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and Proposed Class Counsel
8

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

10 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**
11

12 MARIA KUZMINOVA, on behalf of
13 herself and a class of similarly situated
employees,

14 Plaintiffs,

15 v.

16 READY RESPONDERS, INC., a Delaware
corporation, and DOES 1 through 10,
17 inclusive,

18 Defendants.
19

Case No. 21STCV13080

*Assigned for all purposes to: Hon. Yvette M.
Palazuelos, Dept. SSC- 9*

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

DATE: April 12, 2022

TIME: 10:00 a.m.

DEPT.: SSC-9

Action Filed: April 6, 2021

1 **PLEASE TAKE NOTICE THAT** on April 12, 2022, at 10:00 a.m., or as soon thereafter
2 as the matter may be heard, in Department SSC-9 of the above-entitled Court, located at 312 N.
3 Spring Street, Los Angeles, California 90012, Plaintiff Maria Kuzminova (“Kuzminova”), and to-
4 be-added Plaintiff Ryan Munoz (“Munoz”), will and hereby do move unopposed for an Order (1)
5 preliminarily approving the proposed class and representative action settlement in the above-
6 captioned case, (2) provisionally certifying the settlement class, (3) permitting Plaintiff Kuzminova
7 to file a Consolidated Class and Representative Action Complaint adding Plaintiff Munoz to this
8 action, (4) provisionally approving the appointment of Plaintiffs Kuzminova and Munoz as Class
9 Representatives, (5) provisionally approving the appointment of Daniel F. Gaines, Alex P.
10 Katofsky, and Miriam L. Schimmel, of Gaines & Gaines, APLC, and James R. Hawkins and
11 Gregory Mauro of James Hawkins APLC, as Class Counsel, (6) provisionally approving the
12 appointment of ILYM Group, Inc. as settlement administrator, (7) approving and directing
13 distribution of notice to the settlement class, and (8) setting a final fairness and approval hearing.

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

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

21 This Motion will be based on the Memorandum of Points and Authorities set forth herein,
22 the Class and Representative Action Settlement Agreement and Release (the “Agreement” or
23 “Settlement Agreement”), the Declarations of proposed Class Counsel Daniel F. Gaines and
24 Gregory Mauro, and Declarations of Maria Kuzminova and Ryan Munoz, such evidence or oral
25 argument as may be presented at the hearing, and on the complete record and file herein.

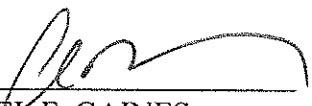
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1 DATED: January 12, 2022

GAINES & GAINES, APLC

2
3 By: 

4 DANIEL F. GAINES

ALEX P. KATOFSKY

MIRIAM L. SCHIMMEL

Attorneys for Plaintiffs 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 Plaintiff Maria Kuzminova (“Kuzminova”) and Ryan Munoz (“Munoz”) (collectively,
5 “Plaintiffs”) and Defendant Ready Responders, Inc. (“Defendant”) (together, the “Parties”) have
6 reached a resolution of this class and representative action and hereby submit their Settlement
7 Agreement to the Court for its preliminary approval.

8 On January 26, 2021, Plaintiff Kuzminova exhausted the pre-filing requirements of the
9 Labor Code Private Attorneys General Act of 2004 (“PAGA”). Declaration of Daniel F. Gaines
10 (“Gaines Decl.”) at ¶ 6. On April 6, 2021, Plaintiff Kuzminova filed her class action and
11 representative PAGA action in Los Angeles County Superior Court, entitled *Maria Kuzminova v.*
12 *Ready Responders, Inc.*, et al., Case No. 21STCV13080 (“Kuzminova Matter”), alleging: (1)
13 Failure to Pay All Minimum and Overtime Wages, (2) Failure to Provide Rest Periods or
14 Compensation in Lieu Thereof; (3) Failure to Provide Meal Periods or Compensation in Lieu
15 Thereof, (4) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement
16 Provisions, (5) Failure to Pay Wages Due at Separation of Employment, (6) Failure to Reimburse
17 Expenses, and (7) Violation of Business & Professions Code § 17200, et seq., and (8) Civil
18 Penalties for Labor Code Violations set forth above pursuant to § Labor Code 2699(a). Gaines
19 Decl. at ¶ 7.

