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Attorneys for Plaintiff Ricardo Loera
and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

RICARDO LOERA, on behalf of himself
and all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*,

Plaintiff,

v.

VC1 CONCRETE CONSTRUCTION,
LLC, a California limited liability
company, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: STK-CV-UOE-2022-10482

Assigned to the Hon. Blanca Banuelos, Dept. 10B

CLASS ACTION

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

**Date: October 8, 2024
October 9, 2024
October 10, 2024**

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

Complaint Filed: November 15, 2022

1 **PLEASE TAKE NOTICE THAT** on _____ 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 Ricardo Loera 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 Ricardo Loera 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 \$20,000 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 allocated to the Individual PAGA Payments; (7) approving as to content and form
14 the notice to the settlement class, and directing it be disseminated by the Settlement Administrator;
15 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.

23 \\

24 \\

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1 This Motion will be based on the Memorandum of Points and Authorities set forth herein,
2 the Class Action and Private Attorneys General Act (“PAGA”) Settlement Agreement, the
3 Declarations of Daniel F. Gaines and Ricardo Loera, such evidence or oral argument as may be
4 presented at the hearing, and on the complete record and file herein.

5
6 DATED: September 9, 2024

Respectfully submitted,

7 GAINES & GAINES,
8 A Professional Law Corporation

9
10 By: *Daniel F. Gaines*

DANIEL F. GAINES

ALEX P. KATOFISKY

Attorneys for Plaintiff Ricardo Loera
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 Class
4 Action and Private Attorneys General Act (“PAGA”) Settlement Agreement (“Settlement”,
5 “Stipulation” or “Stip.”) for the Court’s approval. The Settlement is made and entered into by and
6 between Plaintiff Ricardo Loera (“Plaintiff” or “Loera”), individually and on behalf of all others
7 similarly situated, and Defendant VC1 Concrete Construction, 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 \$325,000 to a settlement class of
14 approximately 215 Class Members, yielding gross payments of nearly **\$1,512** 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 Ricardo Loera as Class
21 Representative; (d) approve the appointment of Gaines & Gaines, APLC as Class Counsel; (e)
22 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 7, 2022, Plaintiff Loera exhausted the pre-filing requirements of the Labor
27 Code Private Attorneys General Act of 2004 (“PAGA”). Declaration of Daniel F. Gaines (“Gaines
28 Decl.”) at ¶ 6.

1 On November 15, 2022, Plaintiff commenced this Action by filing a Complaint alleging
2 claims under PAGA. Plaintiff subsequently filed the Operative Complaint (the First Amended
3 Complaint) on June 6, 2023. 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 Minimum and Overtime Wages Due (Labor Code §§ 510,
6 1194, and 1194.2); (2) Failure to Pay Reporting Time Wages (Labor Code §§ 510, 1194, and
7 1194.2; IWC Wage Order 16-2001); (3) Failure to Provide Rest Periods Or Compensation In Lieu
8 Thereof (Labor Code § 226.7; IWC Wage Order 16-2001); (4) Failure to Provide Meal Periods Or
9 Compensation In Lieu Thereof (Labor Code §§ 226.7, 510, 512, 1174, 1174.5, 1194, and 1198;
10 IWC Wage Order 16-2001); (5) Failure to Reimburse Necessary Business Expenses (Labor Code
11 § 2802); (6) Knowing and Intentional Failure to Comply With Itemized Employee Wage Statement
12 Provisions (Labor Code § 226(a), (e)); (7) Failure to Timely Pay Wages Due At Separation Of
13 Employment (Labor Code §§ 201-203); (8) Violation of Business and Professions Code § 17200;
14 and (9) Penalties Pursuant To Labor Code § 2699(f) For Violations Of Labor Code §§ 201, 202,
15 226(a), 226.7, 510, 512, 1174, 1174.5, 1194, 1198, And 2802 And Pursuant To Labor Code §
16 2699(a) for Violations of Labor Code §§ 226.3 and 558. Gaines Decl. at ¶ 8.

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

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

13 On May 2, 2024, following their exchange of information and documents regarding the
14 Settlement Class and the claims and defenses asserted by the Parties, the Parties engaged in arm's-
15 length negotiations with the assistance of an experienced wage and hour mediator, Judge Howard
16 R. Broadman (Ret.), where the Parties were able to reach the resolution of the Action detailed
17 herein. Gaines Decl. at ¶ 12.

