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Cori Bratby-Rudd and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

KELSEY JONES, ZOE MUNOZ, CORI
BRATSBY-RUDD, on behalf of themselves
and all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

PEACE OVER VIOLENCE, a California
domestic nonprofit, PATRICIA O.
GIGGANS, an individual, and DOES 1
through 10, inclusive,

Defendants.

CASE NO: 20STCV39038

*Assigned to the Hon. Yvette M. Palazuelos, Dept.
SSC-9*

CLASS ACTION

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

DATE: June 14, 2022

TIME: 10:00 a.m.

DEPT.: SSC-9

Action Filed: October 13, 2020

1 **PLEASE TAKE NOTICE THAT** on June 14, 2022 at 10:00 a.m., or as soon thereafter as
2 the matter may be heard, in Department SSC-9 of the above-entitled Court, located at 312 N. Spring
3 Street, Los Angeles, California 90012, Plaintiffs Kelsey Jones, Zoe Munoz, and Cori Bratby-Rudd
4 will and hereby do move unopposed for an Order (1) preliminarily approving the proposed class
5 action settlement in the above-captioned case, (2) provisionally certifying the settlement class, (3)
6 provisionally approving the appointment of Plaintiffs Kelsey Jones, Zoe Munoz, and Cori Bratby-
7 Rudd as Class Representatives, (4) provisionally approving the appointment of Daniel F. Gaines,
8 Esq. and Alex P. Katofsky, Esq. of Gaines & Gaines, APLC and Joseph Tojarieh, Esq. of
9 Stonebrook Law as Class Counsel, (5) provisionally approving the appointment of Simpluris, Inc.
10 as settlement administrator, (6) approving and directing distribution of notice to the settlement
11 class, and (7) setting a final fairness and approval hearing.

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

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

19 This Motion will be based on the Memorandum of Points and Authorities set forth herein,
20 the Joint Stipulation of Class Action and Representative Action Settlement, the Declarations of
21 Daniel F. Gaines, Kelsey Jones, Zoe Munoz, and Cori Bratby-Rudd, such evidence or oral argument
22 as may be presented at the hearing, and on the complete record and file herein.

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1 DATED: March 21, 2022

GAINES & GAINES,
A Professional Law Corporation

2
3
4 By: Alex P. Katofsky
5 DANIEL F. GAINES
6 ALEX P. KATOFISKY
7 Attorneys for Plaintiffs Kelsey Jones, Zoe Munoz,
8 and Cori Bratby-Rudd and Proposed Class Counsel
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 **A. Case Summary and Procedural History**

4 Plaintiffs Kelsey Jones (“Jones”), Zoe Munoz (“Munoz”), and Cori Bratby-Rudd (“Bratby-
5 Rudd”) (together, “Plaintiffs”) and Defendants Peace Over Violence (“POV”) and Patricia O.
6 Giggans (“Giggans”) (together, “Defendants”) (collectively, the “Parties”) have reached a
7 resolution of this class action and hereby submit their settlement agreement to the Court for its
8 preliminary approval.

9 Plaintiffs filed a putative wage-and-hour class action complaint against Defendants on
10 October 13, 2020 also alleging claims pursuant to PAGA. Plaintiffs allege that during the Class
11 Period, with respect to Plaintiffs and the Settlement Class Members, Defendant POV failed to pay
12 all of the Settlement Class Members’ overtime wages and minimum wages for all hours worked
13 and/or recorded. Plaintiffs further allege that Defendant POV failed to provide compliant meal and
14 rest periods and associated premium payments; failed to issue compliant and accurate itemized
15 wage statements; failed to timely pay all wages due and owing at the time of termination or
16 resignation; failed to provide reimbursements for necessary work-related expenses; and engaged in
17 unfair competition based on the alleged Labor Code violations. Declaration of Daniel F. Gaines
18 (“Gaines Decl.”) at ¶ 6.