20 On February 24, 2021, Plaintiff Munoz exhausted the pre-filing requirements of the Labor
21 Code Private Attorneys General Act of 2004 (“PAGA”). Declaration of Gregory Mauro (“Mauro
22 Decl.”) at ¶ 2. On February 24, 2021, Plaintiff Munoz filed his class action in Los Angeles County
23 Superior Court, entitled *Ryan Munoz v. Ready Responders, Inc.*, Case No. 21STCV07377 (“Munoz
24 Matter”), alleging: (1) Failure to Pay Wages Including Overtime, (2) Failure to Provide Meal
25 Periods, (3) Failure to Provide Rest Periods, (4) Failure to Pay Timely Wages, (5) Failure to Provide
26 Accurate Itemized Wage Statements, and (6) Violation of Business & Professions Code § 17200,
27 et seq. Munoz amended his complaint and added a PAGA claim on May 3, 2021. Hawkins Decl.
28 at ¶ 3.

1 Both the *Kuzminova* Matter and *Munoz* Matter (collectively, “the Actions”) were designated
2 as complex. On July 6, 2021, the Court ordered the Actions related and transferred the *Kuzminova*
3 Matter to Department 9 of Los Angeles Superior Court with Judge Palazuelos.

4 Founded in 2016, Louisiana-based Ready Responders, Inc. has maintained a mission to
5 provide patients with direct access to healthcare in their homes. With its on-demand mobile health
6 service, Defendant’s physician groups provide non-emergency care directly to patients through
7 “Responders” who travel to patients’ homes or other secure locations to facilitate a telemedicine
8 visit with a licensed clinician. However, Defendant only operated its business within California
9 for approximately less than one year. Given the short duration that Defendant did business in
10 California, the total aggregate number of workweeks at issue in this case is only approximately
11 2,071. Gaines Decl. at ¶ 9.

12 Plaintiff Kuzminova began working for Defendant in April 2020 as a full-time, non-exempt,
13 Responder, and worked for Defendant until she was terminated in June 2020. At the time of her
14 termination, she was earning an hourly wage of \$18.00. Gaines Decl. at ¶ 10.

15 Plaintiff Munoz began working for Defendant in May 2020 as a full-time, non-exempt,
16 Responder, and continually worked for Defendant until he resigned his position in December 2020.
17 At the time of his resignation, he was earning an hourly wage of \$25.50. Hawkins Decl. at ¶ 4.

18 According to the data produced by Defendant, there are a total of approximately 51 Class
19 Members during the class liability period and 72 PAGA Settlement Group Members employed at
20 some point during the PAGA liability period. The average hourly rate of pay for these employees
21 was \$21 per hour. Gaines Decl. at ¶ 11.

22 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged
23 in the Actions, and further denies that the Actions are appropriate for class treatment for any
24 purpose other than this settlement. Defendant contends, that at all times, it has complied with the
25 California Labor Code and all applicable state, federal, and local laws related to its California non-
26 exempt employees. It is Defendant’s position that, if the Actions were to be litigated, class
27 certification would be inappropriate because Plaintiffs would be unable to satisfy the requirements
28 for class certification. Defendant would contend that Plaintiffs are not adequate class

1 representatives, Plaintiffs' claims are not typical of putative class members, individual issues and
2 questions of law and fact predominate over any common issues, and that a class action is not
3 superior to other available methods for fairly and effectively adjudicating the issues. Defendant
4 would also contend that the PAGA claim cannot be manageably tried. The Actions, the negotiation
5 and execution of this Settlement Agreement, and all acts performed or documents executed
6 pursuant to or in furtherance of the Settlement Agreement (i) shall not be used as an admission or
7 evidence of wrongdoing on behalf of Defendant; (ii) shall not be an admission or evidence of fault
8 on behalf of Defendant in any action before a civil, criminal, or administrative agency; and (iii)
9 shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness
10 of these or similar claims for class certification in the Actions or with respect to any other
11 proceeding. Gaines Decl. at ¶ 12.

12 The Class Representatives contend that Defendant violated the California Labor Code and
13 that this case is appropriate for class certification. Gaines Decl. at ¶ 13.

