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Attorneys for Plaintiff Nelson Gonzalez
and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, BURBANK COURTHOUSE

NELSON GONZALEZ, on behalf of
himself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

G.A.T. AIRLINE GROUND SUPPORT,
INC., an Alabama corporation, and DOES
1 through 10, inclusive,

Defendants.

CASE NO: 20BBCV00548

*Assigned to the Honorable Frank M. Tavelman,
Dept. A*

CLASS ACTION

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

DATE: June 16, 2023

TIME: 9:00 a.m.

DEPT.: A

Reservation ID: 289626777671

Complaint Filed: September 6, 2020

1 **PLEASE TAKE NOTICE THAT** on June 16, 2023 at 9:00 a.m., or as soon thereafter as
2 the matter may be heard, in Department A of the above-entitled Court, located at 300 East Olive,
3 Burbank, California 91502, Plaintiff Nelson Gonzalez will and hereby does move unopposed for
4 an Order (1) preliminarily finding that the settlement between the parties falls within the range of
5 reasonableness and approving the proposed class action settlement in the above-captioned case, (2)
6 conditionally certifying, for settlement purposes only, a settlement class, (3) approving the
7 appointment of Plaintiff Nelson Gonzalez as the Class Representative, (4) approving the
8 appointment of Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC as Class
9 Counsel, (5) approving the appointment of Phoenix Class Action Administration Solutions as
10 settlement administrator, (6) preliminarily approving the allocation of \$40,000 from the Gross
11 Settlement Amount to settle Plaintiff's representative claims under the Private Attorneys General
12 Act (Lab. Code §§ 2698 et seq., "PAGA"), of which seventy-five percent (75%) will be paid to the
13 Labor and Workforce Development Agency and twenty-five percent (25%) shall be distributed to
14 the Aggrieved Employees on a pro rata basis as their Individual PAGA Payment; (7) approving as
15 to content and form the notice to the settlement class, and directing it be disseminated by the
16 Settlement Administrator; and (8) setting a final fairness and approval 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.

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

1 DATED: May 11, 2023

Respectfully submitted,

2 GAINES & GAINES,
3 A Professional Law Corporation

4
5 By: 

6 DANIEL F. GAINES

ALEX P. KATOFISKY

7 Attorneys for Plaintiff Nelson Gonzalez and Proposed
8 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 (“Settlement”, “Stipulation” or “Stip.”) for the Court’s approval.
5 The Settlement is made and entered into by and between Plaintiff Nelson Gonzalez (“Plaintiff” or
6 “Gonzalez”), individually and on behalf of all others similarly situated, and Defendant G.A.T.
7 Airline Ground Support, Inc. (“Defendant” or “GAT”).

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 \$400,000 to a settlement class of
14 approximately 3,476 Class Members who worked an estimated 154,578 workweeks during the
15 Class Period as of December 5, 2022. As detailed below, the settlement is in the best interests of
16 the class in light of all of the facts and circumstances and the risks and delays of further 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 Nelson Gonzalez as
21 the Class Representative; (d) approve the appointment of Daniel F. Gaines and Alex P. Katofsky
22 of Gaines & Gaines, APLC as Class Counsel; (e) approve appointment of the Settlement
23 Administrator; (f) approve the allocation of \$40,000 from the Gross Settlement Amount to settle
24 Plaintiff’s representative claims under the Private Attorneys General Act (Lab. Code §§ 2698 et
25 seq., “PAGA”) (g) authorize the mailing of the proposed class action notice packet; and (h) schedule
26 a final fairness and approval hearing.

27 \\\

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II. BACKGROUND AND PROCEDURAL HISTORY

A. Statement of Facts

Defendant, GAT Airline Ground Support, Inc., is a ground and cargo handling service provider. GAT employs non-exempt, hourly employees at various airports throughout California whose job duties focus on providing turn-around and overnight services to GAT's airline partners. Generally, those employees work in teams to turn around commercial airplanes between flights, i.e. cleaning and stocking the airplane cabin (above the wing work) and refueling, loading and unloading baggage and cargo, and escorting airplanes in and out of airport gates (below the wing work). The work schedule of those employees is dictated by the flight schedules of the airline partners which they service. Declaration of Daniel F. Gaines ("Gaines Decl.") at ¶ 6.

