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and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – LONG BEACH COURTHOUSE

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

Plaintiff,

v.

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

Defendants.

CASE NO: 21LBCV00333

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

CLASS ACTION

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

DATE: January 12, 2023

TIME: 8:30 a.m.

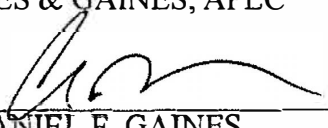
DEPT.: S27

Action Filed: June 18, 2021

1 **PLEASE TAKE NOTICE THAT** on January 12, 2023 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
3 Magnolia, Long Beach, California 90802, Plaintiff Kevin Pugh will and hereby does move
4 unopposed for an Order granting final approval of this class action settlement. This Motion is made
5 pursuant to California Rules of Court Rule 3.769, which requires court approval of the settlement
6 of class actions. This Motion, unopposed by Defendant The Airport Collective, Inc. and will be
7 based on the Memorandum of Points and Authorities, the Settlement Agreement and Release of
8 Claims, the Declarations of Daniel F. Gaines and Alex P. Katofsky, the Declaration of Jarrod
9 Salinas of Phoenix Class Action Administration Solutions, the Declaration of Plaintiff Kevin Pugh,
10 such evidence or oral argument as may be presented at the hearing, and on the complete records
11 and file herein.¹

12 Dated: December 22, 2022

GAINES & GAINES, APLC

13
14 By: 
15 DANIEL F. GAINES
16 ALEX P. KATOFSKY
17 Attorneys for Plaintiff Kevin Pugh
18 and Proposed Class Counsel
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28 ¹ This motion should not be construed as a waiver of any attorney-client or attorney work-product
privileges.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 By this unopposed motion, Kevin Pugh (“Pugh” or “Plaintiff”) and the settlement class
4 (collectively “Class Members” or “Class”) seek final approval of the class action settlement
5 reached with Defendant The Airport Collective, Inc. (“Defendant”) (collectively, the “Parties”).
6 Subject to Court approval, Plaintiff has settled the Released Class and PAGA Claims on behalf of
7 the Class Members as defined in the Settlement Agreement and Release of Claims for a settlement
8 package worth \$150,000. *See* Declaration of Daniel F. Gaines (“Gaines Decl.”), Exhibit (“Ex.”)²
9 B (collectively, the “Settlement,” “Stipulation,” or “Stip.”).

10 As discussed herein, the proposed Settlement satisfies all of the criteria for final settlement
11 approval under California law because it is fair, adequate, and reasonable. Exhibit B; *see also*,
12 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor*
13 *Company* (1996) 48 Cal.App.4th 1794, 1801. The response of the Settlement Class to the
14 Settlement confirms that final settlement approval is appropriate. *There have been no objections*
15 *and no opt outs* among 77 total Class Members. Declaration of Jarrod Salinas of Phoenix Class
16 Action Administration Solutions (“Phoenix”) (“Salinas Decl.”) ¶ 8, 9, the settlement administrator
17 for this action.

18 The Parties have agreed upon a settlement class defined as: all non-exempt California
19 employees of Defendant from January 1, 2020 through January 27, 2022.

20 The Labor & Workforce Development Agency (“LWDA”) shall be paid \$1,500 (75%) of
21 the \$2,000 total allocated to settle the Class’s claims brought pursuant to Labor Code § 2698 *et*
22 *seq.*, the Private Attorneys General Act of 2004 (“PAGA”), and the remaining 25%, or \$500, shall
23 be included in the Net Settlement Proceeds for payment to Class Members. Stip. at ¶ C(1)(d).

24 Because the Settlement achieves outstanding results for the Settlement Class, Defendant’s
25 past and current employees, and the State of California, Plaintiff respectfully requests, on behalf of

26
27 ² Unless otherwise noted, all “Ex.” references are to the exhibits attached to the Declaration of
28 Daniel F. Gaines in Support of the Motion for Final Approval of Class Settlement submitted
herewith.

1 the Class and without opposition from Defendant, that the Court approve the Settlement as fair,
2 adequate, and reasonable, and enter judgment in accordance with the Settlement's terms.³

3 **II. STATEMENT OF FACTS**

4 **A. Background and Procedural History**

5 On April 13, 2021, Plaintiff exhausted the pre-filing requirements of the Labor Code Private
6 Attorneys General Act of 2004 ("PAGA"). Gaines Decl. at ¶ 8.

7 On or about June 18, 2021, Plaintiff initiated the Action by filing a Representative Action
8 Complaint for Penalties, pursuant to PAGA, on behalf of himself and all other aggrieved employees
9 (the "Complaint"). The First Amended Complaint asserts class and PAGA representative action
10 claims against Defendant for (1) failure to provide compliant rest periods or compensation in lieu
11 thereof (Labor Code §§ 226.7 and 558; IWC Wage Order 4-2001); (2) failure to provide compliant
12 meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 510, 512, 558, 1194 and
13 1194.2; IWC Wage Order 4-2001); (3) failure to reimburse employee business expenses (Labor
14 Code § 2802); (4) failure to comply with itemized employee wage statement provisions (Labor
15 Code §§ 226 and 226.3); (5) failure to timely pay wages due at separation of employment (Labor
16 Code §§ 201-203); (6) violation of Business and Professions Code §§ 17200, *et seq.*; and (7) civil
17 penalties pursuant to Labor Code §§ 2698, *et seq.* for violations of Labor Code §§ 201, 202, 226,
18 226.3, 226.7, 510, 512, 558, 1194, and 2802 (the "First Amended Complaint"). Gaines Decl. at ¶
19 9.

