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and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

ZOHRA JAYARAMAN, on behalf of
herself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*,

Plaintiff,

v.

AMETHOD PUBLIC SCHOOLS, a
California corporation, and DOES 1
through 10, inclusive,

Defendants.

CASE NO: RG21105927

Assigned to the Hon. Julia Spain, Dept. 520

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

DATE: December 2, 2022

TIME: 2:00 p.m.

DEPT.: 520

Reservation No. A-21105927-001

Action Filed: June 3, 2021

1 **PLEASE TAKE NOTICE THAT** on December 2, 2022 at 2:00 p.m., or as soon thereafter
2 as the matter may be heard, in Department 520 of the above-entitled Court, located at 1225 Fallon
3 Street, Oakland, California 94612, Plaintiff Zohra Jayaraman (“Plaintiff” or “Jayaraman”) 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 the 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 \$40,000 from the Maximum Settlement
11 Amount to settle Plaintiff’s representative claims under the Private Attorneys General Act (Lab.
12 Code §§ 2698 et seq., “PAGA”), of which seventy-five percent (75%) will be paid to the Labor and
13 Workforce Development Agency and twenty-five percent (25%) shall be included in the Net
14 Settlement Proceeds for payment to members of the PAGA Group; (7) approving as to content and
15 form the notice to the settlement class, and directing it be disseminated by the Settlement
16 Administrator; (8) permitting Plaintiff to file a First Amended Class and Representative Action
17 Complaint; and (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 Agreement and Release of Claims, the Declaration of Daniel F. Gaines, such
3 evidence or oral argument as may be presented at the hearing, and on the complete record and file
4 herein.

5
6 DATED: October 17, 2022

Respectfully submitted,

7 GAINES & GAINES,
8 A Professional Law Corporation

9
10 By: 

DANIEL F. GAINES

ALEX P. KATOFISKY

11 Attorneys for Plaintiff Zohra Jayaraman and Proposed
12 Class Counsel

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Parties have reached a resolution of this class action and hereby submit their Settlement
4 Agreement and Release of Claims (“Settlement”, “Stipulation” or “Stip.”) for the Court’s approval.
5 The Settlement is made and entered into by and between Plaintiff Zohra Jayaraman (“Plaintiff” or
6 “Jayaraman”), individually and on behalf of all others similarly situated, and Defendant Amethod
7 Public Schools (“Defendant”).

8 The settlement occurred as a result of extensive arm’s-length negotiations by experienced
9 counsel with the assistance of a respected mediator with experience in the area of employment class
10 actions. Most importantly, the settlement will result in significant financial benefit to the
11 participating claimants, on terms that are by any measure fair, reasonable and adequate. *See*
12 *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801-02. The proposed settlement provides
13 for a non-revisionary class settlement in the gross amount of \$560,000 to a settlement class of
14 approximately 275 Class Members who worked approximately 28,843 workweeks, yielding gross
15 payments of \$2,306 per employee. As detailed below, the settlement is in the best interests of the
16 class in light of all of the facts and circumstances and the risks and delays of further litigation.

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

25 **II. BACKGROUND AND PROCEDURAL HISTORY**

26 On March 30, 2021, Plaintiff exhausted the pre-filing requirements of the PAGA.
27 Declaration of Daniel F. Gaines (“Gaines Decl.”) at ¶ 6.
28

