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Attorneys for Plaintiff Eva Lopez
and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS

EVA LOPEZ, on behalf of herself and all
“aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiff,

v.

QUALITY BUILT, LLC, a Delaware
limited liability company, and DOES 1
through 10, inclusive,

Defendants.

CASE NO: 23CU0207

Assigned to the Hon. Valerie Chrissakis, Dept. 8

CLASS ACTION

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

Date: July 8, 2024

Time: 8:15 a.m.

Dept.: 8

Complaint Filed: June 5, 2023

1 **PLEASE TAKE NOTICE THAT** on July 8, 2024 at 8:15 a.m., or as soon thereafter as
2 the matter may be heard, in Department 8 of the above-entitled Court, located at 1640 Kings County
3 Drive, Hanford, California 93230, Plaintiff Eva Lopez will and hereby does move unopposed for
4 an Order (1) preliminarily finding that the settlement between the parties falls within the range of
5 reasonableness and approving the proposed class action settlement in the above-captioned case, (2)
6 conditionally certifying, for settlement purposes only, a settlement class, (3) approving the
7 appointment of Plaintiff Eva Lopez as Class Representative, (4) approving the appointment of
8 Gaines & Gaines, APLC as Class Counsel, (5) approving the appointment of Phoenix Settlement
9 Administrators as settlement administrator, (6) preliminarily approving the allocation of \$10,000
10 from the Gross Settlement Amount to settle Plaintiff's representative claims under the Private
11 Attorneys General Act (Lab. Code §§ 2698 et seq.), of which seventy-five percent (75%) will be
12 paid to the Labor and Workforce Development Agency and twenty-five percent (25%) shall be
13 distributed to the Aggrieved Employees; and (8) setting a final fairness and approval hearing.

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

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

21 This Motion will be based on the Memorandum of Points and Authorities set forth herein,
22 the Settlement Agreement and Release, the Declarations of Daniel F. Gaines, Jodey Lawrence, and
23 Eva Lopez, such evidence or oral argument as may be presented at the hearing, and on the complete
24 record and file herein.

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27 \\

28 \\

1
2 DATED: June 7, 2024

Respectfully submitted,

3 GAINES & GAINES,
4 A Professional Law Corporation

5
6 By: 
7 DANIEL F. GAINES
8 ALEX P. KATOFISKY
9 Attorneys for Plaintiff Eva Lopez
10 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 (“Settlement”) for the Court’s approval. The Settlement is made and
5 entered into by and between Plaintiff Eva Lopez (“Plaintiff” or “Lopez”), individually, on behalf
6 of all others similarly situated, and on behalf of all other “aggrieved employees,” and Defendant
7 Quality Built, 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-reversionary class settlement in the gross amount of \$200,000 to a settlement class of
14 approximately eighty-seven (87) Class Members, yielding gross payments of nearly \$2,300 each.
15 As detailed below, the settlement is in the best interests of the class and the aggrieved employees
16 in light of all of the facts and circumstances 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 Eva Lopez 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 approve the allocation of \$10,000 from the Gross Settlement Amount to settle Plaintiff’s
24 representative claims under the Private Attorneys General Act (Lab. Code §§ 2698 et seq.), of
25 which seventy-five percent (75%) will be paid to the Labor and Workforce Development Agency
26 and twenty-five percent (25%) shall be distributed to the Aggrieved Employees; (g) authorize the
27 mailing of the proposed class and PAGA action notice packet; and (h) schedule a final fairness and
28 approval hearing.

II. BACKGROUND AND PROCEDURAL HISTORY

On March 8, 2023, Plaintiff Lopez exhausted the pre-filing requirements of the Labor Code Private Attorneys General Act of 2004 (“PAGA”). On June 5, 2023, Plaintiff Lopez initiated her Action in the Kings County Superior Court by filing a PAGA complaint. Declaration of Daniel F. Gaines (“Gaines Decl.”) at ¶ 6.