Plaintiff Nelson Gonzalez worked for Defendant at its Burbank Airport location from September 2009 through February 2020. Plaintiff alleges he and other non-exempt employees were not provided rest periods in compliance with California law. Plaintiff also alleges he was misclassified as an exempt employee, and as a result, was underpaid minimum and overtime wages. Defendants continue to deny all material allegations and deny that any class could be certified. Gaines Decl. at ¶ 7.

B. Procedural History

On June 10, 2020, Plaintiff exhausted the pre-filing requirements of the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Gaines Decl. at ¶ 8.

On or about September 8, 2020, Plaintiff initiated the Action by filing a Complaint as a representative action, pursuant to PAGA, on behalf of himself and all other exempt and non-exempt California employees. Thereafter, on July 28, 2021, Plaintiff filed a First Amended Complaint that added standalone class action allegations in addition to the PAGA Claims. The Action presently asserts class and representative action claims against Defendant for (1) failure to pay all minimum and overtime wages due (Labor Code §§ 510, 1194, and 1194.2) (2) failure to provide rest periods or compensation in lieu thereof (Labor Code § 226.7; IWC Wage Order 9-2001); (3) 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)

violation of Business and Professions Code § 17200; and (6) penalties pursuant to Labor Code § 2699(f) for violations of Labor Code §§ 201, 202, 226(a), 226.7, 510, and 1194 and pursuant to Labor Code § 2699(a) for Violations of Labor Code §§ 226.3 and 558 (the “First Amended Complaint”). Gaines Decl. at ¶ 9.

III. INVESTIGATION AND SETTLEMENT DISCUSSIONS

Since the inception of the Action, the Parties have engaged in formal and informal discovery. Plaintiff served multiple written discovery requests, including Form Interrogatories, Special Interrogatories and Requests for Production of Documents, to which Defendant responded and produced several hundred pages of records. Among other things, Defendant provided Plaintiff with copies of policies applicable to Class Members and Plaintiff’s claims, relevant time and pay data for Plaintiff, and flight schedule information relevant to the rest break schedules of the putative Class Members. Gaines Decl. at ¶ 10.

The Parties engaged in extensive discussions about the respective strengths and weaknesses of their claims and defenses. On March 4, 2022, the Parties participated in a full day mediation session with Tripper Ortman, Esq., a respected mediator with extensive experience resolving employment actions. Although they did not settle at the mediation, on or about November 29, 2022, the Parties were able to agree to the basic terms of this settlement agreement with the assistance of Mr. Ortman. Gaines Decl. at ¶ 11.

Between January 11, 2023, and January 15, 2023, the Parties fully executed a Memorandum of Understanding memorializing the terms of the settlement in writing. Gaines Decl. at ¶ 12. The Parties agreed to settle the claims asserted on behalf of the non-exempt employee subclass only, which includes claims for rest period violations, and derivative penalties. The Parties further agreed to dismiss without prejudice, and not settle the claims asserted on behalf of the exempt employee subclass, which included claims for unpaid minimum and overtime wages based on Plaintiff’s assertion that he and other exempt employees were misclassified. Gaines Decl. at ¶ 13.

The settlement discussions were conducted at arm’s-length. Based on their own independent investigation and evaluation, Class Counsel are of the opinion (and will so represent to the Court) that settlement for the consideration and on the terms set forth in this Settlement

1 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in
2 light of all known facts and circumstances, including the risk of significant delay, the risk the
3 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.
4 Defendant and its counsel also agree (and will so represent to the Court) that this settlement is fair
5 and in the best interests of the Defendant and the Settlement Class. Gaines Decl. at ¶ 14.

