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9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES – POMONA COURTHOUSE SOUTH**
12

13 SAL ROJAS, on behalf of himself, all
14 similarly situated Class Members, and all
"aggrieved employees" pursuant to Labor
Code § 2698 et seq.,

15
16 Plaintiffs,

17 v.

18 THE PRECISION COIL SPRING
COMPANY, a California corporation, and
19 DOES 1 through 10, inclusive,

20 Defendants.
21
22
23
24
25
26
27
28

CASE NO: CIVDS1932945

Assigned to the Hon. Peter A. Hernandez, Dept. O

**NOTICE OF UNOPPOSED MOTION AND
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND SEEKING
LEAVE TO FILE FIRST AMENDED
COMPLAINT**

DATE: November 30, 2021

TIME: 9:30 a.m.

DEPT.: O

Reservation No.: 192346078016

Action Filed: July 2, 2020

1 **PLEASE TAKE NOTICE THAT** on November 30, 2021 at 9:30 a.m., or as soon
2 thereafter as the matter may be heard, in Department O of the above-entitled Court, located at 400
3 Civic Center Plaza, Pomona, California 91766, Plaintiff Sal Rojas ("Plaintiff" or "Rojas") will and
4 hereby does move unopposed for an Order (1) preliminarily finding that the settlement falls within
5 the range of reasonableness and approving the proposed class action settlement in the above-
6 captioned case, (2) conditionally certifying, for settlement purposes only, a settlement class, (3)
7 approving the appointment of Plaintiff as Class Representative, (4) approving the appointment of
8 Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC as Class Counsel, (5) approving
9 the appointment of ILYM Group, Inc. as settlement administrator, (6) preliminarily approving the
10 allocation of \$80,000 from the Gross Settlement Amount to settle Plaintiff's representative claims
11 under the Private Attorneys General Act (Lab. Code §§ 2698 et seq.), of which seventy-five percent
12 (75%) will be paid to the Labor and Workforce Development Agency and twenty-five percent
13 (25%) shall be paid to PAGA Aggrieved Employees, (7) approving as to content and form the
14 notice to the settlement class, and directing it be disseminated by the Settlement Administrator; (8)
15 permitting Plaintiff to file a First Amended Complaint, and (9) setting a final fairness and approval
16 hearing.

17 This unopposed Motion is made pursuant to Rule 3.769 of the California Rules of Court,
18 which provides for court approval of the settlement of a purported class action and allows the Court
19 to preliminarily certify a class for settlement purposes only.

20 The basis for this unopposed Motion is that the proposed settlement is fair, adequate, and
21 reasonable and in the best interests of the settlement class as a whole, and that the procedures
22 proposed by the Parties are adequate to ensure the opportunity of class members to participate in,
23 opt out of, or object to the settlement.

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1 This Motion will be based on the Memorandum of Points and Authorities set forth herein,
2 the Joint Stipulation of Class Action Settlement and Release Between Plaintiff and Defendant, the
3 Declaration of Daniel F. Gaines, such evidence or oral argument as may be presented at the hearing,
4 and on the complete record and file herein.

5
6 DATED: October 18, 2021

Respectfully submitted,

7 GAINES & GAINES,
8 A Professional Law Corporation

9
10 By: 

DANIEL F. GAINES

ALEX P. KATOFISKY

11 Attorneys for Plaintiff Sal Rojas and Proposed Class
12 Counsel

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Parties have reached a resolution of this class action and hereby submit their Joint
4 Stipulation of Class Action Settlement and Release Between Plaintiff and Defendant (“Settlement”,
5 “Stipulation” or “Stip.”) for the Court’s approval. The Settlement is made and entered into by and
6 between Plaintiff Sal Rojas (“Plaintiff” or “Rojas”), individually and on behalf of all others
7 similarly situated, and Defendant The Precision Coil Spring Company (“Defendant”).

8 The settlement occurred as a result of extensive arm’s-length negotiations by experienced
9 counsel with the assistance of a respected mediator with experience in the area of employment class
10 actions. Most importantly, the settlement will result in significant financial benefit to the
11 participating claimants, on terms that are by any measure fair, reasonable and adequate. *See*
12 *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801-02. The proposed settlement provides
13 for a non-revisionary class settlement in the gross amount of \$800,000 and the proposed settlement
14 class contains approximately 117 Class Members. As detailed below, the settlement is in the best
15 interests of the class in light of all of the facts and circumstances and the risks and delays of further
16 litigation.

