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Attorneys for Plaintiff Bradley Granados
and Proposed Class Counsel

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

BRADLEY GRANADOS, on behalf of
himself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

BAKERSFIELD COUNTRY CLUB, a
California corporation, and DOES 1
through 10, inclusive,

Defendants.

CASE NO: BCV-21-102124

Assigned to the Hon. Thomas S. Clark, Dept. 17

CLASS ACTION

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

DATE: March 3, 2023

TIME: 8:30 a.m.

DEPT.: 17

Complaint Filed: September 10, 2021

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1 **PLEASE TAKE NOTICE THAT** on March 3, 2023 at 8:30 a.m., or as soon thereafter as
2 the matter may be heard, in Department 17 of the above-entitled Court, located at 1415 Truxtun
3 Avenue, Bakersfield, California 93301, Plaintiff Bradley Granados will and hereby does move
4 unopposed for an Order (1) preliminarily finding that the settlement between the parties falls within
5 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 Bradley Granados as the Class Representative, (4) approving
8 the appointment of Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC as Class
9 Counsel, (5) approving the appointment of CPT Group, Inc. as settlement administrator,
10 (6) preliminarily approving the allocation of \$7,500 from the Gross Settlement Amount to settle
11 Plaintiff's representative claims under the Private Attorneys General Act (Lab. Code §§ 2698 et
12 seq., "PAGA"), of which seventy-five percent (75%) will be paid to the Labor and Workforce
13 Development Agency and twenty-five percent (25%) shall be included in the Net Settlement
14 Amount for payment to Class Members; (7) approving as to content and form the notice to the
15 settlement class, and directing it be disseminated by the Settlement Administrator; (8) permitting
16 Plaintiff to file a First Amended Class and Representative Action Complaint; and (9) setting a final
17 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 This Motion will be based on the Memorandum of Points and Authorities set forth herein,
26 the Settlement Agreement and Release of Claims, the Declaration of Daniel F. Gaines, such
27 evidence or oral argument as may be presented at the hearing, and on the complete record and file
28 herein.

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1 DATED: February 3, 2023

Respectfully submitted,

2 GAINES & GAINES,
3 A Professional Law Corporation

4
5 By: 

6 DANIEL F. GAINES

ALEX P. KATOFISKY

7 Attorneys for Plaintiff Bradley Granados and Proposed
8 Class Counsel

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Parties have reached a resolution of this class action and hereby submit their Settlement
4 Agreement and Release of Claims (“Settlement”, “Stipulation” or “Stip.”) for the Court’s approval.
5 The Settlement is made and entered into by and between Plaintiff Bradley Granados (“Plaintiff” or
6 “Granados”), individually and on behalf of all others similarly situated, and Defendant Bakersfield
7 Country Club (“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 \$200,000 to a settlement class of
14 approximately 175 employees who worked approximately 16,500 workweeks during the Class
15 Period,. As detailed below, the settlement is in the best interests of the class in light of all of the
16 facts and circumstances and the risks and delays of further litigation.

17 For the foregoing reasons, the Parties respectfully request that the Court: (a) grant
18 preliminary approval of the settlement agreement and preliminarily find that the settlement falls
19 within the range of reasonableness; (b) conditionally grant certification of the proposed Settlement
20 Class, for settlement purposes only; (c) approve the appointment of Plaintiff Bradley Granados as
21 the Class Representative; (d) approve the appointment of Daniel F. Gaines and Alex P. Katofsky
22 of Gaines & Gaines, APLC as Class Counsel; (e) approve appointment of the Settlement
23 Administrator; (f) approve the allocation of \$10,000 from the Gross Settlement Amount to settle
24 Plaintiff’s representative claims under the Private Attorneys General Act (Lab. Code §§ 2698 et
25 seq., “PAGA”) (g) permit the filing of a First Amended Complaint; (h) authorize the mailing of the
26 proposed class action notice packet; and (i) schedule a final fairness and approval hearing.

