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8
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF TULARE**
12

13 ADRIANA MUNOZ, on behalf of herself
and all "aggrieved employees" pursuant to
14 Labor Code § 2698 et seq.,

15 Plaintiffs,

16 v.

17 SONOCO PLASTICS, INC., a Delaware
corporation, PENINSULA PACKAGING,
18 LLC, a California limited liability
company, and DOES 1 through 10,
19 inclusive,

20 Defendants.
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CASE NO: VCU292220

Assigned to Hon. John P. Bianco, Dept. 2

CLASS ACTION

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

Date: October 23, 2023

Time: 8:30 a.m.

Dept.: 2

Complaint Filed: June 23, 2022

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15 Attorneys for Plaintiff Samuel Aguirre

16 and Proposed Class Counsel

1 **PLEASE TAKE NOTICE THAT** on October 23, 2023 at 8:30 a.m., or as soon thereafter
2 as the matter may be heard, in Department 2 of the above-entitled Court, located at 221 S. Mooney
3 Blvd., Visalia, California 93291, Plaintiffs Adrianna Munoz and Samuel Aguirre (together,
4 “Plaintiffs”) will and hereby do move unopposed for an Order (1) preliminarily finding that the
5 settlement between the parties falls within the range of reasonableness and approving the proposed
6 class action settlement in the above-captioned case, (2) conditionally certifying, for settlement
7 purposes only, a settlement class, (3) approving the appointment of Plaintiffs Adrianna Munoz and
8 Samuel Aguirre as Class Representatives, (4) approving the appointment of Gaines & Gaines,
9 APLC, Falakassa Law, P.C., and Bokhour Law Group, P.C. as Class Counsel, (5) approving the
10 appointment of Phoenix Settlement Administrators as settlement administrator, (6) preliminarily
11 approving the allocation of \$20,000 from the Maximum Settlement Amount to settle Plaintiffs’
12 representative claims under the Private Attorneys General Act (Lab. Code §§ 2698 et seq.), of
13 which seventy-five percent (75%) will be paid to the Labor and Workforce Development Agency
14 and twenty-five percent (25%) will be distributed proportionately among all Aggrieved Employees
15 ; (7) approving as to content and form the notice to the settlement class, and directing it be
16 disseminated by the Settlement Administrator; (8) setting a final fairness and approval hearing; and
17 (9) granting Plaintiffs leave to file a Second Amended Complaint.

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 a 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.

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1 This Motion will be based on the Memorandum of Points and Authorities set forth herein,
2 the Joint Stipulation of Class Action Settlement and Release Between Plaintiffs, on Behalf of
3 Themselves and All Others Similarly Situated and Aggrieved, and Defendants, the Declarations of
4 Daniel F. Gaines, Mehrdad Bokhour, and Joshua S. Falakassa, such evidence or oral argument as
5 may be presented at the hearing, and on the complete record and file herein.

6
7 DATED: August 30, 2023

Respectfully submitted,

8 GAINES & GAINES,
9 A Professional Law Corporation

10
11 By: 

DANIEL F. GAINES
ALEX P. KATOFISKY
Attorneys for Plaintiff Adriana Munoz
and Proposed Class Counsel

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. BACKGROUND AND PROCEDURAL HISTORY	2
III. INVESTIGATION AND SETTLEMENT DISCUSSIONS.....	3
IV. LEGAL ANALYSIS.....	4
A. The Proposed Settlement Terms	4
1. The Settlement Class.....	4
2. Allocations to be Paid from the Maximum Settlement Amount.....	4
3. Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)	6
B. Two-Step Approval Process.....	6
C. Procedures for Settlement Before Class Certification	7
1. The Settlement Class Should Be Certified for Settlement Purposes.....	8
a. The Settlement Class is Ascertainable	8
b. Questions of Law or Fact Common to Members of the Settlement Class Predominate.....	8
c. The Proposed Class Representative's Claims are Typical of the Class Members' Claims	9
D. The Settlement Is Fair and Reasonable and Not the Result of Fraud or Collusion	9
1. The Settlement Falls Within The "Ballpark" of Reasonableness	10
2. Despite the Asserted Fairness of the Settlement Terms, Class Members May Request Exclusion From, Or Object To, The Settlement.....	13
E. Plaintiffs Should Be Permitted to File Their Second Amended Complaint.....	14
V. CONCLUSION	15

