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8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF HUMBOLDT**
11

12 MILES STRANG, on behalf of himself and
on behalf of all similarly situated
13 individuals,

14 Plaintiff,

15 v.

16 REDWOODS RURAL HEALTH
CENTER, INCORPORATED, a California
17 corporation, and DOES 1 through 10,
inclusive,

18 Defendants.
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CASE NO: CV2101785

Assigned to the Hon. Timothy Canning, Dept. 4

CLASS ACTION

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

DATE: February 27, 2023

TIME: 10:30 a.m.

DEPT.: 4

Action Filed: December 15, 2021

PLEASE TAKE NOTICE THAT on February 27, 2023 at 10:30 a.m., or as soon thereafter as the matter may be heard, in Department 4 of the above-entitled Court, located at 825 Fifth Street, Eureka, California 95501, Plaintiff Miles Strang (“Plaintiff” or “Strang”) will and hereby does move unopposed for an Order (1) preliminarily finding that the settlement between the parties falls within the range of reasonableness and approving the proposed class action settlement in the above-captioned case, (2) conditionally certifying, for settlement purposes only, a settlement class, (3) approving the appointment of Plaintiff as Class Representative, (4) approving the appointment of Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC as Class Counsel, (5) approving the appointment of CPT Group as settlement administrator, (6) preliminarily approving the allocation of \$10,000 from the Gross Fund Value to settle Plaintiff’s representative claims under the Private Attorneys General Act (Lab. Code §§ 2698 et seq.); (7) approving as to content and form the notice to the settlement class, and directing it be disseminated by the Settlement Administrator; and (8) setting a final fairness and approval hearing.

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

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

This Motion will be based on the Memorandum of Points and Authorities set forth herein, the Class Action Settlement Agreement, 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.

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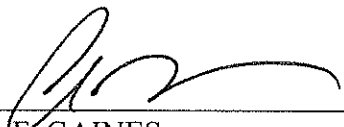
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1 DATED: January 24, 2023

Respectfully submitted,

2 GAINES & GAINES,
3 A Professional Law Corporation

4
5 By: 

6 DANIEL P. GAINES

ALEX P. KATOFSKY

7 Attorneys for Plaintiff Miles Strang and Proposed Class
8 Counsel

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Parties have reached a resolution of this class action and hereby submit their Class Action Settlement Agreement (“Settlement”, “Stipulation” or “Stip.”) for the Court’s approval. The Settlement is made and entered into by and between Plaintiff Miles Strang (“Plaintiff” or “Strang”), individually and on behalf of all others similarly situated, and Defendant Redwoods Rural Health Center, Incorporated (“Defendant”). *See* Declaration of Daniel F. Gaines (“Gaines Decl.”), **Exhibit B**

The settlement occurred as a result of extensive arm’s-length negotiations by experienced counsel with the assistance of a respected mediator with experience in the area of employment class actions. Most importantly, the settlement will result in significant financial benefit to the participating claimants, on terms that are by any measure fair, reasonable and adequate. *See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801-02. The proposed settlement provides for a non-revisionary class settlement in the gross amount of \$250,000 to a settlement class of approximately 178 members, yielding average gross payments of \$1,404 each. As detailed below, the settlement is in the best interests of the class in light of all of the facts and circumstances and the risks and delays of further litigation.

For the foregoing reasons, the Parties respectfully request that the Court: (a) grant preliminary approval of the settlement agreement and preliminarily find that the settlement falls within the range of reasonableness; (b) conditionally grant certification of the proposed Settlement Class, for settlement purposes only; (c) approve the appointment of Plaintiff Miles Strang as Class Representative; (d) approve the appointment of Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC as Class Counsel; (e) approve appointment of the Settlement Administrator; (f) authorize the mailing of the proposed class action notice packet; and (g) schedule a final fairness and approval hearing.

II. BACKGROUND AND PROCEDURAL HISTORY

On December 14, 2021, Plaintiff exhausted the pre-filing requirements of the Labor Code Private Attorneys General Act of 2004 (“PAGA”) (the “PAGA Notice”). Gaines Decl. at ¶ 6.

