

1 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
2 ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
3 EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
4 **GAINES & GAINES, APLC**
4550 East Thousand Oaks Boulevard, Suite 100
5 Westlake Village, CA 91362
Telephone: (818) 703-8985
6 Facsimile: (818) 703-8984

7 Attorneys for Plaintiff Bernadette Uvalles
and Proposed Class Counsel
8

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

10 **FOR THE COUNTY OF STANISLAUS**

11
12 BERNADETTE UVALLES, on behalf of
herself and all "aggrieved employees"
13 pursuant to Labor Code § 2698 *et seq.*,

14 Plaintiff,

15 v.

16 JAMNADAS, INC., a California
corporation, and DOES 1 through 10,
17 inclusive,

18 Defendants.
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CASE NO: CV-21-005438

Assigned to the Hon. John D. Freeland, Dept. 23

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

DATE: June 23, 2022

TIME: 8:30 a.m.

DEPT.: 23

Action Filed: October 4, 2021

1 **PLEASE TAKE NOTICE THAT** on June 23, 2022 at 8:30 a.m., or as soon thereafter as
2 the matter may be heard, in Department O of the above-entitled Court, located at 801 10th Street,
3 Modesto, CA 95354, Plaintiff Bernadette Uvalles (“Plaintiff” or “Uvalles”) will and hereby does
4 move unopposed for an Order (1) preliminarily finding that the settlement between the parties falls
5 within the range of reasonableness and approving the proposed class action settlement in the above-
6 captioned case, (2) conditionally certifying, for settlement purposes only, a settlement class, (3)
7 approving the appointment of Plaintiff as Class Representative, (4) approving the appointment of
8 Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC as Class Counsel, (5) approving
9 the appointment of Simpluris, Inc. as settlement administrator, (6) preliminarily approving the
10 allocation of \$10,000 from the Gross Settlement Amount to settle Plaintiff’s representative claims
11 under the Private Attorneys General Act (Lab. Code §§ 2698 et seq.), of which seventy-five percent
12 (75%) will be paid to the Labor and Workforce Development Agency and twenty-five percent
13 (25%) shall be included in the Net Settlement Amount for payment to Class Members, (7)
14 approving as to content and form the notice to the settlement class, and directing it be disseminated
15 by the Settlement Administrator; (8) permitting Plaintiff to file a First Amended Complaint, and
16 (9) setting a final fairness and approval hearing.

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

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

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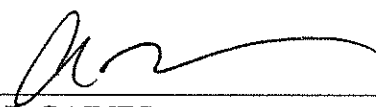
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1 This Motion will be based on the Memorandum of Points and Authorities set forth herein,
2 the Settlement Agreement and Release of Claims, the Declaration of Daniel F. Gaines, such
3 evidence or oral argument as may be presented at the hearing, and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

5
6 DATED: June 1, 2022

Respectfully submitted,

7 GAINES & GAINES,
8 A Professional Law Corporation

9
10 By: 

DANIEL F. GAINES

ALEX P. KATOFISKY

11 Attorneys for Plaintiff Bernadette Uvalles and Proposed
12 Class Counsel

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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

8 The settlement occurred as a result of extensive arm’s-length negotiations by experienced
9 counsel with the assistance of a respected mediator with experience in the area of employment class
10 actions. Most importantly, the settlement will result in significant financial benefit to the
11 participating claimants, on terms that are by any measure fair, reasonable and adequate. *See*
12 *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801-02. The proposed settlement provides
13 for a non-revisionary class settlement in the gross amount of \$286,000, paid to a proposed
14 settlement class encompassing approximately 200 members who worked approximately 12,000
15 workweeks during the Class Period. As detailed below, the settlement is in the best interests of the
16 class in light of all of the facts and circumstances and the risks and delays of further litigation.