6 **IV. LEGAL ANALYSIS**

7 **A. The Proposed Settlement Terms**

8 **1. The Settlement Class**

9 The settlement agreement, signed by all parties and their counsel, is “Exhibit B” to the
10 accompanying Declaration of Daniel Gaines. Gaines Decl., **Exhibit B** (“the Settlement
11 Agreement”). The Parties have agreed to a Settlement Class composed of all individuals who are
12 or previously were employed by Defendant in California who were classified as hourly non-exempt
13 employees during the period November 17, 2017, to December 31, 2022 (“Settlement Class”). Stip.
14 at ¶ 5. The essential terms are as follows:

- 15 • The Parties agree that class certification is appropriate for purposes of settlement. *Id.* at
16 B(10).
- 17 • The Parties will conduct a direct mail notice campaign through an experienced and neutral
18 settlement administrator: Phoenix Class Action Administration Solutions (“Phoenix”). *Id.*
19 at A(7); see also “Exhibit A” to the Settlement Agreement – the Notice. The Settlement
20 Administrator will mail Notice of the Settlement to Class Members using the most current,
21 known mailing addresses identified in a class list supplied by Defendant, as verified or
22 updated by query to the National Change of Address Database. *Id.* at F(2).
- 23 • If the settlement is approved, Defendants will ultimately pay \$400,000.00 into a qualified
24 settlement fund.
- 25 • The settlement fund will cover the following:
 - 26 ○ Administrative Costs, currently anticipated to be \$30,000.00 or less. *Id.* at C(7).
 - 27 ○ Payment of \$40,000.00 in civil penalties under PAGA to be split, pursuant to Labor
28 Code Section 2699, subd. (i), 75% to California’s Labor Workforce Development

- 1 Agency (“LWDA”) and 25% to the class members. *Id.* at A(24).
- 2 ○ Plaintiff’s proposed Enhancement Award not to exceed \$1,500,000. *Id.* at A(6).
- 3 ○ An attorney’s fee award, not to exceed 33.33% of the total settlement, or
- 4 \$133,333.33. *Id.* at A(5).
- 5 ○ Reimbursement of Plaintiff’s litigation costs not to exceed \$25,000.00. *Id.*
- 6 ○ The money to the Class Members, *i.e.* the “Net Settlement Amount,” which is the
- 7 sum available from the total approved settlement amount after accounting for the
- 8 above items. *Id.* at A(20). The individual settlement payments will be paid to Class
- 9 Members pro-rata based on the number of workweeks Class Members worked for
- 10 Defendant during the Class Period. *Id.* at A(17).
- 11 • The class Notice will inform each Class Member of their estimated Individual Settlement
- 12 Payment. *Id.* at F(5). Class Members will then have 45 days to decide to participate in the
- 13 settlement, object to it, or opt out in favor of preserving their own individual claims. *Id.* at
- 14 A(32).
- 15 • Any unclaimed funds, after a certain time period, will be given to an appropriate *cy pres*
- 16 recipient. *Id.* at F(12). At no point does any money revert back to Defendant. *Id.*
- 17 • The Settlement Administrator will provide regular reports updating counsel as to the
- 18 number of exclusions or opt outs. *Id.* at F(2)(b). Upon completion of the administration of
- 19 the settlement, the Administrator will provide a written declaration of compliance under
- 20 oath to certify the completion of its duties to the court and counsel. *Id.*
- 21 • As consideration for the payments outlined above, Defendants will receive a release, from
- 22 all Class Members who do not opt out of claims arising out of the allegations made in the
- 23 operative complaint and agreed to be released in the Settlement Agreement. *Id.* at E(5).

24 Assuming the Court grants Preliminary Approval, the above terms will unfold pursuant to

25 the following proposed schedule: Within 30 days of Preliminary Approval, Defendants will provide

26 the Settlement Administrator with a final list of Class Members along with all necessary worker

27 data, including work weeks; and the Administrator shall send out the required class Notice. Within

28 45 days of the mailing of Notice, Class Members may object or exclude themselves in writing to

1 the Settlement Administrator.

