses).

2. Group 2: Group of 57 Plaintiffs and Settlement Class Members who were assigned by Allswell to work at Mobis and/or Kia Georgia's West Point locations during the class period for more than 60 days but not more than 120 days each shall receive $8,000.00 (5.66 percent of the Gross Settlement Fund minus attorneys' fees, costs, and expenses).

3. Group 3: Group of 217 Plaintiffs and Settlement Class Members who were assigned by Allswell to work at Mobis and/or Kia Georgia's West Point locations during the class period for more than 120 days but not more than 400 days each shall receive $16,800.00, less $2,500.00 for the one member of Group 3 who was assigned to Mobis and/or Kia after December 31, 2023 (45.26 percent of the Gross Settlement Fund minus attorneys' fees, costs, and expenses).

4. Group 4: Group of 258 Plaintiffs and Settlement Class Members who were assigned by Allswell to work at Mobis and/or Kia Georgia's West Point locations during the class period for more than 400 days each shall receive $11,100.00, less $2,500.00 for each of the 100 members of Group 4 who were assigned to Mobis and/or Kia after December 31, 2023 (32.47 percent of the Gross Settlement Fund minus attorneys' fees, costs, and expenses).

FLSA Settlement Group

Single Group of 614 Plaintiffs and FLSA Collective Action Class Members who were assigned by Allswell to Mobis and/or Kia Georgia's West Point locations during the class period shall receive $30.00 for each week worked as shown by

(E.D.N.Y. July 10, 2015) ("[T]he plaintiffs' burden at trial will be to establish a just and reasonable inference of each class member's approximate damages by more than mere speculation or guess, and not to prove the precise damages for each plaintiff.").

> payroll data produced by Defendants before mediation, with the average FLSA payment being $1,672.61, and the total FLSA payments are
> $999,870.00 (12.42 percent of the Gross Settlement fund). FLSA payments shall be made as one-half unpaid wages, with all required withholding and remittances made to the appropriate taxing authorities, and one-half liquidated damages. FLSA payments to FLSA Group, are received in addition to amounts received as members of Groups 1, 2, or 3 or 4.

Attach. 1, ¶ III.17.4.

C. The Gross Settlement Fund Provides Relief Without Requiring Claims to Be Submitted.

The Settlement Agreement is not a claims-made settlement. It instead provides relief to all Settlement Class Members without need for them to submit a claim. *Id.* at ¶¶ III.11.1, 28.

D. The Settlement Agreement Is Non-Reversionary.

The non-reversionary settlement fund provides that the funds will be paid to all Settlement Class Members without regard or need for them to submit a claim. *Id.*, Hall Decl. ¶ 20. Excess funds that cannot be distributed or checks that are not negotiated by Settlement Class Members (*cy pres* funds) will be donated to Georgia Legal Services, Inc., a 501(c)(3) non-profit organization generally serving the interests of the Class. Attach. 1, ¶ III.17.11.

E. The Settlement Agreement Provides Substantial Economic Benefit Relating to Uncertain Claims.

The economic benefit provided to all Settlement Class Members is substantial. *Id.* ¶ III.4. At issue throughout the case and in negotiations was the uncertain nature of Plaintiff's RICO claims, potential defenses to class certification, potential defenses to some of Plaintiffs' theories of damages, litigation expenses for such complex litigation, and necessary delays for trial and potential appeals. Hall Decl. ¶ 21.

F. Releases.

In exchange for the above benefits, Settlement Class Members will provide Defendants with a release of Class Claims, including, but not limited to, a general releases of all known or unknown claims arising out of or relating to the Settlement Class Members' recruitment and employment as of the Effective Date of the Settlement Agreement. Attach. 1, ¶ III.16.

G. Notice and Administration.

The Settlement provides for appropriate notice to the Class Members. The parties will work jointly to administer the notice and the claims process. Attach. 1, ¶ III.11. The notice in the form of a "Long Form Notice" written in English and Spanish provides detailed information about the lawsuit and settlement. The notice program requires:

