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Attorneys for Plaintiff Lorenzo Calleros
and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MERCED

LORENZO CALLEROS, on behalf of
himself and all "aggrieved employees"
pursuant to Labor Code § 2698 et seq.

Plaintiff,

v.

DIAL GENERAL ENGINEERING, a
California general partnership, and DOES
1 through 10, inclusive,

Defendants.

CASE NO: 22CV-00720

*Assigned to the Honorable Brian McCabe,
Department 8*

CLASS ACTION

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

DATE: June 1, 2022

TIME: 8:15 a.m.

DEPT.: 8

Action Filed: March 1, 2022

1 **PLEASE TAKE NOTICE THAT** on June 1, 2022 at 8:15 a.m., or as soon thereafter as
2 the matter may be heard, in Department 8 of the above-entitled Court, located at 627 West 21st
3 Street, Merced, CA 95340, Plaintiff Lorenzo Calleros (“Plaintiff” or “Calleros”) will and hereby
4 does move unopposed for an Order (1) preliminarily finding that the settlement between the parties
5 falls within the range of reasonableness and approving the proposed class action settlement in the
6 above-captioned case, (2) conditionally certifying, for settlement purposes only, a settlement class,
7 (3) approving the appointment of Plaintiff as Class Representative, (4) approving the appointment
8 of Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC as Class Counsel,
9 (5) approving the appointment of Simpluris, Inc. as settlement administrator, (6) preliminarily
10 approving the allocation of \$10,000 from the Maximum Settlement Amount to settle Plaintiff’s
11 representative claims under the Private Attorneys General Act (Lab. Code §§ 2698 et seq.), of
12 which seventy-five percent (75%) will be paid to the Labor and Workforce Development Agency
13 and twenty-five percent (25%) shall be paid to Aggrieved Employees, (7) approving as to content
14 and form the notice to the settlement class, and directing it be disseminated by the Settlement
15 Administrator; and (8) setting a final fairness and approval hearing.

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

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

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

DATED: May 5, 2022

Respectfully submitted,

GAINES & GAINES,
A Professional Law Corporation

By: Daniel F. Gaines
DANIEL F. GAINES
ALEX P. KATOFISKY
Attorneys for Plaintiff Lorenzo Calleros and Proposed
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 Lorenzo Calleros (“Plaintiff” or
6 “Calleros”), individually and on behalf of all others similarly situated, and Defendant Dial General
7 Engineering (“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 \$135,000 to a settlement class of
14 approximately 37 members who worked approximately 713 biweekly pay periods 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 Lorenzo Calleros 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 the Settlement
23 Administrator; (f) authorize the mailing of the proposed class action notice packet; and (g) schedule
24 a final fairness and approval hearing.

25 **II. BACKGROUND AND PROCEDURAL HISTORY**

26 On August 23, 2021, Plaintiff exhausted the pre-filing requirements of the Labor Code
27 Private Attorneys General Act of 2004 (“PAGA”). Declaration of Daniel F. Gaines (“Gaines
28 Decl.”) at ¶ 6.

1 Settlement discussions ensued, and the parties tolled the statute of limitations from October
2 29, 2021, to the date the action was filed. Gaines Decl. at ¶ 7.

3 On March 1, 2022 Plaintiff filed a Complaint on behalf of himself and all other Class
4 Members and Aggrieved Employees that asserts class and representative PAGA action claims
5 against Defendant for (1) knowing and intentional failure to comply with itemized employee wage
6 statement provisions (Labor Code §§ 226(a), (e), and 558.1), and (2) penalties pursuant to Labor
7 Code § 2699(f) for violations of Labor Code §§ 226(a), and pursuant to Labor Code §2699(a) for
8 violations of Labor Code §§ 226.3 and 558.1 (the “Complaint”). Gaines Decl. at ¶ 8.

9 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged
10 in the Action, and further denies that the Action is appropriate for class treatment for any purpose
11 other than this settlement. Defendant contends that it has complied at all times with the California
12 Labor Code. It is Defendant’s position that, if this case were to be litigated, class certification
13 would be inappropriate because Plaintiff is not an adequate class representative, Plaintiff’s claims
14 are not typical of putative class members, and individual issues predominate over class issues. The
15 Action, the negotiation and execution of this Settlement Agreement, and all acts performed or
16 documents executed pursuant to or in furtherance of the Settlement Agreement (i) shall not be used
17 as an admission or evidence of wrongdoing on behalf of Defendant; (ii) shall not be an admission
18 or evidence of fault on behalf of Defendant in any action before a civil, criminal, or administrative
19 agency; and (iii) shall not be deemed to be, and may not be used as, an admission or evidence of
20 the appropriateness of these or similar claims for class certification in the Action or with respect to
21 any other proceeding. Gaines Decl. at ¶ 9.

