

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
GAINES & GAINES, APLC
27200 Agoura Rd., Suite 101
Calabasas, CA 91301
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff George Padilla and Proposed
Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

GEORGE PADILLA, on behalf of himself
and all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*,

Plaintiff,

v.

SMITH CHEVROLET CO., INC. dba
SMITH COLLISION CENTER, a
California corporation, and DOES 1
through 10, inclusive,

Defendants.

CASE NO: CV-20-002683

Assigned to the Hon. Sonny S. Sandhu, Dept. 24

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

Date: April 6, 2021

Time: 8:30 a.m.

Dept.: 24

Complaint Filed: June 17, 2020

PLEASE TAKE NOTICE THAT on April 6, 2021 at 8:30 a.m., or as soon thereafter as
the matter may be heard, in Department 24 of the above-entitled Court, located at 800 11th Street,
Modesto, California 95354, Plaintiff George Padilla will and hereby does move unopposed for an
Order (1) preliminarily approving the proposed class action settlement in the above-captioned case,
(2) provisionally certifying a settlement class, (3) provisionally approving the appointment of
Plaintiff George Padilla as Class Representative, (4) provisionally approving the appointment of
Daniel F. Gaines, Esq. and Alex P. Katofsky, Esq. of Gaines & Gaines, APLC as Class Counsel,

1 (5) provisionally approving the appointment of Phoenix Settlement Administrators as settlement
2 administrator, (6) approving and directing distribution of notice to the settlement class, (7)
3 permitting Plaintiff to file a Second Amended Complaint, and (8) setting a final fairness and
4 approval hearing.

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

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

12 This Motion will be based on the Memorandum of Points and Authorities set forth herein,
13 the Settlement Agreement and Release of Claims, the Declaration of Daniel F. Gaines, such
14 evidence or oral argument as may be presented at the hearing, and on the complete record and file
15 herein.

16 DATED: February 22, 2021

Respectfully submitted,

17 GAINES & GAINES,
18 A Professional Law Corporation

19
20 By: *Daniel F. Gaines*

21 DANIEL F. GAINES

ALEX P. KATOFISKY

22 Attorneys for Plaintiff George Padilla and Proposed
23 Class 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 Settlement
4 Agreement and Release of Claims for the Court's approval. The Settlement is made and entered
5 into by and between Plaintiff George Padilla ("Plaintiff", "Class Representative", or "Padilla"),
6 individually and on behalf of all others similarly situated, and Defendant Smith Chevrolet Co., Inc.
7 cba Smith Collision Center ("Defendant").

8 The settlement occurred as a result of extensive arm's-length negotiations by experienced
9 counsel. Most importantly, the settlement will result in significant financial benefit to the
10 participating claimants, on terms that are by any measure fair, reasonable and adequate. *See*
11 *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801-02.

12 For the foregoing reasons, the Parties respectfully request that the Court: (a) grant
13 preliminary approval of the settlement agreement, (b) conditionally grant certification of the
14 proposed Settlement Class, (c) provisionally approve the appointment of Plaintiff George Padilla
15 as Class Representative, (d) provisionally approve the appointment of Daniel F. Gaines, Esq. and
16 Alex P. Katofsky of Gaines & Gaines, APLC as Class Counsel, (e) approve appointment of the
17 settlement administrator, (f) permit the filing of a Second Amended Complaint, (g) authorize the
18 mailing of the proposed class action notice packet; and (h) schedule a final fairness and approval
19 hearing.

20 **II. BACKGROUND AND PROCEDURAL HISTORY**

21 On April 10, 2020, Plaintiff sent a notice to the California Labor & Workforce Development
22 Agency ("LWDA") pertaining to alleged wage and hour claims against Defendant. Declaration of
23 Daniel F. Gaines ("Gaines Decl.") at ¶ 6.