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

26 **II. BACKGROUND AND PROCEDURAL HISTORY**

27 On July 27, 2021, Plaintiff sent a letter to the California Labor and Workforce Development
28 Agency (“LWDA”), alleging Defendant violated the California Labor Code and seeking penalties

1 under PAGA. Specifically, Plaintiff alleged Defendant failed to pay wages and premium wages to
2 Defendant's non-exempt California employees, denied employees meal periods and rest periods,
3 failed to provide suitable seats to its California employees, failed to reimburse business expenses,
4 failed to provide accurate itemized wage statements, and failed to timely pay wages at the
5 separation of employment. Declaration of Daniel F. Gaines ("Gaines Decl.") at ¶ 6.

6 On or about October 4, 2021, Plaintiff initiated the Action by filing a Representative Action
7 Complaint for Penalties, pursuant to PAGA, on behalf of herself and all other aggrieved employees
8 (the "Complaint"). Gaines Decl. at ¶ 7.

9 The First Amended Complaint, which will be filed as part of the settlement approval
10 process, asserts both class action claims (pursuant to *C.C.P.* § 382 *et seq.*) and PAGA representative
11 claims (pursuant to *Cal. Lab. Code* § 2698 *et seq.*) against Defendant for (1) failure to pay for all
12 hours worked (Labor Code §§ 510 and 1194); (2) failure to pay correct overtime rates of pay (Labor
13 Code §§ 510 and 1194); (3) failure to provide compliant rest periods or compensation in lieu
14 thereof (Labor Code §§ 226.7 and 558; IWC Wage Order 5-2001); (4) failure to provide compliant
15 meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 512, and 558; IWC Wage
16 Order 5-2001); (5) failure to reimburse all business-related expenses (Labor Code § 2802); (6)
17 failure to comply with itemized employee wage statement provisions (Labor Code § 226(a), (e),
18 (h))); (7) failure to timely pay wages due at separation of employment (Labor Code §§ 201-203);
19 (8) violation of Business and Professions Code §§ 17200, *et seq.*; (9) civil penalties pursuant to
20 Labor Code § 2698, *et seq.*, for violations of Labor Code § 1198 for failure to provide suitable
21 seating and (10) civil penalties pursuant to Labor Code § 2698, *et seq.* for violations of Labor Code
22 §§ 201, 202, 226(a), 226.3, 226.7, 510, 512, 558, 1194, 1198 and 2802 (the "First Amended
23 Complaint"). Gaines Decl. at ¶ 8.

24 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged
25 in the Action, and further denies that the Action is appropriate for class treatment for any purpose
26 other than this settlement. Defendant contends that it has complied at all times with the California
27 Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable federal, state,
28 and local laws and regulations. It is Defendant's position that, if this case were to be litigated, class

1 certification would be inappropriate because Plaintiff is not an adequate class representative,
2 Plaintiff's claims are not typical of putative class members, and individual issues predominate over
3 class issues. The Action, the negotiation and execution of this Settlement Agreement, and all acts
4 performed or documents executed pursuant to or in furtherance of the Settlement Agreement (i)
5 shall not be used as an admission or evidence of wrongdoing on behalf of Defendant; (ii) shall not
6 be an admission or evidence of fault on behalf of Defendant in any action before a civil, criminal,
7 or administrative agency; and (iii) shall not be deemed to be, and may not be used as, an admission
8 or evidence of the appropriateness of these or similar claims for class certification in the Action or
9 with respect to any other proceeding. Gaines Decl. at ¶ 9.

10 The Class Representative contends that Defendant violated the California Labor Code and
11 Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
12 certification. Gaines Decl. at ¶ 10.

13 **III. INVESTIGATION AND SETTLEMENT DISCUSSIONS**

14 Class Counsel represent that they have conducted a thorough investigation into the facts
15 and law during the prosecution of this class action case, including the exchange of extensive
16 informal discovery and the review and verification of statistical data and other facts and information
17 provided by Defendant. Counsel for the Parties also represent that they have investigated the
18 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and
19 potential defenses thereto, and the damages and other losses claimed by Plaintiff. Gaines Decl. at
20 ¶ 11.

21 On April 12, 2022, following their exchange of information and documents regarding the
22 Settlement Class and the claims and defenses asserted by the Parties, the Parties engaged in arm's-
23 length negotiations with the assistance of mediator Marc Feder, Esq., through which they were able
24 to reach the resolution of the Action set forth herein. Gaines Decl. at ¶ 12.