17 For the foregoing reasons, the Parties respectfully request that the Court: (a) grant
18 preliminary approval of the settlement agreement and preliminarily find that the settlement falls
19 within the range of reasonableness; (b) conditionally grant certification of the proposed Settlement
20 Class, for settlement purposes only; (c) approve the appointment of Plaintiff Sal Rojas as Class
21 Representative; (d) approve the appointment of Daniel F. Gaines and Alex P. Katofsky of Gaines
22 & Gaines, APLC as Class Counsel; (e) approve appointment of the Settlement Administrator; (f)
23 permit the filing of a First Amended Complaint; (g) authorize the mailing of the proposed class
24 action notice packet; and (h) schedule a final fairness and approval hearing.

25 **II. BACKGROUND AND PROCEDURAL HISTORY**

26 On April 24, 2020, Plaintiff sent a letter to the LWDA, alleging Defendant violated the
27 California Labor Code and seeking penalties under PAGA. Specifically, Plaintiff alleged Defendant
28 failed to pay wages and premium wages to Defendant’s non-exempt California employees, denied

1 employees meal periods and rest periods, failed to provide accurate itemized wage statements, and
2 failed to timely pay wages at the separation of employment. Declaration of Daniel F. Gaines
3 (“Gaines Decl.”) at ¶ 6.

4 On July 2, 2020, Plaintiff filed a representative action complaint in the Los Angeles County
5 Superior court titled *Sal Rojas, et al. vs. The Precision Coil Spring Company, et al.*, case no.
6 20PSCV00430. Plaintiff alleges Defendant violated various sections of the California Labor Code
7 and applicable wage orders as alleged in his letter to the LWDA. Gaines Decl. at ¶ 7.

8 Plaintiff’s First Amended Complaint, which he seeks leave to file in connection with this
9 Motion, includes class and PAGA allegations predicated on the same facts as alleged in the
10 Complaint, including: (1) failure to pay all wages due (Lab. Code §§ 510 and 1194); (2) failure to
11 provide rest periods or compensation in lieu thereof (Lab. Code § 226.7); (3) failure to provide
12 meal periods or compensation in lieu thereof (Lab. Code §§ 226.7 and 512); (4) knowing and
13 intentional failure to comply with itemized employee wage statement provisions (Lab. Code §
14 226(a) and (e)); (5) failure to timely pay wages due at separation of employment (Labor Code §§
15 201 to 203); (6) violation of Business and Professions Code § 17200 et seq.; and (7) penalties
16 pursuant to Labor Code § 2699(f) for violations of Labor Code §§ 201, 202, 226(a), 226.7, 510,
17 512, and 1194, and pursuant to Labor Code § 2699(a) for violations of Labor Code § 226.3. Gaines
18 Decl. at ¶ 8.

19 **III. INVESTIGATION AND SETTLEMENT DISCUSSIONS**

20 The Parties engaged in informal discovery prior to attending mediation in the Action,
21 including but not limited to: pre-litigation investigation, exchange of informal written discovery,
22 including Workweek data, number of class members, written policies, payroll records, and
23 timekeeping records for the purposes of mediation. The Parties thoroughly investigated all of the
24 claims in the Action prior to negotiating a settlement in the Action. Gaines Decl. at ¶ 9.

25 On September 2, 2021, the Parties attended a formal mediation with Marc Feder, Esq. The
26 Parties reached a settlement agreement at the conclusion of the mediation and executed a
27 memorandum of understanding which is superseded in full by their Settlement Agreement. Gaines
28 Decl. at ¶ 10.

1 Defendant has determined to settle the Action in the manner and upon the terms and
2 conditions set forth herein solely to avoid the expense, inconvenience, and burden of further legal
3 proceedings and the uncertainties of trials and appeals. Gaines Decl. at ¶ 11.

4 Defendant has denied and continues to deny each and all of the claims and allegations in
5 the Action. Defendant has asserted and continues to assert many defenses thereto and has expressly
6 denied and continues to deny any fault, wrongdoing, or liability whatsoever arising out of the
7 conduct alleged in the Action. Defendant contends that it has, at all times, complied with the
8 provisions of the California Labor Code, the California Business and Professions Code, and all
9 applicable federal and California laws and regulations. Neither the Settlement (including all drafts
10 hereof) nor any document referred to herein, nor any action taken to carry out this Settlement is,
11 may be construed as, or may be used in any proceeding as an admission by or against Defendant of
12 any fault, wrongdoing, infirmity of defense, or liability whatsoever. Defendant expressly denies
13 any fault, wrongdoing, or liability, and expressly denies the validity of all causes of action and
14 prayers for relief asserted in the Action. Gaines Decl. at ¶ 12.

