

DANIEL F. GAINES, ESQ. SBN 251488  
daniel@gaineslawfirm.com  
ALEX P. KATOFISKY, ESQ. SBN 202754  
alex@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 Mary Magdalena Mejia  
and Proposed Class Counsel

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN JOAQUIN**

MARY MAGDALENA MEJIA,  
individually and on behalf of all similarly  
situated individuals,

Plaintiff,

v.

TOURO UNIVERSITY MEDICAL  
GROUP, a California corporation, TOURO  
UNIVERSITY CALIFORNIA, form of  
entity unknown, and DOES 1 through 10,  
inclusive,

Defendants.

CASE NO: STK-CV-UOE-2023-953

*Assigned to the Honorable Barbara Kronlund,  
Dept. 10D*

**CLASS ACTION**

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

**Date:**  
**Time:**  
**Dept.:**

*Complaint Filed: February 3, 2023*

1           **PLEASE TAKE NOTICE THAT** on \_\_\_\_\_ at \_\_\_\_\_.m., or as soon  
2 thereafter as the matter may be heard, in Department 10D of the above-entitled Court, located at  
3 180 E. Weber Avenue, Stockton, California 95202, Plaintiff Mary Magdalena Mejia will and  
4 hereby does move unopposed for an Order (1) preliminarily finding that the settlement between the  
5 parties falls within the range of reasonableness and approving the proposed class action settlement  
6 in the above-captioned case, (2) conditionally certifying, for settlement purposes only, a settlement  
7 class, (3) approving the appointment of Plaintiff as the Class Representative, (4) approving the  
8 appointment of Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC as Class  
9 Counsel, (5) approving the appointment of Phoenix Settlement Administration as settlement  
10 administrator, (6) preliminarily approving the allocation of \$100,000 from the Gross Settlement  
11 Amount to settle Plaintiff's representative claims under the Private Attorneys General Act (Lab.  
12 Code §§ 2698 et seq., "PAGA"), of which seventy-five percent (75%) will be paid to the Labor and  
13 Workforce Development Agency ("LWDA") and twenty-five percent (25%) shall be allocated to  
14 the Aggrieved Employees as Individual PAGA Payments; (7) approving as to content and form the  
15 notice to the Settlement Class, and directing it be disseminated by the Administrator; and (8) setting  
16 a final fairness and approval hearing.

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

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

24           This Motion will be based on the Memorandum of Points and Authorities set forth herein,  
25 the Class Action and PAGA Representative Action Settlement Agreement, the Declaration of  
26 Daniel F. Gaines, such evidence or oral argument as may be presented at the hearing, and on the  
27 complete record and file herein.

1 DATED: April 3, 2024

GAINES & GAINES, APLC

2  
3 By: *Daniel F. Gaines*

4 DANIEL F. GAINES

ALEX P. KATOFSKY

5 Attorneys for Plaintiff Mary Magdalena Mejia and  
6 Proposed Class Counsel  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## **TABLE OF CONTENTS**

|                                                                                                                                             | <b><u>Page</u></b> |
|---------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| I. INTRODUCTION .....                                                                                                                       | 1                  |
| II. BACKGROUND AND PRECEDURAL HISTORY .....                                                                                                 | 2                  |
| III. INVESTIGATION AND SETTLEMENT DISCUSSIONS.....                                                                                          | 2                  |
| IV. LEGAL ANALYSIS.....                                                                                                                     | 3                  |
| A. The Proposed Settlement Terms .....                                                                                                      | 3                  |
| B. Settlement of Claims Pursuant to Labor Code § 2699 et. seq. (PAGA) .....                                                                 | 4                  |
| C. Two-Step Approval Process.....                                                                                                           | 5                  |
| D. Procedures for Settlement Before Class Certification .....                                                                               | 6                  |
| 1. The Settlement Class Should Be Certified for Settlement Purposes<br>Only.....                                                            | 7                  |
| a. The Settlement Class Is Ascertainable.....                                                                                               | 7                  |
| b. Questions of Law or Fact Common to Members of the<br>Settlement Class Predominate.....                                                   | 7                  |
| c. The Proposed Class Representative’s Claims are Typical of<br>the Class Members’ Claims .....                                             | 8                  |
| E. The Settlement Is Fair and Reasonable and Not the Result of Fraud or<br>Collusion .....                                                  | 8                  |
| 1. The Settlement Falls Within The “Ballpark” of Reasonableness .....                                                                       | 9                  |
| 2. Despite the Asserted Fairness of the Settlement Terms, Class<br>Members May Request Exclusion From, Or Object To, The<br>Settlement..... | 13                 |
| V. CONCLUSION .....                                                                                                                         | 14                 |