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28

1 **II. BACKGROUND AND PROCEDURAL HISTORY**

2 On July 7, 2021, Plaintiff exhausted the pre-filing requirements of the Labor Code Private
3 Attorneys General Act of 2004 (“PAGA”). On or about November 18, 2021, Plaintiff sent a
4 supplemental letter pursuant to PAGA. Thereafter, on or about October 10, 2022, Plaintiff sent a
5 second supplemental letter pursuant to PAGA. Declaration of Daniel F. Gaines (“Gaines Decl.”)
6 at ¶ 6.

7 On or about September 10, 2021, Plaintiff initiated the Action by filing a Representative
8 Action Complaint for Penalties, pursuant to PAGA, on behalf of himself and all other aggrieved
9 employees. The First Amended Complaint, attached to the Settlement as Exhibit 3 and which will
10 be filed as part of the settlement approval process, asserts class and PAGA representative action
11 claims against Defendant for (1) failure to pay all wages earned (Labor Code §§ 204.3, 226.2, 246,
12 246.5, 247, 247.5, 248, 248.1, 248.2, 510, 550-553, 558.1, 1102.5, 1194, and 1194.2); (2) failure
13 to provide compliant rest periods or compensation in lieu thereof (Labor Code §§ 226.7 and 558;
14 IWC Wage Order 5-2001); (3) failure to provide compliant meal periods or compensation in lieu
15 thereof (Labor Code §§ 226.7, 512, 558, 1197, and 1198; IWC Wage Order 5-2001); (4) failure to
16 comply with itemized employee wage statement provisions (Labor Code §§ 226 and 226.3); (5)
17 failure to timely pay wages due during employment and at separation of employment (Labor Code
18 §§ 201-204 and 210); (6) violation of Business and Professions Code §§ 17200, et seq.; and (7)
19 civil penalties pursuant to Labor Code §§ 2698, et seq. for violations of Labor Code §§ 201
20 through 204.3, 210, 226, 226.2, 226.3, 226.7, 246, 246.5, 247, 247.5, 248, 248.1, 248.2, 510, 512,
21 550-553, 558, 558.1, 1102.5, 1194, 1194.2, 1197, and 1198 (the “First Amended Complaint”).
22 Gaines Decl. at ¶ 7.

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

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1 Plaintiff's claims are not typical of putative class members, and individual issues predominate over
2 class issues. The Action, the negotiation and execution of this Settlement Agreement, and all acts
3 performed or documents executed pursuant to or in furtherance of the Settlement Agreement (i)
4 shall not be used as an admission or evidence of wrongdoing on behalf of Defendant; (ii) shall not
5 be an admission or evidence of fault on behalf of Defendant in any action before a civil, criminal,
6 or administrative agency; and (iii) shall not be deemed to be, and may not be used as, an admission
7 or evidence of the appropriateness of these or similar claims for class certification in the Action or
8 with respect to any other proceeding. The Parties also agree that in the event the Court does not
9 grant final approval of the Settlement, the First Amended Complaint shall be deemed withdrawn.
10 The parties further agree that Defendant does not waive any defense to the First Amended
11 Complaint and the PAGA claim contained therein. The parties further acknowledge that the filing
12 of the First Amended Complaint is for settlement purposes only. Gaines Decl. at ¶ 8.

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

16 **III. INVESTIGATION AND SETTLEMENT DISCUSSIONS**

17 Class Counsel represent that they have conducted a thorough investigation into the facts
18 and law during the prosecution of this class action case, including the exchange of extensive
19 informal discovery and the review and verification of statistical data and other facts and information
20 provided by Defendant. Counsel for the Parties also represent that they have investigated the
21 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and
22 potential defenses thereto, and the damages and other losses claimed by Plaintiff. Gaines Decl. at
23 ¶ 10.

24 On August 18, 2022, following their exchange of information and documents regarding the
25 Settlement Class and the claims and defenses asserted by the Parties, the Parties engaged in arm's-
26 length negotiations with the assistance of mediator Judge Howard R. Broadman (Ret.), through
27 which they were able to reach the resolution of the Action set forth herein. Gaines Decl. at ¶ 11.