> a. Within ten (10) days of the entry of the Preliminary Approval Order, Defendants Allswell and SPJ will provide full names, last known mailing addresses (Mexico and U.S.), email addresses, and all phone numbers known or available to them for each Class Settlement Member. Defendants Allswell and SPJ also will provide dates of birth, gender, Social Security numbers, and Mexico passport numbers known or available to them. For those Class Settlement Members for whom Defendants Allswell and SPJ do not provide contact data sufficient for the Settlement Administrator to communicate with them, Defendant Kia Georgia and Mobis will send a written request to all appropriate management employees asking them to search for any emails, text messages or phone numbers otherwise received from class members and will provide any related email addresses or phone to the Settlement Administrator.
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> b. At Class Counsel's own expense, the Settlement Administrator, will distribute the Long Form Notice electronically as an attachment and/or linked file via email (for known emails), WhatsApp (for class members with WhatsApp accounts associated with their mobile phone numbers), and text messaging (for class members without associated WhatsApp accounts). The Settlement Administrator will distribute the Long Form Notice by mail to the last known address of any Class Member for whom Class Counsel is unable to verify an email address, WhatsApp account, or mobile telephone number capable of receiving text messages.

> c. Within thirty (30) days of the entry of the Preliminary Approval Order, Defendant Allswell will provide a physical copy of the Long Form Notice to all Class Members employed by Defendant Allswell at the time of the Preliminary Approval Order.
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> d. All completed Long Form Notices and Settlement Distribution Forms and requests for exclusion, from Class Members shall be sent to the Settlement Administrator and the Settlement Administrator shall provide copies of such writings to Class Counsel and Defendants' Counsel on a regular and timely basis. All written objections must be sent to the Settlement Administrator as provided for in the Settlement Agreement.
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> e. On or before thirty (30) days before the Fairness Hearing, at Class Counsel's expense, the Settlement Administrator shall make efforts by phone, email, WhatsApp, and first-class mail to last known address, to contact all Settlement Class Members who have not submitted Settlement Distribution Information and shall request that they provide Settlement Distribution Information. The Settlement Administrator may rely on signed written instructions (with written or electronic signatures) from Class Members for the claims distribution if signer affirms that he or she is the Class Member. None of Defendants, Class Counsel, Defendants Counsel or retained outside entities shall be liable in any way for any failed distribution of funds so long as there is substantial compliance with the terms of this Agreement relating to distribution.

Attach. 1, ¶ III.11. The almost identical notice program was approved in the matter *Peregrina v. SL Alabama, LLC*, No. 3:23-cv-206-TCB. Docs. 32 (Motion) & 33 (Order) (N.D. Ga. July 25, 2024) (granting preliminary approval to class settlement, including notice distribution, in lawsuit on behalf of TN visa holders).

H. Attorneys' Fees and Expenses.

Defendants agree that the Administrator will pay from the common settlement fund, in addition to other consideration outlined herein to the Settlement Class Members and Collective Members, attorney's fees and expenses to Class Counsel and Defendants will not oppose or object to Class Counsels' application for all attorneys' fees, costs and expenses in an amount of $3,450,000.00, subject to Court approval. Attach. 1, ¶ III.27.1. The Agreement with respect to attorneys' fees, costs and expenses was negotiated after the substantive terms of the settlement and were negotiated and agreed upon with representative

Plaintiffs' participation during the mediation. Hall Decl. ¶ 22.

III. THE CLASS SETTLEMENT SHOULD BE PRELIMINARILY APPROVED

A. Settlement and Class Action Approval Process.

"Public policy strongly favors the pretrial settlement of class action lawsuits." *In re United States Oil and Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992). Settlement "has special importance in class actions with their notable uncertainty, difficulties of proof, and length. Settlements of complex cases contribute greatly to the efficient utilization of scarce judicial resources, and achieve the speedy resolution of justice…" *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 538 (S.D. Fla. 1988) *aff'd*, 899 F.2d (11th Cir. 1990) (citations omitted). Judicial review of a proposed class action settlement is a two-step process: preliminary approval and a subsequent fairness hearing. *Holman v. Student Loan Xpress, Inc.,* No. 8:08–cv–305–T–23MAP, 2009 WL 4015573, at *4 (M.D. Fla. Nov. 19, 2009); *see also* Manual for Complex Litigation, § 21.632 (4th ed. 2006); *Jones v. Commerce Bancorp Inc.*, Civil No. 05–5600 (RBK), 2007 WL 2085357, at *2 (D.N.J. July 16, 2007).

In the first step of the process, a court should make a preliminary evaluation of the fairness of the settlement before directing that notice be given to the Settlement Class. *Jones*, 2007 WL 2085357 at *2. The factors considered are (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense, and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved. *Bennet v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). "Preliminary approval is not binding, and it is granted unless a proposed settlement is obviously deficient." *Jones*, 2007 WL

2085357 at *2. Preliminary approval is appropriate where the proposed settlement is the result of the parties' good faith negotiations, there are no obvious deficiencies, and the settlement falls within the range of reason. *Id.*; *see also, In re Nasdaq Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997).