2 After the deadline for objections and opt-outs, the court will conduct a Final
3 Approval/Settlement Fairness hearing up on the parties' noticed motion. Thereafter, and after the
4 settlement becomes effective, Defendants have 15 days to deposit the settlement funds which the
5 Settlement Administrator will then distribute.

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

7 The Parties agree to settle this Action for a Gross Settlement Amount of Four Hundred
8 Thousand Dollars (\$400,000) (the "Gross Settlement Amount"). The Gross Settlement Amount
9 includes the following: all Individual Settlement Payments to "Class Members," defined as all
10 members of the Settlement Class; all awards to Class Counsel for attorneys' fees and litigation costs
11 and expenses, including, without limitation, all such fees and costs incurred to date, as well as such
12 fees and costs to be incurred in documenting the settlement, providing any notices required as part
13 of the settlement, securing Court approval of the settlement, and obtaining judgment in the Action;
14 the Class Representative Enhancement as approved by the Court; the PAGA Payment; and all
15 Settlement Administration Costs, including, without limitation, settlement administration fees and
16 expenses. The Gross Settlement Amount does not include Defendant's share of Employer Taxes.
17 Defendant shall pay Employer Taxes separately from, and in addition to, the Gross Settlement
18 Amount. Stip. at ¶ 15.

19 From the Gross Settlement Amount, Defendant will not oppose Plaintiff's counsel's
20 application to the Court for up to 33-1/3% of the Gross Settlement Amount for attorneys' fees (or
21 \$133,333.33). Stip. at ¶ C(5).

22 From the Gross Settlement Amount, Defendant will not oppose Plaintiff's counsel's
23 application to the Court for up to \$25,000 in reimbursement of litigation costs and expenses. Stip.
24 at ¶ C(6).

25 From the Gross Settlement Amount, Defendant will not oppose Plaintiff's counsel's
26 application to the Court for a Class Representative Enhancement to the Class Representative Nelson
27
28

1 Gonzalez in the gross amount of \$1,500.¹ Stip. at ¶ C(4).

2 From the Gross Settlement Amount, settlement administration fees paid to Phoenix Class
3 Action Administration Solutions will be no more than \$30,000. Stip. at ¶ C(7).

4 From the Gross Settlement Amount, the portion to be allocated for settlement of any and all
5 claims for penalties under the PAGA is \$40,000 (“PAGA Payment”), 75% of which shall be paid
6 to the LWDA and 25% shall be distributed to the Aggrieved Employees on a pro rata basis as their
7 Individual PAGA Payment. Stip. at ¶ C(1).

8 The Net Settlement Amount is the Gross Settlement Amount, less the amounts awarded by
9 the Court for Class Counsel’s attorneys’ fees and litigation costs and expenses; Settlement
10 Administration Costs; the Class Representative Enhancement, and the PAGA Payment. The Net
11 Settlement Amount is the maximum amount that shall be made available to Class Members for
12 distribution, and it includes the Class Members’ portions of payroll taxes. Under no circumstances
13 shall the value of the Net Settlement Amount cause the Gross Settlement Amount in this Agreement
14 to exceed \$400,000. Stip. at ¶ 20.

15 The Individual Settlement Payments to Class Members shall be calculated as follows: The
16 Net Settlement Amount shall be divided among Class Members based on the Class Members’
17 number of Class Workweeks worked during the Class Period. The Settlement Administrator will
18 calculate each Class Member’s pro rata share of the Net Settlement Amount by dividing the total
19 number of Class Workweeks worked by all Class Members during the Class Period into the Net
20 Settlement Amount (i.e., the “Workweek Value”), and then multiplying the Workweek Value by
21 the number of Class Workweeks actually worked by each Class Member during the Class Period.
22 Stip. at ¶ C(3).