19 On July 24, 2020, Plaintiffs filed with the LWDA and served on Defendants a notice under
20 Labor Code section 2699.3 (“the PAGA Notice”) stating they intended to serve as a proxy of the
21 LWDA to recover civil penalties for aggrieved employees. The PAGA Notice and an Amended
22 PAGA Notice included violations of law originally pled in the Class Action, plus a request for
23 penalties for failure to comply with Labor Code section 2810.5. On October 13, 2020, after 65
24 days had passed without any communication from the LWDA, Plaintiffs filed their complaint with
25 a PAGA claim on behalf of themselves and aggrieved employees in the PAGA Period as a proxy
26 of the LWDA to recover civil penalties for the Labor Code violations set out in the PAGA Notice.
27 Gaines Decl. at ¶ 7.

1 **B. Investigation and Settlement Discussions**

2 Recognizing that this was a resolvable case and also understanding that Defendants were
3 suffering substantial financial limitations in defending and resolving a class and PAGA action, the
4 Parties agreed to exchange informal discovery in which Plaintiffs were provided with, among other
5 things: (1) class data points to permit pertinent calculation of workweeks, pay periods, number of
6 shifts, and employee numbers within the Class Period and PAGA Period; (2) sufficient information
7 to determine the average hourly rate for Settlement Class Members working during the Class Period
8 and PAGA Period; (3) written policies, including employee handbooks in place during the Class
9 Period and PAGA Period; (4) a sampling of time and payroll records from the Class Period and
10 PAGA Period; and (5) Plaintiffs' personnel files, time records, pay stubs, and other documents
11 pertaining to Plaintiffs. Gaines Decl. at ¶ 8.

12 After preparing damage analyses and assessing the claims of Plaintiffs, the Class Members,
13 and the Aggrieved Employees, the Parties participated in a full-day mediation before mediator
14 Henry Bongiovi, Esq., a well-regarded mediator experienced in mediating complex labor and
15 employment matters. The matter did not settle on the day of the mediation. However, with the aid
16 of the mediator's evaluation, and continued settlement discussions, the Parties eventually reached
17 the Settlement to resolve the Action. Gaines Decl. at ¶ 9.

18 The Parties thereafter jointly prepared the Joint Stipulation of Class Action and
19 Representative Action Settlement ("Settlement"). Gaines Decl. at ¶ 10; Exhibit B.

20 Class Counsel has conducted significant investigation of the law and facts relating to the
21 claims asserted in the Action, together with the review of Defendants' finances, and has concluded
22 that that the Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the
23 Settlement Class, taking into account the nonprofit status of the Defendant POV, the expense and
24 time necessary to litigate the Actions through trial and any appeals, the risks and costs of further
25 litigation of the Actions, the risk of an adverse outcome, the uncertainties of complex litigation, the
26 information learned through informal discovery regarding Plaintiffs' allegations, and the
27 substantial benefits to be received by the Settlement Class Members. Gaines Decl. at ¶ 11.

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1 Defendants have concluded that, because of the substantial expense of defending against
2 the Action, the length of time necessary to resolve the issues presented herein, the inconvenience
3 involved, and the concomitant disruption to their business operations, it is in their best interest to
4 accept the terms of this Agreement. Defendants deny each of the allegations and claims asserted
5 against it in the Action, the PAGA Notice and the Amended PAGA Notice. However, Defendants
6 nevertheless desire to settle the Action for the purpose of avoiding the burden, expense and
7 uncertainty of continuing litigation and for the purpose of putting to rest the controversies
8 engendered by the Action. Gaines Decl. at ¶ 12.

9 Discussions between counsel for the Parties, informal discovery, as well as the investigation
10 and evaluation of the claims of Plaintiffs by the Parties, have permitted each side to assess the
11 relative merits of the claims and the defenses to those claims. The Parties agree that the above-
12 described investigation and evaluation, as well as the information exchanged during settlement
13 negotiations and mediation, are more than sufficient to assess the merits of the respective Parties'
14 positions and to compromise the issues on a fair and equitable basis. Gaines Decl. at ¶ 13.

15 Based on its own independent investigations and evaluations, Class Counsel are of the
16 opinion that the consideration and terms of the Settlement as set forth below, considering the
17 representative and class claims, and the risk of loss, is fair, reasonable, and adequate in light of all
18 known facts and circumstances, and is in the best interests of the Class. Class Counsel are also of
19 the opinion that the total consideration and payment set forth in this Settlement is adequate in light
20 of the uncertainties surrounding the risk of further litigation, and the possible defenses and offset
21 claims that Defendants have asserted and could assert. Gaines Decl. at ¶ 14.

