

1 **ORDR**

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3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

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6 KAYLYNN BYERS and EVERARDO  
7 JUAREZ, on behalf of themselves and all  
8 others similarly situated,

9 Plaintiffs,

10 vs.

11 CUSTOMER CONNEXX LLC; JAN ONE  
12 INC.; ARCA, INC.; and DOES 1  
13 through 50; inclusive,

14 Defendants.

CASE NO: A-23-877788-C

DEPT NO: 8

15 **ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

16 This matter came before the Court for a hearing on November 14, 2023 upon Plaintiffs  
17 Motion for Class Certification on an Order Shortening Time the Honorable Jessica K. Peterson  
18 presiding. Joshua Sliker was present on behalf of Defendant. Leah L. Jones was present via  
19 BlueJeans Virtual Appearance for Plaintiffs. The Court, having heard the arguments of counsel  
20 and having considered the papers and pleadings on file herein, and good cause appearing  
21 therefor, hereby enters the following findings of fact and conclusions of law. To the extent any  
22 finding of fact should properly be designated a conclusion of law, it shall be deemed a  
23 conclusion of law. To the extent any conclusion of law should properly be designated a finding  
24 of fact, it shall be deemed a finding of fact.

25 **DISCUSSION**

26 Plaintiffs assert that Class certification is appropriate because all the criteria required  
27 pursuant to NRCP 23(a) and NRCP 23(c) are met. Defendant Jan One argues that the class  
28

1 should not be certified because no discovery has been done to establish the requisite criteria, and  
2 the class as proposed is too broad.<sup>1</sup>

### 3 **FINDINGS OF FACT**

- 4 1. From 2016 through March of 2023, Customer Connexx was a wholly owned  
5 subsidiary of Jan One.
- 6 2. Customer Connex operated a call center that performed customer service and  
7 scheduling functions for customers of JAN ONE's sister company ARCA Recycling,  
8 Inc.
- 9 3. In March 2023, JanOne sold the assets and liabilities of ARCA Recycling and  
10 Customer Connexx.
- 11 4. Plaintiff Kaylynn Byers was employed Customer Connexx from August 2017 through  
12 August 19, 2023.
- 13 5. Plaintiff Everardo Juarez was employed by Customer Connexx from April 2022  
14 through August 19, 2023.
- 15 6. Plaintiffs received an email letter dated August 23, 2023, (hereinafter "lay-off letter")  
16 from Virland Johnson President of Customer Connexx, which purported to lay off  
17 employees as of August 19, 2023.
- 18 7. Plaintiff Kaylynn Byers has not been paid since July 9, 2023 even though she worked  
19 until the Defendants terminated her employment.
- 20 8. Plaintiff Everardo Juarez has not been paid since July 28, 2023 even though he  
21 worked until the Defendants terminated his employment.
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27 <sup>1</sup> The Court is basing this Order in part on the briefing that was submitted and also the Stipulation and Order that  
28 was entered on December 19, 2023.

1 9. Plaintiffs are seeking to certify a class that will be comprised of:

2 **All persons employed by Defendant in the state of Nevada who are owed**  
3 **wages, salary, and/or compensation at time of separation of employment.**  
4

5 10. Based on the admission of Defendant in the letter dated August 19, 2023, wherein  
6 Defendant admitted that it would be unable to bring payroll current, there is no  
7 dispute that the employees have not been paid.

8 11. There is also no dispute that the employees were not paid within 3 days of the date  
9 the discharged employees became due, thus triggering the statutory penalty  
10 provisions of NRS 608.040. However, the amounts that are due to each employee for  
11 unpaid wages and therefore the corresponding penalty for failure to pay are different.  
12

13 12. Neither Defendant Jan One or Arca Inc., were the employers of either KayLynn  
14 Byers or Everardo Juarez and do not appear to be the employer of any of the other  
15 employees who were laid off by Customer Connex.