B. The Settlement Factors Support Preliminary Approval.

The proposed Settlement Agreement satisfies all of the factors to be considered for preliminary approval under Rule 23.

1. No Possibility of Collusion: The Settlement Agreement is the product of an informed arms-length negotiation by experienced counsel. *See Hughes v. Microsoft Corp.*, 2001 WL 34089697, at *7 (W.D. Wash. Mar. 26, 2001) ("In determining whether to approve a settlement, the Court keeps in mind the unique ability of Class Counsel to assess potential risks and rewards of litigation."). Settlement negotiations occurred with an experienced mediator with class settlement experience and included two "all day" face-to-face mediation sessions. Declaration of Chris Parker ¶¶ 10-13; Hall Decl. ¶ 9.

2. Likelihood of Success at Trial: The Settlement Agreement falls within the range of possible recovery. Given the difficulties Plaintiffs would have to overcome if they were to litigate these cases to verdict, the recovery under the terms of the Settlement is fair, adequate, and reasonable. While Plaintiffs and their counsel believe the claims are meritorious, Defendants have raised, and would continue to raise, challenges to Class Certification and to the legal and factual bases for Plaintiffs' claims and damages theories. Hall Decl. ¶ 23. Throughout the litigation, and even now, Defendants vigorously deny that they engaged in any misrepresentations or wrongful conduct and deny that the case can be litigated as a class action under Fed. R. Civ. P. 23. Attach. 1, ¶¶ III.2 and 7. Thus, there was no

guarantee of Plaintiffs' success at trial, or even that the case would be certified as a litigated class action. *Id.;* Hall Decl. ¶ 24.

3. Range of Possible Recovery and Whether the Recovery is Fair and Adequate and Reasonable: The Settlement Agreement proposed by the parties immediately provides the certainty of valuable and substantial benefits to the Class Members in the form of money. Indeed, the amount of the class benefit is a substantial percentage of what any Class Member could expect to receive as a successful litigant. *Id.* The Settlement Class Members will receive a fair percentage of the maximum amount they could possibly receive through successful litigation. Courts have held that class recoveries between 13% and 20% are "frequently found . . . to be fair and adequate." *Parsons v. Brighthouse Networks, LLC*, No. 2:09-cv-267-AKK, 2015 WL 13629647 at *3 (N.D. Ala. Feb. 5, 2015). This case is above those ranges. Hall Decl. ¶ 25.

4. The Complexity, Expense and Likely Duration of Litigation: This factor also weighs heavily in favor of settlement approval. This case is complex and asserts complex federal claims that would be very expensive to litigate involving multiple defendants and with Plaintiffs and witnesses throughout the United States and in Mexico. *Id.* ¶ 25.

5. Substance and Opposition to Settlement: This factor is not applicable at the preliminary approval stage because notice has not yet been provided. The parties are not aware of any opposition at this stage.

6. The Stage of Proceedings: This factor also weighs in favor of Settlement approval. The parties agreed to mediation after extensive briefing and a ruling on motion to dismiss, which framed (and limited) the legal issues, and after extensive review of documents which allowed Class Counsel to evaluate

damages. Class Counsel believed they had a good grasp of what issues would survive summary judgment and get to trial, while class certification remained uncertain. The ruling on the motion to dismiss also set the scope of extensive and expensive discovery that would occur as merits discovery proceeded, especially since many of the class members and witnesses live in Mexico. *Id.* ¶ 27. The settlement allowed the parties to avoid exhausting their resources and to allocate those resources towards reaching the Settlement.

Substantial evidence supports each of the fairness factors that will lead to an ultimate final approval of the Settlement, which, in turn, supports preliminary approval. The proposed Settlement also satisfies the preliminary approval test as the Settlement "is the result of the parties' good faith negotiations, there are no obvious deficiencies, and the settlement falls within the range of reason." *Jones*, 2007 WL 2085357 at *2; *In re Nasdaq Antitrust Litig.*, at 102 (S.D.N.Y. 1997).

