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and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

RICARDO PANTOJA, on behalf of
himself and all others similarly situated;

Plaintiff,

v.

SOUTH BAY SAFETY, INC., a California
Corporation; ACME FURNITURE
INDUSTRY, INC., a California
Corporation, and DOES 1 through 50
inclusive,

Defendants.

CASE NO: 21STCV38848

*Assigned to the Hon. Carolyn B. Kuhl, Dept.
SS12*

CLASS ACTION

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

DATE: July 23, 2024

TIME: 10:30 a.m.

DEPT.: SSC-12

Action Filed: October 21, 2021

1 **PLEASE TAKE NOTICE THAT** on July 23, 2024 at 10:30 a.m., or as soon thereafter as
2 the matter may be heard, in Department SSC-12 of the above-entitled Court, located at 312 N.
3 Spring Street, Los Angeles, California 90012, Plaintiff Ricardo Pantoja will and hereby does move
4 unopposed for an Order (1) preliminarily approving the proposed class action settlement in the
5 above-captioned case, (2) provisionally certifying the settlement class, (3) provisionally approving
6 the appointment of Plaintiff Ricardo Pantoja as Class Representative, (4) provisionally approving
7 the appointment of Daniel F. Gaines, Esq. and Alex P. Katofsky, Esq. of Gaines & Gaines, APLC
8 and Jake D. Finkel of The Finkel Firm as Class Counsel, (5) provisionally approving the
9 appointment of Phoenix Settlement Administrators as settlement administrator, (6) approving and
10 directing distribution of notice to the settlement class, and (7) setting a final fairness and approval
11 hearing.

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

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

19 This Motion will be based on the Memorandum of Points and Authorities set forth herein,
20 the Class Action and PAGA Settlement Agreement and Class Notice, the Declarations of Daniel F.
21 Gaines, Jake D. Finkel, Ricardo Pantoja, and Jodey Lawrence, such evidence or oral argument as
22 may be presented at the hearing, and on the complete record and file herein.

1 DATED: May 13, 2024

GAINES & GAINES,
A Professional Law Corporation

2
3
4 By: *Daniel F. Gaines*

DANIEL F. GAINES

ALEX P. KATOFISKY

Attorneys for Plaintiff Ricardo Pantoja and Proposed
Class Counsel

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 **A. Case Summary and Procedural History**

4 Plaintiff Ricardo Pantoja (“Plaintiff” or “Pantoja”) and Defendants South Bay Safety, Inc.
5 (“South Bay”) and Acme Furniture Industry, Inc. (“Acme”) (together, “Defendants”) (collectively,
6 the “Parties”) have reached a resolution of this class and PAGA action and hereby submit their
7 settlement agreement to the Court for its preliminary approval.

8 On October 21, 2021, Plaintiff commenced this Action by filing a Complaint alleging
9 causes of action against Defendants for: (1) Failure to Pay Minimum Wage and Overtime Wages;
10 (2) Failure to Provide Meal Periods; (3) Failure to Provide Rest Periods; (4) Failure to Provide
11 Accurate Wage Statements; (5) Failure to Pay Wages Upon Ending Employment; and (6) Unfair
12 Competition (Business and Professions Code § 17200 et seq. On April 11, 2023, Plaintiff filed a
13 First Amended Complaint alleging causes of action against Defendants for: (1) Failure to Pay
14 Minimum Wage and Overtime Wages; (2) Failure to Provide Meal Periods; (3) Failure to Provide
15 Rest Periods; (4) Failure to Provide Accurate Wage Statements; (5) Failure to Pay Wages Upon
16 Ending Employment; (6) Unfair Competition (Business and Professions Code § 17200 et seq.); and
17 (7) Civil Penalties Pursuant to Labor Code § 2698 et seq. for Violations of Labor Code §§ 201-202,
18 226(a), 226.7, 510, 512, 1174, 1174.5, and 1194 and Pursuant to Labor Code § 2699(a) for
19 Violations of Labor Code §§ 226.3 and 558. The First Amended Complaint is the operative
20 complaint in the Action (the “Operative Complaint”). Declaration of Daniel F. Gaines (“Gaines
21 Decl.”) at ¶ 6.

