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and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF EL DORADO

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

Plaintiffs,

v.

RESCUE ELECTRIC CORPORATION, a
California corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: 21CV0106

Assigned to the Hon. Dylan Sullivan, Dept. 9

CLASS ACTION

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

Date: October 13, 2023

Time: 8:30 a.m.

Dept.: 9

Complaint Filed: November 4, 2021

1 **PLEASE TAKE NOTICE THAT** on October 13, 2023 at 8:30 a.m., or as soon thereafter
2 as the matter may be heard, in Department 9 of the above-entitled Court, located at 3321 Cameron
3 Park Drive, Cameron Park, California 95682, Plaintiff Leonides Trejo (“Plaintiff”) 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 the Class Representative, (4) approving the
8 appointment of Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC as Class
9 Counsel, (5) approving the appointment of Phoenix Settlement Administration as settlement
10 administrator, (6) preliminarily approving the allocation of \$50,000 from the Gross Fund 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 (“LWDA”) and twenty-five percent (25%) shall be distributed to Aggrieved
14 Employees; (7) approving as to content and form the notice to the Settlement Class, and directing
15 it be disseminated by the Settlement Administrator; (8) permitting Plaintiff to file a Second
16 Amended Class and Representative Action Complaint; and (9) setting a final fairness and approval
17 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 the class for settlement purposes only.

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

25 \\

26 \\

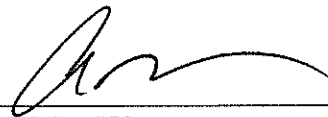
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1 This Motion will be based on the Memorandum of Points and Authorities set forth herein,
2 the Joint Stipulation for Class and PAGA Representative Action Settlement and Release, the
3 Declaration of Daniel F. Gaines, such evidence or oral argument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

5
6 DATED: August 3, 2023

GAINES & GAINES, APLC

7
8 By: 

DANIEL F. GAINES

ALEX P. KATOFISKY

Attorneys for Plaintiff Leonides Trejo 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 Joint
4 Stipulation for Class and PAGA Representative Action Settlement and Release ("Settlement",
5 "Stipulation" or "Stip.") for the Court's approval. The Settlement is made and entered into by and
6 between Plaintiff Leonides Trejo ("Plaintiff"), individually and on behalf of all others similarly
7 situated and all "aggrieved employees" pursuant to Labor Code § 2698, *et seq.*, and Defendant
8 Rescue Electric Corporation ("Defendant").

9 The Settlement occurred as a result of extensive arm's-length negotiations by experienced
10 counsel with the assistance of a respected mediator experienced in the area of employment wage-
11 and-hour class actions. Most importantly, the Settlement will result in significant financial benefit
12 to the participating class members, on terms that are by any measure fair, reasonable and adequate.
13 *See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801-02. The proposed Settlement
14 provides for a non-revisionary class settlement in the gross amount of \$1,385,000.00 to a settlement
15 class of approximately 1,767 exempt and non-exempt employees who worked approximately
16 137,303 workweeks, yielding gross payments of approximately **\$784 per employee**. As detailed
17 below, the Settlement is in the best interests of the class in light of all of the facts and circumstances
18 and the risks and delays of further litigation.

19 For the foregoing reasons, the Parties respectfully request that the Court: (1) grant
20 preliminary approval of the Settlement and preliminarily find that the Settlement falls within the
21 range of reasonableness; (2) conditionally grant certification of the proposed Settlement Class,
22 including two subclasses, for settlement purposes only; (3) approve the appointment of Plaintiff as
23 the Class Representative; (4) approve the appointment of Daniel F. Gaines and Alex P. Katofsky
24 of Gaines & Gaines, APLC as Class Counsel; (5) approve appointment of Phoenix Settlement
25 Administration as the Settlement Administrator; (6) grant preliminary approval of the allocation of
26 \$50,000 from the Gross Fund to settle Plaintiff's representative claims under PAGA; (7) permit the
27 filing of a Second Amended Complaint; (8) approve the content and form of the proposed class
28 action notice packet and authorize its mailing; and (9) schedule a final fairness and approval

1 hearing.

2 **II. BACKGROUND AND PROCEDURAL HISTORY**

3 On August 16, 2021, Plaintiff submitted his letter to the California Labor and Workforce
4 Development Agency giving notice of a claim under PAGA. Declaration of Daniel F. Gaines
5 (“Gaines Decl.”) at ¶ 6.