22 For the foregoing reasons, the Parties respectfully request that the Court: (a) grant
23 preliminary approval of the settlement agreement, (b) conditionally grant certification of the
24 proposed settlement class, (c) provisionally approve the appointment of Plaintiffs Kelsey Jones,
25 Zoe Munoz, and Cori Bratby-Rudd as Class Representatives, (d) provisionally approve the
26 appointment of Daniel F. Gaines, Esq. and Alex P. Katofsky, Esq. of Gaines & Gaines, APLC and
27 Joseph Tojarieh, Esq. of Stonebrook Law as Class Counsel, (e) approve appointment of the
28 settlement administrator, (f) authorize the mailing of the proposed class action notice packet; and

(g) schedule a final fairness and approval hearing.

II. LEGAL ANALYSIS

A. The Proposed Settlement Terms

The Parties have agreed upon a settlement class: all current and former non-exempt, hourly paid employees who worked in California for Defendant POV at any time during the Class Period [October 13, 2016 through December 31, 2021]. Defendants represent that there are approximately 72 Class Members during the Class Period who worked an approximate aggregate of 5,265 Pay Periods during the Class Period. Settlement at ¶ 16.

The Parties stipulate to the conditional certification of the Settlement Class for settlement purposes only. Settlement at ¶ 4.

The Settlement Agreement provides that Defendants shall pay the total, non-reversionary fund in the sum of \$135,000, from which all payments for the Individual Settlement Payments to Participating Class Members and the Court-approved amounts for attorneys' fees and reimbursement of litigation costs and expenses to Class Counsel, Settlement Administration Costs, Service Awards, and the Labor Code Private Attorneys' General Act, codified at Labor Code Section 2698, *et seq.* ("PAGA") payment, shall be paid. It expressly excludes Employer Taxes, which shall be paid by Defendants separate and apart from the Gross Settlement Amount (the "Gross Settlement Amount"). Settlement at ¶ 1(I).

Class Members need not submit a claim form to receive their share of the Settlement. Class Members who timely exclude themselves from the Settlement will not be part of the final Settlement Class and not bound by the releases herein. Settlement at ¶ 1(L).

The Settlement Agreement further provides that Plaintiffs' counsel may request an award of attorneys' fees not to exceed \$45,000 (i.e., one-third of the Gross Settlement Amount) and seek reimbursement of litigation costs necessarily incurred in pursuing this Action, not to exceed \$10,000. Settlement at ¶ 10. It also provides that Plaintiffs will seek, and Defendants will not oppose, a service payment to each named Plaintiff Kelsey Jones, Zoe Munoz, and Cori Bratby-Rudd in the amount of \$5,000 (for a total of \$15,000). Settlement at ¶ 11.

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1 In addition, each of the Plaintiffs have entered into a full and complete general release in
2 favor of the Defendants and their related parties, for which the Parties have agreed that they will
3 each be paid an additional \$5,000, in addition to any service payment they are awarded. Their
4 general release payment relates to claims not otherwise resolved through the class action settlement,
5 including allegations relating to periods of time they worked for Defendant POV as unpaid
6 volunteers prior to their employment. Gaines Decl. at ¶ 15.

7 The Parties have agreed that Simpluris, Inc. (“Simpluris”), an experienced and competent
8 settlement administration company, will administer the settlement. Simpluris’ credentials are
9 attached as Exhibit C to the Gaines Declaration. Up to \$4,000 has been allocated to compensate
10 Simpluris, Inc. for its work related to the administration.

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

12 Pursuant to PAGA, the Parties have agreed that \$10,000 of the Gross Settlement Amount
13 will be allocated to settle the claims brought under Labor Code § 2699 *et. seq.* Pursuant to Labor
14 Code § 2699(i), “civil penalties recovered by aggrieved employees shall be distributed as follows:
15 75 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved
16 employees.” As such, 75 percent of the apportioned PAGA settlement amount – or \$7,500 – shall
17 be payable to the Labor and Workforce Development Agency. The remaining 25 percent, or
18 \$2,500, will remain a part of the Net Settlement Amount to be distributed to Participating Class
19 Members on a *pro rata* basis, based upon their respective Pay Periods during the PAGA Period.
20 Settlement at ¶ 13.

