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and Proposed Class Counsel

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

MAYRA DIAZ, on behalf of herself and
on behalf of all similarly situated
individuals,

Plaintiff,

v.

KAWEAH DELTA HEALTH CARE
DISTRICT, a California public entity, and
DOES 1 through 10, inclusive,

Defendants.

CASE NO: VCU297155

*Assigned to the Honorable Bret D. Hillman,
Dept. 2*

CLASS ACTION

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

**Date: October 22, 2024
Time: 8:30 a.m.
Dept.: 2**

Action Filed: April 3, 2023

1 **PLEASE TAKE NOTICE THAT** on October 22, 2024 at 8:30 a.m., or as soon thereafter
2 as the matter may be heard, in Department 2 of the above-entitled Court, located at 221 S. Mooney
3 Blvd., Visalia, California 93291, Plaintiffs Mayra Diaz and Robert Villareal will and hereby do
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 Mayra Diaz and Robert Villareal as the Class Representatives, (4)
8 approving the appointment of Gaines & Gaines, APLC and Stonebrook Law as Class Counsel,
9 (5) approving the appointment of Phoenix Settlement Administrators as settlement administrator,
10 (6) preliminarily approving the allocation of \$50,000 from the Class Settlement Amount to settle
11 Plaintiffs' representative claims under the Private Attorneys General Act (Lab. Code §§ 2698 et
12 seq.), of which seventy-five percent (75%) will be paid to the Labor and Workforce Development
13 Agency and twenty-five percent (25%) will be paid to PAGA Aggrieved Employees; (7) approving
14 as to content and form the notice to the settlement class, and directing it be disseminated by the
15 Settlement Administrator; and (8) setting a final fairness and approval hearing.

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

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

23 This Motion will be based on the Memorandum of Points and Authorities set forth herein,
24 the Settlement Agreement for Class and Representative Action, the Declarations of Daniel F.
25 Gaines, Joseph Tojarieh, Mayra Diaz and Robert Villareal, such evidence or oral argument as may
26 be presented at the hearing, and on the complete record and file herein.

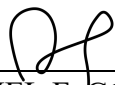
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1 DATED: September 24, 2024

Respectfully submitted,

2 GAINES & GAINES,
3 A Professional Law Corporation

4
5 By: 

6 DANIEL F. GAINES

ALEX P. KATOFISKY

7 Attorneys for Plaintiffs Mayra Diaz and Robert Villareal
8 and Proposed Class Counsel
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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. BACKGROUND AND PROCEDURAL HISTORY	1
III. INVESTIGATION AND SETTLEMENT DISCUSSIONS.....	3
IV. LEGAL ANALYSIS.....	4
A. The Proposed Settlement Terms	4
1. The Settlement Class and its Two Subclasses.....	4
2. Allocations to be Paid from the Class Settlement Amount.....	4
3. Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)	6
B. Two-Step Approval Process.....	6
C. Procedures for Settlement Before Class Certification	7
1. The Settlement Class Should Be Certified for Settlement Purposes	8
a. The Settlement Class and its Subclasses are Ascertainable	8
b. Questions of Law or Fact Common to Members of the Settlement Class and Subclasses Predominate.....	8
c. The Proposed Class Representatives' Claims are Typical of the Class Members' Claims	9
D. The Settlement Is Fair and Reasonable and Not the Result of Fraud or Collusion	9
1. The Settlement Falls Within The "Ballpark" of Reasonableness	10
2. Despite the Asserted Fairness of the Settlement Terms, Class Members May Request Exclusion From, Or Object To, The Settlement.....	12
V. CONCLUSION	13

TABLE OF AUTHORITIES

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

TABLE OF AUTHORITIES

(continued)

Page

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

STATUTES

Cal. Labor Code § 558	2, 9
Cal. Labor Code § 1194	2, 9
Cal. Labor Code § 1194.2	2, 9
Cal. Labor Code § 1198	2, 9
Cal. Labor Code § 2698	2
Cal. Labor Code § 2699	2, 6, 8, 9

RULES AND REGULATIONS

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

OTHER AUTHORITIES

4 Alba Conte & Herbert B. Newberg, <i>Newberg on Class Actions</i> (4th ed. 2002).....	7, 10
Manual for Complex Litigation (Third) § 30.41	6

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Parties have reached a resolution of this class action and hereby submit their Settlement
4 Agreement for Class and Representative Action (“Settlement”, “Stipulation” or “Stip.”) for the
5 Court’s approval. The Settlement is made and entered into by and between Plaintiffs Mayra Diaz
6 (“Diaz”) and Robert Villareal (“Villareal”) (together, “Plaintiffs”), individually and on behalf of
7 all others similarly situated, and Defendant Kaweah Delta Health Care District (“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 \$475,000 to a settlement class of
14 approximately 6,200 Class Members. As detailed below, the settlement is in the best interests of
15 the class in light of all of the facts and circumstances and the risks and delays of further litigation.