6 On November 4, 2021, Plaintiff filed a PAGA Representative Action Complaint on behalf
7 of all “aggrieved employees” (the “Complaint”) seeking penalties for (1) failure to pay all overtime
8 wages (Lab. Code §§ 510 and 1194); (2) failure to provide rest periods (Lab. Code § 226.7; IWC
9 Wage Order 16-2001); (3) failure to provide meal periods (Lab. Code §§ 226.7 and 512; IWC Wage
10 Order 16-2001); (4) failure to provide accurate itemized wage statements (Lab. Code § 226(a), (e));
11 (5) failure to reimburse all business expenses (Lab. Code § 2802); (6) failure to timely pay wages
12 due at separation (Lab. Code §§ 201-203); (7) unfair business practices (Bus. & Prof. Code §
13 17200); and (8) PAGA penalties (Lab. Code § 2699(f)). Gaines Decl. at ¶ 7.

14 On August 1, 2022, Plaintiff filed his First Amended Complaint adding putative class claims
15 alleging similar Labor Code violations in Plaintiff’s Complaint (“FAC”). Gaines Decl. at ¶ 8.

16 The Second Amended Complaint, attached to the Settlement as **Exhibit B** and which will
17 be filed as part of the settlement approval process, asserts class and representative action claims
18 pursuant to PAGA against Defendant for: (1) Failure to Pay All Minimum And Overtime Wages
19 Due (Labor Code §§ 200, 204, 210, 218.5, 233, 246, 510, 558, 1174, 1174.5, 1182.12 *et seq.*, 1194,
20 1194.2, 1194.3, 1197, 1197.1, 1198, and 1199); (2) Failure to Provide Rest Periods or
21 Compensation In Lieu Thereof (Labor Code § 226.7; IWC Wage Order 16-2001); (3) Failure to
22 Provide Meal Periods or Compensation In Lieu Thereof (Labor Code §§ 226.7 and 512; IWC Wage
23 Order 16-2001); (4) Knowing and Intentional Failure to Comply With Itemized Employee Wage
24 Statement Provisions (Labor Code § 226(a), (e)); (5) Failure to Reimburse all Business-Related
25 Expenses (Labor Code § 2802); (6) Failure to Timely Pay Wages Due at Separation of Employment
26 (Labor Code §§ 201-203 and 256); (7) Violation of Business and Professions Code § 17200; and
27 (8) Penalties Pursuant To Labor Code § 2699(f) for Violations of Labor Code §§ 200-202, 204,
28 218.5, 226(a), 226.7, 233, 246, 256, 510, 512, 1174, 1174.5, 1182.12 *et seq.*, 1194, 1194.3, 1197,

1 1197.1, 1198, 1198.5, 1199 and 2802 and Pursuant to Labor Code § 2699(a) for Violations of Labor
2 Code §§ 210, 226.3, and 558 (the “Second Amended Complaint” or “SAC”). Gaines Decl. at ¶ 9.

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

6 Defendant does not admit, and specifically denies, that Defendant violated any federal,
7 state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or
8 any other applicable laws, regulations or legal requirements; breached any contract; violated or
9 breached any duty; engaged in any misrepresentation or deception; or engaged in any other
10 unlawful conduct with respect to its employees or anyone else. Defendant further denies that this
11 case is appropriate for class certification. Neither the Settlement, nor any of its terms or provisions,
12 nor any of the negotiations connected with it, will be construed as an admission or concession by
13 Defendant of any such violations or failures to comply with any applicable law. Except as
14 necessary in a proceeding to enforce the terms of the Settlement, the Settlement and its terms and
15 provisions will not be offered or received as evidence in any action or proceeding to establish any
16 liability or admission on the part of Defendant or to establish the existence of any condition
17 constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.
18 Gaines Decl. at ¶ 11.

19 **III. INVESTIGATION AND SETTLEMENT DISCUSSIONS**

20 Class Counsel represent that they have conducted a thorough investigation into the facts
21 and law during the prosecution of this class action case, including the exchange of extensive
22 informal discovery and the review and verification of statistical data and other facts and information
23 provided by Defendant, including policy and procedure handbooks, timesheets, and wage
24 statements. Counsels for the Parties also represent that they have investigated the applicable law
25 as applied to the facts discovered regarding Plaintiff’s alleged claims of and Defendant’s potential
26 defenses thereto, and the damages and other losses claimed by Plaintiff. Gaines Decl. at ¶ 12.