14 **B. Investigation and Settlement Discussions**

15 Through extensive informal discovery, Class Counsel have conducted a thorough
16 investigation into the facts and law at issue in this case, including the exchange of extensive
17 documents and the review and verification of statistical data and other facts and information
18 provided by Defendant. Counsel for the Parties also represent that they have investigated the
19 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiffs and
20 potential defenses thereto, and the potential damages claimed by Plaintiffs. Gaines Decl. at ¶ 14.

21 The Parties engaged in extensive early settlement discussions and negotiations within the
22 first two months of litigation. As part of the discussions, and before any agreement was negotiated,
23 Plaintiffs requested and Defendant produced extensive confidential documentation including time
24 and pay data, policy documents, class size information, sample wage statements, information on
25 the number of pay periods and workweeks, information on the number of California non-exempt
26 employees who signed a Separation Agreement and Waiver and Release of all Claims ("Severances
27 and Releases") in connection with the March 2021 cessation of operations, sample Severances and
28 Releases, and information regarding the hourly rates. In short, Defendant provided informal

1 discovery sufficient to enable the Plaintiffs and Class Counsel to rigorously evaluate the strengths
2 and risks of the case and perform an analysis of the potential damages arising from the claims made
3 in this case. Beginning June 2021, the Parties engaged in extensive discussions on the calculation
4 of Plaintiffs' alleged potential damages and the merits of Plaintiffs' claims. Negotiations concluded
5 on August 20, 2021 when counsel for the Parties reached an agreement on the basic terms of the
6 Settlement. The Parties then engaged in discussions on the specific terms of the long-form
7 Settlement Agreement, which was executed by all Parties on December 9, 2021. The Settlement
8 amount and terms as detailed herein are based squarely on the information Defendant provided.
9 Gaines Decl. ¶ 15.

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

17 The Parties agree that the Settlement Class described herein may be certified for settlement
18 purposes only and that any motion for preliminary approval seeking, *inter alia*, certification of the
19 Settlement Class is for purposes of the settlement only. Defendant does not concede that the
20 Settlement Class would satisfy certification requirements if the issues were to be fully litigated. If
21 for any reason the settlement is not approved, the certification will have no force or effect and will
22 immediately be revoked. The Parties further agree that certification for purposes of approving the
23 Settlement Agreement is in no way an admission that class certification is proper under the more
24 stringent standard applied for litigation and that evidence of this limited stipulation for settlement
25 purposes only will not be admissible for any purpose in this or any other proceeding. Gaines Decl.
26 at ¶ 16.

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1 **II. LEGAL ANALYSIS**

2 **A. The Proposed Settlement Terms**

3 The Parties have agreed upon the following definition of the “Settlement Class Members”:
4 “all persons who were employed by Defendant as an hourly non-exempt employee in the State of
5 California during the Class Period, who did not sign a ‘Separation Agreement and Waiver and
6 Release of all Claims’ related to Defendant’s shutdown of California operations in March 2021.”
7 Settlement at ¶ I.4. The Class Period means the period from April 1, 2020 to March 31, 2021,
8 which is the approximate period that Defendant had hourly non-exempt employees actively
9 employed in California.

10 “PAGA Settlement Group Members” is defined as “all persons who were employed by
11 Defendant as an hourly non-exempt employee in the State of California at any time from April 1,
12 2020 to March 31, 2021, regardless of whether they are also a Class Member or Participating Class
13 Member.” Each PAGA Settlement Group Member will be paid an Individual PAGA Payment.

14 The Parties stipulate to the conditional certification of the Settlement Class for settlement
15 purposes only. Settlement at ¶ II.1.

16 The Settlement Agreement provides that Defendant shall pay the total, non-reversionary
17 sum of \$100,000 to resolve the claims alleged in the Actions (the “Total Settlement Amount”).
18 Settlement at ¶ I.39. This amount includes the sum of the Net Settlement Amount, the Class
19 Representative Enhancement Awards, Class Counsel Fees, Class Counsel Costs, PAGA Payment,
20 and Settlement Administrator Costs.