20 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged
21 in the Action, and further denies that the Action is appropriate for class treatment for any purpose
22 other than this settlement. Defendant contends that it has complied at all times with the California
23 Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable federal, state,
24 and local laws and regulations. It is Defendant's position that, if this case were to be litigated, class
25 certification would be inappropriate because Plaintiff is not an adequate class representative,
26 Plaintiff's claims are not typical of putative class members, and individual issues predominate over
27

28 ³ Plaintiff is filing a separate application for the Court's approval of Class Counsel's attorneys' fees and costs, claims administration fees, and Plaintiff's service award.

1 class issues. The Action, the negotiation and execution of this Settlement Agreement, and all acts
2 performed or documents executed pursuant to or in furtherance of the Settlement Agreement (i)
3 shall not be used as an admission or evidence of wrongdoing on behalf of Defendant; (ii) shall not
4 be an admission or evidence of fault on behalf of Defendant in any action before a civil, criminal,
5 or administrative agency; and (iii) shall not be deemed to be, and may not be used as, an admission
6 or evidence of the appropriateness of these or similar claims for class certification in the Action or
7 with respect to any other proceeding. Gaines Decl. at ¶ 10.

8 The Class Representative contends that Defendant violated the California Labor Code and
9 Industrial Welfare Commission Wage Orders, and that this case is appropriate for class
10 certification. Gaines Decl. at ¶ 11.

11 **B. Investigation And Settlement Discussions**

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

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

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

1 The Parties agree that the Settlement Class described herein may be certified for settlement
2 purposes only and that any motion for approval seeking, *inter alia*, certification of the Settlement
3 Class is for purposes of the settlement only. If for any reason the settlement is not approved, the
4 certification will have no force or effect and will immediately be revoked. The Parties further agree
5 that certification for purposes of the settlement is in no way an admission that class certification is
6 proper under the more stringent standard applied for litigation and that evidence of this limited
7 stipulation for settlement purposes only will not be admissible for any purpose in this or any other
8 proceeding. Gaines Decl. at ¶ 14.

9 **C. Summary of Settlement Terms**

10 **1. Benefits to the Class and the Public**

11 The Settlement provides that (a) the Court may certify the Settlement Class as described in
12 the Stipulation on a provisional, non-mandatory basis for the purposes of this settlement only,
13 conditioned upon the Court granting final approval of the Settlement; and (b) Defendant shall pay
14 the total, non-reversionary sum of \$150,000 (the “Maximum Settlement Amount”). The Maximum
15 Settlement Amount includes the attorneys’ fees of Class Counsel; litigation costs and expenses
16 (which includes, without limitation, all such fees and costs incurred to date, as well as such fees
17 and costs to be incurred in documenting the settlement, providing any notices required as part of
18 the settlement, securing Court approval of the settlement, and obtaining judgment in the Action);
19 the Enhancement Payment to the Class Representative, as approved by the Court; the payment to
20 the California Labor and Workforce Development Agency (“LWDA”); and all costs of
21 administration, including, without limitation, settlement administration fees and expenses.
22 Defendant shall pay all employer payroll tax obligations due on wage payments made from the Net
23 Settlement Proceeds in addition to, and separate and apart from, the Maximum Settlement Amount.
24 Defendant shall separately pay Plaintiff a general release payment of \$15,000 in exchange for his
25 broad release of all claims - documented through a separate agreement. Stip. at ¶ C(1)(a).

26 The Parties have agreed to a settlement class composed of all non-exempt California
27 employees of Defendant from January 1, 2020 through January 27, 2022 (the “Class Period”).
28 Defendant represents that this Class contains approximately 77 Class Members, and the Maximum

1 Settlement Amount will increase proportionately if the final class includes more than 77 members.
2 Stip. at ¶¶ A(4); E(16).

3 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff's counsel's
4 application to the Court for up to 35% of the Maximum Settlement Amount for attorneys' fees (or
5 \$52,500). Stip. at ¶ C(1)(f).

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

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

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

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

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

24 The Individual Payment Amount means the portion of the Net Settlement Proceeds
25 distributable to each Class Member who participates in the Settlement (i.e., who does not submit a
26 valid request for exclusion form). The Individual Payment Amounts will be calculated by dividing
27 the Net Settlement Proceeds by the total weeks worked by all participating Class Members in
28 California in a non-exempt position during the Class Period, which will yield the applicable weekly

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

7 **2. Preliminary Approval, Notice, and the Claims Process**

8 By Order dated September 6, 2022, this Court granted Plaintiff's unopposed motion for
9 preliminary approval of the Settlement and provisionally certified the Settlement Class, finding
10 that the Settlement appeared to be within the range of reasonableness of settlements that could
11 ultimately be given final approval. See **Exhibit C**. The Court approved the distribution of the
12 Notice of Proposed Class Action Settlement and set the Final Fairness and Approval Hearing. *Id.*

13 Pursuant to the Court's Order, on October 3, 2022, Phoenix mailed Notice packets
14 containing the notice of the terms of the Settlement — including the terms relating to attorneys'
15 fees and costs — to 77 Class Members. Salinas Decl. at ¶ 5, Salinas Decl., Ex. A. Class Members
16 were given 45 days after the Notice was mailed to opt out or object to the Settlement. As of the
17 date of this motion, 77 Class Members will be issued their share of the Settlement and they will be
18 paid, on average, approximately \$1,055.15 each; the highest-paid Class Members will be paid
19 approximately \$4,103.83. Salinas Decl. at ¶ 13. No Class Members have objected to the
20 Settlement; and no Class Members have opted out. *Id.* at ¶¶ 8, 9.