TABLE OF AUTHORITIES

	<u>Page</u>
CASES	
<i>Amchem Products, Inc. v. Windsor</i> (1987) 521 U.S. 591	8
<i>Clark v. American Residential Services LLC</i> (2009) 175 Cal.App.4th 785.....	10
<i>Classen v. Weller</i> (1983) 145 Cal. App. 3d 27.....	9
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal. App. 4th 1794.....	1, 7, 8
<i>Green v. Obledo</i> (1981) 29 Cal.3d 126.....	6
<i>Hammon v. Barry</i> (D.D.C. 1990) 752 F. Supp. 1087	9
<i>In re Armored Car Antitrust Litig.</i> (N.D. Ga. 1979) 472 F. Supp. 1357	10
<i>In re Baldwin-United Corp.</i> (S.D.N.Y. 1984) 105 F.R.D. 475	7
<i>In re Chicken Antitrust Litig.</i> (N.D. Ga. 1980) 560 F. Supp. 957	9
<i>In re Paine Webber Ltd. P'ships Litig.</i> (S.D.N.Y. 1997) 171 F.R.D. 104	10
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	10
<i>Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.</i> (7th Cir. 1987) 834 F.2d 677.....	9
<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> (C.D. Cal. 2004) 221 F.R.D. 523	9
<i>Priddy v. Edelman</i> (6th Cir. 1989) 883 F.2d 438.....	9
<i>Reyes v. Board of Supervisors</i> (1987) 196 Cal. App. 3d 1263.....	8

TABLE OF AUTHORITIES
(continued)

Page

<i>Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n</i> (E.D. Pa. 1978).....	10
<i>Steinberg v. Carey</i> (S.D.N.Y. 1979) 470 F. Supp. 471	9
<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800.....	6
<i>Wershba v. Apple Computer</i> (2001) 91 Cal.App.4th 224.....	6, 7

STATUTES

Cal. Bus. & Prof. Code § 17200.....	2
Cal. Labor Code §§ 201-203	2, 13
Cal. Labor Code § 226	2, 9, 13
Cal. Labor Code § 226.3	2, 9
Cal. Labor Code § 226.7	2
Cal. Labor Code § 510	9, 11, 12
Cal. Labor Code § 512	2, 10, 11
Cal. Labor Code § 558	9, 11, 12
Cal. Labor Code § 1194	9, 11, 12
Cal. Labor Code § 2698	2, 9
Cal. Labor Code § 2699	2, 6, 8

RULES AND REGULATIONS

Cal. R. Ct. 3.769.....	2, 6, 7
Fed. R. Civ. P. 23(e).....	6

OTHER AUTHORITIES

4 Alba Conte & Herbert B. Newberg, <i>Newberg on Class Actions</i> (4th ed. 2002)	7, 8
Manual for Complex Litigation (Third) § 30.41	6

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 of Class Action Settlement and Release Between Plaintiffs, on Behalf of Themselves
5 and All Others Similarly Situated and Aggrieved, and Defendants ("Settlement", "Stipulation" or
6 "Stip.") for the Court's approval. The Settlement is made and entered into by and between Plaintiffs
7 Adrianna Munoz and Samuel Aguirre, individually and on behalf of all others similarly situated,
8 and Defendants Sonoco Plastics, Inc., a Delaware corporation, and Peninsula Packaging, LLC, a
9 California limited liability company (together, "Defendants").