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

25 The Parties agree that the Settlement Class described herein may be certified for settlement
26 purposes only and that any motion for approval seeking, *inter alia*, certification of the Settlement
27 Class is for purposes of the settlement only. If for any reason the settlement is not approved, the
28 certification will have no force or effect and will immediately be revoked. The Parties further agree

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

5 **IV. LEGAL ANALYSIS**

6 **A. The Proposed Settlement Terms**

7 **1. The Settlement Class**

8 The Parties have agreed to a settlement class composed of all persons directly employed by
9 Defendant in California and classified as a non-exempt employee who worked during the Class
10 Period [from June 6, 2019, through the date in which the Court grants Preliminary Approval of the
11 Settlement, unless modified pursuant to Section 8 of the Agreement]. Stip. at ¶ 1.13.

12 The Aggrieved Employees means a person directly employed by Defendant in California
13 and classified as a non-exempt employee who worked during the PAGA Period [the period from
14 November 15, 2021, through the date in which the Court grants Preliminary Approval of the
15 Settlement, unless modified pursuant to Section 8 of this Agreement]. Stip. at ¶ 1.34.

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

17 The Parties agree to settle the Action for a Gross Settlement Amount of \$325,000 (“the
18 Gross Settlement Amount”).¹ The Gross Settlement Amount will be used to pay Individual Class
19 Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class
20 Counsel Expenses, Class Representative Service Payment, and the Administrator’s Expenses.
21 Stip. at ¶ 1.23. It will be paid and disbursed in two installments, one year apart. Stip. at ¶ 4.3.

22 From the Gross Settlement Amount, Defendant will not oppose Plaintiff’s counsel’s
23 application to the Court for up to one-third of the Gross Settlement Amount for attorneys’ fees

24 ¹ If the number of Class Members exceeds 215 by 10-percent (i.e., more than 237 Class Members)
25 or the number of Class Pay Periods exceeds 9,076 by 10-percent (i.e., more than 9,984 Class Pay
26 Periods), whichever figure is more favorable to Defendant, the Gross Settlement Amount may,
27 subject to Defendant’s election, increase proportionally by either (a) \$1,315.79 for each additional
28 Class Member above 237, or (b) \$31.14 for each additional Class Pay Period above 9,984,
whichever figure Defendant elects to use. In lieu of paying an additional amount, Defendant shall
have the exclusive option to choose an end date for the Class Period and PAGA Period (the same
date) earlier than the date of Preliminary Approval so to avoid any such pro rata increase of the
Gross Settlement Amount. Stip. at ¶ 8.

1 (projected to be \$108,333.33). Stip. at ¶ 3.2.2.

2 From the Gross Settlement Amount, Defendant will not oppose Plaintiff's counsel's
3 application to the Court for up to \$15,000 in reimbursement of litigation costs and expenses. Stip.
4 at ¶ 3.2.2.

5 From the Gross Settlement Amount, Defendant will not oppose Plaintiff's counsel's
6 application to the Court for a Class Representative Service Payment to Plaintiff Ricardo Loera in
7 the gross amount of \$20,000, in consideration for his efforts in instituting and participating in the
8 Action and in exchange for the general release of all claims by Mr. Loera. Stip. at ¶ 3.2.1

9 From the Gross Settlement Amount, settlement administration fees paid to Phoenix
10 Settlement Administrators will be no more than \$7,000. Stip. at ¶ 3.2.3.

11 From the Gross Settlement Amount, the portion to be allocated for settlement of any and all
12 claims for penalties under the PAGA is \$20,000 ("PAGA Payment"), 75% (\$15,000) shall be paid
13 directly to the LWDA and 25% (\$5,000) shall be allocated to the Individual PAGA Payments. Stip.
14 at ¶ 3.2.5.

15 The Net Settlement Amount means the Gross Settlement Amount, less the following
16 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
17 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
18 Litigation Expenses Payment, and the Administration Expenses Payment. Stip. at ¶ 1.28.

19 The Individual Class Payment means a Participating Class Member's pro rata share of the
20 Net Settlement Amount calculated according to the number of Class Pay Periods worked by the
21 Participating Class Member. Stip. at ¶ 1.24.

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

23 Pursuant to PAGA, the Parties have agreed that \$20,000 of the Gross Settlement Amount
24 will be allocated to settle the claims brought under Labor Code § 2699 et seq. Pursuant to Labor
25 Code § 2699(i), "civil penalties recovered by aggrieved employees shall be distributed as follows:
26 75 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved
27 employees." As such, 75% of the apportioned PAGA settlement amount – or \$15,000 – shall be
28 allocated to the Individual PAGA Payments. Stip. at ¶ 3.2.5.