21 **D. Compliance with Procedural Requirements of PAGA**

22 On April 19, 2022, in compliance with Labor Code § 2699(1)(2), Plaintiff's counsel
23 submitted copies of the Settlement Agreement and preliminary approval papers to the LWDA
24 through its online submission interface. These final approval papers are also being submitted to
25 the LWDA concurrently with their submission to the Court. The LWDA has not objected or
26 otherwise responded to any of the submissions thus far. Gaines Decl. at ¶ 55; Ex. D.

1 **III. ARGUMENT**

2 **A. The Class Members Received the Best Practicable Notice**

3 California law vests the Court with broad discretion in fashioning an appropriate notice
4 program. *See* California Civil Code § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960,
5 973-74. To protect the rights of absent class members, the parties must provide class members
6 with the best notice practicable of a potential class action settlement. *Phillips Petroleum Co. v.*
7 *Shutts* (1985) 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-76
8 (individual notice must be sent to all class members who can be identified through reasonable
9 efforts); *Mullane v. Central Hanover Bank & Garretson Company* (1950) 339 U.S. 306, 314 (best
10 practicable notice is that which is “reasonably calculated, under all the circumstances, to apprise
11 interested parties of the pendency of the action and afford them an opportunity to present their
12 objections”). The content and method of the notice should be designed to apprise the class
13 members of the terms of the proposed settlement and of the class members’ rights regarding the
14 settlement. *See Mullane, supra*, 339 U.S. at 314; *Philadelphia Housing Authority v. American*
15 *Radiator & Standard Sanitary Corp.* (E.D. Pa. 1970) 323 F. Supp. 364, 378.

16 The Notice approved by the Court met these requirements: it identified the Parties and
17 described the lawsuit, the Class, the settlement amount, the proposed method for distribution of the
18 Maximum Settlement Amount, the amount proposed to be paid as a service payment to the named
19 Plaintiff, the amount of administrative costs, and the requested amount for attorneys’ fees and costs.
20 *See Salinas Decl., Ex. A.* The Notice was described the proposed Settlement with enough
21 specificity to allow each Class Member to make an informed choice whether to accept and
22 participate in it. It also explained how and when Class Members may object to or opt out of the
23 Settlement. Finally, the Notice provided the schedule for the hearing on final approval of the
24 Settlement and informed Class Members how to obtain additional information about the
25 Settlement.

26 The California Supreme Court has held that notice is appropriate if it has a “reasonable
27 chance of reaching a substantial percentage of the class members ...” *Cartt, supra*, 50 Cal.App.3d
28 at 974. Notice was mailed to individual Class Members at their last known address, and in the end,

1 100% of the Notices were successfully mailed to Class Members. *See* Salinas Decl. at ¶¶ 3-10.
2 Notice actually reached the vast majority of Class Members and apprised them of all pertinent
3 information regarding the Settlement, under California law, the Notice given to Class Members
4 was more than adequate.

5 **B. Final Settlement Approval is Appropriate**

6 The Settlement is fair, adequate, and reasonable because it provides substantial benefits to
7 Class Members and the general public. The fairness, adequacy, and reasonableness of the
8 Settlement are illustrated by the fact that not one of the 77 Class Members objected to, and none of
9 them have requested exclusion from, the Settlement. Salinas Decl. at ¶¶ 8, 9. In addition, the State
10 of California will receive \$1,500 for education and enforcement purposes pursuant to Labor Code
11 Sections 2699(i) and (j). Under the legal standards used by California courts to determine whether
12 class action settlements should be approved, this Settlement warrants approval.

13 **1. The Three-Step Settlement Approval Process**

14 The law favors settlement, particularly in class actions and other complex cases where
15 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
16 *See 4 Newberg on Class Actions* 4th (4th ed. 2002) § 11.41 (and cases cited therein); *Class Plaintiffs*
17 *v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco Corp.* (9th Cir.
18 1976) 529 F.2d 943, 950; *see also, Potter v. Pacific Coast Lumber Co.* (1951) 37 Cal.2d 592, 602.
19 These concerns apply with particular force in a case such as this, where novel issues of law are at
20 play (including California's complicated requirements for overtime pay).

21 A class action, however, may not be dismissed, compromised, or settled without the
22 approval of the court. California Rules of Court Rule 3.769; Federal Rules of Civil Procedure,
23 Rule 23(e).⁴ Judicial proceedings under Federal Rule of Civil Procedure Rule 23 have led to a
24 defined procedure and specific criteria for settlement approval in class action settlements, described
25 in the Federal Judicial Center, *Manual for Complex Litigation*, Fourth (4th ed. 2004) ("Manual") §

26
27 ⁴ The California Supreme Court has authorized California's trial courts to use Federal Rule 23
28 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 21.632, *et seq.* The *Manual*'s settlement approval procedure describes three distinct steps:

- 2 (1) Preliminary approval of the proposed settlement at an informal hearing;
- 3 (2) Dissemination of mailed and/or published notice of the settlement to all affected
- 4 Class members; and
- 5 (3) A "formal fairness hearing," or final settlement approval hearing, at which Class
- 6 members may be heard regarding the settlement, and at which evidence and
- 7 argument concerning the fairness, adequacy, and reasonableness of the settlement
- 8 may be presented.

9 *Manual*, § 21.632-34.

