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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

17 DIAMOND WEATHERS, individually, and
18 as a representative of other aggrieved
employees,

19 Plaintiff,

20 v.

21 BG-IC, LLC, and DOES 1 through 250,
22 inclusive,

23 Defendants.

Case No. 21STCV07570
[Related to Case No. 21STCV08334]

*Assigned for all purposes to: Judge Carolyn B.
Kuhl, Dept. SSC-12*

CLASS ACTION

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

DATE: September 21, 2022
TIME: 10:30 a.m.
DEPT.: SSC-12

Action Filed: February 26, 2021

1 **PLEASE TAKE NOTICE THAT** on September 21, 2022 at 10:30 a.m., or as soon
2 thereafter as the matter may be heard, in Department SSC-12 of the above-entitled Court, located
3 at 312 N. Spring Street, Los Angeles, California 90012, Plaintiffs Diamond Weathers and Milad
4 Razani will and hereby do move unopposed for an Order (1) preliminarily approving the proposed
5 class action settlement in the above-captioned case, (2) provisionally certifying the settlement class,
6 (3) provisionally approving the appointment of Plaintiffs Diamond Weathers and Milad Razani as
7 Class Representatives, (4) provisionally approving the appointment of Brent S. Buchsbaum, Esq.
8 and Laurel N. Haag, Esq. of Law Offices of Buchsbaum & Haag, LLP and Daniel F. Gaines, Esq.
9 and Alex P. Katofsky, Esq. of Gaines & Gaines, APLC as Class Counsel, (5) provisionally
10 approving the appointment of Phoenix Settlement Administrations as settlement administrator,
11 (6) approving and directing distribution of notice to the settlement class, and (7) setting a final
12 fairness and approval hearing.

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

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

20 This Motion will be based on the Memorandum of Points and Authorities set forth herein,
21 the Joint Stipulation of Settlement, the Declarations of Daniel F. Gaines, Brent S. Buchsbaum and
22 Jodey Lawrence, such evidence or oral argument as may be presented at the hearing, and on the
23 complete record and file herein.

1 DATED: July 12, 2022

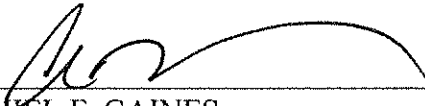
LAW OFFICES OF BUCHSBAUM & HAAG, LLP

2
3 By: /s/ Brent S. Buchsbaum

4 BRENT S. BUCHSBAUM
5 LAUREL N. HAAG
6 Attorneys for Plaintiff Diamond Weathers
7 and Proposed Class Counsel

8 DATED: July 12, 2022

GAINES & GAINES, APLC

9
10 By: 

11 DANIEL F. GAINES
12 ALEX P. KATOFISKY
13 Attorneys for Plaintiff Milad Razani
14 and Proposed Class Counsel
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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND PROCEDURAL HISTORY	1
A. Case Summary and Procedural History	1
B. Investigation and Settlement Discussions.....	2
II. LEGAL ANALYSIS.....	4
A. The Proposed Settlement Terms	4
B. Settlement of Claims Pursuant to Labor Code § 2699 et. seq. (PAGA)	4
C. Two-Step Approval Process.....	5
D. Procedures for Settlement Before Class Certification	6
1. The Settlement Class Should Be Certified for Settlement Purposes	7
a. The Settlement Class Is Ascertainable.....	7
b. Questions of Law or Fact Common to Members of the Settlement Class Predominate.....	7
c. The Proposed Class Representative's Claims are Typical of the Class Members' Claims	8
E. The Settlement Is Fair and Reasonable and Not the Result of Fraud or Collusion	8
1. The Settlement Falls Within The "Ballpark" of Reasonableness	9
2. Despite the Asserted Fairness of the Settlement Terms, Class Members May Request Exclusion From, Or Object To, The Settlement.....	12
III. CONCLUSION	12