21 The Net Settlement Amount of \$42,435.68 will be divided to each Participating Class
22 Member. Each Participating Class Member will receive an individualized amount (“Individual
23 Settlement Amount”) based on the number of eligible workweeks worked by the Settlement Class
24 Member. The Individual Settlement Payments will be paid pursuant to the following settlement
25 formula: (1) First, using the Class Information, the Settlement Administrator will compute the total
26 number of eligible workweeks of all Participating Class Members collectively during the Class
27 Period; this sum shall be known as the workweek total; (2) Second, the Settlement Administrator
28 will divide the Net Settlement Amount by the workweek total to determine the settlement value for

1 each eligible workweek (the “Workweek Value”); and (3) Third, the Settlement Administrator will
2 multiply the number of eligible workweeks of a Participating Settlement Class Member during the
3 Class Period by the Workweek Value to determine that Settlement Class Member’s Individual
4 Settlement Payment.

5 Class Members will have an opportunity to request exclusion from the Class Settlement (i.e.
6 opt out), but not the PAGA Settlement Group, by the Response Deadline as defined in the
7 Settlement Agreement and to object to the Class Settlement at the Final Approval Hearing.
8 Pursuant to the Agreement, the Notice of Class Action Settlement will be sent to the last known
9 address of all Settlement Class Members. If the notice returned as undeliverable, the Administrator
10 will undertake another reasonable address verification measure to locate a valid mailing address
11 and will promptly send the Notice of Class Action Settlement to the new address. As such, the
12 Notice of Class Action Settlement is likely to reach most, if not all, Settlement Class Members.

13 Class Members need not submit a claim form to receive their share of the Settlement. Class
14 Members who timely exclude themselves from the Settlement will not be part of the final
15 Settlement Class and not bound by the releases in the Settlement, except the PAGA Release, and
16 will have no right to object and shall be foreclosed from making any objection to the Agreement.
17 Settlement at ¶¶ I.34.; III.7.e. PAGA Settlement Group Members will be sent their Individual
18 PAGA Payment regardless of whether they opt out of the Class Settlement and will be bound by
19 the PAGA Release.

20 The Settlement Agreement further provides that Plaintiffs’ counsel may request an award
21 of attorneys’ fees not to exceed \$33,333.33 (i.e., one-third of the Total Settlement Amount) and
22 seek reimbursement of litigation costs necessarily incurred in pursuing this Action, not to exceed
23 \$4,230.99. Settlement at ¶ III.10.

24 It also provides that Plaintiffs will seek, and Defendant will not oppose, incentive awards
25 to each named Plaintiff Kuzminova and Munoz in the amount of \$5,000 (for a total of \$10,000).
26 Settlement at ¶ III.13.

27 The Parties have agreed that ILYM Group, Inc. (“ILYM”), an experienced and competent
28 settlement administration company, will administer the settlement. ILYM’s credentials are attached

1 as **Exhibit C** to the Gaines Decl. Up to \$4,000 has been allocated to compensate ILYM for its work
2 related to the administration.

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

4 Pursuant to PAGA, the Parties have agreed that \$10,000 of the Total Settlement Amount
5 will be allocated to settle the claims brought under Labor Code § 2699 *et. seq.* Pursuant to Labor
6 Code § 2699(i), “civil penalties recovered by aggrieved employees shall be distributed as follows:
7 75 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved
8 employees.” As such, 75 percent of the apportioned PAGA settlement amount – or \$7,500 – shall
9 be payable to the Labor and Workforce Development Agency. The remaining 25 percent, or
10 \$2,500, will be paid to the Net Settlement Amount for distribution to PAGA Group Members based
11 on the following formula: \$2,500 divided by the number of PAGA Settlement Group Members.
12 PAGA Group Members shall be bound by the settlement of the PAGA Claims, even if they opt out
13 of the final Settlement Class.

14 As required by Labor Code § 2699(l)(2), concurrent with Plaintiffs’ submission of the
15 Settlement Agreement to the Court, they are transmitting it, together with this Motion, to the
16 LWDA. Gaines Decl. at ¶ 39.