On September 25, 2023, Plaintiff filed a First Amended Complaint Class Action Complaint (the “FAC”). The FAC asserts claims against Defendant for (1) Failure to Pay All Minimum and Overtime Wages Due (Labor Code §§ 510, 1194, and 1194.2); (2) Failure to Provide Rest Periods Or Compensation In Lieu Thereof (Labor Code § 226.7; IWC Wage Order 4-2001); (3) Failure to Provide Meal Periods Or Compensation In Lieu Thereof (Labor Code §§ 226.7 and 512; IWC Wage Order 4-2001); (4) Failure to Reimburse All Business-Related Expenses (Labor Code § 2802); (5) Knowing and Intentional Failure to Comply With Itemized Employee Wage Statement Provisions (Labor Code § 226(a), (e)); (6) Failure to Timely Pay Wages Due at Separation of Employment (Labor Code §§ 201-203); (7) Violation of Business and Professions Code § 17200; and (8) Penalties Pursuant to Labor Code § 2699(f) for Violations of Labor Code §§ 201, 202, 226(a), 226.7, 246, 510, 512, 1194, and 2802, and Pursuant To Labor Code § 2699(a) for Violations of Labor Code §§ 226.3 and 558. Gaines Decl. at ¶ 7.

Defendant disputes all claims alleged in the Action and does not by the Settlement admit any liability or wrongdoing whatsoever. Gaines Decl. at ¶ 8.

The Class Representative contends that Defendant 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.

III. INVESTIGATION AND SETTLEMENT DISCUSSIONS

Class Counsel represent that they have 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 Defendant. Counsel for the Parties also represent that they have investigated the applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and

1 potential defenses thereto, and the damages and other losses claimed by Plaintiff. Gaines Decl. at
2 ¶ 10.

3 On February 27, 2024, following their exchange of information and documents regarding
4 the Settlement Class and the claims and defenses asserted by the Parties, the Parties engaged in
5 arm's-length negotiations with the assistance of an experienced wage and hour mediator, Hon.
6 Dickran M. Tevrizian (Ret.), where the Parties were able to reach the resolution of the Action.
7 Gaines Decl. at ¶ 11.

8 Based on their own independent investigation and evaluation, Class Counsel are of the
9 opinion (and will so represent to the Court) that settlement for the consideration and on the terms
10 set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of
11 the Settlement Class in light of all known facts and circumstances, including the risk of significant
12 delay, the risk the Settlement Class will not be certified by the Court, and the defenses asserted by
13 Defendant. Defendant and its counsel also agree (and will so represent to the Court) that this
14 settlement is fair and in the best interest of the Settlement Class. Gaines Decl. at ¶ 12.

15 The Parties agree that the Settlement Class described herein may be certified for settlement
16 purposes only and that any motion for approval seeking, *inter alia*, certification of the Settlement
17 Class is for purposes of the settlement only. If for any reason the settlement is not approved, the
18 certification will have no force or effect and will immediately be revoked. The Parties further agree
19 that certification for purposes of the settlement is in no way an admission that class certification is
20 proper under the more stringent standard applied for litigation and that evidence of this limited
21 Settlement Agreement for settlement purposes only will not be admissible for any purpose in this
22 or any other proceeding. Gaines Decl. at ¶ 13.

23 **IV. LEGAL ANALYSIS**

24 **A. The Proposed Settlement Terms**

25 **1. The Settlement Class**

26 The Parties have agreed to a settlement class composed of all current and former non-
27 exempt employees of Defendant, who were employed by Defendant in California at any time during
28 the Class Period [June 5, 2019 through February 27, 2024]. Stip. at ¶ I(II).

1 The Aggrieved Employees are defined as follows: All current and former non-exempt
2 employees of Defendant, who were employed by Defendant in California at any time during the
3 PAGA Period [March 28, 2022 through February 27, 2024]. Stip. at ¶ I(B).

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

5 The Parties agree to settle the Action for a Gross Settlement Amount of \$200,000 (“the
6 Gross Settlement Amount”).¹ All payments associated with the Settlement shall be paid by the
7 Settlement Administrator from the Gross Settlement Amount, including all payments to
8 Participating Settlement Class Members, the Named Plaintiff, the Class Representative
9 Enhancement Payment, Class Counsel (for Attorneys’ Fees and Costs), the Labor and Workforce
10 Development Agency (“LWDA”) pursuant to the PAGA claim, all taxes (except Defendant’s
11 share of employer-side payroll taxes, which include FICA (Social Security and Medicare) and
12 unemployment insurance (FUTA and SUTA/SUI) on the amount allocated as wages to be paid
13 to Participating Settlement Class Members), and all payments to the Settlement Administrator.
14 The Gross Settlement Amount does not include Defendant’s share of “employer-side payroll
15 taxes,” which Defendant shall be responsible for paying separately. Stip. at ¶ I(Q).

