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5 Attorneys for Plaintiff Ashley Avery
6 and Proposed Class Counsel

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF YUBA**

9
10 ASHLEY AVERY, on behalf of herself and
11 all "aggrieved employees" pursuant to
Labor Code § 2698 *et seq.*,

12 Plaintiff,

13 v.

14 TAKLAK INC., a California corporation,
and DOES 1 through 10, inclusive,

15 Defendants.
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CASE NO: CVCV23-00479

Assigned to the Hon. Stephen W. Berrier, Dept. 4

**NOTICE OF UNOPPOSED MOTION AND
UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION SETTLEMENT
AND LEAVE TO FILE FIRST AMENDED
COMPLAINT**

Date: March 10, 2025

Time: 10:00 a.m.

Dept.: 4

Complaint Filed: May 15, 2023

1 **PLEASE TAKE NOTICE THAT** on March 10, 2025 at 10:00 a.m., or as soon thereafter
2 as the matter may be heard, in Department 4 of the above-entitled Court, located at 215 Fifth Street,
3 Suite 200, Marysville, California 95901, Plaintiff Ashley Avery will and hereby does move
4 unopposed for an Order (1) preliminarily finding that the settlement between the parties falls within
5 the range of reasonableness and preliminarily approving the proposed class action settlement in the
6 above-captioned case, (2) conditionally certifying, for settlement purposes only, a settlement class,
7 (3) provisionally approving the appointment of Plaintiff Ashley Avery as Class Representative, (4)
8 provisionally approving the appointment of Gaines & Gaines, APLC as Class Counsel,
9 (5) provisionally approving the appointment of Phoenix Settlement Administrators as settlement
10 administrator, (6) approving as to content and form the notice to the settlement class, and directing
11 it be disseminated by the Settlement Administrator; (7) setting a final fairness and approval hearing;
12 and (8) granting Plaintiff leave to file a First Amended Complaint.

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

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

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1 This Motion will be based on the Memorandum of Points and Authorities set forth herein,
2 the Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims, the
3 Declarations of Daniel F. Gaines, Jodey Lawrence, and Ashley Avery, such evidence or oral
4 argument as may be presented at the hearing, and on the complete record and file herein.

5
6 DATED: February 10, 2025

Respectfully submitted,

7 GAINES & GAINES,
8 A Professional Law Corporation

9
10 By: Daniel Gaines
11 DANIEL F. GAINES
12 Attorneys for Plaintiff Ashley Avery
13 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 Joint
4 Stipulation and Settlement Agreement of Class Action and PAGA Claims (“Settlement”,
5 “Stipulation” or “Stip.”) for the Court’s approval. The Settlement is made and entered into by and
6 between Plaintiff Ashley Avery (“Plaintiff” or “Avery”), individually and on behalf of all others
7 similarly situated, and Defendant Taklak Inc. (“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 \$137,500 to a settlement class of
14 approximately 71 Settlement Class Members, yielding a gross recovery of nearly **\$1,936.62** each.
15 As detailed below, the Settlement is in the best interests of the class in light of all of the facts and
16 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 and preliminarily find that the Settlement falls within the
19 range of reasonableness; (b) conditionally grant certification of the proposed Settlement Class, for
20 settlement purposes only; (c) provisionally approve the appointment of Plaintiff Ashley Avery as
21 Class Representative; (d) provisionally approve the appointment of Gaines & Gaines, APLC as
22 Class Counsel; (e) provisionally approve appointment of Phoenix Settlement Administrators as the
23 Settlement Administrator; (f) authorize the mailing of the proposed class action notice packet; (g)
24 schedule a final fairness and approval hearing; and (h) grant Plaintiff leave to file a First Amended
25 Complaint.

26 **II. BACKGROUND AND PROCEDURAL HISTORY**

27 On March 8, 2023, Plaintiff exhausted the pre-filing requirements of the Labor Code Private
28 Attorneys General Act of 2004 (“PAGA”). Declaration of Daniel F. Gaines (“Gaines Decl.”) at ¶

6.

