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8

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

10 **FOR THE COUNTY OF LOS ANGELES – POMONA COURTHOUSE SOUTH**

11
12 SAMUEL PLACENSIA, on behalf of
himself and all “aggrieved employees”
13 pursuant to Labor Code § 2698 *et seq.*,

14 Plaintiffs,

15 v.

16 ARM AND J CORPORATION, a
California corporation, dba PUENTE
17 HILLS CHRYSLER DODGE JEEP RAM,
and DOES 1 through 10, inclusive,

18 Defendants.
19

CASE NO: 21PSCV00211

Assigned to the Hon. Peter A. Hernandez, Dept. O

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

DATE: March 8, 2022

TIME: 9:30 a.m.

DEPT.: O

Reservation No.: 903200864659

Action Filed: March 12, 2021

1 **PLEASE TAKE NOTICE THAT** on March 8, 2022 at 9:30 a.m., or as soon thereafter as
2 the matter may be heard, in Department O of the above-entitled Court, located at 400 Civic Center
3 Plaza, Pomona, California 91766, Plaintiff Samuel Placensia (“Plaintiff” or “Placensia”) will and
4 hereby does move unopposed for an Order (1) preliminarily finding that the settlement between the
5 parties falls within the range of reasonableness and approving the proposed class action settlement
6 in the above-captioned case, (2) conditionally certifying, for settlement purposes only, a settlement
7 class, (3) approving the appointment of Plaintiff as Class Representative, (4) approving the
8 appointment of Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC as Class
9 Counsel, (5) approving the appointment of Phoenix Settlement Administrators as settlement
10 administrator, (6) preliminarily approving the allocation of \$20,000 from the Gross Settlement
11 Amount to settle Plaintiff’s representative claims under the Private Attorneys General Act (Lab.
12 Code §§ 2698 et seq.), of which seventy-five percent (75%) will be paid to the Labor and Workforce
13 Development Agency and twenty-five percent (25%) shall be paid to Class Members who have not
14 submitted a valid and timely Request for Exclusion Form as part of the Net Settlement Sum, (7)
15 approving as to content and form the notice to the settlement class, and directing it be disseminated
16 by the Settlement Administrator; (8) permitting Plaintiff to file a First Amended Complaint, and
17 (9) setting a final fairness and approval hearing.

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

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

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

4
5 DATED: January 28, 2022

Respectfully submitted,

6 GAINES & GAINES,
7 A Professional Law Corporation

8
9 By: Alex P. Katofsky

DANIEL F. GAINES

ALEX P. KATOFISKY

10 Attorneys for Plaintiff Samuel Placencia and Proposed
11 Class Counsel

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. BACKGROUND AND PROCEDURAL HISTORY	1
III. INVESTIGATION AND SETTLEMENT DISCUSSIONS.....	2
IV. LEGAL ANALYSIS	3
A. The Proposed Settlement Terms	3
1. The Settlement Class.....	3
2. Allocations to be Paid from the Maximum Settlement Amount.....	4
3. Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)	5
B. Two-Step Approval Process.....	5
C. Procedures for Settlement Before Class Certification	7
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.....	8
c. The Proposed Class Representative's Claims are Typical of the Class Members' Claims	8
D. The Settlement Is Fair and Reasonable and Not the Result of Fraud or Collusion	9
1. The Settlement Falls Within The "Ballpark" of Reasonableness	10
2. Despite the Asserted Fairness of the Settlement Terms, Class Members May Request Exclusion From, Or Object To, The Settlement.....	14
E. Plaintiff Should Be Permitted to File His First Amended Complaint.....	14
V. CONCLUSION	15