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

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

14 **III. LEGAL ANALYSIS**

15 **A. The Proposed Settlement Terms**

16 **1. The Settlement Class**

17 The Parties have agreed to a settlement class composed of all persons employed in a non-
18 exempt position by Defendant [Redwoods Rural Health Center Incorporated] in California during
19 the Class Period [December 15, 2017 through October 31, 2022]. Stip. at ¶ 10(a). Defendant
20 represents that this Class contains approximately 178 individuals. Gaines Decl. at ¶ 24.

21 **2. Allocations to be Paid from the Gross Fund Value**

22 The Parties agreed to settle the Action for a Gross Fund Value of Two Hundred Fifty
23 Thousand Dollars (\$250,000) (the "Gross Fund Value"), subject to any increase based on the
24 escalator provision in paragraph 13 of the Settlement. The Gross Fund Value is non-reversionary;
25 no portion of the Gross Fund Value will return to Defendant. The Gross Fund Value plus any
26 applicable employer-side payroll taxes shall be the maximum amount Defendant is required to pay
27 under the Settlement. Stip. at ¶ 2.

28 \\\

1 From the Gross Fund Value, Defendant will not oppose Plaintiff's counsel's application to
2 the Court for up to 35% of the Gross Fund Value for attorneys' fees (or \$87,500 based on the
3 projected Gross Fund Value of \$250,000). Stip. at ¶ 2(d).

4 From the Gross Fund Value, Defendant will not oppose Plaintiff's counsel's application to
5 the Court for up to \$15,000 in reimbursement of litigation costs and expenses. Stip. at ¶ 2(d).

6 From the Gross Fund Value, Defendant will not oppose Plaintiff's counsel's application to
7 the Court for an enhancement award to the Class Representative in the gross amount of \$15,000, in
8 consideration for his efforts in instituting and participating in the Action. Stip. at ¶ 2(a).

9 From the Gross Fund Value, settlement administration fees paid to CPT Group will be no
10 more than \$7,500. Stip. at ¶ 2(b).

11 From the Gross Fund Value, the portion to be allocated for settlement of any and all claims
12 for penalties under the PAGA is \$10,000 (the "PAGA Payment"), 75% of which shall be paid to
13 the LWDA and 25% will be distributed to the Net GFV for distribution to Aggrieved Employees
14 on a pro rata basis. PAGA Members shall receive their portion of the PAGA Payment and release
15 the PAGA claims alleged regardless of their decision to opt-out of the class settlement. Stip. at ¶
16 2(c).

17 The Net GFV shall consist of the GFV less the amounts of attorneys' fees and costs, costs
18 of administration, PAGA allocation to the LWDA, and enhancement award. All Participating Class
19 Members and Aggrieved Employees will receive a portion of the Net GFV on a pro rata basis based
20 on the number of workweeks they worked during the Class Period and/or PAGA Period
21 ("Individual Settlement Payment"). Specifically, (1) the Administrator will calculate the total
22 number of Workweeks worked by each Class Member during the Class Period and the aggregate
23 total number of Workweeks worked by all Class Members during the Class Period; (2) The
24 Administrator will also calculate the total number of PAGA Workweeks worked by each Aggrieved
25 Employee during the PAGA Period and the aggregate total number of PAGA Workweeks worked
26 by all Aggrieved Employees during the PAGA Period; (3) the Administrator will use the following
27 formula to calculate each Participating Class Member's Individual Settlement Payment: After
28 deducting \$2,500, or any other amount approved by the Court that is 25% of the PAGA Penalties,

1 the Net GFV will be divided by the aggregate total number of Workweeks of all Participating Class
2 Members worked during the Class Period, resulting in the “Workweek Value.” Each Participating
3 Class Member’s Individual Settlement Payment will be calculated by multiplying each individual
4 Participating Class Member’s total number of Workweeks by the Workweek Value. For purposes
5 of payment, workweeks worked shall be defined as any regular workweeks in which the
6 Participating Class Member actually worked one shift; (4) The Administrator will use the following
7 formula to calculate each Aggrieved Employee’s PAGA Penalty Payment from the Net GFV: The
8 \$2,500 amount, or other amount approved by the Court that is 25% of the PAGA Penalties, will be
9 divided by the aggregate total number of PAGA Workweeks of all Aggrieved Employees worked
10 during the PAGA Period, resulting in the “PAGA Period Workweek Value.” Each Aggrieved
11 Employee’s Individual PAGA Penalty Payment will be calculated by multiplying each individual
12 Aggrieved Employee’s total number of PAGA Workweeks worked during the PAGA Period by the
13 PAGA Period Workweek Value; (5) If a Class Member is both a Participating Class Member and
14 an Aggrieved Employee, the Administrator will add that Class Member’s Individual Settlement
15 Payment and Individual PAGA Penalty Payment to obtain that Class Member’s Individual Total
16 Settlement Payment; (6) The Individual Settlement Payment will be reduced by the Employee’s
17 Share of Payroll Taxes with respect to the wage portion of the Individual Settlement Payment. Stip.
18 at ¶ 2(e).