25 Based on their own independent investigation and evaluation, Class Counsel are of the
26 opinion that settlement for the consideration and on the terms set forth in this Settlement Agreement
27 is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all
28 known facts and circumstances, including the risk of significant delay, the risk the Settlement Class

1 will not be certified by the Court, and the defenses asserted by Defendant. Gaines Decl. at ¶ 14.

2 The Parties agree that the Settlement Class described herein may be certified for settlement
3 purposes only and that any motion for approval seeking, *inter alia*, certification of the Settlement
4 Class is for purposes of the settlement only. If for any reason the settlement is not approved, the
5 certification will have no force or effect and will immediately be revoked. The Parties further agree
6 that certification for purposes of the settlement is in no way an admission that class certification is
7 proper under the more stringent standard applied for litigation and that evidence of this limited
8 Stipulation for settlement purposes only will not be admissible for any purpose in this or any other
9 proceeding. Gaines Decl. at ¶ 15.

10 **IV. LEGAL ANALYSIS**

11 **A. The Proposed Settlement Terms**

12 **1. The Settlement Class**

13 The Parties have agreed to a settlement class composed of all current and former hourly-
14 paid, non-exempt employees employed by Defendant in California between October 4, 2017 and
15 June 12, 2022 (the “Class Period”). Defendant represents that this Class contains no more than
16 approximately 200 Class Members who worked no more than 12,000 workweeks during the Class
17 Period (Stip. at ¶ A(4)) and an escalator clause increases the Gross Settlement Amount if this
18 workweek representation is inaccurate (Stip. at ¶ H(16)).

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

20 The Stipulation provides that Defendant shall pay an amount not to exceed \$286,000 to
21 resolve the Action on a class-wide basis (the “Gross Settlement Settlement”). The Gross Settlement
22 Amount includes the attorneys’ fees of Class Counsel; litigation costs and expenses (which
23 includes, without limitation, all such fees and costs incurred to date, as well as such fees and costs
24 to be incurred in documenting the settlement, providing any notices required as part of the
25 settlement, securing Court approval of the settlement, and obtaining judgment in the Action); the
26 Enhancement Payment to the Class Representative, as approved by the Court; the payment to the
27 LWDA; and all costs of administration, including, without limitation, settlement administration
28 fees and expenses. All employer payroll tax obligations due on wage payments made from the Net

1 Settlement Amount shall be paid by Defendant separate and apart from, and in addition to the Gross
2 Settlement Amount. Stip. at ¶ C(1)(a).

3 From the Gross Settlement Amount, Defendant will not oppose Plaintiff's counsel's
4 application to the Court for up to 35% of the Gross Settlement Amount for attorneys' fees (or
5 \$100,100). Stip. at ¶ C(1)(f).

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

9 From the Gross 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 \$7,500, in consideration for her efforts in instituting and participating in the Action and
12 in exchange for her general release of all claims. Stip. at ¶ C(1)(e).

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

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

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

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

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

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

7 Pursuant to PAGA, the Parties have agreed that \$20,000 of the Gross Settlement Amount
8 will be allocated to settle the claims brought under Labor Code § 2699 *et seq.* Pursuant to Labor
9 Code § 2699(i), “civil penalties recovered by aggrieved employees shall be distributed as follows:
10 75 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved
11 employees.” As such, 75 percent of the apportioned PAGA settlement amount – or \$7,500 – shall
12 be payable to the LWDA. The remaining 25 percent, or \$2,500, shall be included in the Net
13 Settlement Amount for payment to Class Members. Stip. at ¶ C(1)(d).