C. The Requested Attorneys' Fees are Reasonable.

Subject to final court approval, Class Counsel has secured a settlement of Plaintiffs' claims on a Class- and Collective-wide basis for significant monetary relief of $11,500,000.00 (the "Gross Settlement Fund"), $3,450,000.00 is to be paid to Class Counsel as attorneys' fees and costs, including administration of the settlement funds. Attach. 1, ¶ III.4. The Gross Settlement Fund amount is based on the parties' estimate of potential damages for each of the settlement class members for the applicable eligible class period. *Id.*

The parties negotiated this amount with the assistance of Mr. Parker. *Id.* at III.3; Parker Decl. ¶¶ 10-14. The attorneys' fees were negotiated after the other material terms of the Settlement were reached and with the participation and fully informed agreement of representative Plaintiffs. Parker Decl. ¶ 13. Prior to final

approval, Class Counsel will file a separate motion for attorneys' fees and expenses describing the reasonableness of their fee and expenses incurred in light of the amount of work performed by counsel, the results obtained, the quality of representation, and the complexity and novelty of the issues presented. Attach. 1, ¶ III.27.1

D. The Proposed Notice Plan is Adequate.

The parties have developed a Notice Plan that relies upon distribution to the last known addresses and emails and communications through the last known telephone numbers (including WhatsApp accounts) of the Settlement Class Members. *Id.* ¶ III.11. In addition, Defendant Allswell will provide notice directly to presently employed Settlement Class Members as of the Effective Date of the Settlement Agreement. *Id.* ¶ III.11.4. Defendants are required, in accordance with their respective obligations under the Settlement Agreement in Paragraph 11.1, to provide reasonably available last-known contact information for Class Members so that Class Counsel can engage in aggressive outreach to ensure that Class Members know of the settlement benefits and how to provide necessary information to receive payment. *Id.* ¶ III.11.1.

Rule 23(c)(2)(B) requires (for a class action under Rule 23(b)(3) like this one) "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Here, a large portion of the class live in Mexico and are no longer employed with Defendants. Hall Decl. ¶ 36. However, Defendants have several forms of contact information for the Settlement Class that may be used to adequately provide notice. *Id.*

The Long Form Notice described above and attached hereto as Attachment

2, fully informs the Class Members of this litigation, the Settlement and what actions they may take. The notices are clear and straightforward, providing putative Class Members with enough information to evaluate the settlement and object to or opt-out of the settlement if desired. This comprehensive plan is adequate under Rule 23(c)(2). *See, e.g., Peregrina*, R. Docs. 32 (Motion) & 33 (Order) (N.D. Ga. July 25, 2024) (granting preliminary approval to class settlement, including notice distribution procedure, in lawsuit on behalf of TN visa holders).

E. The Proposed Settlement Class Meets All the Requirements for Class Certification of a Settlement Class Pursuant to Rule 23(a).

"A class may be certified 'solely for purposes of settlement where a settlement is reached before a litigated determination of the class certification issue.'" *Lipuma v. Am. Express Co.*, 406 F.Supp. 2d 1298, 1313-1314 (S.D. Fla. 2005) (citation omitted). However, the Court must also determine whether the proposed settlement class satisfies the requirements for class certification under Rule 23. Pursuant to Fed. R. Civ. P. 23(a), a class can only be certified if there is numerosity, commonality, typicality, and adequacy of representation. In addition, because a Rule 23(b)(3) "opt-out" Settlement Class is requested, at least one of the requirements of Rule 23(b)(3) must be satisfied. To satisfy the numerosity requirement, "the class [must be] so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Numerosity is met as there are an estimated 614 Class Members. Attach. 1, ¶ III.17.3. Rule 23(a)(2) requires that there be at least one question of law or fact common to the class. Fed. R. Civ. P. 23(a)(2); *Fabricant v. Sears Roebuck & Co.*, 202 F.R.D. 310, 313 (S.D. Fla. 2001). The overriding and dispositive question in this case is whether the Defendants made material misrepresentations to Plaintiffs during their recruitment and procurement of their

TN visa. TAC (Doc. 74) ¶¶ 4-7. This question is common of every Class Member. *Id.*

Rule 23(a)(3) requires that the claims of the Class Representatives must be "typical of the claims or defenses of the class." "[T]ypicality requires a nexus between the class representative's claims or defenses and the common questions of fact or law which unite the class." *Fabricant*, 202 F.R.D. at 313. This requirement is satisfied in that Plaintiffs' claims are typical of the Settlement Class Members' claims because the legal theories and supporting facts relied upon by both Plaintiffs and the putative Settlement Class are substantially similar and all arise out of their recruitment, and employment under TN visas to work with Defendants.