16 From the Gross Settlement Amount, Defendant will not oppose Plaintiff’s counsel’s
17 application to the Court for up to 35% of the Gross Settlement Amount for attorneys’ fees (projected
18 to be \$70,000). Stip. at ¶ I(D).

19 From the Gross Settlement Amount, Defendant will not oppose Plaintiff’s counsel’s
20 application to the Court for up to \$15,000 in reimbursement of litigation costs and expenses. Stip.
21 at ¶ I(D).

22 From the Gross Settlement Amount, Defendant will not oppose Plaintiff’s counsel’s
23 application to the Court for an Enhancement Payment to Plaintiff Eva Lopez in the gross amount

24 ¹ Defendant estimates that the Settlement Class Members will have worked a total of approximately
25 5,472 Workweeks during the Class Period. Should the Class List, upon delivery to the Settlement
26 Administrator, include more than a ten percent (10%) increase in the total number of Workweeks
27 worked by Settlement Class Members during the Class Period (e.g., more than 10% greater than
28 5,472 Workweeks worked by Settlement Class Members as of and including the final date of the
Class Period, for a total of 6,019 or more Workweeks worked by Settlement Class Members as of
and including the final date of the Class Period), then there shall be a pro rata adjustment to the
Gross Settlement Amount in the amount of \$44.45 for each Workweek in excess of 6,019. Stip. at
¶ I(N).

1 of up to \$12,000, in consideration for her efforts in instituting and participating in the Action. Stip.
2 at ¶ I(I).

3 From the Gross Settlement Amount, settlement administration fees paid to Phoenix
4 Settlement Administrators will be no more than \$5,000. Stip. at ¶ I(T).

5 From the Gross Settlement Amount, the portion to be allocated for settlement of any and all
6 claims for penalties under the PAGA is \$10,000 (“PAGA Payment”), 75% (\$7,500) shall be paid
7 directly to the LWDA and 25% (\$2,500) shall be paid to Aggrieved Employees. Stip. at ¶ I(Y).

8 The Net Settlement Amount is the amount remaining from the Gross Settlement Amount
9 (from which Individual Settlement Payments are to be made) after payment of all of the following:
10 (1) Attorneys’ Fees and Costs, with Attorneys’ Fees not to exceed thirty-five percent of the Gross
11 Settlement Amount (estimated to be \$70,000); and actual Costs incurred in an amount not to exceed
12 \$15,000 (2) Settlement Administration Costs, not to exceed \$5,000; (3) the Class Representative
13 Enhancement Payment to the Named Plaintiff Eva Lopez, not to exceed \$12,000.00; and (4) the
14 PAGA Allocation of a total of \$10,000.00. Stip. at ¶ I(T).

15 The Net Settlement Amount shall be divided among all Participating Settlement Class
16 Members and distributed to Participating Settlement Class Members based on their number of
17 Workweeks worked during the Class Period. Specifically, the Individual Settlement Payment that
18 each Participating Settlement Class Member is entitled to receive under this Agreement will be
19 determined by dividing the Net Settlement Amount by the total number of Workweeks worked by
20 Settlement Class Members during the Class Period to produce the “standard workweek rate.” Each
21 Participating Settlement Class Member shall then receive an Individual Settlement Payment equal
22 to the number of Workweeks that the Participating Settlement Class Member worked during the
23 Class Period multiplied by the standard workweek rate. Each Participating Settlement Class
24 Member shall be paid the standard workweek rate, subject to any applicable taxes and tax
25 withholdings, for each Workweek they worked during the Class Period as reflected in the records
26 of Defendant. Stip. at ¶ III(E).

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

2 Pursuant to PAGA, the Parties have agreed that \$10,000 of the Gross Settlement Amount
3 will be allocated to settle the claims brought under Labor Code § 2699 et seq. Pursuant to Labor
4 Code § 2699(i), “civil penalties recovered by aggrieved employees shall be distributed as follows:
5 75 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved
6 employees.” As such, 75% of the apportioned PAGA settlement amount – or \$7,500 – shall be
7 paid directly to the LWDA, and 25%, i.e., \$2,500, shall be paid to Aggrieved Employees. Stip. at
8 ¶ I(Y).