21 As required by Labor Code § 2699(l)(2), concurrent with Plaintiffs’ submission of the
22 Settlement Agreement to the Court, they are transmitting it, together with this Motion, to the
23 LWDA. Gaines Decl. at ¶ ____.

24 **C. Two-Step Approval Process**

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

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

16 Thus, the preliminary approval by the trial court is simply a conditional finding that the
17 settlement appears to be within the range of acceptable settlements. *See Wershba v. Apple*
18 *Computer* (2001) 91 Cal.App.4th 224, 234-35. “The strength of the findings made by a judge at a
19 preliminary hearing or conference concerning a tentative settlement proposal may vary. The court
20 may find that the settlement proposal contains some merit, is within the range of reasonableness
21 required for a settlement offer, or is presumptively valid subject only to any objections that may be
22 raised at a final hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26
23 (4th ed. 2002).

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

26 When the parties to an action reach a monetary settlement, they will
27 usually prepare and execute a joint stipulation of settlement, which
28 is submitted to the court for preliminary approval. The stipulation
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.

Id. at § 11.24.

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¹ 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) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore, Plaintiffs cite Federal Rule 23 and federal case law in addition to California law.

1 Here, the Parties have reached such an agreement and have submitted the Settlement
2 Agreement herewith which fully sets forth all terms of the agreement reached among the Parties.
3 See Gaines Decl., Exhibit B; Gaines Decl. ¶ 10.

4 **D. Procedures for Settlement Before Class Certification.**

5 Pursuant to California Rules of Court, Rule 3.769(d), parties also may, at the preliminary
6 approval stage, request that the court provisionally approve certification of the class – conditioned
7 upon final approval of the settlement. “[P]re-certification settlements are routinely approved if
8 found to be fair and reasonable.” *Wershba, supra*, 91 Cal. App. 4th at 240. *Accord Dunk, supra*,
9 48 Cal. App. 4th at 1803 (although the settlement was reached before any “adversary certification,”
10 the court was satisfied that it was “fair, adequate and reasonable.”). See also *In re Baldwin-United*
11 *Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478² (“many courts have employed this practice in the
12 name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”)

13 The strength of the findings made by a judge at a preliminary hearing
14 or conference concerning a tentative settlement proposal . . . may be
15 set out in conditional orders granting tentative approval to the various
16 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.

17 4 *Newberg on Class Actions*, at §11.26.

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

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

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

26 The proposed settlement class is ascertainable. The class definition, the size of the class

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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 and the means for identifying the members of the class determine whether the class is ascertainable.
2 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
3 are identifiable from Defendant POV's records. Further, the settlement class is sufficiently
4 numerous to warrant certification. According to Defendant POV's records, the Class is comprised
5 of approximately 72 individuals. Gaines Decl. ¶ 35.

6 b. **Questions of Law or Fact Common to Members of the Settlement**
7 **Class Predominate**

8 The Class Members' claims all stem from a common source: all Class Members allege that
9 Defendants violated the same Labor Code and Wage Order provisions in connection with their
10 work for Defendant POV. The same Labor Code and Wage Order violations are alleged on behalf
11 of all persons encompassed in the settlement class, including: (a) all claims for failure to pay
12 overtime wages; (b) all claims for failure to pay minimum wages; (c) all claims for failure to provide
13 compliant meal and rest periods and associated premium pay; (d) all claims for the failure to timely
14 pay wages earned; (e) all claims for the failure to timely pay wages upon termination; (f) all claims
15 for failure to keep adequate or accurate time records; (g) all claims for failure to indemnify
16 employees for costs incurred in furtherance of their work duties; (h) all claims for non-compliant
17 wage statements; and (i) all claims asserted through California Business & Professions Code §
18 17200 *et seq.* arising out of the Labor Code violations referenced in the Complaint. All members
19 of the Settlement Class seek the same legal remedies under the same state laws, all related to their
20 employment under uniform policies and practices. Under these circumstances, the commonality
21 requirement is satisfied for purposes of certifying the settlement class for settlement. Gaines Decl.
22 ¶ 36.