24 On or about June 17, 2020, Plaintiff initiated the Action by filing a Complaint, subsequently
25 amended, pursuant to PAGA on behalf of himself and all other aggrieved employees. The Second
26 Amended Complaint, attached to the Settlement Agreement as Exhibit 3 and which will be filed as
27 part of the settlement approval process, asserts direct class and representative action claims against
28 Defendant for (1) failure to provide rest periods or compensation in lieu thereof (Labor Code §

226.7; IWC Wage Order 4-2001); (2) failure to provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7, and 512; IWC Wage Order 4-2001); (3) knowing and intentional failure to comply with itemized employee wage statement provisions (Labor Code §§ 226(a), (e), (h)); (4) failure to timely pay wages due at separation of employment (Labor Code §§ 201-203); (5) failure to reimburse employee business expenses (Labor Code § 2802); (6) violation of Business and Professions Code § 17200; and (6) penalties pursuant to Labor Code § 2699(f) for violations of Labor Code §§ 201-203, 226(a), 226.3, 226.7, 512, 558 and 2802. (the “Second Amended Complaint”). Gaines Decl. at ¶ 7.

III. INVESTIGATION AND SETTLEMENT DISCUSSIONS

Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, and further denies that the Action is appropriate for class treatment for any purpose other than this settlement. Defendant contends that it has complied at all times with the California Labor Code. It is Defendant’s position that, if this case were to be litigated, class certification would be inappropriate because Plaintiff is not an adequate class representative, Plaintiff’s claims are not typical of putative class members, and individual issues predominate over class issues. The Action, the negotiation and execution of the Settlement Agreement, and all acts performed or documents executed pursuant to or in furtherance of the Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for class certification in the Action or with respect to any other proceeding. Gaines Decl. at ¶ 8.

The Class Representative contends that Defendant violated the California Labor Code and that this case is appropriate for class certification. Gaines Decl. at ¶ 9.

Class Counsel represent that they have conducted a thorough investigation into the facts and law during the prosecution of this class action case, including the exchange of extensive informal discovery and the review and verification of statistical data and other facts and information provided by Defendant. Counsel for the Parties also represent that they have investigated the

1 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and
2 potential defenses thereto, and the damages claimed by Plaintiff. Gaines Decl. at ¶ 10.

3 In December and January, 2021, following their exchange of information regarding the
4 Settlement Class and the claims and defenses asserted by the Parties, counsel for the Parties
5 engaged in arm's-length negotiations to reach the basic terms of the Settlement. Gaines Decl. at ¶
6 11.

7 Based on their own independent investigation and evaluation, Class Counsel are of the
8 opinion that settlement for the consideration and on the terms set forth in this Settlement Agreement
9 is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all
10 known facts and circumstances, including the risk of significant delay, the risk the Settlement Class
11 will not be certified by the Court, and the defenses asserted by Defendant. Defendant and its
12 counsel also agree that this settlement is fair and in the best interest of the Settlement Class. Gaines
13 Decl. at ¶ 12.

14 The Parties thereafter jointly prepared the Settlement Agreement and Release ("Settlement
15 Agreement" or "Stipulation of Settlement" or "Stip."), attached to the concurrently-filed Gaines
16 Declaration as **Exhibit B**. All of the terms of the Parties' settlement are contained within the
17 Settlement Agreement. At all times, the Parties' settlement negotiations have been non-collusive,
18 adversarial, and at arm's length. Gaines Decl. at ¶ 13.

19 **IV. LEGAL ANALYSIS**

20 **A. The Proposed Settlement Terms**

21 **1. The Settlement Class**

22 The Parties have agreed to a Settlement Class composed of all current and former non-
23 exempt California employees of Defendant employed from June 17, 2016 through December 31,
24 2020. Defendant represents that this Class contains no more than 122 members who worked no
25 more than 5,500 pay periods during the Class Period. Stip. at ¶ A(4).