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

24 **II. BACKGROUND AND PROCEDURAL HISTORY**

25 On March 27, 2023, May 8, 2023, and August 2, 2023, Plaintiffs exhausted the pre-filing
26 requirements of the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Declaration of
27 Daniel F. Gaines (“Gaines Decl.”) at ¶ 6.

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1 On April 3, 2023, Plaintiff Diaz filed her Class Action Complaint. Gaines Decl. at ¶ 7.

2 On June 2, 2023, as a matter of right, Plaintiff Diaz filed a First Amended Complaint that
3 added Labor Code Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.* (“PAGA”)
4 claims (the “First Amended Complaint”). Gaines Decl. at ¶ 8.

5 On November 11, 2023, pursuant to the Court’s Order on the parties’ stipulation, Plaintiffs
6 filed a Second Amended Class and Representative Action Complaint for: (1) Failure to Pay All
7 Minimum Wages Due (Labor Code §§ 1194, 1194.2, and 1198; IWC Wage Order 5-2001); and (2)
8 Penalties Pursuant to Labor Code § 2699(a) for Violations of Labor Code § 558. This is the
9 operative complaint in the action. Gaines Decl. at ¶ 9.

10 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged
11 in the Action, and further denies that the Action are appropriate for class treatment for any purpose
12 other than this settlement. Defendant does not admit, and specifically denies, it has violated any
13 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any
14 statute or any other applicable laws, regulations or legal requirements; breached any contract;
15 violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any
16 other unlawful conduct with respect to their employees. Neither this Settlement Agreement, nor
17 any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as
18 an admission or concession by Defendant of any such violations or failures to comply with any
19 applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement
20 Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received
21 as evidence in any action or proceeding to establish any liability or admission on the part of
22 Defendant or to establish the existence of any condition constituting a violation of, or a non-
23 compliance with, federal, state, local or other applicable law. If Final Approval does not occur, the
24 Parties agree that this Settlement Agreement is void, but remains protected by California Evidence
25 Code Section 1152. Gaines Decl. at ¶ 10.

26 The Class Representatives contend that Defendant violated the California Labor Code and
27 that this case is appropriate for class certification. Gaines Decl. at ¶ 11.

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1 **III. INVESTIGATION AND SETTLEMENT DISCUSSIONS**

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

8 Following their exchange of information and documents regarding the Settlement Class and
9 the claims and defenses asserted by the Parties, the Parties participated in a mediation with Laurie
10 Saldana, Esq., an experienced mediator. With Ms. Saldana's assistance over the course of several
11 months, the Parties engaged in arm's-length negotiations where the Parties were able to reach the
12 resolution of the Action detailed herein. Gaines Decl. at ¶ 13.

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

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

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1 **IV. LEGAL ANALYSIS**

2 **A. The Proposed Settlement Terms**

3 **1. The Settlement Class and its Two Subclasses**

4 The Settlement Class is defined as follows: All current and former non-exempt employees
5 of Defendant who worked anytime during the period of October 19, 2019 and June 27, 2021 and
6 whose time was rounded (“Rounding Sub-Class”); and all current and former non-exempt
7 employees of Defendant who were subject to on-call time during any workweek from October 19,
8 2019 through the date of preliminary approval of the Settlement (“On-Call Sub-Class”). Stip. at ¶
9 I(D).

10 The “PAGA Aggrieved Employees” are defined as: All On-Call Subclass Members who
11 were subject to on-call time during any workweek from April 3, 2022 through the date of
12 preliminary approval (“PAGA Period”). Stip. at ¶ I(Q).

13 **2. Allocations to be Paid from the Class Settlement Amount**

14 The Parties agree to settle the Action for a Class Settlement Amount of \$475,000 (“the
15 Class Settlement Amount”). The Class Settlement Amount includes all Individual Settlement
16 Payments to Class Members, the Class Representative Enhancement Payment to Plaintiffs,
17 Settlement Administration Costs to the Settlement Administrator, the PAGA Settlement Amount,
18 and the Attorneys’ Fees and Costs. Defendant will be responsible for any employer payroll taxes
19 required by law, separate and in addition to the Class Settlement Amount, including the employer
20 FICA, FUTA, and SDI contributions on the wage portion of the Individual Settlement Payments.
21 Stip. at ¶ I(G).