10 The first two steps of this process are now complete. The first step was completed on
11 September 6, 2022, when this Court granted preliminary approval of the Settlement. *See Exhibit*
12 *C.* In doing so, the Court determined that the Settlement was within the range of possible final
13 approval and that notice to the Class Members of the Settlement's terms and of the scheduling of
14 the formal fairness hearing should be distributed. *See Wershba v. Apple Computer* (2001) 91
15 Cal.App.4th 224, 234-35; 4 *Newberg, supra*, § 11.25.

16 The second step in the class action settlement approval process, the dissemination of the
17 Notice, is complete as well. In accordance with the Court's Preliminary Approval Order, the
18 Parties worked with Phoenix to implement the Court-approved notice program, which employed
19 the best practicable means to disseminate to all Class Members notices of the Settlement's terms
20 and of the date and time of the final approval hearing. *C.C.P.* § 382; *see also*, Ex. A to Salinas
21 Decl.; *see generally*, Salinas Declaration.

22 The third and last step in the class action settlement approval process is the final approval
23 hearing at which the Court shall determine whether the Settlement is fair, adequate, and reasonable.
24 At the final approval hearing, scheduled for January 12, 2023, Class Members will have the
25 opportunity to be heard regarding the Settlement, and Class Counsel will present evidence and
26 argument in support of the Settlement.⁵ *See Manual*, § 21.634. At the conclusion of the final

27 ⁵ No Class Members submitted a written objection to the Settlement; it is anticipated that none
28 will appear at the final approval hearing.

1 approval hearing, this Court will decide whether to grant final approval of the Settlement and
2 whether to enter a final order and enter judgment in the action.

3 **2. The Terms of the Settlement Disclose No Grounds to Doubt Its**
4 **Fairness**

5 When faced with a motion for final approval of a class action settlement under Code of
6 Civil Procedure § 382, a court inquires whether the settlement is “fair, adequate, and reasonable.”
7 *See Wershba, supra*, 91 Cal.App.4th at 244-45; *Dunk, supra*, 48 Cal.App.4th at 1801. A preliminary
8 review of the terms of the proposed Settlement shows that it is fair. Indeed, this Court should begin
9 its analysis with a presumption that the proposed Settlement is fair:

10 [A] presumption of fairness exists where: (1) the settlement is
11 reached through arm’s-length bargaining; (2) investigation and
12 discovery are sufficient to allow counsel and the court to act
intelligently; (3) counsel is experienced in similar litigation; and
(4) the percentage of objectors is small.

13 *Dunk, supra*, 48 Cal.App.4th at 1802; *Wershba, supra*, 91 Cal.App.4th at 245.

14 During the course of this litigation, the Parties have engaged in significant investigation
15 into the factual and legal claims presented in the complaint. Substantial discovery into the merits
16 of Plaintiff’s claims and the nature of Defendant’s practices took place between the Parties in which
17 Defendant and Plaintiff exchanged a considerable amount of information and documentation and
18 further apprised each other of their respective factual contentions, legal theories, and defenses. In
19 short, the Parties have engaged in extensive good faith, arms-length negotiations, telephone
20 conferences, and substantial correspondence further aimed at settling their disputes. Gaines Decl.
21 at ¶¶ 12-15.

22 The Settlement reached by the Parties provides substantial payments to Class Members,
23 particularly in relation to the harm alleged. The presumption of fairness and adequacy is especially
24 appropriate here because the reaction of Class Members has been uniformly positive – no Class
25 Members objected to, and no Class Members have requested exclusion from, the Settlement.
26 Salinas Decl. at ¶¶ 8, 9. Accordingly, because the four circumstances identified in *Dunk* are present
27 here, it is appropriate for the Court to presume that the Settlement is worthy of final approval. *See*
28 *Dunk, supra*, 48 Cal.App.4th at 1802; *see also, Kullar, supra*, 168 Cal.App.4th at 129-30.

1 **3. Each of the Relevant Criteria Supports Final Approval of the**
2 **Settlement**

3 In deciding whether to grant final approval to a class action settlement, California courts
4 consider several factors, including the following: (1) the value of the settlement; (2) the risks
5 inherent in continued litigation; (3) the extent of discovery completed and the stage of the
6 proceedings when settlement was reached; (4) the complexity, expense, and likely duration of the
7 litigation in the absence of settlement; (5) the experience and views of class counsel; and (6) the
8 reaction of class members. *See Wershba, supra*, 91 Cal.App.4th at 244-45; *Dunk, supra*, 48
9 Cal.App.4th at 1801. As described below, each of these criteria supports final approval of the
10 Settlement.

11 a. **The Value of the Settlement Favors Final Approval**

12 Under the Settlement, Defendant has agreed to a settlement package valued at \$150,000
13 (including attorneys' fees and costs) to resolve this action. The entire Net Settlement Amount shall
14 be paid to Class Members. This Settlement provides for substantial benefits to be paid not long
15 after the commencement of the litigation. The settlement amount is commensurate with the value
16 of the claims adjusted for risk; the amounts to be paid are not nominal or symbolic. Based on the
17 claims received to date, Class Members shall be paid, on average, about \$1,055.15 each –
18 comprised of compensation for damages, wages, penalties and interest for Defendant's alleged
19 failure to pay wages, provide meal and rest periods, provide compliant wage statements, reimburse
20 expenses, timely pay wages, and other violations of the Labor Code. This is an exceptional result.

21 Plaintiff's counsel created a comprehensive damage analysis using sampling information
22 obtained through informal discovery. This damage analysis reveals that the negotiated settlement
23 falls within a realistic range of recovery on Class Members' claims. Gaines Decl. ¶ 33.