15 **IV. LEGAL ANALYSIS**

16 **A. The Proposed Settlement Terms**

17 **1. The Settlement Class**

18 The Parties have agreed to a settlement class composed of all of Defendant's non-
19 exempt employees who worked in California during the Class Period (defined at July 2, 2016
20 through the earlier of March 31, 2022 or preliminary approval of the Settlement). It is estimated
21 there are approximately 117 Class Members, although this number may increase through the end
22 of the Class Period. Stip. at ¶ 1.4.

23 **2. Allocations to be Paid from the Gross Settlement Amount**

24 The Stipulation provides that Defendant shall pay an amount not to exceed \$800,000 to
25 resolve the Action on a class-wide basis (the "Gross Settlement Settlement"). The Gross Settlement
26 Amount is inclusive of all payments to Class Members, the Class Counsel Fees and Expenses
27 Payment, the Class Representative Payment, the Settlement Administration Costs, and the PAGA
28 Payment. The employer share of payroll taxes on the 20% allocated to payment of wages from the

1 Net Settlement Amount shall be paid by Defendant separate and apart from, and in addition to, the
2 Gross Settlement Amount. Stip. at ¶ 1.14.

3 From the Gross Settlement Amount, Defendant will not oppose Plaintiff's counsel's
4 application to the Court for up to 35% of the Gross Settlement Amount for attorneys' fees
5 (\$280,000). Stip. at ¶ 4.3.

6 From the Gross Settlement Amount, Defendant will not oppose Plaintiff's counsel's
7 application to the Court for up to \$15,000 in reimbursement of litigation costs and expenses. Stip.
8 at ¶ 4.3.

9 From the Gross Settlement Amount, Defendant will not oppose Plaintiff's counsel's
10 application to the Court for a service payment to the Class Representative in the gross amount of
11 \$12,000, in consideration for his efforts in instituting and participating in the Action and in
12 exchange for his general release of all claims. Stip. at ¶ 4.4.

13 From the Gross Settlement Amount, settlement administration fees paid to ILYM Group,
14 Inc. will be no more than \$6,000. Stip. at ¶ 4.5.

15 From the Maximum Settlement Amount, the portion to be allocated for settlement of any
16 and all claims for penalties under the PAGA is \$80,000 ("PAGA Payment"), 75% of which shall
17 be paid to the LWDA and 25% shall be paid to PAGA Aggrieved Employees. Stip. at ¶ 4.6. PAGA
18 Aggrieved Employees may not opt out of the PAGA portion of the Settlement and will be bound
19 by the PAGA release of claims, even if they opt out of the Settlement Class. Stip. at ¶¶ 4.13, 4.28.

20 The Net Settlement Amount means the Gross Settlement Amount less the Class Counsel
21 Fees and Expenses Payment, the Class Representative Payment, the Settlement Administration
22 Costs, and the PAGA Payment. Stip. at ¶ 1.15.

23 The Individual Settlement Payments to be paid to Class Members and PAGA Aggrieved
24 Employees shall be calculated and allocated as follows. As to the class portion of the Individual
25 Settlement Payments, to be paid from the Net Settlement Amount, the Net Settlement Amount will
26 be divided by the total Workweeks for all Class Members to determine the estimated "Class Benefit
27 Amount" (i.e. the amount to be allocated for each Workweek). Then, each Class Member's
28 preliminary class portion of the Individual Settlement Payment will be determined by multiplying

1 each Class Member's individual Workweeks by the Class Benefit Amount. As to the PAGA
2 portion of the Individual Settlement Payments, to be paid from the PAGA Payment, the amount to
3 be paid to each PAGA Aggrieved Employee will not change between the preliminary and final
4 calculations. The employee portion of the PAGA Payment (\$20,000) shall be divided by the total
5 PAGA Period Workweeks for all PAGA Aggrieved Employees to determine the estimated PAGA
6 Benefit Amount. Then, each PAGA Aggrieved Employee's PAGA portion of the Individual
7 Settlement Payment will be determined by multiplying their individual PAGA Period Workweeks
8 by the PAGA Benefit Amount. Following Final Approval, the Individual Settlement Payments
9 shall be calculated using the same steps described above using the actual and final figures for
10 Participating Class Members, the Net Settlement Amount, Class Counsel Fees and Expenses
11 Payment, Class Representative Payment, Settlement Administration Costs, and the PAGA
12 Payment. Stip. at ¶ 4.7.