16 13. The only party who has appeared in this action is JanOne, Inc. although based on the  
17 Affidavit of Service, it appears as if all parties were served on September 28, 2023.<sup>2</sup>  
18

19 14. Neither Customer Connexx or Arca, Inc., filed an Opposition to the Class  
20 Certification or a Joinder to Jan One's Opposition.

21 15. On December 15, 2023 Defendants JANONE Inc., and ARCA Inc., and Plaintiffs  
22 filed a Stipulation and Order to dismiss JanOne. Within that same Stipulation, the  
23 parties recognized that JanOne, Inc. was formerly known as Appliance Recycling  
24 Centers of America, Inc., which was misidentified in the Complaint as "ARCA, Inc.,"  
25 and therefore "ARCA, Inc." is not a separate entity.  
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27 <sup>2</sup> The Court notes that JanOne, Inc. disputes whether service on Arca, Inc., or Customer Connexx was properly  
28 effectuated based on the document filed as Doc Id # 8 in Odyssey. However, there was a subsequent Affidavit of  
Service filed on October 4, 2023 which indicates all parties were served at 1605 S. 30<sup>th</sup> Ave, Moorhead, MN.

1 16. Based on the foregoing, as of December 19, 2023 the day that Notice of Entry of the  
2 Stipulation and Order was filed neither JanOne nor Arca are parties to the instant  
3 action.  
4

### 5 CONCLUSIONS OF LAW

6 17. As JanOne is no longer a party to the instant action, it does not have standing to  
7 oppose Plaintiff's Motion for Class Certification. See *Beazer Homes Holding Corp. v.*  
8 *Eighth Judicial Dist. Court*, 128 Nev. 723, 731, 291 P.3d 128, 133 (2012) (providing  
9 that a party generally has standing to assert only its rights.)

10 18. EDCR 2.20 provides that the failure of the opposing party to serve and file written  
11 opposition may be construed as an admission that the motion and/or joinder is  
12 meritorious and a consent to granting the same.  
13

14 19. In determining whether to certify a class, a court should accept the allegations  
15 contained within a complaint as true. High Noon at Arlington Ranch Homeowners  
16 Ass'n v. Eighth Jud. Dist. Ct. of State ex rel. Cnty. of Clark, 129 Nev. 1122 (2013)  
17 citing *Meyer v. District Court*. 110 Nev. 1357, 1363–64, 885 P.2d 622, 626 (1994).  
18

19 20. A court's class certification decision must be based on NRCP 23(a) and (b), which  
20 specify the circumstances under which a case is appropriate for resolution as a class  
21 action.Id.

22 21. Pursuant to NRCP 23, a class action may be maintained only if all four of the NRCP  
23 23(a) requirements (numerosity, commonality, typicality, and adequacy) and one of  
24 three additional NRCP 23(b) requirements is met.  
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1 Based on the Plaintiffs Affidavits there are approximately 70 employees of Customer  
2 Connexx at the time the “lay off letter” was tendered. Therefore, the Court finds that  
3 the numerosity requirement is met.  
4

5 22. NRCP 23(a)'s commonality requirement provides that “members of a class may sue  
6 or be sued as representative parties on behalf of all only if ... (2) there are questions of  
7 law or fact common to the class.” Id. In this case, because all of the employees are  
8 owed wages and are also owed statutory penalty damages, there are common question  
9 of law. While factually the damage amounts may be different, this does not destroy  
10 the commonality requirement being met. See *Shuette v Beazer Homes*, 121 Nev. 837,  
11 848, 124 P.3d 530, 538 (2005) ([c]ommonality does not require that ‘all questions of  
12 law and fact must be identical, but that an issue of law or fact exists that inheres in the  
13 complaints of all the class members.’ Thus, this prerequisite may be satisfied by a  
14 single common question of law or fact.)  
15