23 The Individual PAGA Payment to each Aggrieved Employee shall be determined by
24 dividing the Ten Thousand Dollars and Zero Cents (\$10,000.00) allocated to the Aggrieved
25 Employees by the total number of weeks worked by all Aggrieved Employees during the PAGA
26

27 ¹ Plaintiff has separately negotiated for a separate payment for a general release of all claims
28 relating to his claim that he was improperly misclassified. Gaines Decl. at ¶ 16.

1 Period, resulting in the PAGA workweek value; and then multiplying the PAGA workweek value
2 by the number of weeks worked by each Aggrieved Employee during the PAGA Period. Stip. at ¶
3 C(2).

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

5 Pursuant to PAGA, the Parties have agreed that \$40,000 of the Gross Settlement Amount
6 will be allocated to settle the claims brought under Labor Code § 2699 et seq. Pursuant to Labor
7 Code § 2699(i), “civil penalties recovered by aggrieved employees shall be distributed as follows:
8 75 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved
9 employees.” As such, 75 percent of the apportioned PAGA settlement amount – or \$30,000 – shall
10 be payable to the LWDA. The remaining 25 percent, or \$10,000, shall be distributed to the
11 Aggrieved Employees on a *pro rata* basis as their Individual PAGA Payment. Stip. at ¶ C(1).

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

13 Any settlement of class litigation must be reviewed and approved by the Court. Cal. R. Ct.
14 3.769; Fed. R. Civ. P. 23(e).² This is done in two steps: (1) an early (preliminary) review by the
15 trial court, and (2) a final review after notice has been distributed to the Class Members informing
16 them of the terms of the settlement and allowing them to exclude themselves from, participate in
17 and/or object to the settlement. The Manual for Complex Litigation (Third) § 30.41 states:

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

24 Thus, the preliminary approval by the trial court is simply a conditional finding that the
25 settlement appears to be within the range of acceptable settlements. *See Wershba v. Apple*

26
27 ² 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 *Computer* (2001) 91 Cal.App.4th 224, 234-35. “The strength of the findings made by a judge at a
2 preliminary hearing or conference concerning a tentative settlement proposal may vary. The court
3 may find that the settlement proposal contains some merit, is within the range of reasonableness
4 required for a settlement offer, or is presumptively valid subject only to any objections that may be
5 raised at a final hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26
6 (4th ed. 2002).

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

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

13 *Id.* at § 11.24.

14 Here, the Parties have reached such an agreement and have submitted the Stipulation
15 herewith. *See* Gaines Decl., **Exhibit B**; Gaines Decl. ¶ 15.

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

17 Pursuant to California Rules of Court, Rule 3.769(d), parties also may, at the preliminary
18 approval stage, request that the court provisionally approve certification of the class – conditioned
19 upon final approval of the settlement. “[P]re-certification settlements are routinely approved if
20 found to be fair and reasonable.” *Wershba, supra*, 91 Cal. App. 4th at 240. *Accord Dunk, supra*,
21 48 Cal. App. 4th at 1803 (although the settlement was reached before any “adversary certification,”
22 the court was satisfied that it was “fair, adequate and reasonable.”). *See also In re Baldwin-United*
23 *Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478³ (“many courts have employed this practice in the
24 name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”)

25 The strength of the findings made by a judge at a preliminary hearing
26 or conference concerning a tentative settlement proposal . . . may be
27 set out in conditional orders granting tentative approval to the various
items submitted to the court. Three basic rulings are often
conditionally entered at this preliminary hearing. These conditional

28 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 rulings may approve a temporary settlement class, the proposed
2 settlement, and the class counsel's application for fees and expenses.
3 4 *Newberg on Class Actions*, at § 11.26.

4 As required by Labor Code § 2699(1)(2), concurrent with Plaintiff's submission of the
5 Stipulation to the Court, his counsel is transmitting it, together with this Motion, to the LWDA.
6 Gaines Decl. at ¶ 32.