10 The settlement occurred as a result of extensive arm's-length negotiations by experienced
11 counsel with the assistance of a respected mediator with experience in the area of employment class
12 actions. Most importantly, the settlement will result in significant financial benefit to the
13 participating claimants, on terms that are by any measure fair, reasonable and adequate. *See*
14 *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801-02. The proposed settlement provides
15 for a non-revisionary class settlement in the gross amount of \$660,000 to a settlement class of
16 approximately 925 Class Members, yielding gross payments of nearly \$714 each. 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: (a) grant
20 preliminary approval of the settlement agreement and preliminarily find that the settlement falls
21 within the range of reasonableness; (b) conditionally grant certification of the proposed Settlement
22 Class, for settlement purposes only; (c) approve the appointment of Plaintiffs Adrianna Munoz and
23 Samuel Aguirre as Class Representatives; (d) approve the appointment of Gaines & Gaines, APLC,
24 Falakassa Law, P.C., and Bokhour Law Group, P.C. as Class Counsel; (e) approve appointment of
25 Phoenix Settlement Administrators as the Settlement Administrator; (f) authorize the mailing of
26 the proposed class action notice packet; (g) schedule a final fairness and approval hearing; and (9)
27 grant Plaintiffs leave to file a Second Amended Complaint.

28 \\\

1 **II. BACKGROUND AND PROCEDURAL HISTORY**

2 On April 8, 2022, Plaintiff Munoz exhausted administrative remedies pursuant to California
3 Labor Code § 2699, *et seq.* by providing notice of her claims to the Labor and Workforce
4 Development Agency (“LWDA”) and Defendants. Declaration of Daniel F. Gaines (“Gaines
5 Decl.”) at ¶ 6.

6 On June 23, 2022, Plaintiff Munoz filed a PAGA Complaint against Defendants entitled
7 *Adriana Munoz, individually and on behalf of all similarly situated individuals, on behalf of the*
8 *general public, and all “aggrieved employees” pursuant to Labor Code § 2698 et seq, v. SONOCO*
9 *PLASTICS, INC., a Delaware corporation, PENINSULA PACKAGING, LLC, a California limited*
10 *liability company, and Does 1 through 10, inclusive, Tulare County Superior Court Case No.*
11 *VCU292220, alleging: (1) failure to provide rest periods or compensation in lieu thereof (Labor*
12 *Code § 226.7; IWC Wage Order 1-2001); (2) failure to provide meal periods or compensation in*
13 *lieu thereof (Labor Code §§ 226.7, 512; IWC Wage Order 1-2001); (3) knowing and intentional*
14 *failure to comply with itemized employee wage statement provisions (Labor Code § 226(a), (e));*
15 *(4) failure to pay wages due at separation of employment (Labor Code §§ 201-203); (5) violation*
16 *of Business and Professions Code § 17200; and (6) penalties pursuant to labor code § 2699(f) for*
17 *violations of labor code §§ 201, 202, 226(a), 226.7, and 512 and pursuant to Labor Code § 2699(a)*
18 *for violations of Labor Code §§ 226.3 and 558. Gaines Decl. at ¶ 7.*

19 On August 19, 2022, Plaintiff Munoz filed a First Amended Class and Representative
20 Action Complaint that added standalone class action allegations. Gaines Decl. at ¶ 8.

21 On September 30, 2022, Plaintiff Aguirre exhausted administrative remedies pursuant to
22 California Labor Code § 2699, *et seq.* by providing notice of his claims to the LWDA and
23 Defendants. On October 3, 2022, Plaintiff Aguirre filed a PAGA Complaint against Defendants
24 entitled *Samuel Aguirre, on behalf of himself and all others similarly situated, v. SONOCO*
25 *PLASTICS, INC.; PENINSULA PACKAGING, LLC; and Does 1 through 50, inclusive, Tulare*
26 *County Superior Court Case No. VCU293593, alleging: (1) failure to pay all minimum wages; (2)*
27 *failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) failure*
28 *to pay all sick time; (6) wage statement violations; (7) waiting time penalties; (8) failure to*

1 reimburse necessary business expenses; (9) unfair competition; and (10) penalties under the Private
2 Attorneys General Act (the “Aguirre Action”).

3 In connection with this Settlement, and as part of this Motion for Preliminary Approval,
4 Plaintiffs seek leave of Court to file a Second Amended Complaint, in the form attached to the
5 Settlement as Exhibit B, which alleges all claims in the Munoz and Aguirre actions (together, the
6 “Actions”). Upon final approval of this Settlement, counsel for Aguirre will cause the Aguirre
7 Action to be dismissed with prejudice. Gaines Decl. at ¶ 9.