16 23. The typicality requirement is met by showing that ach class member's claim arises  
17 from the same course of events and each class member makes similar legal arguments  
18 to prove the defendant's liability. In this case, all of the class members claims will  
19 arise from not being paid their past wages as well as the failure to pay them after they  
20 were laid off. As such, all class members will be asserting the same argument to  
21 establish the Defendant’s liability. Therefore, the typicality requirement is met.  
22

23 24. The predominance prong is satisfied where the Court finds that the common questions  
24 of the class predominate over the questions related to individualized class members.  
25 In other words, where the common questions significantly and directly impact each  
26 class member’s effort to establish liability and entitlement to relief and the resolution  
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1 can be achieved through generalized proof, predominance will be met. In this case,  
2 as previously stated the common question is whether the individuals were paid wages  
3 when they were due and owing. While the amounts will be subject to individualized  
4 proof, the common question of law predominates over the particularized amounts that  
5 each class member is entitled to.  
6

7 25. As it pertains to whether class action is the superior method for adjudicating the  
8 claims, the Court finds that it is. This is mainly because absent class certification, this  
9 Court would not even have jurisdiction because the amount in controversy of the  
10 individual Plaintiffs would not meet the jurisdictional minimum of the District Court.  
11 Therefore, the individual Plaintiffs would be required to litigate this matter in either  
12 small claims court or justice court, which could lead to inconsistent judgments and  
13 would also overburden the judiciary by having essentially 70 mini trials. See *Shuette*,  
14 (A proper class action prevents identical issues from being litigated over and over[,]  
15 thus avoid[ing] duplicative proceedings and inconsistent results. It also helps class  
16 members obtain relief when they might be unable or unwilling to individually litigate  
17 an action for financial reasons or for fear of repercussion.)  
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1 **ORDER**

2 26. Based on the foregoing Findings of Fact and Conclusions of Law, the Court

3 GRANTS Plaintiffs' Motion for Class Certification.

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5 27. THE COURT FURTHER ORDERS Plaintiffs Class shall be comprised of all  
6 individuals employed by Customer Connexx who were owed wages as of August 19,  
7 2023 and have not been paid their wages within three days of their termination  
8 pursuant to the August 19, 2023 letter.

9 Dated this 20th day of December, 2023

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11  
12 B4D 630 5103 FF4F  
13 Jessica K. Peterson  
14 District Court Judge

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25 **AFFIRMATION**

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the  
preceding Order filed in District Court case number  
A877788 **DOES NOT** contain the social security  
number of any person.

26 /s/ Jessica K Peterson

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Kaylynn Byers, Plaintiff(s)

CASE NO: A-23-877788-C

7 vs.

DEPT. NO. Department 8

8 Customer Connexx LLC,  
9 Defendant(s)

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11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order was served via the court's electronic eFile system to all  
14 recipients registered for e-Service on the above entitled case as listed below:

Service Date: 12/20/2023

15 Joshua Sliker joshua.sliker@jacksonlewis.com

16 Las Docketing lasvegasdocketing@jacksonlewis.com

17 Kelley Chandler Kelley.Chandler@jacksonlewis.com

18 Katlyn Brady katlyn.brady@jacksonlewis.com

19 Rebecca Portelli Rebecca.Portelli@jacksonlewis.com

20 Legal Filings legalfilings@thiermanbuck.com

21 Veronica Hunter Veronica.Hunter@jacksonlewis.com

22 William Gignilliat William.Gignilliat@jacksonlewis.com

23 Leah Jones leah@thiermanbuck.com

24 Joshua Buck josh@thiermanbuck.com

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1 If indicated below, a copy of the above mentioned filings were also served by mail  
2 via United States Postal Service, postage prepaid, to the parties listed below at their last  
3 known addresses on 12/21/2023

4 Customer Connexx LLC 325 E. Warm Springs Road, Suite 102  
Las Vegas, NV, 89119

5 VM7 Corporation 7301 Ohms Ln  
6 Suite 320  
7 Edina, MN, 55439  
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