1 On or about June 3, 2021, Plaintiff initiated the Action by filing a Representative Action
2 Complaint for Penalties, pursuant to PAGA, on behalf of herself and all other aggrieved employees.
3 The First Amended Complaint, attached to the Settlement Agreement as **Exhibit 1** and which
4 Plaintiff seeks to file as part of this Motion, asserts class and PAGA representative action claims
5 against Defendant for (1) failure to pay all minimum and overtime wages due (Labor Code §§ 510,
6 1194, and 1194.2); (2) failure to provide compliant meal periods or compensation in lieu thereof
7 (Labor Code §§ 226.7 and 512; IWC Wage Order 4-2001); (3) failure to provide compliant rest
8 periods or compensation in lieu thereof (Labor Code §§ 226.7, 510, and 1194; IWC Wage Order
9 4-2001); (4) failure to reimburse all business-related expenses (Labor Code § 2802); (5) failure to
10 comply with itemized employee wage statement provisions (Labor Code § 226(a), (e),); (6) failure
11 to timely pay wages due at separation of employment (Labor Code §§ 201-203); (7) violation of
12 Business and Professions Code §§ 17200, *et seq.*; and (8) civil penalties pursuant to Labor Code §§
13 2698, *et seq.* for violations of Labor Code §§ 201-202, 204, 210, 226(a), 226.3, 226.7, 510, 512,
14 558, 1194, and 2802 (the “First Amended Complaint”). Gaines Decl. at ¶ 7.

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

1 grant final approval of the Settlement, the First Amended Complaint shall be deemed withdrawn.
2 The parties further agree that Defendant does not waive any defense to the First Amended
3 Complaint and the PAGA claim contained therein. The parties further acknowledge that the filing
4 of the First Amended Complaint is for settlement purposes only. Gaines Decl. at ¶ 8.

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

8 **III. INVESTIGATION AND SETTLEMENT DISCUSSIONS**

9 Class Counsel represent that they have conducted a thorough investigation into the facts
10 and law during the prosecution of this class action case, including the exchange of extensive
11 informal discovery and the review and verification of statistical data and other facts and information
12 provided by Defendant. Counsel for the Parties also represent that they have investigated the
13 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and
14 potential defenses thereto, and the damages and other losses claimed by Plaintiff. Gaines Decl. at
15 ¶ 10.

16 On May 2, 2022, following their exchange of information and documents regarding the
17 Settlement Class and the claims and defenses asserted by the Parties, the Parties engaged in arm's-
18 length negotiations with the assistance of mediator Jeffrey Krivis, Esq., through which they were
19 able to reach the resolution of the Action set forth herein. Gaines Decl. at ¶ 11.

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

27 The Parties agree that the Settlement Class described herein may be certified for settlement
28 purposes only and that any motion for approval seeking, *inter alia*, certification of the Settlement

1 Class is for purposes of the settlement only. If for any reason the settlement is not approved, the
2 certification will have no force or effect and will immediately be revoked. The Parties further agree
3 that certification for purposes of the settlement is in no way an admission that class certification is
4 proper under the more stringent standard applied for litigation and that evidence of this limited
5 Stipulation for settlement purposes only will not be admissible for any purpose in this or any other
6 proceeding. Gaines Decl. at ¶ 13.

7 **IV. LEGAL ANALYSIS**

8 **A. The Proposed Settlement Terms**

9 **1. The Settlement Class**

10 The Parties have agreed to a settlement class composed of all persons who are or were
11 previously employed (1) in California; (2) by Defendant (3) as non-exempt employees; and (4) at
12 any point from June 3, 2017, through the date of preliminary approval of this Settlement or August
13 15, 2022, whichever is earlier. This Class contains approximately 275 individuals who worked
14 approximately 28,000 workweeks during the Class Period.

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

16 The Parties agree to settle this Action for a Maximum Settlement Amount of Five Hundred
17 Sixty Thousand Dollars (\$560,000) (the “Maximum Settlement Amount”), subject to any increase
18 based on the escalator provision in paragraph H(19) of the Settlement. The Maximum Settlement
19 Amount includes the attorneys’ fees of Class Counsel; litigation costs and expenses (which
20 includes, without limitation, all such fees and costs incurred to date, as well as such fees and costs
21 to be incurred in documenting the settlement, providing any notices required as part of the
22 settlement, securing Court approval of the settlement, and obtaining judgment in the Action); the
23 Enhancement Payment to the Class Representative, as approved by the Court; the payment to the
24 California Labor and Workforce Development Agency (“LWDA”); and all costs of administration,
25 including, without limitation, settlement administration fees and expenses. All employer payroll
26 tax obligations due on wage payments made from the Net Settlement Proceeds shall be paid by
27 Defendant separate and apart from the Maximum Settlement Amount. Stip. at ¶ C(1)(a).