## TABLE OF AUTHORITIES

### Page

#### CASES

|                                                                                                                 |            |
|-----------------------------------------------------------------------------------------------------------------|------------|
| <i>Amchem Products, Inc. v. Windsor</i><br>(1987) 521 U.S. 591 .....                                            | 7          |
| <i>Clark v. American Residential Services LLC</i><br>(2009) 175 Cal.App.4th 785 .....                           | 9          |
| <i>Classen v. Weller</i><br>(1983) 145 Cal. App. 3d 27.....                                                     | 8          |
| <i>Dunk v. Ford Motor Co.</i><br>(1996) 48 Cal. App. 4th 1794 .....                                             | 1, 3, 6, 7 |
| <i>Green v. Obledo</i><br>(1981) 29 Cal.3d 126 .....                                                            | 5          |
| <i>Hammon v. Barry</i><br>(D.D.C. 1990) 752 F. Supp. 1087 .....                                                 | 8          |
| <i>In re Armored Car Antitrust Litig.</i><br>(N.D. Ga. 1979) 472 F. Supp. 1357 .....                            | 8          |
| <i>In re Baldwin-United Corp.</i><br>(S.D.N.Y. 1984) 105 F.R.D. 475 .....                                       | 6          |
| <i>In re Chicken Antitrust Litig.</i><br>(N.D. Ga. 1980) 560 F. Supp. 957 .....                                 | 8          |
| <i>In re Paine Webber Ltd. P'ships Litig.</i><br>(S.D.N.Y. 1997) 171 F.R.D. 104 .....                           | 9          |
| <i>Kullar v. Foot Locker Retail, Inc.</i><br>(2008) 168 Cal.App.4th 116 .....                                   | 3, 9       |
| <i>Mars Steel Corp. v. Continental Illinois Nat'l Bank &amp; Trust Co.</i><br>(7th Cir. 1987) 834 F.2d 677..... | 8          |
| <i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i><br>(C.D. Cal. 2004) 221 F.R.D. 523 .....                   | 8          |
| <i>Priddy v. Edelman</i><br>(6th Cir. 1989) 883 F.2d 438.....                                                   | 8          |

**TABLE OF AUTHORITIES**

**(continued)**

**Page**

|                                                                                         |      |
|-----------------------------------------------------------------------------------------|------|
| <i>Reyes v. Board of Supervisors</i><br>(1987) 196 Cal. App. 3d 1263.....               | 7    |
| <i>Sommers v. Abraham Lincoln Federal Sav. &amp; Loan Ass'n</i><br>(E.D. Pa. 1978)..... | 8    |
| <i>Steinberg v. Carey</i><br>(S.D.N.Y. 1979) 470 F. Supp. 471.....                      | 8    |
| <i>Vasquez v. Superior Court</i><br>(1971) 4 Cal.3d 800 .....                           | 5    |
| <i>Wershba v. Apple Computer</i><br>(2001) 91 Cal.App.4th 224 .....                     | 5, 6 |

**STATUTES**

|                                                |        |
|------------------------------------------------|--------|
| Cal. Business & Professions Code § 17200 ..... | 2      |
| Cal. Labor Code §§ 201-203 .....               | 12     |
| Cal. Labor Code § 226 .....                    | 12     |
| Cal. Labor Code § 226.7 .....                  | 10, 11 |
| Cal. Labor Code § 510 .....                    | 10, 11 |
| Cal. Labor Code § 512 .....                    | 11     |
| Cal. Labor Code § 558 .....                    | 10, 11 |
| Cal. Labor Code § 1194 .....                   | 10, 11 |
| Cal. Labor Code § 1194.2 .....                 | 10     |
| Cal. Labor Code § 2698 .....                   | 1      |
| Cal. Labor Code § 2699 .....                   | 4, 5   |