On May 15, 2023, Plaintiff initiated her Action in the Yuba County Superior Court by filing a representative action complaint, pursuant to PAGA, on behalf of herself and all “aggrieved employees.” Gaines Decl. at ¶ 7.

As part of the approval of this Settlement, Plaintiff will file a First Amended Complaint substantially in the form attached to the Settlement as **Exhibit B** which asserts claims against Defendant for (1) Failure to Pay All Overtime and Sick Pay Wages Due (Labor Code §§ 246, 510, 1194, And 1198; IWC Wage Order 7-2001); (2) Failure to Provide Rest Periods or Compensation In Lieu Thereof (Labor Code § 226.7; IWC Wage Order 7-2001); (3) Failure to Provide Meal Periods or Compensation In Lieu Thereof (Labor Code §§ 226.7 And 512; IWC Wage Order 7-2001); (4) Knowing and Intentional Failure to Comply With Itemized Employee Wage Statement Provisions (Labor Code § 226(a), (e)); (5) Failure to Timely Pay Wages Due at Separation of Employment (Labor Code §§ 201-203); (6) Violation of Business And Professions Code § 17200; and (7) Penalties Pursuant to Labor Code § 2699(f) for Violations of Labor Code §§ 201, 202, 226(a), 226.7, 246, 510, 512, 1194, and 1198, and Pursuant to Labor Code § 2699(a) for Violations of Labor Code §§ 226.3 and 558. Gaines Decl. at ¶ 8.

Defendant denies any liability or wrongdoing of any kind whatsoever in connection with the claims in the Action and further denies that, for any purpose other than settling this Action, this Action is appropriate for class action or representative treatment. Gaines Decl. at ¶ 9.

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 ¶ 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, including but not limited to documents regarding Defendant’s employment/workplace policies in place during the applicable period and a sample of records relating to hours worked and wages paid to Defendant’s non-exempt employees during the relevant time periods, and the review and

1 verification of statistical data, financial data, and other facts and information provided by
2 Defendant. Class Counsel also represents that they have investigated the applicable law as applied
3 to the facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and
4 the damages and other losses claimed by Plaintiff. Gaines Decl. at ¶ 11.

5 On January 17, 2024, the Parties participated in a full-day mediation with Jeffrey Owensby,
6 Esq., but were unable to reach a settlement of Plaintiff's wage and hour claims. After exchanging
7 and reviewing additional relevant documents and class data, on August 28, 2024, the Parties
8 participated in a full-day mediation with experienced wage and hour class action mediator Judge
9 Maria-Elena James (Ret.), which resulted in a settlement of all claims asserted in the current PAGA
10 complaint as well as class claims premised upon and arising from similar theories. Gaines Decl. at
11 ¶ 12.

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

18 The Parties agree that the Settlement Class described herein may be certified for settlement
19 purposes only and that any motion for approval seeking, *inter alia*, certification of the Settlement
20 Class is for purposes of the settlement only. If for any reason the Settlement is not approved, the
21 certification will have no force or effect and will immediately be revoked. The Parties further agree
22 that certification for purposes of the settlement is in no way an admission that class certification is
23 proper under the more stringent standard applied for litigation and that evidence of this Settlement
24 Agreement is for settlement purposes only and will not be admissible for any purpose in this or any
25 other proceeding. Gaines Decl. at ¶ 14.

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1 **IV. LEGAL ANALYSIS**

2 **A. The Proposed Settlement Terms**

3 **1. The Settlement Class**

4 The Parties have agreed to a settlement class composed of all current and former hourly-
5 paid or non-exempt employees of Defendant, employed by Defendant in California at any time
6 during the Class Period [May 15, 2019 through November 1, 2024]. Stip. at ¶¶ 4-5.

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

8 The Parties agree to settle the Action for a Gross Settlement Amount of \$137,500 (the
9 “Gross Settlement Amount”).¹ The Gross Settlement Amount includes: (a) payments to
10 Settlement Class Members (excluding any appropriate and lawfully required employer-side
11 payroll taxes owed by Defendant on such payments, which Defendant shall separately be
12 responsible for apart from the Gross Settlement Amount); (b) the Enhancement Award to the
13 Class and PAGA Representative; (c) the PAGA Payment; (d) the Settlement Administrator’s fees
14 and costs, and (e) Class Counsel’s approved attorneys’ fees and costs/expenses. In no
15 circumstance shall Defendant be required to pay any additional monies beyond the Gross
16 Settlement Amount plus the employer-side payroll taxes. Stip. at ¶ 39.