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1 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff's counsel's
2 application to the Court for up to 35% of the Maximum Settlement Amount for attorneys' fees (or
3 \$196,000). Stip. at ¶ C(1)(f).

4 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff's counsel's
5 application to the Court for up to \$15,000 in reimbursement of litigation costs and expenses. Stip.
6 at ¶ C(1)(g).

7 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff's counsel's
8 application to the Court for a Class Representative Service Award to the Class Representative in
9 the gross amount of \$15,000, in consideration for her efforts in instituting and participating in the
10 Action. Stip. at ¶ C(1)(e).

11 From the Maximum Settlement Amount, settlement administration fees paid to Phoenix
12 Settlement Administrators will be no more than \$12,000. Stip. at ¶ C(1)(h).

13 From the Maximum Settlement Amount, the portion to be allocated for settlement of any
14 and all claims for penalties under the PAGA is \$40,000 ("PAGA Payment"), 75% of which shall
15 be paid to the LWDA and 25% shall be included in the Net Settlement Proceeds for payment to
16 members of the PAGA Group. Stip. at ¶ C(1)(d).

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

22 The Individual Payment Amount is portion of the Net Settlement Proceeds distributable to
23 each Class Member who participates in the class settlement (i.e., who does not submit a valid
24 request for exclusion form) and each PAGA Group member, whether or not they participate in the
25 class settlement. The class portion of the Individual Payment Amounts will be calculated by
26 dividing the Net Settlement Proceeds, less the \$10,000 allocation to the PAGA Group, by the total
27 workdays worked by all participating Class Members in California in a non-exempt position during
28 the Class Period, which will yield the applicable class workday rate. The class workday rate shall

1 be multiplied by the number of workdays each individual participating Class Member worked for
2 Defendant in California in a non-exempt position during the Class Period to yield the class portion
3 of their Individual Payment Amount. Each Participating Settlement Class Member who does not
4 opt out will receive an Individual Payment Amount for the class settlement equal to their individual
5 workdays worked in California in a non-exempt position during the Class Period multiplied by the
6 class workday rate. Stip. at ¶ C(1)(c)(i).

7 The PAGA portion of the Individual Payment Amounts will be calculated by dividing the
8 \$10,000 of the Net Settlement Proceeds allocated to the PAGA Group, by the total workdays
9 worked by all PAGA Group members in California in a non-exempt position during the PAGA
10 Period, which will yield the applicable PAGA workday rate. The PAGA workday rate shall be
11 multiplied by the number of workdays each individual participating PAGA Group member worked
12 for Defendant in California in a non-exempt position during the PAGA Period to yield the PAGA
13 portion of their Individual Payment Amount. Each PAGA Group member will receive an
14 Individual Payment Amount for the PAGA allocation of the settlement equal to their individual
15 workdays worked in California in a non-exempt position during the PAGA Period multiplied by
16 the PAGA workday rate. Stip. at ¶ C(1)(c)(ii).

17 For tax purposes, each non-PAGA portion of the Individual Payment Amounts will be
18 apportioned (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable
19 withholdings); and (b) 80% to penalties and interest (reported on an IRS Form 1099, if required by
20 law). The PAGA portion of the Individual Payment Amounts will be apportioned 100% to penalties
21 (reported on an IRS Form 1099, if required by law). All Individual Payment Amounts paid to Class
22 Members will be subject to any applicable wage garnishments, liens, or other legally mandated
23 treatment as required by law. Stip. at ¶ C(1)(c)(iii).

24 The Maximum Settlement Amount will be paid by Defendant over approximately three
25 years, commencing on prior to preliminary approval and ending on September 1, 2025.
26 Disbursements will be paid to Class Members in three installments over three years. Stip. at ¶ G(3)-
27 (4).