27 On February 9, 2023, following the Parties’ exchange of information and documents
28 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties

1 engaged in arm's-length negotiations with the assistance of mediator Judge David I. Brown (Ret.)
2 through which they were able to reach the resolution of the Action as set forth herein. Gaines Decl.
3 at ¶ 13.

4 Based on their own independent investigation and evaluation, Class Counsel are of the
5 opinion that settlement for the consideration and on the terms set forth in this Settlement is fair,
6 reasonable, and adequate and is in the best interest of the Settlement Class in light of all known
7 facts and circumstances, including the risk of significant delay, the risk the Settlement Class will
8 not be certified by the Court, and the defenses asserted by Defendant. Gaines Decl. at ¶ 14.

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

17 **IV. LEGAL ANALYSIS**

18 **A. The Proposed Settlement Terms**

19 The Parties have agreed upon a settlement class: all California employees who were
20 employed by Defendant during the Class Period [November 4, 2017, through the earlier of the date
21 of Preliminary Approval of the Settlement or August 11, 2023]. Defendant represents that the
22 Settlement Class contains approximately 1,767 employees with 137,303 workweeks, with a
23 breakdown among two subclasses of 1,729 non-exempt employees with 132,407 workweeks and
24 38 exempt employees with 4,896 workweeks. Settlement at ¶ 56.

25 The Parties stipulate to the conditional certification of the Settlement Class and its
26 subclasses as defined herein for settlement purposes only. Settlement at ¶ 85.

27 The Settlement provides that Defendant shall pay the total, non-reversionary sum of
28 \$1,385,000 to resolve the claims alleged in the Action on behalf of the Settlement Class (the "Gross

1 Fund"). Settlement. at ¶ 12.

2 Class Members need not submit a claim form to receive their share of the Settlement. Class
3 Members who timely exclude themselves from the Settlement will not be part of the final
4 Settlement Class and not bound by the Settlement's release of class claims as outlined by the
5 Released Class Claims by Non-Exempt Employees Subclass and Released Class Claims by Exempt
6 Employee Subclass provisions (although Aggrieved Employees will be bound by the PAGA
7 release, even if they opt out of the class settlement). Settlement at ¶ 25, 28-29, 57, 73-76.

8 The Settlement provides that Plaintiff's counsel may request an award of attorneys' fees not
9 to exceed 35% of the Gross Fund (projected to be \$484,750) and seek reimbursement of litigation
10 costs necessarily incurred in pursuing this Action, not to exceed \$15,000. Settlement at ¶ 41. The
11 Settlement also provides that Plaintiff will seek, and Defendant will not oppose, a service payment
12 to the named Plaintiff, Leonides Trejo, in the amount of \$15,000. Settlement at ¶ 42.

13 After reviewing multiple bids, the Parties agreed to Phoenix Settlement Administration
14 ("Phoenix"), an experienced and competent settlement administration company, as the Settlement
15 Administrator. Up to \$20,000 of the Gross Fund has been allocated to compensate Phoenix for its
16 work related to the settlement administration. Settlement at ¶ 43.

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

18 Pursuant to PAGA, the Parties have agreed that \$50,000 of the Gross Fund will be allocated
19 to settle the claims brought under Labor Code § 2699 et. seq. Pursuant to Labor Code § 2699(i),
20 "civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the
21 Labor and Workforce Development Agency...and 25 percent to the aggrieved employees." As
22 such, seventy-five percent (75%), or \$37,500, of the PAGA Settlement Amount will be paid to the
23 California Labor and Workforce Development Agency as the Labor and Workforce Development
24 Agency ("LWDA") Payment, and twenty-five percent (25%), or \$12,500, will constitute the Net
25 PAGA Settlement Amount to be paid to Class Members employed by Defendant during the PAGA
26 Period. Settlement at ¶ 14.

