

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Lori Dentinger
and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

LORI DENTINGER, on behalf of herself
and all "aggrieved employees" pursuant to
Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

PROFESSIONAL EVALUATIONS &
DEVELOPMENTAL SERVICES, LLC, a
California limited liability company, and
DOES 1 through 10, inclusive,

Defendants.

CASE NO: STK-CV-UOE-2022-11016

Assigned to the Hon. Erin Guy Castillo, Dept. 10B

CLASS ACTION

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

**Date: November 2, 2023
November 3, 2023
November 7, 2023**

**Time: 9:00 a.m.
Dept.: 10B**

Complaint Filed: November 30, 2022

1 **PLEASE TAKE NOTICE THAT** on November ___, 2023 at 9:00 a.m., or as soon
2 thereafter as the matter may be heard, in Department 10B of the above-entitled Court, located at
3 180 E. Weber Avenue, Stockton, California 95202, Plaintiff Lori Dentinger will and hereby does
4 move unopposed for an Order (1) preliminarily finding that the settlement between the parties falls
5 within the range of reasonableness and approving the proposed class action settlement in the above-
6 captioned case, (2) conditionally certifying, for settlement purposes only, a settlement class, (3)
7 approving the appointment of Plaintiff Lori Dentinger as Class Representative, (4) approving the
8 appointment of Gaines & Gaines, APLC as Class Counsel, (5) approving the appointment of
9 Phoenix Settlement Administrators as settlement administrator, (6) preliminarily approving the
10 allocation of \$40,000 from the Gross Settlement Amount to settle Plaintiff's representative claims
11 under the Private Attorneys General Act (Lab. Code §§ 2698 et seq.), of which seventy-five percent
12 (75%) will be paid to the Labor and Workforce Development Agency and twenty-five percent
13 (25%) shall be paid to Aggrieved Employees as part of the Net Settlement Proceeds; (7) approving
14 as to content and form the notice to the settlement class, and directing it be disseminated by the
15 Settlement Administrator; and (8) setting a final fairness and approval hearing.

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

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

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

5
6 DATED: September 20, 2023

Respectfully submitted,

7 GAINES & GAINES,
8 A Professional Law Corporation

9
10 By: 

DANIEL F. GAINES

ALEX P. KATOFISKY

11 Attorneys for Plaintiff Lori Dentinger
12 and Proposed Class Counsel

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Parties have reached a resolution of this class action and hereby submit their Settlement
4 Agreement and Release of Claims (“Settlement”, “Stipulation” or “Stip.”) for the Court’s approval.
5 The Settlement is made and entered into by and between Plaintiff Lori Dentinger (“Plaintiff” or
6 “Dentinger”), individually and on behalf of all others similarly situated, and Defendant Professional
7 Evaluations & Developmental Services, LLC (“Defendant”).

8 The settlement occurred as a result of extensive arm’s-length negotiations by experienced
9 counsel with the assistance of a respected mediator with experience in the area of employment class
10 actions. Most importantly, the settlement will result in significant financial benefit to the
11 participating claimants, on terms that are by any measure fair, reasonable and adequate. *See*
12 *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801-02. The proposed settlement provides
13 for a non-revisionary class settlement in the gross amount of \$525,000 to a settlement class of
14 approximately 83 Class Members, yielding gross payments of nearly **\$6,325** each. As detailed
15 below, the settlement is in the best interests of the class in light of all of the facts and circumstances
16 and the risks and delays of further litigation.

17 For the foregoing reasons, the Parties respectfully request that the Court: (a) grant
18 preliminary approval of the settlement agreement and preliminarily find that the settlement falls
19 within the range of reasonableness; (b) conditionally grant certification of the proposed Settlement
20 Class, for settlement purposes only; (c) approve the appointment of Plaintiff Lori Dentinger as
21 Class Representative; (d) approve the appointment of Gaines & Gaines, APLC as Class Counsel;
22 (e) approve appointment of Phoenix Settlement Administrators as the Settlement Administrator; (f)
23 authorize the mailing of the proposed class action notice packet; and (g) schedule a final fairness
24 and approval hearing.

25 **II. BACKGROUND AND PROCEDURAL HISTORY**

26 On September 22, 2022, Plaintiff Dentinger exhausted the pre-filing requirements of the
27 Labor Code Private Attorneys General Act of 2004 (“PAGA”). Declaration of Daniel F. Gaines
28 (“Gaines Decl.”) at ¶ 6.