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

2 Pursuant to PAGA, the Parties have agreed that \$40,000 of the Maximum Settlement
3 Amount will be allocated to settle the claims brought under Labor Code § 2699 et seq. Pursuant to
4 Labor Code § 2699(i), “civil penalties recovered by aggrieved employees shall be distributed as
5 follows: 75 percent to the Labor and Workforce Development Agency...and 25 percent to the
6 aggrieved employees.” As such, 75 percent of the apportioned PAGA settlement amount – or
7 \$30,000 – shall be payable to the LWDA. The remaining 25 percent, or \$10,000, shall be included
8 in the Net Settlement Proceeds for payment to members of the PAGA Group. Stip. at ¶ C(1)(d).

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

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

15 Approval of class action settlements involves a two-step process.
16 First, counsel submit the proposed terms of settlement and the court
17 makes a preliminary fairness evaluation. If the preliminary
18 evaluation of the proposed settlement does not disclose grounds to
19 doubt its fairness or other obvious deficiencies, such as unduly
20 preferential treatment of class representatives or of segments of the
 class, or excessive compensation for attorneys, and appears to fall
 within the range of possible approval, the court should direct that
 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.

21 Thus, the preliminary approval by the trial court is simply a conditional finding that the
22 settlement appears to be within the range of acceptable settlements. *See Wershba v. Apple*
23 *Computer* (2001) 91 Cal.App.4th 224, 234-35. “The strength of the findings made by a judge at a
24 preliminary hearing or conference concerning a tentative settlement proposal may vary. The court
25 may find that the settlement proposal contains some merit, is within the range of reasonableness

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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 required for a settlement offer, or is presumptively valid subject only to any objections that may be
2 raised at a final hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26
3 (4th ed. 2002).

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

6 When the parties to an action reach a monetary settlement, they will
7 usually prepare and execute a joint stipulation of settlement, which
8 is submitted to the court for preliminary approval. The stipulation
9 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.

10 *Id.* at § 11.24.

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

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

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

22 The strength of the findings made by a judge at a preliminary hearing
23 or conference concerning a tentative settlement proposal . . . may be
24 set out in conditional orders granting tentative approval to the various
25 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.

26 4 *Newberg on Class Actions*, at § 11.26.

27 As required by Labor Code § 2699(l)(2), concurrent with Plaintiff’s submission of the

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 Stipulation to the Court, her counsel is transmitting it, together with this Motion, to the LWDA.
2 Gaines Decl. at ¶ 34.

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

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

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

11 The proposed Settlement Class is ascertainable. The class definition, the size of the Class,
12 and the means for identifying the members of the class determine whether the class is ascertainable.
13 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
14 are identifiable from Defendant's employment and payroll records. Further, the Settlement Class
15 is sufficiently numerous to warrant certification. According to Defendant's records, the Class
16 comprises approximately 275 employees. Gaines Decl. ¶ 28.

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

19 The Class Members' claims all stem from a common source: members of the Settlement
20 Class allege that Defendant violated the same Labor Code provisions in connection with their
21 employment. All members of the Class seek the same relief under the same California laws (related
22 to unpaid wages due, unpaid meal and rest period premiums, inaccurate or incomplete wage
23 statements, failure to timely pay wages due during employment and upon separation, failure to
24 reimburse expenses, and derivative claims). Under these circumstances, the commonality
25 requirement is satisfied for purposes of certifying the Settlement Class for settlement purposes.
26 Gaines Decl. ¶ 30.

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1 c. **The Proposed Class Representative's Claims Are Typical of the**
2 **Class Members' Claims**

3 A class representative's claims are typical when they arise from the same event or course
4 of conduct that gives rise to the claims of the class, and are based on the same legal theory.
5 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, named Plaintiff and proposed
6 Class Representative Zohra Jayaraman is a former non-exempt employee who worked for
7 Defendant in the State of California during the Class Period. She contends that Defendant failed
8 to pay all overtime wages due, failed to provide meal and rest periods, failed to comply with
9 itemized employee wage statement provisions, failed to reimburse expenses, and failed to timely
10 pay wages during employment and at the separation of employment, in violation of Labor Code §§
11 201-204, 210, 226(a), 226.3, 226.7, 510, 512, 558, 1194, 2698, 2699, and 2802, among other Labor
12 Code provisions. She has the same claims as those that the members of the Settlement Class would
13 reasonably be expected to bring based on the course of conduct alleged herein. Gaines Decl. ¶ 31.