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	10
<i>Classen v. Weller</i> (1983) 145 Cal. App. 3d 27.....	8
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal. App. 4th 1794	1, 7
<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	7
<i>In re Chicken Antitrust Litig.</i> (N.D. Ga. 1980) 560 F. Supp. 957	9
<i>In re Paine Webber Ltd. P'ships Litig.</i> (S.D.N.Y. 1997) 171 F.R.D. 104	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.....	9
<i>Reyes v. Board of Supervisors</i> (1987) 196 Cal. App. 3d 1263.....	8

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
<i>Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n</i> (E.D. Pa. 1978).....	9
<i>Steinberg v. Carey</i> (S.D.N.Y. 1979) 470 F. Supp. 471.....	9
<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	5
<i>Wershba v. Apple Computer</i> (2001) 91 Cal.App.4th 224	6, 7

STATUTES

Cal. Bus. & Prof. Code § 17200	2
Cal. Labor Code §§ 201-203.....	2, 8
Cal. Labor Code § 226	2, 11, 13
Cal. Labor Code § 226.7	2, 11
Cal. Labor Code § 510	2, 8, 10
Cal. Labor Code § 512	2, 10
Cal. Labor Code § 2699	2, 5, 7

RULES AND REGULATIONS

Cal. R. Ct. 3.769.....	1, 5
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
Manual for Complex Litigation (Third) § 30.41	6

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Parties have reached a resolution of this class action and hereby submit their Settlement Agreement and Release of Claims (“Settlement”, “Stipulation” or “Stip.”) for the Court’s approval. The Settlement is made and entered into by and between Plaintiff Samuel Placensia (“Plaintiff” or “Placensia”), individually and on behalf of all others similarly situated, and Defendant Arm and J Corporation, a California corporation, dba Puente Hills Chrysler Dodge Jeep Ram (“Defendant”).

The settlement occurred as a result of extensive arm’s-length negotiations by experienced counsel with the assistance of a respected mediator with experience in the area of employment class actions. Most importantly, the settlement will result in significant financial benefit to the participating claimants, on terms that are by any measure fair, reasonable and adequate. *See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801-02. The proposed settlement provides for a non-revisionary class settlement in the gross amount of \$366,788 and the proposed settlement class contains approximately 420 members who worked approximately 6,800 pay periods during the Class Period. As detailed below, the settlement is in the best interests of the class in light of all of the facts and circumstances and the risks and delays of further litigation.

For the foregoing reasons, the Parties respectfully request that the Court: (a) grant preliminary approval of the settlement agreement and preliminarily find that the settlement falls within the range of reasonableness; (b) conditionally grant certification of the proposed Settlement Class, for settlement purposes only; (c) approve the appointment of Plaintiff Samuel Placensia as Class Representative; (d) approve the appointment of Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC as Class Counsel; (e) approve appointment of the Settlement Administrator; (f) permit the filing of a First Amended Complaint; (g) authorize the mailing of the proposed class action notice packet; and (h) schedule a final fairness and approval hearing.

II. BACKGROUND AND PROCEDURAL HISTORY

On January 5, 2021, Plaintiff sent a letter to the LWDA, alleging Defendant violated the California Labor Code and seeking penalties under PAGA. Specifically, Plaintiff alleged Defendant failed to pay wages and premium wages to Defendant’s non-exempt California employees, denied

1 employees meal periods and rest periods, failed to reimburse business expenses, failed to provide
2 accurate itemized wage statements, and failed to timely pay wages at the separation of employment.
3 Declaration of Daniel F. Gaines (“Gaines Decl.”) at ¶ 6.

4 On March 12, 2021, Plaintiff filed a representative action complaint in the Los Angeles
5 County Superior court titled *Samuel Placencia, et al. vs. Arm and J Corporation, A California*
6 *Corporation, dba Puente Hills Chrysler Dodge Jeep Ram, et al.*, case no. 21PSCV00211. Plaintiff
7 alleges Defendant violated various sections of the California Labor Code and applicable wage
8 orders as alleged in his letter to the LWDA. Gaines Decl. at ¶ 7.

