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8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES – LONG BEACH COURTHOUSE**
11

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

14 Plaintiff,

15 v.

16 THE AIRPORT COLLECTIVE, INC., a
California corporation, and DOES 1
17 through 10, inclusive,

18 Defendants.
19
20
21

CASE NO: 21LBCV00333

Assigned to the Honorable Mark C. Kim, Dept. S27

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

DATE: August 30, 2022

TIME: 8:30 a.m.

DEPT.: S27

Reservation ID: 052955941730

Action Filed: June 18, 2021

1 **PLEASE TAKE NOTICE THAT** on August 30, 2022 at 8:30 a.m., or as soon thereafter
2 as the matter may be heard, in Department S27 of the above-entitled Court, located at 275 Magnolia,
3 Long Beach, California 90802, Plaintiff Kevin Pugh ("Plaintiff" or "Pugh") will and hereby does
4 move unopposed for an Order (1) preliminarily finding that the settlement between the parties falls
5 within the range of reasonableness and approving the proposed class action settlement in the above-
6 captioned case, (2) conditionally certifying, for settlement purposes only, a settlement class, (3)
7 approving the appointment of Plaintiff as Class Representative, (4) approving the appointment of
8 Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC as Class Counsel, (5) approving
9 the appointment of Phoenix Class Action Administration Solutions as settlement administrator,
10 (6) preliminarily approving the allocation of \$2,000 from the Maximum Settlement Amount to
11 settle Plaintiff's representative claims under the Private Attorneys General Act (Lab. Code §§ 2698
12 et seq.), of which seventy-five percent (75%) will be paid to the Labor and Workforce Development
13 Agency and twenty-five percent (25%) shall be paid to Class Members who have not submitted a
14 valid and timely Request for Exclusion Form as part of the Net Settlement Proceeds, (7) approving
15 as to content and form the notice to the settlement class, and directing it be disseminated by the
16 Settlement Administrator; (8) permitting Plaintiff to file a First Amended Complaint, and (9) setting
17 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.

25 \\

26 \\

27 \\

28 \\

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 DA TED: April 19, 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 Kevin Pugh and Proposed Class
11 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 Kevin Pugh ("Plaintiff" or
6 "Pugh"), individually and on behalf of all others similarly situated, and Defendant The Airport
7 Collective, Inc. ("Defendant").

8 The settlement occurred as a result of extensive arm's-length negotiations by experienced
9 counsel with the assistance of a respected mediator with experience in the area of employment class
10 actions. Most importantly, the settlement will result in significant financial benefit to the
11 participating claimants, on terms that are by any measure fair, reasonable and adequate. See
12 *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801-02. The proposed settlement provides
13 for a non-revisionary class settlement in the gross amount of \$150,000 to a settlement class of
14 approximately 77 Class Members, yielding gross payments of nearly \$2,000 per employee. As
15 detailed below, the settlement is in the best interests of the class in light of all of the facts and
16 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 Kevin Pugh as Class
21 Representative; (d) approve the appointment of Daniel F. Gaines and Alex P. Katofsky of Gaines
22 & Gaines, APLC as Class Counsel; (e) approve appointment of the Settlement Administrator; (f)
23 permit the filing of a First Amended Complaint; (g) authorize the mailing of the proposed class
24 action notice packet; and (h) schedule a final fairness and approval hearing.

25 **II. BACKGROUND AND PROCEDURAL HISTORY**

26 On April 13, 2021, Plaintiff exhausted the pre-filing requirements of the Labor Code Private
27 Attorneys General Act of 2004 ("PAGA"). Declaration of Daniel F. Gaines ("Gaines Decl.") at ¶
28 6.