26 **2. Allocations to be Paid from the Maximum Settlement Amount**

27 The Stipulation provides that Defendant shall pay an amount not to exceed \$200,000 to
28 resolve the Action on a class-wide basis (the "Maximum Settlement Amount"). The Maximum

1 Settlement Amount includes the attorneys' fees of Class Counsel, litigation costs and expenses
2 (which includes, without limitation, all such fees and costs incurred to date, as well as such fees
3 and costs to be incurred in documenting the settlement, providing any notices required as part of
4 the settlement, securing Court approval of the settlement, and obtaining judgment in the Action),
5 the service payment to the Class Representative, as approved by the Court, the payment to the
6 LWDA pursuant to the PAGA claims in the Action, and all costs of administration, including,
7 without limitation, settlement administration fees and expenses. Defendant shall pay all employer
8 payroll tax obligations due on wage payments made from the Net Settlement Proceeds in addition
9 to, and separate and apart from, the Maximum Settlement Amount. Stip. at ¶ C(1)(a).

10 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff's counsel's
11 application to the Court for up to 40% of the Maximum Settlement Amount for attorneys' fees.
12 Plaintiff's estimated attorneys' fees to be requested from the Court are \$80,000. Stip. at ¶ C(1)(f).

13 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff's counsel's
14 application to the Court for up to \$3,000 in reimbursement of litigation costs and expenses. Stip.
15 at ¶ C(1)(g).

16 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff's counsel's
17 application to the Court for a Service Payment to the Class Representative in the gross amount of
18 \$5,000 in consideration for his efforts in instituting and participating in the Action.¹ Stip. at ¶
19 C(1)(e).

20 From the Maximum Settlement Amount, settlement administration fees paid to Phoenix
21 Settlement Administrators will be no more than \$5,000. Stip. at ¶ C(1)(h).

22 From the Maximum Settlement Amount, the portion to be allocated for settlement of any
23 and all claims for penalties under the PAGA is \$5,000 (75% of which shall be paid to the California
24 Labor and Workforce Development Agency and 25% of which shall be paid to Class Members who
25 have not submitted a valid and timely Request for Exclusion Form as part of the Net Settlement
26 Proceeds). Stip. at ¶ C(1)(d).

27 ¹ Plaintiff is represented by separate counsel in a different proceeding related to his separation of
28 employment from Defendant. Those claims are not released or otherwise affected by this
Settlement.

1 The Net Settlement Proceeds is the Maximum Settlement Amount less the amounts
2 approved and awarded by the Court for: attorneys' fees and documented litigation costs and
3 expenses incurred or advanced by Class Counsel, the service payment to the Class Representative,
4 the payment to the LWDA pursuant to PAGA, and the costs of administering the settlement.. Stip.
5 at ¶ C(1)(b).

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

7 Pursuant to PAGA, the Parties have agreed that \$5,000 of the Maximum Settlement Amount
8 will be allocated to settle the claims brought under Labor Code § 2699 et seq. Pursuant to Labor
9 Code § 2699(i), "civil penalties recovered by aggrieved employees shall be distributed as follows:
10 75 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved
11 employees." As such, 75 percent of the apportioned PAGA settlement amount – or \$3,750 – shall
12 be payable to the Labor and Workforce Development Agency. The remaining 25 percent, or
13 \$1,250, shall be paid to Class Members who have not submitted a valid and timely Request for
14 Exclusion Form as part of the Net Settlement Proceeds. Stip. at ¶ C(1)(d).

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

16 Any settlement of class litigation must be reviewed and approved by the Court. Cal. R. Ct.
17 3.769; Fed. R. Civ. P. 23(e).² This is done in two steps: (1) an early (preliminary) review by the
18 trial court, and (2) a final review after notice has been distributed to the Class Members informing
19 them of the terms of the settlement and allowing them to exclude themselves from, participate in
20 and/or object to the settlement. The Manual for Complex Litigation (Third) § 30.41 states:

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

27 ² The California Supreme Court has authorized California's trial courts to use Federal Rule 23 and
cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971)
28 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 in opposition to the settlement.

2 Thus, the preliminary approval by the trial court is simply a conditional finding that the
3 settlement appears to be within the range of acceptable settlements. *See Wershba v. Apple*
4 *Computer* (2001) 91 Cal.App.4th 224, 234-35. “The strength of the findings made by a judge at a
5 preliminary hearing or conference concerning a tentative settlement proposal may vary. The court
6 may find that the settlement proposal contains some merit, is within the range of reasonableness
7 required for a settlement offer, or is presumptively valid subject only to any objections that may be
8 raised at a final hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26
9 (4th ed. 2002).