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1 Based on their own independent investigation and evaluation, Class Counsel are of the
2 opinion that settlement for the consideration and on the terms set forth in this Settlement
3 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in
4 light of all known facts and circumstances, including the risk of significant delay, the risk the
5 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant. Gaines
6 Decl. at ¶ 12.

7 The Parties agree that the Settlement Class described herein may be certified for settlement
8 purposes only and that this motion for approval seeking, inter alia, certification of the Settlement
9 Class is for purposes of the settlement only. If for any reason the settlement is not approved, the
10 certification will have no force or effect and will immediately be revoked. The Parties further agree
11 that certification for purposes of the settlement is in no way an admission that class certification is
12 proper under the more stringent standard applied for litigation and that evidence of this limited
13 Stipulation for settlement purposes only will not be admissible for any purpose in this or any other
14 proceeding. Gaines Decl. at ¶ 13.

15 **IV. LEGAL ANALYSIS**

16 **A. The Proposed Settlement Terms**

17 **1. The Settlement Class**

18 The Parties have agreed to a settlement class composed of all non-exempt California
19 employees of Defendant Bakersfield Country Club between September 10, 2017 and November
20 30, 2022. Defendant represents that this Class contains approximately 175 members who worked
21 no more than 16,50 workweeks during the Class Period. Stip. at ¶ A(4).

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

23 The Parties agree to settle this Action for a Gross Settlement Amount of Two Hundred
24 Thousand Dollars (\$200,000) (the "Gross Settlement Amount"), subject to any increase based on
25 the escalator provision in paragraph H(18) of the Settlement. The Gross Settlement Amount
26 includes the attorneys' fees of Class Counsel; litigation costs and expenses (which includes, without
27 limitation, all such fees and costs incurred to date, as well as such fees and costs to be incurred in
28 documenting the settlement, providing any notices required as part of the settlement, securing Court

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1 approval of the settlement, and obtaining judgment in the Action); the Enhancement Payment to
2 the Class Representative, as approved by the Court; the payment to the California Labor and
3 Workforce Development Agency ("LWDA"); and all costs of administration, including, without
4 limitation, settlement administration fees and expenses. All employer payroll tax obligations due
5 on wage payments made from the Net Settlement Amount shall be paid by Defendant separate and
6 apart from the Gross Settlement Amount. Stip. at ¶ C(1)(a).

7 From the Gross Settlement Amount, Defendant will not oppose Plaintiff's counsel's
8 application to the Court for up to 35% of the Gross Settlement Amount for attorneys' fees (or
9 \$70,000). Stip. at ¶ C(1)(f).

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

13 From the Gross Settlement Amount, Defendant will not oppose Plaintiff's counsel's
14 application to the Court for an Enhancement Payment to the Class Representative Bradley
15 Granados in the gross amount of \$8,000, in consideration for his efforts in instituting and
16 participating in the Action and in exchange for his general release of all claims. Stip. at ¶ C(1)(e).

17 From the Gross Settlement Amount, settlement administration fees paid to CPT Group, Inc.
18 will be no more than \$7,500. Stip. at ¶ C(1)(h).

19 From the Gross Settlement Amount, the portion to be allocated for settlement of any and all
20 claims for penalties under the PAGA is \$10,000 ("PAGA Payment"), 75% of which shall be paid
21 to the LWDA and 25% shall be included in the Net Settlement Amount for payment to Class
22 Members. Stip. at ¶ C(1)(d).

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

27 The Individual Settlement Payments are the portion of the Net Settlement Amount
28 distributable to each Class Member who participates in the Settlement (i.e., who does not submit a

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1 valid request for exclusion form). The Individual Payment Amounts will be calculated by dividing
2 the Net Settlement Amount by the total workweeks worked by all participating Class Members in
3 California in a non-exempt position during the Class Period, which will yield the applicable
4 workweek rate. The workweek rate shall be multiplied by the number of workweeks each
5 individual participating Class Member worked for Defendant in California in a non-exempt position
6 during the Class Period to yield their Individual Payment Amount. Each Participating Settlement
7 Class Member who does not opt out will receive an Individual Payment Amount equal to their
8 individual workweeks worked in California in a non-exempt position during the Class Period
9 multiplied by the workweek rate. Stip. at ¶ C(1)(c).