The requirements of Rule 23(a)(4) also are met: (1) Plaintiffs (as Class Representatives) have no interests antagonistic to the class, and (2) Class Counsel possesses the competence to undertake the litigation. *Fabricant*, 202 F.R.D. at 314. Plaintiffs have no interests that are adverse or antagonistic to the interests of the Settlement Class. Moreover, the Plaintiffs are represented by counsel experienced in complex litigation, who have no interests in conflict with the interests of members of the proposed Settlement Class, who together with Plaintiffs, have displayed their commitment to the interests of the Settlement Class in the course of litigation to date, and who will fairly and adequately protect the interests of the Settlement Class. Hall Decl. ¶¶ 37-38, 65-109; *see Kirkpatrick v. J.C. Bradford & Co.*, 827 F.2d 718, 726 (11th Cir. 1987).

F. Proposed Class Counsel are Adequate and Experienced.

Proposed Class Counsel have extensive experience handling complex class actions and have demonstrated a willingness to vigorously prosecute the class

claims. Hall Decl. ¶¶ 37-38, 65-109. Over the course of this case, proposed Class Counsel have drafted various extensive pleadings; engaged in substantive briefing opposing Defendants' Motions to Dismiss; moved for conditional certification of the case as a FLSA collective action; engaged in extensive negotiations and document review in the leadup to the mediation; led Plaintiffs' mediation efforts; represented the interests of the Settlement Class in contested negotiations; and coordinated the efforts of Plaintiffs. *Id.* ¶ 38. All of this culminated in this settlement. *Id.*

The proposed Settlement Class also meets the requirements of Rule 23(b)(3) because (1) common questions of the class predominate over questions that affect individual members and (2) class resolution is superior to other available methods. The class action device is superior, particularly in a case where a potential common practice is present. Plaintiffs are also Mexican non-U.S. citizens, and it would be difficult for them to pursue litigation on their own. *Id.* ¶ 39; *see Herman v. Seaworld Parks & Entmt., Inc.*, 320 F.R.D. 271, 299 (M.D. Fla. 2017) ("The focus of superiority analysis is on the relative advantage available to the plaintiffs"); *Klay v. Humana, Inc.*, 382 F.3d 1241, 1269 (11th Cir. 2004).

IV. THE COURT SHOULD APPOINT PLAINTIFFS' COUNSEL AS CLASS COUNSEL

Daniel Werner of Radford Scott LLP, Rachel Berlin and Brian J. Sutherland of Beal Sutherland Berlin & Brown, LLC, Christopher B. Hall of Hall & Lampros, LLP, and Abigail Kerfoot and Julia Solórzano of Centro de los Derechos del Migrante should be appointed Settlement Class Counsel and have extensive experience handling complex litigation and class actions.[5] Hall Decl. ¶¶ 65-109.

[5] Class Counsel recently oversaw the distribution of class notice and settlement proceeds to class members in the United States and Mexico in *Peregrina v. SL Alabama,* No. 3:23-cv-206-TCP (N.D. Ga.). *Peregrina* was a similar class action

Moreover, they have diligently and properly litigated these matters and negotiated this excellent resolution for the Settlement. Accordingly, for the purposes of Rule 23(g), Plaintiffs' counsel should be appointed as Class Counsel.

V. THE FLSA SETTLEMENT SHOULD BE PRELIMINARILY APPROVED

The parties also request that the Court preliminarily approve the settlement of the Plaintiffs' and opt-in Plaintiffs' claims for unpaid overtime under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207. The average recovery to each FLSA Settlement Collective Member is on the upper end of the potential recoveries for the claimed unpaid overtime.

A. The FLSA Settlement Provides Substantial Recovery.

The Settlement Agreement requires Defendants to pay the FLSA Settlement Collective Members, including the named Plaintiffs, an average of $1,672.61, for a total of $999,870.00. The payment is a pro-rated amount based on the number of workweeks each Collective Member worked for Defendants. This amounts to $30.00 per workweek for each Collective Member. Attach. 1, ¶ III.16.4.

Plaintiffs allege that Defendants calculated overtime improperly by not including housing and transportation contributions during the first month of work. Plaintiffs believe they likely would recover $110.88 in total per class member for this overtime underpayment, which is Plaintiffs' strongest FLSA claim.[6] Hall

(though with additional class claims under the Trafficking Victims Protection Act, 18 U.S.C. § 1594(a) and discrimination claims under 42 U.S.C. § 1981) on behalf of TN visa holders. The Court granted preliminary and final approval of the class settlement and appointed the same attorneys as Class Counsel.