1 On November 30, 2022, Plaintiff Dentinger initiated her Action in the San Joaquin County
2 Superior Court by filing a complaint, pursuant to PAGA, on behalf of herself and all other aggrieved
3 employees. Gaines Decl. at ¶ 7.

4 As set forth in the operative First Amended Complaint, the Action assert claims against
5 Defendant for (1) failure to pay all wages due (Labor Code §§ 226.7, 246, 510, 512, 1194, and
6 1194.2; IWC Wage Order 4-2001); (2) failure to provide compliant meal periods or correct
7 compensation in lieu thereof (Labor Code §§ 226.7, 510, 512, 1174, 1174.5, 1194, and 1198; IWC
8 Wage Order 4-2001); (3) failure to provide compliant rest periods or correct compensation in lieu
9 thereof (Labor Code § 226.7; IWC Wage Order 4-2001); (4) failure to reimburse all business-
10 related expenses (Labor Code § 2802); (5) failure to comply with itemized employee wage
11 statement provisions (Labor Code § 226(a), (e)); (6) failure to timely pay wages due at the
12 separation of employment (Labor Code §§ 201-203); (7) violation of Business and Professions
13 Code § 17200 for underlying violations of the Labor Code as set forth in the Action; and (8) civil
14 penalties pursuant to PAGA for underlying violations of the Labor Code as set forth in the Action.
15 Gaines Decl. at ¶ 8.

16 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged
17 in the Action, and further denies that the Action are appropriate for class treatment for any purpose
18 other than this settlement. Defendant contends that it has complied at all times with the California
19 Labor Code. It is Defendant's position that, if this case were to be litigated, class certification would
20 be inappropriate because Plaintiff is not an adequate Class Representative, Plaintiff's claims are
21 not typical of putative class members, and individual issues predominate over class issues, among
22 other defenses. The Action, the negotiation and execution of this Settlement Agreement, and all
23 acts performed or documents executed pursuant to or in furtherance of this Settlement Agreement
24 (i) shall not be used as an admission, or as evidence of wrongdoing by the Defendant, or for any
25 other purpose whatsoever; (ii) shall not be an admission or evidence of fault on behalf of Defendant
26 in any action before a civil court, criminal court, administrative agency of any type, or other
27 tribunal; and (iii) shall not be deemed to be, and may not be used as, an admission or evidence of
28

1 the appropriateness of these or similar claims for class certification in the Action or with respect to
2 any other proceeding whatsoever. Gaines Decl. at ¶ 9.

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

6 **III. INVESTIGATION AND SETTLEMENT DISCUSSIONS**

7 Class Counsel represent that they have conducted a thorough investigation into the facts
8 and law during the prosecution of this class action case, including the exchange of extensive
9 informal discovery and the review and verification of statistical data and other facts and information
10 provided by Defendant. Counsel for the Parties also represent that they have investigated the
11 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and
12 potential defenses thereto, and the damages and other losses claimed by Plaintiff. Gaines Decl. at
13 ¶ 11.

14 On July 28, 2023, following their exchange of information and documents regarding the
15 Settlement Class and the claims and defenses asserted by the Parties, the Parties engaged in arm's-
16 length negotiations with the assistance of an experienced wage and hour mediator, Brandon
17 McKelvey, Esq., where the Parties were able to reach the resolution of the Action set forth herein.
18 Gaines Decl. at ¶ 12.

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

26 The Parties agree that the Settlement Class described herein may be certified for settlement
27 purposes only and that any motion for approval seeking, *inter alia*, certification of the Settlement
28 Class is for purposes of the settlement only. If for any reason the settlement is not approved, the

1 certification will have no force or effect and will immediately be revoked. The Parties further agree
2 that certification for purposes of the settlement is in no way an admission that class certification is
3 proper under the more stringent standard applied for litigation and that evidence of this limited
4 Settlement Agreement for settlement purposes only will not be admissible for any purpose in this
5 or any other proceeding. Gaines Decl. at ¶ 14.

6 **IV. LEGAL ANALYSIS**

7 **A. The Proposed Settlement Terms**

8 **1. The Settlement Class**

9 The Parties have agreed to a settlement class composed of all non-exempt employees of
10 Defendant Professional Evaluations & Developmental Services, LLC in California at any time
11 between November 30, 2018 and the earlier of (1) the date of preliminary approval of this
12 Settlement or (2) September 26, 2023 (the “Class Period End Date”). Stip. at ¶ A(4).