17 From the Gross Settlement Amount, Defendant will not oppose Plaintiff’s counsel’s
18 application to the Court for up to 35% of the Gross Settlement Amount for attorneys’ fees (projected
19 to be \$48,125). Stip. at ¶ 46.

20 From the Gross Settlement Amount, Defendant will not oppose Plaintiff’s counsel’s
21 application to the Court for up to \$15,000 in reimbursement of litigation costs and expenses. Stip.
22 at ¶ 46.

23 From the Gross Settlement Amount, Defendant will not oppose Plaintiff’s counsel’s

24 _____
25 ¹ The Gross Settlement Amount was calculated with, and is premised on, the understanding that the
26 Class Members and PAGA Employees worked approximately 3,229 Workweeks during the Class
27 Period. The Parties agree that if the total number of Workweeks during the Class Period exceeds
28 One Hundred Fifteen Percent (115%) of the estimated 3,229 Workweeks (*i.e.*, exceeds 3,713
Workweeks), Defendant will proportionately increase the Gross Settlement Amount commensurate
with the percentage increase in the number of total Workweeks beyond fifteen percent (15%). As
an example, and for the avoidance of doubt, if the total Workweeks increases to 2% above 3,713
Workweeks, then the Gross Settlement Amount shall increase by 2%. Stip. at ¶ 74.

1 application to the Court for Enhancement Award to Plaintiff Ashley Avery in the gross amount of
2 \$6,000, in consideration for her efforts in instituting and participating in the Action. Stip. at ¶ 47.

3 From the Gross Settlement Amount, settlement administration fees paid to Phoenix
4 Settlement Administrators will be no more than \$7,500. Stip. at ¶ 45.

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 distributed to the PAGA Employees as PAGA
8 Employee Payments. Stip. at ¶ 43.

9 The Gross Settlement Amount shall encompass the following: (1) Class Counsel’s fees,
10 costs, and expenses; (2) the Enhancement Award; (3) the Settlement Administrator’s fees and costs;
11 (4) the PAGA Payment; and (5) the Net Settlement Amount (the “NSA”). After the deduction of
12 the amounts approved for the Enhancement Award, the PAGA Payment, the Settlement
13 Administrator’s fees and costs, and Class Counsel’s fees, costs, and expenses from the Gross
14 Settlement Amount, the remainder shall be referred to as the Net Settlement Amount. Stip. at ¶ 42.

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

16 Pursuant to PAGA, the Parties have agreed that \$10,000 of the Gross Settlement Amount
17 will be allocated to settle the claims brought under Labor Code § 2699 et seq. Pursuant to Labor
18 Code § 2699(i), “civil penalties recovered by aggrieved employees shall be distributed as follows:
19 75 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved
20 employees.” As such, 75% of the apportioned PAGA settlement amount – or \$7,500 – shall be
21 paid directly to the LWDA, and 25%, i.e., \$2,500, shall be distributed to the PAGA Employees as
22 PAGA Employee Payments. Stip. at ¶ 43.

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

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

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

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

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

23 When the parties to an action reach a monetary settlement, they will
24 usually prepare and execute a joint stipulation of settlement, which
25 is submitted to the court for preliminary approval. The stipulation
26 should set forth the essential terms of the agreement, including but
 not limited to, the amount of settlement, form of payment, manner of
 determining the effective date of settlement and any recapture clause.

27 ² The California Supreme Court has authorized California's trial courts to use Federal Rule 23 and
28 cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971)
4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore,
Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

1 *Id.* at § 11.24.

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

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

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

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

17 4 *Newberg on Class Actions*, at § 11.26.

18 As required by Labor Code § 2699(1)(2), concurrent with Plaintiff’s submission of the
19 Stipulation to the Court, her counsel is transmitting it, together with this Motion, to the LWDA.
20 Gaines Decl. at ¶ 28.