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

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

18 *Id.* at § 11.24.

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

21 **C. Procedures for Settlement Before Class Certification.**

22 Pursuant to California Rules of Court, Rule 3.769(d), parties also may, at the preliminary
23 approval stage, request that the court provisionally approve certification of the class – conditioned
24 upon final approval of the settlement. “[P]re-certification settlements are routinely approved if
25 found to be fair and reasonable.” *Wershba, supra*, 91 Cal. App. 4th at 240. *Accord Dunk, supra*,
26 48 Cal. App. 4th at 1803 (although the settlement was reached before any “adversary certification,”
27 the court was satisfied that it was “fair, adequate and reasonable.”). *See also In re Baldwin-United*
28 *Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478³ (“many courts have employed this practice in the
name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”)

³ 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 The strength of the findings made by a judge at a preliminary hearing
2 or conference concerning a tentative settlement proposal . . . may be
3 set out in conditional orders granting tentative approval to the various
4 items submitted to the court. Three basic rulings are often
5 conditionally entered at this preliminary hearing. These conditional
6 rulings may approve a temporary settlement class, the proposed
7 settlement, and the class counsel's application for fees and expenses.

8 4 *Newberg on Class Actions*, at §11.26.

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

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

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

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

20 The proposed Settlement Class is ascertainable. The class definition, the size of the Class,
21 and the means for identifying the members of the class determine whether the class is ascertainable.
22 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
23 are identifiable from Defendant's employment and payroll records. Further, the Settlement Class
24 is sufficiently numerous to warrant certification. According to Defendant's records, the Class
25 comprises no more than 122 employees. Gaines Decl. ¶ 27.

26 b. **Questions of Law or Fact Common to Members of the Settlement**
27 **Class Predominate**

28 The Class Members' claims all stem from a common source: members of the Settlement
Class allege that Defendant violated the same Labor Code provisions in connection with their
employment in non-exempt positions. All members of the Class seek the same relief under the
same California laws (related to unpaid missed rest and meal periods, failure to reimburse expenses,

1 and derivative claims). Under these circumstances, the commonality requirement is satisfied for
2 purposes of certifying the Settlement Class for settlement purposes. Gaines Decl. ¶ 28.

3 c. **The Proposed Class Representative's Claims are Typical of the**
4 **Class Members' Claims**

5 A class representative's claims are typical when they arise from the same event or course
6 of conduct that gives rise to the claims of the class, and are based on the same legal theory.
7 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, named Plaintiff and proposed
8 Class Representative George Padilla is a former employee who worked for Defendant in the State
9 of California during the Settlement Period in a non-exempt position. He contends that Defendant
10 failed to provide meal and rest periods, failed to comply with itemized employee wage statement
11 provisions, failed to reimburse business expenses, and failed to timely pay wages at the separation
12 of employment, in violation of Labor Code §§ 201-203, 226(a), 226.3, 226.7, 512, 558, 2698, 2699,
13 and 2802, among other Labor Code provisions. He has the same claims as those that the members
14 of the Settlement Class would reasonably be expected to bring based on the course of conduct
15 alleged herein. Gaines Decl. ¶ 29.

16 Plaintiff Padilla has also demonstrated that he will aggressively and competently assert the
17 interests of the proposed Settlement Class; he has taken an active role in this litigation and has no
18 apparent conflicts with other class members.⁴ Gaines Decl. ¶ 30. Furthermore, Plaintiff has
19 retained competent counsel, experienced in litigating class action claims in the employment
20 context. *See* Gaines Decl. ¶¶ 2-5.

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

23 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
24 evidence to the contrary is offered. *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars*
25 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re*

26 _____
27 ⁴ Plaintiff Padilla alleged claims against Defendant related to wrongful termination, for which he
28 was separately represented by independent counsel. These wrongful termination claims have been
resolved through negotiations independent from the negotiation of the resolution of the claims
asserted in this lawsuit. Gaines Decl. ¶ 31.