TABLE OF AUTHORITIES

Page

CASES

<i>Amchem Products, Inc. v. Windsor</i> (1987) 521 U.S. 591	7
<i>Clark v. American Residential Services LLC</i> (2009) 175 Cal.App.4th 785	9, 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	6, 7
<i>Green v. Obledo</i> (1981) 29 Cal.3d 126	5
<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	6
<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	9
<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.....	8

TABLE OF AUTHORITIES
(continued)

Page

<i>Reyes v. Board of Supervisors</i> (1987) 196 Cal. App. 3d 1263.....	7
<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	5
<i>Wershba v. Apple Computer</i> (2001) 91 Cal.App.4th 224	5, 6

STATUTES

Cal. Business & Professions Code § 17200	7
Cal. Labor Code §§ 201-203	1, 7
Cal. Labor Code § 204	7, 11
Cal. Labor Code § 210	7, 11
Cal. Labor Code § 226	1, 7
Cal. Labor Code § 226.7	1, 7
Cal. Labor Code § 510	1, 7
Cal. Labor Code § 512	1, 7
Cal. Labor Code § 558	1, 7
Cal. Labor Code § 1194	1, 7
Cal. Labor Code § 1194.2	1, 7
Cal. Labor Code § 1197	1, 7
Cal. Labor Code § 1197.1	1, 7
Cal. Labor Code § 2698	1, 7
Cal. Labor Code § 2699	1, 2, 4, 5, 7

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
Cal. Labor Code § 2699.3	1
Cal. Labor Code § 2802	1, 7, 10
RULES AND REGULATIONS	
Cal. R. Ct. 3.769.....	5, 6
Fed. R. Civ. P. 23(e).....	5
OTHER AUTHORITIES	
4 Alba Conte & Herbert B. Newberg, <i>Newberg on Class Actions</i> (4th ed. 2002).....	6, 9
Manual for Complex Litigation (Third) § 30.41	5

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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

4 Plaintiffs Diamond Weathers (“Weathers”) and Milad Razani (“Razani”) (together,
5 “Plaintiffs”) and Defendant BG-IC, LLC. (“BG” or “Defendant”) (collectively, the “Parties”) have
6 reached a resolution of this class action and hereby submit their settlement agreement to the Court
7 for its preliminary approval.

8 On December 10, 2020, Plaintiff Razani sent a letter, by certified mail, return receipt
9 requested, to Defendant and by online submission to the LWDA, setting forth the facts and theories
10 of the violations alleged herein against Defendant, as proscribed by Labor Code § 2698 *et seq.*
11 Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff Razani from the
12 LWDA within sixty-five (65) days thereafter. Declaration of Daniel F. Gaines (“Gaines Decl.”) at
13 ¶ 6.

14 On February 26, 2021, Plaintiff Weathers filed a class action lawsuit against BG, alleging
15 claims for Violation of California Labor Code §§ 510, 1194, 1198 (Unpaid Overtime and Minimum
16 Wages); (2) Violation of California Labor Code §§ 226(a) and 1174 (Non-compliant Wage
17 Statements); (3) Violation of California Labor Code §§ 201-203 (Failure to Pay All Wages and on
18 a Timely Basis); and (4) Violation of California Business & Professions Code §§ 17200, *et seq.*
19 Declaration of Brent S. Buchsbaum (“Buchsbaum Decl.”) at ¶ 9.

20 On March 3, 2021, Plaintiff Razani failed a Class and Representative Action Complaint for:
21 (1) Failure to Pay All Minimum and Overtime Wages Due (Labor Code §§ 510 and 1194); (2)
22 Failure to Provide Rest Periods or Compensation In Lieu Thereof (Labor Code § 226.7; IWC Wage
23 Order 4-2001); (3) Failure to Provide Meal Periods or Compensation In Lieu Thereof (Labor Code
24 §§ 226.7, 510, 512 and 1194; IWC Wage Order 4-2001); (4) Knowing and Intentional Failure to
25 Comply With Itemized Employee Wage Statement Provisions (Labor Code § 226(a), (e), (h)); (5)
26 Failure to Pay Wages Due at Separation Of Employment (Labor Code §§ 201-203); (6) Failure to
27 Reimburse Expenses (Labor Code § 2802); (7) Violation of Business and Professions Code §
28 17200; and (8) Penalties Pursuant to Labor Code § 2699(f) for Violations of Labor Code §§ 201,