1 On or about June 18, 2021, Plaintiff initiated the Action by filing a Representative Action
2 Complaint for Penalties, pursuant to PAGA, on behalf of himself and all other aggrieved employees
3 (the "Complaint"). The First Amended Complaint, attached to the Settlement Agreement as
4 **Exhibit 3** and which will be filed as part of the settlement approval process, asserts class and PAGA
5 representative action claims against Defendant for (1) failure to provide compliant rest periods or
6 compensation in lieu thereof (Labor Code §§ 226.7 and 558; IWC Wage Order 4-2001); (2) failure
7 to provide compliant meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 510, 512,
8 558, 1194 and 1194.2; IWC Wage Order 4-2001); (3) failure to reimburse employee business
9 expenses (Labor Code § 2802); (4) failure to comply with itemized employee wage statement
10 provisions (Labor Code §§ 226 and 226.3); (5) failure to timely pay wages due at separation of
11 employment (Labor Code §§ 201-203); (6) violation of Business and Professions Code §§ 17200,
12 *et seq.*; and (7) civil penalties pursuant to Labor Code §§ 2698, *et seq.* for violations of Labor Code
13 §§ 201, 202, 226, 226.3, 226.7, 510, 512, 558, 1194, and 2802 (the "First Amended Complaint").
14 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. Gaines Decl. at ¶ 8.

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

4 **III. . INVESTIGATION AND SETTLEMENT DISCUSSIONS**

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

12 On January 27, 2022, following their exchange of information and documents regarding the
13 Settlement Class and the claims and defenses asserted by the Parties, the Parties engaged in arm's-
14 length negotiations with the assistance of mediator Judge David I. Brown (Sacramento County
15 Super. Ct., Ret.), through which they were able to reach the resolution of the Action set forth herein.
16 Gaines Decl. at ¶ 11.

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

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

proper under the more stringent standard applied for litigation and that evidence of this limited stipulation for settlement purposes only will not be admissible for any purpose in this or any other proceeding. Gaines Decl. at ¶ 13.

IV. LEGAL ANALYSIS

A. The Proposed Settlement Terms

1. The Settlement Class

The Parties have agreed to a settlement class composed of all non-exempt California employees of Defendant from January 1, 2020 through January 27, 2022 (the "Class Period"). Defendant represents that this Class contains approximately 77 Class Members, and the Maximum Settlement Amount will increase proportionately if the final class includes more than 77 members. Stip. at ¶¶ A(4); E(16).

2. Allocations to be Paid from the Maximum Settlement Amount

The Stipulation provides that Defendant shall pay an amount not to exceed \$150,000 to resolve the Action on a class-wide basis (the "Maximum Settlement Settlement"), subject to any increase based on the escalator provision in paragraph H(16) of the Settlement Agreement. The Maximum Settlement Amount includes the attorneys' fees of Class Counsel; litigation costs and expenses (which includes, without limitation, all such fees and costs incurred to date, as well as such fees and costs to be incurred in documenting the settlement, providing any notices required as part of the settlement, securing Court approval of the settlement, and obtaining judgment in the Action); the Enhancement Payment to the Class Representative, as approved by the Court; the payment to the California Labor and Workforce Development Agency ("LWDA"); and all costs of administration, including, without limitation, settlement administration fees and expenses. Defendant shall pay all employer payroll tax obligations due on wage payments made from the Net Settlement Proceeds in addition to, and separate and apart from, the Maximum Settlement Amount. Defendant shall separately pay Plaintiff a general release payment of \$15,000 in exchange for his broad release of all claims - documented through a separate agreement. Stip. at ¶ C(1)(a).

From the Maximum Settlement Amount, Defendant will not oppose Plaintiff's counsel's application to the Court for up to 35% of the Gross Settlement Amount for attorneys' fees (or

1 \$52,500). Stip. at ¶ C(1)(f).

2 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff's counsel's
3 application to the Court for up to \$10,000 in reimbursement of litigation costs and expenses. Stip.
4 at ¶ C(1)(g).

5 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff's counsel's
6 application to the Court for an Enhancement Payment to the Class Representative in the gross
7 amount of \$2,500, in consideration for his efforts in instituting and participating in the Action. Stip.
8 at ¶ C(1)(e).