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

15 Any settlement of class litigation must be reviewed and approved by the Court. Cal. R. Ct.
16 3.769; Fed. R. Civ. P. 23(e).¹ This is done in two steps: (1) an early (preliminary) review by the
17 trial court, and (2) a final review after notice has been distributed to the Class Members informing
18 them of the terms of the settlement and allowing them to exclude themselves from, participate in
19 and/or object to the settlement. The Manual for Complex Litigation (Third) § 30.41 states:

20 Approval of class action settlements involves a two-step process.
21 First, counsel submit the proposed terms of settlement and the court
22 makes a preliminary fairness evaluation. If the preliminary
23 evaluation of the proposed settlement does not disclose grounds to
24 doubt its fairness or other obvious deficiencies, such as unduly
25 preferential treatment of class representatives or of segments of the
26 class, or excessive compensation for attorneys, and appears to fall
27 within the range of possible approval, the court should direct that
28 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.

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

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

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

11 When the parties to an action reach a monetary settlement, they will
12 usually prepare and execute a joint stipulation of settlement, which
13 is submitted to the court for preliminary approval. The stipulation
14 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.

15 *Id.* at § 11.24.

16 Here, the Parties have reached such an agreement and have submitted the Stipulation
17 herewith. *See* Gaines Decl., **Exhibit B**; Gaines Decl. ¶ 13.

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

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

27
28 ² In determining the fairness and reasonableness of a proposed settlement, California courts may
look to federal cases for guidance. *See Wershba*, 91 Cal. App. 4th at 239-40.

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

8 4 *Newberg on Class Actions*, at § 11.26.

9 As required by Labor Code § 2699(1)(2), concurrent with Plaintiff's submission of the
10 Stipulation to the Court, her counsel is transmitting it, together with this Motion, to the LWDA.
11 Gaines Decl. at ¶ 37.

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

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

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

20 The proposed Settlement Class is ascertainable. The class definition, the size of the Class,
21 and the means for identifying the members of the class determine whether the class is ascertainable.
22 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
23 are identifiable from Defendant's employment and payroll records. Further, the Settlement Class
24 is sufficiently numerous to warrant certification. According to Defendant's records, the Class
25 comprises approximately 200 employees. Gaines Decl. ¶ 33.

26 b. **Questions of Law or Fact Common to Members of the Settlement**
27 **Class Predominate**

28 The Class Members' claims all stem from a common source: members of the Settlement
Class allege that Defendant violated the same Labor Code provisions in connection with their
employment. All members of the Class seek the same relief under the same California laws (related
to unpaid wages, unpaid meal and rest period premiums, failure to provide suitable seats,

1 unreimbursed business expenses, inaccurate or incomplete wage statements, failure to timely pay
2 wages due upon separation, and derivative claims). Under these circumstances, the commonality
3 requirement is satisfied for purposes of certifying the Settlement Class for settlement purposes.
4 Gaines Decl. ¶ 34.

5 c. **The Proposed Class Representative's Claims Are Typical of the**
6 **Class Members' Claims**

7 A class representative's claims are typical when they arise from the same event or course
8 of conduct that gives rise to the claims of the class, and are based on the same legal theory.
9 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, named Plaintiff and proposed
10 Class Representative Bernadette Uvalles is a former non-exempt employee who worked for
11 Defendant in the State of California during the Class Period. She contends that Defendant failed
12 to pay all wages, failed to provide meal and rest periods, failed to comply with itemized employee
13 wage statement provisions, failed to provide suitable seats, failed to reimburse expenses, and failed
14 to timely pay wages at the separation of employment, in violation of Labor Code §§ 201, 202,
15 226(a), 226.3, 226.7, 510, 512, 558, 1194, 1198 and 2802, among other Labor Code provisions.
16 She has the same claims as those that the members of the Settlement Class would reasonably be
17 expected to bring based on the course of conduct alleged herein. Gaines Decl. ¶ 35.

18 Plaintiff has also demonstrated that she will aggressively and competently assert the
19 interests of the proposed Settlement Class; she has taken an active role in this litigation and has no
20 apparent conflicts with other class members. Gaines Decl. ¶ 36. Furthermore, Plaintiff has retained
21 competent counsel, experienced in litigating class action claims in the employment context. *See*
22 Gaines Decl. ¶¶ 2-5.