1 202, 226(a), 226.7, 510, 512, 1194, and 2802 and Pursuant to Labor Code § 2699(a) for Violations
2 of Labor Code §§ 226.3, 558, 2750, and 2751. Gaines Decl. at ¶ 7.

3 Plaintiffs seek to represent a putative class of approximately 189 current and former non-
4 exempt employees who are or were employed by Defendant in California at any time during the
5 Class Period on all claims alleged in two actions. Gaines Decl. at ¶ 8.

6 **B. Investigation and Settlement Discussions**

7 The parties exchanged substantial informal discovery, including data and documents related
8 to the size of the proposed class, Defendant's policies and pay practices, and the damages,
9 restitution, and penalties sought against Defendant. Based on this informal discovery exchanged,
10 Plaintiffs and their counsel prepared a detailed analysis of the alleged damages. Gaines Decl. at ¶
11 9.

12 Defendant denies Plaintiffs' claims. Defendant does not believe that any liability to
13 Plaintiffs or Class Members exists, or that Plaintiffs or Class Members are entitled to any recovery.
14 In addition, Defendant contends that Plaintiffs' claims are not suitable for class or representative
15 action treatment. In settling this action, Defendant does not admit liability with respect to any of
16 the alleged claims made by Plaintiffs and makes no admissions regarding any facts or law related
17 to the lawsuit. Nothing in this Agreement will be offered or used for the purpose of arguing or
18 asserting this settlement is an admission of liability by Defendant or the Released Parties. Gaines
19 Decl. at ¶ 10.

20 On February 2, 2022, the Parties participated in a mediation session with mediator Jeffrey
21 Ross, Esq. With his assistance, the Parties were able to agree to the terms of a resolution of the
22 claims asserted in the Complaint. The Parties thereafter jointly prepared the Joint Stipulation of
23 Settlement ("Settlement," "Stipulation," or "Stip."). All of the terms of the Parties' settlement are
24 contained within the Settlement. At all times, the Parties' settlement negotiations have been non-
25 collusive, adversarial, and at arm's length. Gaines Decl. at ¶ 11; Exhibit B.

26 Discussions between counsel for the Parties, informal discovery, as well as the investigation
27 and evaluation of the claims of Plaintiffs by the Parties, have permitted each side to assess the
28 relative merits of the claims and the defenses to those claims. The Parties agree that the above-

1 described investigation and evaluation, as well as the information exchanged during settlement
2 negotiations and mediation, are more than sufficient to assess the merits of the respective Parties'
3 positions and to compromise the issues on a fair and equitable basis. Gaines Decl. at ¶ 12.

4 Based on its own independent investigations and evaluations, Class Counsel are of the
5 opinion that the consideration and terms of the Settlement as set forth below, considering the
6 representative and class claims, and the risk of loss, is fair, reasonable, and adequate in light of all
7 known facts and circumstances, and is in the best interests of the Class. Class Counsel are also of
8 the opinion that the total consideration and payment set forth in this Settlement is adequate in light
9 of the uncertainties surrounding the risk of further litigation, and the possible defenses and offset
10 claims that Defendant has asserted and could assert. Gaines Decl. at ¶ 13.

11 For the foregoing reasons, the Parties respectfully request that the Court: (a) grant
12 preliminary approval of the settlement agreement, (b) conditionally grant certification of the
13 proposed settlement class, (c) provisionally approve the appointment of Plaintiffs Diamond
14 Weathers and Milad Razani as Class Representatives, (d) provisionally approve the appointment
15 of Brent S. Buchsbaum, Esq. and Laurel N. Haag, Esq. of Law Offices of Buchsbaum & Haag, LLP
16 and Daniel F. Gaines, Esq. and Alex P. Katofsky, Esq. of Gaines & Gaines, APLC as Class Counsel,
17 (e) approve appointment of the settlement administrator, (f) authorize the mailing of the proposed
18 class action notice packet; and (g) schedule a final fairness and approval hearing.