9 From the Maximum Settlement Amount, settlement administration fees paid to Phoenix
10 Class Action Administration Solutions will be no more than \$5,000. Stip. at ¶ C(1)(h).

11 From the Maximum Settlement Amount, the portion to be allocated for settlement of any
12 and all claims for penalties under the PAGA is \$2,000 ("PAGA Payment"), 75% of which shall be
13 paid to the LWDA and 25% shall be included in the Net Settlement Proceeds for payment to Class
14 Members. Stip. at ¶ C(1)(d).

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

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

California in a non-exempt position during the Class Period multiplied by the weekly rate. Stip. at ¶ C(1)(c).

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

Pursuant to PAGA, the Parties have agreed that \$2,000 of the Maximum Settlement Amount will be allocated to settle the claims brought under Labor Code § 2699 et seq. Pursuant to Labor Code § 2699(i), “civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved employees.” As such, 75 percent of the apportioned PAGA settlement amount – or \$1,500 – shall be payable to the LWDA. The remaining 25 percent, or \$500, shall be included in the Net Settlement Proceeds for payment to Class Members. Stip. at ¶ C(1)(d).

B. Two-Step Approval Process

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

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

Thus, the preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. See *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 234-35. “The strength of the findings made by a judge at a

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

1 preliminary hearing or conference concerning a tentative settlement proposal may vary. The court
2 may find that the settlement proposal contains some merit, is within the range of reasonableness
3 required for a settlement offer, or is presumptively valid subject only to any objections that may be
4 raised at a final hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26
5 (4th ed. 2002).

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

8 When the parties to an action reach a monetary settlement, they will
9 usually prepare and execute a joint stipulation of settlement, which
10 is submitted to the court for preliminary approval. The stipulation
11 should set forth the essential terms of the agreement, including but
12 not limited to, the amount of settlement, form of payment, manner of
13 determining the effective date of settlement and any recapture clause.

14 *Id.* at § 11.24.

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

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

18 Pursuant to California Rules of Court, Rule 3.769(d), parties also may, at the preliminary
19 approval stage, request that the court provisionally approve certification of the class – conditioned
20 upon final approval of the settlement. “[P]re-certification settlements are routinely approved if
21 found to be fair and reasonable.” *Wershba, supra*, 91 Cal. App. 4th at 240. *Accord Dunk, supra*,
22 48 Cal. App. 4th at 1803 (although the settlement was reached before any “adversary certification,”
23 the court was satisfied that it was “fair, adequate and reasonable.”). *See also In re Baldwin-United*
24 *Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478² (“many courts have employed this practice in the
25 name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”)

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

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

2 As required by Labor Code § 2699(1)(2), concurrent with Plaintiff's submission of the
3 Stipulation to the Court, his counsel is transmitting it, together with this Motion, to the LWDA.
4 Gaines Decl. at ¶ 31.

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

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

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

13 The proposed Settlement Class is ascertainable. The class definition, the size of the Class,
14 and the means for identifying the members of the class determine whether the class is ascertainable.
15 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
16 are identifiable from Defendant's employment and payroll records. Further, the Settlement Class
17 is sufficiently numerous to warrant certification. According to Defendant's records, the Class
18 comprises approximately 77 employees. Gaines Decl. ¶ 27.

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

21 The Class Members' claims all stem from a common source: members of the Settlement
22 Class allege that Defendant violated the same Labor Code provisions in connection with their
23 employment. All members of the Class seek the same relief under the same California laws (related
24 to unpaid meal and rest period premiums, unreimbursed business expenses, inaccurate or
25 incomplete wage statements, failure to timely pay wages due upon separation, and derivative
26 claims). Under these circumstances, the commonality requirement is satisfied for purposes of
27 certifying the Settlement Class for settlement purposes. Gaines Decl. ¶ 28.

