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and Proposed Class Counsel
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF MERCED**

11
12 SHAVELLA CRAWFORD, on behalf of
herself and all “aggrieved employees”
13 pursuant to Labor Code § 2698 *et seq.*,

14 Plaintiff,

15 v.

16 KAINTH HOSPITALITY INC., a
California corporation, and DOES 1
17 through 10, inclusive,

18 Defendants.
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CASE NO: 21CV-01252

Assigned to the Hon. Brian McCabe, Dept. 8

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

DATE: June 8, 2022

TIME: 8:15 a.m.

DEPT.: 8

Action Filed: April 14, 2021

1 **PLEASE TAKE NOTICE THAT** on June 8, 2022 at 8:15 a.m., or as soon thereafter as
2 the matter may be heard, in Department 8 of the above-entitled Court, located at 627 West 21st
3 Street, Merced, CA 95340, Plaintiff Shavella Crawford (“Plaintiff” or “Crawford”) will and hereby
4 does move unopposed for an Order (1) preliminarily finding that the settlement between the parties
5 falls within the range of reasonableness and approving the proposed class action settlement in the
6 above-captioned case, (2) conditionally certifying, for settlement purposes only, a settlement class,
7 (3) approving the appointment of Plaintiff as Class Representative, (4) approving the appointment
8 of Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC as Class Counsel,
9 (5) approving the appointment of Phoenix Class Action Administration Solutions as settlement
10 administrator, (6) preliminarily approving the allocation of \$10,000 from the Maximum Settlement
11 Amount to settle Plaintiff’s representative claims under the Private Attorneys General Act (Lab.
12 Code §§ 2698 et seq.), of which seventy-five percent (75%) will be paid to the Labor and Workforce
13 Development Agency and twenty-five percent (25%) shall be included in the Net Settlement
14 Proceeds for payment to Class Members; (7) approving as to content and form the notice to the
15 settlement class, and directing it be disseminated by the Settlement Administrator; (8) permitting
16 Plaintiff to file a First Amended Complaint, and (9) 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 5, 2022

Respectfully submitted,

2 GAINES & GAINES,
3 A Professional Law Corporation

4
5 By: *Daniel F. Gaines*

6 DANIEL F. GAINES

7 ALEX P. KATOFISKY

8 Attorneys for Plaintiff Shavella Crawford and Proposed
9 Class Counsel

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. BACKGROUND AND PROCEDURAL HISTORY	1
III. INVESTIGATION AND SETTLEMENT DISCUSSIONS.....	3
IV. LEGAL ANALYSIS.....	4
A. The Proposed Settlement Terms	4
1. The Settlement Class.....	4
2. Allocations to be Paid from the Maximum Settlement Amount.....	4
3. Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)	5
B. Two-Step Approval Process.....	6
C. Procedures for Settlement Before Class Certification	7
1. The Settlement Class Should Be Certified for Settlement Purposes	8
a. The Settlement Class is Ascertainable	8
b. Questions of Law or Fact Common to Members of the Settlement Class Predominate.....	8
c. The Proposed Class Representative’s Claims are Typical of the Class Members’ Claims	8
D. The Settlement Is Fair and Reasonable and Not the Result of Fraud or Collusion	9
1. The Settlement Falls Within The “Ballpark” of Reasonableness	10
2. Despite the Asserted Fairness of the Settlement Terms, Class Members May Request Exclusion From, Or Object To, The Settlement.....	13
E. Plaintiff Should Be Permitted to File His First Amended Complaint.....	13
V. CONCLUSION	14

TABLE OF AUTHORITIES

Page

CASES

<i>Amchem Products, Inc. v. Windsor</i> (1987) 521 U.S. 591	8
<i>Clark v. American Residential Services LLC</i> (2009) 175 Cal.App.4th 785	10
<i>Classen v. Weller</i> (1983) 145 Cal. App. 3d 27.....	8
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal. App. 4th 1794	1, 7, 8
<i>Green v. Obledo</i> (1981) 29 Cal.3d 126	6
<i>Hammon v. Barry</i> (D.D.C. 1990) 752 F. Supp. 1087	9
<i>In re Armored Car Antitrust Litig.</i> (N.D. Ga. 1979) 472 F. Supp. 1357	9
<i>In re Baldwin-United Corp.</i> (S.D.N.Y. 1984) 105 F.R.D. 475	7
<i>In re Chicken Antitrust Litig.</i> (N.D. Ga. 1980) 560 F. Supp. 957	9
<i>In re Paine Webber Ltd. P'ships Litig.</i> (S.D.N.Y. 1997) 171 F.R.D. 104	10
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	10
<i>Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.</i> (7th Cir. 1987) 834 F.2d 677.....	9
<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> (C.D. Cal. 2004) 221 F.R.D. 523	9
<i>Priddy v. Edelman</i> (6th Cir. 1989) 883 F.2d 438.....	9
<i>Reyes v. Board of Supervisors</i> (1987) 196 Cal. App. 3d 1263.....	8