27 As required by Labor Code § 2699(l)(2), concurrent with Plaintiff's submission of the
28 Settlement to the Court, Plaintiff will submit the Settlement and a copy of this Motion to the

1 LWDA. Gaines Decl. at ¶ 37.

2 **C. Two-Step Approval Process**

3 Any settlement of class litigation must be reviewed and approved by the Court. Cal. R. Ct.
4 3.769; Fed. R. Civ. P. 23(e).¹ This is done in two steps: (1) an early (preliminary) review by the
5 trial court, and (2) a final review after notice has been distributed to the Class Members informing
6 them of the terms of the settlement and allowing them to exclude themselves from, participate in
7 and/or object to the settlement. The Manual for Complex Litigation (Third) § 30.41 states:

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

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

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

24 When the parties to an action reach a monetary settlement, they will
25 usually prepare and execute a joint stipulation of settlement, which
26 is submitted to the court for preliminary approval. The stipulation
should set forth the essential terms of the agreement, including but

27 ¹ The California Supreme Court has authorized California's trial courts to use Federal Rule 23 and
28 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, 145-46. Where appropriate, therefore,
Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

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.

Here, the Parties have reached such an agreement and have submitted the Settlement herewith which fully sets forth all terms of the agreement reached among the Parties. *See* Gaines Decl. ¶ 16, Exhibit B.

D. Procedures for Settlement Before Class Certification.

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

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

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

1. The Settlement Class Should Be Certified for Settlement Purposes Only

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

²In 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 a. **The Settlement Class is Ascertainable**

2 The proposed Settlement Class and its two proposed subclasses are ascertainable. The class
3 definition, size of the class, and means for identifying the members of the class determine whether
4 the class is ascertainable. *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In
5 this case, the Class Members are identifiable from Defendant's records. Further, the Settlement
6 Class and both subclasses are sufficiently numerous to warrant certification. According to
7 Defendant's records, the Settlement Class is comprised of approximately 1,767 individuals, with
8 more than 1,729 employees in the non-exempt subclass and 38 employees in the exempt subclass.
9 Gaines Decl. ¶ 33; Settlement at ¶ 56.

10 b. **Questions of Law or Fact Common to Members of the Settlement**
11 **Class Predominate**

12 The Class Members' claims all stem from a common source: all Class Members allege that
13 Defendant violated the same Labor Code and Wage Order provisions in connection with their work
14 for Defendant. The same Labor Code and Wage Order violations are alleged on behalf of all
15 persons encompassed in the Settlement Class, arising out of or which could be pled based on the
16 facts and the allegations set forth in the operative complaint in the Action. As to exempt employees,
17 these claims include failure to issue accurate wage statements and failure to reimburse all business
18 expenses and related unfair competition claims; as to non-exempt employees, these claims include
19 failure to pay all required minimum and overtime wages, failure to pay sick pay; failure to provide
20 meal periods and rest breaks (or pay related premiums in lieu); failure to maintain records, failure to
21 timely pay wages during employment; failure to reimburse necessary business expenses; wage
22 statement violations; waiting time penalties; and related unfair competition claims. Gaines Decl. ¶
23 34.

24 c. **The Proposed Class Representative's Claims are Typical of the**
25 **Class Members' Claims**

26 A class representative's claims are typical when they arise from the same event or course
27 of conduct that gives rise to the claims of the class, and are based on the same legal theory.
28 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, the named Plaintiff and proposed

1 Class Representative Leonides Trejo is a former non-exempt employee of Defendant. Plaintiff
2 alleges he was not paid all required minimum and overtime wages; paid sick pay; provided with
3 30-minute, uninterrupted, and off-duty meal periods as required by California law; provided with
4 10-minute rest breaks as required by California law; reimbursed necessary business expenses;
5 provided with compliant itemized employee wage statements; and timely paid all wages during
6 employment and due at termination. Plaintiff alleges the same claims as the Settlement Class would
7 reasonably be expected to bring based on the course of conduct alleged herein. Gaines Decl. ¶ 35.

8 Plaintiff has demonstrated that he will aggressively and competently assert the interests of
9 the proposed Settlement Class, has taken an active role in the litigation, and has no apparent
10 conflicts with other class members. Gaines Decl. ¶ 36. Furthermore, Plaintiff has retained
11 competent counsel, experienced in litigating class action claims in the employment context. See
12 Gaines Decl. ¶¶ 2-5.