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

11 Pursuant to PAGA, the Parties have agreed that \$10,000 of the Gross Settlement Amount
12 will be allocated to settle the claims brought under Labor Code § 2699 *et seq.* Pursuant to Labor
13 Code § 2699(i), “civil penalties recovered by aggrieved employees shall be distributed as follows:
14 75 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved
15 employees.” As such, 75 percent of the apportioned PAGA settlement amount – or \$7,500 – shall
16 be payable to the LWDA. The remaining 25 percent, or \$2,500, shall be included in the Net
17 Settlement Amount for payment to Class Members. Stip. at ¶ C(1)(d).

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

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

24 Approval of class action settlements involves a two-step process.
25 First, counsel submit the proposed terms of settlement and the court
26 makes a preliminary fairness evaluation. If the preliminary
evaluation of the proposed settlement does not disclose grounds to

27 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)
28 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 doubt its fairness or other obvious deficiencies, such as unduly
2 preferential treatment of class representatives or of segments of the
3 class, or excessive compensation for attorneys, and appears to fall
4 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.

5 Thus, the preliminary approval by the trial court is simply a conditional finding that the
6 settlement appears to be within the range of acceptable settlements. *See Wershba v. Apple*
7 *Computer* (2001) 91 Cal.App.4th 224, 234-35. "The strength of the findings made by a judge at a
8 preliminary hearing or conference concerning a tentative settlement proposal may vary. The court
9 may find that the settlement proposal contains some merit, is within the range of reasonableness
10 required for a settlement offer, or is presumptively valid subject only to any objections that may be
11 raised at a final hearing." 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26
12 (4th ed. 2002).

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

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

18 *Id.* at § 11.24.

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

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

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

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

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

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

11 As required by Labor Code § 2699(1)(2), concurrent with Plaintiff’s submission of the
12 Stipulation to the Court, his counsel is transmitting it, together with this Motion, to the LWDA.
13 Gaines Decl. at ¶ 32.

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

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

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

22 The proposed Settlement Class is ascertainable. The class definition, the size of the Class,
23 and the means for identifying the members of the class determine whether the class is ascertainable.
24 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
25 are identifiable from Defendant’s employment and payroll records. Further, the Settlement Class
26 is sufficiently numerous to warrant certification. According to Defendant’s records, the Class
27 comprises approximately 175 employees. Gaines Decl. ¶ 28.

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² In determining the fairness and reasonableness of a proposed settlement, California courts may
look to federal cases for guidance. *See Wershba*, 91 Cal. App. 4th at 239-40.

1 b. **Questions of Law or Fact Common to Members of the Settlement**

2 **Class Predominate**

3 The Class Members' claims all stem from a common source: members of the Settlement
4 Class allege that Defendant violated the same Labor Code provisions in connection with their
5 employment. All members of the Class seek the same relief under the same California laws (related
6 to unpaid wages due, unpaid meal and rest period premiums, inaccurate or incomplete wage
7 statements, failure to timely pay wages due during employment and upon separation, and derivative
8 claims). Under these circumstances, the commonality requirement is satisfied for purposes of
9 certifying the Settlement Class for settlement purposes. Gaines Decl. ¶ 29.

10 c. **The Proposed Class Representative's Claims Are Typical of the**

11 **Class Members' Claims**

12 A class representative's claims are typical when they arise from the same event or course
13 of conduct that gives rise to the claims of the class, and are based on the same legal theory.
14 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, named Plaintiff and proposed
15 Class Representative Bradley Granados is a former non-exempt employee who worked for
16 Defendant in the State of California during the Class Period. He contends that Defendant failed to
17 pay all wages due, failed to provide meal and rest periods, failed to comply with itemized employee
18 wage statement provisions, and failed to timely pay wages due at the separation of employment, in
19 violation of Labor Code §§ 201-204.3, 210, 226, 226.2, 226.3, 226.7, 246, 246.5, 247, 247.5, 248,
20 248.1, 248.2, 510, 512, 550-553, 558, 558.1, 1102.5, 1194, 1197, 1198, 2698, and 2699, among
21 other Labor Code provisions. He has the same claims as those that the members of the Settlement
22 Class would reasonably be expected to bring based on the course of conduct alleged herein. Gaines
23 Decl. ¶ 30.