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).² 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

27 ² 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 determining the effective date of settlement and any recapture clause.
2 *Id.* at § 11.24.

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

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

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

14 The strength of the findings made by a judge at a preliminary hearing
15 or conference concerning a tentative settlement proposal . . . may be
16 set out in conditional orders granting tentative approval to the various
17 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.

18 4 *Newberg on Class Actions*, at § 11.26.

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

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

23 It is well established that trial courts should use a lower standard for determining the
24 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk, supra*, 48 Cal.
25 App. 4th at 1807, n. 19. The reason for this is that no trial is anticipated in a settlement class, so
26 the case management issues inherent in determining if the class should be certified need not be

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 confronted. *Amchem Products, Inc. v. Windsor* (1987) 521 U.S. 591, 620. The proposed
2 Settlement Class meets all requirements for certification, as discussed below.

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

4 The proposed Settlement Class is ascertainable. The class definition, the size of the Class,
5 and the means for identifying the members of the class determine whether the class is ascertainable.
6 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
7 are identifiable from Defendant's employment and payroll records. Further, the Settlement Class
8 is sufficiently numerous to warrant certification. According to Defendant's records, the Class
9 comprises approximately 215 members. Gaines Decl. ¶ 35.

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

12 The Class Members' claims all stem from a common source: members of the Settlement
13 Class allege that Defendant violated the same Labor Code provisions in connection with their
14 employment in non-exempt positions. All members of the Class seek the same relief under the
15 same California laws (related to unpaid wages, unpaid meal and rest period premiums, inaccurate
16 or incomplete wage statements, failure to reimburse expenses, failure to timely pay wages due upon
17 separation, and derivative claims). Under these circumstances, the commonality requirement is
18 satisfied for purposes of certifying the Settlement Class for settlement purposes. Gaines Decl. ¶
19 36.

20 c. **The Proposed Class Representative's Claims Are Typical of the**
21 **Class Members' Claims**

22 A class representative's claims are typical when they arise from the same event or course
23 of conduct that gives rise to the claims of the class, and are based on the same legal theory.
24 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, named Plaintiff and proposed
25 Class Representative is a former non-exempt employee who worked for Defendant in the State of
26 California during the Class Period. He contends that Defendant failed to pay all wages, failed to
27 provide meal and rest periods, failed to comply with itemized employee wage statement provisions,
28 failure to reimburse expenses, and failed to timely pay wages at the separation of employment, in

1 violation of Labor Code §§ 201, 202, 226(a), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194,
2 1198, 2698, 2699, and 2802, among other Labor Code provisions. He has the same claims as those
3 that the members of the Settlement Class would reasonably be expected to bring based on the course
4 of conduct alleged herein. Gaines Decl. ¶ 37.

5 Plaintiff has also demonstrated that he will aggressively and competently assert the interests
6 of the proposed Settlement Class; he has taken an active role in the litigation and has no apparent
7 conflicts with other class members. Gaines Decl. ¶ 38. Furthermore, Plaintiff has retained
8 competent counsel, experienced in litigating class action claims in the employment context. *See*
9 Gaines Decl. ¶¶ 2-5.

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

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

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

1 proposed settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of
2 counsel, who are most closely acquainted with the facts of the underlying litigation”); *see* Gaines
3 Decl. ¶¶ 2-5, 13-26.

4 Here, the Parties’ counsel have a great deal of experience in class action litigation and
5 specialize in employment wage and hour matters. Moreover, counsel for both Parties conducted
6 an extensive investigation of the factual allegations involved in this case. The Parties have engaged
7 in a broad exchange of documents, data, records and other information. Each side has apprised the
8 other, informally and at a formal mediation, of their respective factual contentions, legal theories
9 and defenses, resulting in extensive arm’s-length negotiations taking place among the Parties. *See*
10 Gaines Decl. ¶¶ 2-5, 13-33.

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

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

21 In the lawsuit, Plaintiff alleges that Defendant failed to pay Class Members all wages due
22 in two separate ways. First, Defendant purportedly failed to pay Class Members all minimum and
23 overtime wages due, in violation of Labor Code §§ 510, 558, 1194, and 1194.2, by requiring them
24 to work off-the-clock, without compensation. Defendant allegedly required Class Members to
25 always list a specified number of hours on their timesheets, even if they worked longer than the
26 hours written. Additionally, after Class Members left the last job site, they were allegedly not
27 compensated for the drive time from the last jobsite back to the yard site. *See* IWC Wage Order 16-
28 2001, § 5(A) (“[a]ll employer-mandated travel that occurs after the first location where the

1 employee's presence is required by the employer shall be compensated at the employee's regular
2 rate of pay..."). Gaines Decl. ¶ 16.