8 Defendants deny all material allegations set forth in the Munoz and Aguirre actions.
9 Notwithstanding, in the interest of avoiding further litigation, the Parties desire to fully and finally
10 settle all actual or potential claims by the putative Class Members. Gaines Decl. at ¶ 10.

11 **III. INVESTIGATION AND SETTLEMENT DISCUSSIONS**

12 Plaintiffs’ counsel in the Actions diligently investigated the proposed putative Class
13 Members’ claims against Defendants, including any and all applicable defenses and the applicable
14 law. The investigation included, *inter alia*, the exchange of information pursuant to informal
15 discovery methods, review of numerous corporate policies and practices, and review and analysis
16 of voluminous time and payroll records. Gaines Decl. at ¶ 11.

17 On May 26, 2023, the Parties participated in a mediation before Steve Pearl, Esq., a highly
18 respected mediator of wage and hour class actions. With the assistance of the mediator, the Parties
19 reached agreement on the principal terms of a class and PAGA action settlement that would fully
20 resolve the Action. Gaines Decl. at ¶ 12.

21 The settlement discussions before and during the mediation were conducted at arm’s length
22 and the settlement is the result of an informed and detailed analysis of Defendants’ alleged potential
23 liability in relation to the costs and risks associated with continued litigation. Gaines Decl. at ¶ 13.

24 Based on the data and documents produced pursuant to informal discovery, as well as Class
25 Counsel’s own independent investigation and evaluation, and the mediator’s efforts, Class Counsel
26 believe that the settlement with Defendants for the consideration and on the terms set forth in this
27 Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class
28 Members in light of all known facts and circumstances, including the risk of significant delay and

1 uncertainty associated with litigation, various defenses asserted by Defendants, the sharply
2 contested legal and factual issues involved, and numerous appellate issues. Gaines Decl. at ¶ 14.

3 This Settlement Agreement is made and entered into by and between Plaintiffs, individually
4 and on behalf of all others similarly situated and aggrieved, on the one hand, and Defendants, on
5 the other hand, and is subject to the terms and conditions hereof, and to the Court's approval. The
6 Parties expressly acknowledge that the Settlement Agreement is entered into solely for the purpose
7 of compromising significantly disputed claims and that nothing herein is an admission of any
8 liability or wrongdoing by Defendants. If, for any reason the Settlement Agreement is not
9 approved, it will be of no force or effect, and the Parties shall be returned to their original respective
10 positions. Gaines Decl. at ¶ 15.

11 **IV. LEGAL ANALYSIS**

12 **A. The Proposed Settlement Terms**

13 **1. The Settlement Class**

14 The Parties have agreed to a settlement class composed of all persons employed in
15 California by Defendants, Sonoco Plastics, Inc. and Peninsula Packaging, LLC, as current or former
16 hourly-paid or non-exempt employees at any time during the period between June 23, 2018, through
17 May 26, 2023. Stip. at ¶ 15.

18 The Aggrieved Employees are defined all Class Members employed by Defendants during
19 the PAGA Period (from April 8, 2021 through May 26, 2023). Stip. at ¶ 11.

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

21 12. The Parties agree to settle this Action for a Maximum Settlement Amount of
22 \$660,000 (the "Maximum Settlement Amount"). The Maximum Settlement Amount is to be paid
23 by Defendants, jointly and severally, in full satisfaction of all claims arising from the Action, and
24 includes all Individual Settlement Payments to Participating Class Members, the Class
25 Representatives' Enhancement Payments, Settlement Administration Costs to the Settlement
26 Administrator, the PAGA Settlement Amount, and the Attorneys' Fees and Costs to Class
27 Counsel. The Maximum Settlement Amount does not include Defendants' share of employer
28 payroll taxes. This Maximum Settlement Amount has been agreed to by Plaintiffs and Defendants

1 based on the aggregation of the agreed-upon settlement value of individual claims. In no event
2 will Defendants be liable for more than the Maximum Settlement Amount except as otherwise
3 explicitly set forth herein. The Maximum Settlement Amount is non-reversionary. Stip. at ¶ 24.

4 From the Maximum Settlement Amount, Defendants will not oppose Plaintiffs' counsel's
5 application to the Court for up to 35% of the Maximum Settlement Amount for attorneys' fees
6 (projected to be \$231,000). Stip. at ¶ 12.