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

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

23 Approval of class action settlements involves a two-step process.
24 First, counsel submit the proposed terms of settlement and the court
25 makes a preliminary fairness evaluation. If the preliminary
26 evaluation of the proposed settlement does not disclose grounds to
27 doubt its fairness or other obvious deficiencies, such as unduly

28 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 preferential treatment of class representatives or of segments of the
2 class, or excessive compensation for attorneys, and appears to fall
3 within the range of possible approval, the court should direct that
4 notice ... be given to the class members of a formal fairness hearing,
at which arguments and evidence may be presented in support of and
in opposition to the settlement.

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

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

14 When the parties to an action reach a monetary settlement, they will
15 usually prepare and execute a joint stipulation of settlement, which
16 is submitted to the court for preliminary approval. The stipulation
17 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.

18 *Id.* at § 11.24.

19 Here, the Parties have reached such an agreement and have submitted the Settlement
20 Agreement herewith which fully sets forth all terms of the agreement reached among the Parties.

21 *See* Gaines Decl. ¶ 38; **Exhibit B**.

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

23 Pursuant to California Rules of Court, Rule 3.769(d), parties also may, at the preliminary
24 approval stage, request that the court provisionally approve certification of the class – conditioned
25 upon final approval of the settlement. "[P]re-certification settlements are routinely approved if
26 found to be fair and reasonable." *Wershba, supra*, 91 Cal. App. 4th at 240. *Accord Dunk, supra*,
27 48 Cal. App. 4th at 1803 (although the settlement was reached before any "adversary certification,"
28 the court was satisfied that it was "fair, adequate and reasonable."). *See also In re Baldwin-United*

1 Corp. (S.D.N.Y. 1984) 105 F.R.D. 475, 478² (“many courts have employed this practice in the
2 name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”)

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

10 4 *Newberg on Class Actions*, at §11.26.

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

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

18 a. **The Settlement Class is Numerous and Ascertainable**

19 The proposed settlement class is ascertainable. The class definition, the size of the class
20 and the means for identifying the members of the class determine whether the class is ascertainable.
21 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
22 are identifiable from Defendant’s employment records, including records of those who signed
23 severance and release agreements. Further, the settlement class is sufficiently numerous to warrant
24 certification. According to Defendant’s records, the Settlement Class is comprised of
25 approximately 51 individuals as of March 31, 2021 when Defendant shut down its California
26 operations. Gaines Decl. ¶ 20; Settlement, ¶ I.4.

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

3 The Class Members' claims all stem from a common source: Plaintiffs allege as to all Class
4 Members that Defendant violated the same Labor Code and Wage Order provisions in connection
5 with their work for Defendant. The same Labor Code and Wage Order violations are alleged on
6 behalf of all persons encompassed in the settlement class, including claims for: (1) Failure to Pay
7 All Minimum and Overtime Wages, (2) Failure to Provide Rest Periods or Compensation in Lieu
8 Thereof; (3) Failure to Provide Meal Periods or Compensation in Lieu Thereof, (4) Knowing and
9 Intentional Failure to Comply with Itemized Employee Wage Statement Provisions, (5) Failure to
10 Pay Wages Due at Separation of Employment, (6) Failure to Reimburse Expenses, (7) Failure to
11 Provide Accurate Itemized Wage Statements, and (8) Violation of Business & Professions Code §
12 17200, et seq., and (9) Civil Penalties for Labor Code Violations set forth above pursuant to §
13 Labor Code 2699(a), based on the preceding claims. Plaintiffs seek on behalf of all members of
14 the Settlement Class the same legal remedies under the same state laws, all related to their
15 employment under alleged uniform policies and practices. Under these circumstances, the
16 commonality requirement is satisfied for purposes of certifying the settlement class for settlement.
17 Gaines Decl. ¶ 21.

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

20 A class representative's claims are typical when they arise from the same event or course
21 of conduct that gives rise to the claims of the class and are based on the same legal theory.
22 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, the named Plaintiffs and
23 proposed Class Representatives Maria Kuzminova and Ryan Munoz are former non-exempt
24 employees who were employed by Defendant in California. Plaintiffs allege the same claims as
25 those that they contend the members of the Settlement Class would reasonably be expected to bring
26 based on the course of conduct alleged herein. Gaines Decl. ¶ 22.