9 The First Amended Complaint, which will be filed as part of the settlement approval
10 process, asserts direct class and representative action claims against Defendant for (1) failure to
11 pay all minimum wages and overtime wages (Labor Code § 510 and 1194); (2) failure to provide
12 rest periods or compensation in lieu thereof (Labor Code § 226.7; IWC Wage Order 4-2001); (3)
13 failure to provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7, and 512;
14 IWC Wage Order 4-2001); (4) knowing and intentional failure to comply with itemized employee
15 wage statement provisions (Labor Code §§ 226(a), (e), (h)); (5) failure to timely pay wages due at
16 separation of employment (Labor Code §§ 201-203); (6) failure to reimburse employee business
17 expenses (Labor Code § 2802); (7) violation of Business and Professions Code § 17200; and (8)
18 penalties pursuant to Labor Code § 2699(f) for violations of Labor Code §§ 201-203, 226(a), 226.3,
19 226.7, 510, 512, 558, 1194, and 2802. (the “First Amended Complaint”). Gaines Decl. at ¶ 8.

20 **III. INVESTIGATION AND SETTLEMENT DISCUSSIONS**

21 The Parties engaged in informal discovery prior to attending mediation in the Action,
22 including but not limited to: pre-litigation investigation, exchange of informal written discovery,
23 including workweek data, the number of class members, written policies, payroll records, and
24 timekeeping records for the purposes of mediation. The Parties thoroughly investigated all of the
25 claims in the Action prior to negotiating a settlement in the Action. Gaines Decl. at ¶ 9.

26 On October 4, 2021, the Parties attended a formal mediation with well-known mediator
27 Marc J. Feder, Esq. The Parties reached a settlement agreement at the conclusion of the mediation
28 and executed a memorandum of understanding which is superseded in full by their Settlement

1 Agreement. Gaines Decl. at ¶ 10.

2 Based on their own independent investigation and evaluation, Class Counsel are of the
3 opinion that settlement for the consideration and on the terms set forth in this Settlement Agreement
4 is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all
5 known facts and circumstances, including the risk of significant delay, the risk the Settlement Class
6 will not be certified by the Court, and the defenses asserted by Defendant. Defendant and its
7 counsel also agree that this settlement is fair and in the best interest of the Settlement Class. Gaines
8 Decl. at ¶ 11.

9 Defendant has denied and continues to deny each and all of the claims and allegations in
10 the Action. Defendant has asserted and continues to assert many defenses thereto and has expressly
11 denied and continues to deny any fault, wrongdoing, or liability whatsoever arising out of the
12 conduct alleged in the Action. Defendant contends that it has, at all times, complied with the
13 provisions of the California Labor Code, the California Business and Professions Code, and all
14 applicable federal and California laws and regulations. Neither the Settlement (including all drafts
15 hereof) nor any document referred to herein, nor any action taken to carry out this Settlement is,
16 may be construed as, or may be used in any proceeding as an admission by or against Defendant of
17 any fault, wrongdoing, infirmity of defense, or liability whatsoever. Defendant expressly denies
18 any fault, wrongdoing, or liability, and expressly denies the validity of all causes of action and
19 prayers for relief asserted in the Action. Gaines Decl. at ¶ 12.

20 **IV. LEGAL ANALYSIS**

21 **A. The Proposed Settlement Terms**

22 **1. The Settlement Class**

23 The Parties have agreed to a settlement class composed of all non-exempt employees
24 employed by Defendant in California at any time between March 12, 2017 and October 31, 2021
25 (the "Class Period"). Defendant represents that this Class contains approximately 420 members
26 who worked approximately 6,800 pay periods during the Class Period. Stip. at ¶ A(4).