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
<i>Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n</i> (E.D. Pa. 1978).....	9
<i>Steinberg v. Carey</i> (S.D.N.Y. 1979) 470 F. Supp. 471.....	9
<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	6
<i>Wershba v. Apple Computer</i> (2001) 91 Cal.App.4th 224	6, 7

STATUTES

Cal. Bus. & Prof. Code § 17200	2
Cal. Labor Code §§ 201-203.....	2, 9
Cal. Labor Code § 226	2, 9
Cal. Labor Code § 226.3	2, 9
Cal. Labor Code § 226.7	2, 9, 11
Cal. Labor Code § 510	2, 11
Cal. Labor Code § 512	2, 9, 11
Cal. Labor Code § 558	2, 9, 11
Cal. Labor Code § 1194	2, 11
Cal. Labor Code § 2698	2, 9
Cal. Labor Code § 2699	5, 6, 7, 9

RULES AND REGULATIONS

Cal. R. Ct. 3.769.....	1,6,7
Fed. R. Civ. P. 23(e).....	6

OTHER AUTHORITIES

4 Alba Conte & Herbert B. Newberg, <i>Newberg on Class Actions</i> (4th ed. 2002).....	6
Manual for Complex Litigation (Third) § 30.41	6

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 Shavella Crawford (“Plaintiff”
6 or “Crawford”), individually and on behalf of all others similarly situated, and Defendant Kainth
7 Hospitality Inc. (“Defendant”).

8 The settlement occurred as a result of extensive arm’s-length negotiations by experienced
9 counsel with the assistance of a respected mediator with experience in the area of employment class
10 actions. Most importantly, the settlement will result in significant financial benefit to the
11 participating claimants, on terms that are by any measure fair, reasonable and adequate. *See*
12 *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801-02. The proposed settlement provides
13 for a non-revisionary class settlement in the gross amount of \$200,000 to a settlement class of
14 approximately 40 Class Members, yielding gross payments of \$5,000 per employee. As detailed
15 below, the settlement is in the best interests of the class in light of all of the facts and circumstances
16 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 Shavella Crawford as
21 Class Representative; (d) approve the appointment of Daniel F. Gaines and Alex P. Katofsky of
22 Gaines & Gaines, APLC as Class Counsel; (e) approve appointment of the Settlement
23 Administrator; (f) permit the filing of a First Amended Complaint; (g) authorize the mailing of the
24 proposed class action notice packet; and (h) schedule a final fairness and approval hearing.

25 **II. BACKGROUND AND PROCEDURAL HISTORY**

26 On November 18, 2020 and January 28, 2021, Plaintiff exhausted the pre-filing
27 requirements of the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Declaration of
28 Daniel F. Gaines (“Gaines Decl.”) at ¶ 6.

1 On or about April 14, 2021, Plaintiff initiated the Action by filing a Representative Action
2 Complaint for Penalties, pursuant to PAGA, on behalf of herself and all other aggrieved employees
3 (the “Complaint”). The First Amended Complaint, attached to the Settlement Agreement as
4 **Exhibit 3** and which will be filed as part of the settlement approval process, asserts class and PAGA
5 representative action claims against Defendant for (1) failure to provide compliant rest periods or
6 compensation in lieu thereof (Labor Code § 226.7; IWC Wage Order 5-2001); (2) failure to provide
7 compliant meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 510, 512, and 1194;
8 IWC Wage Order 5-2001); (3) failure to comply with itemized employee wage statement provisions
9 (Labor Code § 226); (4) failure to timely pay wages due at separation of employment (Labor Code
10 §§ 201-203); (5) violation of Business and Professions Code §§ 17200, *et seq.*; and (6) civil
11 penalties pursuant to Labor Code §§ 2698, *et seq.* for violations of Labor Code §§ 201, 202, 226,
12 226.3, 226.7, 510, 512, 558, 1194, and 1198 (the “First Amended Complaint”). Gaines Decl. at ¶
13 7.