**RULES AND REGULATIONS**

|                            |      |
|----------------------------|------|
| Cal. R. Ct. 3.769.....     | 5, 6 |
| Fed. R. Civ. P. 23(e)..... | 5    |

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**  
**(continued)**

**Page**

**OTHER AUTHORITIES**

4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* (4th ed. 2002)..... 6, 9

Manual for Complex Litigation (Third) § 30.41 ..... 5

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 PAGA Representative Action Settlement Agreement (“Settlement”, “Stipulation” or  
5 “Stip.”) for the Court’s approval. The Settlement is made and entered into by and between Plaintiff  
6 Mary Magdalena Mejia (“Plaintiff” or “Mejia”), individually and on behalf of all others similarly  
7 situated and all “aggrieved employees” pursuant to Labor Code § 2698, *et seq.*, and Defendants  
8 Touro University Medical Group and Touro University (collectively “Defendants”).

9 The Settlement occurred as a result of extensive arm’s-length negotiations by experienced  
10 counsel with the assistance of a respected mediator experienced in the area of employment wage-  
11 and-hour class actions. Most importantly, the Settlement will result in significant financial benefit  
12 to the participating class members, on terms that are by any measure fair, reasonable and adequate.  
13 *See Dunk v. Ford Motor Co.* (2008) 48 Cal. App. 4th 1794, 1801-02. The proposed Settlement  
14 provides for a non-revisionary class settlement in the gross amount of \$1,950,000 to a settlement  
15 class of approximately 600 non-exempt employees who worked approximately 36,536 Workweeks  
16 during the Class Period, yielding gross payments of approximately **\$3,250 per employee and over**  
17 **\$53 per workweek**. As detailed below, the Settlement is in the best interests of the class in light  
18 of all of the facts and circumstances and the risks and delays of further litigation.

19 For the foregoing reasons, the Parties respectfully request that the Court: (1) grant  
20 preliminary approval of the Settlement and preliminarily find that the Settlement falls within the  
21 range of reasonableness; (2) conditionally grant certification of the proposed Settlement Class,  
22 including two subclasses, for settlement purposes only; (3) approve the appointment of Plaintiff as  
23 the Class Representative; (4) approve the appointment of Daniel F. Gaines and Alex P. Katofsky  
24 of Gaines & Gaines, APLC as Class Counsel; (5) approve appointment of Phoenix Settlement  
25 Administration as the Administrator; (6) grant preliminary approval of the allocation of \$100,000  
26 from the Gross Settlement Amount to settle Plaintiff’s representative claims under PAGA; (7)  
27 approve the content and form of the proposed class action notice packet and authorize its mailing;  
28 and (8) schedule a final fairness and approval hearing.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

On January 19, 2023, Plaintiff filed a PAGA Notice with the California Labor and Workforce Development Agency (“LWDA”). On February 2, 2023 and March 27, 2023, Plaintiff filed supplemental PAGA Notices with the LWDA. Declaration of Daniel F. Gaines (“Gaines Decl.”) at ¶ 6.

On February 3, 2023, Plaintiff commenced the Action by filing with the Court her Complaint against Defendants. Plaintiff’s Complaint asserted claims that Defendants: (a) failed to pay minimum and overtime wages; (b) failed to provide rest periods or pay in lieu thereof; (c) failed to provide meal periods or pay in lieu thereof; (d) failed to provide accurate itemized wage statements; and (e) violated California Business and Professions Code § 17200 et seq. Gaines Decl. at ¶ 7.

On July 7, 2023, Plaintiff filed a First Amended Class and Representative Action Complaint, which is the Operative Complaint in the Action, wherein Plaintiff added a PAGA claim. Gaines Decl. at ¶ 8.

The Class Representative contends that Defendants violated the California Labor Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class certification. Gaines Decl. at ¶ 9.

Defendants deny the allegations in the PAGA Notices and operative Complaint, deny any failure to comply with the laws identified therein, deny any liability for the causes of action alleged therein, and deny that Plaintiff or any Class Members or Aggrieved Employees are entitled to damages, penalties, or any other relief. Gaines Decl. at ¶ 10.