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

2 The Stipulation provides that Defendant shall pay an amount not to exceed \$366,788 to
3 resolve the Action on a class-wide basis (the "Gross Settlement Settlement"). The Gross Settlement
4 Amount includes the attorneys' fees of Class Counsel, litigation costs and expenses (which
5 includes, without limitation, all such fees and costs incurred to date, as well as such fees and costs
6 to be incurred in documenting the settlement, providing any notices required as part of the
7 settlement, securing Court approval of the settlement, and obtaining judgment in the Action), the
8 enhancement payment to the Class Representative, as approved by the Court, the payment to the
9 LWDA pursuant to the PAGA claims in the Action, and all costs of administration, including,
10 without limitation, settlement administration fees and expenses. Defendant shall pay all employer
11 payroll tax obligations due on wage payments made from the Net Settlement Sum in addition to,
12 and separate and apart from, the Gross Settlement Amount. Stip. at ¶ C(1)(a).

13 From the Gross Settlement Amount, Defendant will not oppose Plaintiff's counsel's
14 application to the Court for up to 35% of the Gross Settlement Amount for attorneys' fees (or
15 \$128,375.80). Stip. at ¶ C(1)(f).

16 From the Gross Settlement Amount, Defendant will not oppose Plaintiff's counsel's
17 application to the Court for up to \$12,000 in reimbursement of litigation costs and expenses. Stip.
18 at ¶ C(1)(g).

19 From the Gross Settlement Amount, Defendant will not oppose Plaintiff's counsel's
20 application to the Court for an Enhancement Payment to the Class Representative in the gross
21 amount of \$10,000, in consideration for his efforts in instituting and participating in the Action and
22 in exchange for his general release of all claims. Stip. at ¶ C(1)(e).

23 From the Gross Settlement Amount, settlement administration fees paid to Phoenix
24 Settlement Administrators will be no more than \$7,500. Stip. at ¶ C(1)(h).

25 From the Gross Settlement Amount, the portion to be allocated for settlement of any and all
26 claims for penalties under the PAGA is \$20,000 ("PAGA Payment"), 75% of which shall be paid
27 to the LWDA and 25% shall be paid to Class Members who have not submitted a valid and timely
28 Request for Exclusion Form as part of the Net Settlement Sum. Stip. at ¶ C(1)(d).

1 The Net Settlement Sum is the Gross Settlement Amount less the amounts approved and
2 awarded by the Court for: attorneys' fees and documented litigation costs and expenses incurred or
3 advanced by Class Counsel, the general release payment to the Class Representative, the payment
4 to the LWDA pursuant to PAGA, and the costs of administering the settlement. Stip. at ¶ C(1)(b).

5 "Individual Settlement Payments" means the portion of the Net Settlement Sum
6 distributable to each Class Member who participates in the Settlement (i.e., who does not submit a
7 valid request for exclusion form). The Individual Settlement Payments will be calculated by
8 dividing the Net Settlement Sum by the total weeks worked by all participating Class Members in
9 California in a non-exempt position during the Class Period, which will yield the applicable weekly
10 rate. The weekly rate shall be multiplied by the number of weeks each individual participating Class
11 Member worked for Defendant in California in a non-exempt position during the Class Period to
12 yield their Individual Payment Amount. Each Participating Settlement Class Member who does
13 not opt out will receive an Individual Payment Amount. Stip. at ¶ C(1)(c).

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

15 Pursuant to PAGA, the Parties have agreed that \$20,000 of the Gross Settlement Amount
16 will be allocated to settle the claims brought under Labor Code § 2699 et seq. Pursuant to Labor
17 Code § 2699(i), "civil penalties recovered by aggrieved employees shall be distributed as follows:
18 75 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved
19 employees." As such, 75 percent of the apportioned PAGA settlement amount – or \$15,000 – shall
20 be payable to the LWDA. The remaining 25 percent, or \$5,000, shall be paid to Class Members
21 who have not submitted a valid and timely Request for Exclusion Form as part of the Net Settlement
22 Sum. Stip. at ¶ C(1)(d).