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

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

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 Settlement Class meets all requirements for certification, as discussed below.

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

3 The proposed Settlement Class is ascertainable. The class definition, the size of the Class,
4 and the means for identifying the members of the class determine whether the class is ascertainable.
5 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
6 are identifiable from Defendant's employment and payroll records. Further, the Settlement Class
7 is sufficiently numerous to warrant certification. According to Defendant's records, the Class
8 comprises approximately 71 members. Gaines Decl. ¶ 24.

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

11 The Class Members' claims all stem from a common source: members of the Settlement
12 Class allege that Defendant violated the same Labor Code provisions in connection with their
13 employment in non-exempt positions. All members of the Class seek the same relief under the
14 same California laws (related to unpaid overtime and sick pay wages, unpaid meal and rest period
15 premiums, inaccurate or incomplete wage statements, failure to timely pay wages due upon
16 separation, and derivative claims). Under these circumstances, the commonality requirement is
17 satisfied for purposes of certifying the Settlement Class for settlement purposes. Gaines Decl. ¶
18 25.

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

21 A class representative's claims are typical when they arise from the same event or course
22 of conduct that gives rise to the claims of the class, and are based on the same legal theory.
23 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, named Plaintiff and proposed
24 Class Representative Ashley Avery is a former non-exempt employee who worked for Defendant
25 in the State of California during the Class Period. She contends that Defendant failed to pay all
26 overtime and sick pay wages, failed to provide meal and rest periods, failed to comply with itemized
27 employee wage statement provisions, and failed to timely pay wages at the separation of
28 employment, in violation of Labor Code §§ 201, 202, 226(a), 226.3, 226.7, 246, 510, 512, 558,

1 1194, 1198, 2698, and 2699, among other Labor Code provisions. She has the same claims as those
2 that the members of the Settlement Class would reasonably be expected to bring based on the course
3 of conduct alleged herein. Gaines Decl. ¶ 26.

4 Plaintiff has also demonstrated that she will aggressively and competently assert the
5 interests of the proposed Settlement Class; she has taken an active role in the litigation and has no
6 apparent conflicts with other class members. Gaines Decl. ¶ 27; Declaration of Ashley Avery
7 (“Avery Decl.”). Furthermore, Plaintiff has retained competent counsel, experienced in litigating
8 class action claims in the employment context. See Gaines Decl. ¶¶ 2-5.

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

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

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

1 counsel, who are most closely acquainted with the facts of the underlying litigation”); *see* Gaines
2 Decl. ¶¶ 2-5, 11-14, 16-23.

3 Here, the Parties’ counsel have a great deal of experience in class action litigation and
4 specialize in employment wage and hour matters. Moreover, counsel for both Parties conducted
5 an extensive investigation of the factual allegations involved in this case. The Parties have engaged
6 in a broad exchange of documents, data, records and other information. Each side has apprised the
7 other, informally and at a formal mediation, of their respective factual contentions, legal theories
8 and defenses, resulting in extensive arm’s-length negotiations taking place among the Parties. *See*
9 Gaines Decl. ¶¶ 2-5, 11-14, 16-23.

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

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

20 Plaintiff contends that Defendant paid Class Members shift differential wages that were not
21 included in their regular rate of pay for purposes of paying them meal and rest period premiums,
22 sick pay, and overtime wages at the correct rates, in violation of Labor Code §§ 226.7, 246, 510,
23 512, 558, 1194, and 1198 and IWC Wage Order 7-2001. Defendant allegedly failed to properly
24 blend these shift differential wages and instead paid Class Members meal and rest period premiums,
25 sick pay wages, and overtime wages based only on the base hourly rate of pay, thus allegedly
26 depriving them of all wages earned, in violation of Labor Code §§ 226.7, 246, 510, 512, 558, and
27 1194. California Labor Code § 510 requires the payment of premium overtime compensation based
28 on employees’ regular rate of pay. 29 U.S.C. § 207(e) defines the “regular rate” to include all