22 Defendants deny the allegations in the Operative Complaint, deny any failure to comply
23 with the laws identified in in the Operative Complaint and deny any and all liability for the causes
24 of action alleged. Gaines Decl. at ¶ 7.

25 Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiff gave timely written notice
26 to Defendants and the LWDA by sending the PAGA Notice prior to asserting a PAGA claims.
27 Gaines Decl. at ¶ 8.

1 **B. Investigation and Settlement Discussions**

2 Recognizing that this was a resolvable case, the Parties agreed to exchange informal
3 discovery in which Plaintiff was provided with, among other things: (1) class data points to permit
4 pertinent calculation of workweeks, pay periods, number of shifts, and employee numbers within
5 the Class Period and PAGA Period; (2) sufficient information to determine the average hourly rate
6 for Settlement Class Members working during the Class Period and PAGA Period; and (3) a
7 sampling of time and payroll records from the Class Period and PAGA Period. Gaines Decl. at ¶
8 9.

9 After preparing damage analyses and assessing the claims of Plaintiff, the Class Members,
10 and the Aggrieved Employees, the Parties participated in two mediations before the Hon. David I.
11 Brown (Ret.), a well-regarded mediator experienced in mediating complex labor and employment
12 matters. By the conclusion of the second session, they reached a resolution of the claims alleged.
13 Gaines Decl. at ¶ 10.

14 The Parties thereafter jointly prepared the Class Action and PAGA Settlement Agreement
15 and Class Notice (“Settlement”). Gaines Decl. at ¶ 11; Exhibit B.

16 Class Counsel has conducted significant investigation of the law and facts relating to the
17 claims asserted in the Action, and have concluded that that the Settlement is fair, reasonable,
18 adequate, and in the best interests of the Settlement Class, taking into account the expense and time
19 necessary to litigate the Action through trial and any appeals, the risks and costs of further litigation
20 of the Action, the risk of an adverse outcome, the uncertainties of complex litigation, the
21 information learned through informal discovery regarding Plaintiff’s allegations, and the
22 substantial benefits to be received by the Settlement Class Members. Gaines Decl. at ¶ 12.

23 Defendants have concluded that, because of the substantial expense of defending against
24 the Action, the length of time necessary to resolve the issues presented herein, the inconvenience
25 involved, and the concomitant disruption to their business operations, it is in their best interest to
26 accept the terms of this Agreement. Defendants deny each of the allegations and claims asserted
27 against them in the Action and the PAGA Notice. However, Defendants nevertheless desire to
28 settle the Action for the purpose of avoiding the burden, expense and uncertainty of continuing

1 litigation and for the purpose of putting to rest the controversies engendered by the Action. Gaines
2 Decl. at ¶ 13.

3 Discussions between counsel for the Parties, informal discovery, as well as the investigation
4 and evaluation of the claims of Plaintiff by the Parties, have permitted all parties to assess the
5 relative merits of the claims and the defenses to those claims. The Parties agree that the above-
6 described investigation and evaluation, as well as the information exchanged during settlement
7 negotiations and mediation, are more than sufficient to assess the merits of the respective Parties'
8 positions and to compromise the issues on a fair and equitable basis. Gaines Decl. at ¶ 14.

9 Based on their own independent investigations and evaluations, Class Counsel are of the
10 opinion that the consideration and terms of the Settlement as set forth below, considering the
11 representative and class claims, and the risk of loss, is fair, reasonable, and adequate in light of all
12 known facts and circumstances, and is in the best interests of the Class. Class Counsel are also of
13 the opinion that the total consideration and payment set forth in this Settlement is adequate in light
14 of the uncertainties surrounding the risk of further litigation, and the possible defenses and offset
15 claims that Defendants have asserted and could assert. Gaines Decl. at ¶ 15.