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

24 Any settlement of class litigation must be reviewed and approved by the Court. Cal. R. Ct.
25 3.769; Fed. R. Civ. P. 23(e).¹ This is done in two steps: (1) an early (preliminary) review by the
26

27 ¹ The California Supreme Court has authorized California's trial courts to use Federal Rule 23 and
28 cases applying it for guidance in considering class issues. See *Vasquez v. Superior Court* (1971)
4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore,
Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

1 trial court, and (2) a final review after notice has been distributed to the Class Members informing
2 them of the terms of the settlement and allowing them to exclude themselves from, participate in
3 and/or object to the settlement. The Manual for Complex Litigation (Third) § 30.41 states:

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

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

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

25 When the parties to an action reach a monetary settlement, they will
26 usually prepare and execute a joint stipulation of settlement, which
27 is submitted to the court for preliminary approval. The stipulation
28 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 Stipulation
herewith. *See* Gaines Decl., **Exhibit B**; Gaines Decl. ¶ 17.

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

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

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

14 4 *Newberg on Class Actions*, at § 11.26.

15 As required by Labor Code § 2699(1)(2), concurrent with Plaintiff’s submission of the
16 Stipulation to the Court, his counsel is transmitting it, together with this Motion, to the LWDA.
17 Gaines Decl. at ¶ 36.

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

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

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

26 The proposed Settlement Class is ascertainable. The class definition, the size of the Class,
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28 ² In determining the fairness and reasonableness of a proposed settlement, California courts may
look to federal cases for guidance. *See Wershba*, 91 Cal. App. 4th at 239-40.

1 and the means for identifying the members of the class determine whether the class is ascertainable.
2 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
3 are identifiable from Defendant's employment and payroll records. Further, the Settlement Class
4 is sufficiently numerous to warrant certification. According to Defendant's records, the Class
5 comprises approximately 420 employees. Gaines Decl. ¶ 32.

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

8 The Class Members' claims all stem from a common source: members of the Settlement
9 Class allege that Defendant violated the same Labor Code provisions in connection with their
10 employment. All members of the Class seek the same relief under the same California laws (related
11 to unpaid wages, unpaid meal and rest period premiums, unreimbursed business expenses,
12 inaccurate or incomplete wage statements, failure to timely pay wages due upon separation, and
13 derivative claims). Under these circumstances, the commonality requirement is satisfied for
14 purposes of certifying the Settlement Class for settlement purposes. Gaines Decl. ¶ 33.

15 c. **The Proposed Class Representatives' Claims Are Typical of the**
16 **Class Members' Claims**

17 A class representative's claims are typical when they arise from the same event or course
18 of conduct that gives rise to the claims of the class, and are based on the same legal theory.
19 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, named Plaintiff and proposed
20 Class Representative Samuel Placencia is a former non-exempt employee who worked for
21 Defendant in the State of California during the Class Period. He contends that Defendant failed to
22 pay all wages, failed to provide meal and rest periods, failed to comply with itemized employee
23 wage statement provisions, failed to reimburse expenses, and failed to timely pay wages at the
24 separation of employment, in violation of Labor Code §§ 201-203, 226(a), 226.3, 226.7, 510, 512,
25 558, 1194, 2698, 2699, and 2802, among other Labor Code provisions. He has the same claims as
26 those that the members of the Settlement Class would reasonably be expected to bring based on the
27 course of conduct alleged herein. Gaines Decl. ¶ 34.

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1 Plaintiff has also demonstrated that he will aggressively and competently assert the interests
2 of the proposed Settlement Class; he has taken an active role in this litigation and has no apparent
3 conflicts with other class members. Gaines Decl. ¶ 35. Furthermore, Plaintiff has retained
4 competent counsel, experienced in litigating class action claims in the employment context. See
5 Gaines Decl. ¶¶ 2-5.