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

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

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

15 The proposed Settlement Class is ascertainable. The class definition, the size of the Class,
16 and the means for identifying the members of the class determine whether the class is ascertainable.
17 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
18 are identifiable from Defendant's employment and payroll records. Further, the Settlement Class
19 is sufficiently numerous to warrant certification. According to Defendant's records, the Class
20 comprises approximately 3,476 Class Members who worked an estimated 154,578 workweeks
21 during the Class Period as of December 5, 2022. Gaines Decl. ¶ 28.

22 b. **Questions of Law or Fact Common to Members of the Settlement**
23 **Class Predominate**

24 The Class Members' claims all stem from a common source: members of the Settlement
25 Class allege that Defendant violated the same Labor Code provisions in connection with their
26 employment. All members of the Class seek the same relief under the same California laws (related
27 to unpaid rest period premiums, inaccurate or incomplete wage statements, failure to timely pay
28 wages due during employment and upon separation, and derivative claims). Under these

1 circumstances, the commonality requirement is satisfied for purposes of certifying the Settlement
2 Class for settlement purposes. Gaines Decl. ¶ 29.

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 Nelson Gonzalez is a former non-exempt employee who worked for
9 Defendant in the State of California during the Class Period. He contends that Defendant failed to
10 provide rest periods, failed to comply with itemized employee wage statement provisions, and
11 failed to timely pay wages due at the separation of employment, in violation of Labor Code §§ 201,
12 202, 203, 226(a), 226.3, 226.7, 2698, and 2699, among other Labor Code provisions. He has the
13 same claims as those that the members of the Settlement Class would reasonably be expected to
14 bring based on the course of conduct alleged herein. Gaines Decl. ¶ 30.

15 Plaintiff has also demonstrated that he will aggressively and competently assert the interests
16 of the proposed Settlement Class; he has taken an active role in this litigation and has no apparent
17 conflicts with other class members. Gaines Decl. ¶ 31. Furthermore, Plaintiff has retained
18 competent counsel, experienced in litigating class action claims in the employment context. *See*
19 Gaines Decl. ¶¶ 2-5.

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

22 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
23 evidence to the contrary is offered. *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars*
24 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re*
25 *Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962. Courts do not substitute their
26 judgment for that of the proponents, particularly where, as here, settlement has been reached with
27 the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
28 *Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990)

1 752 F. Supp. 1087, 1093; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored*
2 *Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357, 1368; *Sommers v. Abraham Lincoln*
3 *Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.

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

14 Here, the Parties’ counsel have a great deal of experience in class action litigation and
15 specialize in employment wage and hour matters. Moreover, counsel for both Parties conducted
16 an extensive investigation of the factual allegations involved in this case. The Parties have engaged
17 in a broad exchange of documents, data, records and other information. Each side has apprised the
18 other, informally and at a formal mediation, of their respective factual contentions, legal theories
19 and defenses, resulting in extensive arm’s-length negotiations taking place among the Parties. *See*
20 *Gaines Decl.* ¶¶ 2-5, 10-15.

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

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

1 of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys.”
2 *Kullar, supra*, 168 Cal.App.4th at 133.

3 Plaintiff’s counsel created a comprehensive damage analysis using sampling information
4 obtained through informal discovery. This damage analysis reveals that the negotiated settlement
5 falls within a realistic range of recovery on Class Members’ claims. Gaines Decl. ¶ 17.