14 Plaintiff has also demonstrated that she will aggressively and competently assert the
15 interests of the proposed Settlement Class; she has taken an active role in this litigation and has no
16 apparent conflicts with other class members. Gaines Decl. ¶ 32. Furthermore, Plaintiff has retained
17 competent counsel, experienced in litigating class action claims in the employment context. See
18 Gaines Decl. ¶¶ 2-5.

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

21 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
22 evidence to the contrary is offered. *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars*
23 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re*
24 *Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962. Courts do not substitute their
25 judgment for that of the proponents, particularly where, as here, settlement has been reached with
26 the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
27 *Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990)
28 752 F. Supp. 1087, 1093; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored*

1 *Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357, 1368; *Sommers v. Abraham Lincoln*
2 *Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.

3 While the recommendations of counsel proposing the settlement are not conclusive, the
4 Court can properly take them into account, particularly where, as here, such counsel have been
5 involved in informal discovery and negotiations for some period of time, appear to be competent,
6 have experience with this type of litigation, and have exchanged substantial evidence with the
7 opposing party. *See Newberg on Class Actions, supra*, § 11.47; *In re Paine Webber Ltd. P'ships*
8 *Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 (“[s]o long as the integrity of the arm’s-length
9 negotiation process is preserved, however, a strong initial presumption of fairness attaches to the
10 proposed settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of
11 counsel, who are most closely acquainted with the facts of the underlying litigation”); *see* Gaines
12 Decl. ¶¶ 2-5, 10-14.

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

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

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

1 *Kullar, supra*, 168 Cal.App.4th at 133.

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

5 Plaintiff alleges that Defendant failed to comply with Labor Code § 204's strict wage
6 payment timing requirements. Labor Code § 204 requires employers – like Defendant – to pay
7 their employees on a weekly, bi-weekly, or semimonthly basis. Defendant, however, allegedly paid
8 its employees on a monthly basis. Defendant did not comply with Labor Code § 204 (and,
9 derivatively, Labor Code § 210) because Defendant failed to pay its employees with sufficient
10 frequency. Defendant also allegedly paid Plaintiff and Class Members beyond the time frames
11 required by Labor Code § 204, which requires wages be paid within seven (7) days of the end of
12 any weekly and bi-weekly pay period and within ten (10) days of the end of any semi-monthly pay
13 period. The PAGA penalties attributable to this violation – which hurt employees by delaying their
14 wages and put them in financial jeopardy – approximate \$441,900 at the initial violation rate of
15 \$100 per employee pay period. Gaines Decl. ¶ 16.

16 Plaintiff further alleges that Plaintiff and Class Members were required to use their personal
17 cellular phone to make calls for Defendant's benefit, but were not fully reimbursed by Defendant
18 for these cellular phone expenses. The only reimbursement policy provided by Defendant relates
19 to travel expenses, but it provides no indication that cellular phone expenses used for business
20 purposes would be reimbursed to non-exempt employees. Further, the wage statements produced
21 by Defendant evidence no reimbursement for personal cellular phone use. This practice violates
22 Labor Code § 2802. Plaintiff contends that she could recover up to approximately \$140,000 in
23 expense reimbursement if she could certify this claim and prove that cell phone use was reasonable
24 and necessary. Defendant adamantly opposes this claim, argues that employees were not required
25 to use their own personal cell phones, and that even if they were, reimbursement could have been
26 sought and it would have paid it. Defendant also argues that this claim is not proper for certification
27 due to the individualized inquires which it will necessitate. A compromise was necessary to resolve
28 this claim at this juncture of the litigation. Gaines Decl. ¶ 17.