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1 Plaintiffs have also demonstrated that they will aggressively and competently assert the
2 interests of the proposed Settlement Class; they have taken active roles in this litigation and have
3 no apparent conflicts with other class members. Plaintiffs participated actively in the litigation,
4 providing information and documents to assist their attorneys in pursuing their claims. Gaines
5 Decl. ¶ 23. Furthermore, Plaintiffs have retained competent counsel, experienced in litigating class
6 action claims in the employment context. *See* Gaines Decl. ¶¶ 2-5.

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

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

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

1 Here, the Parties' counsel have a great deal of experience in class action litigation and
2 specialize in employment wage and hour matters. Moreover, counsel for both Parties conducted
3 an extensive investigation of the factual allegations involved in this case. The Parties have engaged
4 in a broad exchange of documents, statistics, records and other information. Each side has apprised
5 the other of their respective factual contentions, legal theories and defenses, resulting in extensive
6 arms-length negotiations taking place among the Parties. *See* Gaines Decl. ¶ 2-5, 14-17; Hawkins
7 Decl. ¶ 10-12.

8 1. **The Settlement Falls Within The "Ballpark" of Reasonableness**

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

18 Prior to settlement, Plaintiffs' counsel created a comprehensive damage analysis using
19 sampling information obtained through informal discovery. This damage analysis reveals that the
20 negotiated settlement falls within a realistic range of recovery on class members' claims. Gaines
21 Decl. ¶ 24.

22 a. **The Risks Associated with the Minimum Wage/Overtime Claim**

23 In the Actions, Plaintiffs assert that Ready Responders failed to compensate Class Members
24 for all time worked due to work performed off the clock. Specifically, Plaintiffs contend that
25 Defendant required Class Members to be physically present somewhere within their area of
26 coverage prior to starting their scheduled shift. Plaintiffs contend that since Defendant has no office,
27 Class Members drove and parked somewhere within the general area where their work was to be
28 performed and then waited in their car for dispatch to assign them a patient. Plaintiffs contend that

1 only after Class Members got to their coverage zone, were they permitted to clock in for work.
2 However, Plaintiffs contend that despite being under the control of Defendant, they were not paid
3 for the time they spent getting to the coverage zone. Plaintiffs estimates the time they spent waiting
4 to go to the coverage zone was approximately 10-15 minutes. Gaines Decl. ¶ 25. Plaintiffs claim
5 that Defendant also failed to pay them for the time it took to drive home from their last patient's
6 location. The time would vary depending on location, but Plaintiffs assert that it could be as much
7 as an hour away from where they lived. Thus, they would not be paid for the hour long drive back
8 home. Plaintiffs claim that employees were also supposed to write reports for each patient visit,
9 but because of their busy schedule, they frequently had to complete the reports after their shift when
10 they were not being paid. Moreover, Plaintiffs allege that Defendant encouraged employees to
11 complete reports off-the-clock. Plaintiffs estimate this claim was only worth approximately
12 \$46,298³ if Plaintiffs proved full liability. Gaines Decl. ¶ 26.

13 Plaintiffs acknowledge the risks associated with Plaintiffs' ability to prove these claims.
14 Defendant maintains that the off the clock claim would fail to be certified because it would require
15 a highly individualized inquiry into each employee's daily practices. Additionally, Defendant
16 maintains that the drive time to the putative class members' coverage zones at the beginning of
17 their shifts and the drive time back home at the end of employees' shifts was not compensable
18 because it was uncontrolled commute time. Gaines Decl. ¶ 27. Defendant contends that it had a
19 clear off-the-clock no work policy as stated in its handbook and that putative class members were
20 directed to log all time worked, including time writing reports for each patient visit.

21 **b. The Risks Associated with the Meal and Rest Break Claims**

22 Plaintiffs further allege that Defendant failed to pay premium wages when employees did
23 not receive a lawful meal break or rest break. Plaintiffs allege that Defendant failed to require Class
24 Members to clock out for meal breaks in direct violation of Labor Code § 512. Further, Plaintiffs
25 contend neither meal nor rest breaks were scheduled. Plaintiffs contend that Class Members were
26 simply expected to take meal and rest breaks in between patients and that this practice often resulted

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28 ³ Plaintiffs' potential damages calculations include the 21 non-exempt employees who signed Severances and Release and so are not part of the Settlement Class.