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

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

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

26 Thus, the preliminary approval by the trial court is simply a conditional finding that the
27 settlement appears to be within the range of acceptable settlements. *See Wershba v. Apple*
28 *Computer* (2001) 91 Cal.App.4th 224, 234-35. “The strength of the findings made by a judge at a
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

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

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

6
7 When the parties to an action reach a monetary settlement, they will
8 usually prepare and execute a joint stipulation of settlement, which
9 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.

10 *Id.* at § 11.24.

11 Here, the Parties have reached such an agreement and have submitted the Settlement
12 herewith. *See* Gaines Decl., **Exhibit B**; Gaines Decl. ¶ 14.

13 **C. 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, 478³ (“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 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 As required by Labor Code § 2699(1)(2), concurrent with Plaintiff's submission of the
2 Settlement to the Court, her counsel is transmitting it, together with this Motion, to the LWDA.
3 Gaines Decl. at ¶ 30.

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

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

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

12 The proposed Settlement Class is ascertainable. The class definition, the size of the Class,
13 and the means for identifying the members of the class determine whether the class is ascertainable.
14 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
15 are identifiable from Defendant's employment and payroll records. Further, the Settlement Class
16 is sufficiently numerous to warrant certification. According to Defendant's records, the Class
17 comprises approximately 87 members. Gaines Decl. ¶ 26.

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

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

1 c. **The Proposed Class Representative's Claims Are Typical of the**
2 **Class Members' Claims**

3 A class representative's claims are typical when they arise from the same event or course
4 of conduct that gives rise to the claims of the class, and are based on the same legal theory.
5 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, named Plaintiff and proposed
6 Class Representative Eva Lopez is a former non-exempt employee who worked for Defendant in
7 the State of California during the Class Period. She contends that Defendant failed to pay all wages,
8 failed to provide meal and rest periods, failed to comply with itemized employee wage statement
9 provisions, failed to reimburse expenses, and failed to timely pay wages at the separation of
10 employment, in violation of Labor Code §§ 201, 202, 226(a), 226.3, 226.7, 246, 510, 512, 558,
11 1194, 2698, 2699, and 2802 among other Labor Code provisions. She has the same claims as those
12 that the members of the Settlement Class would reasonably be expected to bring based on the course
13 of conduct alleged herein. Gaines Decl. ¶ 28.

14 Plaintiff has also demonstrated that she will aggressively and competently assert the
15 interests of the proposed Settlement Class; she has taken an active role in the litigation and has no
16 apparent conflicts with other class members. Gaines Decl. ¶ 29. Furthermore, Plaintiff has retained
17 competent counsel, experienced in litigating class action claims in the employment context. *See*
18 Gaines Decl. ¶¶ 2-5.

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

21 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
22 evidence to the contrary is offered. *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars*
23 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re*
24 *Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962. Courts do not substitute their
25 judgment for that of the proponents, particularly where, as here, settlement has been reached with
26 the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
27 *Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990)
28 752 F. Supp. 1087, 1093; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored*

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

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

13 Here, the Parties’ counsel have a great deal of experience in class action litigation and
14 specialize in employment wage and hour matters. Moreover, counsel for both Parties conducted
15 an extensive investigation of the factual allegations involved in this case. The Parties have engaged
16 in a broad exchange of documents, data, records and other information. Each side has apprised the
17 other, informally and at a formal mediation, of their respective factual contentions, legal theories
18 and defenses, resulting in extensive arm’s-length negotiations taking place among the Parties. *See*
19 Gaines Decl. ¶¶ 2-5, 10-11.