22 From the Gross Settlement Amount, Defendant will not oppose Plaintiffs’ counsel’s
23 application to the Court for up to one-third of the Gross Settlement Amount for attorneys’ fees
24 (projected to be \$158,333.33). Stip. at ¶ III(2).

25 From the Gross Settlement Amount, Defendant will not oppose Plaintiffs’ counsel’s
26 application to the Court for up to \$15,000 in reimbursement of litigation costs and expenses. Stip.
27 at ¶ III(2).

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1 From the Gross Settlement Amount, Defendant will not oppose Plaintiffs' counsel's
2 application to the Court for Class Representative Enhancement Payments to Plaintiffs Mayra Diaz
3 and Robert Villareal in the gross amount of \$7,500 each, in consideration for their efforts in
4 instituting and participating in the Action and in exchange for the general release of all claims by
5 Ms. Diaz and Mr. Villareal. Stip. at ¶ IV(3).

6 From the Gross Settlement Amount, settlement administration fees paid to Phoenix
7 Settlement Administrators will be no more than \$32,500. Stip. at ¶ V(4).

8 From the Gross Settlement Amount, the portion to be allocated for settlement of any and all
9 claims for penalties under the PAGA is \$50,000 ("PAGA Payment"), 75% (\$32,500) shall be paid
10 directly to the LWDA and 25% (\$12,500) will be paid to PAGA Aggrieved Employees. Stip. at ¶
11 VI(6).

12 The Net Settlement Amount and \$12,500 of the PAGA Settlement Amount will be used to
13 satisfy Individual Settlement Payments to PAGA Aggrieved Employees in accordance with the
14 terms of the Settlement. Stip. at ¶ VII(7).

15 To determine the Individual Settlement Payment for each Participating Settlement Class
16 Member and each PAGA Aggrieved Employee, the Settlement Administrator will: (a) Divide the
17 number of Workweeks worked by each Class Member during both the Rounding Sub-Class Period
18 and during the On-Call Sub-Class Period by the total number of Workweeks worked by all Class
19 Members during the Rounding Sub-Class Period and during the On-Call Sub-Class Period. The
20 resulting percentage shall be applied to the Net Settlement Amount to determine the Individual
21 Settlement Payment for that Participating Settlement Class Member; (b) Add the PAGA Portion of
22 the Settlement for PAGA Aggrieved Employees, whether or not they are Class Members; (c) For
23 taxation purposes, the class portion of the Individual Settlement Payment to each Class Member
24 shall be allocated fifty percent (50%) to potential penalties and interest to be paid as one check and
25 reported on a 1099 Form; and fifty percent (50%) to wages to be paid as another check and reported
26 on a W-2 Form. As to each PAGA Aggrieved Employee, the PAGA portion of the Individual
27 Settlement Payment shall be allocated all (100%) to potential penalties to be paid as one check and
28 reported on a 1099 Form; (d) The Settlement Administrator shall determine the eligibility for, and

1 the amounts of, any Individual Settlement Payments under the terms of this Settlement Agreement.
2 Stip. at ¶ VIII(8).

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

4 Pursuant to PAGA, the Parties have agreed that \$50,000 of the Class Settlement Amount
5 will be allocated to settle the claims brought under Labor Code § 2699 et seq. Pursuant to Labor
6 Code § 2699(i), “civil penalties recovered by aggrieved employees shall be distributed as follows:
7 75 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved
8 employees.” As such, 75% (\$37,500) shall be paid directly to the LWDA and 25% (\$12,500) will
9 be paid to PAGA Aggrieved Employees. Stip. at ¶ VI(6).

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

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

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

27 Thus, the preliminary approval by the trial court is simply a conditional finding that the
28 settlement appears to be within the range of acceptable settlements. *See Wershba v. Apple*
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

¹ 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, Plaintiffs cite Federal Rule 23 and federal case law in addition to California law.

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

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

7 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
10 should set forth the essential terms of the agreement, including but
11 not limited to, the amount of settlement, form of payment, manner of
12 determining the effective date of settlement and any recapture clause.

13 *Id.* at § 11.24.

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

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

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

25 The strength of the findings made by a judge at a preliminary hearing
26 or conference concerning a tentative settlement proposal . . . may be
27 set out in conditional orders granting tentative approval to the various
28 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.