3 Plaintiff also alleges that Class Members were contacted by Defendant off-the-clock.
4 Defendant called and texted to discuss the work schedule, the driving time for the next day, and
5 other work matters. Class Members contend that they were not compensated for this time. Gaines
6 Decl. ¶ 17.

7 Defendant also allegedly maintained an illegal policy and practice regarding overtime from
8 May 1, 2018 until January 15, 2024. Gaines Decl. ¶ 18.

9 Plaintiff also argues that Defendant failed to pay Class Members all reporting time wages
10 due, in violation of Labor Code §§ 510, 1194, and 1194.2 and IWC Wage Order 16-2001. He argues
11 that Class Members routinely reported to work only to be told they were no longer needed and were
12 sent home within two hours of reporting to work. Defendant, however, did not pay Class Members
13 the required reporting time pay. Defendant is required to pay Class Members for half the usual or
14 scheduled day's work, but in no event for less than two hours at the employee's regular rate of
15 pay. *See* IWC Wage Order 16-2001, § 5(B) ("[e]ach workday an employee is required to report for
16 work and does report, but is not put to work or is furnished less than half said employee's usual or
17 scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in
18 no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of
19 pay, which shall not be less than the minimum wage."). Gaines Decl. ¶ 19.

20 Plaintiff calculates damages on these unpaid wage claims at \$494,768, with PAGA civil
21 penalty liability of up to \$363,300. Gaines Decl. ¶ 20.

22 Plaintiff contends that Defendant failed to permit or authorize Class Members to take timely
23 30-minute meal periods for shifts greater than 5 hours in length, in violation of Labor Code §§
24 226.7, 510, 512, 558, 1174, 1174.5, 1194, and 1198 and IWC Wage Order 16-2001. Labor Code
25 § 512 provides that employers may not employ an employee for a work period of more than 5 hours
26 without providing a 30-minute meal period starting no later than the end of the 5th hour. Class
27 Members were routinely unable to take a proper meal period when they worked shifts in excess of
28 5 hours in duration. Gaines Decl. ¶ 21.

1 From May 1, 2018 until January 15, 2024, Defendant allegedly maintained an unlawful
2 written meal period policy that failed to set forth any language with respect to a second meal period
3 for employees who worked ten or more hours in one workday. Timecards typically demonstrated
4 uniform clock in and clock out times for meal periods across the entire class. Gaines Decl. ¶ 22.

5 Plaintiff and Class Members rarely took a legally compliant meal period; they were
6 typically late, cut short, or on-duty. Plaintiff contends that he and Class Members were given a
7 short amount of time to eat, but then were told to get back to work by their Foreman. Plaintiff never
8 received an uninterrupted 30-minute meal period and was never paid a meal period premium.
9 Gaines Decl. ¶ 23.

10 Although Plaintiff was unable to ascertain a specific meal period violation rate based on the
11 wage and time data provided by Defendant through informal discovery, based on Plaintiff's
12 experience, he assumes a 50% meal period violation rate. Plaintiff calculates damages on this claim
13 at \$971,132, with PAGA civil penalty liability of up to \$363,300. Gaines Decl. ¶ 24.

14 Plaintiff further argues that Defendant failed to pay Class Members premium wages for
15 missed, denied and unauthorized rest periods in violation of Labor Code §§ 226.7 and 558 and IWC
16 Wage Order 16-2001. Class Members were allegedly denied, and therefore unable to take, 10-
17 minute rest periods for every four hours of work or major fraction thereof, but were not paid
18 premium wages of one hour's pay for each missed, denied and unauthorized rest period. Gaines
19 Decl. ¶ 25.

20 As with meal periods, from May 1, 2018 until January 15, 2024, Defendant allegedly
21 maintained an improper rest period policy which did not contain the "major fraction thereof"
22 language. In *Brinker v. Restaurant Corp. v. Superior Court* (2017) 53 Cal.4th 1004,1029-30, where
23 a restaurant employer applied a similarly deficient rest period policy, the California Supreme Court
24 held that the defendant's uniform rest period policy violated California law because it did not take
25 into account the "major fraction thereof" language in the relevant IWC Wage Order. *Id. at 1033*.
26 Gaines Decl. ¶ 26.