23 c. **The Proposed Class Representatives' Claims are Typical of the**
24 **Class Members' Claims**

25 A class representative's claims are typical when they arise from the same event or course
26 of conduct that gives rise to the claims of the class, and are based on the same legal theory.
27 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, the named Plaintiffs and
28 proposed Class Representatives Kelsey Jones, Zoe Munoz, and Cori Bratby-Rudd are former non-

1 exempt employees of Defendants POV whom, Plaintiffs allege, were not paid all wages due; were
2 not provided with proper uninterrupted (off-the-clock and free of all duties) 30-minute meal periods
3 for every shift they worked which exceeded five hours in duration; were not provided with 10-
4 minute rest breaks as required by California law; were not provided with compliant itemized
5 employee wage statements; and were not paid all wages due at termination. Plaintiffs allege the
6 same claims as those that the members of the Settlement Class would reasonably be expected to
7 bring based on the course of conduct alleged herein. Gaines Decl. ¶ 37.

8 Plaintiffs have also demonstrated that they will aggressively and competently assert the
9 interests of the proposed Settlement Class; they have taken active roles in this litigation and have
10 no apparent conflicts with other class members. Plaintiffs participated actively in the litigation,
11 including some of their participation in a full day mediation. Gaines Decl. ¶ 38. Furthermore,
12 Plaintiffs have retained competent counsel, experienced in litigating class action claims in the
13 employment context. See Gaines Decl. ¶¶ 2-5.

14 **E. The Settlement Is Fair and Reasonable and Not the Result of Fraud or**
15 **Collusion**

16 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
17 evidence to the contrary is offered. *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars*
18 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re*
19 *Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962. Courts do not substitute their
20 judgment for that of the proponents, particularly where, as here, settlement has been reached with
21 the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
22 *Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990)
23 752 F. Supp. 1087, 1093; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored*
24 *Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357, 1368; *Sommers v. Abraham Lincoln*
25 *Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.

26 While the recommendations of counsel proposing the settlement are not conclusive, the
27 Court can properly take them into account, particularly where, as here, such counsel have been
28 involved in informal discovery and negotiations for some period of time, appear to be competent,

1 have experience with this type of litigation, and have exchanged substantial evidence with the
2 opposing party. *See Newberg on Class Actions, supra*, § 11.47; *In re Paine Webber Ltd. P'ships*
3 *Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 (“[s]o long as the integrity of the arm’s-length
4 negotiation process is preserved, however, a strong initial presumption of fairness attaches to the
5 proposed settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of
6 counsel, who are most closely acquainted with the facts of the underlying litigation”); *see* Gaines
7 Decl. ¶¶ 2-5, ___-___.

8 Here, the Parties’ counsel have a great deal of experience in class action litigation and
9 specialize in employment wage and hour matters. Moreover, counsel for both Parties conducted
10 an extensive investigation of the factual allegations involved in this case. The Parties have engaged
11 in a broad exchange of documents, statistics, records and other information. Each side has apprised
12 the other, informally and at a formal mediation, of their respective factual contentions, legal
13 theories and defenses, resulting in extensive arms-length negotiations taking place among the
14 Parties. *See* Gaines Decl. ¶ 2-5, 8-15.

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

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

25 Firstly, Plaintiffs allege that Defendant Giggans is properly named Defendant and should
26 be held personally liable for the violations alleged under Labor Code § 558.1 as she is an owner,
27 director, officer, and/or managing agent of the Defendant Peace Over Violence, who violated, or
28 caused violations of, California wage and hour laws. Labor Code § 558.1 imputes liability onto the

1 owner of the employer for certain Labor Code violations. Plaintiffs contend that Defendant
2 Giggans is an owner of the employer, POV, and personally involved in the alleged violations or
3 has sufficient participation in the activities of the employer such that the Ms. Giggans may be
4 deemed to have contributed to the violation, and, therefore, equally liable as Defendant. *See Usher*
5 *v. White* (2021) 64 Cal.App.5th 883, reh'g denied (June 10, 2021) (to be held personally liable as
6 an “other person acting on behalf of an employer” for certain wage-and-hour violations, an owner
7 of the employer must have been personally involved in the purported violation or had sufficient
8 participation in the activities of the employer such that the owner may be deemed to have
9 contributed to the violation.). *See also Martinez v. Combs* (2010) 49 Cal.4th 35, as modified (June
10 9, 2010) (to be liable for labor violations, a defendant must be an employer.)