7 From the Maximum Settlement Amount, Defendants will not oppose Plaintiffs' counsel's
8 application to the Court for up to \$15,000 in reimbursement of litigation costs and expenses. Stip.
9 at ¶ 12.

10 From the Maximum Settlement Amount, Defendants will not oppose Plaintiffs' counsel's
11 application to the Court for Enhancement Payments to the Plaintiffs Adriana Munoz and Samuel
12 Aguirre in the gross amount of \$15,000 each (for a total of \$30,000), in consideration for their
13 efforts in instituting and participating in the Action and in exchange for the general release of all
14 claims by Ms. Munoz and Mr. Aguirre. Stip. at ¶ 18.

15 From the Maximum Settlement Amount, settlement administration fees paid to Phoenix
16 Settlement Administrators will be no more than \$12,000. Stip. at ¶ 37.

17 From the Maximum Settlement Amount, the portion to be allocated for settlement of any
18 and all claims for penalties under the PAGA is \$20,000 ("PAGA Payment"), 75% (\$15,000) shall
19 be paid directly to the LWDA and 25% (\$5,000) will be distributed proportionately among all
20 Aggrieved Employees based on their Compensable Workweeks during the PAGA Period. Stip.
21 at ¶ 23.

22 The Net Settlement Amount means the portion of the Maximum Settlement Amount
23 remaining after deduction of the approved Class Representatives' Enhancement Payments,
24 Settlement Administration Costs, PAGA Settlement Amount, and Attorneys' Fees and Costs. The
25 Net Settlement Amount will be distributed to Participating Class Members. Stip. at ¶ 25.

26 Individual Settlement Payment means each Participating Class Member's share of the Net
27 Settlement Amount, to be distributed to the Class Members who do not submit a valid Request for
28 Exclusion. Stip. at ¶ 22.

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

2 Pursuant to PAGA, the Parties have agreed that \$20,000 of the Maximum Settlement
3 Amount will be allocated to settle the claims brought under Labor Code § 2699 et seq. Pursuant to
4 Labor Code § 2699(i), “civil penalties recovered by aggrieved employees shall be distributed as
5 follows: 75 percent to the Labor and Workforce Development Agency...and 25 percent to the
6 aggrieved employees.” As such, 75% of the apportioned PAGA settlement amount – or \$15,000 –
7 shall be paid directly to the LWDA, and 25%, i.e., \$5,000, will be distributed proportionately
8 among all Aggrieved Employees based on their Compensable Workweeks during the PAGA
9 Period. Stip. at ¶ 23.

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

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

16 Approval of class action settlements involves a two-step process.
17 First, counsel submit the proposed terms of settlement and the court
18 makes a preliminary fairness evaluation. If the preliminary
19 evaluation of the proposed settlement does not disclose grounds to
20 doubt its fairness or other obvious deficiencies, such as unduly
21 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.

22 Thus, the preliminary approval by the trial court is simply a conditional finding that the
23 settlement appears to be within the range of acceptable settlements. *See Wershba v. Apple*
24 *Computer* (2001) 91 Cal.App.4th 224, 234-35. “The strength of the findings made by a judge at a
25 preliminary hearing or conference concerning a tentative settlement proposal may vary. The court

26

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,
 Plaintiffs cite Federal Rule 23 and federal case law in addition to California law.

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

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

7
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
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.

11 *Id.* at § 11.24.

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

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

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

23 The strength of the findings made by a judge at a preliminary hearing
24 or conference concerning a tentative settlement proposal . . . may be
25 set out in conditional orders granting tentative approval to the various
26 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.

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

2 As required by Labor Code § 2699(1)(2), concurrent with Plaintiffs' submission of the
3 Stipulation to the Court, their counsel is transmitting it, together with this Motion, to the LWDA.
4 Gaines Decl. at ¶ 32.

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

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

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

13 The proposed Settlement Class is ascertainable. The class definition, the size of the Class,
14 and the means for identifying the members of the class determine whether the class is ascertainable.
15 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
16 are identifiable from Defendant's employment and payroll records. Further, the Settlement Class
17 is sufficiently numerous to warrant certification. According to Defendant's records, the Class
18 comprises approximately 925 members. Gaines Decl. ¶ 28.