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

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1 The Class Representative contends that Defendant violated the California Labor Code and
2 Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
3 certification. Gaines Decl. at ¶ 9.

4 **III. INVESTIGATION AND SETTLEMENT DISCUSSIONS**

5 Class Counsel represent that they have conducted a thorough investigation into the facts
6 and law during the prosecution of this class action case, including the exchange of extensive formal
7 and informal discovery and the review and verification of statistical data and other facts and
8 information provided by Defendant. Counsel for the Parties also represent that they have
9 investigated the applicable law as applied to the facts discovered regarding the alleged claims of
10 Plaintiff and potential defenses thereto, and the damages and other losses claimed by Plaintiff.
11 Gaines Decl. at ¶ 10.

12 On February 17, 2022, following their exchange of information and documents regarding
13 the Settlement Class and the claims and defenses asserted by the Parties, the Parties engaged in
14 arm's-length negotiations with the assistance of mediator Marc Feder, Esq., through which they
15 were able to reach the resolution of the Action set forth herein. Gaines Decl. at ¶ 11.

16 Based on their own independent investigation and evaluation, Class Counsel are of the
17 opinion (and will so represent to the Court) that settlement for the consideration and on the terms
18 set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of
19 the Settlement Class in light of all known facts and circumstances, including the risk of significant
20 delay, the risk the Settlement Class will not be certified by the Court, and the defenses asserted by
21 Defendant. Defendant and its counsel also agree (and will so represent to the Court) that this
22 settlement is fair and in the best interest of the Settlement Class. Gaines Decl. at ¶ 12.

23 The Parties agree that the Settlement Class described herein may be certified for settlement
24 purposes only and that any motion for approval seeking, *inter alia*, certification of the Settlement
25 Class is for purposes of the settlement only. If for any reason the settlement is not approved, the
26 certification will have no force or effect and will immediately be revoked. The Parties further agree
27 that certification for purposes of the settlement is in no way an admission that class certification is
28 proper under the more stringent standard applied for litigation and that evidence of this limited

1 stipulation for settlement purposes only will not be admissible for any purpose in this or any other
2 proceeding. Gaines Decl. at ¶ 13.

3 **IV. LEGAL ANALYSIS**

4 **A. The Proposed Settlement Terms**

5 1. **The Settlement Class**

6 The Parties have agreed to a settlement class composed of all non-exempt California
7 employees of Defendant from April 14, 2017 through February 17, 2022 (the “Class Period”).
8 Defendant represents that this Class contains approximately 40 individuals who worked no more
9 than 5,200 workweeks during the Class Period. Stip. at ¶ A(4).

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

11 The Parties agree to settle this Action for a Maximum Settlement Amount of Two Hundred
12 Thousand Dollars (\$200,000.00) (the “Maximum Settlement Amount”), subject to any increase
13 based on the escalator provision in paragraph H(16) of the Settlement. The Maximum Settlement
14 Amount includes the attorneys’ fees of Class Counsel; litigation costs and expenses (which
15 includes, without limitation, all such fees and costs incurred to date, as well as such fees and costs
16 to be incurred in documenting the settlement, providing any notices required as part of the
17 settlement, securing Court approval of the settlement, and obtaining judgment in the Action); the
18 Enhancement Payment to the Class Representative, as approved by the Court; the PAGA payment
19 to the California Labor and Workforce Development Agency (“LWDA”); all employer payroll tax
20 obligations due on wage payments made from the Net Settlement Proceeds; and all costs of
21 administration, including, without limitation, settlement administration fees and expenses. Stip. at
22 ¶ C(1)(a).

23 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff’s counsel’s
24 application to the Court for up to 40% of the Maximum Settlement Amount for attorneys’ fees (or
25 \$80,000). Stip. at ¶ C(1)(f).

26 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff’s counsel’s
27 application to the Court for up to \$12,000 in reimbursement of litigation costs and expenses. Stip.
28 at ¶ C(1)(g).

1 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff's counsel's
2 application to the Court for an Enhancement Payment to the Class Representative in the gross
3 amount of \$10,00, in consideration for his efforts in instituting and participating in the Action. Stip.
4 at ¶ C(1)(e).

5 From the Maximum Settlement Amount, settlement administration fees paid to Phoenix
6 Class Action Administration Solutions will be no more than \$5,500. Stip. at ¶ C(1)(h).