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. Gaines Decl. ¶ 31. Furthermore, Plaintiff has retained
27 competent counsel, experienced in litigating class action claims in the employment context. *See*
28 Gaines Decl. ¶¶ 2-5.

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

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

13 While the recommendations of counsel proposing the settlement are not conclusive, the
14 Court can properly take them into account, particularly where, as here, such counsel have been
15 involved in informal discovery and negotiations for some period of time, appear to be competent,
16 have experience with this type of litigation, and have exchanged substantial evidence with the
17 opposing party. *See Newberg on Class Actions, supra*, § 11.47; *In re Paine Webber Ltd. P'ships*
18 *Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 (“[s]o long as the integrity of the arm’s-length
19 negotiation process is preserved, however, a strong initial presumption of fairness attaches to the
20 proposed settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of
21 counsel, who are most closely acquainted with the facts of the underlying litigation”); *see Gaines*
22 *Decl.* ¶¶ 2-5, 10-26.

23 Here, the Parties’ counsel have a great deal of experience in class action litigation and
24 specialize in employment wage and hour matters. Moreover, counsel for both Parties conducted
25 an extensive investigation of the factual allegations involved in this case. The Parties have engaged
26 in a broad exchange of documents, data, records and other information. Each side has apprised the
27 other, informally and at a formal mediation, of their respective factual contentions, legal theories
28 and defenses, resulting in extensive arm’s-length negotiations taking place among the Parties. *See*

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1 Gaines Decl. ¶¶ 2-5, 10-26.

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

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

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

15 Plaintiff claims that Defendant paid Plaintiff and Class Members bonuses and other forms
16 of non-base hourly wages, including, but not limited to, bonuses and split-shift premiums, that were
17 not included in their regular rate of pay for purposes of computing the proper overtime rate and
18 sick pay, in violation of Labor Code §§ 510 and 1194. As a result, they were allegedly not properly
19 compensated for work performed in excess of 8 hours in a workday and worked performed in excess
20 of 40 hours in a workweek at a rate no less than one and one-half times the regular rate of pay, in
21 violation of Labor Code §§ 510 and 1194. Plaintiff calculates the damage liability for this claim at
22 up to approximately \$30,000 and PAGA civil penalty liability for this claim at \$162,200. Gaines
23 Decl. ¶ 16.

24 Plaintiff also asserts that Defendant failed to pay Plaintiff and Class Members premium
25 wages for missed, denied and unauthorized rest periods in violation of Labor Code § 226.7 and
26 IWC Wage Order 5-2001. Plaintiff and other Class Members contend that they were denied, and
27 therefore unable to take, 10-minute on-the-clock rest periods for every four hours of work or major
28 fraction thereof, but were not paid premium wages of one hour’s pay for each missed, denied and

1 unauthorized rest period. When they were able to take a rest period, they allege that they were
2 oftentimes on-duty, late or cut short. Based on a 25% violation rate, estimated based on Plaintiff's
3 experience, he calculates the damage liability for this claim at up to \$250,000 and PAGA civil
4 penalty liability totaling up to \$295,500. Gaines Decl. ¶ 17.

5 Plaintiff further alleges that Defendant failed to permit or authorize Plaintiff and Class
6 Members to take timely 30-minute meal periods for shifts greater than 5 hours in length, in violation
7 of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 5-2001. Based on an analysis of a
8 wage and time data provided by Defendant through informal discovery, Plaintiff has ascertained a
9 meal period violation rate of 59.4%. Plaintiff calculates premium wages on this claim at up to
10 \$250,000 and PAGA civil penalty liability for this claim at \$175,500. Gaines Decl. ¶ 18.