19 b. **Questions of Law or Fact Common to Members of the Settlement**
20 **Class Predominate**

21 The Class Members' claims all stem from a common source: members of the Settlement
22 Class allege that Defendant violated the same Labor Code provisions in connection with their
23 employment in non-exempt positions. All members of the Class seek the same relief under the
24 same California laws (related to unpaid wages, unpaid meal and rest period premiums, inaccurate
25 or incomplete wage statements, failure to timely pay wages due upon separation, and derivative
26 claims). Under these circumstances, the commonality requirement is satisfied for purposes of
27 certifying the Settlement Class for settlement purposes. Gaines Decl. ¶ 29.

c. **The Proposed Class Representatives' Claims Are Typical of the Class Members' Claims**

A class representative's claims are typical when they arise from the same event or course of conduct that gives rise to the claims of the class, and are based on the same legal theory. *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, named Plaintiffs and proposed Class Representatives are former non-exempt employees who worked for Defendant in the State of California during the Class Period. They contend that Defendant failed to pay all wages, failed to provide meal and rest periods, failed to comply with itemized employee wage statement provisions, and failed to timely pay wages at the separation of employment, in violation of Labor Code §§ 201, 202, 226(a), 226.3, 226.7, 246, 256, 510, 512, 516, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, and 2699, among other Labor Code provisions. They have the same claims as those that the members of the Settlement Class would reasonably be expected to bring based on the course of conduct alleged herein. Gaines Decl. ¶ 30.

Plaintiffs have also demonstrated that they will aggressively and competently assert the interests of the proposed Settlement Class; they have taken active roles in the litigation and have no apparent conflicts with other class members. Gaines Decl. ¶ 31. Furthermore, Plaintiffs have retained competent counsel, experienced in litigating class action claims in the employment context. See Gaines Decl. ¶¶ 2-5.

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

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

1 *Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357, 1368; *Sommers v. Abraham Lincoln*
2 *Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.

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

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

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

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

1 *Kullar, supra*, 168 Cal.App.4th at 133.

2 Plaintiffs' counsel created a comprehensive damage analysis using sampling information
3 obtained through informal discovery. The sampling included 226 employees (approximately
4 24.6% of the proposed class) and data from 92,118 shifts (nearly 24% of all shifts). The damage
5 analysis reveals that the negotiated settlement falls within a realistic range of recovery on Class
6 Members' claims. Gaines Decl. ¶ 17.

7 Plaintiffs allege that Defendants failed to permit or authorize Class Members to take timely
8 30-minute meal periods for shifts greater than 5 hours in length, in violation of Labor Code §§
9 226.7, 510, 512, 558, and 1194 and IWC Wage Order 1-2001. Labor Code § 512 provides that
10 employers may not employ an employee for a work period of more than 5 hours without providing
11 a 30-minute meal period starting no later than the end of the fifth hour. Class Members were
12 purportedly routinely unable to take a proper meal period when they worked shifts in excess of five
13 hours in duration and a second meal period when they worked shifts in excess of ten hours in
14 duration. When Class Members were able to take a meal period, they contend that they were late
15 or short, or they would be interrupted in the middle and an additional legally compliant meal period
16 was never provided, thereby entitling them to premium meal period wages, which were not fully
17 paid. Based on the time and wage data produced by Defendants, –Plaintiffs ascertained a meal
18 period violation rate of 46.8%, net of premium payments. Although Defendants did pay some meal
19 period premiums, Plaintiffs contend that substantial premiums are still owed. Plaintiffs calculate
20 damages on this claim at up to \$3,025,463, with PAGA civil penalty liability of up to \$2,991,000.
21 Gaines Decl. ¶ 18.