1 remuneration for employment paid to or on behalf of the employee. California law mirrors federal
2 law on the issue of computation of the regular rate of pay. The leading case on this issue is *Walling*
3 *v. Youngerman-Reynolds Hardware Co.* (1945) 324 U.S. 419, 424, which explains that the “regular
4 rate” is “all payments which the parties have agreed shall be received regularly during the
5 workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties; it is
6 an actual fact.” This includes all forms of bonuses and shift differential wages. *See also Ferra v.*
7 *Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 (holding that “the calculation of
8 premium pay for a noncompliant meal, rest, or recovery period, like the calculation of overtime
9 pay, must account for not only hourly wages but also other nondiscretionary payments for work
10 performed by the employee” because the terms “regular rate of compensation under section
11 226.7(c)” and “regular rate of pay under section 510(a)” are “synonymous” and “encompasses all
12 nondiscretionary payments, not just hourly wages.”) Plaintiff contends that here, when Class
13 Members worked overtime, earned meal period or other premium wages, or earned sick wages,
14 they were paid at one and one-half times the base hourly rate of pay. Plaintiff also contends that the
15 shift differential wages earned by Class Members were not discretionary within the meaning of the
16 applicable regulation (29 U.S.C. § 207(e)), and accordingly, must have been included in their
17 regular rate of pay for purposes of determining their overtime pay, sick pay, and meal and rest
18 period premiums. However, this claim was minimal. Plaintiff calculates Defendant’s damages for
19 these unpaid wages claim at \$4,150 and PAGA civil penalty liability for this claim of
20 \$23,200. Defendant contends that it properly calculated and paid the meal and rest period
21 premiums, sick pay, and overtime wages at issue. Gaines Decl. ¶ 16.

22 Defendant allegedly failed to permit or authorize Class Members to take timely 30-minute
23 meal periods for shifts greater than 5 hours in length, in violation of Labor Code §§ 226.7 and 512
24 and IWC Wage Order 7-2001. Labor Code § 512 provides that employers may not employ
25 employees for work periods of more than five (5) hours without providing a 30-minute meal period
26 starting no later than the end of the 5th hour. Plaintiff alleges that Class Members were routinely
27 unable to take a proper meal period when they worked shifts in excess of five (5) hours in duration
28 and a second meal period when they worked shifts in excess of ten (10) hours in duration. Plaintiff

1 alleges that Defendant maintained unlawful and bare bones written meal and rest period policies.
2 Plaintiff contends that based on the wage and time data provided by Defendant through informal
3 discovery, the meal period violation rate was 33.8% and 76.4% of all pay periods during the PAGA
4 Period exhibited some form of meal period violation. Plaintiff calculates Defendant's meal period
5 damages at \$72,055 and PAGA civil penalty liability for this claim of \$95,900. Defendant contends
6 that it maintained and implemented legally compliant meal and rest period policies and procedures.
7 Gaines Decl. ¶ 17.

8 Defendant allegedly failed to provide Class Members with legally compliant rest periods,
9 or premium wages of one hour's pay in lieu thereof, as required by Labor Code § 226.7 and IWC
10 Wage Order 7-2001. As discussed above, Plaintiff alleged that Defendant maintained unlawful
11 written rest period policies as it did not contain the "major fraction thereof" language. *Brinker v.*
12 *Restaurant Corp. v. Superior Court*, (2017) 53 Cal.4th 1004,1029-30. Plaintiff calculated
13 Defendant's rest period damages at \$203,852 and PAGA civil penalty liability for this claim of
14 \$124,700. Gaines Decl. ¶ 18. Defendant contends that it maintained and implemented legally
15 compliant rest period policies and procedures.

16 Defendant also allegedly failed to issue Class Members accurately itemized wage
17 statements. Class Members were not paid all wages due, as detailed above. As a result, the wage
18 statements issued by Defendant to Class Members fail to accurately state all gross wages earned,
19 in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2),
20 net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect
21 during the pay period and the corresponding number of hours worked at each hourly rate, in
22 violation of Labor Code § 226(a)(9). Plaintiff calculated the damages for this claim at \$110,050 in
23 addition to \$124,700 in PAGA civil penalties. Defendant contends that it properly issued accurate,
24 itemized wage statements. Gaines Decl. ¶ 19.