13 **E. The Settlement Is Fair and Reasonable and Not the Result of Fraud or**
14 **Collusion**

15 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
16 evidence to the contrary is offered. *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars*
17 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re*
18 *Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962. Courts do not substitute their
19 judgment for that of the proponents, particularly where, as here, settlement has been reached with
20 the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
21 *Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990)
22 752 F. Supp. 1087, 1093; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored*
23 *Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357, 1368; *Sommers v. Abraham Lincoln*
24 *Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.

25 While the recommendations of counsel proposing the Settlement are not conclusive, the
26 Court can properly take them into account, particularly where, as here, such counsel have been
27 involved in informal discovery and negotiations for some period of time, appear to be competent,
28 have experience with this type of litigation, and have exchanged substantial evidence with the

1 opposing party. *See Newberg on Class Actions, supra*, § 11.47; *In re Paine Webber Ltd. P'ships*
2 *Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 (“[s]o long as the integrity of the arm’s-length
3 negotiation process is preserved, however, a strong initial presumption of fairness attaches to the
4 proposed settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of
5 counsel, who are most closely acquainted with the facts of the underlying litigation”); *see* Gaines
6 Decl. ¶¶ 2-5, 12-13.

7 Here, the Parties’ counsels have a great deal of experience in class action litigation and
8 specialize in employment wage and hour matters. Moreover, counsel for both Parties conducted
9 an extensive investigation of the factual allegations involved in this case. The Parties engaged in a
10 broad exchange of documents, statistics, records and other relevant information. Each side apprised
11 the other, informally and at a formal mediation, of their respective factual contentions, legal
12 theories and defenses, resulting in extensive arms-length negotiations taking place among the
13 Parties. *See* Gaines Decl. ¶ 2-5, 12-13.

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

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

24 Prior to settlement, Plaintiff’s counsel created a comprehensive damage analysis using
25 sampling information obtained through informal discovery. This damage analysis reveals that the
26 negotiated settlement falls within a realistic range of recovery on Class Members’ claims. Gaines
27 Decl. ¶ 20.

28 \\\

1 Plaintiff claims Defendant failed to pay Plaintiff and Class Members all earned wages,
2 including minimum wages, overtime wages, and sick pay, in violation of Labor Code §§ 200, 204,
3 233, 246, 510, 558, 1194, and 1197. Plaintiff claims Defendant failed to pay Plaintiff and Class
4 Members at least minimum wage for all hours worked and failed to pay the correct regular rate of
5 pay for all overtime hours worked, and all sick pay. As a result, Plaintiff and Class Members were
6 allegedly not properly compensated for all hours worked, sick pay, and work performed in excess
7 of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at
8 a rate of no less than one and one-half times the regular rate of pay and were instead paid straight
9 time wages in violation of Labor Code §§ 200, 204, 233, 246, 510, 558, 1194, and 1197. Plaintiff
10 contends that he was not paid at least minimum wage for all hours worked due to rounding and
11 working off-the-clock, not paid all sick pay, and regularly worked more than forty (40) hours in a
12 workweek but was paid straight time wages for the work performed over forty (40) hours. Plaintiff
13 calculates damages on this claim at up to \$4,209,000 based on a presumed one hour of unpaid
14 overtime wages per week per employee. Gaines Decl. ¶ 21.

15 Plaintiff further alleges that Defendant failed to permit or authorize Class Members to take
16 timely, uninterrupted 30-minute meal periods for shifts greater than five (5) hours in length, in
17 violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 16-2001. Labor Code § 512
18 provides that employers (like Defendant) may not employ an employee for a work period of more
19 than five hours without providing a 30-minute meal period starting no later than the end of the fifth
20 hour. Plaintiff contends that Plaintiff and Class Members were routinely unable to take a proper
21 meal period when they worked shifts in excess of five (5) hours in duration and were not paid
22 premium wages of one hour's pay for each noncompliant meal period. Plaintiff also alleges that
23 Defendant's meal period policy omits a timing provision requiring that employees must take meal
24 periods before the end of the fifth hour of work and fails to set forth any language with respect to
25 a second meal period for employees who work ten or more hours in one workday. Gaines Decl. ¶
26 22.