22 The Class Representative contends that Defendant violated the California Labor Code and
23 that this case is appropriate for class certification. Gaines Decl. at ¶ 10.

24 **III. INVESTIGATION AND SETTLEMENT DISCUSSIONS**

25 Class Counsel represent that they have conducted a thorough investigation into the facts
26 and law during the prosecution of this class action case, including the exchange of extensive
27 informal discovery and the review and verification of statistical data and other facts and information
28 provided by Defendant. Counsel for the Parties also represent that they have investigated the

1 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and
2 potential defenses thereto, and the damages claimed by Plaintiff. Gaines Decl. at ¶ 11.

3 In January 2022, following their exchange of information regarding the Settlement Class
4 and the claims and defenses asserted by the Parties, counsel for the Parties employed the assistance
5 of mediator David Phillips, Esq. for a full-day mediation to reach the basic terms of their Settlement.
6 Gaines Decl. at ¶ 12.

7 Based on their own independent investigation and evaluation, Class Counsel are of the
8 opinion (and will so represent to the Court) that settlement for the consideration and on the terms
9 set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of
10 the Settlement Class in light of all known facts and circumstances, including the risk of significant
11 delay, the risk the Settlement Class will not be certified by the Court, and the defenses asserted by
12 Defendant. Defendant and its counsel also agree (and will so represent to the Court) that this
13 settlement is fair and in the best interest of the Settlement Class. Gaines Decl. at ¶ 13.

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

22 **IV. LEGAL ANALYSIS**

23 **A. The Proposed Settlement Terms**

24 **1. The Settlement Class**

25 The Parties have agreed to a settlement class composed of all current and former non-
26 exempt California employees of Defendant employed at any time from August 23, 2020 through
27 March 26, 2022 (the “Class Period”). As of late-November, 2021, Defendant represents that this
28

1 Class contains approximately 37 members who worked approximately 713 biweekly pay periods
2 during the Class Period. Stip. at ¶ H(7).

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

4 The Stipulation provides that Defendant shall pay an amount not to exceed \$135,000 to
5 resolve the Action on a class-wide basis (the “Maximum Settlement Amount”). The Maximum
6 Settlement Amount includes the attorneys’ fees of Class Counsel, litigation costs and expenses
7 (which includes, without limitation, all such fees and costs incurred to date, as well as such fees
8 and costs to be incurred in documenting the settlement, providing any notices required as part of
9 the settlement, securing Court approval of the settlement, and obtaining judgment in the Action),
10 the service payment to the Class Representative, as approved by the Court, the payment to the
11 LWDA and Aggrieved Employees pursuant to the PAGA claims in the Action, and all costs of
12 administration, including, without limitation, settlement administration fees and expenses. In no
13 event shall Defendant be obligated to pay or deposit with the Settlement Administrator more than
14 \$135,000.00, except for any legally required employer taxes and under the “escalator provision”
15 set forth in Section H(17) of the Settlement. Stip. at ¶ C(1)(a).

16 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff’s counsel’s
17 application to the Court for up to 35% of the Maximum Settlement Amount for attorneys’ fees (or
18 \$47,250). Stip. at ¶ C(1)(f).

19 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff’s counsel’s
20 application to the Court for up to \$11,000 in reimbursement of litigation costs and expenses. Stip.
21 at ¶ C(1)(g).

22 From the Maximum Settlement Amount, Defendant will not oppose Plaintiff’s counsel’s
23 application to the Court for a Service Payment to the Class Representative in the gross amount of
24 \$20,000, in consideration for his efforts in instituting and participating in the Action and in
25 exchange for his general release of all claims. Stip. at ¶ C(1)(e).

26 From the Maximum Settlement Amount, settlement administration fees paid to Simpluris,
27 Inc. will be no more than \$3,500. Stip. at ¶ C(1)(h).

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1 From the Maximum Settlement Amount, the portion to be allocated for settlement of any
2 and all claims for penalties under the PAGA is \$10,000 (“PAGA Payment”), 75% of which shall
3 be paid to the LWDA and 25% shall be paid to Aggrieved Employees. Stip. at ¶ C(1)(d).