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

25 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
26 evidence to the contrary is offered. *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars*
27 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re*
28 *Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962. Courts do not substitute their

1 judgment for that of the proponents, particularly where, as here, settlement has been reached with
2 the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
3 *Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990)
4 752 F. Supp. 1087, 1093; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored*
5 *Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357, 1368; *Sommers v. Abraham Lincoln*
6 *Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.

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

17 Here, the Parties’ counsel have a great deal of experience in class action litigation and
18 specialize in employment wage and hour matters. Moreover, counsel for both Parties conducted
19 an extensive investigation of the factual allegations involved in this case. The Parties have engaged
20 in a broad exchange of documents, data, records and other information. Each side has apprised the
21 other, informally and at a formal mediation, of their respective factual contentions, legal theories
22 and defenses, resulting in extensive arm’s-length negotiations taking place among the Parties. *See*
23 Gaines Decl. ¶¶ 2-5, 14-31.

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

25 The Court must make an “independent assessment of the reasonableness of the terms of the
26 settlement” prior to granting preliminary and final approval. *Clark v. American Residential*
27 *Services LLC* (2009) 175 Cal.App.4th 785, 799; *Kullar v. Foot Locker Retail, Inc.* (2008) 168
28 Cal.App.4th 116, 127-28, 130, 133. To do so requires the Parties to submit “basic information

1 about the nature and magnitude of the claims in question and the basis for concluding that the
2 consideration being paid for the release of those claims represents a reasonable compromise.”
3 *Clark, supra*, 175 Cal.App.4th at 800. However, the Court should *not* “attempt to decide the merits
4 of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys.”
5 *Kullar, supra*, 168 Cal.App.4th at 133.

6 Plaintiff’s counsel created a comprehensive damage analysis using sampling information
7 obtained through informal discovery. This damage analysis reveals that the negotiated settlement
8 falls within a realistic range of recovery on Class Members’ claims. Gaines Decl. ¶ 16.

9 Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members all wages due in
10 two separate ways. Plaintiff contends that Defendant failed to pay Class Members for time spent
11 working off-the-clock and without compensation, in violation of Labor Code §§ 510, 558, and
12 1194. Plaintiff was routinely required to work off-the-clock before and after clocking out for her
13 shift; she alleges that Defendant required her to make and receive phone calls for work purposes
14 before and after clocking in/out for work. Plaintiff estimates that she spent up to 30 minutes a week
15 performing work off-the-clock. Plaintiff calculates the liability of this claim on a class-wide basis
16 at \$102,947, based on 30 minutes of off-the-clock work per week. Gaines Decl. ¶ 17. Defendant
17 contends, however, that it paid all wages due, that it never required employees to work off the
18 clock, and if employees did work off the clock, it was without its knowledge. It also contended
19 that this claim would not be certified because the facts that underlie it are individualized among
20 Class Members. Based on these risks, this claim required a compromise to resolve at this juncture
21 of the litigation. Gaines Decl. ¶ 18.

22 Defendant allegedly failed to pay Class Members all premium overtime wages and sick pay
23 wages at the correct overtime rates of pay due when they worked shifts in excess of eight (8) hours
24 in a workday and/or in excess of forty (40) hours in a workweek, in violation of Labor Code §§
25 510, 558, and 1194. When Class Members worked overtime hours or earned sick pay wages and
26 earned non-base wages (including, but not limited to, bonuses) during the same pay period, they
27 contend that their overtime and sick pay rates were inaccurate because Defendant failed to blend
28 these non-base wages into the regular rate of pay for purposes of calculating the rates. Plaintiff

1 calculates underpaid overtime wages on this claim at \$10,632. Gaines Decl. ¶ 19. Defendant
2 mounted multiple defenses to this claim, the strongest of which was that the bonuses earned were
3 fully discretionary, such that they were not subject to inclusion in the regular rate. Notwithstanding
4 the defenses asserted by Defendant, this was Plaintiff's strongest claim. Gaines Decl. ¶ 20.