13 The Aggrieved Employees are defined all non-exempt employees of Defendant
14 Professional Evaluations & Developmental Services, LLC in California at any time between
15 September 22, 2021 and the Class Period End Date (the “PAGA Period”). Stip. at ¶ A(6).

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

17 The Parties agree to settle the Action for a Gross Settlement Amount of \$525,000 (“the
18 Gross Settlement Amount”).¹ The Gross Settlement Amount includes the attorneys’ fees of Class
19 Counsel; litigation costs and expenses (which includes, without limitation, all such fees and costs
20 incurred to date, as well as such fees and costs to be incurred in documenting the settlement,
21 providing any notices required as part of the settlement, securing Court approval of the
22 settlement, and obtaining judgment in the Action); the Service Payment to the Class
23 Representative, as approved by the Court; the payment to the California Labor and Workforce
24 Development Agency (“LWDA”); and all costs of administration, including, without limitation,
25 settlement administration fees and expenses. All employer payroll tax obligations due on wage

26
27 ¹ Defendant has represented that Class Members worked no more than 13,500 workweeks during
28 the Class Period. Should this number increase, the Gross Settlement Amount will increase
proportionately. For example, if there are 14,850 workweeks, the Gross Settlement Amount shall
increase by 10%. Stip. at ¶ H(16).

1 payments made from the Net Settlement Proceeds shall be paid by Defendant separately and apart
2 from, and in addition to, the Gross Settlement Amount. Stip. at ¶ C(1)(a).

3 From the Gross Settlement Amount, Defendant will not oppose Plaintiff's counsel's
4 application to the Court for up to 35% of the Gross Settlement Amount for attorneys' fees (projected
5 to be \$183,750). Stip. at ¶ C(1)(g).

6 From the Gross Settlement Amount, Defendant will not oppose Plaintiff's counsel's
7 application to the Court for up to \$12,000 in reimbursement of litigation costs and expenses. Stip.
8 at ¶ C(1)(h).

9 From the Gross Settlement Amount, Defendant will not oppose Plaintiff's counsel's
10 application to the Court for Incentive Award and General Release Payment to Plaintiff Lori
11 Dentinger in the gross amount of \$15,000, in consideration for her efforts in instituting and
12 participating in the Action and in exchange for the general release of all claims by Ms. Dentinger.
13 Stip. at ¶ C(1)(f).

14 From the Gross Settlement Amount, settlement administration fees paid to Phoenix
15 Settlement Administrators will be no more than \$5,000. Stip. at ¶ C(1)(i).

16 From the Gross Settlement Amount, the portion to be allocated for settlement of any and all
17 claims for penalties under the PAGA is \$40,000 ("PAGA Payment"), 75% (\$30,000) shall be paid
18 directly to the LWDA and 25% (\$10,000) shall be paid to Aggrieved Employees as part of the Net
19 Settlement Proceeds. Stip. at ¶ C(1)(e).

20 The Net Settlement Proceeds is defined as the Gross Settlement Amount less the amounts
21 approved and awarded by the Court for: attorneys' fees and documented litigation costs and
22 expenses incurred or advanced by Class Counsel; the Service Payment to the Class Representative;
23 the payment to the LWDA pursuant to PAGA; and the costs of administering the settlement. Stip.
24 at ¶ C(1)(b).

25 The Individual Payment Amount means the portion of the Net Settlement Proceeds
26 distributable to each Class Member who participates in the Class Settlement (i.e., who does not
27 submit a valid request for exclusion form) and each Aggrieved Employee, whether they participate
28 in the Class Settlement or not. As to participating Class Members, the class portion of the

1 Individual Payment Amount will be determined by dividing the Net Settlement Proceeds, less the
2 \$10,000 PAGA allocation, by the total number of hours worked as a non-exempt employee in
3 California by the entire Settlement Class during the Class Period, net of opt outs, resulting in the
4 class hour value; and then multiplying the class hour value by the number of hours worked as a
5 non-exempt employee in California by each participating Class Member during the Class Period.
6 As to the Aggrieved Employees, the PAGA portion of the Individual Payment Amount will be
7 determined by dividing the PAGA settlement amount (\$10,000) by the total number of pay periods
8 worked as a non-exempt employee in California by all Aggrieved Employees during the PAGA
9 Period, resulting in the PAGA pay period value; and then multiplying the PAGA pay period value
10 by the number of pay periods worked by each Aggrieved Employee as a non-exempt employee in
11 California during the PAGA Period. Stip. at ¶ C(1)(c).