19 **II. LEGAL ANALYSIS**

20 **A. The Proposed Settlement Terms**

21 The Parties have agreed upon a settlement class: all current and former non-exempt
22 employees who are or were employed by Defendant in California at any time during the Class
23 Period [February 25, 2017 through February 28, 2022]. Settlement at ¶ I(c).

24 The Parties stipulate to the conditional certification of the Settlement Class as defined herein
25 for settlement purposes only. Settlement at ¶ 2.01.

26 The Settlement Agreement provides that Defendant shall pay the total, non-reversionary
27 sum of \$665,000 to resolve the claims alleged in the Action on behalf of the Settlement Class (the
28 "Gross Settlement Amount"). Stip. at ¶ I(n).

1 Class Members need not submit a claim form to receive their share of the Settlement. Class
2 Members who timely exclude themselves from the Settlement will not be part of the final
3 Settlement Class and not bound by the Settlement's releases. Stip. at ¶ I(cc).

4 The Settlement Agreement further provides that Plaintiffs' counsel may request an award
5 of attorneys' fees not to exceed \$221,666.66 (i.e., one-third of the Gross Settlement Amount) and
6 seek reimbursement of litigation costs necessarily incurred in pursuing this Action, not to exceed
7 \$20,000. Stip. at ¶ 3.06(b). It also provides that Plaintiffs will seek, and Defendant will not oppose,
8 a service payment to each of the named plaintiffs, Diamond Weathers and Milad Razani, in the
9 amount of \$10,000 (for a total of \$20,000). Stip. at ¶ 3.06(b).

10 The Parties have agreed that Phoenix Settlement Administrations ("Phoenix"), an
11 experienced and competent settlement administration company, will administer the settlement.
12 Phoenix's credentials are discussed in the concurrently filed Declaration of Jodey Lawrence. Up
13 to \$7,500 has been allocated to compensate Phoenix for its work related to the administration. Stip.
14 at ¶ 3.06(c).

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

16 Pursuant to PAGA, the Parties have agreed that \$40,000 of the Gross Settlement Amount
17 will be allocated to settle the claims brought under Labor Code § 2699 *et. seq.* Pursuant to Labor
18 Code § 2699(i), "civil penalties recovered by aggrieved employees shall be distributed as follows:
19 75 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved
20 employees." As such, 75 percent of the apportioned PAGA settlement amount – or \$30,000 – shall
21 be payable to the Labor and Workforce Development Agency. The remaining 25 percent, or
22 \$10,000, will be included in the Net Settlement Amount for distribution to PAGA Group Members.
23 Stip. at ¶ 3.06(e).

24 As required by Labor Code § 2699(i)(2), concurrent with Plaintiffs submission of the
25 Settlement Agreement to the Court, they are transmitting it, together with this Motion, to the
26 LWDA. Gaines Decl. at ¶ 39.

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

28 Any settlement of class litigation must be reviewed and approved by the Court. Cal. R. Ct.

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.

Here, the Parties have reached such an agreement and have submitted the Settlement

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 Agreement herewith which fully sets forth all terms of the agreement reached among the Parties.
2 See Gaines Decl., Exhibit B; Gaines Decl. ¶ 11.

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

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

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

19 4 *Newberg on Class Actions*, at §11.26.

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

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

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

28 The proposed settlement class is ascertainable. The class definition, the size of the class
and the means for identifying the members of the class determine whether the class is ascertainable.

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 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
2 are identifiable from Defendant's records. Further, the settlement class is sufficiently numerous to
3 warrant certification. According to Defendant's records, the Class is comprised of approximately
4 189 individuals. Gaines Decl. ¶ 35; Settlement at ¶ 6.17.