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, 510, 512, and 558 and IWC Wage Order 5-2001. Labor Code § 512
8 provides that employers (like Defendant) may not employ an employee for a work period of more
9 than 5 hours without providing a 30-minute meal period starting no later than the end of the 5th
10 hour. Plaintiff and Class Members allege that they were routinely unable to take a proper meal
11 break when they worked shifts in excess of 5 hours in duration and a second meal break when they
12 worked shifts in excess of 10 hours in duration. When they were able to take a meal period, they
13 were oftentimes late, cut short or they would be required to work through them. Based on an
14 analysis of a wage and time data provided by Defendant through informal discovery, Plaintiff has
15 ascertained a meal period violation rate of 51.1%. Plaintiff calculates Defendant's class-wide meal
16 period liability to approximately \$409,776. Gaines Decl. ¶ 21. Defendant also asserts numerous
17 defenses to this claim. It believes it provided all meal periods due to employees, that it paid
18 premium wages whenever a meal period was not provided, and that any meal period not reflected
19 on a time card was waived by employees. It also contends that this claim is highly individualized
20 among its workforce such that it would not be certified. These defenses required that Plaintiff
21 discount this claim for settlement purposes at this juncture of the litigation. Gaines Decl. ¶ 22.

22 Plaintiff further alleges that Defendant failed to provide Plaintiff and Class Members with
23 legally compliant rest periods, or premium wages of one hour's pay in lieu thereof, as required by
24 Labor Code §§ 226.7 and 558 and Wage Order 5-2001. Class Members contend that they were
25 simply too busy to take their rest periods or would be required to work through them. Defendant
26 alleged failed to implement a written rest period policy. Defendant's maximum class-wide rest
27 period liability exceeds \$742,249 but required a substantial discount for settlement purposes.
28 Because rest periods are not recorded in time records (and California law does not require that they

1 be recorded), this claim was difficult to prove and would be challenging to certify. Defendant
2 argued that it implemented California compliant rest period policies which it enforced across its
3 workforce, such that Plaintiff would not be able to demonstrate any rest period violations at all, nor
4 would she obtain class certification on this claim. The risks of further litigation on this claim
5 warrant the compromised settlement amount. Gaines Decl. ¶ 23.

6 Plaintiff and Class Members further contend that they were required to incur expenses in
7 the performance of their job duties for which they are not fully reimbursed, in violation of Labor
8 Code § 2802. Plaintiff and Class Members were required to use their personal cell phones but were
9 not fully reimbursed by Defendant for these expenses. This practice allegedly violates Labor Code
10 § 2802. Defendant has shown no evidence of reimbursement of these expenses and the wage
11 statements provided in advance of this mediation confirm the failure to reimburse for any expenses
12 whatsoever. This violates Labor Code § 2802. Plaintiff calculates \$92,310 in unreimbursed
13 expenses (based on damages of \$30 per month), but Defendant maintained a slew of defenses to
14 this claim, including that it never required employees to use their cell phones for work purposes,
15 any use of employee cell phones was not necessary (an essential elements of an expense
16 reimbursement claim), and that no employees sought reimbursement for their cell phone expenses
17 which was not honored. The risks inherent in litigating this claim were substantial and the
18 settlement amount represents a fair compromise as to the value of this claim adjusted for risk.
19 Gaines Decl. ¶ 24.

20 Class Members also sought wage statement penalties pursuant to Labor Code § 226(e),
21 waiting time penalties pursuant to Labor Code § 203 and PAGA penalties derivative of the
22 underlying violations alleged. The value of these penalties – which are derivative, discretionary,
23 and subject to defenses of their own – is approximately \$622,749. Plaintiff believed it was unlikely
24 that many of these penalties could be recovered because their value would eclipse the value of
25 alleged underpaid wages (if wages were recovered at all), because some of Plaintiff's claims are
26 novel, and because of Defendant's potential independent defenses to these penalties. Gaines Decl.
27 ¶ 25.