12 For tax purposes, the class portion of each Individual Payment Amount will be apportioned
13 (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); and (b)
14 80% equally as penalties and interest (reported on an IRS Form 1099, if required). The PAGA
15 portion of each Individual Payment Amount will be apportioned 100% as penalties (reported on an
16 IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members and
17 Aggrieved Employees will be subject to any applicable wage garnishments, liens, or other legally
18 mandated treatment as required by law. Stip. at ¶ C(1)(d).

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

20 Pursuant to PAGA, the Parties have agreed that \$40,000 of the Gross Settlement Amount
21 will be allocated to settle the claims brought under Labor Code § 2699 et seq. Pursuant to Labor
22 Code § 2699(i), “civil penalties recovered by aggrieved employees shall be distributed as follows:
23 75 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved
24 employees.” As such, 75% of the apportioned PAGA settlement amount – or \$30,000 – shall be
25 paid directly to the LWDA, and 25%, i.e., \$10,000, shall be paid to Aggrieved Employees as part
26 of the Net Settlement Proceeds. Stip. at ¶ C(1)(e).

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

28 Any settlement of class litigation must be reviewed and approved by the Court. Cal. R. Ct.

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

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

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

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

26 When the parties to an action reach a monetary settlement, they will
27 usually prepare and execute a joint stipulation of settlement, which
28 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.

Id. at § 11.24.

² 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 Here, the Parties have reached such an agreement and have submitted the Stipulation
2 herewith. *See* Gaines Decl., **Exhibit B**; Gaines Decl. ¶ 15.

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

4 Pursuant to California Rules of Court, Rule 3.769(d), parties also may, at the preliminary
5 approval stage, request that the court provisionally approve certification of the class – conditioned
6 upon final approval of the settlement. “[P]re-certification settlements are routinely approved if
7 found to be fair and reasonable.” *Wershba, supra*, 91 Cal. App. 4th at 240. *Accord Dunk, supra*,
8 48 Cal. App. 4th at 1803 (although the settlement was reached before any “adversary certification,”
9 the court was satisfied that it was “fair, adequate and reasonable.”). *See also In re Baldwin-United*
10 *Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478³ (“many courts have employed this practice in the
11 name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”)

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

16 4 *Newberg on Class Actions*, at § 11.26.

17 As required by Labor Code § 2699(1)(2), concurrent with Plaintiff’s submission of the
18 Stipulation to the Court, his counsel is transmitting it, together with this Motion, to the LWDA.
19 Gaines Decl. at ¶ 32.

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

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

27
28 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 a. **The Settlement Class is Ascertainable**

2 The proposed Settlement Class is ascertainable. The class definition, the size of the Class,
3 and the means for identifying the members of the class determine whether the class is ascertainable.
4 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
5 are identifiable from Defendant's employment and payroll records. Further, the Settlement Class
6 is sufficiently numerous to warrant certification. According to Defendant's records, the Class
7 comprises approximately 83 members. Gaines Decl. ¶ 28.

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

10 The Class Members' claims all stem from a common source: members of the Settlement
11 Class allege that Defendant violated the same Labor Code provisions in connection with their
12 employment in non-exempt positions. All members of the Class seek the same relief under the
13 same California laws (related to unpaid wages, unpaid meal and rest period premiums, inaccurate
14 or incomplete wage statements, failure to reimburse expenses, failure to timely pay wages due upon
15 separation, and derivative claims). Under these circumstances, the commonality requirement is
16 satisfied for purposes of certifying the Settlement Class for settlement purposes. Gaines Decl. ¶
17 29.

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 is a former non-exempt employee who worked for Defendant in the State of
24 California during the Class Period. She contends that Defendant failed to pay all wages, failed to
25 provide meal and rest periods, failed to comply with itemized employee wage statement provisions,
26 failure to reimburse expenses, and failed to timely pay wages at the separation of employment, in
27 violation of Labor Code §§ 201, 202, 204, 210, 226(a), 226.3, 226.7, 246, 510, 512, 558, 1174,
28 1174.5, 1194, 1198, 2698, 2699, and 2802, among other Labor Code provisions. She has the same

1 claims as those that the members of the Settlement Class would reasonably be expected to bring
2 based on the course of conduct alleged herein. Gaines Decl. ¶ 30.

3 Plaintiff has also demonstrated that he will aggressively and competently assert the interests
4 of the proposed Settlement Class; she has taken an active role in the litigation and has no apparent
5 conflicts with other class members. Gaines Decl. ¶ 31. Furthermore, Plaintiff has retained
6 competent counsel, experienced in litigating class action claims in the employment context. See
7 Gaines Decl. ¶¶ 2-5.