## **III. INVESTIGATION AND SETTLEMENT DISCUSSIONS**

Class Counsel conducted a thorough investigation into the facts and law during the prosecution of this class action case, including the exchange of extensive informal discovery and the review and verification of statistical data and other facts and information provided by Defendants, including policy and procedure handbooks, and wage statements. Counsel for the Parties also represent that they have investigated the applicable law as applied to the facts

1 discovered regarding Plaintiff's alleged claims and Defendants' potential defenses thereto, and the  
2 damages and other losses claimed by Plaintiff. Gaines Decl. at ¶ 11.

3 On February 12, 2024, the Parties participated in a full-day mediation presided over by  
4 mediator Brandon McKelvey. Following the mediation, each side, represented by their respective  
5 counsel, agreed to settle the Action. Gaines Decl. at ¶ 12.

6 Prior to mediation, Plaintiff obtained from Defendants documents and information to  
7 investigate the claims such that Plaintiff's investigation was sufficient to satisfy the criteria for  
8 court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and  
9 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*"). Gaines  
10 Decl. at ¶ 13.

11 Based on their own independent investigation and evaluation, Class Counsel are of the  
12 opinion that settlement for the consideration and on the terms set forth in this Settlement is fair,  
13 reasonable, and adequate and is in the best interest of the Settlement Class in light of all known  
14 facts and circumstances, including the risk of significant delay, the risk the Settlement Class will  
15 not be certified by the Court, and the defenses asserted by Defendants. Gaines Decl. at ¶ 14.

16 The Parties agree that the Settlement Class described herein may be certified for settlement  
17 purposes only and that any motion for approval seeking, *inter alia*, certification of the Settlement  
18 Class is for purposes of the settlement only. If for any reason the Settlement is not approved, the  
19 certification will have no force or effect and will immediately be revoked. The Parties further agree  
20 that certification for purposes of settlement only is in no way an admission that class certification  
21 is proper under the more stringent standard applied for litigation and that evidence of this limited  
22 stipulation for settlement purposes only will not be admissible for any purpose in this or any other  
23 proceeding. Gaines Decl. at ¶ 15.

#### 24 **IV. LEGAL ANALYSIS**

##### 25 **A. The Proposed Settlement Terms**

26 The Parties have agreed upon a settlement class: All individuals who currently or previously  
27 have worked for either of the Defendants in California in hourly-paid, non-exempt classified  
28 positions at any time during the Class Period. Defendants represent that the Settlement Class

contains approximately 600 employees collectively have worked a total of approximately 36,536 Workweeks during the Class Period. Settlement at ¶ 4.1.

The Parties stipulate to the conditional certification of the Settlement Class as defined herein for settlement purposes only. Settlement at ¶ 13.1.

The Settlement provides that Defendants shall pay the total, non-reversionary sum of \$1,950,000 to resolve the claims alleged in the Action on behalf of the Settlement Class (the “Gross Settlement Amount”). Settlement. at ¶ 1.22.

Class Members need not submit a claim form to receive their share of the Settlement. Class Members who timely exclude themselves from the Settlement will not be part of the final Settlement Class and not bound by the Settlement’s release of class claims as outlined by the Released Class Claims (although Aggrieved Employees will be bound by the PAGA release, even if they opt out of the class settlement). Settlement at ¶¶ 1.39, 1.40.

The Settlement provides that Plaintiff’s counsel may request an award of attorneys’ fees not to exceed 35% of the Gross Settlement Amount (projected to be \$682,500) and seek reimbursement of litigation costs necessarily incurred in pursuing this Action, not to exceed \$25,000. Settlement at ¶ 3.2(b). The Settlement also provides that Plaintiff will seek, and Defendants will not oppose, a service payment to the named Plaintiff, Mary Magdalena Mejia, in the amount of \$15,000. Settlement at ¶ 3.2(a).

After reviewing multiple bids, the Parties agreed to Phoenix Settlement Administration (“Phoenix”), an experienced and competent settlement administration company, as the Administrator. Up to \$10,000 of the Gross Settlement Amount has been allocated to compensate Phoenix for its work related to the settlement administration. Settlement at ¶ 3.2(c).