16 For the foregoing reasons, the Parties respectfully request that the Court: (a) grant
17 preliminary approval of the settlement agreement, (b) conditionally grant certification of the
18 proposed settlement class, (c) provisionally approve the appointment of Plaintiff Ricardo Pantoja
19 as the Class Representative, (d) provisionally approve the appointment of Daniel F. Gaines, Esq.
20 and Alex P. Katofsky, Esq. of Gaines & Gaines, APLC and Jake D. Finkel of The Finkel Firm as
21 Class Counsel, (e) approve appointment of the settlement administrator, (f) authorize the mailing
22 of the proposed class action notice packet; and (g) schedule a final fairness and approval hearing.

23 **II. LEGAL ANALYSIS**

24 **A. The Proposed Settlement Terms**

25 The Parties have agreed upon a settlement class: all persons within the State of California
26 who are or were employed by South Bay and placed to work at Acme in a non-exempt position in
27 the State of California during the Class Period. Defendants represent that there are approximately
28 621 Class Members who worked an approximate aggregate of 20,000 Workweeks during the Class

1 Period, and 282 Aggrieved Employees who worked a total 11,000 of PAGA Pay Periods.
2 Settlement at ¶ 4.1.

3 The Parties stipulate to the conditional certification of the Settlement Class for settlement
4 purposes only. Settlement at ¶ 12.1.

5 The Settlement Agreement provides that Defendants shall pay the total, non-reversionary
6 fund in the sum of \$500,000, jointly and severally, from which all payments for the Individual Class
7 Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's
8 attorneys' fees and expenses, the Administrator's expenses, and penalties to be paid to the
9 California Labor and Workforce Development Agency ("LWDA"), shall be paid. It expressly
10 excludes Employer Taxes, which shall be paid by Defendants separate and apart from the Gross
11 Settlement Amount (the "Gross Settlement Amount"). Settlement at ¶ 3.1.

12 Class Members need not submit a claim form to receive their share of the Settlement. Class
13 Members who timely exclude themselves from the Settlement will not be part of the final
14 Settlement Class and not bound by the class releases herein (but will still be bound by the PAGA
15 release). Settlement at ¶ 7.5.3.

16 The Settlement Agreement further provides that Plaintiff's counsel may request an award
17 of attorneys' fees not to exceed \$166,666.67 (i.e., one-third of the Gross Settlement Amount) and
18 seek reimbursement of litigation costs necessarily incurred in pursuing this Action, not to exceed
19 \$25,000. Settlement at ¶ 3.2.2. It also provides that Plaintiff will seek, and Defendants will not
20 oppose, a service payment and general release payment to the named Plaintiff Ricardo Pantoja in
21 the amount of \$7,500. Settlement at ¶¶ 3.2.1, 5.1.

22 The Parties have agreed that Phoenix Settlement Administrators ("Phoenix"), an
23 experienced and competent settlement administration company, will administer the settlement.
24 Phoenix's credentials are attached as Exhibit C to the Gaines Declaration. Up to \$15,000 has been
25 allocated to compensate Phoenix Settlement Administrators for its work related to the
26 administration. Settlement at ¶ 3.2.3.

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

28 Pursuant to PAGA, the Parties have agreed that \$50,000 of the Gross Settlement Amount

1 will be allocated to settle the claims brought under Labor Code § 2699 *et. seq.* Pursuant to Labor
2 Code § 2699(i), “civil penalties recovered by aggrieved employees shall be distributed as follows:
3 75 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved
4 employees.” As such, 75 percent of the apportioned PAGA settlement amount – or \$37,500 – shall
5 be payable to the Labor and Workforce Development Agency. The remaining 25 percent, or
6 \$12,500, will be paid to the Aggrieved Employees based on their PAGA Period Pay Periods.
7 Settlement at ¶ 3.2.5.