7 From the Maximum Settlement Amount, the portion to be allocated for settlement of any
8 and all claims for penalties under the PAGA is \$10,000 ("PAGA Payment"), 75% of which shall
9 be paid to the LWDA and 25% shall be included in the Net Settlement Proceeds for payment to
10 Class Members. Stip. at ¶ C(1)(d).

11 The Net Settlement Proceeds is defined as the Maximum Settlement Amount less the
12 amounts approved and awarded by the Court for: attorneys' fees and documented litigation costs
13 and expenses incurred or advanced by Class Counsel; the Enhancement Payment to the Class
14 Representative; the payment to the LWDA pursuant to PAGA; and the costs of administering the
15 settlement. Stip. at ¶ C(1)(b).

16 The Individual Payment Amount is the portion of the Net Settlement Proceeds distributable
17 to each Class Member who participates in the Settlement (i.e., who does not submit a valid request
18 for exclusion form). The Individual Payment Amounts will be calculated by dividing the Net
19 Settlement Proceeds by the total weeks worked by all participating Class Members in California in
20 a non-exempt position during the Class Period, which will yield the applicable weekly rate. The
21 weekly rate shall be multiplied by the number of weeks each individual participating Class Member
22 worked for Defendant in California in a non-exempt position during the Class Period to yield their
23 Individual Payment Amount. Each Participating Settlement Class Member who does not opt out
24 will receive an Individual Payment Amount equal to their individual weeks worked in California
25 in a non-exempt position during the Class Period multiplied by the weekly rate. Stip. at ¶ C(1)(c).

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

27 Pursuant to PAGA, the Parties have agreed that \$10,000 of the Maximum Settlement
28 Amount will be allocated to settle the claims brought under Labor Code § 2699 et seq. Pursuant to

1 Labor Code § 2699(i), “civil penalties recovered by aggrieved employees shall be distributed as
2 follows: 75 percent to the Labor and Workforce Development Agency...and 25 percent to the
3 aggrieved employees.” As such, 75 percent of the apportioned PAGA settlement amount – or
4 \$7,500 – shall be payable to the LWDA. The remaining 25 percent, or \$2,500, shall be included in
5 the Net Settlement Proceeds for payment to Class Members. Stip. at ¶ C(1)(d).

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

7 Any settlement of class litigation must be reviewed and approved by the Court. Cal. R. Ct.
8 3.769; Fed. R. Civ. P. 23(e).¹ This is done in two steps: (1) an early (preliminary) review by the
9 trial court, and (2) a final review after notice has been distributed to the Class Members informing
10 them of the terms of the settlement and allowing them to exclude themselves from, participate in
11 and/or object to the settlement. The Manual for Complex Litigation (Third) § 30.41 states:

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

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

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, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

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

3 When the parties to an action reach a monetary settlement, they will
4 usually prepare and execute a joint stipulation of settlement, which
5 is submitted to the court for preliminary approval. The stipulation
6 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.

7 *Id.* at § 11.24.

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

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

11 Pursuant to California Rules of Court, Rule 3.769(d), parties also may, at the preliminary
12 approval stage, request that the court provisionally approve certification of the class – conditioned
13 upon final approval of the settlement. “[P]re-certification settlements are routinely approved if
14 found to be fair and reasonable.” *Wershba, supra*, 91 Cal. App. 4th at 240. *Accord Dunk, supra*,
15 48 Cal. App. 4th at 1803 (although the settlement was reached before any “adversary certification,”
16 the court was satisfied that it was “fair, adequate and reasonable.”). *See also In re Baldwin-United*
17 *Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478² (“many courts have employed this practice in the
18 name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”)

19 The strength of the findings made by a judge at a preliminary hearing
20 or conference concerning a tentative settlement proposal . . . may be
21 set out in conditional orders granting tentative approval to the various
22 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.

23 4 *Newberg on Class Actions*, at § 11.26.

24 As required by Labor Code § 2699(1)(2), concurrent with Plaintiff’s submission of the
25 Stipulation to the Court, her counsel is transmitting it, together with this Motion, to the LWDA.
26 Gaines Decl. at ¶ 30.

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

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

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

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

9 The proposed Settlement Class is ascertainable. The class definition, the size of the Class,
10 and the means for identifying the members of the class determine whether the class is ascertainable.
11 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
12 are identifiable from Defendant's employment and payroll records. Further, the Settlement Class
13 is sufficiently numerous to warrant certification. According to Defendant's records, the Class
14 comprises approximately 40 employees. Gaines Decl. ¶ 25.