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

20 Pursuant to PAGA, the Parties have agreed that \$10,000 of the Gross Fund Value will be
21 allocated to settle the claims brought under Labor Code § 2699 et seq. Pursuant to Labor Code
22 § 2699(i), “civil penalties recovered by aggrieved employees shall be distributed as follows: 75
23 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved
24 employees.” As such, 75 percent of the apportioned PAGA settlement amount – or \$7,500 – shall
25 be payable to the LWDA. The remaining 25 percent, or \$2,500, will be distributed to the Net GFV
26 for distribution to Aggrieved Employees on a pro rata basis, who shall receive their portion of the
27 PAGA Payment and release the PAGA claims alleged regardless of their decision to opt-out of the
28 class settlement. Stip. at ¶ 2(c).

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

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

7 Approval of class action settlements involves a two-step process.
8 First, counsel submit the proposed terms of settlement and the court
9 makes a preliminary fairness evaluation. If the preliminary
10 evaluation of the proposed settlement does not disclose grounds to
11 doubt its fairness or other obvious deficiencies, such as unduly
12 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.

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

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

23 When the parties to an action reach a monetary settlement, they will
24 usually prepare and execute a joint stipulation of settlement, which
25 is submitted to the court for preliminary approval. The stipulation
26 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.

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, 145-146. Where appropriate, therefore,
Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

1 *Id.* at § 11.24.

2 Here, the Parties have reached such an agreement and have submitted the Stipulation
3 herewith. *See* Gaines Decl., **Exhibit B**; Gaines Decl. ¶ 12.

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

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

13 The strength of the findings made by a judge at a preliminary hearing
14 or conference concerning a tentative settlement proposal . . . may be
15 set out in conditional orders granting tentative approval to the various
16 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.

17 4 *Newberg on Class Actions*, at § 11.26.

18 As required by Labor Code § 2699(l)(2), concurrent with Plaintiff’s submission of the
19 Stipulation to the Court, his counsel is transmitting it, together with this Motion, to the LWDA.
20 Gaines Decl. at ¶ 29.

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

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

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

1 Settlement Class meets all requirements for certification, as discussed below.

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

3 The proposed Settlement Class is ascertainable. The class definition, the size of the Class,
4 and the means for identifying the members of the class determine whether the class is ascertainable.
5 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
6 are identifiable from Defendant's employment and payroll records. Further, the Settlement Class
7 is sufficiently numerous to warrant certification. According to Defendant's records, the Class
8 comprises approximately 178 employees. Gaines Decl. ¶ 25.

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

11 The Class Members' claims all stem from a common source: members of the Settlement
12 Class allege that Defendant violated the same Labor Code provisions in connection with their
13 employment. All members of the Class seek the same relief under the same California laws (related
14 to unpaid meal and rest period premiums, unreimbursed business expenses, inaccurate or
15 incomplete wage statements, failure to timely pay wages due upon separation, and derivative
16 claims). Under these circumstances, the commonality requirement is satisfied for purposes of
17 certifying the Settlement Class for settlement purposes. Gaines Decl. ¶ 26.