1 *Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962. Courts do not substitute their
2 judgment for that of the proponents, particularly where, as here, settlement has been reached with
3 the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
4 *Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990)
5 752 F. Supp. 1087, 1093; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored*
6 *Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357, 1368; *Sommers v. Abraham Lincoln*
7 *Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.

8 While the recommendations of counsel proposing the settlement are not conclusive, the
9 Court can properly take them into account, particularly where, as here, such counsel have been
10 involved in informal discovery and negotiations for some period of time, appear to be competent,
11 have experience with this type of litigation, and have exchanged substantial evidence with the
12 opposing party. *See Newberg on Class Actions, supra*, § 11.47; *In re Paine Webber Ltd. P'ships*
13 *Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 (“[s]o long as the integrity of the arm’s-length
14 negotiation process is preserved, however, a strong initial presumption of fairness attaches to the
15 proposed settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of
16 counsel, who are most closely acquainted with the facts of the underlying litigation”); *see Gaines*
17 Decl. ¶¶ 2-5, 8-13.

18 Here, the Parties’ counsel have a great deal of experience in class action litigation and
19 specialize in employment wage and hour matters. Moreover, counsel for both Parties conducted
20 an extensive investigation of the factual allegations involved in this case. The Parties have engaged
21 in a broad exchange of documents, statistics, records and other information. Each side has apprised
22 the other of their respective factual contentions, legal theories and defenses, resulting in extensive
23 arms-length negotiations taking place among the Parties. *See Gaines Decl. ¶¶ 2-5, 8-13.*

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

25 The Court must make an “independent assessment of the reasonableness of the terms of the
26 settlement” prior to granting preliminary and final approval. *Clark v. American Residential*
27 *Services LLC* (2009) 175 Cal.App.4th 785, 799; *Kullar v. Foot Locker Retail, Inc.* (2008) 168
28 Cal.App.4th 116, 127-28, 130, 133. To do so requires the Parties to submit “basic information

1 about the nature and magnitude of the claims in question and the basis for concluding that the
2 consideration being paid for the release of those claims represents a reasonable compromise.”
3 *Clark, supra*, 175 Cal.App.4th at 800. However, the Court should *not* “attempt to decide the merits
4 of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys.”
5 *Kullar, supra*, 168 Cal.App.4th at 133.

6 Plaintiff’s counsel created a comprehensive damage analysis using sampling information
7 obtained through informal discovery. This damage analysis reveals that the negotiated settlement
8 falls within a realistic range of recovery on class members’ claims. Gaines Decl. ¶ 15.

9 Plaintiff asserts that Defendant failed to pay premium wages to Plaintiff and Class Members
10 who were denied rest periods, in violation of Labor Code §§ 226.7 and 558 and IWC Wage Order
11 4-2001. Plaintiff and Class Members were allegedly routinely not authorized and unable to take an
12 off-duty, 10-minute rest period for every four (4) hours of work or major fraction thereof, but were
13 not paid premium wages of one hour’s pay for each missed rest period. When they were able to
14 take a rest period, they were oftentimes late, cut short or on-duty, in violation of Labor Code §§
15 226.7, 558 and IWC Wage Order No. 4-2001. The maximum value of this claim is approximately
16 \$1,000,000, but required a significant discount for settlement purposes, particularly because of the
17 class certification hurdle and the likelihood of prevailing on the merits was challenging based on
18 Defendant’s policies and practices, which it contends comply with California law. Gaines Decl. ¶
19 16.

20 Plaintiff asserts that Defendant failed to pay premium wages to Plaintiff and Class Members
21 who were denied meal periods, in violation of Labor Code §§ 226.7, 512, 558 and IWC Wage Order
22 4-2001. Plaintiff and Class Members were allegedly routinely denied, and not authorized to take,
23 an uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in
24 duration, and a second meal period when they worked shifts greater than ten hours, but were not
25 paid premium wages of one hour’s pay for each missed meal period. When they were able to take
26 a meal period, they were cut short, late, or on-duty, in violation of Labor Code §§ 226.7, 512 and
27 558 and IWC Wage Order 4-2001. The maximum value of this claim is also approximately
28 \$1,000,000, based on the same number of shifts as the rest period claim at the same