15 b. **Questions of Law or Fact Common to Members of the Settlement**
16 **Class Predominate**

17 The Class Members' claims all stem from a common source: members of the Settlement
18 Class allege that Defendant violated the same Labor Code provisions in connection with their
19 employment. All members of the Class seek the same relief under the same California laws (related
20 to unpaid meal and rest period premiums, inaccurate or incomplete wage statements, failure to
21 timely pay wages due upon separation, and derivative claims). Under these circumstances, the
22 commonality requirement is satisfied for purposes of certifying the Settlement Class for settlement
23 purposes. Gaines Decl. ¶ 27.

24 c. **The Proposed Class Representative's Claims Are Typical of the**
25 **Class Members' Claims**

26 A class representative's claims are typical when they arise from the same event or course
27 of conduct that gives rise to the claims of the class, and are based on the same legal theory.
28 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, named Plaintiff and proposed

1 Class Representative Shavella Crawford is a former non-exempt employee who worked for
2 Defendant in the State of California during the Class Period. She contends that Defendant failed
3 to provide meal and rest periods, failed to comply with itemized employee wage statement
4 provisions, and failed to timely pay wages at the separation of employment, in violation of Labor
5 Code §§ 201-203, 226(a), 226.3, 226.7, 512, 558, 2698, and 2699, among other Labor Code
6 provisions. She has the same claims as those that the members of the Settlement Class would
7 reasonably be expected to bring based on the course of conduct alleged herein. Gaines Decl. ¶ 28.

8 Plaintiff has also demonstrated that she will aggressively and competently assert the
9 interests of the proposed Settlement Class; she has taken an active role in this litigation and has no
10 apparent conflicts with other class members. Gaines Decl. ¶ 29. Furthermore, Plaintiff has retained
11 competent counsel, experienced in litigating class action claims in the employment context. *See*
12 Gaines Decl. ¶¶ 2-5.

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

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

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

opposing party. *See Newberg on Class Actions, supra*, § 11.47; *In re Paine Webber Ltd. P'ships Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 (“[s]o long as the integrity of the arm’s-length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation”); *see* Gaines Decl. ¶¶ 2-5, 10-11.

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

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

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

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

Plaintiff alleges that Defendant failed to permit or authorize Plaintiff and Class Members to take timely 30-minute meal periods for shifts greater than 5 hours in length, in violation of Labor

1 Code §§ 226.7, 510, 512, 558, and 1194 and IWC Wage Order 5-2001. Labor Code § 512 provides
2 that employers (like Defendant) may not employ an employee for a work period of more than 5
3 hours without providing a 30-minute meal period starting no later than the end of the 5th hour.
4 Plaintiff and Class Members contend that they were routinely unable to take a proper meal break
5 when they worked shifts in excess of 5 hours in duration and a second meal break when they worked
6 shifts in excess of 10 hours in duration. When they were able to take a meal period, they were
7 oftentimes late, cut short or they would be required to work through them. Moreover, Defendant
8 does not maintain a legally compliant meal period policy (or any meal policy) and Defendant's
9 handbook does not mention any meal period guidelines. Based on an analysis of a wage and time
10 data provided by Defendant through formal discovery, Plaintiff has ascertained a meal period
11 violation rate of 44% across 87.4% of all pay periods. Most violations are a result of missed meal
12 periods (48.3% of all shifts and which also represents 96.3% of all meal period violations). Plaintiff
13 calculates Defendant's meal period liability to exceed \$85,956. Defendant, however, maintained
14 numerous defenses to this claim. It argued that it implemented policies and practices consistent
15 with the requirements of California law and that any missed meal breaks were waived, not denied.
16 It also contended that this claim could not be certified based on varying shifts and job types among
17 the class members. In short, a discount was required to resolve this claim at this stage of the
18 litigation based on class certification and merits risks. Gaines Decl. ¶ 16.

19 Plaintiff further alleges that Defendant failed to provide Plaintiff and Class Members with
20 legally compliant rest periods, or premium wages of one hour's pay in lieu thereof, as required by
21 Labor Code §§ 226.7 and 558 and Wage Order 5-2001. Plaintiff and Class Members contend that
22 they were simply too busy to take their rest periods or would be required to work through them.
23 Moreover, as with meal periods, Plaintiff argues that Defendant does not maintain a legally
24 compliant rest period policy (or any rest policy) and its handbook does not mention any rest period
25 guidelines. Defendant's rest period liability exceeds \$190,016. Like Plaintiff's meal break claim,
26 prevailing on this claim also involved substantial risk. Defendant argued its policy and practice
27 always authorized employees to take their rest periods and leave the company premises for them.
28 It contends that, because there are no records as to when rest breaks were taken, this claim will be

1 difficult, if not impossible, for Plaintiff to certify. It claimed that any missed rest breaks were
2 voluntarily waived by employees. The risks of prevailing on this claim required a discount for
3 settlement purposes at this juncture of the litigation. Gaines Decl. ¶ 17.