4 The Net Settlement Proceeds is the Maximum Settlement Amount less the amounts
5 approved and awarded by the Court for: attorneys’ fees and documented litigation costs and
6 expenses incurred or advanced by Class Counsel, the service payment to the Class Representative,
7 the payment to the LWDA and Aggrieved Employees pursuant to PAGA, and the costs of
8 administering the settlement. Stip. at ¶ C(1)(b).

9 The Individual Payment Amount is the portion of the Net Settlement Proceeds distributable
10 to each Class Member who participates in the Settlement (i.e., who does not submit a timely, valid
11 request for exclusion form), together with the allocation from the PAGA payment distributable to
12 each Aggrieved Employee, whether they opt out or not. With respect to the Net Settlement
13 Proceeds, the Individual Payment Amounts will be calculated by dividing the Net Settlement
14 Proceeds by the total weeks worked by all participating Class Members in California in a non-
15 exempt position during the Class Period, which will yield the applicable weekly rate. The weekly
16 rate shall be multiplied by the number of weeks each individual participating Class Member worked
17 for Defendant in California in a non-exempt position during the Class Period to yield their
18 Individual Payment Amount. Each Participating Settlement Class Member who does not opt out
19 will receive an Individual Payment Amount equal to their individual weeks worked in California
20 in a non-exempt position during the Class Period multiplied by the Workweek Value. As to the
21 PAGA payment allocated to Aggrieved Employees, the PAGA allocation shall be apportioned
22 among all Aggrieved Employees based on the same formula as the Net Settlement Proceeds. Stip.
23 at ¶ C(1)(c).

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

25 Pursuant to PAGA, the Parties have agreed that \$10,000 of the Maximum Settlement
26 Amount will be allocated to settle the claims brought under Labor Code § 2699 et seq. Pursuant to
27 Labor Code § 2699(i), “civil penalties recovered by aggrieved employees shall be distributed as
28 follows: 75 percent to the Labor and Workforce Development Agency...and 25 percent to the

1 aggrieved employees.” As such, 75 percent of the apportioned PAGA settlement amount – or
2 \$7,500 – shall be payable to the LWDA. The remaining 25 percent, or \$2,500) shall be paid to
3 Aggrieved Employees. Stip. at ¶ C(1)(d).

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

5 Any settlement of class litigation must be reviewed and approved by the Court. Cal. R. Ct.
6 3.769; Fed. R. Civ. P. 23(e).¹ This is done in two steps: (1) an early (preliminary) review by the
7 trial court, and (2) a final review after notice has been distributed to the Class Members informing
8 them of the terms of the settlement and allowing them to exclude themselves from, participate in
9 and/or object to the settlement. The Manual for Complex Litigation (Third) § 30.41 states:

10 Approval of class action settlements involves a two-step process.
11 First, counsel submit the proposed terms of settlement and the court
12 makes a preliminary fairness evaluation. If the preliminary
13 evaluation of the proposed settlement does not disclose grounds to
14 doubt its fairness or other obvious deficiencies, such as unduly
15 preferential treatment of class representatives or of segments of the
16 class, or excessive compensation for attorneys, and appears to fall
17 within the range of possible approval, the court should direct that
18 notice ... be given to the class members of a formal fairness hearing,
19 at which arguments and evidence may be presented in support of and
20 in opposition to the settlement.

21 Thus, the preliminary approval by the trial court is simply a conditional finding that the
22 settlement appears to be within the range of acceptable settlements. *See Wershba v. Apple*
23 *Computer* (2001) 91 Cal.App.4th 224, 234-35. “The strength of the findings made by a judge at a
24 preliminary hearing or conference concerning a tentative settlement proposal may vary. The court
25 may find that the settlement proposal contains some merit, is within the range of reasonableness
26 required for a settlement offer, or is presumptively valid subject only to any objections that may be
27 raised at a final hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26
28 (4th ed. 2002).

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

31 ¹ The California Supreme Court has authorized California's trial courts to use Federal Rule 23 and
32 cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971)
33 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore,
34 Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

1 When the parties to an action reach a monetary settlement, they will
2 usually prepare and execute a joint stipulation of settlement, which
3 is submitted to the court for preliminary approval. The stipulation
4 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.

Id. at § 11.24.

5 Here, the Parties have reached such an agreement and have submitted the Stipulation
6 herewith. *See* Gaines Decl., **Exhibit B**; Gaines Decl. ¶ ____.