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

7 The Class Members' claims all stem from a common source: all Class Members allege that
8 Defendant violated the same Labor Code and Wage Order provisions in connection with their work
9 for Defendant. The same Labor Code and Wage Order violations are alleged on behalf of all
10 persons encompassed in the settlement class, arising out of or which could be pled based on the facts
11 and the allegations set forth in the operative complaints in the Actions, including but not limited to
12 claims for failure to pay wages, failure to pay wages at the regular rate and failure to pay overtime,
13 failure to provide meal periods, failure to provide rest periods, failure to furnish accurate wage
14 statements, failure to pay all wages earned, failure to maintain required records, failure to timely pay
15 earned wages upon termination or discharge, failure to reimburse business expenses, and unfair
16 competition premised on the claims set forth above. Gaines Decl. ¶ 36.

17 c. **The Proposed Class Representatives' Claims are Typical of the**
18 **Class Members' Claims**

19 A class representative's claims are typical when they arise from the same event or course
20 of conduct that gives rise to the claims of the class, and are based on the same legal theory.
21 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, the named Plaintiffs and
22 proposed Class Representatives Diamond Weathers and Milad Razani are former non-exempt
23 employees of Defendant whom, Plaintiffs allege, were not paid all wages due; were not provided
24 with proper uninterrupted (off-the-clock and free of all duties) 30-minute meal periods for every
25 shift they worked which exceeded five hours in duration; were not provided with 10-minute rest
26 breaks as required by California law; were not provided with compliant itemized employee wage
27 statements; were not reimbursed all business expenses; and were not timely paid all wages due at
28 termination. Plaintiffs allege the same claims as those that the members of the Settlement Class

1 would reasonably be expected to bring based on the course of conduct alleged herein. Gaines Decl.
2 ¶ 37.

3 Plaintiffs have also demonstrated that they will aggressively and competently assert the
4 interests of the proposed Settlement Class; they have taken active roles in the litigation and have
5 no apparent conflicts with other class members. Gaines Decl. ¶ 38. Furthermore, Plaintiffs have
6 retained competent counsel, experienced in litigating class action claims in the employment
7 context. See Gaines Decl. ¶¶ 2-5; Buchsbaum Decl. ¶¶ 2-8.

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

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

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

Decl. ¶¶ 2-5, 9-13.

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, statistics, 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 arms-length negotiations taking place among the Parties. *See* Gaines Decl. ¶¶ 2-5, 9-13.

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.

Prior to settlement, Plaintiffs' 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. ¶ 18.

Plaintiffs allege that Defendant failed to pay Plaintiffs and Class Members all wages due in three separate ways. First, Defendant purportedly failed to properly compute bonuses, commissions and other non-base hourly wages earned by Plaintiffs and Class Members into their regular rate of pay for purposes of paying them overtime at the correct rates, in violation of Labor Code §§ 510 and 1194. Defendant failed to properly blend these non-base hourly wages, including bonuses and commissions, and instead paid Plaintiffs and Class Members overtime based only on

1 the base hourly rate of pay, thus depriving Plaintiffs and Class Members of all overtime wages
2 earned. This claim was valued at up to approximately \$101,800, calculated based on an expert
3 analysis of class members' time records (in excess of 90% of class members' time and wage data
4 were reviewed). This was by far Plaintiffs' strongest claim. Defendant argued the claim was
5 subject to multiple defenses, including that bonus payments were discretionary and not subject to
6 inclusion in the regular rate of pay. Plaintiffs did not provide any discount based on these defenses.
7 Gaines Decl. at ¶ 19.