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

² In determining the fairness and reasonableness of a proposed settlement, California courts may
look to federal cases for guidance. *See Wershba*, 91 Cal. App. 4th at 239-40.

1 As required by Labor Code § 2699(1)(2), concurrent with Plaintiffs' submission of the
2 Stipulation to the Court, their counsel is transmitting it, together with this Motion, to the LWDA.
3 Gaines Decl. at ¶ 31.

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 and its Subclasses are 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 6,200 members; each subclass includes more than one thousand
18 individuals. Gaines Decl. ¶ 27.

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

21 The Class Members' claims all stem from a common source: members of the Settlement
22 Class allege that Defendant violated the same Labor Code provisions in connection with their
23 employment in non-exempt positions. All members of each subclass seek the same relief under the
24 same California laws (related to unpaid minimum wages based on varying theories). Under these
25 circumstances, the commonality requirement is satisfied for purposes of certifying the Settlement
26 Class for settlement purposes. Gaines Decl. ¶ 28.

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

A class representative's claims are typical when they arise from the same event or course of conduct that gives rise to the claims of the class, and are based on the same legal theory. *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, named Plaintiffs and proposed Class Representatives are former non-exempt employees who worked for Defendant in the State of California during the Class Period. They contend that Defendant failed to pay all minimum wages, in violation of Labor Code §§ 558, 1194.2, 1198, and 2699(a), among other Labor Code provisions. They have the same claims as those that the members of the Settlement Class would reasonably be expected to bring based on the course of conduct alleged herein. Gaines Decl. ¶ 29.

Plaintiffs have also demonstrated that they will aggressively and competently assert the interests of the proposed Settlement Class; they have taken active roles in the litigation and have no apparent conflicts with other class members. Gaines Decl. ¶ 30. Furthermore, Plaintiffs have retained competent counsel, experienced in litigating class action claims in the employment context. *See* Gaines Decl. ¶¶ 2-5; Declaration of Joseph Tojarieh at ¶¶ 1-5.

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

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

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1 While the recommendations of counsel proposing the settlement are not conclusive, the
2 Court can properly take them into account, particularly where, as here, such counsel have been
3 involved in informal discovery and negotiations for some period of time, appear to be competent,
4 have experience with this type of litigation, and have exchanged substantial evidence with the
5 opposing party. *See Newberg on Class Actions, supra*, § 11.47; *In re Paine Webber Ltd. P'ships*
6 *Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 (“[s]o long as the integrity of the arm’s-length
7 negotiation process is preserved, however, a strong initial presumption of fairness attaches to the
8 proposed settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of
9 counsel, who are most closely acquainted with the facts of the underlying litigation”); *see* Gaines
10 Decl. ¶¶ 2-5, 12-13.

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

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

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

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1 Plaintiffs contend that Defendant failed to pay Plaintiffs and Class Members all minimum
2 wages due in three separate ways.³ Gaines Decl. ¶ 17.

3 First, Defendant required Plaintiff Diaz and other Class Members to be on-call, but
4 allegedly did not compensate them for all time spent on-call at or above the minimum wage, despite
5 the fact that they were subject to Defendant's control during this time. Defendant has a practice to
6 pay its employees less than California minimum wage for all on-call hours worked; Plaintiffs
7 contend that sometimes Defendant paid employees as little as \$3.25 per hour the time spent on-call.
8 Gaines Decl. ¶ 18.

9 Defendant argues that it has no obligation to pay Class Members for on-call time at the
10 minimum wage or above because it exerts no, or minimal, control over them during on-call hours.
11 It forcefully asserted that even if payment was required, its damage exposure was minimal. Plaintiff
12 values this claim at up to \$2,796,500, but it was subject to reduction for risks of litigation including
13 class certification and prevailing on the merits. Gaines Decl. ¶ 19.

14 As to Plaintiffs' claims for unlawfully rounding time clock entries to the nearest quarter-
15 hour, Plaintiff contends that this practice is unlawful and runs afoul of the 2022 Court of Appeal
16 decision in *Camp v. Home Depot U.S.A.* (2022) 84 Cal.App.5th 638, 659-660 (review granted by
17 the California Supreme Court on February 1, 2023, CA Supreme Court Case No. S277518)
18 distinguishing and calling into question the holding in *See's Candy Shops, Inc. v. Superior Court*
19 (2012) 210 Cal.App.4th 889. Plaintiffs have calculated the value of this claim at \$266,019, based
20 on approximately 20,463 hours lost due to rounding at the average minimum hourly wage of \$13.
21 Of course, Defendant argued that its rounding policy was facially neutral, that applicable law does
22 not forbid time rounding in the manner it was done, and that it resulted in no underpayment of
23 wages. Defendant argued it had no exposure on this claim. Gaines Decl. ¶ 20.