24 Plaintiff alleges that Defendant failed to permit or authorize Plaintiff and Class Members to
25 take timely 30-minute meal periods for shifts greater than 5 hours in length, in violation of Labor
26 Code §§ 226.7, 510, 512, 558, 1194 and 1194.2 and IWC Wage Order 4-2001. Labor Code § 512
27 provides that employers (like Defendant) may not employ an employee for a work period of more
28 than 5 hours without providing a 30-minute meal period starting no later than the end of the 5th

1 hour. Plaintiff and Class Members allege that they were routinely unable to take a proper meal
2 break when they worked shifts in excess of 5 hours in duration and a second meal break when they
3 worked shifts in excess of 10 hours in duration. When they were able to take a meal period, they
4 were oftentimes late or cut short. Based on an analysis of wage and time data provided by
5 Defendant through discovery, Plaintiff has ascertained a meal period violation rate of 65.8% over
6 approximately 30,000 shifts. Plaintiff calculates Defendant's meal period liability to exceed
7 \$311,297. Defendant, however, maintained numerous defenses to this claim. It argued that its
8 written policies were consistent with the requirements of California law and that any missed meal
9 breaks were waived, not denied. It also contended that this claim could not be certified based on
10 varying shifts and job types among the class members. In short, a discount was required to resolve
11 this claim at this stage of the litigation based on class certification and merits risks. Gaines Decl.
12 ¶ 34.

13 Plaintiff further alleges that Defendant failed to provide Plaintiff and Class Members with
14 legally compliant rest periods, or premium wages of one hour's pay in lieu thereof, as required by
15 Labor Code § 226.7 and Wage Order 4-2001. Plaintiff and Class Members were allegedly not able
16 to take all of their applicable rest periods. Plaintiff contends that typically, employees would only
17 be authorized to take fewer than half the rest periods Defendant was obligated to provide due to the
18 busy nature of their jobs. Defendant also maintained an allegedly-unlawful policy and practice
19 requiring Plaintiff and Class Members to remain on its premises during rest periods, resulting in
20 impermissible on-duty rest periods subject to employer control. Defendant's rest period policy
21 provides, in relevant part, that: "Nonexempt employees are free to leave during meal breaks." Since
22 there is no such express authorization for rest periods, Plaintiff contends it follows that Class
23 Members were improperly required to remain on Defendant's premises during rest periods.
24 Plaintiff alleges that this practice violates the holding in *Augustus v. ABM Security Services, Inc.*
25 (2016) 5 Cal. 5th 257, which held that the rest period requirement "obligates employers to permit
26 and authorizes employees to take off-duty rest periods. That is, during rest periods employers must
27 relieve employees of all duties and relinquish control over how employees spend their time." *Id.*
28 at 269. An employer may not place any limitations on where employees may go or not go during

1 their rest periods). *See also* Department of Industrial Relations website
2 (www.dir.ca.gov/dlse/faq_restperiods.htm) (Question: “Can my employer require that I stay on the
3 work premises during my rest period? No, your employer cannot impose any restraints not inherent
4 in the rest period requirement itself.”). Defendant also admits it never paid rest period premiums.
5 If Plaintiff could prove that Defendant denied Class Members 25% of their entitled rest periods,
6 this claim would be worth up to \$118,250. Like Plaintiff’s meal break claim, prevailing on this
7 claim also involved substantial risk. Defendant argued its policy and practice always authorized
8 employees to take their rest periods and leave the company premises for them. It contends that,
9 because there are no records as to when rest breaks were taken, this claim will be difficult, if not
10 impossible, for Plaintiff to certify. It claimed that any missed rest breaks were voluntarily waived
11 by employees. The risks of prevailing on this claim required a discount for settlement purposes at
12 this juncture of the litigation. Gaines Decl. ¶ 35.

13 Plaintiff and Class Members were required to incur expenses in the performance of their
14 job duties for which they alleged they were not fully reimbursed, in violation of Labor Code § 2802.
15 Plaintiff and Class Members were required to use their personal automobiles, but contend that they
16 were not fully reimbursed by Defendant for these expenses, including, but not limited to, gas,
17 maintenance, and insurance. This practice violates Labor Code § 2802. Based on Plaintiff’s
18 analysis, he believes this claim could be valued at up to \$90,210. A discount, however, was
19 required for settlement purposes. Defendant contended this claim could not be certified due to the
20 individualized issues as to reimbursement amount among different employees. It also contended
21 that its drivers – which represent a small fraction of its workforce – were always fully reimbursed
22 for their auto expenses and could always seek additional reimbursement if they were not otherwise
23 fully reimbursed. The settlement here represents a fair compromise of the value of this claim.
24 Gaines Decl. ¶ 36.

25 Plaintiff alleges that Defendant failed to issue Plaintiff and Class Members accurately
26 itemized wage statements, failed to pay waiting time penalties, and owes PAGA civil penalties, all
27 derivative of the claims alleged above. These penalty claims would total up to approximately
28 \$350,800 but required a substantial discount for settlement purposes because they are wholly

1 derivative of the underlying unpaid wage and expense reimbursement claims (i.e. if Plaintiff did
2 not prevail on the underlying claims, he would not prevail on these penalty claims), they are subject
3 to independent defenses of their own (including proof of injury and/or willfulness), and they are
4 subject to reduction in the Court's discretion. As such, these claims required a compromise to
5 resolve at this juncture of the litigation. Gaines Decl. ¶ 37.