8 As required by Labor Code § 2699(l)(2), concurrent with Plaintiff’s submission of the
9 Settlement Agreement to the Court, they are transmitting it, together with this Motion, to the
10 LWDA. Gaines Decl. at ¶ ____.

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

12 Any settlement of class litigation must be reviewed and approved by the Court. Cal. R. Ct.
13 3.769; Fed. R. Civ. P. 23(e).¹ This is done in two steps: (1) an early (preliminary) review by the
14 trial court, and (2) a final review after notice has been distributed to the Class Members informing
15 them of the terms of the settlement and allowing them to exclude themselves from, participate in
16 and/or object to the settlement. The Manual for Complex Litigation (Third) § 30.41 states:

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

28 Thus, the preliminary approval by the trial court is simply a conditional finding that the
settlement appears to be within the range of acceptable settlements. *See Wershba v. Apple*
Computer (2001) 91 Cal.App.4th 224, 234-35. “The strength of the findings made by a judge at a

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 preliminary hearing or conference concerning a tentative settlement proposal may vary. The court
2 may find that the settlement proposal contains some merit, is within the range of reasonableness
3 required for a settlement offer, or is presumptively valid subject only to any objections that may be
4 raised at a final hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26
5 (4th ed. 2002).

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

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

14 *Id.* at § 11.24.

15 Here, the Parties have reached such an agreement and have submitted the Settlement
16 Agreement herewith which fully sets forth all terms of the agreement reached among the Parties².
17 See Gaines Decl., Exhibit B; Gaines Decl. ¶ 11.

18 **D. 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, 478³ (“many courts have employed this practice in the
26 name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”)

27 \\\

28 ² Class Counsel have entered into a written fee sharing agreement, signed by Plaintiff Pantoja, whereby they will share any attorneys’ fees recovered in the Action 50% payable to The Finkel Firm and 50% payable to Gaines & Gaines, A Professional Law Corporation.

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

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

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

17 The proposed settlement class is ascertainable. The class definition, the size of the class
18 and the means for identifying the members of the class determine whether the class is ascertainable.
19 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
20 are identifiable from Defendants' records. Further, the settlement class is sufficiently numerous to
21 warrant certification. According to Defendants' records, the Class is comprised of approximately
22 621 individuals. Gaines Decl. ¶ 27.

23 b. **Questions of Law or Fact Common to Members of the Settlement**
24 **Class Predominate**

25 The Class Members' claims all stem from a common source: all Class Members allege that
26 Defendants violated the same Labor Code and Wage Order provisions in connection with their
27 employment by Defendants. The same Labor Code and Wage Order violations are alleged on
28 behalf of all persons encompassed in the settlement class, including: (a) all claims for failure to pay
minimum wage and overtime wages; (b) all claims for failure to provide compliant meal and rest
periods and associated premium pay; (c) all claims for the failure to timely pay wages upon
termination; (d) all claims for non-compliant wage statements; and (e) all claims asserted through

1 California Business & Professions Code § 17200 *et seq.* arising out of the Labor Code violations
2 referenced in the Complaint. All members of the Settlement Class seek the same legal remedies
3 under the same state laws, all related to their employment under uniform policies and practices.
4 Under these circumstances, the commonality requirement is satisfied for purposes of certifying the
5 settlement class for settlement. Gaines Decl. ¶ 28.

6 c. **The Proposed Class Representative's Claims are Typical of the**
7 **Class Members' Claims**

8 A class representative's claims are typical when they arise from the same event or course
9 of conduct that gives rise to the claims of the class, and are based on the same legal theory.
10 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, the named Plaintiff and proposed
11 Class Representative Ricardo Pantoja is a former non-exempt employee of Defendant South Bay,
12 placed to work at Defendant Acme, whom, Plaintiff alleges, was not paid all wages due; was not
13 provided with proper uninterrupted (off-the-clock and free of all duties) 30-minute meal periods
14 for every shift he worked which exceeded five hours in duration; was not provided with 10-minute
15 rest breaks as required by California law; was not provided with compliant itemized employee wage
16 statements; and was not paid all wages due at termination. Plaintiff alleges the same claims as
17 those that the members of the Settlement Class would reasonably be expected to bring based on the
18 course of conduct alleged herein. Gaines Decl. ¶ 29.