1 penalty/premium wage rates, and required a significant discount for settlement purposes. Time
2 records demonstrated that meal periods were frequently taken, which would adversely affect
3 Plaintiff's motion for class certification due to Defendant's anticipated waiver argument. In
4 addition, the likelihood of prevailing on the merits at a 100% violation rate was unlikely based on
5 Defendant's policies and practices, which it contends comply with California law. The
6 compromised settlement amount is appropriate and fair given the risks of continued litigation.
7 Gaines Decl. ¶ 17.

8 Plaintiff also contends that he and other Class Members were not properly and fully
9 reimbursed for all expenses they incurred, in violation of Labor Code § 2802. The expense
10 reimbursement claims alleged by Plaintiff are his weakest (and smallest dollar value) claim,
11 particularly because of the class certification hurdle and the difficulty in proving a uniform policy
12 and practice denying expense reimbursement. As such, these claims were allocated only a nominal
13 value for settlement purposes. Gaines Decl. ¶ 18.

14 Class Members also sought wage statement penalties pursuant to Labor Code § 226(e),
15 waiting time penalties pursuant to Labor Code § 203 and PAGA penalties derivative of the
16 underlying violations alleged. The value of these penalties – which are derivative, discretionary,
17 and subject to defenses of their own – could be substantial (totaling slightly in excess of \$1 million),
18 but their recovery carried substantial risk. Plaintiff believed it was unlikely the many of these
19 penalties could be recovered because their value would eclipse the value of alleged underpaid meal
20 and rest period premium wages (if such premium wages were recovered at all), because Plaintiff's
21 claims are novel, and because of Defendant's potential independent defenses to these penalties.
22 Gaines Decl. ¶ 19.

23 A discount on the maximum value of Class members' claims was required (and warranted)
24 to resolve the matter at this junction. Plaintiff and Class Members all signed arbitration agreements
25 which would likely preclude any recovery of damages or wages on a groupwide basis, leaving Class
26 Members to fend for their own in individual lawsuits, which would likely not occur. In addition,
27 if Plaintiff could defeat the arbitration agreements and pursue his direct Labor Code claims in court,
28 class certification is a substantial risk in any class action case. Here, while Plaintiff maintains that

1 the requirements of class certification are met, Defendant proffers various arguments why class
2 treatment is not appropriate here, including but not limited to that individualized inquires among
3 class members predominate over common ones – particularly with respect to Plaintiff’s meal and
4 rest period claims. If Defendant was to defeat Plaintiff’s class certification motion, there would be
5 no class wide relief whatsoever, and most class members would likely not file individual claims.
6 Gaines Decl. ¶ 20.

7 Plaintiff also faced the risk of a loss on the merits on his claims. Plaintiff’s wage statement
8 claims are highly technical. It is possible that the Court would find that Defendant substantially
9 complied with the requirements of Labor Code section 226(a) such that no penalties would be
10 awarded. It is also possible that the Court would agree with Defendant’s position that its meal and
11 rest period policies and practices complied with the requirements of California law. In such a case,
12 the value of the majority of Plaintiff’s claims would be zero. Gaines Decl. ¶ 21.

13 Finally, Plaintiff faced the risk that he would not obtain a maximum damage/penalty award
14 on all (or any of) his claims. For example, Plaintiff seeks discretionary penalties pursuant to the
15 Private Attorneys General Act. Even if Plaintiff did prevail on these claims, it is possible that the
16 Court would not impose all penalties pursuant to its discretionary power to reduce them. Gaines
17 Decl. ¶ 22.

18 Defendant strongly contends that its policies and practices do not violate any laws. It
19 contends that its meal and rest break policies properly provided for all meal and rest periods and
20 fully compensated its employees for all time worked. It further contends that the wage statements
21 it provides to its employees are fully compliant with California law and that it reimbursed all
22 business expenses they incurred. Gaines Decl. ¶ 23.