22 Plaintiffs further contend that Defendants failed to pay Class Members premium wages for
23 missed, denied and unauthorized rest periods in violation of Labor Code § 226.7 and IWC Wage
24 Order 1-2001. Class Members were allegedly denied, and therefore unable to take, 10-minute rest
25 periods for every four hours of work or major fraction thereof, but were not paid premium wages
26 of one hour's pay for each missed, denied, and unauthorized rest period. When they were able to
27 take a rest period, Plaintiffs argue they were oftentimes late or cut short. Plaintiffs contend that
28 Class Members were also improperly prohibited from leaving Defendants' premises while on their

1 rest periods, thereby subjecting them to Defendants' control during their rest periods, which is not
2 a rest period at all—such that premium rest period wages are owed (and were allegedly not paid).
3 Plaintiffs have assumed a 25% violation rate for rest periods, yielding damages of up to \$1,694,574,
4 with PAGA civil penalty liability of up to \$2,994,500. Gaines Decl. ¶ 19.

5 Defendants paid Class Members bonuses, including, but not limited to, “AWD AWARD”
6 and “BOO OTHER BONUS,” and other forms of non-base hourly wages that Plaintiffs contend
7 were not included in their regular rate of pay for purposes of computing the proper overtime rate,
8 rest period premium rates, and sick pay rates, in violation of Labor Code §§ 246, 510, and 1194.
9 Defendants allegedly failed to properly blend these bonuses and other non-base hourly wages and
10 instead paid Class Members overtime wages, rest period premium wages, and sick pay based only
11 on the base hourly rate of pay, thus depriving Plaintiff and Class Members of all wages earned, in
12 violation of Labor Code §§ 510, 558, and 1194. California Labor Code § 510 requires the payment
13 of premium overtime compensation based on employees' regular rate of pay. Labor Code § 207(e)
14 defines the “regular rate” to include all remuneration for employment paid to or on behalf of the
15 employee. California law mirrors federal law on the issue of computation of the regular rate of pay.
16 The leading case on this issue is *Walling v. Youngerman-Reynolds Hardware Co.* (1945) 324 U.S.
17 419, 424, which explains that the “regular rate” is “all payments which the parties have agreed shall
18 be received regularly during the workweek, exclusive of overtime payments. It is not an arbitrary
19 label chosen by the parties; it is an actual fact.” This includes all forms of bonuses and other non-
20 base hourly wages. *See also Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863
21 (holding that “the calculation of premium pay for a noncompliant meal, rest, or recovery period,
22 like the calculation of overtime pay, must account for not only hourly wages but also other
23 nondiscretionary payments for work performed by the employee” because the terms “regular rate
24 of compensation under [Labor Code] section 226.7(c)” and “regular rate of pay under section
25 510(a)” are “synonymous” and “encompasses all nondiscretionary payments, not just hourly
26 wages.”) Here, when Class Members worked overtime hours, they were paid at one and one-half
27 times the base hourly rate of pay. Class Members contend they are entitled to significant
28 compensation as a result. Plaintiffs calculate damages for this claim at approximately \$28,000 with

1 PAGA civil liability at \$75,500. Gaines Decl. ¶ 20.

2 Defendants allegedly failed to issue Class Members accurately itemized wage statements.
3 Plaintiff and Class Members contend they were not paid all wages due, as detailed above. As a
4 result, the wage statements issued to Class Members fail to accurately state all gross wages earned,
5 in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2),
6 net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect
7 during the pay period and the corresponding number of hours worked at each hourly rate, in
8 violation of Labor Code § 226(a)(9). Plaintiffs calculate statutory penalties on this claim at
9 \$2,220,000, with PAGA civil penalty liability of up to \$2,997,100. Gaines Decl. ¶ 21.

10 Defendants also allegedly failed to pay Class Members all wages due upon separation of
11 employment, in violation of Labor Code §§ 201-203. As Defendants failed to pay them all wages
12 due during the course of their employment, as described above, wages were due and owing upon
13 separation of employment but went unpaid. Plaintiffs calculate statutory penalties on this claim at
14 up to \$2,162,101, with PAGA civil penalty liability of \$26,200. Gaines Decl. ¶ 22.