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1 The discount negotiated for settlement here is a reasonable compromise, particularly
2 considering that the risk of obtaining class certification on all or any of Plaintiff's claims involves
3 a 50% or higher hurdle, especially with respect to the meal and rest period claims and off-the-clock
4 claims, to which Defendant maintains strong arguments to defeat class certification (in addition to
5 multiple defenses on the merits of the claims), and the fact that Plaintiff and all Class Members
6 entered into arbitration agreements with Defendant, which may render the class action claims
7 valueless because they cannot be pursued in a group action and few, if any, employees are likely to
8 pursue their claims on an individual basis. Class certification is a substantial risk in any class action
9 case. Here, while Plaintiff maintains that the requirements of class certification are met, Defendant
10 proffers various arguments why class treatment is not appropriate, including but not limited to that
11 individualized inquires among class members predominate over common ones. If Defendant was
12 to defeat Plaintiff's class certification motion, there would be no class wide relief whatsoever, and
13 most class members would likely not file individual claims. Gaines Decl. ¶ 26.

14 Plaintiff also faced the risk of a loss on the merits on her claims. It is very possible that the
15 Court would agree with Defendant's position that its meal and rest period policies and wage
16 payment and practices complied with the requirements of California law or could not be certified.
17 In such a case, the value of the majority of Plaintiff's claims would be zero. Gaines Decl. ¶ 27.

18 Finally, Plaintiff faced the risk that she would not obtain a maximum damage/penalty award
19 on all (or any of) her claims. For example, Plaintiff seeks discretionary penalties pursuant to the
20 PAGA. Even if Plaintiff did prevail on these claims, it is possible that the Court would not impose
21 all penalties pursuant to its discretionary power to reduce them. Gaines Decl. ¶ 28.

22 Defendant strongly contends that its policies and practices do not violate any laws. It
23 contends that it properly provided for all meal and rest periods and fully compensated its employees
24 for all time worked and expenses incurred. It further contends that the wage statements it provides
25 to its employees are fully compliant with California law. Gaines Decl. ¶ 29.

26 When the costs and risks of non-certification and loss on the merits are considered,
27 Plaintiff's counsel is of the opinion that the settlement reached is clearly a favorable one. Gaines
28 Decl. ¶¶ 16-30.

1 The settlement for each Class Member is fair, reasonable and adequate, given the inherent
2 risk of litigation, the risk relative to class certification and the costs of pursuing such litigation. The
3 settlement shall finally resolve all claims of the Class Members as alleged in the Action. Gaines
4 Decl. ¶ 31.

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

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

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

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

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

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

24 **V. CONCLUSION**

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

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

2. Conditionally certifying, for settlement purposes only, the Settlement Class;
3. Appointing Plaintiff Bernadette Uvalles as Class Representative;
4. Appointing Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC as Class Counsel;
5. Approving Simpluris, Inc. as Settlement Administrator;
6. Preliminarily approving the allocation of \$10,000 from the Gross Settlement Amount to settle Plaintiff's representative claims under the PAGA, of which seventy-five percent (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 her 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 to provide to the Settlement Administrator a list of all Class Members, including their last known addresses, telephone numbers, social security numbers, and their dates of employment in an hourly-paid, non-exempt position in California during the Class Period ("Settlement Class Information")	15 business days after entry of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail Notice and Request for Exclusion Form to Class Members	10 calendar days after receipt of the Settlement Class Information
Last day for Class Members to submit a written request for exclusion to the Settlement Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members
Last day for Class Members to submit an Objection to the Settlement Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members

<u>EVENT</u>	<u>TIMING</u>
Last day for Class Counsel to file and serve moving papers in support of final settlement approval and request for attorneys' fees and costs	10 calendar days before the final settlement approval hearing date
Last day for Class Counsel to file with the Court and serve declaration by Settlement Administrator specifying the due diligence undertaken with regard to the mailing of the Notice	10 calendar days before the final settlement approval hearing date
Final settlement approval hearing	_____, 2022, at _____.m. (approximately 95 days after entry of this Order)

DATED: June 1, 2022

Respectfully submitted,

GAINES & GAINES,
A Professional Law Corporation

By: 

DANIEL F. GAINES
ALEX P. KATOFISKY
Attorneys for Plaintiff Bernadette Uvalles and Proposed
Class Counsel