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

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

18 While the recommendations of counsel proposing the settlement are not conclusive, the
19 Court can properly take them into account, particularly where, as here, such counsel have been
20 involved in informal discovery and negotiations for some period of time, appear to be competent,
21 have experience with this type of litigation, and have exchanged substantial evidence with the
22 opposing party. See *Newberg on Class Actions, supra*, § 11.47; *In re Paine Webber Ltd. P'ships*
23 *Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 (“[s]o long as the integrity of the arm’s-length
24 negotiation process is preserved, however, a strong initial presumption of fairness attaches to the
25 proposed settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of
26 counsel, who are most closely acquainted with the facts of the underlying litigation”); see Gaines
27 Decl. ¶¶ 2-5, 13-17.

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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, data, records and other information. Each side has apprised the
5 other, informally and at a formal mediation, of their respective factual contentions, legal theories
6 and defenses, resulting in extensive arm's-length negotiations taking place among the Parties. See
7 Gaines Decl. ¶¶ 2-5, 13-17.

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 Plaintiff's counsel created a comprehensive damage analysis using sampling information
19 obtained through informal discovery. This damage analysis reveals that the negotiated settlement
20 falls within a realistic range of recovery on Class Members' claims. Gaines Decl. ¶ 19.

21 Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members all wages due
22 during the course of their employment, in violation of Labor Code §§ 510, 558, 1194 and IWC
23 Wage Order 4-2001. Defendant paid Plaintiff and Class Members piece-rate, commission and
24 bonus wages. However, some tasks had no compensable piece-rate or commission unit associated
25 with them, such that they went uncompensated. This includes rest periods, which must be
26 separately paid; however, Defendant allegedly failed to provide compensated rest periods and
27 denied rest periods altogether. Plaintiff and Class Members were not compensated for all hours
28 worked (and thus, all minimum wages due) when they performed tasks for which no piece-rate or

1 commission was associated, including rest periods. Based on Plaintiff's investigation, analysis and
2 expert review of wage data, Plaintiff estimates that the total sum of \$339,600 was underpaid.
3 Defendant, however, asserted multiple defenses to this claim, and argued that even if any sums
4 were underpaid, such amounts were nominal and nowhere near the amount proffered by Plaintiff.
5 A discount was required and warranted to resolve the matter at this junction of the litigation. Gaines
6 Decl. ¶ 20.

7 Plaintiff further alleges that Defendant failed to offer or authorize uninterrupted ten-minute
8 on-the-clock rest periods to Plaintiff and Class Members for every four hours worked or major
9 fraction thereof, but did not pay them premium wages in the amount of one hour's pay for these
10 denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 4-2001. Plaintiff and
11 Class Members contend that they were routinely unable, and not authorized, to take a 10-minute
12 rest period for every four (4) hours of work or major fraction thereof, but were not paid premium
13 wages of one hour's pay for each missed rest period. Moreover, Defendant's meal period policy
14 states that non-exempt employees are to take their meal periods off-premises; Defendant's rest
15 period policy does not contain this language, which Plaintiff argues indicates that the rest periods
16 must impermissibly be taken on the company premises. This policy and practice would violate
17 *Augustus v. ABM Security Services, Inc.* (2016) 5 Cal. 5th 257, which held that the rest period
18 requirement "obligates employers to permit and authorizes employees to take off-duty rest periods.
19 That is, during rest periods employers must relieve employees of all duties and relinquish control
20 over how employees spend their time." *Id.* at 269. Plaintiff estimates the value of this claim to be
21 approximately \$1,018,800 based on a 100% violation rate. Defendant vigorously argued, however,
22 that it fully complied with all rest break requirements incorporated within California law, and
23 argued that even if sums were underpaid, such amounts were nominal and nowhere near the amount
24 proffered by Plaintiff. Due to the risks inherent in prosecuting this claim further, a discount was
25 required and warranted to resolve the matter at this junction of the litigation. Gaines Decl. ¶ 21.