27 In advance of mediation, Defendant provided timecards handwritten by Plaintiff and Class
28 Members which reflected that employees took their meal periods exactly on the hour or half hour

1 and for exactly 30 minutes. Plaintiff contends these constitute inaccurate rounded time records,
2 which the Supreme Court in *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, held failed to
3 “properly account for meal periods that were short or delayed based on actual time punches but did
4 not appear as short or delayed under the rounding policy.” *Donahue, supra*, 11 Cal. 5th 78. Plaintiff
5 contends Plaintiff and Class Members rarely took a legally compliant meal period; they were
6 typically late, cut short, or on-duty. Plaintiff contends that for each workday that Plaintiff and Class
7 Members were not provided compliant meal periods, they must be paid a one-hour premium as
8 additional wages beyond earnings for actual hours worked. Based on Plaintiff’s experience of
9 regularly receiving late or on-duty meal periods, Plaintiff assumed a 40% meal period violation
10 rate; Plaintiff calculates damages on this claim at \$5,612,500. Gaines Decl. ¶ 23.

11 Plaintiff also argues that Defendant failed to pay Plaintiff and Class Members premium
12 wages for missed, denied and unauthorized rest periods in violation of Labor Code §§ 226.7 and
13 558 and IWC Wage Order 16-2001. Plaintiff contends that Plaintiff and Class Members were
14 denied, and therefore unable to take, 10-minute rest periods for every four hours of work or major
15 fraction thereof and were not paid premium wages of one hour’s pay for each missed, denied and
16 unauthorized rest period. When Class Members were able to take a rest period, Defendant allegedly
17 maintained a policy and practice requiring employees to remain on the company’s worksites.
18 Plaintiff contends Defendant’s rest period policy and practice violates California Supreme Court’s
19 mandate in *Augustus v. ABM Security Services, Inc.* (2016) 5 Cal. 5th 257, 269 (holding that the
20 rest period requirement “obligates employers to permit and authorizes employees to take off-duty
21 rest periods. That is, during rest periods employers must relieve employees of all duties and
22 relinquish control over how employees spend their time.” An employer may not place any
23 limitations on where employees may go or not go during their rest periods). These alleged
24 restrictions and requirements contravene California law with respect to rest periods. *See also*
25 Department of Industrial Relations website (www.dir.ca.gov/dlse/faq_restperiods.htm) (Question:
26 “Can my employer require that I stay on the work premises during my rest period? No, your
27 employer cannot impose any restraints not inherent in the rest period requirement itself.) Plaintiff
28 contends that for each workday that Plaintiff and Class Members were denied a rest period and/or

1 were restricted from leaving the worksites during their rest period, they must be paid a one-hour
2 premium as additional wages beyond earnings for actual hours worked. Plaintiff calculates
3 damages on this claim at nearly \$4,150,000 based on a presumed 25% violation rate. Gaines Decl.
4 ¶ 24.

5 Plaintiff further contends that Defendant failed to reimburse Plaintiff and Class Members
6 for all necessary business expenses, including their personal vehicles to drive to and from worksites
7 to perform work for Defendant. Plaintiff calculates damages on this claim at \$1,386,700 (premised
8 on \$50/month in unreimbursed expenses). Gaines Decl. ¶ 25.

9 Plaintiff contends Defendant also faced liability for alleged failure to issue accurately
10 itemized wage statements, timely pay wages during employment, timely pay wages at separation
11 of employment (waiting time penalties), and for PAGA civil penalties. Altogether, Plaintiff asserts
12 these penalties could eclipse the value of the unpaid wages sought, with over \$16,000,000 in
13 exposure. Gaines Decl. ¶ 26.

14 A discount on the maximum value of Class Members' claims was required (and warranted)
15 to resolve the matter at this stage of the litigation. As to the merits, Plaintiff's claims had some
16 shortfalls. Proof of many of Plaintiff's wage-and-hour claims would require extensive testimony
17 from Class Members because time and wage records would not show the alleged violations on their
18 face. This entails substantial risk. As to the meal and rest claims, Defendant alleges numerous
19 defenses, including full compliance with all California laws and waiver by Class Members. As to
20 the claims for inaccurate itemized wage statements, untimely pay during employment, and untimely
21 pay at separation, Defendant argues that it did not act willfully and always acted in good faith --
22 defenses which, if successful, could preclude the award of any such penalties. Finally, as to the
23 claim for PAGA penalties, Defendant argues that no Court would award penalties that greatly
24 exceed the value of the wage claims by a staggering multiple, and would instead exercise its
25 discretion to reduce them. As there were significant litigation risks as to the damages sought by
26 Plaintiff, the Settlement represents a fair compromise of these risks. Gaines Decl. ¶ 27.