13 3. **Settlement of Claims Pursuant to Labor Code § 2699 *et seq.* (PAGA)**

14 Pursuant to PAGA, the Parties have agreed that \$80,000 of the Gross Settlement Amount
15 will be allocated to settle the claims brought under Labor Code § 2699 *et seq.* Pursuant to Labor
16 Code § 2699(i), "civil penalties recovered by aggrieved employees shall be distributed as follows:
17 75 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved
18 employees." As such, 75 percent of the apportioned PAGA settlement amount – or \$60,000 – shall
19 be payable to the LWDA. The remaining 25 percent, or \$20,000, shall be paid to PAGA Aggrieved
20 Employees. Stip. at ¶ 1.20.

21 **B. Two-Step Approval Process**

22 Any settlement of class litigation must be reviewed and approved by the Court. Cal. R. Ct.
23 3.769; Fed. R. Civ. P. 23(e).¹ This is done in two steps: (1) an early (preliminary) review by the
24 trial court, and (2) a final review after notice has been distributed to the Class Members informing
25 them of the terms of the settlement and allowing them to exclude themselves from, participate in

26 _____
27 ¹ The California Supreme Court has authorized California's trial courts to use Federal Rule 23 and
28 cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971)
4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore,
Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

1 and/or object to the settlement. The Manual for Complex Litigation (Third) § 30.41 states:

2 Approval of class action settlements involves a two-step process.
3 First, counsel submit the proposed terms of settlement and the court
4 makes a preliminary fairness evaluation. If the preliminary
5 evaluation of the proposed settlement does not disclose grounds to
6 doubt its fairness or other obvious deficiencies, such as unduly
7 preferential treatment of class representatives or of segments of the
8 class, or excessive compensation for attorneys, and appears to fall
9 within the range of possible approval, the court should direct that
10 notice ... be given to the class members of a formal fairness hearing,
11 at which arguments and evidence may be presented in support of and
12 in opposition to the settlement.

13 Thus, the preliminary approval by the trial court is simply a conditional finding that the
14 settlement appears to be within the range of acceptable settlements. *See Wershba v. Apple*
15 *Computer* (2001) 91 Cal.App.4th 224, 234-35. “The strength of the findings made by a judge at a
16 preliminary hearing or conference concerning a tentative settlement proposal may vary. The court
17 may find that the settlement proposal contains some merit, is within the range of reasonableness
18 required for a settlement offer, or is presumptively valid subject only to any objections that may be
19 raised at a final hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26
20 (4th ed. 2002).

21 The procedures for the Parties’ submission of a proposed settlement for preliminary
22 approval by the Court also are discussed in 4 *Newberg on Class Actions*:

23 When the parties to an action reach a monetary settlement, they will
24 usually prepare and execute a joint stipulation of settlement, which
25 is submitted to the court for preliminary approval. The stipulation
26 should set forth the essential terms of the agreement, including but
27 not limited to, the amount of settlement, form of payment, manner of
28 determining the effective date of settlement and any recapture clause.

Id. at § 11.24.

Here, the Parties have reached such an agreement and have submitted the Stipulation
herewith. *See* Gaines Decl., **Exhibit B**; Gaines Decl. ¶ 13.

C. Procedures for Settlement Before Class Certification.

Pursuant to California Rules of Court, Rule 3.769(d), parties also may, at the preliminary
approval stage, request that the court provisionally approve certification of the class – conditioned
upon final approval of the settlement. “[P]re-certification settlements are routinely approved if

1 found to be fair and reasonable.” *Wershba, supra*, 91 Cal. App. 4th at 240. *Accord Dunk, supra*,
2 48 Cal. App. 4th at 1803 (although the settlement was reached before any “adversary certification,”
3 the court was satisfied that it was “fair, adequate and reasonable.”). *See also In re Baldwin-United*
4 *Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478² (“many courts have employed this practice in the
5 name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”)

6 The strength of the findings made by a judge at a preliminary hearing
7 or conference concerning a tentative settlement proposal . . . may be
8 set out in conditional orders granting tentative approval to the various
9 items submitted to the court. Three basic rulings are often
conditionally entered at this preliminary hearing. These conditional
rulings may approve a temporary settlement class, the proposed
settlement, and the class counsel’s application for fees and expenses.