26 As a result of Defendant's alleged unlawful meal period practices, Plaintiff alleges that
27 Class Members were not always provided the meal periods to which they were entitled. For each
28 workday on which Plaintiff and non-exempt Aggrieved Employees were denied a meal period, or

1 when a meal period was late or cut short, the employee must be paid a one-hour premium as
2 additional wages beyond earnings for actual hours worked. See IWC Wage Order No. 4,
3 subdivision 12(a). Plaintiff and Class Members contend that they were routinely denied, and not
4 authorized to take, an uninterrupted, 30-minute meal period for every shift worked over five hours
5 in duration, or second, uninterrupted, 30-minute meal period for every shift worked over ten hours
6 in duration, but were not paid premium wages of one hour's pay for each missed meal period.
7 When employees did receive a meal period, they would typically be interrupted and required to go
8 back to work or would simply clock out for their meal period and continue working, without
9 compensation. Plaintiff's time records exhibit a one-hour meal break each day, even though that
10 time was largely spent working for Defendant selling cars. Defendant did pay some meal period
11 premiums, but they were only paid for entirely missed meal periods and not late or short meal
12 periods, which represent the majority of the violations. Furthermore, an analysis of Plaintiff's time
13 records indicates that nearly two-thirds of all pay periods worked by Plaintiff exhibit a meal period
14 violation. Plaintiff and Class Members are entitled to significant wages for non-compliant meal
15 periods and unpaid minimum and overtime wages for all uncompensated time during off-the-clock
16 meal periods. Plaintiff estimates the value of this claim to be approximately \$407,250. Defendant
17 vehemently denies this claim, contends that employees were routinely offered their meal periods,
18 and contends that its time records are accurate such that no employees worked off the clock during
19 purported meal periods. A compromise was required to resolve this claim at this juncture of the
20 litigation. Gaines Decl. ¶ 22.

21 Plaintiff further alleges that he and other Class Members were required to incur expenses
22 in the performance of their job duties for which they were not fully reimbursed, in violation of
23 Labor Code § 2802. Plaintiff and Class Members contend that they were required to use their own
24 personal cellular phone to perform work for Defendant, but were not fully reimbursed by Defendant
25 for these expenses. Plaintiff estimates the value of this claim to be up to \$60,000. Defendant denies
26 this claim, maintains that it reimbursed its employees properly in compliance with Labor Code §
27 2802, and contends that employees were never required to use their own cell phones but instead
28 may have chosen to do so, a defense which would have defeated the claim in its entirety. A discount

1 was required and warranted to resolve the claim at this junction of the litigation. Gaines Decl. ¶ 23.

2 Class Members also sought wage statement penalties pursuant to Labor Code § 226(e),
3 waiting time penalties pursuant to Labor Code § 203 and PAGA penalties derivative of the
4 underlying violations alleged. The value of these penalties – which are derivative, discretionary,
5 and subject to defenses of their own – is approximately \$2,439,600, a substantial amount which
6 required a compromise to resolve based on risk of litigation. Plaintiff believed it was unlikely that
7 many of these penalties could be recovered because their value would eclipse the value of alleged
8 underpaid wages (if wages were recovered at all), because Plaintiff's claims are novel, and because
9 of Defendant's potential independent defenses to these penalties. Gaines Decl. ¶ 24.

10 The discount negotiated for settlement here is a reasonable compromise, particularly
11 considering that the risk of obtaining class certification on all or any of Plaintiff's claims involves
12 a 50% or higher hurdle, especially with respect to the meal and rest period claims, to which
13 Defendant maintains strong arguments to defeat class certification (in addition to multiple defenses
14 on the merits of the claims), and the fact that Plaintiff and all Class Members entered into arbitration
15 agreements with Defendant, which may render the class action claims valueless because they
16 cannot be pursued in a group action and few, if any, employees are likely to pursue their claims on
17 an individual basis. Class certification is a substantial risk in any class action case. Here, while
18 Plaintiff maintains that the requirements of class certification are met, Defendant proffers various
19 arguments why class treatment is not appropriate, including but not limited to that individualized
20 inquires among class members predominate over common ones. If Defendant was to defeat
21 Plaintiff's class certification motion, there would be no class wide relief whatsoever, and most class
22 members would likely not file individual claims. Gaines Decl. ¶ 25.