[6] Defendant Allswell's records show that TN visa holders, on average, earned $13.16 per hour and worked 66.25 hours per week. Plaintiffs calculate that employer- provided housing, in which four individuals lived together, was valued at an average of $318.00 per Collective Member, or $73.38 per week. The cost of employer-provided housing for one month therefore adds $1.10 to each Collective Member's regular rate of pay ($73.38/66.25 hours worked). Plaintiffs calculate that employer-provided transportation was approximately $37.50 per week. The cost of employer-provided transportation for one month adds $0.57 to each Collective

Decl. ¶ 44.

Plaintiffs also allege housing and transportation deductions after the first month were improper under the FLSA because the housing and transportation accommodations were primarily for the benefit of the employer, and not the employee, and thus should not have been deducted. 29 U.S.C. § 203(m) and 29 C.F.R. § 531.3 (requiring deducted costs to be reasonable, not primarily for the benefit of the employer, and pursuant to agreement with employee). This claim was for approximately $67.50 per month and depended on uncertain deductions data produced by Defendants. Hall Decl. ¶ 45 This claim was less strong and hotly contested. Defendants argued that the employees benefited most from the housing and transportation, and this issue was subject to more compromise in negotiations. *Id*.

1. Total FLSA Damages.

The Collective Members will receive an average of $1,672.61 as FLSA damages. This amount greatly exceeds the claim for unpaid overtime of $110.88 plus liquidated damages because Plaintiffs were able to negotiate damages based on the less certain claims for improper housing and transportation deductions. *Id.* ¶ 46.

The proposed Long Form Notice, which includes a Settlement Distribution Form, is attached to the Settlement Agreement as Attachment 2, fully informs recipients regarding this case and their rights, including their right to participate in the settlement or decline to do so, the amount they will receive if they participate, and the claims they will release if they choose to participate.

Member's pay rate ($37.50/66.25 hours worked). The resulting overtime underpayment was thus $110.88 (73.38 for housing, $37.50 for transportation). Hall Decl. ¶ 45

A. The FLSA Settlement Should be Preliminarily Approved Because it is Fair and Reasonable.

To have an enforceable release of FLSA claims in this Circuit, the Court must review and approve agreements settling alleged violations of the FLSA. *E.g., Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1352–53 (11th Cir. 1982) (claims for back wages arising under the FLSA may be settled or compromised only with approval of the Secretary of Labor or the court). A Proposed Order and Judgment approving the Settlement Agreement, including the collective and individual FLSA claims, is attached hereto as Attachment 3.

To approve a settlement of claims arising under the FLSA, proposed by an employer and an employee, a court must determine that the settlement is a "fair and reasonable [resolution] of a bona fide dispute" of the claims raised pursuant to the FLSA. *Id.* at 1355. There is a strong presumption in favor of finding a settlement fair. *See Murchison v. Grand Cypress Hotel Corp.*, 13 F.3d 1483, 1486 (11th Cir. 1994) (noting that Eleventh Circuit Court of Appeals "favor[s] and encourage[s] settlements in order to conserve judicial resources."). The Eleventh Circuit encourages reasonable compromise and settlement of FLSA litigation. *Lynn's Food Stores, Inc.*, 679 F.2d at 1354. In determining whether the settlement is fair, adequate, and reasonable, courts often examine the factors used in approving the settlement of class actions under Federal Rule of Civil Procedure 23:

(1) the existence of collusion behind the settlement;
(2) the complexity, expense, and likely duration of the litigation;
(3) the stage of the proceedings and the amount of discovery completed;
(4) the probability of plaintiff's success on the merits;
(5) the range of possible recovery; and
(6) the opinions of counsel.

See e.g., *Prieto v. Scheeler's Cafe De Marco, Inc.*, 2017 WL 359220, at *1 (M.D. Fla. Jan. 9, 2017); *Leverso v. SouthTrust Bank of Ala., Nat'l Ass'n*, 18 F.3d 1527, 1530 n.6 (11th Cir. 1994). The six factors support approving the Collective Settlement Agreement.