1 in Class Members frequently missing meal and rest breaks or taking them late because they were
2 busy with a patient. Moreover, Plaintiffs allege that when Class Members tried to take a break, they
3 would frequently be cut short because they would be called to visit another patient. Plaintiffs also
4 allege that when Class Members worked over 10 hours in a day, they never received a third rest
5 break or second meal break. Plaintiffs allege that when Class Members clocked out at the end of
6 their shift through the application on their phone, they were required to confirm that they took their
7 meal and rest breaks (even if they did not), or else, according to the client's recollection, you
8 wouldn't be able to clock out. Gaines Decl. ¶ 28.

9 Defendant argues that it maintains facially compliant meal and rest break policies and that
10 Class Members were provided the opportunity to take compliant meal and rest periods. The mobile
11 application that the putative class members used to record their daily time worked included a
12 method to clock in and out for off-duty meal breaks. Defendant contends that it never prevented
13 any of its employees from taking meal and rest breaks and that its employees understood they were
14 expected to take them. Defendant contends that the time records it provided Plaintiffs indicate that
15 putative class members regularly took compliant meal breaks. Plaintiffs also acknowledge the risk
16 in attempting to prove that class members failed to take rest breaks through declarations and oral
17 testimony. Based on the information provided, including a review of a sample of Class Members'
18 time and wage records, Plaintiffs estimated the maximum value of the meal break claim to be
19 approximately \$57,022⁴ and the maximum value of the rest break claim to be approximately
20 \$132,254.⁵ Gaines Decl. ¶ 29.

21 c. **The Risks Associated With The Expense Reimbursement Claim**

22 Plaintiffs asserted that Defendant violated Labor Code § 2802 by failing to reimburse Class
23 Members for mileage driven from their home to their coverage area, from their coverage area to
24 their first patient's home, and from their last patient's home back to their own home. Class Members
25 were only reimbursed for mileage when they drove from one patient's home to another patient's
26 home. Plaintiffs also asserted that Defendant failed to reimburse Class Members for required use

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28 ⁴ See footnote 3 above.

⁵ See footnote 3 above.

1 of their cell phones for work. Plaintiffs claim Class Members were expected to download several
2 applications on their personal cell phone to use for purposes related to the performance of their job
3 duties for Defendant. Defendant contends that there is no basis for this claim on the merits because
4 home to work commuting is not a business expense required to be reimbursed under California law.
5 Further, Defendant had an express policy permitting submissions for business expense
6 reimbursement through Expensify and provided company-purchased phones to employees to use
7 for work related needs shortly after its operations began in California. Plaintiffs estimate damages
8 in the amount of \$13,670⁶ for this claim. Gaines Decl. ¶ 30.

9 d. **The Risks Associated With The Inaccurate Wage Statement**
10 **Claim**

11 Plaintiffs also sought statutory penalties for non-compliant wage statements. This is a
12 derivative claim and therefore, recovery is necessarily dependent upon the success of the above
13 underlying claims. Given that, it is possible that Plaintiffs would not recover on these penalties at
14 all. Plaintiffs' expert valued the maximum value of this claim at approximately \$69,828⁷ for 51
15 Class Members. Gaines Decl. ¶ 31.

16 e. **The Risks Associated With The PAGA Claim**

17 The PAGA claims alleged by Plaintiffs could be valued at up to \$103,600⁸ assuming one
18 violation occurred in every pay period at the initial penalty rate and without stacking penalties, as
19 there is currently no California authority that provides for PAGA penalties to be stacked. However,
20 any recovery on these claims is also not certain. PAGA claims are discretionary, such that the
21 Court could decline to award their full value. They are also derivative, so Plaintiffs must prevail
22 on their underlying Labor Code claims to prevail on these claims. Finally, the Court may award
23 far less than the maximum value on these penalty claims, particularly if they approach or exceed
24 the value of the underlying wage claims. Gaines Decl. ¶ 32.

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27 ⁶ See footnote 3 above.

28 ⁷ See footnote 3 above.