1 Plaintiff also alleges that Defendant failed to authorize or permit Class Members to take
2 timely, uninterrupted 30-minute meal periods on shifts greater than 5 hours in length in violation
3 of Labor Code §§ 226.7, 512, 558 and IWC Wage Order 4-2001, resulting in a failure to pay wall
4 wages due, in violation of Labor Code §§ 510, 1194 and 1194.2³. Labor Code § 512 provides that
5 employers may not employ an employee for a work period of more than 5 hours without providing
6 a 30-minute meal period starting no later than the end of the fifth hour. Class Members contend
7 that they were routinely unable to take a lawful meal break when they worked shifts in excess of 5
8 hours in duration and a second meal break when they worked shifts in excess of 10 hours in
9 duration. When they were provided with a meal break, they were purportedly late or cut short as
10 evidenced by time records provided by Defendant. Based on Plaintiff's expert's analysis of a
11 substantial sample of Defendant's time and payroll data for the entire Class Period, Defendant's
12 meal period violation rate totals over 37% among all shifts worked (over 40,000 unique meal break
13 violations) and, more significantly, affects over 71% of all 4,419 pay periods worked during the
14 PAGA Period (i.e., 3,161 pay periods with at least one unique meal break violation). The potential
15 value of this claim exceeds \$638,511, although it was not without its challenges. Defendant paid
16 substantial meal period premiums during the Class Period, estimated to exceed \$250,000. It argued
17 that this claim could not be certified because individual inquires would predominate over common
18 ones. It proffered a host of defenses to the merits of the claim which could render its value at zero.
19 Based on these defenses, a compromise was required to resolve this claim at this juncture of the
20 litigation. Gaines Decl. ¶ 18.

21 Defendant allegedly failed to provide Class Members with legally compliant rest periods,
22 or premium wages of one hour's pay in lieu thereof, as required by Labor Code § 226.7 and Wage
23 Order 4-2001, resulting in a failure to pay wall wages due, in violation of Labor Code §§ 510, 1194
24 and 1194.2. Class Members contend that they were routinely not authorized and unable to take an
25 off-duty, uninterrupted 10-minute rest period for every four (4) hours of work or major fraction
26 thereof, and were not paid premium wages of one hour's pay for each missed rest period. While a

27 ³ Plaintiff also argued that Defendant deprived Class Members of wages due to an unlawful time
28 rounding practice. Discovery revealed that this theory of Plaintiff's unpaid wages claim was
without merit.

1 20% rest break violation rate would yield damages of nearly \$440,000, Defendant adamantly
2 opposed this claim on multiple bases, including both on the merits (because it implemented what it
3 argued was a complaint policy together with proper rest break practices) and as to class certification
4 (based on its argument that assessing its rest period liability to hundreds of employees would result
5 in hundreds of mini-trials, rendering class certification unmanageable). Based on the risks of future
6 litigation, the Parties agreed to the compromise documented in the Settlement. Gaines Decl. ¶ 19.

7 Plaintiff alleges that Defendant failed to issue Plaintiff and Class Members accurately
8 itemized wage statements, failed to pay waiting time penalties, and owes PAGA civil penalties,
9 primarily derivative of the claims alleged above. These penalty claims would total up to
10 approximately \$1,519,400 (without stacking duplicative PAGA penalties), but required a
11 substantial discount for settlement purposes because they are primarily derivative of the underlying
12 unpaid wage claims (i.e. if Plaintiff did not prevail on her underlying unpaid wage claims, she
13 would likely not prevail on most or many of these penalty claims), they are subject to independent
14 defenses of their own (including proof of injury and/or willfulness), and they are subject to
15 reduction in the Court's discretion. Plaintiff believed it was unlikely that the Court would entertain
16 an award of penalties which was substantial compared to the amount of the unpaid wages sought.
17 As such, these claims required a compromise to resolve at this juncture of the litigation. Gaines
18 Decl. ¶ 20.

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

1 Gaines Decl. ¶ 21.

2 Plaintiff also faced the risk of a loss on the merits on her claims. It is very possible that the
3 Court would agree with Defendant's position that its policies and practices complied with the
4 requirements of California law or could not be certified. In such a case, the value of the majority
5 of Plaintiff's claims would be zero. Gaines Decl. ¶ 22.