25 Defendant allegedly failed to pay Class Members all wages due upon separation of
26 employment, in violation of Labor Code §§ 201-202. As Defendant failed to pay Class Members
27 all wages due during the course of employment, as discussed above, these wages remained due and
28 owing upon separation of employment. In addition, Plaintiff alleges that she was not issued her

1 final wages on the day of her termination; instead, she was issued her several days later. Plaintiff
2 calculates statutory penalties on this claim at \$223,612, with PAGA civil penalty liability of \$4,800.
3 Defendant contends that it properly paid all wages due upon separation of employment. Gaines
4 Decl. ¶ 20.

5 The compromise reached here is fair and reasonable considering the factual and legal
6 disputes among the Parties, the defenses raised by Defendant as to class certification and the merits
7 of Plaintiff's claims, and the risk the Court would reduce or eliminate any award of penalties, and
8 the fact that Defendant has a limited ability to pay any judgment due to financial constraints. Indeed,
9 the Settlement includes an installment payment plan because of these financial constraints.
10 Defendant strongly contends that its policies and practices do not violate any laws. It contends that
11 it properly paid all wages due and that it provided for all meal and rest periods and fully
12 compensated its employees for all time worked. It further contends that the wage statements it
13 provided to its employees were fully compliant with California law. Gaines Decl. ¶ 21.

14 When the costs and risks of non-certification and loss on the merits are considered,
15 Plaintiff's counsel are of the opinion that the Settlement reached is clearly a favorable one. Gaines
16 Decl. ¶¶ 16-22.

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. ¶ 23.

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.

E. Plaintiff Should Be Permitted to File Her First Amended Complaint

In connection with this Settlement, Plaintiff shall file a First Amended Complaint, attached to the Stipulation as **Exhibit B**, which conforms to all claims to be released in the Settlement. The Parties agreed that, as part of this motion for preliminary approval, Plaintiff would concurrently seek leave to file the First Amended Complaint, the filing of which is a condition of the Stipulation.

To effectuate the class settlement of the Action, Defendant does not oppose the filing of the First Amended Complaint for settlement purposes only. As part of its order preliminarily approving the settlement, Plaintiff requests that the Court approve the filing of the First Amended Complaint, and consents that Defendant not be required to file a responsive pleading thereto. Gaines Decl. ¶

8.

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. Provisionally appointing Plaintiff Ashley Avery as the Class Representative;
4. Provisionally appointing Gaines & Gaines, APLC as Class Counsel;
5. Provisionally approving Phoenix Settlement Administrators as Settlement Administrator;
6. Approving as to content and form the notice to the Settlement Class, and directing it to be disseminated by the Settlement Administrator;
7. Permitting Plaintiff to file the First Amended Complaint, attached to the Stipulation as **Exhibit B**, no later than ten (10) calendar days after notice of the entry of the Order granting this motion has been given, and consent that Defendant not be required to file a responsive pleading thereto; 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 the full name, telephone number, and last known address and full social security number of all Class Members; the information necessary to determine the estimated settlement allocation to each Class Member, including: (i) the total number of Workweeks of each Class Member in California in an hourly-paid or non-exempt position within the Class Period; and (ii) the total number of Workweeks of each PAGA Employee in California in an hourly-paid or non-exempt position within the PAGA Period (“Settlement Class Information”)	20 calendar days after entry of Court’s Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail Notice of Proposed Settlement (“Notice”) to Class Members	10 calendar days after Settlement Administrator’s receipt of the Class Member List
Last day for exclusion requests by Class Members to be postmarked to Settlement Administrator	45 calendar days after the initial mailing of the Notice to Class Members
Last day for objections to the Settlement by Class Members to be postmarked to 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	_____, 2025, at _____. (approximately 100 days after entry of this Order)

1 DATED: February 10, 2025

Respectfully submitted,

2 GAINES & GAINES,
3 A Professional Law Corporation

4
5 By: Daniel Gaines
6 DANIEL F. GAINES
7 Attorneys for Plaintiff Ashley Avery
8 and Proposed Class Counsel
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