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

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

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

Decl. ¶¶ 2-5, 13-26.

Here, the Parties' counsel have a great deal of experience in class action litigation and specialize in employment wage and hour matters. Moreover, counsel for both Parties conducted an extensive investigation of the factual allegations involved in this case. The Parties have engaged in a broad exchange of documents, data, records and other information. Each side has apprised the other, informally and at a formal mediation, of their respective factual contentions, legal theories and defenses, resulting in extensive arm's-length negotiations taking place among the Parties. *See* Gaines Decl. ¶¶ 2-5, 13-26.

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

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

Defendant paid Class Members once a month until shortly after this Action was filed. Not only were Class Members paid only once a month, they were paid late, typically issued wages fifteen or more days after the end of the monthly payroll period. Labor Code §§ 204 and 210 authorize penalties for the late payment of wages exceeding \$67,000 here. Gaines Decl. ¶ 16.

Plaintiff alleges that Defendant failed to pay Plaintiff and non-exempt Class Members all wages due in numerous ways. First, non-exempt Class Members were paid a flat rate of \$2.25 for drive time between clients and a flat rate of \$10 for supervision, no matter how many minutes/hours were actually spent, and both of which are allegedly insufficient to cover the applicable minimum wage. Next, Defendant required non-exempt Class Members to work off-the-clock, without compensation. Non-exempt Class Members were only paid for time spent with Defendant's clients

1 and for specific limited report writing. They were not paid for time spent: (1) preparing notes and
2 charting, (2) responding to work-related phone calls and text messages, and (3) washing and
3 maintaining equipment to be used with Defendant's clients. Third, Defendant compensated non-
4 exempt Class Members for only 15 minutes of pay when its clients cancelled or were a "no show,"
5 notwithstanding the fact that non-exempt Class Members were subject to Defendant's control and
6 scheduled to work during this time. Defendant is required to pay non-exempt Class Members for
7 half the usual or scheduled day's work, but in no event for less than two hours at the employee's
8 regular rate of pay. *See* IWC Wage Order 4-2001, § 5(A) ([e]ach workday an employee is required
9 to report for work and does report, but is not put to work or is furnished less than half said
10 employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled
11 day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the
12 employee's regular rate of pay, which shall not be less than the minimum wage.) Fourth, Defendant
13 also allegedly paid non-exempt Class Members bonuses and shift differential wages that were not
14 included in their regular rate of pay for purposes of paying them meal and rest period premiums,
15 sick pay, and overtime wages at the correct rates. Defendant purportedly failed to properly blend
16 these bonuses and shift differential wages and instead paid non-exempt Class Members meal and
17 rest period premiums, sick pay wages, and overtime wages based only on the base hourly rate of
18 pay, thus depriving non-exempt Class Members of all wages earned. Gaines Decl. ¶ 17.

19 Plaintiff further alleges that non-exempt Class Members were routinely unable to take a
20 proper meal period when they worked shifts in excess of 5 hours in duration. When they were able
21 to take a meal period, they were oftentimes late, cut-short, or on-duty. Plaintiff regularly ate her
22 lunch while driving between clients. Defendant never required employees to record their meal
23 periods. This "raise[s] a rebuttable presumption of meal period violations" and violates Labor
24 Code §§ 1174 and 1174.5. *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 61. Defendant
25 also failed to maintain any written meal period policy. Gaines Decl. ¶ 18.

26 Plaintiff further contends that non-exempt Class Members were denied, and therefore
27 unable to take, 10-minute rest periods for every four hours of work or major fraction thereof, but
28 were not paid premium wages of one hour's pay for each missed, denied and unauthorized rest

1 period. Plaintiff was too busy and not authorized to take her legally entitled rest periods and was
2 never paid premium wages for missed rest periods. Defendant had no procedure in place for
3 employees to be relieved to take their rest periods. As with meal periods, Defendant failed to
4 maintain any written rest period policy. Gaines Decl. ¶ 19.

5 Class Members were required to incur expenses in the performance of their job duties for
6 which they were allegedly not fully reimbursed, in violation of Labor Code § 2802. Defendant
7 required Class Members to use their personal cell phones and home internet while working for
8 Defendant, for work-related purposes, but failed to reimburse them for their use. Defendant also
9 failed to reimburse Class Members for their mileage and instead paid only a flat wage of \$2.25 for
10 each drive. Defendant has shown no evidence of reimbursement of these expenses. Gaines Decl. ¶
11 20.