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

Pursuant to PAGA, the Parties have agreed that \$100,000 of the Gross Settlement Amount will be allocated to settle the claims brought under Labor Code § 2699 *et. seq.* Pursuant to Labor Code § 2699(i), “civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved employees.” As such, seventy-five percent (75%), or \$75,000, of the PAGA Settlement Amount

1 will be paid to the California Labor and Workforce Development Agency as the Labor and  
2 Workforce Development Agency (“LWDA”) Payment, and twenty-five percent (25%), or \$25,000,  
3 will be allocated to the Individual PAGA Payments for the Aggrieved Employees. Settlement at ¶  
4 3.2(d).

5 As required by Labor Code § 2699(1)(2), concurrent with Plaintiff’s submission of the  
6 Settlement to the Court, Plaintiff will submit the Settlement and a copy of this Motion to the  
7 LWDA. Gaines Decl. at ¶ 35.

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

9 Any settlement of class litigation must be reviewed and approved by the Court. Cal. R. Ct.  
10 3.769; Fed. R. Civ. P. 23(e).<sup>1</sup> This is done in two steps: (1) an early (preliminary) review by the  
11 trial court, and (2) a final review after notice has been distributed to the Class Members informing  
12 them of the terms of the settlement and allowing them to exclude themselves from, participate in  
13 and/or object to the settlement. The Manual for Complex Litigation (Third) § 30.41 states:

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

25 Thus, the preliminary approval by the trial court is simply a conditional finding that the  
26 settlement appears to be within the range of acceptable settlements. *See Wershba v. Apple*  
27 *Computer* (2001) 91 Cal.App.4th 224, 234-35. “The strength of the findings made by a judge at a  
28 preliminary hearing or conference concerning a tentative settlement proposal may vary. The court  
may find that the settlement proposal contains some merit, is within the range of reasonableness  
required for a settlement offer, or is presumptively valid subject only to any objections that may be

---

<sup>1</sup> 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, 145-46. Where appropriate, therefore, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

1 raised at a final hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26  
2 (4th ed. 2002).

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

5 When the parties to an action reach a monetary settlement, they will  
6 usually prepare and execute a joint stipulation of settlement, which  
7 is submitted to the court for preliminary approval. The stipulation  
8 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.

9 *Id.* at § 11.24.

10 Here, the Parties have reached such an agreement and have submitted the Settlement  
11 herewith which fully sets forth all terms of the agreement reached among the Parties. *See* Gaines  
12 Decl. ¶ 16, Exhibit B.

13 **D. Procedures for Settlement Before Class Certification.**

14 Pursuant to California Rules of Court, Rule 3.769(d), parties also may, at the preliminary  
15 approval stage, request that the court provisionally approve certification of the class – conditioned  
16 upon final approval of the settlement. “[P]re-certification settlements are routinely approved if  
17 found to be fair and reasonable.” *Wershba, supra*, 91 Cal. App. 4th at 240. *Accord Dunk, supra*,  
18 48 Cal. App. 4th at 1803 (although the settlement was reached before any “adversary certification,”  
19 the court was satisfied that it was “fair, adequate and reasonable.”). *See also In re Baldwin-United*  
20 *Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478<sup>2</sup> (“many courts have employed this practice in the  
21 name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”)

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

26 4 *Newberg on Class Actions*, at §11.26.

27  
28 <sup>2</sup>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                   1.       **The Settlement Class Should Be Certified for Settlement Purposes Only**

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

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

9           The proposed Settlement Class is ascertainable. The class definition, size of the class, and  
10 means for identifying the members of the class determine whether the class is ascertainable.  
11 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members  
12 are identifiable from Defendants' records. Further, the Settlement Class is sufficiently numerous  
13 to warrant certification. According to Defendants' records, the Settlement Class is comprised of  
14 approximately 600 individuals. Gaines Decl. ¶ 31.

15                   b.       **Questions of Law or Fact Common to Members of the Settlement**  
16                               **Class Predominate**

17           The Class Members' claims all stem from a common source: all Class Members allege that  
18 Defendants violated the same Labor Code and Wage Order provisions in connection with their  
19 work for Defendants. The same Labor Code and Wage Order violations are alleged on behalf of  
20 all persons encompassed in the Settlement Class, arising out of or which could be pled based on the  
21 facts and the allegations set forth in the operative complaint in the Action. Specifically, these claims  
22 include failure to pay all required minimum and overtime wages, failure to provide meal periods and  
23 rest breaks (or pay related premiums in lieu); failure to timely pay wages during employment; wage  
24 statement violations; waiting time penalties; and related unfair competition claims. Gaines Decl. ¶  
25 32.