11 Prior to settlement, Plaintiffs’ counsel created a comprehensive damage analysis using
12 sampling information obtained through informal discovery. This damage analysis reveals that the
13 negotiated settlement falls within a realistic range of recovery on class members’ claims. Gaines
14 Decl. ¶ 18.

15 Plaintiffs contend that Defendants failed to compensate Plaintiffs and Class Members who
16 were required to work on-call for Defendant POV with all minimum wages and overtime wages, in
17 violation of Labor Code §§ 510, 558, 1194, 1194.2, and 1197. Whether on-call time is considered
18 compensable must be determined by looking at the restrictions placed on the employee. A variety
19 of factors are considered in deterring whether the employer-imposed restrictions turn the on-call
20 time into compensable “hours worked.” These factors include whether there are excessive
21 geographic restrictions on the employee’s movements; whether the frequency of calls is unduly
22 restrictive; whether a fixed time limit for response is unduly restrictive; whether the on-call
23 employee can easily trade his or her on-call responsibilities with another employee; and whether
24 and to what extent the employee engages in personal activities during on-call periods. *See Berry v.*
25 *County of Sonoma* (1994) 30 F.3d 1174. Plaintiffs and Class Members contend that they were
26 required to be on-call a few days out of each workweek for up to 24 hours a day. They allege that
27 they were not permitted to be too far from the job site or engaging in activities that would restrict
28 them from working their on-call shift. Although Plaintiffs and Class Members contend that they

1 were subject to the control of the Defendants during each on-call shift, they were not compensated
2 for their time, in violation of Labor Code §§ 510, 558, 1194, 1194.2, and 1197. Relatedly, and as
3 a result of Defendant POV's on-call policy, Defendants allegedly failed to provide Plaintiffs and
4 Class Members with one day's rest in seven and caused them to work more than six days in seven,
5 in violation of Labor Code §§ 551 and 552. Gaines Decl. ¶ 19.

6 Plaintiff further allege that Defendants failed to pay Plaintiffs and Class Members for all
7 overtime hours worked, in violation of Labor Code §§ 510, 558, and 1194. Plaintiffs and Class
8 Members would allegedly work some overtime hours (over than 8 hours in a workday and over 40
9 hours in a workweek), but were not paid at one and one-half times their regular rate of pay, in
10 violation of Labor Code §§ 510, 558, and 1194. When Plaintiffs and Class Members worked these
11 overtime hours, Defendants would sometimes require them to roll-over this time to the next office
12 day or next pay period and would only pay them at their base hourly rate for all hours worked.
13 Gaines Decl. ¶ 20.

14 The maximum value of the unpaid wage claims alleged is estimated at \$1,350,000 if
15 Plaintiffs prevail on all their theories of recovery on a classwide basis. Of course, there are
16 substantial hurdles to any recovery here. Defendants contend they properly paid all wages due,
17 including all overtime wages, and that there is no on-call work required to be compensated
18 (employees were not sufficiently restricted while on call). They contend that the issues raised by
19 Plaintiffs are highly individualized and not suitable for class treatment. They contend they have no
20 money to pay a substantial settlement, even if they were liable for the claims. The compromise
21 reached is fair and proportionately to the risk of continued litigation. Gaines Decl. ¶ 21.

22 Plaintiffs also contend that Defendants failed to pay Plaintiffs and Class Members premium
23 wages for each missed, denied and unauthorized 30-minute meal period for every five hours of
24 work and each second missed, denied and unauthorized 30-minute meal period for every ten hours
25 of work. An employer must pay an employee one hour of pay at the employee's regular rate of
26 compensation for each workday that a meal period is not properly provided. Defendants allegedly
27 failed to do so and therefore have violated Labor Code §§ 226.7 and 512. What's more, Plaintiffs
28 allege that Defendant POV maintains no records showing the start and stop time for meal periods

1 such that it is impossible to determine the depth of the violations alleged. Defendants also failed
2 to pay any meal period premiums during the Class Period. Furthermore, according to a California
3 Supreme Court opinion just issued on July 15, 2021, Plaintiffs and Class Members are entitled to a
4 heightened meal period premium for any period when bonuses or other non-base hourly wages
5 were earned (which was frequent) because those bonus and non-base hourly wages must be
6 incorporated into the regular rate of pay for purposes of calculating the meal period premium rate.
7 *See Ferra, et al., v. Loews Hollywood Hotel, LLC* (Cal., July 15, 2021, No. S259172) 2021 WL
8 2965438. Gaines Decl. ¶ 22.