8 Next, Defendant also allegedly failed to pay Plaintiffs and Class Members all minimum
9 wages and overtime wages earned, in violation of Labor Code §§ 510, 1194, and 1194.2, because
10 Plaintiffs and Class Members contend that they were required to work off-the-clock after they had
11 clocked out for the day to communicate with other employees through group texts and emails. This
12 allegedly violates Labor Code §§ 510 and 1194. This claim was weak because proof among
13 employees other than just the Plaintiffs would be challenging, particularly because Class Members
14 worked at a multitude of job sites throughout California under varying supervisors. While Plaintiffs
15 calculate the liability for this claim at approximately \$740,000, it required a substantial discount
16 due to risks inherent in certifying the claim and expected difficulty in proving the claim. Gaines
17 Decl. at ¶ 20.

18 Finally, Defendant allegedly failed to pay Plaintiffs and Class Members all wages due for
19 performed while on-call for Defendant, in violation of Labor Code §§ 510 and 1194 and IWC Wage
20 Order 4-2001. Plaintiffs argued that Defendant frequently required Class Members to be on-call
21 and subject to their control twenty-four hours a day, seven days a week, without compensation.
22 Plaintiffs calculate the liability for this claim at \$1,730,000, but it, too, required a discount for
23 settlement purposes for the same reason as the off-the-clock claim described above. This claim
24 was weak because proof among employees other than just the Plaintiffs would be challenging,
25 particularly because Class Members worked at a multitude of job sites throughout California under
26 varying supervisors. Notwithstanding the discounted settlement value, this resolution represents a
27 fair compromise of the claims at this juncture of the litigation. Gaines Decl. at ¶ 21.

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1 Plaintiffs also contend that Defendant failed to permit or authorize Class Members to take
2 timely 30-minute meal periods for shifts greater than 5 hours in length, in violation of Labor Code
3 §§ 226.7, 512, 558 and IWC Wage Order 4-2001. Labor Code § 512 provides that employers (like
4 Defendant) may not employ an employee for a work period of more than 5 hours without providing
5 a 30-minute meal period starting no later than the end of the 5th hour. When meal periods were
6 provided, Class Members allege that they were required to carry a two-way radio and be alert to
7 and respond to calls during their meal period, resulting in an on-duty meal period subject to
8 employer control. Defendant asserted numerous defenses to this claim. Notably, the meal period
9 violation rate ascertained from Plaintiffs' expert's review of Defendant's time and wage data was
10 only 12%, which tends to demonstrate a high level of meal period compliance. Defendant also
11 argued waiver and an inability to certify this claim as defenses, which were forceful. The maximum
12 potential value of this claim is approximately \$1,413,000; the settlement amount here represents a
13 fair compromise in light of the litigation risks that lied ahead. Gaines Decl. at ¶ 22.

14 Plaintiffs also contend that Defendant failed to provide Plaintiffs and Class Members with
15 legally compliant rest periods, or premium wages of one hour's pay in lieu thereof, as required by
16 Labor Code § 226.7 and Wage Order 4-2001. When rest periods were provided, Plaintiffs and
17 Class Members contend that they were required to carry, and be alert to, a two-way radio, resulting
18 in an on-duty rest period subject to employer control. Plaintiffs calculate the liability for this claim
19 at approximately \$360,000 based on an assumed 25% violation rate, which Defendant vehemently
20 challenged. Defendant raised a host of defenses as to this claim – the strongest of which was that
21 its policy and practice was never to require employees to be alert and respond to a two-way radio
22 during their breaks. Defendant also made arguments regarding waiver and class certification,
23 including that individualized issues regarding job requirements, supervisors, work sites, and break
24 waivers implicated serious class certification defenses. Notwithstanding these defenses, the
25 settlement amount is a fair compromise of these claims based on the state of the litigation. Gaines
26 Decl. at ¶ 23.