1. The Collective Settlement was not a Product of Collusion.

Counsel for Defendants produced to Plaintiffs' counsel time and pay records for the Settlement Collective and all of its individual members. Hall Decl. ¶¶ 51-52. This exchange allowed Plaintiffs' counsel to make damages calculations and an independent thorough assessment of the damages in this action. *Id.*

The parties engaged in lengthy settlement negotiations before ultimately reaching an agreement to settle the case. *Id.* ¶ 53. Thus, the settlement in this case is the ultimate result of arm's-length negotiations by parties who were well represented by experienced counsel and made aware of all potential outcomes. *Id.* ¶ 54.

2. The Complexity, Expense, and Likely Duration of the Litigation.

The FLSA claims are complex because Defendant Allswell did pay overtime. The issue was the proper regular rates of pay based on factors such as bonuses, housing and transportation contributions, whether the promised wage should be the regular rate of pay for overtime purposes, and other factors. *Id.* ¶ 55. Such factors are data intensive and involve multiple unsettled issues. *Id.*

Further litigation would be time-consuming and expensive, including additional merits discovery of Defendants, Plaintiffs, and putative members of the Settlement Collective, concerning willfulness and liquidated damages, and appeals. *Id.* ¶ 56.

3. The Stage of the Proceedings and the Amount of Discovery Completed.

This factor considers whether the parties have had the opportunity to fully evaluate the claims. *E.g., Carnegie v. Mut. Sav. Life Ins. Co.*, 2004 WL 3715446, *19 (N.D. Ala. Nov. 23, 2004). This factor is met because the parties exchanged substantial payroll discovery to facilitate settlement, including Defendants' production of the putative Settlement Collective members' time and pay records.

Given the nature of the claims in the case – that Collective Members claim they were not paid all overtime wages due to Defendants' FLSA violations – the necessary information to evaluate damages and liability were employment dates and the number of hours worked, based on Defendants' pay records. Defendants provided this information prior to Plaintiffs making any settlement demand. Plaintiffs' counsel analyzed the data in great detail and Defendants' time and pay records provided the basis for all subsequent negotiations of the FLSA component of the Settlement. Consequently, the parties have had sufficient information with which to assess the potential merits of the case, liability and damages, and the risks attendant to continued litigation. Hall Decl. ¶ 57.

4. The Probability of Plaintiffs' Success on the Merits.

Plaintiffs are confident they would prevail on the merits if this case were to proceed. The extent of Plaintiff's damages however, remained uncertain. Defendants have consistently denied their liability generally and, if they were found liable, the extent of that liability. This settlement represents a good faith compromise of these issues. Further, if the case were to proceed, Plaintiffs and the Settlement Collective would run the risk that any judgment won might not be collectible. *Id.* ¶ 58.

5. The Range of Possible Recovery.

"[T]here is a range of reasonableness with respect to a settlement—a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion. . . ." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972). Plaintiffs' counsel believe that the most likely outcome at trial on the FLSA claims would be a recovery of between $110.00 and $3,500.00 per class member, with the likely

outcome being on the lower end of the estimate. Hall Decl. ¶ 60. The average settlement amount of over $1,600.00 is an excellent result for the Settlement Collective Members. Hall Decl. ¶¶ 59-60.

6. Counsels' Opinions.

Counsel for the parties therefore recommend preliminary approval of this settlement and represent herein that the settlement is fair, beneficial, and equitably allocated among the Settlement Collective members. *Id.*¶ 61.

VI. THE COURT SHOULD PRELIMINARILY APPROVE ATTORNEYS' FEES

Plaintiffs' total attorneys' fees and costs for the class action *and* collective action claims are set forth above, subject to final court approval of the parties' Settlement. Further, again as described above, the parties negotiated this amount with the assistance of skilled mediator Chris Parker. *Id.* ¶ 62. The attorneys' fees were negotiated after the other material terms of the Settlement were reached. *Id.* ¶ 63.

Prior to final approval of the Settlement, Class Counsel will file a separate motion for attorneys' fees and expenses describing the reasonableness of their fee and expenses incurred in light of the amount of work performed by counsel, the results obtained, the quality of representation, and the complexity and novelty of the issues presented. *Id.* ¶ 64.

VII. THE PROPOSED SCHEDULE OF EVENTS

The parties propose the following schedule for the Settlement-related events in this case. The proposed dates are respectfully requested.

1. **10 days from the entry of the Preliminary Order:** Defendant Allswell will provide, in accordance with its respective obligations under the terms of the Settlement Agreement, last known mailing addresses (Mexico and U.S.), email addresses, and all phone numbers reasonably available to Defendants for each Class Settlement Member. Defendant

Allswell also will provide dates of birth, Social Security numbers, and Mexico passport numbers to confirm identities.