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

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

26 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
27 evidence to the contrary is offered. *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars*
28 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re*

1 *Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962. Courts do not substitute their
2 judgment for that of the proponents, particularly where, as here, settlement has been reached with
3 the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
4 *Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990)
5 752 F. Supp. 1087, 1093; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored*
6 *Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357, 1368; *Sommers v. Abraham Lincoln*
7 *Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.

8 While the recommendations of counsel proposing the settlement are not conclusive, the
9 Court can properly take them into account, particularly where, as here, such counsel have been
10 involved in informal discovery and negotiations for some period of time, appear to be competent,
11 have experience with this type of litigation, and have exchanged substantial evidence with the
12 opposing party. *See Newberg on Class Actions, supra*, § 11.47; *In re Paine Webber Ltd. P'ships*
13 *Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 (“[s]o long as the integrity of the arm’s-length
14 negotiation process is preserved, however, a strong initial presumption of fairness attaches to the
15 proposed settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of
16 counsel, who are most closely acquainted with the facts of the underlying litigation”); *see* Gaines
17 Decl. ¶¶ 2-5, 18-30.

18 Here, the Parties’ counsel have a great deal of experience in class action litigation and
19 specialize in employment wage and hour matters. Moreover, counsel for all Parties conducted an
20 extensive investigation of the factual allegations involved in this case. The Parties have engaged
21 in a broad exchange of documents, statistics, records and other information. Each side has apprised
22 the other, informally and at a formal mediation, of their respective factual contentions, legal
23 theories and defenses, resulting in extensive arms-length negotiations taking place among the
24 Parties. *See* Gaines Decl. ¶ 2-5, 18-30.

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

26 The Court must make an “independent assessment of the reasonableness of the terms of the
27 settlement” prior to granting preliminary and final approval. *Clark v. American Residential*
28 *Services LLC* (2009) 175 Cal.App.4th 785, 799; *Kullar v. Foot Locker Retail, Inc.* (2008) 168

1 Cal.App.4th 116, 127-28, 130, 133. To do so requires the Parties to submit “basic information
2 about the nature and magnitude of the claims in question and the basis for concluding that the
3 consideration being paid for the release of those claims represents a reasonable compromise.”
4 *Clark, supra*, 175 Cal.App.4th at 800. However, the Court should *not* “attempt to decide the merits
5 of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys.”
6 *Kullar, supra*, 168 Cal.App.4th at 133.

7 Plaintiff alleges that Defendants failed to pay him and other South Bay employees staffed
8 to work at Acme all minimum and overtime wages earned during the course of employment, in
9 violation of Labor Code §§ 510, 558 and 1194, when it rounded down the hours reflected on
10 Plaintiff’s and employees’ time records to pay fewer hours than were actually worked. On a weekly
11 basis, this rounding practice deprived Plaintiff and other employees of significant hours worked
12 and wages due. Defendants time records are rounded; the rounding is not fair and neutral and
13 resulted, over a period of time, in the failure to compensate Class Members properly for all the time
14 they actually worked. Rounding is only permissible if the employer applies a consistent rounding
15 policy that, on average, favors neither overpayment nor underpayment. *AHMC Healthcare, Inc. v.*
16 *Superior Court* (2018) 24 Cal.App.5th 1014. Rounding is widely anticipated to soon be interpreted
17 as entirely prohibited in California. In *Camp v. Home Depot U.S.A.* (2022) 84 Cal.App.5th 638,
18 659-660 (review granted by the California Supreme Court on February 1, 2023, CA Supreme Court
19 Case No. S277518) (“*Camp*”), the Court of Appeal ruled that when “an employer has agreed to pay
20 compensation as measured by a unit of time,” there is no authority that “an employer may round
21 captured work minutes where it results in the failure to pay an employee for all minutes worked.”
22 Here, Defendants utilized a quarter hour rounding system, which is impermissible pursuant to
23 *Camp*. Plaintiff’s expert determined \$59,669 in unpaid wages for unlawful rounding and PAGA
24 civil penalty liability totaling \$478,900. Gaines Decl. ¶ 18.