10 4 *Newberg on Class Actions*, at § 11.26.

11 As required by Labor Code § 2699(1)(2), concurrent with Plaintiff’s submission of the
12 Stipulation to the Court, his counsel is transmitting it, together with this Motion, to the LWDA.
13 Gaines Decl. at ¶ 33.

14 1. **The Settlement Class Should Be Certified for Settlement Purposes**

15 It is well established that trial courts should use a lower standard for determining the
16 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk, supra*, 48 Cal.
17 App. 4th at 1807, n. 19. The reason for this is that no trial is anticipated in a settlement class, so
18 the case management issues inherent in determining if the class should be certified need not be
19 confronted. *Amchem Products, Inc. v. Windsor* (1987) 521 U.S. 591, 620. The proposed
20 Settlement Class meets all requirements for certification, as discussed below.

21 a. **The Settlement Class is Ascertainable**

22 The proposed Settlement Class is ascertainable. The class definition, the size of the Class,
23 and the means for identifying the members of the class determine whether the class is ascertainable.
24 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
25 are identifiable from Defendant’s employment and payroll records. Further, the Settlement Class
26 is sufficiently numerous to warrant certification. According to Defendant’s records, the Class

27
28 ² In determining the fairness and reasonableness of a proposed settlement, California courts may
look to federal cases for guidance. *See Wershba*, 91 Cal. App. 4th at 239-40.

1 comprises approximately 117 employees. Gaines Decl. ¶ 29.

2 b. **Questions of Law or Fact Common to Members of the Settlement**
3 **Class Predominate**

4 The Class Members' claims all stem from a common source: members of the Settlement
5 Class allege that Defendant violated the same Labor Code provisions in connection with their
6 employment. All members of the Class seek the same relief under the same California laws (related
7 to unpaid wages, unpaid meal and rest period premiums, inaccurate or incomplete wage statements,
8 failure to timely pay wages due upon separation, and derivative claims). Under these
9 circumstances, the commonality requirement is satisfied for purposes of certifying the Settlement
10 Class for settlement purposes. Gaines Decl. ¶ 30.

11 c. **The Proposed Class Representatives' Claims Are Typical of the**
12 **Class Members' Claims**

13 A class representative's claims are typical when they arise from the same event or course
14 of conduct that gives rise to the claims of the class, and are based on the same legal theory.
15 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, named Plaintiff and proposed
16 Class Representative is a former non-exempt employee who worked for Defendant in the State of
17 California during the Class Period. He contends that Defendant failed to pay all wages, failed to
18 provide meal and rest periods, failed to comply with itemized employee wage statement provisions,
19 and failed to timely pay wages at the separation of employment, in violation of Labor Code §§ 201-
20 203, 226(a), 226.3, 226.7, 510, 512, 558, 1194, 2698, and 2699, among other Labor Code
21 provisions. He has the same claims as those that the members of the Settlement Class would
22 reasonably be expected to bring based on the course of conduct alleged herein. Gaines Decl. ¶ 31.

23 Plaintiff has also demonstrated that he will aggressively and competently assert the interests
24 of the proposed Settlement Class; he has taken an active role in this litigation and has no apparent
25 conflicts with other class members. Gaines Decl. ¶ 32. Furthermore, Plaintiff has retained
26 competent counsel, experienced in litigating class action claims in the employment context. *See*
27 Gaines Decl. ¶¶ 2-5.

1 **D. The Settlement Is Fair and Reasonable and Not the Result of Fraud or**
2 **Collusion**

3 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
4 evidence to the contrary is offered. *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars*
5 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re*
6 *Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962. Courts do not substitute their
7 judgment for that of the proponents, particularly where, as here, settlement has been reached with
8 the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
9 *Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990)
10 752 F. Supp. 1087, 1093; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored*
11 *Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357, 1368; *Sommers v. Abraham Lincoln*
12 *Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.

13 While the recommendations of counsel proposing the settlement are not conclusive, the
14 Court can properly take them into account, particularly where, as here, such counsel have been
15 involved in informal discovery and negotiations for some period of time, appear to be competent,
16 have experience with this type of litigation, and have exchanged substantial evidence with the
17 opposing party. *See Newberg on Class Actions, supra*, § 11.47; *In re Paine Webber Ltd. P'ships*
18 *Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 (“[s]o long as the integrity of the arm’s-length
19 negotiation process is preserved, however, a strong initial presumption of fairness attaches to the
20 proposed settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of
21 counsel, who are most closely acquainted with the facts of the underlying litigation”); *see Gaines*
22 *Decl.* ¶¶ 2-5, 9-14.