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

A class representative's claims are typical when they arise from the same event or course of conduct that gives rise to the claims of the class, and are based on the same legal theory. *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, named Plaintiff and proposed Class Representative Kevin Pugh is a former non-exempt employee who worked for Defendant in the State of California during the Class Period. He contends that Defendant failed to provide meal and rest periods, failed to comply with itemized employee wage statement provisions, failed to reimburse expenses, and failed to timely pay wages at the separation of employment, in violation of Labor Code §§ 201-203, 226(a), 226.3, 226.7, 512, 558, 2698, 2699, and 2802, among other Labor Code provisions. He has the same claims as those that the members of the Settlement Class would reasonably be expected to bring based on the course of conduct alleged herein. Gaines Decl. ¶ 29.

Plaintiff has also demonstrated that he will aggressively and competently assert the interests of the proposed Settlement Class; he has taken an active role in this litigation and has no apparent conflicts with other class members. Gaines Decl. ¶ 30. Furthermore, Plaintiff has retained competent counsel, experienced in litigating class action claims in the employment context. *See* Gaines Decl. ¶¶ 2-5.

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

Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962. Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990) 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, 10-11.

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, 10-11.

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 permit or authorize Plaintiff and Class Members to
6 take timely 30-minute meal periods for shifts greater than 5 hours in length, in violation of Labor
7 Code §§ 226.7, 510, 512, 558, 1194 and 1194.2 and IWC Wage Order 4-2001. Labor Code § 512
8 provides that employers (like Defendant) may not employ an employee for a work period of more
9 than 5 hours without providing a 30-minute meal period starting no later than the end of the 5th
10 hour. Plaintiff and Class Members allege that they were routinely unable to take a proper meal
11 break when they worked shifts in excess of 5 hours in duration and a second meal break when they
12 worked shifts in excess of 10 hours in duration. When they were able to take a meal period, they
13 were oftentimes late or cut short. Based on an analysis of wage and time data provided by
14 Defendant through discovery, Plaintiff has ascertained a meal period violation rate of 65.8% over
15 approximately 30,000 shifts. Plaintiff calculates Defendant's meal period liability to exceed
16 \$311,297. Defendant, however, maintained numerous defenses to this claim. It argued that its
17 written policies were consistent with the requirements of California law and that any missed meal
18 breaks were waived, not denied. It also contended that this claim could not be certified based on
19 varying shifts and job types among the class members. In short, a discount was required to resolve
20 this claim at this stage of the litigation based on class certification and merits risks. Gaines Decl.
21 ¶ 16.

22 Plaintiff further alleges that Defendant failed to provide Plaintiff and Class Members with
23 legally compliant rest periods, or premium wages of one hour's pay in lieu thereof, as required by
24 Labor Code § 226.7 and Wage Order 4-2001. Plaintiff and Class Members were allegedly not able
25 to take all of their applicable rest periods. Plaintiff contends that typically, employees would only
26 be authorized to take fewer than half the rest periods Defendant was obligated to provide due to the
27 busy nature of their jobs. Defendant also maintained an allegedly-unlawful policy and practice
28 requiring Plaintiff and Class Members to remain on its premises during rest periods, resulting in