27 Defendant allegedly failed to provide Plaintiffs and other Class Members with wage
28 statements that fully and accurately itemized the requirements set forth in Labor Code §§ 226(a)

1 and 226.3. Plaintiffs and other Class Members were not paid all minimum wages, overtime wages,
2 and meal and rest period premium wages due, as set forth above. As such, the wage statements
3 provided by Defendant derivatively failed to accurately state all gross wages earned, in violation
4 of Labor Code §§ 226(a)(1), net wages earned, in violation of Labor Code §§226(a)(5), and all
5 applicable hourly rates in effect during the pay period and the corresponding number of hours
6 worked, in violation of Labor Code §§ 226(a)(9). Moreover, and independent of the above
7 allegations, the wage statements issued to Plaintiffs and Class Members allegedly failed to
8 accurately set forth all applicable hourly rates in effect during the pay period and the corresponding
9 number of hours worked, in violation of Labor Code §§ 226(a)(9). Separately, the wage statements
10 allegedly failed to set forth any overtime rates whatsoever, in violation of Labor Code §§ 226(a)(9),
11 which requires that wage statements set forth any and all applicable hourly rates in effect during
12 the pay period and the corresponding number of hours worked at each rate. Plaintiffs calculate the
13 liability for this claim at \$274,450 based on 2,793 wage statements issued during the applicable
14 one-year limitations period. This claim was subject to several defenses by Defendant, the strongest
15 of which was that Defendant fully complied with the requirements of the wage statement laws, its
16 wage statements would be found to be fully compliant with the law, and applicable case law at the
17 time of settlement did not allow for derivative wage statement claims based on the failure to provide
18 meal and rest breaks, the primary claim occurring in the most pay periods from which this penalty
19 would derive. Notwithstanding these defenses, Plaintiffs were able to secure a fair recovery on
20 these claims. Gaines Decl. at ¶ 24.

21 Plaintiffs and Class Members allege that they were required to incur expenses in the
22 performance of their job duties for which they are not fully reimbursed, in violation of Labor Code
23 § 2802. Class Members were purportedly required to their personal cellular phones, but were not
24 fully reimbursed by Defendant for these expenses. Plaintiffs have estimated damages at the rate of
25 \$10 per pay period, or \$74,000, in unreimbursed expenses among all Class Members. Defendant
26 argued that employees were not required to use their cell phones for work purposes, such that such
27 expenses were not reasonable or necessary, and if they did have to use their cell phones, they would
28 have been reimbursed upon request. Plaintiffs' biggest hurdle to recovery on this claim was a

1 proffered disparity of experiences and practices among the Class Members, which Defendant
2 argued would defeat class certification. The settlement's compromise as to this claim is fair and
3 reasonable considering the defenses asserted by Defendant. Gaines Decl. at ¶ 25.

4 Defendant allegedly also failed to provide Plaintiffs and Class Members with written
5 commission compensation agreements, in violation of Labor Code § 2751(a). "Whenever an
6 employer enters into a contract for employment with an employee for services to be rendered within
7 the state and the contemplated method of payment of the employee involves commissions, the
8 contract shall be in writing" The agreement must specify the way the commissions will be
9 computed and paid. Labor Code § 2751(a). Plaintiffs contend that Class Members were not
10 provided with written commission compensation agreements as required by, and in violation of,
11 Labor Code §§ 2750 and 2751. Penalties for this violation are encompassed in the PAGA damages
12 calculation below. Gaines Decl. at ¶ 26.

13 The PAGA claims alleged by Plaintiffs could be valued at up to \$279,300 (without stacking
14 multiple penalties per pay period). However, any recovery on these claims is not certain either.
15 PAGA claims are discretionary, such that the Court could decline to award their full value. They
16 are also derivative, so Plaintiffs must prevail on their underlying Labor Code claims to prevail on
17 these claims. Finally, the Court may award far less than the maximum value on these penalty
18 claims, particularly if they approach or exceed the value of the underlying wage claims.
19 Considering the numerous claims asserted by Plaintiffs and the obstacles to prevailing on many of
20 them, it is possible that they would not prevail on one or more of them, such that their PAGA claims
21 as to some or all of their claims would also fail. The compromised settlement amount takes these
22 risks into account. Gaines Decl. at ¶ 27.