18 c. **The Proposed Class Representative's Claims Are Typical of the**
19 **Class Members' Claims**

20 A class representative's claims are typical when they arise from the same event or course
21 of conduct that gives rise to the claims of the class, and are based on the same legal theory.
22 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, named Plaintiff and proposed
23 Class Representative Brandon Velazquez is a former non-exempt employee who worked for
24 Defendant in the State of California during the Class Period. He contends that Defendant failed to
25 provide meal and rest periods, failed to reimburse business expenses, failed to comply with itemized
26 employee wage statement provisions, and failed to timely pay wages at the separation of
27 employment, in violation of Labor Code §§ 201-203, 226, 226.7, 512, 558, 2698, 2699, and 2802
28 among other Labor Code provisions. He has the same claims as those that the members of the

1 Settlement Class would reasonably be expected to bring based on the course of conduct alleged
2 herein. Gaines Decl. ¶ 27.

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. ¶ 28. 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

1 Decl. ¶¶ 2-5, 11-23.

2 Here, the Parties' counsel have a great deal of experience in class action litigation and
3 specialize in employment wage and hour matters. Moreover, counsel for both Parties conducted
4 an extensive investigation of the factual allegations involved in this case. The Parties have engaged
5 in a broad exchange of documents, data, records and other information. Each side has apprised the
6 other, informally and at a formal mediation, of their respective factual contentions, legal theories
7 and defenses, resulting in extensive arm's-length negotiations taking place among the Parties. *See*
8 *Gaines Decl. ¶¶ 2-5, 11-23.*

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

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

19 Plaintiff alleges that Defendant failed to pay its employees premium wages for missed,
20 denied and unauthorized rest periods in violation of Labor Code § 226.7 and IWC Wage Order 5-
21 2001. Plaintiff and other Class Members contend that they were denied, and therefore unable to
22 take, 10-minute on-the-clock rest periods for every four hours of work or major fraction thereof,
23 but were not paid premium wages of one hour's pay for each missed, denied and unauthorized rest
24 period. When they were able to take a rest period, they were oftentimes on-duty, late, or cut short.
25 Plaintiff and Class Members also allege that they were also unable to leave the work premises
26 during their rest periods. For each workday on which Plaintiff and Class Members were denied a
27 rest period and/or were required to remain on the premises, they must be paid a one-hour premium
28 as additional wages beyond earnings for actual hours worked; Plaintiff argues that these rest period

1 premiums went unpaid. Plaintiff calculates the classwide liability for this claim at \$527,760 and
2 PAGA civil penalty liability totaling \$115,600, all based on an estimated 50% violation rate.
3 Gaines Decl. ¶ 13.

4 Plaintiff further contends that Defendant failed to permit or authorize Plaintiff and Class
5 Members to take timely 30-minute meal periods for shifts greater than 5 hours in length, in violation
6 of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 5-2001. Labor Code § 512 provides
7 that employers may not employ an employee for a work period of more than 5 hours without
8 providing a 30-minute meal period starting no later than the end of the fifth hour. Plaintiff and Class
9 Members allege that they were routinely unable to take a proper meal period when they worked
10 shifts in excess of 5 hours and a second meal period when they worked shifts in excess of 10 hours.
11 When they were able to take a meal period, it was routinely late (provided after the fifth hour of
12 work) or they were required to attend “working lunches,” which is not a legally compliant meal
13 period at all. Based on an analysis of a wage and time data provided by Defendant through informal
14 discovery and Plaintiff’s experience, Plaintiff has ascertained a meal period violation rate of 73.6%
15 for all meal period violations and a violation rate of 98.7% for shifts between 10 and 12 hours.
16 Defendant paid only 12.5% of meal period premiums allegedly owed. Plaintiff calculates classwide
17 liability on this claim at \$320,704 and PAGA civil penalty liability for this claim at \$170,500 based
18 on Plaintiff’s expert’s analysis of a sampling of Class Members’ time clock records. Gaines Decl.
19 ¶ 14.

20 Plaintiff also alleges that Plaintiff and Class Members were required to incur expenses in
21 the performance of their job duties for which they are not fully reimbursed, in violation of Labor
22 Code § 2802. Plaintiff and Class Members were required to use their personal cellphones and
23 vehicles, but argue that they were not fully reimbursed by Defendant for these expenses. Plaintiff
24 calculates \$247,762 in unreimbursed expenses (based on \$85.20 per month - \$30 in phone expenses
25 and \$55.20 in mileage per employee) and PAGA civil penalty liability for this claim at \$231,800.
26 Gaines Decl. ¶ 15.