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

27 Finally, Plaintiff faced the risk that he would not obtain a maximum damage/penalty award
28 on all (or any of) his claims. For example, Plaintiff seeks discretionary penalties pursuant to the

1 PAGA. Even if Plaintiff did prevail on these claims, it is possible that the Court would not impose
2 all penalties pursuant to its discretionary power to reduce them. Gaines Decl. ¶ 27.

3 Defendant strongly contends that its policies and practices do not violate any laws. It
4 contends that it properly provided for all meal and rest periods and fully compensated their
5 employees for all time worked. It further contends that the wage statements it provides to its
6 employees are fully compliant with California law. Gaines Decl. ¶ 28.

7 When the costs and risks of non-certification and loss on the merits are considered,
8 Plaintiff's counsel is of the opinion that the settlement reached is clearly a favorable one. Gaines
9 Decl. ¶¶ 18-29.

10 The settlement for each Class Member is fair, reasonable and adequate, given the inherent
11 risk of litigation, the risk relative to class certification and the costs of pursuing such litigation. The
12 settlement shall finally resolve all claims of the Class Members as alleged in the Action. Gaines
13 Decl. ¶ 30.

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

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

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

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

24 In connection with this Settlement, Plaintiff shall file a First Amended Complaint, attached
25 to the Stipulation as **Exhibit 3**, which adds class allegations and claims to comport with the release
26 provided for in the Stipulation. The Parties agreed that, as part of his motion for preliminary
27 approval, Plaintiff would concurrently seek leave to file the First Amended Complaint, the filing
28 of which is a condition of the Stipulation.

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

5 **V. CONCLUSION**

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

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

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

11 3. Appointing Plaintiff Samuel Placensia as Class Representative;

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

14 5. Approving Phoenix Settlement Administration as Settlement Administrator;

15 6. Preliminarily approving the allocation of \$20,000 from the Gross Settlement
16 Amount to settle Plaintiff's representative claims under the PAGA, of which seventy-five percent
17 (75%) shall be paid to the Labor and Workforce Development Agency and twenty-five percent
18 (25%) shall be paid to Class Members who have not submitted a valid and timely Request for
19 Exclusion Form as part of the Net Settlement Sum;

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

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

26 9. Setting the following schedule of settlement proceedings:

27 \\\n

28 \\\n

<u>EVENT</u>	<u>TIMING</u>
Last day for Defendant to provide to the Settlement Administrator a list of all Class Members, including their last known addresses, telephone numbers, social security numbers, and their dates of employment in a non-exempt position in California during the Class Period ("Settlement Class Information")	20 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail Notice and Request for Exclusion form to Class Members	30 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Class Members to submit a written Request for Exclusion form to the Settlement Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members
Last day for Class Members to submit an Objection to the Settlement Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members
Last day for Class Counsel to file and serve moving papers in support of final settlement approval and request for attorneys' fees and costs	10 calendar days before the final settlement approval hearing date
Last day for Class Counsel to file with the Court and serve declaration by Settlement Administrator specifying the due diligence undertaken with regard to the mailing of the Notice	10 calendar days before the final settlement approval hearing date
Final settlement approval hearing	_____, 2022, at _____.m. (approximately 95 days after entry of the Order granting this Motion)

DATED: January 28, 2022

Respectfully submitted,

GAINES & GAINES,
A Professional Law Corporation

By: *Alex P. Katofsky*

DANIEL F. GAINES
ALEX P. KATOFISKY
Attorneys for Plaintiff Samuel Placensia and Proposed
Class Counsel