11 Plaintiff also argues that Defendant failed to issue Plaintiff and Class Members accurately
12 itemized wage statements. As detailed above, Plaintiff and Class Members contend that they were
13 not paid all wages due. As a result, the wage statements issued by Defendant to Plaintiff and Class
14 Members would fail to accurately state all gross wages earned, in violation of Labor Code §
15 226(a)(1), and net wages earned, in violation of Labor Code § 226(a)(5). Separately, the wage
16 statements issued to Plaintiff and other Class Members allegedly failed to list the total hours
17 worked, in violation of Labor Code §§ 226(a)(2) and 226.3, and all applicable hourly rates in effect
18 during the pay period and the corresponding number of hours worked, in violation of Labor Code
19 §§ 226(a)(9) and 226.3. Plaintiff calculates the statutory penalty liability for this claim at up to
20 \$289,850 and PAGA civil penalty liability for this claim at \$295,500. Gaines Decl. ¶ 19.

21 Defendant also allegedly failed to pay Plaintiff and certain Class Members all wages due
22 timely upon separation of employment, in violation of Labor Code §§ 201-203. This is a derivative
23 claim for which Plaintiff calculates the statutory penalty liability at \$175,468 and PAGA civil
24 penalty liability at \$5,600. Gaines Decl. ¶ 20.

25 The discount negotiated for settlement here is a reasonable compromise, particularly
26 considering that the risk of obtaining class certification on all or any of Plaintiff's claims involves
27 a 50% or higher hurdle, especially with respect to the meal and rest period claims, to which
28 Defendant maintains strong arguments to defeat class certification (in addition to multiple defenses

1 on the merits of the claims). Class certification is a substantial risk in any class action case. Here,
2 while Plaintiff maintains that the requirements of class certification are met, Defendant proffers
3 various arguments why class treatment is not appropriate, including but not limited to that
4 individualized inquires among class members predominate over common ones. If Defendant was
5 to defeat Plaintiff's class certification motion, there would be no class wide relief whatsoever, and
6 most class members would likely not file individual claims. Gaines Decl. ¶ 21.

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

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

15 Defendant strongly contends that its policies and practices do not violate any laws. It
16 contends that it properly provided for all meal and rest periods and fully compensated its employees
17 for all time worked. It further contends that the wage statements it provides to its employees are
18 fully compliant with California law. Gaines Decl. ¶ 24.

19 When the costs and risks of non-certification and loss on the merits are considered,
20 Plaintiff's counsel is of the opinion that the settlement reached is clearly a favorable one. Gaines
21 Decl. ¶¶ 15-25.

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

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

28 Despite the asserted fairness of the settlement terms, any potential Class Member who

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

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

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

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

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

17 **V. CONCLUSION**

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

- 20 1. Preliminarily finding that the settlement falls within the range of reasonableness and
21 approving the proposed settlement;
- 22 2. Conditionally certifying, for settlement purposes only, the Settlement Class;
- 23 3. Appointing Plaintiff Bradley Granados as the Class Representative;
- 24 4. Appointing Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC as
25 Class Counsel;
- 26 5. Approving CPT Group, Inc. as Settlement Administrator;
- 27 6. Preliminarily approving the allocation of \$10,000 from the Gross Settlement
28 Amount to settle Plaintiff's representative claims under the PAGA, of which seventy-five percent

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(75%) shall be paid to the Labor and Workforce Development Agency and twenty-five percent (25%) shall be included in the Net Settlement Amount for payment to Class Members;

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

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

9. Setting the following schedule of settlement proceedings:

<u>EVENT</u>	<u>TIMING</u>
Last day for Defendant shall provide to the Settlement Administrator a list of all Class Members, including their last known addresses, telephone numbers, social security numbers, and their dates of employment in a non-exempt position in California during the Class Period ("Settlement Class Information")	10 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail Notice and 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 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 a written 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	_____, 2023, at _____.m. (approximately 85 days after entry of this Order)

1 DATED: February 3, 2023

Respectfully submitted,

2 GAINES & GAINES,
3 A Professional Law Corporation

4
5 By: 

6 DANIEL F. GAINES

ALEX P. KATOFISKY

7 Attorneys for Plaintiff Bradley Granados and Proposed
8 Class Counsel