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

8 Pursuant to California Rules of Court, Rule 3.769(d), parties also may, at the preliminary
9 approval stage, request that the court provisionally approve certification of the class – conditioned
10 upon final approval of the settlement. “[P]re-certification settlements are routinely approved if
11 found to be fair and reasonable.” *Wershba, supra*, 91 Cal. App. 4th at 240. *Accord Dunk, supra*,
12 48 Cal. App. 4th at 1803 (although the settlement was reached before any “adversary certification,”
13 the court was satisfied that it was “fair, adequate and reasonable.”). *See also In re Baldwin-United*
14 *Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478² (“many courts have employed this practice in the
15 name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”)

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

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

21 As required by Labor Code § 2699(1)(2), concurrent with Plaintiff’s submission of the
22 Stipulation to the Court, his counsel is transmitting it, together with this Motion, to the LWDA.
23 Gaines Decl. at ¶ 30.

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

25 It is well established that trial courts should use a lower standard for determining the
26 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk, supra*, 48 Cal.

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

1 App. 4th at 1807, n. 19. The reason for this is that no trial is anticipated in a settlement class, so
2 the case management issues inherent in determining if the class should be certified need not be
3 confronted. *Amchem Products, Inc. v. Windsor* (1987) 521 U.S. 591, 620. The proposed
4 Settlement Class meets all requirements for certification, as discussed below.

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

6 The proposed Settlement Class is ascertainable. The class definition, the size of the Class,
7 and the means for identifying the members of the class determine whether the class is ascertainable.
8 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
9 are identifiable from Defendant's employment and payroll records. Further, the Settlement Class
10 is sufficiently numerous to warrant certification. According to Defendant's records, the Class
11 comprises approximately 37 members. Gaines Decl. ¶ 25.

12 b. **Questions of Law or Fact Common to Members of the Settlement**
13 **Class Predominate**

14 The Class Members' claims all stem from a common source: members of the Settlement
15 Class allege that Defendant violated the same Labor Code provisions in connection with their
16 employment. All members of the Class seek the same relief under the same California laws (related
17 to inaccurate and incomplete wage statements). Under these circumstances, the commonality
18 requirement is satisfied for purposes of certifying the Settlement Class for settlement purposes.
19 Gaines Decl. ¶ 27.

20 c. **The Proposed Class Representative's Claims Are Typical of the**
21 **Class Members' Claims**

22 A class representative's claims are typical when they arise from the same event or course
23 of conduct that gives rise to the claims of the class, and are based on the same legal theory.
24 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, named Plaintiff and proposed
25 Class Representative Lorenzo Calleros is a former non-exempt employee who worked for
26 Defendant in the State of California during the Class Period. He contends that Defendant failed to
27 comply with itemized employee wage statement provisions, in violation of Labor Code §§ 226(a),
28 226.3, 558.1, 2698, and 2699, among other Labor Code provisions. He has the same claims as

1 those that the members of the Settlement Class would reasonably be expected to bring based on the
2 course of conduct alleged herein. Gaines Decl. ¶ 28.

3 Plaintiff has also demonstrated that he will aggressively and competently assert the interests
4 of the proposed Settlement Class; he has taken an active role in this litigation and has no apparent
5 conflicts with other class members. Gaines Decl. ¶ 29. Furthermore, Plaintiff has retained
6 competent counsel, experienced in litigating class action claims in the employment context. *See*
7 Gaines Decl. ¶¶ 2-5.

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

10 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
11 evidence to the contrary is offered. *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars*
12 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re*
13 *Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962. Courts do not substitute their
14 judgment for that of the proponents, particularly where, as here, settlement has been reached with
15 the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
16 *Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990)
17 752 F. Supp. 1087, 1093; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored*
18 *Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357, 1368; *Sommers v. Abraham Lincoln*
19 *Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.

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

Decl. ¶¶ 2-5, 11-12.

Here, the Parties' counsel have a great deal of experience in class action litigation and specialize in employment wage and hour matters. Moreover, counsel for both Parties conducted an extensive investigation of the factual allegations involved in this case. The Parties have engaged in a broad exchange of documents, data, records and other information. Each side has apprised the other, informally and at a formal mediation, of their respective factual contentions, legal theories and defenses, resulting in extensive arm's-length negotiations taking place among the Parties. *See* Gaines Decl. ¶¶ 2-5, 11-12.

1. **The Settlement Falls Within The "Ballpark" of Reasonableness**

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

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

Plaintiff alleges that Defendant failed to issue Plaintiff and Class Members accurately itemized wage statements. The wage statements issued to Plaintiff and all Class Members allegedly failed to set forth the name and address of the legal entity that is the employer, in violation of Labor Code §§ 226(a)(8) and 226.3. "Dial General Engineering" as listed on the wage statements is a company that no longer exists. Defendant's address is not set forth on the wage statements. Gaines Decl. ¶ 17.