6 The discount negotiated for settlement here is a reasonable compromise, particularly
7 considering that the risk of obtaining class certification on all or any of Plaintiff's claims involves
8 a 50% or higher hurdle, especially with respect to the meal and rest period and expense
9 reimbursement claims, to which Defendant maintains strong arguments to defeat class certification
10 (in addition to multiple defenses on the merits of the claims). Class certification is a substantial
11 risk in any class action case. Here, while Plaintiff maintains that the requirements of class
12 certification are met, Defendant proffers various arguments why class treatment is not appropriate,
13 including but not limited to that individualized inquires among class members predominate over
14 common ones. If Defendant was to defeat Plaintiff's class certification motion, there would be no
15 class wide relief whatsoever, and most class members would likely not file individual claims.
16 Gaines Decl. ¶ 38.

17 Plaintiff also faced the risk of a loss on the merits on his claims. It is very possible that the
18 Court would agree with Defendant's position that its meal and rest period policies and practices
19 complied with the requirements of California law or could not be certified. In such a case, the value
20 of the majority of Plaintiff's claims would be zero. Gaines Decl. ¶ 39.

21 Finally, Plaintiff faced the risk that he would not obtain a maximum damage/penalty award
22 on all (or any of) his claims. For example, Plaintiff seeks discretionary penalties pursuant to the
23 PAGA. Even if Plaintiff did prevail on these claims, it is possible that the Court would not impose
24 all penalties pursuant to its discretionary power to reduce them. Gaines Decl. ¶ 40.

25 Defendant strongly contends that its policies and practices do not violate any laws. It
26 contends that it properly provided for all meal and rest periods and fully compensated their
27 employees for all time worked. It further contends that the wage statements it provides to its
28 employees are fully compliant with California law. Gaines Decl. ¶ 41.

1 When the costs and risks of non-certification and loss on the merits are considered,
2 Plaintiff's counsel is of the opinion that the settlement reached is clearly a favorable one. Gaines
3 Decl. ¶¶ 33-42.

4 The settlement for each Class Member is fair, reasonable and adequate, given the inherent
5 risk of litigation, the risk relative to class certification and the costs of pursuing such litigation. The
6 settlement shall finally resolve all claims of the Class Members as alleged in the Action. Gaines
7 Decl. ¶ 43.

8 **b. The Risks Inherent in Continued Litigation Are Substantial**

9 Of particular relevance to the proposed Settlement's reasonableness is the fact that
10 Defendant has legal and factual grounds for defending this action. Defendant consistently asserted
11 that, throughout the relevant time period, it adhered to the legal requirements embodied in
12 California's labor laws at all times. Defendant also contended that a class action could not be
13 properly maintained because Plaintiff could not satisfy the criteria to certify a class under C.C.P. §
14 382.

15 The areas of law at issue in this lawsuit are dynamically changing. An adverse appellate
16 court decision or change in law by the legislature may defeat certification of some or all of the
17 claims alleged in Plaintiff's complaint. *See Keller v. Tuesday Morning, Inc.* (2009) 179 Cal. App.
18 4th 1389 (affirming the decertification of a class two years after it was originally certified).
19 Plaintiff's counsel are familiar with many class action cases where certification and/or liability
20 were immediately defeated as a result of an adverse appellate court ruling, or a change in law by
21 the California legislature. Gaines Decl. at ¶ 47. In short, the risks inherent in continued litigation
22 here, including the risks of maintaining class certification in the event it was obtained, are
23 substantial.

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1 c. **Plaintiff Believes She Would Likely Have Succeeded in Proving**
2 **Class Certification was Proper Yet a Risk of Non-Certification**
3 **Is Always Present**

4 Class Counsel is confident that they could have proven that this case is appropriate for class
5 certification; Defendant, in contrast, adamantly opposed certification.

6 C.C.P. § 382 sets forth the class certification criteria:

7 [W]hen the question is one of a common or general interest, of many
8 persons, or when the parties are numerous, and it is impracticable to
9 bring them all before the court, one or more may sue or defend for
10 the benefit of all.

11 As interpreted by the California Supreme Court, C.C.P. § 382 requires the existence of an
12 “ascertainable class” whose members share a “well-defined community of interest” in the basic
13 issues of the suit. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435; *Richmond v. Dart*
14 *Industries, Inc.* (1981) 29 Cal.3d 462, 470; *Vasquez, supra*, 4 Cal.3d at 808. The “community of
15 interest” requirement embodies three factors: “(1) predominant common question of law or fact;
16 (2) class representatives with claims or defenses typical of the class; and (3) class representatives
17 who can adequately represent the class.” *Linder*, 23 Cal.4th at 435, quoting *Richmond*, 29 Cal.3d
18 at 470. “Other relevant considerations include the probability that each class member will come
19 forward to prove his or her separate claim to part of the total recovery and whether the class
20 approach would actually serve to deter and redress alleged wrongdoing.” *Id.* Lastly, as a general
21 rule, if a defendant’s liability can be determined by facts common to the class members, a class
22 will be certified even if such members must individually prove their damages. *Employment*
23 *Development Dept. v. Superior Court* (1981) 30 Cal.3d 256, 266.

24 i. ***The Proposed Class is Ascertainable***

25 The proposed Settlement Class is clearly ascertainable as it is defined by concrete factors –
26 whether the class members were non-exempt California employees of Defendant in California
27 during a specified time frame. In this case, the Class Members are identifiable from Defendant’s
28 employment and payroll records. Further, the Settlement Class is sufficiently numerous to warrant
certification. According to Defendant’s records, the final Class is comprised of 77 members.
Gaines Decl. ¶ 50.