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

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

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

2 Plaintiff contends that Defendant failed to pay Class Members all minimum and overtime
3 wages earned, in violation of Labor Code §§ 510, 558, 1194, and 1194.2. Class Members were
4 allegedly not paid for time spent training, for travel time, or for time spent when they were unable
5 to retrieve data from a jobsite. An employer is obligated to pay the wages of an hourly employee
6 for all time that the employee is under the control of the employer, and this includes all the time
7 the employee is suffered or permitted to work, whether or not required to do so. When Class
8 Members allegedly worked off-the-clock, they were under the control of Defendant and required
9 to be compensated for all hours worked. Defendant, however, allegedly failed to do so, in violation
10 of Labor Code §§ 510, 558, 1194, and 1194.2. Plaintiff calculates Defendant's damages for the
11 alleged unpaid wages at up to \$329,464 and PAGA civil penalty liability for unpaid wages up to
12 \$148,500. Gaines Decl. ¶ 15. Defendant disagrees with Plaintiff's calculations and analysis, and
13 denies that liability exists.

14 Plaintiff argues that Defendant failed to permit or authorize Class Members to take timely
15 30-minute meal periods for shifts greater than 5 hours in length, in violation of Labor Code
16 §§ 226.7, 512, and 558 and IWC Wage Order 4-2001. Labor Code § 512 provides that employers
17 may not employ employees for work periods of more than five (5) hours without providing a 30-
18 minute meal period starting no later than the end of the 5th hour. Plaintiff alleges that Class
19 Members were routinely unable to take a proper meal period when they worked shifts in excess of
20 five (5) hours in duration and a second meal period when they worked shifts in excess of ten (10)
21 hours in duration. Plaintiff contends that the wage and time data provided by Defendant through
22 informal discovery results in meal period damages at up to \$114,220 and PAGA civil penalty
23 liability for meal periods of up to \$75,000. Gaines Decl. ¶ 16. Defendant disagrees with Plaintiff's
24 calculations and analysis, and denies that liability exists.

25 Plaintiff further contends that Defendant failed to provide Class Members with legally
26 compliant rest periods, or premium wages of one hour's pay in lieu thereof, as required by Labor
27 Code §§ 226.7 and IWC Wage Order 4-2001. Class Members were allegedly denied, and therefore
28 unable to take, 10-minute rest periods for every four hours of work or major fraction thereof, but

1 were not paid premium wages of one hour's pay for each allegedly missed, denied, and
2 unauthorized rest period. When they were able to take a rest period, Plaintiff contends that the rest
3 periods were often late, cut short, or on-duty. Plaintiff calculates Defendant's maximum rest period
4 damages at \$768,565 and PAGA civil penalty liability for rest period damages at up to \$148,500.
5 Gaines Decl. ¶ 17. Defendant disagrees with Plaintiff's calculations and analysis, and denies that
6 liability exists.

7 Class Members were allegedly required to incur expenses in the performance of their job
8 duties for which they were not fully reimbursed, in violation of Labor Code § 2802. Defendant
9 purportedly required Class Members to use their personal vehicles while working for Defendant,
10 for work-related purposes, but allegedly failed to fully reimburse them for their use. This purported
11 practice would violate Labor Code § 2802. Plaintiff calculates Defendant's potential damages at
12 \$48,254 (based on \$30/month/employee) for allegedly unreimbursed expenses and PAGA civil
13 penalty liability for allegedly unreimbursed expenses as up to \$148,500. Gaines Decl. ¶ 18.
14 Defendant disagrees with Plaintiff's calculations and analysis, and denies that liability exists.

15 Defendant allegedly failed to provide Class Members with wage statements or a separate
16 document at the time of the payment of wages that set forth all accrued sick leave, in violation of
17 Labor Code § 246. Plaintiff calculates Defendant's potential PAGA civil penalty liability for this
18 claim as up to \$148,500. Gaines Decl. ¶ 19. Defendant disagrees with Plaintiff's calculations and
19 analysis, and denies that liability exists.

20 Defendant also allegedly failed to issue Class Members accurately itemized wage
21 statements. Plaintiff argues that Class Members were not paid all wages due, as detailed above.
22 As a result, Plaintiff alleges the wage statements issued by Defendant to Class Members fail to
23 accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked,
24 in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5),
25 and all applicable hourly rates in effect during the pay period and the corresponding number of
26 hours worked at each hourly rate, in violation of Labor Code § 226(a)(9). Plaintiff calculates the
27 potential damages for this the alleged failure to provide itemized wage statements at up to \$130,900
28 in addition to up to \$148,500 in possible PAGA civil penalties. Gaines Decl. ¶ 20. Defendant

1 disagrees with Plaintiff's calculations and analysis, and denies that liability exists.