4 Plaintiff alleges that Defendant failed to issue Plaintiff and Class Members accurately
5 itemized wage statements, failed to pay waiting time penalties, and owes PAGA civil penalties, all
6 derivative of the claims alleged above. These penalty claims would total up to approximately
7 \$149,000 but required a substantial discount for settlement purposes because they are wholly
8 derivative of the underlying unpaid wage claims (i.e. if Plaintiff did not prevail on her underlying
9 meal and rest period claims, she would not prevail on these penalty claims), they are subject to
10 independent defenses of their own (including proof of injury and/or willfulness), and they are
11 subject to reduction in the Court's discretion. Plaintiff believed it was unlikely that the Court would
12 entertain an award of penalties which was substantial compared to the amount of the unpaid wages
13 sought. As such, these claims required a compromise to resolve at this juncture of the litigation.
14 Gaines Decl. ¶ 18.

15 The discount negotiated for settlement here is a reasonable compromise, particularly
16 considering that the risk of obtaining class certification on all or any of Plaintiff's claims involves
17 a 50% or higher hurdle, especially with respect to the meal and rest period claims, to which
18 Defendant maintains strong arguments to defeat class certification (in addition to multiple defenses
19 on the merits of the claims). Class certification is a substantial risk in any class action case. Here,
20 while Plaintiff maintains that the requirements of class certification are met, Defendant proffers
21 various arguments why class treatment is not appropriate, including but not limited to that
22 individualized inquires among class members predominate over common ones. If Defendant was
23 to defeat Plaintiff's class certification motion, there would be no class wide relief whatsoever, and
24 most class members would likely not file individual claims. Gaines Decl. ¶ 19.

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

1 Finally, Plaintiff faced the risk that she would not obtain a maximum damage/penalty award
2 on all (or any of) his claims. For example, Plaintiff seeks discretionary penalties pursuant to the
3 PAGA. Even if Plaintiff did prevail on these claims, it is possible that the Court would not impose
4 all penalties pursuant to its discretionary power to reduce them. Gaines Decl. ¶ 21.

5 Defendant strongly contends that its policies and practices do not violate any laws. It
6 contends that it properly provided for all meal and rest periods and fully compensated their
7 employees for all time worked. It further contends that the wage statements it provides to its
8 employees are fully compliant with California law. Gaines Decl. ¶ 22.

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

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

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

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

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

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

26 In connection with this Settlement, Plaintiff shall file a First Amended Complaint, attached
27 to the Stipulation as **Exhibit 3**, which adds class allegations and claims to comport with the release
28 provided for in the Stipulation. The Parties agreed that, as part of her motion for preliminary

1 approval, Plaintiff would concurrently seek leave to file the First Amended Complaint, the filing
2 of which is a condition of the Stipulation.

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

7 **V. CONCLUSION**

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

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

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

13 3. Appointing Plaintiff Shavella Crawford as Class Representative;

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

16 5. Approving Phoenix Class Action Administration Solutions as Settlement
17 Administrator;

18 6. Preliminarily approving the allocation of \$10,000 from the Maximum Settlement
19 Amount to settle Plaintiff's representative claims under the PAGA, of which seventy-five percent
20 (75%) shall be paid to the Labor and Workforce Development Agency and twenty-five percent
21 (25%) shall be included in the Net Settlement Proceeds for payment to Class Members;

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

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

28 9. Setting the following schedule of settlement proceedings:

<u>EVENT</u>	<u>TIMING</u>
Last day for Defendant to provide to the Settlement Administrator a list 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 Request for Exclusion form to Class Members	20 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Class Members to submit a written Request for 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 an 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
Final settlement approval hearing	_____, 2022, at _____.m. (approximately 85 days after entry of the Order granting this Motion)

DATED: May 5, 2022

Respectfully submitted,

GAINES & GAINES,
A Professional Law Corporation

By: *Daniel F. Gaines*

DANIEL F. GAINES
ALEX P. KATOFISKY
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Class Counsel