9 Defendants maintain that they provided all required meal breaks. They contend that
10 employees were always authorized to take their meal breaks as required by California law. While
11 the value of this claim approximately \$694,000 according to Plaintiffs' expert's analysis, the risks
12 of maintaining this claim on a class basis through trial, prevailing on it, and collecting on any
13 judgment were massive. The settlement's compromise, while substantial, is justified in light of
14 these risks. Gaines Decl. ¶ 23.

15 Plaintiffs also allege that Defendants failed to separately compensate Plaintiffs and Class
16 Members for missed, denied and unauthorized 10-minute rest periods for every four hours of work
17 or major fraction thereof. An employer must pay an employee one hour of pay at the employee's
18 regular rate of compensation for each workday that a rest period is not properly provided.
19 Defendants failed to do so and therefore have violated Labor Code § 226.7. Moreover, as with
20 meal periods, Plaintiffs and Class Members are entitled to a heightened rest period premium for
21 any period when bonuses or other non-base hourly wages were earned because those bonus and
22 non-base hourly wages must be incorporated into the regular rate of pay for purposes of calculating
23 the rest period premium rate. *See Ferra supra*, 2021 WL 2965438. Gaines Decl. ¶ 24.

24 Defendants maintain that they authorized all employees to take rest breaks at the proper
25 intervals as required by California law. Even if Plaintiffs could prove a 50% violation rate – an
26 uncertainty which will be determined by representative employee testimony – the value of this
27 claim exceeds \$578,000. This would have been a difficult claim to certify if Defendants opposed
28 class certification, and the risk on prevailing on this claim was lower than the meal break claim

1 because it will be tied to employee testimony rather than documentary evidence (i.e. time records).
2 The risks of maintaining this claim on a class basis through trial, prevailing on it, and collecting on
3 any judgment were substantial. The settlement's compromise is justified in light of these risks.
4 Gaines Decl. ¶ 25.

5 Plaintiffs assert a claim under Labor Code § 2802 related to unreimbursed expenses for use
6 of their personal autos and cell phones. This claim was also challenging because proving liability
7 and damages would be challenging, particularly with respect to auto mileage – measuring liability
8 and damages is difficult where employees likely kept few, if any, records of their auto expenses.
9 Defendants contend that POV had a reimbursement policy for all employees who incurred business
10 related expenses and all employees who followed this policy by submitting for reimbursement were
11 reimbursed accordingly. To the extent that any employee was not reimbursed, it was due to the
12 employee's failure to submit for the reimbursement. Plaintiffs also sought statutory penalties for
13 non-compliant wage statements (valued at up to \$143,240) and waiting time (valued at up to
14 \$194,515). These were uncertain claims because it is unclear that Plaintiffs would prevail on the
15 claims which underlie them (from which they derive), such that no recovery was guaranteed. They
16 are also subject to multiple independent defenses of their own. As a result, Plaintiffs gave them
17 little more than nominal value for settlement purposes. Gaines Decl. ¶ 26.

18 The PAGA claims alleged by Plaintiffs could be valued at up to approximately \$165,700
19 (without stacking). However, any recovery on these claims is not certain either. PAGA claims are
20 discretionary, such that the Court could decline to award their full value. They are also derivative,
21 so Plaintiffs must prevail on their underlying Labor Code claims to prevail on these claims. Finally,
22 the Court may award far less than the maximum value on these penalty claims, particularly if they
23 approach or exceed the value of the underlying wage claims and considering that Defendants have
24 little, if any, ability to pay a substantial judgment. Gaines Decl. ¶ 27.

25 A discount on the maximum value of Class members' claims was required (and warranted)
26 to resolve the matter at this stage of the litigation. Class certification is a substantial risk in any
27 class action case. Here, while Plaintiffs maintain that the requirements of class certification are
28 met, Defendants proffer various arguments why class treatment is not appropriate here, including

1 but not limited to that individualized inquires among class members predominate over common
2 ones. If Defendants were to defeat Plaintiffs' class certification motion, there would be no class
3 wide relief whatsoever, and most class members would likely not file individual claims. Gaines
4 Decl. ¶ 28.