6 Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members premium wages
7 for missed, denied and unauthorized rest periods in violation of Labor Code § 226.7 and IWC Wage
8 Order 9-2001. Specifically, Plaintiff alleges Plaintiff and other Class Members were denied, and
9 therefore unable to take, 10-minute on-the-clock rest periods for every four hours of work or major
10 fraction thereof, but were not paid premium wages of one hour’s pay for each missed, denied and
11 unauthorized rest period, and when they were able to take a rest period, Defendant’s practice was
12 to impermissibly suggest that they remain on the company premises. Defendant also concedes that
13 it did not maintain written rest period policy acknowledgments from Class Members for the entire
14 duration of the putative Class Period. The lack of a legally compliant written rest period policy
15 violates our Supreme Court’s ruling in *Brinker Restaurant Corp. v. Superior Court* (2012) 53
16 Cal.4th 1028-1029, 1033 (holding that an employer’s rest break policy violates the applicable IWC
17 Wage Order if it does not state the full requirements for rest periods as set forth in the applicable
18 IWC Wage Order.) *See also Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th
19 220 at 724–25 (holding that the employer “violated wage and hour requirements by failing to adopt
20 a policy authorizing and permitting its [employees] to take meal or rest break periods”). Defendant
21 here similarly had no written rest period policy in effect for portions of the putative Class Period.
22 Therefore, Plaintiff contends that Defendant has violated IWC Wage Order 9-2001, subdivision
23 12(A). Plaintiff also contends Defendant’s rest period practice violates the Supreme Court’s
24 mandate in *Augustus v. ABM Security Services, Inc.* (2016) 5 Cal. 5th 257, 269 (holding that the
25 rest period requirement “obligates employers to permit and authorizes employees to take off-duty
26 rest periods. That is, during rest periods employers must relieve employees of all duties and
27 relinquish control over how employees spend their time.” An employer may not place any
28 limitations on where employees may go or not go during their rest periods). (Emphasis added).

1 These restrictions and requirements contravene California law with respect to rest periods. *See also*
2 Department of Industrial Relations website (www.dir.ca.gov/dlse/faq_restperiods.htm) (Question:
3 “Can my employer require that I stay on the work premises during my rest period? No, your
4 employer cannot impose any restraints not inherent in the rest period requirement itself.) Plaintiff
5 further contends that Defendant did not maintain a set schedule for employees to take their rest
6 periods. Instead, employees took their rest periods around flight schedules. However, flight
7 schedules dictated when an employee could take a break, and if the flights were late, then Class
8 Members were not always able to take their rest periods. Due to the busy nature of the job and
9 changing flight schedules, Plaintiff contends employees would often not receive their rest periods,
10 and when they were able to take a rest period, Class Members were explicitly told that they should
11 not leave their work premises during their rest periods, thus resulting in an on-duty rest period.
12 Plaintiff contends that his manager explicitly told him to stay on the company premises because his
13 rest period was “only a 10 minute break.” Plaintiff contends that Plaintiff and other Class Members
14 knew that leaving the premises on their rest periods was not allowed upon by management. In
15 addition, Plaintiff was simply too busy to take all his entitled rest periods due to his busy workday.
16 Plaintiff asserts for each workday on which Plaintiff and Class Members were denied a rest period
17 and/or were restricted from leaving the premises during their rest period, they must be paid a one-
18 hour premium as additional wages beyond earnings for actual hours worked. See, Wage Order No.
19 5 subdivision 12(a). Defendant never paid such premiums. Plaintiff calculates the damage liability
20 for this claim at \$22,061,926 and PAGA civil penalty liability for this claim at \$5,000,400. Gaines
21 Decl. ¶ 18.

22 Plaintiff further contends that Defendant failed to issue Plaintiff and Class Members
23 accurately itemized wage statements. Specifically, Plaintiff and Class Members were not paid all
24 rest period premium wages due, as detailed above. As a result, the wage statements issued by
25 Defendant to Plaintiff and Class Members fail to accurately state all gross wages earned, in
26 violation of Labor Code § 226(a)(1), and net wages earned, in violation of Labor Code § 226(a)(5).
27 This is a derivative claim. Plaintiff calculates the statutory penalty liability for this claim at
28 \$4,476,400 and PAGA civil penalty liability for this claim at \$12,501,000. Gaines Decl. ¶ 19.

1 Plaintiff also argues that Defendant failed to pay Plaintiff and all Class Members all wages
2 due upon separation of employment, in violation of Labor Code §§ 201-203. As Defendant failed
3 to pay them all wages due during the course of their employment, as described above, these wages
4 were due and owing upon separation of employment yet went unpaid. This is a derivative claim.
5 Gaines Decl. ¶ 20.