2 Defendant allegedly failed to pay Class Members all wages due upon separation of
3 employment, in violation of Labor Code §§ 201-202. As Defendant purportedly failed to pay Class
4 Members all wages due during the course of employment, as discussed above, and these alleged
5 wages remained due and owing upon separation of employment. Plaintiff calculates potential
6 statutory penalties on this claim at up to \$244,336, with PAGA civil penalty liability of up to
7 \$1,400. Gaines Decl. ¶ 21. Defendant disagrees with Plaintiff's calculations and analysis, and
8 denies that liability exists.

9 Notwithstanding Plaintiff's positions, Defendant maintained forceful defenses to Plaintiff's
10 claims. It contends employees were paid for all work, including all mandatory travel time and all
11 training time – and that there is no off-the-clock work or viable claims for such. It maintains that
12 employees were always offered meal periods and any deficiencies shown in the time records
13 represent a waiver by employees rather than Defendant's denial of a meal period. Defendant further
14 contends that it maintained legally compliant rest period policies and practices that ensured all
15 employees received their rest periods. It argues that it complied with all wage statement and wage
16 payment timing provisions at all times, and that it always reimbursed employees' expenses when
17 reimbursement requests were made. It further argues and disputes Plaintiff's potential damages
18 calculations. It also argues that class certification is unlikely on most of Plaintiff's claims because
19 they would allegedly be unmanageable, and employees working across different worksites would
20 have varying experiences, such that Plaintiff's claims could not effectively be tried in representation
21 fashion. Plaintiff and her counsel considered these (and many other) defenses in agreeing to the
22 compromised settlement amount, which they believe represents a fair compromise of the claims
23 alleged. Gaines Decl. ¶ 22.

24 When the costs and risks of non-certification and loss on the merits are considered,
25 Plaintiff's counsel are of the opinion that the settlement reached is clearly a favorable one. Gaines
26 Decl. ¶ 23.

27 The settlement for each Class Member is fair, reasonable and adequate, given the inherent
28 risk of litigation, the risk relative to class certification and the costs of pursuing such litigation. The

1 settlement shall finally resolve all claims of the Class Members as alleged in the Actions. Gaines
2 Decl. ¶ 24.

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

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

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

12 **V. CONCLUSION**

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

- 15 1. Preliminarily finding that the settlement falls within the range of reasonableness and
16 approving the proposed settlement;
- 17 2. Conditionally certifying, for settlement purposes only, the Settlement Class;
- 18 3. Appointing Plaintiff Eva Lopez as the Class Representative;
- 19 4. Appointing Gaines & Gaines, APLC as Class Counsel;
- 20 5. Approving Phoenix Settlement Administrators as Settlement Administrator;
- 21 6. Preliminarily approving the allocation of \$10,000 from the Gross Settlement
22 Amount to settle Plaintiff's representative claims under the PAGA, of which seventy-five percent
23 (75%) shall be paid to the Labor and Workforce Development Agency and twenty-five percent
24 (25%) shall be paid to Aggrieved Employees;
- 25 7. Approving as to content and form the notice to the Settlement Class, and directing
26 it to be disseminated by the Settlement Administrator;
- 27 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 the names, last known mailing addresses, last known telephone numbers and social security numbers for the Settlement Class Members, as well as the number of Workweeks worked by Settlement Class Members during the Class Period ("Class List")	15 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail Notice to Class Members	10 calendar days after the Settlement Administrator's receipt of the Class List
Last day for Class Members to submit a written exclusion request to the Settlement Administrator	45 calendar days after the initial mailing of the Notice to Class Members
Last day for Class Members to submit an objection to the Settlement Administrator	45 calendar days after the initial mailing of the Notice to Class Members
Last day for Class Counsel to file and serve moving papers in support of final settlement approval and request for attorneys' fees and costs	10 calendar days before the final settlement approval hearing date
Last day for Class Counsel to file with the Court and serve declaration by Settlement Administrator specifying the due diligence undertaken with regard to the mailing of the Notice	10 calendar days before the final settlement approval hearing date
Final settlement approval hearing	_____, 2024, at _____.m. (approximately 90 days after entry of the Order granting this Motion)

DATED: June 7, 2024

Respectfully submitted,

GAINES & GAINES,
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