23 When the costs and risks of non-certification and loss on the merits are considered,
24 Plaintiff’s counsel is of the opinion that the settlement reached is clearly a favorable one. Gaines
25 Decl. ¶¶ 15-24.

26 The settlement for each participating Class Member is fair, reasonable and adequate, given
27 the inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
28 litigation. The settlement shall finally resolve all claims of the Class Members as alleged in the

1 Action. Gaines Decl. ¶ 25.

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

4 Despite the asserted fairness of the settlement terms, any potential Class Member who
5 objects to the terms of the settlement set forth in the Stipulation of Settlement has the right to submit
6 a request for exclusion (*i.e.*, opt out) from the settlement, pursuant to which the class member would
7 retain any claim he or she may have against Defendant.

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

11 E. **Plaintiff Should Be Permitted to File His Second Amended Complaint**

12 In connection with this Settlement, Plaintiff shall file a Second Amended Complaint,
13 attached to the Settlement Agreement as **Exhibit 3**, which adds class allegations and claims to
14 comport with the release provided for in the Stipulation. The Parties agreed that, as part of his
15 motion for preliminary approval, Plaintiff would concurrently seek leave to file the Second
16 Amended Complaint, the filing of which is a condition of the Settlement Agreement.

17 To effectuate the class settlement of the Action, Defendant does not oppose the filing of the
18 Second Amended Complaint for settlement purposes only. As part of its order preliminarily
19 approving the settlement, Plaintiff requests that the Court approve his filing of the Second Amended
20 Complaint, and consent that Defendant not be required to file a responsive pleading thereto. Gaines
21 Decl. ¶ 32.

22 V. **CONCLUSION**

23 Based on the foregoing, as part of its preliminary approval of the settlement, the Parties
24 request that the Court:

- 25 1. Review the proposed Stipulation of Settlement setting forth the settlement terms.
- 26 2. Consider whether the proposed settlement preliminarily appears to be fair,
27 reasonable and adequate, and whether the proposed Settlement Class preliminarily appears to meet
28 the applicable certification criteria.

- 1 3. Appoint Plaintiff George Padilla as Class Representative.
- 2 4. Appoint Daniel F. Gaines, Esq. and Alex P. Katofsky of Gaines & Gaines, APLC
- 3 as Class Counsel.
- 4 5. Approve Phoenix Settlement Administrators as Settlement Administrator with
- 5 regard to handling the notice procedure as set forth more particularly in the Stipulation of
- 6 Settlement.
- 7 6. Permit Plaintiff to file his Second Amended Complaint, attached to the Settlement
- 8 Agreement as Exhibit 3, no later than five (5) court days after notice of the entry of the Order
- 9 granting this motion has been given, and consent that Defendant not be required to file a responsive
- 10 pleading thereto.
- 11 7. Enter an Order provisionally approving the proposed Settlement Class on a non-
- 12 mandatory basis, approve forms to be distributed to the Settlement Class, direct notice to be given
- 13 to the Settlement Class, and set the following schedule of settlement proceedings:

<u>EVENT</u>	<u>TIMING</u>
Last day for Defendant to provide to the Settlement Administrator a list of all Class Members, including their last known addresses, telephone numbers, social security numbers, and their dates of employment in a non-exempt position in California during the Class Period ("Settlement Class Information")	10 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail Notice and Exclusion Form to Settlement Class Members	14 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Exclusion Forms from the settlement by Settlement Class Members to be postmarked to Settlement Administrator	45 calendar days after mailing of Class Notice
Last day for written objections to the settlement by Settlement Class Members to be postmarked to Settlement Administrator	45 calendar days after mailing of Class Notice
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

<u>EVENT</u>	<u>TIMING</u>
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 prior to the final settlement approval hearing date
Final settlement approval hearing	_____, 2021, at _____. [approximately 80 calendar days after entry of the Order granting this Motion]

DATED: February 22, 2021

Respectfully submitted,

GAINES & GAINES,
A Professional Law Corporation

By: *Daniel F. Gaines*

DANIEL F. GAINES

ALEX P. KATOFISKY

Attorneys for Plaintiff George Padilla and Proposed Class Counsel