23 Here, the Parties’ counsel have a great deal of experience in class action litigation and
24 specialize in employment wage and hour matters. Moreover, counsel for both Parties conducted
25 an extensive investigation of the factual allegations involved in this case. The Parties have engaged
26 in a broad exchange of documents, data, records and other information. Each side has apprised the
27 other, informally and at a formal mediation, of their respective factual contentions, legal theories
28 and defenses, resulting in extensive arm’s-length negotiations taking place among the Parties. *See*

1 Gaines Decl. ¶¶ 2-5, 9-14.

2 1. **The Settlement Falls Within The “Ballpark” of Reasonableness**

3 The Court must make an “independent assessment of the reasonableness of the terms of the
4 settlement” prior to granting preliminary and final approval. *Clark v. American Residential*
5 *Services LLC* (2009) 175 Cal.App.4th 785, 799; *Kullar v. Foot Locker Retail, Inc.* (2008) 168
6 Cal.App.4th 116, 127-28, 130, 133. To do so requires the Parties to submit “basic information
7 about the nature and magnitude of the claims in question and the basis for concluding that the
8 consideration being paid for the release of those claims represents a reasonable compromise.”
9 *Clark, supra*, 175 Cal.App.4th at 800. However, the Court should *not* “attempt to decide the merits
10 of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys.”
11 *Kullar, supra*, 168 Cal.App.4th at 133.

12 Plaintiff’s counsel created a comprehensive damage analysis using sampling information
13 obtained through informal discovery. This damage analysis reveals that the negotiated settlement
14 falls within a realistic range of recovery on Class Members’ claims. Gaines Decl. ¶ 16.

15 Plaintiff alleges that Defendant failed to pay all minimum and overtime wages earned
16 during the course of employment, in violation of Labor Code §§ 510, 558 and 1194, when it
17 rounded down or “shaved off” the hours reflected on Plaintiff and Class Members’ time records to
18 pay fewer hours than were actually worked. Rounding is only permissible if the employer applies
19 a consistent rounding policy that, on average, favors neither overpayment or nor underpayment.
20 *AHMC Healthcare, Inc. v. Superior Court* (2018) 24 Cal.App.5th 1014. Plaintiff alleges that this
21 is not the case here. Defendant rounded clock in and out times, including lunch clock times, such
22 that substantial wages have been underpaid. Based on a sampling analyzed by Plaintiff’s Counsel,
23 they concluded, with the input of an expert, that 79% of the shifts worked by Class Members during
24 the Class Period exhibit a “net” wage underpayment due to rounding, totaling an average of 6.9
25 minutes per shift or approximately \$179,598 in aggregate maximum exposure to Defendant.
26 Approximately 98% of pay periods were affected. Gaines Decl. ¶ 17.

27 As a result of Defendant’s allegedly unlawful meal period policies and practices, Plaintiff
28 and Class Members contend that they were not provided with all meal periods to which they were

1 entitled. When they were provided meal periods, they were often late, cut short or on-duty. Plaintiff
2 contends that Defendant's meal period policy is facially unlawful because it fails to provide for
3 second meal periods. The meal period policy also fails to address timing requirements for meal
4 periods—i.e., the first meal period must be taken before the end of the fifth hour of work, and a
5 second meal period (if applicable) must be taken before the end of the tenth hour of work. Although
6 illegal meal period policies alone do not necessarily result in a violation of Labor Code §§ 226.7
7 and 512, California courts have in a wide variety of contexts considered pattern and practice
8 evidence, statistical evidence, sampling evidence, expert testimony, and other indicators of an
9 employer's centralized practice in order to evaluate whether common behavior towards similarly
10 situated employees makes class certification appropriate. *See Sav-On Drug Stores, Inc. v. Superior*
11 *Court* (2004) 34 Cal.4th 319, 333. Gaines Decl. ¶ 18.

12 According to Plaintiff's expert's analysis, approximately 50.7% of all shifts have at least
13 one unique meal period violation—the meal period was either short (less than 30 minutes in length),
14 untimely (not taken before the end of the fifth hour of work), or not provided at all. The maximum
15 exposure faced by Defendant for this claim is approximately \$1,002,270, based on an average
16 hourly rate of \$21.37. Gaines Decl. ¶ 19.