1 impermissible on-duty rest periods subject to employer control. Defendant's rest period policy
2 provides, in relevant part, that: "Nonexempt employees are free to leave during meal breaks." Since
3 there is no such express authorization for rest periods, Plaintiff contends it follows that Class
4 Members were improperly required to remain on Defendant's premises during rest periods.
5 Plaintiff alleges that this practice violates the holding in *Augustus v. ABM Security Services, Inc.*
6 (2016) 5 Cal. 5th 257, which held that the rest period requirement "obligates employers to permit
7 and authorizes employees to take off-duty rest periods. That is, during rest periods employers must
8 relieve employees of all duties and relinquish control over how employees spend their time." *Id.*
9 at 269. An employer may not place any limitations on where employees may go or not go during
10 their rest periods). See also Department of Industrial Relations website
11 (www.dir.ca.gov/dlse/faq_restperiods.htm) (Question: "Can my employer require that I stay on the
12 work premises during my rest period? No, your employer cannot impose any restraints not inherent
13 in the rest period requirement itself."). Defendant also admits it never paid rest period premiums.
14 If Plaintiff could prove that Defendant denied Class Members 25% of their entitled rest periods,
15 this claim would be worth up to \$118,250. Like Plaintiff's meal break claim, prevailing on this
16 claim also involved substantial risk. Defendant argued its policy and practice always authorized
17 employees to take their rest periods and leave the company premises for them. It contends that,
18 because there are no records as to when rest breaks were taken, this claim will be difficult, if not
19 impossible, for Plaintiff to certify. It claimed that any missed rest breaks were voluntarily waived
20 by employees. The risks of prevailing on this claims required a discount for settlement purposes at
21 this juncture of the litigation. Gaines Decl. ¶ 17.

22 Plaintiff and Class Members were required to incur expenses in the performance of their
23 job duties for which they alleged they were not fully reimbursed, in violation of Labor Code § 2802.
24 Plaintiff and Class Members were required to use their personal automobiles, but contend that they
25 were not fully reimbursed by Defendant for these expenses, including, but not limited to, gas,
26 maintenance, and insurance. This practice violates Labor Code § 2802. Based on Plaintiff's
27 analysis, he believes this claim could be valued at up to \$90,210. A discount, however, was
28 required for settlement purposes. Defendant contended this claim could not be certified due to the

1 individualized issued as to reimbursement amount among different employees. It also contended
2 that its drivers – which represent a small fraction of its workforce – were always fully reimbursed
3 for their auto expenses and could always seek additional reimbursement if they were not otherwise
4 fully reimbursed. The settlement here represents a fair compromised of the value of this claim.
5 Gaines Decl. ¶ 18.

6 Plaintiff alleges that Defendant failed to issue Plaintiff and Class Members accurately
7 itemized wage statements, failed to pay waiting time penalties, and owes PAGA civil penalties, all
8 derivative of the claims alleged above. These penalty claims would total up to approximately
9 \$350,800 but required a substantial discount for settlement purposes because they are wholly
10 derivative of the underlying unpaid wage and expense reimbursement claims (i.e. if Plaintiff did
11 not prevail on the underlying claims, he would not prevail on these penalty claims), they are subject
12 to independent defenses of their own (including proof of injury and/or willfulness), and they are
13 subject to reduction in the Court's discretion. Plaintiff believed it was unlikely that the Court would
14 entertain an award of penalties which was nearly the same amount of the unpaid wages sought. As
15 such, these claims required a compromise to resolve at this juncture of the litigation. Gaines Decl.
16 ¶ 19.

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

28 \\\

1 Plaintiff also faced the risk of a loss on the merits on his claims. It is very possible that the
2 Court would agree with Defendant's position that its meal and rest period policies and practices
3 complied with the requirements of California law or could not be certified. In such a case, the value
4 of the majority of Plaintiff's claims would be zero. Gaines Decl. ¶ 21.

5 Finally, Plaintiff faced the risk that he would not obtain a maximum damage/penalty award
6 on all (or any of) his claims. For example, Plaintiff seeks discretionary penalties pursuant to the
7 PAGA. Even if Plaintiff did prevail on these claims, it is possible that the Court would not impose
8 all penalties pursuant to its discretionary power to reduce them. Gaines Decl. ¶ 22.

9 Defendant strongly contends that its policies and practices do not violate any laws. It
10 contends that it properly provided for all meal and rest periods and fully compensated their
11 employees for all time worked. It further contends that the wage statements it provides to its
12 employees are fully compliant with California law. Gaines Decl. ¶ 23.

13 When the costs and risks of non-certification and loss on the merits are considered,
14 Plaintiff's counsel is of the opinion that the settlement reached is clearly a favorable one. Gaines
15 Decl. ¶¶ 15-24.