25 Defendants allegedly failed to permit or authorize Plaintiff and Class Members to take
26 timely 30-minute meal periods for shifts greater than 5 hours in length, in violation of Labor Code
27 §§ 226.7, 512, 558 and IWC Wage Order 7-2001. Labor Code § 512 provides that employers (like
28 Defendants) may not employ an employee for a work period of more than 5 hours without providing

1 a 30-minute meal period starting no later than the end of the fifth hour. Defendants are alleged to
2 have failed to schedule Plaintiff and similarly situated persons in an overlapping manner so as to
3 reasonably ensure that Plaintiff and Class Members could take and/or receive timely, uninterrupted,
4 and duty-free meal periods. As a result, Plaintiff and Class Members were often forced to forego a
5 timely uninterrupted meal period and/or work during their meal period. There were simply not
6 enough employees staffed at any given time to allow Class Members to take their entitled meal
7 periods. Defendants did not produce any written meal (or rest) period policies and it appears that
8 no such policies exist. However, the data analysis speaks for itself. Plaintiff's expert calculated a
9 52.3% meal period violation rate during the Class Period, totaling 94,199 unique meal period
10 violations. As for PAGA penalties, 83.4% of all pay periods exhibited some form of meal period
11 violation. This yields \$1,224,582 in damages and \$843,100 in PAGA civil penalty liability. Gaines
12 Decl. ¶ 19.

13 Defendants also allegedly failed to pay premium wages to Plaintiff and non-exempt
14 employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order
15 No. 7-2001. Plaintiff and non-exempt employees were routinely unable to take a 10-minute rest
16 period for every four (4) hours of work or major fraction thereof, but were not paid correct premium
17 wages of one hour's pay for each missed rest period. Defendants failed and/or refused to implement
18 a relief system by which Plaintiff and Class Members could receive duty-free rest breaks.
19 Furthermore, due to Defendants' insufficient relief system, even if Plaintiff and Class Members did
20 receive their rest breaks, they would typically be late. As with meal periods, there was simply not
21 enough staffing to allow all Class Members to take their rest periods. Plaintiff's expert determined
22 \$2,335,527 in damages based on a 100% violation rate and \$1,010,500 in PAGA civil penalty
23 liability. Gaines Decl. ¶ 20.

24 Defendants also allegedly failed to provide Plaintiff and Class Members with wage
25 statements that fully and accurately itemized the requirements set forth in Labor Code §§ 226(a)
26 and 226.3. Plaintiff and Class Members were not paid all due, as set forth above. As such, the wage
27 statements provided by Defendants derivatively failed to accurately state all gross wages earned, in
28 violation of Labor Code §§ 226(a)(1), total hours worked, in violation of Labor Code §§ 226(a)(2)

1 and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable
2 hourly rates in effect during the pay period and the corresponding number of hours worked, in
3 violation of Labor Code §§ 226(a)(9) and 226.3. Furthermore, as a result of Defendants' rounding
4 practice, Defendants allegedly willfully and intentionally failed to make and/or keep records which
5 accurately reflect the hours worked by Plaintiff and Class Members. As such, the wage statements
6 issued to Plaintiff and other employees failed to set forth the correct total hours worked, in violation
7 of Labor Code § 226(a)(2) and 226.3. This yields \$978,550 in statutory damages and \$1,010,500
8 in PAGA civil penalties. Gaines Decl. ¶ 21.