26                   c.       **The Proposed Class Representative's Claims are Typical of the**  
27                               **Class Members' Claims**

28           A class representative's claims are typical when they arise from the same event or course

1 of conduct that gives rise to the claims of the class, and are based on the same legal theory.  
2 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, the named Plaintiff and proposed  
3 Class Representative Mary Magdalena Mejia is a former non-exempt employee of Defendants.  
4 Plaintiff alleges she was not paid all required minimum and overtime wages; provided with 30-  
5 minute, uninterrupted, and off-duty meal periods as required by California law; provided with 10-  
6 minute rest breaks as required by California law; provided with compliant itemized employee wage  
7 statements; and timely paid all wages during employment and due at termination. Plaintiff alleges  
8 the same claims as the Settlement Class would reasonably be expected to bring based on the course  
9 of conduct alleged herein. Gaines Decl. ¶ 33.

10 Plaintiff has demonstrated that she will aggressively and competently assert the interests of  
11 the proposed Settlement Class; she has taken an active role in the litigation and has no apparent  
12 conflicts with other class members. Gaines Decl. ¶ 34. Furthermore, Plaintiff has retained  
13 competent counsel, experienced in litigating class action claims in the employment context. *See*  
14 Gaines Decl. ¶¶ 2-5.

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

17 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless  
18 evidence to the contrary is offered. *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars*  
19 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re*  
20 *Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962. Courts do not substitute their  
21 judgment for that of the proponents, particularly where, as here, settlement has been reached with  
22 the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*  
23 *Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990)  
24 752 F. Supp. 1087, 1093; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored*  
25 *Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357, 1368; *Sommers v. Abraham Lincoln*  
26 *Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.

27 While the recommendations of counsel proposing the Settlement are not conclusive, the  
28 Court can properly take them into account, particularly where, as here, such counsel have been

involved in informal discovery and negotiations for some period of time, appear to be competent, have experience with this type of litigation, and have exchanged substantial evidence with the opposing party. *See Newberg on Class Actions, supra*, § 11.47; *In re Paine Webber Ltd. P'ships Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 (“[s]o long as the integrity of the arm’s-length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation”); *see* Gaines Decl. ¶¶ 2-5, 14-17.

Here, the Parties’ counsels 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 engaged in a broad exchange of documents, statistics, records and other relevant information. Each side apprised the other, informally and at a formal mediation, of their respective factual contentions, legal theories and defenses, resulting in extensive arms-length negotiations taking place among the Parties. *See* Gaines Decl. ¶ 2-5, 14-17.

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.

Prior to settlement, Plaintiff’s counsel created a comprehensive damage analysis using sampling information obtained through informal discovery and with the assistance of an expert statistician. This damage analysis reveals that the negotiated settlement falls within a realistic range

1 of recovery on Class Members' claims. Gaines Decl. ¶ 18.

2 Plaintiff contends that Defendants applied a rounding policy – every clock record is exactly  
3 on the quarter hour. She argues this is a recordkeeping violation and results in time  
4 rounding/shaving which pays fewer hours than were actually worked, in violation of Labor Code  
5 §§ 510, 558, 1194, and 1194.2. On a weekly basis, this practice allegedly deprived Class Members  
6 of significant hours worked and wages due. According to Plaintiff's expert's calculations, the  
7 potential exposure on this claim exceeds \$716,086. However, prevailing on this claim was risky,  
8 and a discount was required for settlement purposes. For example, Defendants argued that any  
9 time rounding was neutral, such that there was no underpayment of wages. They argued this claim  
10 could not be certified because of differences in liability and damages, if any, across the class. The  
11 compromised settlement amount reflects a discount for the risks of further litigation. Gaines Decl.  
12 ¶ 19.