15 There were numerous risks to recovery here which required a compromise to resolve the
16 Actions at this juncture of the litigation. Defendants argued that any bonus or premium wages paid
17 were discretionary, such that it properly paid all wages, including overtime, sick pay, and meal and
18 rest premiums at the correct rates. They forcefully maintained that they enforced legally complaint
19 written policies regarding meal and rest periods that provided all employees with proper, timely
20 meal and rest breaks, and any missed meal and rest periods were waived by employees. Defendants
21 argued that no wage statement penalties or waiting time penalties would be recovered because they
22 paid all wages due, they acted in good faith at all times, and Class Members suffered no actionable
23 injury. They also took the position that PAGA penalties could not be stacked, and the Court would
24 likely exercise its discretion to reduce or eliminate them altogether, based on the alleged weakness
25 of the claims asserted. They also contended that a class could not be certified because of
26 manageability concerns, among other issues, particularly with respect to the claims for meal and
27 rest periods. Finally, Defendants argued that Plaintiffs faced the risk that they would not obtain a
28 maximum damage/penalty award on all (or any of) their claims. Gaines Decl. ¶ 23.

1 Defendants strongly contend that their policies and practices do not violate any laws. They
2 contend that they properly paid all wages and provided for all meal and rest periods and fully
3 compensated their employees for all time worked. They further contend that the wage statements
4 they provide to their employees are fully compliant with California law. Gaines Decl. ¶ 24.

5 When the costs and risks of non-certification and loss on the merits are considered,
6 Plaintiffs' counsel are of the opinion that the settlement reached is clearly a favorable one. Gaines
7 Decl. ¶¶ 13-25.

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 Actions. Gaines
11 Decl. ¶ 26.

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 Defendants.

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 E. **Plaintiffs Should Be Permitted to File Their Second Amended Complaint**

22 In connection with this Settlement, Plaintiffs shall file a Second Amended Complaint,
23 attached to the Stipulation as **Exhibit B**, which adds Mr. Aguirre as an additional named Plaintiff
24 and conforms to all claims to be released the Settlement, including those alleged in the Aguirre
25 Action. The Parties agreed that, as part of this motion for preliminary approval, Plaintiffs would
26 concurrently seek leave to file the Second Amended Complaint, the filing of which is a condition
27 of the Stipulation.

28 \\\

1 To effectuate the class settlement of the Action, Defendants do not oppose the filing of the
2 Second Amended Complaint for settlement purposes only. As part of its order preliminarily
3 approving the settlement, Plaintiffs request that the Court approve the filing of the Second
4 Amended Complaint, and consent that Defendants not be required to file a responsive pleading
5 thereto. Gaines Decl. ¶ 9.

6 **V. CONCLUSION**

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

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

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

12 3. Appointing Plaintiffs Adriana Munoz and Samuel Aguirre as the Class
13 Representatives;

14 4. Appointing Gaines & Gaines, APLC, Falakassa Law, P.C., and Bokhour Law
15 Group, P.C. as Class Counsel;

16 5. Approving Phoenix Settlement Administrators as Settlement Administrator;

17 6. Preliminarily approving the allocation of \$20,000 from the Maximum Settlement
18 Amount to settle Plaintiffs' 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 be distributed proportionately among all Aggrieved Employees;

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

23 8. Permitting Plaintiffs to file the Second Amended Complaint, attached to the
24 Stipulation as **Exhibit B**, no later than ten (10) calendar days after notice of the entry of the Order
25 granting this motion has been given, and consent that Defendant not be required to file a responsive
26 pleading thereto; and,

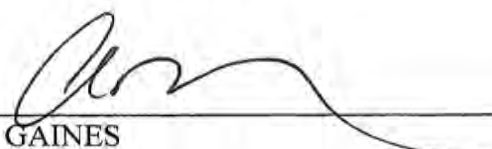
27 9. Setting the following schedule of settlement proceedings:
28

<u>EVENT</u>	<u>TIMING</u>
Last day for Defendant to provide to the Settlement Administrator a readable Microsoft Office Excel spreadsheet and that includes Class Members' names, last-known addresses, last-known telephone numbers, social security numbers, and workweek data (i.e., the start and end dates of employment for each class member for the Settlement Administrator to use in calculating the workweeks) during the Class Period ("Class List")	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	28 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Class Members to submit a written exclusion form to the Settlement Administrator	45 calendar days after the initial mailing of the 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 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	_____, 2024, at _____m. (approximately 100 days after entry of the Order granting this Motion)

DATED: August 30, 2023

Respectfully submitted,

GAINES & GAINES,
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By: 
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