27 Plaintiff contends that Defendant failed to issue Plaintiff and Class Members accurately
28 itemized wage statements. Specifically, as detailed above, Plaintiff and Class Members were not

1 paid all premium wages due. As a result, the wage statements issued by Defendant to Plaintiff and
2 those Class Members fail to accurately state all gross wages earned, in violation of Labor Code §
3 226(a)(1), and net wages earned, in violation of Labor Code § 226(a)(5). Plaintiff calculates the
4 statutory penalty liability for this claim at up to \$214,650 and PAGA civil penalty liability for this
5 claim at up to \$231,800. Gaines Decl. ¶ 16.

6 Finally, Plaintiff sought penalties for waiting time (Labor Code § 203) predicated on all the
7 unpaid wage claims alleged in the Action. The value of these penalties may approach close to
8 \$651,930. These claims also required a significant compromise at this juncture of the litigation,
9 and the compromise reached is fair given the risk of loss on the merits and as to class certification
10 as to the unpaid wage claims from which they derive. Gaines Decl. ¶ 17.

11 The discount negotiated for settlement here is a reasonable compromise, particularly
12 considering that the risk of obtaining class certification on all or any of Plaintiff's claims involves
13 a 50% or higher hurdle, especially with respect to the rest period claims, to which Defendant
14 maintains strong arguments to defeat class certification (in addition to multiple defenses on the
15 merits of the claims). Class certification is a substantial risk in any class action case. Here, while
16 Plaintiff maintains that the requirements of class certification are met, Defendant proffers various
17 arguments why class treatment is not appropriate, including but not limited to that individualized
18 inquiries among class members predominate over common ones. If Defendant was to defeat
19 Plaintiff's class certification motion, there would be no class wide relief whatsoever, and most
20 Class Members would likely not file individual claims. Gaines Decl. ¶ 18.

21 Plaintiff also faced the risk of a loss on the merits on his claims. It is very possible that the
22 Court would agree with Defendant's position that its meal and rest period practices complied with
23 the requirements of California law or could not be certified. In such a case, the value of the majority
24 of Plaintiff's claims would be zero. Gaines Decl. ¶ 19.

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

1 Defendant strongly contends that its policies and practices do not violate any laws. It
2 contends that it properly provided for all meal and rest periods and fully compensated its employees
3 for all time worked. It further contends that the wage statements it provides to its employees are
4 fully compliant with California law. Gaines Decl. ¶ 21.

5 When the costs and risks of non-certification and loss on the merits are considered,
6 Plaintiff's counsel is of the opinion that the settlement reached is clearly a favorable one. Gaines
7 Decl. ¶¶ 11-22.

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

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

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

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

21 **IV. CONCLUSION**

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

- 24 1. Preliminarily finding that the settlement falls within the range of reasonableness and
25 approving the proposed settlement;
- 26 2. Conditionally certifying, for settlement purposes only, the Settlement Class;
- 27 3. Appointing Plaintiff Miles Strang as Class Representative;

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

5. Approving CPT Group as Settlement Administrator;

6. Preliminarily approving the allocation of \$10,000 from the Gross Fund Value 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%) will be distributed to the Net GFV for distribution to Aggrieved Employees on a pro rata basis, who shall receive their portion of the PAGA Payment and release the PAGA claims alleged regardless of their decision to opt-out of the class settlement;

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 ("Class List") and all information necessary to locate Class Members, process payments, and process claims for payments, including, but not limited to, Class Member workweeks or dates of employment during the Class Period, last known addresses, social security numbers, and any other information required to effectuate the Agreement ("Class List")	10 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail Class Notice to Class Members	10 calendar days after Settlement Administrator's receipt of Class List
Last day for Class Members to submit a written request for exclusion to the Settlement Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members
Last day for Class Members to submit an Objection to the Settlement Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members
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

<u>EVENT</u>	<u>TIMING</u>
Last day for Class Counsel to file with the Court and serve declaration by Settlement Administrator specifying the due diligence undertaken with regard to the mailing of the Notice	10 calendar days before the final settlement approval hearing date
Final settlement approval hearing	_____, 2023, at _____ .m. (approximately 120 days after entry of this Order)

DATED: January 24, 2023

Respectfully submitted,

GAINES & GAINES,
A Professional Law Corporation

By: 

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Counsel