13 Plaintiff further alleges that Defendants failed to pay Class Members correct premium  
14 wages for missed, denied, and unauthorized rest periods in violation of Labor Code § 226.7 and  
15 IWC Wage Order 4-2001. Class Members were allegedly denied, and therefore unable to take, 10-  
16 minute rest periods for every four hours of work or major fraction thereof, but were not paid  
17 premium wages of one hour's pay for each missed, denied and unauthorized rest period. Plaintiff  
18 argues that, for part of the class period, Defendants maintained unlawful written rest period policies  
19 that prohibited Class Members from leaving the premises, which she contended violated the holding  
20 in *Augustus v. ABM Security Services, Inc.* (2016) 5 Cal. 5th 257, holding that the rest period  
21 requirement "obligates employers to permit and authorizes employees to take off-duty rest periods.  
22 That is, during rest periods employers must relieve employees of all duties and **relinquish control**  
23 **over how employees spend their time.**" *Id.* at 269 (emphasis added). She also argued that  
24 Defendants' policies failed to comply with the requirements of *Brinker v. Restaurant Corp. v.*  
25 *Superior Court* (2017) 53 Cal.4th 1004,1029-30, where the California Supreme Court held that the  
26 employer's uniform rest period policy violated California law because it did not take into account  
27 the "major fraction thereof" language in the relevant IWC Wage Order. *Id.* at 1033. Gaines Decl.  
28 ¶ 20.

1 According to Plaintiff's expert witness calculations, the potential exposure on this claim  
2 exceeds \$5,993,750, but prevailing on this claim also came with substantial risk that required a  
3 discount for purposes of settlement. For example, Defendants argued that they always offered  
4 proper rest periods to class members, and any rest periods not taken were voluntarily waived. It  
5 argued that this claim would be impossible to certify based on the multiple locations where  
6 employees worked, where no centralized supervisor oversaw the implementation of rest period  
7 policies and practices, and because no records are present to prove missed rest breaks. These risks  
8 required a discount for settlement purposes. Gaines Decl. ¶ 21.

9 Plaintiff further argues that Defendants failed to permit or authorize Class Members to take  
10 timely 30-minute meal periods for shifts greater than 5 hours in length or a second 30-minute meal  
11 period for shifts greater than 10 hours in length, in violation of Labor Code §§ 226.7, 510, 512,  
12 558, and 1194 and IWC Wage Order 4-2001. Labor Code § 512 provides that employers may not  
13 employ an employee for a work period of more than 5 hours without providing a 30-minute meal  
14 period starting no later than the end of the 5<sup>th</sup> hour. Plaintiff contends that Class Members were  
15 routinely unable to take a proper meal period when they worked shifts in excess of 5 hours in  
16 duration and a second meal period when they worked shifts in excess of 10 hours in duration.  
17 Gaines Decl. ¶ 22.

18 Plaintiff contends that Defendants automatically deducted an hour from each employee's  
19 time records for a meal period, even when a meal period was not taken. Defendants argue that  
20 employees uniformly received proper and timely meal periods and the time records show this.  
21 According to Plaintiff's expert witness calculations, the potential exposure on this claim exceeds  
22 \$5,829,000. Litigation and class certification risk required a discount for this claim for settlement  
23 purposes. Defendants maintained the position that their time records were accurate; that employees  
24 were ever compelled to perform any work during their meal periods; and that this claim would be  
25 impossible to certify because proving Plaintiff's theories of liability would require hundreds of  
26 mini-trials. In short, settlement at this juncture required a compromise, and the settlement reached  
27 reflects a fair compromise of the class members' claims. Gaines Decl. ¶ 23.

28 \\\

1 Plaintiff also argues that Defendants failed to issue Class Members accurately itemized  
2 wage statements. Specifically, as Class Members were not paid all wages due, as detailed above,  
3 their wage statements do not state the correct gross wages earned, in violation of Labor Code §§  
4 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net  
5 wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in  
6 effect during the pay period and the corresponding number of hours worked, in violation of Labor  
7 Code §§ 226(a)(9) and 226.3. This claim is primarily derivative in nature – Plaintiff would have  
8 to succeed on her unpaid wage claims to recover these penalties – and could be valued at up to  
9 \$1,062,100. Because of their derivative nature, and because these penalties are subject to unique  
10 defenses for willfulness, their recovery carried risk which required a discount for settlement  
11 purposes. Gaines Decl. ¶ 24.