27 Class certification is a substantial risk in any class action case and is a very difficult hurdle
28 here. While Plaintiff maintains that the requirements of class certification are met, Defendant

1 proffers various arguments why class treatment is not appropriate here, including but not limited to
2 that individualized inquires among Class Members predominate over common ones across all of
3 Plaintiff's claims. If Defendant was to defeat Plaintiff's class certification motion, there would be
4 no class wide relief whatsoever, and most class members would likely not file individual claims.
5 Gaines Decl. at ¶ 28.

6 Defendant strongly contends that its policies and practices do not violate any laws.
7 Defendant contends that it provided all required wages in a timely manner. Gaines Decl. at ¶ 29.

8 When the costs and risks of non-certification and loss on the merits are considered,
9 Plaintiff's counsel are of the opinion that the Settlement reached is clearly a favorable one. Gaines
10 Decl. at ¶¶ 20-30.

11 The settlement for each participating Class Member is fair, reasonable, and adequate, given
12 the inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
13 litigation. The Settlement shall finally resolve all claims of the Class Members as alleged in the
14 Action. Gaines Decl. at ¶ 31.

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 Class Member who objects to the
18 terms of the settlement set forth in the Settlement Agreement has the right to submit a request for
19 exclusion (*i.e.*, opt out) from the Settlement, pursuant to which the Class Member would retain any
20 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 Settlement.

24 **V. PLAINTIFF SHOULD BE PERMITTED TO FILE HIS SECOND AMENDED**
25 **COMPLAINT**

26 In connection with the Settlement, Plaintiff shall file a Second Amended Complaint,
27 attached to the Settlement as Exhibit B and which includes claims to comport with the release
28 negotiated for in the Settlement. The Parties agreed that, as part of his motion for preliminary

1 approval, Plaintiff would concurrently seek leave to file the Second Amended Complaint, the filing
2 of which is a condition of the Stipulation.

3 To effectuate the class settlement of the Action, Defendant does not oppose the filing of the
4 Second Amended Complaint for settlement purposes only. As part of its order preliminarily
5 approving the settlement, Plaintiff requests that the Court approve his filing of the Second Amended
6 Complaint, and consent that Defendant need not file a responsive pleading thereto.

7 **VI. CONCLUSION**

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

10 1. Preliminarily finding that the Settlement falls within the range of reasonableness
11 and approving the proposed settlement;

12 2. Conditionally certifying, for settlement purposes only, the Settlement Class;

13 3. Appointing Plaintiff Leonides Trejo as the Class Representative;

14 4. Appointing Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC as
15 Class Counsel;

16 5. Approving Phoenix Settlement Administration as the Settlement Administrator;

17 6. Preliminarily approving the allocation of \$50,000 from the Gross Settlement
18 Amount to settle Plaintiff's representative claims under the PAGA, of which seventy-five percent
19 (75%) shall be paid to the Labor and Workforce Development Agency and twenty-five percent
20 (25%) will constitute the Net PAGA Settlement Amount to be paid to Class Members employed
21 by Defendant during the PAGA Period;

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

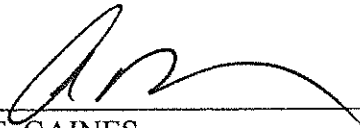
24 8. Permitting Plaintiff to file his Second Amended Complaint, attached to the
25 Settlement as Exhibit B, no later than five (5) court days after notice of the entry of the Order
26 granting this motion has been given, and consent that Defendant not be required to file a responsive
27 pleading thereto;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

28 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 each Class Member's full name, most recent mailing address, social security number, number of workweeks that each Class Member worked during the Class Period and the PAGA Period, and any other relevant information needed to calculate settlement payments ("Class List")	20 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail the Notice to Class Members via U.S. Mail	10 calendar days after Settlement Administrator's receipt of Settlement Class List
Last day for Class Members to submit a written exclusion or objection to 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	The Parties suggest the final approval hearing be held approximately 100 days after the preliminary approval order is signed.

DATED: August 3, 2023

GAINES & GAINES, APLC

By: 

DANIEL F. GAINES

ALEX P. KATOFISKY

Attorneys for Plaintiff Leonides Trejo and Proposed Class Counsel