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1 The wage statements issued to Plaintiff and Class Members also list two separate categories
2 of hours: “hourly” and “health welfare.” However, Plaintiff alleges that they failed to set forth the
3 total number of hours worked by the employee, in violation of Labor Code §§ 226(a)(2). The hours
4 reported for each rate are also allegedly misstated and inaccurate. Plaintiff also contends that the
5 wage statements also failed to accurately set forth the total hours worked, in violation of Labor
6 Code §§ 226(a)(2) and 226.3. When “hourly” and “health welfare” entries are included, Defendant
7 report more base hours worked than are actually worked, which Plaintiff argues is inaccurate and
8 confusing. There is no accurate summation of total hours worked anywhere on the wage statements,
9 and summing the hours listed for each rate of pay does not yield the correct total hours worked.
10 Gaines Decl. ¶ 18.

11 The maximum value of these wage statement claims is approximately \$142,600, divided
12 equally between statutory penalties available under Labor Code section 226(e) and PAGA civil
13 penalties. The discount on the maximum value of the claims is nominal, with a nearly 95% recovery
14 rate. The discount negotiated for settlement here is a reasonable compromise, particularly
15 considering that the risk of obtaining class certification on all or any of Plaintiff’s claims involves
16 a 50% or higher hurdle, to which Defendant maintains strong arguments to defeat class certification
17 (in addition to multiple defenses on the merits of the claims). Class certification is a substantial
18 risk in any class action case. Here, while Plaintiff maintains that the requirements of class
19 certification are met, Defendant proffers various arguments why class treatment is not appropriate,
20 including but not limited to that individualized inquires among class members predominate over
21 common ones. If Defendant was to defeat Plaintiff’s class certification motion, there would be no
22 class wide relief whatsoever, and most class members would likely not file individual claims.
23 Gaines Decl. ¶ 19.

24 Plaintiff also faced the risk of a loss on the merits on his claims. It is very possible that the
25 Court would agree with Defendant’s position that its wage statements complied with the
26 requirements of California law or could not be certified. In such a case, the value Plaintiff’s claims
27 would be zero. Gaines Decl. ¶ 20.

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1 Finally, Plaintiff faced the risk that she would not obtain a maximum damage/penalty award
2 on his claims. For example, Plaintiff seeks discretionary penalties pursuant to the PAGA. Even if
3 Plaintiff did prevail on these claims, it is possible that the Court would not impose all penalties
4 pursuant to its discretionary power to reduce them. Gaines Decl. ¶ 21.

5 Defendant strongly contends that its policies and practices do not violate any laws. It
6 contends that the wage statements it provides to its employees are fully compliant with California
7 law. Gaines Decl. ¶ 22.

8 When the costs and risks of non-certification and loss on the merits are considered,
9 Plaintiff's counsel is of the opinion that the settlement reached is clearly a favorable one. Gaines
10 Decl. ¶¶ 16-23.

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

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

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

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

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 Lorenzo Calleros as the 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 Maximum 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 paid to Aggrieved Employees;
7. Approving as to content and form the notice to the Settlement Class, and directing it to be disseminated by the Settlement Administrator; and
8. Setting the following schedule of settlement proceedings:

<u>EVENT</u>	<u>TIMING</u>
Last day for Defendant to provide to the Settlement Administrator a list of all Class Members, including their last known addresses, telephone numbers, social security numbers, and their dates of employment in a non-exempt position in California during the Class Period ("Settlement Class Information")	21 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail Notice and Request for Exclusion form to Class Members	14 calendar days after Settlement Administrator receives the Settlement Class Information
Last day for Class Members to submit a written Request for Exclusion form to the Settlement Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members
Last day for Class Members to submit an Objection to the Settlement Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members
Last day for Class Counsel to file and serve moving papers in support of final settlement approval and request for attorneys' fees and costs	10 calendar days before the final settlement approval hearing date
Last day for Class Counsel to file with the Court and serve declaration by Settlement Administrator specifying the due diligence undertaken with regard to the mailing of the Notice	10 calendar days before the final settlement approval hearing date

<u>EVENT</u>	<u>TIMING</u>
Final settlement approval hearing	_____, 2022, at _____ .m. (approximately 100 days after entry of the Order granting this Motion)

DATED: May 5, 2022

Respectfully submitted,

GAINES & GAINES,
A Professional Law Corporation

By: *Daniel F. Gaines*

 DANIEL F. GAINES
 ALEX P. KATOFISKY
 Attorneys for Plaintiff Lorenzo Calleros and Proposed
 Class Counsel