9 Defendants also allegedly failed to pay Plaintiff and certain Class Members all wages due
10 upon separation of employment, in violation of Labor Code §§ 201-203. Defendants failed to pay
11 Plaintiff and certain Class Members all wages due during the course of employment, as discussed
12 above, and these wages remained due and owing upon separation of employment. This yields
13 \$2,281,413 in waiting time penalties and \$54,900 in PAGA civil penalties. Gaines Decl. ¶ 22.

14 Defendants strongly contend that their policies and practices do not violate any laws. They
15 contend that they provided all required wages in a timely manner. Gaines Decl. ¶ 23.

16 When the costs and risks of non-certification and loss on the merits are considered,
17 Plaintiff's counsel are of the opinion that the settlement reached is clearly a favorable one. There
18 are numerous risks to further litigation, including multiple defenses asserted by Defendants. For
19 example, Defendants contend that a class will not be certified because the claims asserted by
20 Plaintiff vary significantly among the class, defeating commonality and typicality. They contend
21 that Plaintiff's claims are not typical of other Class members. They argue that Class Members
22 waived any meal or rest breaks which otherwise did not comply with the law. They strongly argue
23 that Plaintiff's derivative claims for deficient wage statements and late pay at separation of
24 employment are subject to defenses for willfulness and good faith, which they will successfully
25 assert here, especially considering brand new California Supreme Court case law. They believe
26 that their time rounding policies and practices complied with California law at all times, and that
27 even if they did not, the *Camp* ruling will be resolved in their favor or not be retroactive.
28 Defendants are firm in their conviction and position that they are not liable for any violations of the

1 Labor Code alleged by Plaintiff, and the compromised settlement here is a fair resolution to highly
2 disputed claims. Gaines Decl. ¶¶ 18-24.

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

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

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

13 Moreover, Class Members who do not opt out may attend the final fairness and approval
14 hearing for the purpose of objecting to one or more of the settlement terms set forth in the
15 Settlement Agreement.

16 **III. CONCLUSION**

17 Based on the foregoing, as part of its preliminary approval of the settlement, the Parties
18 request that the Court:

- 19 1. Review the proposed Settlement Agreement setting forth the settlement terms.
- 20 2. Consider whether the proposed settlement preliminarily appears to be fair,
21 reasonable and adequate, and whether the proposed settlement class preliminarily appear to meet
22 the applicable certification criteria.
- 23 3. Appoint Plaintiff Ricardo Pantoja as the Class Representative.
- 24 4. Appoint Daniel F. Gaines, Esq. and Alex P. Katofsky, Esq. of Gaines & Gaines,
25 APLC and Jake D. Finkel of The Finkel Firm as Class Counsel.
- 26 5. Approve Phoenix Settlement Administrators as Settlement Administrator with
27 regard to handling the notice procedure as set forth more particularly in the Settlement Agreement.

6. Enter an Order provisionally approving the proposed settlement class on a non-mandatory basis, approve forms to be distributed to the settlement class, direct notice to be given to the settlement class, and set the following schedule of settlement proceedings:

<u>EVENT</u>	<u>TIMING</u>
Last day for Defendants to deliver to the Settlement Administrator each Class Members' name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods ("Class Data")	15 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail Notice to Class Members	14 calendar days after receipt of the Class Data
Last day for Class Members to submit a written request for exclusion or a workweek dispute to the Settlement Administrator	60 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	60 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	No later than 16 Court days before the final approval hearing.
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	No later than 16 Court days before the final approval hearing.
Final settlement approval hearing	_____, 2024, at _____. The Parties suggest the final approval hearing be held approximately 120 days after this preliminary approval order is signed.

DATED: May 13, 2024

GAINES & GAINES,
A Professional Law Corporation

By: *Daniel F. Gaines*

DANIEL F. GAINES

ALEX P. KATOFISKY

Attorneys for Plaintiff Ricardo Pantoja and Proposed
Class Counsel