2. **30 days from the entry of the Preliminary Order**: (i) The Plaintiffs will deliver electronically, as set forth above, the Long Form Notice of the Settlement Agreement; and (2) Defendants will provide the Long Form Notice to Settlement Class Members employed with Defendants as of the Effective Date of the Settlement Agreement.

3. **30 days before the Fairness Hearing:** Filing of papers in support of Final Approval and Class Counsels' Application for Attorney's Fee and Expenses.

4. **18 days before the Fairness Hearing:** Deadline for the Settlement Administrator to receive objections, which are to be filed with the Court 15 days before the Fairness Hearing.

5. **15 days before the Fairness Hearing:** Deadline for the Settlement Administrator to receive exclusion requests.

6. **First Available Date 90 days after entry of the Preliminary Approval Order:** Fairness Hearing.

VIII. CONCLUSION

For the foregoing reasons the Parties request that Court to enter an Order granting the parties' Joint Motion.

[Signature Blocks on Following Page]

Respectfully submitted this day: February 9, 2026.

FOR PLAINTIFFS

/s/ Daniel Werner
Daniel Werner
Georgia Bar No. 422070
dwerner@radfordscott.com
James Radford
Georgia Bar No. 108007
jradford@radfordscott.com
RADFORD SCOTT LLP
125 Clairemont Ave., Suite 380
Decatur, Georgia 30030
(678) 271-0300

/s/ Christopher B. Hall
Christopher B. Hall
Georgia Bar No. 318380
HALL & LAMPROS, LLP
400 Galleria Parkway, Suite 1150
Atlanta, GA 30339
Telephone: (404) 876-8100
Facsimile: (404) 876-3477
chall@hallandlampros.com

Rachel Berlin Benjamin
Georgia Bar No. 707419
Brian J. Sutherland
Georgia Bar No. 105408
BEAL SUTHERLAND BERLIN & BROWN LLC
2200 Century Parkway, Suite 100
Atlanta, GA 30345
(404) 476-5305

Counsel for Plaintiffs

FOR DEFENDANTS

CONSTANGY, BROOKS SMITH & PROPHETE, LLP

/s/ Sarah M. Phaff
Sarah M. Phaff
Georgia Bar No. 140626
Frank B. Shuster
Georgia Bar No. 644722
230 Peachtree Street, N.W.
Suite 2400
Atlanta, GA 30303-1557
Telephone: 404.525.8622
Facsimile: 404.525.6955
sphaff@constangy.com
fshuster@constangy.com

Counsel for Defendant Kia Georgia, Inc.

/s/ Jon M. Gumbel
Jon M. Gumbel
Georgia Bar No. 315195
Ingu Hwang
Georgia Bar No. 114295
BURR & FORMAN LLP
171 17th Street, NW
Suite 1100
Atlanta, GA 30363
Telephone: (404) 815-3000
Facsimile: (404) 817-3244
Jgumbel@Burr.com
Ihwang@Burr.com

/s/ Michael L. Lucas
Michael L. Lucas
Allison Hawkins
Admitted Pro Hac Vice
BURR & FORMAN LLP
420 North 20th Street
Suite 3400
Birmingham, AL 35203
Direct: (205) 458-5204
Mobile: (205) 427-3324
Facsimile: (205) 244-5673
Mlucas@Burr.com
Ahawkins@Burr.com

Counsel for Defendant Mobis Alabama, LLC d/b/a Hyundai Mobis

/s/ John S. Gibbs III
John S. Gibbs III
Georgia Bar No. 154250
Charles E. Peeler
Georgia Bar No. 570399
Emily E. Schifter
Georgia Bar No. 767888
TROUTMAN PEPPER
HAMILTON SANDERS LLP
600 Peachtree Street, NE
Suite 3000
Atlanta, GA 30308
Telephone: (404) 885-3093
Facsimile: (404) 885-3900
evan.gibbs@troutman.com
charles.peeler@troutman.com
emily.schifter@troutman.com

Counsel for Defendants GB2G, Inc. d/b/a Allswell and SPJ Connect, Inc.

CERTIFICATE OF FONT AND SERVICE

This is to certify that on February 9, 2026 I prepared the foregoing in Book Antiqua, 13-point type in accordance with L.R. 5.1(C) and that I electronically filed the document with the Clerk of Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

/s/ Christopher B. Hall
Co-Counsel for Plaintiffs