6 Plaintiff faced the risk that she would not obtain a maximum damage/penalty award on all
7 (or any of) her claims. For example, Plaintiff seeks discretionary penalties pursuant to the PAGA.
8 Even if Plaintiff did prevail on these claims, it is possible that the Court would not impose all
9 penalties pursuant to its discretionary power to reduce them. Gaines Decl. ¶ 23.

10 Plaintiff was also forced to recognize that Defendant is a charter school, operating almost
11 entirely with public funds, and with substantial financial limitations. The settlement here – payable
12 over slightly more than three years – reflects a compromise that allows it to remain operational
13 notwithstanding the tremendous strain this settlement will place on its finances. The settlement
14 reflects a discount in light of Defendant's lack of ability to pay a "full value" settlement. Gaines
15 Decl. ¶ 24.

16 Defendant strongly contends that its policies and practices do not violate any laws. It
17 contends that it properly provided for all meal and rest periods and fully compensated their
18 employees for all time worked. It further contends that the wage statements it provides to its
19 employees are fully compliant with California law. Gaines Decl. ¶ 25.

20 When the costs and risks of non-certification and loss on the merits are considered,
21 Plaintiff's counsel is of the opinion that the settlement reached is clearly a favorable one. Gaines
22 Decl. ¶¶ 15-26.

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

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28 \\\

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

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

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

E. Plaintiff Should Be Permitted to File Her First Amended Complaint

In connection with this Settlement, Plaintiff shall file a First Amended Complaint, attached to the Stipulation as **Exhibit 1**, which adds class allegations and claims to comport with the release provided for in the Stipulation. The Parties agreed that, as part of her motion for preliminary approval, Plaintiff would concurrently seek leave to file the First Amended Complaint, the filing of which is a condition of the Stipulation.

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

V. CONCLUSION

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

1. Preliminarily finding that the settlement falls within the range of reasonableness and approving the proposed settlement;
2. Conditionally certifying, for settlement purposes only, the Settlement Class;
3. Appointing Plaintiff Zohra Jayaraman as the Class Representative;
4. Appointing Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC as Class Counsel;

- 1 5. Approving Phoenix Settlement Administrators as Settlement Administrator;
- 2 6. Preliminarily approving the allocation of \$40,000 from the Maximum Settlement
- 3 Amount to settle Plaintiff's representative claims under the PAGA, of which seventy-five percent
- 4 (75%) shall be paid to the Labor and Workforce Development Agency and twenty-five percent
- 5 (25%) shall be included in the Net Settlement Proceeds for payment to members of the PAGA
- 6 Group;
- 7 7. Approving as to content and form the notice to the Settlement Class, and directing
- 8 it to be disseminated by the Settlement Administrator;
- 9 8. Permitting Plaintiff to file her First Amended Complaint, attached to the Stipulation
- 10 as **Exhibit 1**, no later than five (5) court days after notice of the entry of the Order granting this
- 11 motion has been given, and consent that Defendant not be required to file a responsive pleading
- 12 thereto; and,
- 13 9. Setting the following schedule of settlement proceedings:

<u>EVENT</u>	<u>TIMING</u>
Last day for Defendant shall provide to the Settlement Administrator a list of all Class Members, including their last known addresses, telephone numbers, social security numbers, and their dates of employment in a non-exempt position in California during the Class Period ("Settlement Class Information")	10 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail Notice to Class Members	20 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Class Members to submit a written request for exclusion 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

<u>EVENT</u>	<u>TIMING</u>
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	_____, 202____, at _____.m. (approximately 90 days after entry of the Order granting this Motion)

DATED: October 17, 2022

Respectfully submitted,

GAINES & GAINES,
A Professional Law Corporation

By: 

DANIEL F. GAINES

ALEX P. KATOFISKY

Attorneys for Plaintiff Zohra Jayaraman and Proposed
Class Counsel