12 Defendant failed to issue Class Members accurately itemized wage statements.
13 Specifically, non-exempt Class Members were not paid all wages due, as detailed above. As a
14 result, the wage statements issued by Defendant to non-exempt Class Members fail to accurately
15 state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation
16 of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all
17 applicable hourly rates in effect during the pay period and the corresponding number of hours
18 worked at each hourly rate, in violation of Labor Code § 226(a)(9). Moreover, and independent
19 of the above allegations, the wage statements issued to Class Members allegedly failed to set forth
20 the address of the legal entity that is the employer, in violation of Labor Code § 226(a)(8). In
21 addition, the wage statements allegedly fail to state how many hours Class Members worked during
22 the pay period, in violation of Labor Code § 226(a)(2). Gaines Decl. ¶ 21.

23 Defendant allegedly failed to pay certain non-exempt Class Members all wages due upon
24 separation of employment, in violation of Labor Code §§ 201-203. As Defendant failed to pay
25 them all wages due during the course of their employment, as described above, these wages were
26 due and owing upon separation of employment yet went unpaid. Gaines Decl. ¶ 22.

27 Although the value of the claims asserted by Plaintiff could easily exceed \$2,000,000, they
28 were not without risk, and the compromise reached here reflects that. Class certification is a

1 difficult hurdle to overcome, particularly in a case like this one where Defendant argued nearly all
2 of Plaintiff's claims could require individualized inquiries as to liability and damages. Defendant
3 argued it paid employees all wages due and issued legally compliant wage statements pursuant to
4 legally compliant policies and practices. It maintained that it offered all meal and rest breaks
5 required by law, and that employees had sufficient time in their daily schedules to always take their
6 required breaks. Defendant strongly contends that its policies and practices do not violate any laws.
7 Gaines Decl. ¶ 23.

8 Perhaps the best defense proffered by Defendant is that it is a small operation that could not
9 withstand a substantial judgment or the costs required to vigorously defend this Action. Settlement
10 negotiations were primarily focused on Defendant's limited financial resources, and the settlement
11 sum reflects this inability to pay issue. Gaines Decl. ¶ 24.

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

15 The settlement for each Class Member is fair, reasonable and adequate, given the inherent
16 risk of litigation, the risk relative to class certification and the costs of pursuing such litigation. The
17 settlement shall finally resolve all claims of the Class Members as alleged in the Action. Gaines
18 Decl. ¶ 26.

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

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

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

1 **V. CONCLUSION**

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

- 4 1. Preliminarily finding that the settlement falls within the range of reasonableness and
5 approving the proposed settlement;
- 6 2. Conditionally certifying, for settlement purposes only, the Settlement Class;
- 7 3. Appointing Plaintiff Lori Dentinger as the Class Representative;
- 8 4. Appointing Gaines & Gaines, APLC as Class Counsel;
- 9 5. Approving Phoenix Settlement Administrators as Settlement Administrator;
- 10 6. Preliminarily approving the allocation of \$40,000 from the Maximum Settlement
11 Amount to settle Plaintiff's representative claims under the PAGA, of which seventy-five percent
12 (75%) shall be paid to the Labor and Workforce Development Agency and twenty-five percent
13 (25%) shall be paid to Aggrieved Employees as part of the Net Settlement Proceeds;
- 14 7. Approving as to content and form the notice to the Settlement Class, and directing
15 it to be disseminated by the Settlement Administrator; and
- 16 8. Setting the following schedule of settlement proceedings:

17

<u>EVENT</u>	<u>TIMING</u>
Last day for Defendant to provide to the Settlement Administrator a list of all Class Members, including their last known addresses, telephone numbers, social security numbers, and their dates of employment, total hours worked in a non-exempt position in California during the Class Period and the total pay periods worked in a non-exempt position in California during the PAGA Period("Settlement Class Information")	14 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail Notice to Class Members	20 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

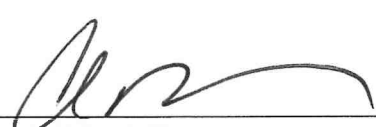
28

<u>EVENT</u>	<u>TIMING</u>
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: September 20, 2023

Respectfully submitted,

GAINES & GAINES,
A Professional Law Corporation

By: 

DANIEL F. GAINES
ALEX P. KATOFISKY
Attorneys for Plaintiff Lori Dentinger
and Proposed Class Counsel