17 Plaintiff alleges that Defendant failed to offer or authorize uninterrupted ten-minute on-the-
18 clock rest periods to Plaintiff and Class Members for every four hours worked or major fraction
19 thereof, and did not pay them premium wages in the amount of one hour's pay for these denied rest
20 periods, in violation of Labor Code §§ 226.7 and 558 and IWC Wage Order 1-2001. Plaintiff and
21 Class Members contend that they were routinely unable, and not authorized, to take a 10-minute
22 rest period for every four (4) hours of work or major fraction thereof, and were not paid premium
23 wages of one hour's pay for each missed rest period. They contend that Defendant required them
24 to remain on Defendant's premises during rest periods, resulting in impermissible on-duty rest
25 periods subject to employer control. This policy and practice violates the holding in *Augustus v.*
26 *ABM Security Services, Inc.* (2016) 5 Cal. 5th 257, which held that the rest period requirement
27 "obligates employers to permit and authorizes employees to take off-duty rest periods. That is,
28 during rest periods employers must relieve employees of all duties and relinquish control over how

1 employees spend their time.” *Id.* at 269 (emphasis added). Gaines Decl. ¶ 20. Based on a 25%
2 violation rate – which Plaintiff believes is high but attainable – Defendant’s exposure on this claim
3 is \$494,216.

4 Class Members also sought wage statement penalties pursuant to Labor Code § 226(e),
5 waiting time penalties pursuant to Labor Code § 203 and PAGA penalties derivative of the
6 underlying violations alleged. The value of these penalties – which are derivative, discretionary,
7 and subject to defenses of their own – is approximately \$2,111,964, a substantial amount which
8 required a compromise to resolve based on risk of litigation. Plaintiff believed it was unlikely that
9 many of these penalties could be recovered because their value would eclipse the value of alleged
10 underpaid wages (if wages were recovered at all), because Plaintiff’s claims are novel, and because
11 of Defendant’s potential independent defenses to these penalties. Gaines Decl. ¶ 21.

12 The maximum exposure faced by Defendant in this Action is therefore approximately
13 \$3,788,048 and the Settlement recovers \$800,000, or more than 21% of the maximum potential
14 recovery. The discount here is a reasonable compromise, particularly considering that the risk of
15 obtaining class certification on all or any of Plaintiff’s claims involves a 50% or higher hurdle,
16 especially with respect to the meal and rest period claims, to which Defendant maintains strong
17 arguments to defeat class certification (in addition to multiple defenses on the merits of the claims).
18 Class certification is a substantial risk in any class action case. Here, while Plaintiff maintains that
19 the requirements of class certification are met, Defendant proffers various arguments why class
20 treatment is not appropriate, including but not limited to that individualized inquires among class
21 members predominate over common ones. If Defendant was to defeat Plaintiff’s class certification
22 motion, there would be no class wide relief whatsoever, and most class members would likely not
23 file individual claims. Gaines Decl. ¶ 22.

24 Plaintiff also faced the risk of a loss on the merits on his claims. It is very possible that the
25 Court would agree with Defendant’s position that its meal and rest period policies and practices
26 complied with the requirements of California law or could not be certified. In such a case, the value
27 of the majority of Plaintiff’s claims would be zero. Gaines Decl. ¶ 23.

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1 Finally, Plaintiff faced the risk that he would not obtain a maximum damage/penalty award
2 on all (or any of) his claims. For example, Plaintiff seeks discretionary penalties pursuant to the
3 PAGA. Even if Plaintiff did prevail on these claims, it is possible that the Court would not impose
4 all penalties pursuant to its discretionary power to reduce them. Gaines Decl. ¶ 24.

5 Defendant strongly contends that its policies and practices do not violate any laws. It
6 contends that it properly provided for all meal and rest periods and fully compensated their
7 employees for all time worked. It further contends that the wage statements it provides to its
8 employees are fully compliant with California law. Gaines Decl. ¶ 25.

9 When the costs and risks of non-certification and loss on the merits are considered,
10 Plaintiff's counsel is of the opinion that the settlement reached is clearly a favorable one. Gaines
11 Decl. ¶¶ 16-26.

12 The settlement for each Class Member is fair, reasonable and adequate, given the inherent
13 risk of litigation, the risk relative to class certification and the costs of pursuing such litigation. The
14 settlement shall finally resolve all claims of the Class Members as alleged in the Action. Gaines
15 Decl. ¶ 27.