27 Plaintiff contends that he and other Class Members were encouraged to keep working
28 through their rest breaks by the foreman to be done with the day quicker. Plaintiff calculates

1 damages on this claim at up to \$973,000, with PAGA civil penalty liability of up to \$363,300, based
2 on a 50% violation rate. Gaines Decl. ¶ 27.

3 Class Members were also allegedly required to incur expenses in the performance of their
4 job duties for which they were not fully reimbursed, in violation of Labor Code § 2802. Class
5 Members were required to use their personal vehicles, cell phones, and personal tools, but were
6 allegedly not fully reimbursed by Defendant for these expenses. This practice violates Labor Code
7 § 2802. Gaines Decl. ¶ 28.

8 Plaintiff calculates damages on this claim at \$252,607, with PAGA civil penalty liability of
9 \$363,300 (calculated based on \$50/month in unreimbursed cell phone and personal vehicle
10 expenses and \$200/employee in unreimbursed tool expenses). Gaines Decl. ¶ 29.

11 Defendant allegedly failed to issue Class Members accurately itemized wage statements.
12 Specifically, Class Members were not paid all wages due, as detailed above. As a result, the wage
13 statements issued by Defendant to Plaintiff and Class Members fail to accurately state all gross
14 wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor
15 Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable
16 hourly rates in effect during the pay period and the corresponding number of hours worked at each
17 hourly rate, in violation of Labor Code § 226(a)(9). Separately, the wage statements issued to
18 Plaintiff and Class Members also purportedly violate Labor Code § 226(a)(7) as they fail to set
19 forth the last four digits of the employee's social security number or an employee identification
20 number. Plaintiff calculates statutory penalties on this claim at \$332,000, with PAGA civil penalty
21 liability of \$363,300. Gaines Decl. ¶ 30.

22 Finally, Defendant allegedly failed to pay certain Class Members all wages due upon
23 separation of employment, in violation of Labor Code §§ 201-203. As Defendant failed to pay
24 them all wages due during the course of their employment, as described above, these wages were
25 due and owing upon separation of employment yet went unpaid. Plaintiff calculates statutory
26 penalties on this claim at \$841,662, with PAGA civil penalty liability of approximately \$10,000.
27 Gaines Decl. ¶ 31.

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1 Defendant maintained numerous defenses to Plaintiff's claims. It contends that it timely
2 paid all wages due, always provided meal and rest breaks as require by law, reimbursed all expenses
3 as required by law. It contends that Plaintiff would not succeed in certifying a class. It contends
4 that even if Plaintiff prevailed on all of his claims, any damages are far less than proffered by
5 Plaintiff. When the costs and risks of non-certification and loss on the merits are considered,
6 Plaintiff's counsel are of the opinion that the settlement reached is clearly a favorable one. Gaines
7 Decl. ¶ 32.

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. ¶ 33.

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 **V. 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 Ricardo Loera as the Class Representative;
- 28 4. Appointing Gaines & Gaines, APLC as Class Counsel;

- 1 5. Approving Phoenix Settlement Administrators as Settlement Administrator;
- 2 6. Preliminarily approving the allocation of \$20,000 from the Gross Settlement
- 3 Amount to settle Plaintiff's representative claims under the PAGA, of which seventy-five percent
- 4 (75%) shall be paid to the Labor and Workforce Development Agency and twenty-five percent
- 5 (25%) shall be allocated to the Individual PAGA Payments;
- 6 7. Approving as to content and form the notice to the Settlement Class, and directing
- 7 it to be disseminated by the Settlement Administrator; and
- 8 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, including each Class Member's name, last-known mailing address, Social Security number, and number of Class Pay Periods and PAGA Pay Periods (the "Class Data")	15 calendar days after service of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail the Notice, the Exclusion Form, the Pay Period Dispute Form and the Objection Form, to Class Members	15 calendar days after Settlement Administrator's receipt of the Class Data
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	_____, at _____.m. (approximately 110 days after entry of the Order granting this Motion)

1 DATED: September 9, 2024

Respectfully submitted,

2 GAINES & GAINES,
3 A Professional Law Corporation

4
5 By: *Daniel F. Gaines*

6 DANIEL F. GAINES

7 ALEX P. KATOFISKY

8 Attorneys for Plaintiff Ricardo Loera
9 and Proposed Class Counsel
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