12 Plaintiff also contends that Defendants failed to timely pay Class Members all wages due  
13 upon separation of employment, in violation of Labor Code §§ 201-203. As Defendants failed to  
14 pay Class Members all wages due during the course of employment, as discussed above, these  
15 wages remained due and owing upon separation of employment. According to Plaintiff’s expert  
16 witness calculations, the potential exposure on the waiting time penalty claims is approximately  
17 \$1,111,514. Valuing these claims, like those for defective wage statements, was speculative.  
18 Plaintiff and the class members would not recover on these claims unless they prevailed on their  
19 underlying unpaid wage claims – not a guarantee in the first place. These waiting time penalty  
20 claims were also subject to a “good faith” defense, which could be established if Defendants  
21 demonstrated that they did not realize all wages due were not paid, even it was determined that  
22 some wages were unpaid. Litigation risk required a discount on this claim for settlement purposes.  
23 Gaines Decl. ¶ 25.

24 Finally, Plaintiff sought derivative PAGA penalties, valued at up to \$1,318,800 (without  
25 stacking multiple penalties per employee pay period). Settlement at this juncture also required a  
26 compromise as to these claims because their recovery was not guaranteed, and there was substantial  
27 risk that the Court would reduce the amount of any PAGA penalties awarded pursuant to its  
28 discretionary power to reduce them. Here, where there is no guarantee that any wages, meal or rest

1 premiums, or statutory penalties would be recovered, there is similarly no guarantee that PAGA  
2 penalties would be recovered. The compromise as to this claim – like each of the other claims  
3 compromised by the settlement – is a fair one that warrants approval by the Court. Gaines Decl. ¶  
4 26.

5 Class certification is a difficult hurdle to overcome, particularly in a case like this one where  
6 Defendants argued nearly all of Plaintiff's claims could require individualized inquiries as to  
7 liability and damages. Defendants argued they paid employees all wages due and issued legally  
8 complaint wage statements pursuant to legally compliant policies and practices. They maintained  
9 that they offered all meal and rest breaks required by law, and that employees had sufficient time  
10 in their daily schedules to always take their required breaks. Defendants strongly contend that their  
11 policies and practices do not violate any laws. Gaines Decl. ¶ 27.

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. ¶ 28.

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. ¶ 29.

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

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 Settlement.

28 \\\

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  
5 and approving the proposed settlement;

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

7             3.       Appointing Plaintiff Mary Magdalena Mejia as the Class Representative;

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

10            5.       Approving Phoenix Settlement Administration as the Administrator;

11            6.       Preliminarily approving the allocation of \$100,000 from the Gross Settlement  
12 Amount to settle Plaintiff's representative claims under the PAGA, of which seventy-five percent  
13 (75%) shall be paid to the Labor and Workforce Development Agency and twenty-five percent  
14 (25%) will be allocated to the Individual PAGA Payments for Aggrieved Employees;

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

17            8.       Setting the following schedule of settlement proceedings:

18

| <b><u>EVENT</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                             | <b><u>TIMING</u></b>                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| Last day for Defendants to provide to the Administrator all Class Member identifying information in Defendants' possession including, for each Class Member, their name, last-known mailing address, last known telephone number, Social Security number, email address (if known and available to Defendants), number of Workweeks worked during the Class Period, and number of PAGA Pay Periods worked during the PAGA Period ("Class Data") | 20 calendar days after entry of Court's Order granting preliminary approval of Settlement |
| Last day for Administrator to mail the Class Notice Packet to Class Members via U.S. Mail                                                                                                                                                                                                                                                                                                                                                       | 14 calendar days after Administrator's receipt of Class Data                              |
| Last day for Class Members to submit a written exclusion or objection to Administrator                                                                                                                                                                                                                                                                                                                                                          | 60 calendar days after the initial mailing of the Class Notice to Class Members           |

28

| <u>EVENT</u>                                                                                                                                                              | <u>TIMING</u>                                                                                                                                      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| 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 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. The Parties suggest the final approval hearing be held approximately 115 days after this preliminary approval order is signed. |

DATED: April 3, 2024

GAINES & GAINES, APLC

By: *Daniel F. Gaines*

DANIEL F. GAINES

ALEX P. KATOFISKY

Attorneys for Plaintiff Mary Magdalena Mejia and  
Proposed Class Counsel