24 Defendant allegedly required Plaintiffs and Class Members to work off-the-clock, without
25 pay, also resulting in an underpayment of minimum wages. Gaines Decl. ¶ 21.

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27 _____
28 ³ Defendant is a public entity that is exempt from many provisions of the Labor Code. Plaintiffs' complaint alleged only claims which can be asserted against a public entity.

1 Plaintiffs contend that they were sometimes required and expected to clock out for their
2 meal periods and continue working off-the-clock, and were sometimes required to attend
3 mandatory, in-person training sessions, without pay. Assessing the value of this claim is difficult
4 because the issues raised vary among Class Members, and Defendant argued that Plaintiffs would
5 be unable to certify the class for this reason. Assuming one hour of underpayment per week per
6 Class Member at the average minimum wage, the maximum value of this claim could approach
7 \$14 million. This claim, however, required a substantial discount for settlement purposes due to
8 litigation risks and class certification challenges. Gaines Decl. ¶ 22.

9 Finally, the value of the PAGA claim alleged is zero, in light of brand-new controlling law
10 from the California Supreme Court. *See, Stone v. Alameda Health System*, 2024 WL 3819163 (Cal.
11 Sup. Ct., August 15, 2024). Gaines Decl. ¶ 23.

12 Defendant maintained numerous defenses to Plaintiffs' claims. It contends that it paid all
13 minimum wages due and that Plaintiffs would be unable to certify a class. It contends that even if
14 Plaintiffs prevailed on all of their claims, any damages are far less than proffered by Plaintiffs.
15 When the costs and risks of non-certification and loss on the merits are considered, Plaintiffs'
16 counsel are of the opinion that the settlement reached is clearly a favorable one. Gaines Decl. ¶ 24.

17 The settlement for each Class Member is fair, reasonable and adequate, given the inherent
18 risk of litigation, the risk relative to class certification and the costs of pursuing such litigation. The
19 settlement shall finally resolve all claims of the Class Members as alleged in the Action. Gaines
20 Decl. ¶ 25.

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

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

27 Moreover, Class Members who do not opt out may, upon providing proper notice to the
28 Parties and the Court, attend the final fairness and approval hearing for the purpose of objecting to

one or more of the settlement terms set forth in the Stipulation of Settlement.

V. CONCLUSION

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

1. Preliminarily finding that the settlement falls within the range of reasonableness and approving the proposed settlement;
2. Conditionally certifying, for settlement purposes only, the Settlement Class;
3. Appointing Plaintiffs Mayra Diaz and Robert Villareal as the Class Representatives;
4. Appointing Gaines & Gaines, APLC and Stonebrook Law as Class Counsel;
5. Approving Phoenix Settlement Administrators as Settlement Administrator;
6. Preliminarily approving the allocation of \$50,000 from the Class Settlement Amount to settle Plaintiffs' representative claims under the PAGA, of which seventy-five percent (75%) shall be paid to the Labor and Workforce Development Agency and twenty-five percent (25%) will be paid to PAGA Aggrieved Employees;
7. Approving as to content and form the notice to the Settlement Class, and directing it to be disseminated by the Settlement Administrator; and
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 full name, most recent mailing address, telephone number, Social Security number, dates of employment (i.e., hire date and termination date, if applicable), the total workweeks worked for each Class Member during each Sub-Class Period, and the total Pay Periods worked for each PAGA Aggrieved Employee (the "Class List")	14 calendar days after service of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail the Notice to Class Members	14 calendar days after 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

<u>EVENT</u>	<u>TIMING</u>
Last day for Class Members to submit an objection to the Settlement Administrator	45 calendar days after the initial mailing of the Notice to Class Members
Last day for Class Counsel to file and serve moving papers in support of final settlement approval and request for attorneys' fees and costs	10 calendar days before the final settlement approval hearing date
Last day for Class Counsel to file with the Court and serve declaration by Settlement Administrator specifying the due diligence undertaken with regard to the mailing of the Notice	10 calendar days before the final settlement approval hearing date
Final settlement approval hearing	_____ , at _____ .m. (approximately 110 days after entry of this Order)

DATED: September 24, 2024

Respectfully submitted,

GAINES & GAINES,
A Professional Law Corporation

By: 

DANIEL F. GAINES

ALEX P. KATOFISKY

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and Proposed Class Counsel