23 Finally, Plaintiffs asserted a claim for waiting time penalties under Labor Code § 203 which
24 was valued at up to \$502,042. This claim also faced substantial risk because of the good faith
25 defense proffered by Defendant (particularly as to penalties flowing from the award of meal and
26 rest period premium wages, if any, which at the time of settlement was in a state of flux) and
27 because its success relies on prevailing on the underlying unpaid wage claims asserted by Plaintiffs
28 – which was not guaranteed. Moreover, if one or more of the unpaid wage claims could not be

1 certified, it is unlikely that this claim would be certified. The settlement's compromise as to the
2 waiting time penalty claim is fair and reasonable considering the risks of prevailing on this penalty
3 claim on a classwide basis. Gaines Decl. at ¶ 28.

4 A discount on the maximum value of Class members' claims was required (and warranted)
5 to resolve the matter at this stage of the litigation. Class certification is a substantial risk in any
6 class action case. Here, while Plaintiffs maintain that the requirements of class certification are
7 met, Defendant proffers various arguments why class treatment is not appropriate here, including
8 but not limited to that individualized inquires among class members predominate over common
9 ones. If Defendant was to defeat Plaintiffs' class certification motion, there would be no class wide
10 relief whatsoever, and most class members would likely not file individual claims. Gaines Decl. at
11 ¶ 29.

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

19 Defendant strongly contends that its policies and practices do not violate any laws. It
20 contends that it provided all required wages in a timely manner. Gaines Decl. at ¶ 31.

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

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

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

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

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

10 **III. CONCLUSION**

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

- 13 1. Review the proposed Settlement Agreement setting forth the settlement terms.
- 14 2. Consider whether the proposed settlement preliminarily appears to be fair,
15 reasonable and adequate, and whether the proposed settlement class preliminarily appear to meet
16 the applicable certification criteria.
- 17 3. Appoint Diamond Weathers and Milad Razani as the Class Representatives.
- 18 4. Appoint Brent S. Buchsbaum, Esq. and Laurel N. Haag, Esq. of Law Offices of
19 Buchsbaum & Haag, LLP and Daniel F. Gaines, Esq. and Alex P. Katofsky, Esq. of Gaines &
20 Gaines, APLC as Class Counsel.
- 21 5. Approve Phoenix Settlement Administrations as Settlement Administrator with
22 regard to handling the notice procedure as set forth more particularly in the Settlement Agreement.
- 23 6. Enter an Order provisionally approving the proposed settlement class on a non-
24 mandatory basis, approve forms to be distributed to the settlement class, direct notice to be given
25 to the settlement class, and set the following schedule of settlement proceedings:

<u>EVENT</u>	<u>TIMING</u>
Last day for Defendant to provide to the Settlement Administrator a "Class List" in electronic format based on its business records, identifying the names of the Class Members, their last known home addresses, Social Security numbers or, as applicable, other taxpayer identification number, their dates of employment and weeks worked during the Class Period (the "Class List")	10 business days after entry of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail Notice to Class Members	10 business 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 less than 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	No less than 10 calendar days prior to the final settlement approval hearing date
Final settlement approval hearing	_____, 2023, at _____. The Parties suggest the final approval hearing be held approximately 100 days after the preliminary approval order is signed.

1 DATED: July 12, 2022

LAW OFFICES OF BUCHSBAUM & HAAG, LLP

2
3 By: /s/ Brent S. Buchsbaum

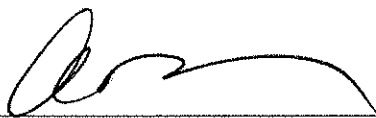
4 BRENT S. BUCHSBAUM

5 LAUREL N. HAAG

6 Attorneys for Plaintiff Diamond Weathers
and Proposed Class Counsel

7
8 DATED: July 12, 2022

GAINES & GAINES, APLC

9
10 By: 

11 DANIEL F. GAINES

12 ALEX P. KATOFISKY

13 Attorneys for Plaintiff Milad Razani
and Proposed Class Counsel