6 The discount negotiated for settlement here is a reasonable compromise, particularly
7 considering that the risk of obtaining class certification on all or any of Plaintiff's claims involves
8 a 50% or higher hurdle, especially with respect to the rest period claims, to which Defendant
9 maintains strong arguments to defeat class certification (in addition to multiple defenses on the
10 merits of the claims). Class certification is a substantial risk in any class action case. Here, while
11 Plaintiff maintains that the requirements of class certification are met, Defendant proffers various
12 arguments why class treatment is not appropriate, including but not limited to that individualized
13 inquires among class members predominate over common ones. If Defendant was to defeat
14 Plaintiff's class certification motion, there would be no class wide relief whatsoever, and most class
15 members would likely not file individual claims. Gaines Decl. ¶ 21. Defendant also contends the
16 Class Members had sufficient time to take their rest periods, and regularly did, and the gaps between
17 flights reflected on the flight schedules are proof of that fact. Gaines Decl. ¶ 22.

18 Plaintiff also faced the risk of a loss on the merits on his claims. It is very possible that the
19 Court would agree with Defendant's position that its policies and practices complied with the
20 requirements of California law or could not be certified. In such a case, the value of the majority
21 of Plaintiff's claims would be zero. Gaines Decl. ¶ 23.

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

26 Defendant strongly contends that its policies and practices do not violate any laws.
27 Defendant asserts its rest period policies were adequate and in compliance with California law. It
28 contends that it properly provided for all rest periods and fully compensated its employees for all

1 time worked. It further contends that the wage statements it provides to its employees are fully
2 compliant with California law. Gaines Decl. ¶ 25.

3 When the costs and risks of non-certification and loss on the merits are considered,
4 Plaintiff's counsel is of the opinion that the settlement reached is clearly a favorable one. Gaines
5 Decl. ¶¶ 15-26.

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

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

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

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

19 **V. CONCLUSION**

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

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

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

25 3. Appointing Plaintiff Nelson Gonzalez as the Class Representative;

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

1 5. Approving Phoenix Class Action Administration Solutions as Settlement
2 Administrator;

3 6. Preliminarily approving the allocation of \$40,000 from the Gross Settlement
4 Amount to settle Plaintiff's representative claims under the PAGA, of which seventy-five percent
5 (75%) shall be paid to the Labor and Workforce Development Agency and twenty-five percent
6 (25%) shall be distributed to the Aggrieved Employees on a pro rata basis as their Individual PAGA
7 Payment;

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

10 8. Setting the following schedule of settlement proceedings:

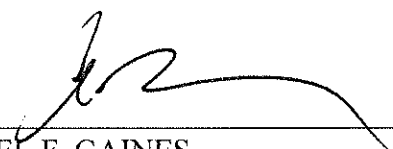
<u>EVENT</u>	<u>TIMING</u>
Last day for Defendant shall provide to the Settlement Administrator a list of all Class Members, including: the names, last known addresses, telephone numbers, social security numbers; each Class Member's dates of employment in California during the Class Period; and such other information that the Settlement Administrator requires to identify Class Members ("Class Data")	30 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 Class Members	7 calendar days after Settlement Administrator's receipt of Class Data
Last day for Class Members to submit a written Exclusion Form to the Settlement Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members
Last day for Class Members to submit a written objection to the Settlement Administrator	45 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

<u>EVENT</u>	<u>TIMING</u>
Final settlement approval hearing	_____, 2023, at _____.m. (approximately 105 days after entry of this Order)

DATED: May 11, 2023

Respectfully submitted,

GAINES & GAINES,
A Professional Law Corporation

By: 

DANIEL F. GAINES

ALEX P. KATOFISKY

Attorneys for Plaintiff Nelson Gonzalez and Proposed
Class Counsel