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2 To the extent that a few individual issues exist, they do not predominate for purposes of a
3 settlement analysis and, therefore, would not have defeated class certification. As the California
4 Supreme Court has stated, “even if some individualized proof of such facts ultimately is required
5 to parse class members’ claims, that such will predominate in the action does not necessarily
6 follow.” See *Sav-On, supra*, 34 Cal.4th at 334. Individual issues do not render class certification
7 inappropriate so long as such issues may effectively be managed. *Richmond, supra*, 29 Cal.3d at
8 473; *Occidental Land v. Superior Court* (1976) 18 Cal.3d 355, 363-64; *Washington Mutual Bank,*
9 *FA v. Superior Court* (2001) 24 Cal.4th 906, 922.

10 **iv. Plaintiff Alleges The Proposed Class Representative’s**
11 **Claims are Typical of the Class’s Claims**

12 The Named Plaintiff’s claims are typical of the Class Members’ claims. The class
13 representative’s claims need not be identical to the claims of other class members and it is only
14 required that the representative be similarly situated so that he or she will have the motive to litigate
15 on behalf of all class members. *Classen v. Weller* (1983) 145 Cal.App.3d 47. In this case, named
16 Plaintiff and proposed Class Representative Kevin Pugh is a former non-exempt employee who
17 worked for Defendant in the State of California during the Class Period. He contends that
18 Defendant failed to provide meal and rest periods, failed to comply with itemized employee wage
19 statement provisions, failed to reimburse expenses, and failed to timely pay wages at the separation
20 of employment, in violation of Labor Code §§ 201-203, 226(a), 226.3, 226.7, 512, 558, 2698, 2699,
21 and 2802, among other Labor Code provisions. He has the same claims as those that the members
22 of the Settlement Class would reasonably be expected to bring based on the course of conduct
23 alleged herein. Gaines Decl. ¶ 52.

24 Plaintiff has also demonstrated that he will aggressively and competently assert the interests
25 of the proposed Settlement Class; he has taken an active role in this litigation and has no apparent
26 conflicts with other class members. He has taken significant risks in bringing this lawsuit – he
27 faces the very real risk that because of the stigma associated with this lawsuit, he may be unable to
28 obtain employment in the future. The stigma and risk associated with filing a class action lawsuit

1 against any employer is significant, particularly in a narrow field. *See generally* the Declaration of
2 Pugh.

3 Finally, Plaintiff has retained competent counsel, experienced in litigating class action
4 claims in the employment context. Gaines Decl. at ¶¶ 2-6; Declaration of Alex P. Katofsky at ¶¶
5 2-5.

6 **v. *Plaintiff Alleges Class Treatment is the Superior Method***
7 ***of Adjudicating the Claims Asserted in this Case***

8 As outlined above, Plaintiff alleges that Defendant's common wage policies applicable to
9 all Class Members are at the root of determining the merits – both factually and legally – of Class
10 Members' claims. Accordingly, there arguably exist significant common questions of law and
11 fact which may be tried by the Court in one proceeding. Judicial efficiency mandates that the
12 class action procedure be utilized to resolve these common issues.

13 The only alternative to certifying a case like this as a class action would be for 77 current
14 and former employees to file individual actions. As the Supreme Court has stated, "[t]he relevant
15 comparison lies between the costs and benefits of adjudicating Plaintiff's claims in a class action
16 and the costs and benefits of proceeding by numerous separate actions – not between the
17 complexity of a class suit that must accommodate some individualized inquiries and the absence
18 of any remedial proceeding whatsoever." *Sav-On, supra*, 34 Cal.4th at 339, fn. 10.

19 Finally, Plaintiff maintains that California courts favor class certification in wage and hour
20 cases. The California Supreme Court has expressly endorsed the use of the class action procedure
21 in wage and hour cases. In *Sav-On*, the Court reasoned that, because there exists a "clear public
22 policy ... that is specifically directed at the enforcement of California's minimum wage and
23 overtime laws for the benefit of workers" (34 Cal.4th at 340), the class action device should be
24 used to enforce these laws wherever this device "would be the most efficient way of adjudicating
25 the class members' overtime claims." 34 Cal.4th at 330. In *Prince v. CLS Transp., Inc.* (2004)
26 118 Cal.App.4th 1320, 1328, the appellate court noted, "wage and hour disputes (and others in the
27 same general class) routinely proceed as class actions."

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1 Although Class Counsel believe the Class Members' claims are meritorious, that the Class
2 would have been certified, and that substantial damages could have been proven at trial, they are
3 experienced counsel who understand that liability, class certification, and damage issues — and
4 the outcome of any appeals that would likely follow if the Class were successful at trial — present
5 substantial risks for Class Members. Those risks must be considered in assessing the fairness of
6 this Settlement, which guarantees a substantial recovery for Class Members and eliminates the risk
7 that Class Members would be left without any recovery. Because the Settlement provides
8 immediate and substantial relief without requiring the Class Members either to undergo the risks
9 of losing at trial or to pay additional attorneys' fees and costs to continue to prosecute this action,
10 it warrants this Court's approval. *See* Gaines Decl. at ¶ 53.

11 d. **Disclosure of Documents and Data Demonstrating the Strengths**
12 **and Weaknesses of this Action Was Completed Prior to**
13 **Entering into the Settlement**

14 The extent of discovery that has been completed and the stage of the litigation are factors
15 that courts consider in determining the fairness of a settlement. *See Dunk, supra*, 48 Cal.App.4th
16 at 1801. Class Counsel conducted a thorough investigation into the claims alleged in the operative
17 complaint prior to commencing settlement discussions. Discovery took place between the Parties
18 in which Defendant and Plaintiff exchanged information and documentation and further apprised
19 each other of their respective factual contentions, legal theories, and defenses. *See* Gaines Decl. at
20 ¶¶ 12-15. Thereafter, the Parties negotiated the proposed Settlement with knowledge of the
21 strengths and weaknesses of this case and the amounts necessary to compensate Class Members
22 for their estimated damages.