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

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

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

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

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

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

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

11 **V. CONCLUSION**

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

- 14 1. Preliminarily finding that the settlement falls within the range of reasonableness and
15 approving the proposed settlement;
- 16 2. Conditionally certifying, for settlement purposes only, the Settlement Class;
- 17 3. Appointing Plaintiff Kevin Pugh as Class Representative;
- 18 4. Appointing Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC as
19 Class Counsel;
- 20 5. Approving Phoenix Class Action Administration Solutions as Settlement
21 Administrator;
- 22 6. Preliminarily approving the allocation of \$2,000 from the Maximum Settlement
23 Amount to settle Plaintiff's representative claims under the PAGA, of which seventy-five percent
24 (75%) shall be paid to the Labor and Workforce Development Agency and twenty-five percent
25 (25%) shall be included in the Net Settlement Proceeds for payment to Class Members;
- 26 7. Approving as to content and form the notice to the Settlement Class, and directing
27 it to be disseminated by the Settlement Administrator;

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

5 9. Setting the following schedule of settlement proceedings:

<u>EVENT</u>	<u>TIMING</u>
Last day for Defendant to provide to the Settlement Administrator a list of all Class Members, including their last known addresses, telephone numbers, social security numbers, and their dates of employment in a non-exempt position in California during the Class Period ("Settlement Class Information")	10 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail Notice and Request for Exclusion form to Class Members	20 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Class Members to submit a written Request for Exclusion form to the Settlement Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members
Last day for Class Members to submit an Objection to the Settlement Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members
Last day for Class Counsel to file and serve moving papers in support of final settlement approval and request for attorneys' fees and costs	10 calendar days before the final settlement approval hearing date
Last day for Class Counsel to file with the Court and serve declaration by Settlement Administrator specifying the due diligence undertaken with regard to the mailing of the Notice	10 calendar days before the final settlement approval hearing date
Final settlement approval hearing	_____, 2022, at _____.m. (approximately 85 days after entry of the Order granting this Motion)

1 DATED: April 19, 2022

Respectfully submitted,

2 GAINES & GAINES,
3 A Professional Law Corporation

4
5 By: *Alex P. Katofsky*

6 DANIEL F. GAINES

ALEX P. KATOFSKY

7 Attorneys for Plaintiff Kevin Pugh and Proposed Class
8 Counsel



Make a Reservation

KEVIN PUGH, ON BEHALF OF HIMSELF AND ALL AGGRIEVED EMPLOYEES PURSUANT TO
LABOR CODE 2698 ET SEQ vs THE AIRPORT COLLECTIVE, INC., A CALIFORNIA
CORPORATION

Case Number: 21LBCV00333 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2021-06-18 Location: Governor George Deukmejian Courthouse - Department S27

Reservation

Case Name:

KEVIN PUGH, ON BEHALF OF HIMSELF AND ALL
AGGRIEVED EMPLOYEES PURSUANT TO LABOR
CODE 2698 ET SEQ vs THE AIRPORT COLLECTIVE,
INC., A CALIFORNIA CORPORATION

Case Number:

21LBCV00333

Type:

Motion re: (Notice of Unopposed Motion and Unopposed
Motion for Preliminary Approval of Class Action
Settlement and Seeking Leave to File First Amended
Complaint)

Status:

RESERVED

Filing Party:

KEVIN PUGH, on behalf of himself and all aggrieved
employees pursuant to Labor Code 2698 et seq (Plaintiff)

Location:

Governor George Deukmejian Courthouse - Department
S27

Date/Time:

08/30/2022 8:30 AM

Number of Motions:

1

Reservation ID:

052955941730

Confirmation Code:

CR-ZVHZ3LFPBHYDFDQW6

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount:

\$61.65

Account Number:

XXXX6645

Type:

Visa

Authorization:

04245G



Print Receipt



Reserve Another Hearing



View My Reservations

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