16 2. **Despite the Asserted Fairness of the Settlement Terms, Class Members**
17 **May Request Exclusion From, Or Object To, The Settlement**

18 Despite the asserted fairness of the settlement terms, any potential Class Member who
19 objects to the terms of the settlement set forth in the Stipulation of Settlement has the right to submit
20 a request for exclusion (*i.e.*, opt out) from the settlement, pursuant to which the Class Member
21 would be bound only by the PAGA portion of the Settlement but would otherwise retain any claim
22 he or she may have against Defendant.

23 Moreover, Class Members who do not opt out may, upon providing proper notice to the
24 Parties and the Court, attend the final fairness and approval hearing for the purpose of objecting to
25 one or more of the settlement terms set forth in the Stipulation of Settlement.

26 **E. Plaintiff Should Be Permitted to File His First Amended Complaint**

27 In connection with this Settlement, Plaintiff shall file a First Amended Complaint, attached
28 to the Stipulation as **Exhibit 3**, which adds class allegations and claims to comport with the release

1 provided for in the Stipulation. The Parties agreed that, as part of his motion for preliminary
2 approval, Plaintiff would concurrently seek leave to file the First Amended Complaint, the filing
3 of which is a condition of the Stipulation.

4 To effectuate the class settlement of the Action, Defendant does not oppose the filing of the
5 First Amended Complaint for settlement purposes only. As part of its order preliminarily approving
6 the settlement, Plaintiff requests that the Court approve their filing of the First Amended Complaint,
7 and consent that Defendant not be required to file a responsive pleading thereto. Gaines Decl. ¶ 8.

8 **V. CONCLUSION**

9 Based on the foregoing, as part of its preliminary approval of the settlement, the Parties
10 request that the Court enter an order:

11 1. Preliminarily finding that the settlement falls within the range of reasonableness and
12 approving the proposed settlement;

13 2. Conditionally certifying, for settlement purposes only, the Settlement Class;

14 3. Appointing Plaintiff Sal Rojas as Class Representative;

15 4. Appointing Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC as
16 Class Counsel;

17 5. Approving ILYM Group, Inc. as Settlement Administrator;

18 6. Preliminarily approving the allocation of \$80,000 from the Gross Settlement
19 Amount to settle Plaintiff's representative claims under the PAGA, of which seventy-five percent
20 (75%) shall be paid to the Labor and Workforce Development Agency and twenty-five percent
21 (25%) shall be paid to PAGA Aggrieved Employees;

22 7. Approving as to content and form the notice to the Settlement Class, and directing
23 it to be disseminated by the Settlement Administrator;

24 8. Permitting Plaintiff to file his First Amended Complaint, attached to the Stipulation
25 as **Exhibit 3**, no later than five (5) court days after notice of the entry of the Order granting this
26 motion has been given, and consent that Defendant not be required to file a responsive pleading
27 thereto; and,

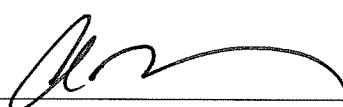
28 9. Setting the following schedule of settlement proceedings:

<u>EVENT</u>	<u>TIMING</u>
Last day for Defendant to provide to the Settlement Administrator a list in Microsoft Excel format containing each Settlement Class Member's (i) full name, (ii) last known address, (iii) Social Security Number, and (iv) dates worked for Defendant in California during the Class Period as a non-exempt employee ("Class List")	14 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail Notice and Request for Exclusion form to Class Members	14 calendar days after the Settlement Administrator's receipt of the Class List
Last day for Class Members to submit a written Request for Exclusion form to the Settlement Administrator	60 calendar days after the initial mailing of the Class Notice to Class Members
Last day for Class Members to submit an Objection to the Settlement Administrator	60 calendar days after the initial mailing of the Class Notice to Class Members
Last day for Class Counsel to file and serve moving papers in support of final settlement approval and request for attorneys' fees and costs	10 calendar days before the final settlement approval hearing date
Last day for Class Counsel to file with the Court and serve declaration by Settlement Administrator specifying the due diligence undertaken with regard to the mailing of the Notice	10 calendar days before the final settlement approval hearing date
Final settlement approval hearing	_____, 2022, at _____.m. (approximately 100 days after entry of the Order granting this Motion)

DATED: October 18, 2021

Respectfully submitted,

GAINES & GAINES,
A Professional Law Corporation

By: 

DANIEL F. GAINES

ALEX P. KATOFISKY

Attorneys for Plaintiff Sal Rojas and Proposed Class
Counsel