5 Moreover, Defendant POV is a non-profit with minimal funds available to litigate or pay a
6 large class action judgment. Class Counsel reviewed comprehensive financials and independently
7 reached this conclusion. A significant discount was warranted and appropriate to resolve this case
8 at this juncture on the terms in the Settlement Agreement. Gaines Decl. ¶ 29.

9 Plaintiffs also faced the risk of a loss on the merits on their claims. Plaintiffs' wage
10 statement claims, for example, are technical and primarily derivative of their underlying wage
11 claims. It is possible that the Court would find that Defendants substantially complied with the
12 requirements of Labor Code section 226(a) such that no penalties would be awarded. It is also
13 possible that the Court would agree with Defendants' position that POV's policies and practices
14 complied with the requirements of California law. In such a case, the value of most of Plaintiffs'
15 claims would be zero. Gaines Decl. ¶ 30.

16 Defendants strongly contend that POV's policies and practices do not violate any laws.
17 They contend that they provided all required wages in a timely manner. Gaines Decl. ¶ 31.

18 When the costs and risks of non-certification and loss on the merits are considered,
19 Plaintiffs' counsel are of the opinion that the settlement reached is clearly a favorable one. Gaines
20 Decl. ¶¶ 20-32.

21 The settlement for each participating Class Member is fair, reasonable and adequate, given
22 the inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
23 litigation. The settlement shall finally resolve all claims of the Class Members as alleged in the
24 Action. Gaines Decl. ¶ 33.

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

27 Despite the asserted fairness of the settlement terms, any potential Class Member who
28 objects to the terms of the settlement set forth in the Settlement Agreement has the right to submit

1 a request for exclusion (*i.e.*, opt out) from the settlement, pursuant to which the class member would
2 retain any claim he or she may have against Defendants.

3 Moreover, Class Members who do not opt out may attend the final fairness and approval
4 hearing for the purpose of objecting to one or more of the settlement terms set forth in the
5 Settlement Agreement.

6 **III. CONCLUSION**

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

- 9 1. Review the proposed Settlement Agreement setting forth the settlement terms.
- 10 2. Consider whether the proposed settlement preliminarily appears to be fair,
11 reasonable and adequate, and whether the proposed settlement class preliminarily appear to meet
12 the applicable certification criteria.
- 13 3. Appoint Plaintiffs Kelsey Jones, Zoe Munoz, and Cori Bratby-Rudd as the Class
14 Representatives.
- 15 4. Appoint Daniel F. Gaines, Esq. and Alex P. Katofsky, Esq. of Gaines & Gaines,
16 APLC and Joseph Tojarieh, Esq. of Stonebrook Law as Class Counsel.
- 17 5. Approve Simpluris, Inc. as Settlement Administrator with regard to handling the
18 notice procedure as set forth more particularly in the Settlement Agreement.
- 19 6. Enter an Order provisionally approving the proposed settlement class on a non-
20 mandatory basis, approve forms to be distributed to the settlement class, direct notice to be given
21 to the settlement class, and set the following schedule of settlement proceedings:

<u>EVENT</u>	<u>TIMING</u>
Last day for Defendants to the Settlement Administrator with information with respect to each Settlement Class Member, including his or her: (1) name, last known address(es) and last known telephone number(s) currently in Defendants' possession, custody, or control; (2) Social Security Number in Defendants' possession, custody, or control; and (3) number of Pay Periods worked during the Class Period and PAGA Period by the Settlement Class Member ("Class List")	10 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	7 calendar days after receipt of the Class List
Last day for Class Members to submit a written Request for Exclusion to Settlement Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members
Last day for Class Members to file an Objection with the Court	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	No later than 17 Court days before the final approval hearing.
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 and Request for Exclusion	No later than 17 Court days before the final approval hearing.
Final settlement approval hearing	_____, 2022, at _____. The Parties suggest the final approval hearing be held approximately 100 days after the preliminary approval order is signed.

DATED: March 21, 2022

GAINES & GAINES,
A Professional Law Corporation

By: 

DANIEL F. GAINES

ALEX P. KATOFSKY

Attorneys for Plaintiffs Kelsey Jones, Zoe Munoz, and
Cori Bratby-Rudd and Proposed Class Counsel