23 e. **The Complexity, Expense, and Likely Duration of Continued**
24 **Litigation Militate in Favor of Final Approval**

25 A fourth factor considered by courts in determining whether a settlement warrants final
26 approval is the complexity, expense, and likely duration of the litigation in the absence of
27 settlement. *See Dunk, supra*, 48 Cal.App.4th at 1801; *Officers for Justice v. Civil Service Com'n*
28 *of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. In applying this factor, a

1 court should weigh the benefits of the settlement against the expense and delay involved in
2 achieving an equivalent or more favorable result at trial. *See Young v. Katz* (5th Cir. 1971) 447
3 F.2d 431, 433.

4 Employment class action cases are expensive and time-consuming to prosecute. Continued
5 litigation of this action against Defendant would likely be complex and expensive due to the nature
6 of the claims. It is Class Counsel's opinion that, without settlement, this litigation could endure
7 for at least three more years. Gaines Decl. at ¶ 44. Further, the Settlement avoids the need for a
8 contested class certification motion that would be time consuming and costly for Plaintiff to file,
9 Defendant to oppose, and the Court to decide. In addition, if the Court were to deny such a motion
10 for class certification, Class Members would be left without a group remedy for their claims. The
11 issues presented here would need to be litigated individually in Superior Courts in a piecemeal,
12 costly, and time-consuming fashion. The Settlement also avoids a lengthy trial or trials that likely
13 would have involved testimony by numerous witnesses and experts.

14 The areas of law at issue in this case are novel, dynamic, and change frequently. Gaines
15 Decl. at ¶ 45. Extended litigation equates to substantial risk for class members, many of whose
16 individual claims do not have substantial value from the onset. *Id.*

17 f. **The Experience and Views of Counsel Favor Final Approval**

18 Class Counsel support the Settlement as fair, adequate, reasonable, and in the best interests
19 of the Class as a whole. The endorsement of qualified and well-informed counsel of the settlement
20 as fair is entitled to significant weight. *See Dunk, supra*, 48 Cal.App.4th at 1802; *Ellis v. Naval*
21 *Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18. Class Counsel have over five decades of
22 collective litigation experience, much of which has been devoted to wage and hour cases in the
23 class action context.

24 Furthermore, Class Counsel is particularly well-suited to gauge the value of the class
25 members' claims here. Class Counsel have litigated many wage and hour class actions addressing
26 the issues presented in this lawsuit. Class Counsel's experience provides a strong basis for their
27 conclusion that the settlement terms here are fair and reasonable. Gaines Decl. at ¶¶ 6-7.
28

1 g. **Class Members' Positive Reaction to the Settlement Favors**
2 **Final Approval**

3 Finally, courts look at the reaction of class members to determine if a settlement that
4 directly affects their interests should be approved as fair, adequate, and reasonable. Of great
5 importance is the fact that no Class Member has objected to, and no Class Members have opted-
6 out from, the Settlement. Salinas Decl. at ¶¶ 8, 9. Such a positive reaction of the Class Members
7 affected by the Settlement supports its approval. A court may properly infer that a class action
8 settlement is fair, adequate, and reasonable even when class members object to it. Indeed, a court
9 may approve a class action settlement as fair, adequate, and reasonable even over the objections of
10 a significant percentage of class members. *See Reed v. General Motors* (5th Cir. 1983) 703 F.2d
11 170, 174; *In re Wash. Pub. Power Supply System Sec. Litig.* (D. Ariz. 1989) 720 F. Supp. 1379,
12 1394 ("settlement is not to be deemed unfair or unreasonable simply because a large number of
13 class members oppose it"). In this action, the Court should construe the overwhelming non-
14 opposition to the Settlement as a strong indication of Class Members' support for the Settlement
15 as fair, adequate, and reasonable.

16 C. **Court Approval of the PAGA Penalty Portion of the Settlement**

17 Pursuant to Labor Code Section 2699(l), the Superior Court shall review and approve the
18 settlement of penalties sought under that Labor Code Section. Cal. Lab. Code § 2699(l). For all
19 of the reasons stated above, the Settlement is fair, reasonable and adequate, and should be approved.
20 As part of the Settlement, Defendant has agreed to pay \$2,000 to settle the claims of the Settlement
21 Class brought pursuant to PAGA, of which the payment of \$1,500 will be paid to the LWDA for
22 education and enforcement purposes. Plaintiff's counsel provided copies of the Settlement
23 Agreement, the preliminary approval motion papers, and these final approval papers to the LWDA
24 at the time they were submitted to the Court (*see Labor Code* § 2699(l)(2)) and they have received
25 no objection (or other response) from the LWDA. Gaines Decl. at ¶ __. As a result, this portion
26 of the Settlement should be approved.

27 **IV. CONCLUSION**

28 For all of the foregoing reasons, Plaintiff requests that the Court grant final approval of this

1 Settlement and approve distribution of the settlement funds to the State of California and the
2 Settlement Class members as set forth in the Stipulation.

3 Dated: December 22, 2022

GAINES & GAINES, APLC

4
5 By: 

DANIEL F. GAINES

ALEX P. KATOFISKY

Attorneys for Plaintiff Kevin Pugh and Proposed
Class Counsel