⁸ See footnote 3 above.

f. **Overall Risks, Complexity, and Likely Duration of Further
Litigation**

A discount on the maximum value of Class Members' claims was required (and warranted) to resolve the matter at this stage of the litigation. Most importantly, Defendant demonstrated that it had strong defenses to Plaintiffs' claims. Defendant strongly contends that its policies and practices do not violate any laws. It contends that it provided all required wages in a timely manner. Based on Defendant's arguments and the information it provided to Plaintiffs, the Parties were able to negotiate a resolution which compromises the claims of the Class Members for fair consideration. Gaines Decl. ¶ 33.

Plaintiffs' claims were not without their challenges. Class certification is a substantial risk in any class action case. Here, while Plaintiffs maintain that the requirements of class certification are met, Defendant proffers various arguments why class treatment is not appropriate here, including but not limited to that individualized inquires among class members predominate over common ones given that the putative class members were assigned to a wide variety of clients and locations, the lack of records of rest break violations, and Defendant's facially complaint meal and rest break policies. If Defendant was to defeat Plaintiffs' class certification motion, there would be no class wide relief whatsoever, and most class members would likely not file individual claims. Gaines Decl. ¶ 34.

Plaintiffs also faced the risk of a loss on the merits on their claims. Plaintiffs' wage statement claims, for example, are technical and primarily derivative of their underlying wage claims. It is possible that the Court would find that Defendant substantially complied with the requirements of Labor Code section 226(a) such that no penalties would be awarded. It is also possible that the Court would agree with Defendant's position that its policies and practices complied with the requirements of California law. In such a case, the value of most of Plaintiffs' claims would be zero. Gaines Decl. ¶ 35. The PAGA claims could also be challenged on manageability grounds under the recent decision in *Wesson v. Staples the Off. Superstore, LLC*, 68 Cal. App. 5th 746 (2021).

1 Based on the above, the total potential recovery would have been approximately \$422,672⁹.
2 While this settlement recovered approximately 24% of the maximum potential, much of that
3 potential involves penalties subject to various risks, and when the recovery is analyzed per shift, it
4 yields a recovery of approximately \$18 per shift within the Class Period (\$100,000 divided by the
5 total number of shifts during the Class Period, 5,473).¹⁰ When the costs and risks of non-
6 certification and loss on the merits are considered, Plaintiffs' counsel are of the opinion that the
7 settlement reached is clearly a favorable one. Gaines Decl. ¶ 36; Hawkins Decl. ¶¶ 9-12.

8 The settlement for each participating Class Member is fair, reasonable and adequate, given
9 the inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
10 litigation. The Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
11 The Parties arrived at it after extensive investigation and discovery, careful evaluation of the law,
12 risks, and all information substantiating the amount of penalties reasonably likely to be awarded to
13 the class were the trier of fact to find Defendant liable. The settlement shall finally resolve all
14 claims of the Class Members as alleged in the Action. Gaines Decl. ¶ 37.

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

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

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

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25 _____
26 ⁹ See footnote 3 above.

27 ¹⁰ Plaintiffs' potential damages calculations include the 21 non-exempt employees who signed
28 Severances and Releases and so are not part of the settlement class. The number of total shifts
excluding the 21 non-exempt employees is approximately 3,391. Therefore, the per shift recovery
for Settlement Class Members is much higher when excluding the 21 employees who signed
Severances and Releases.

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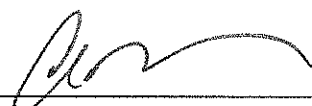
6. Permitting Plaintiff to file her Consolidated Class and Representative Action Complaint, attached to the Settlement Agreement as Exhibit 2.

7. Enter an Order provisionally approving the proposed settlement class on a non-mandatory basis, approve forms to be distributed to the settlement class, direct notice to be given 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 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 ("Class List")	No later than 21 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail Notice to Class Members	No later than 5 calendar days after receiving the Class List from Defendant
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 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	No fewer than 16 Court days prior to 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	No fewer than 16 Court days prior to the final approval hearing
Final settlement approval hearing	_____, 2022, at _____.m. (the Parties propose a date approximately 100 days after entry of this Order)

1 DATED: January 12, 2022

GAINES & GAINES, APLC

2
3 By: 

4 DANIEL F. GAINES

ALEX P. KATOFSKY

MIRIAM L. SCHIMMEL

Attorneys for Plaintiffs and Proposed Class Counsel