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Attorneys for Plaintiff Andrew Ruiz
and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BENITO

ANDREW RUIZ, on behalf of himself, the
general public, all similarly situated
individuals, and all "Class Members"
pursuant to Labor Code § 2698 *et seq.*

Plaintiff,

v.

ALPHA TEKNOVA, INC., a Delaware
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: CU-24-00146

Assigned to the Hon. Omar Rodriguez, Dept. 1

CLASS ACTION

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

Date:

Time: _____

Dept.: 1

Complaint Filed: June 20, 2024

1 **PLEASE TAKE NOTICE THAT** on _____ at ____ a.m., or as soon
2 thereafter as the matter may be heard, in Department 1 of the above-entitled Court, located at 450
3 Fourth Street, Hollister, California 95023, Plaintiff Andrew Ruiz 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 approving the proposed class action settlement in the above-
6 captioned case, (2) conditionally certifying, for settlement purposes only, a settlement class, (3)
7 approving the appointment of Plaintiff Andrew Ruiz as Class Representative, (4) approving the
8 appointment of Gaines & Gaines, APLC as Class Counsel, (5) approving the appointment of
9 Phoenix Settlement Administrators as settlement administrator, (6) preliminarily approving the
10 allocation of \$20,000 from the Gross Settlement Amount to settle Plaintiff's representative claims
11 under the Private Attorneys General Act (Lab. Code §§ 2698 et seq.), of which seventy-five percent
12 (75%) will be paid to the Labor and Workforce Development Agency and twenty-five percent
13 (25%) shall be paid to Aggrieved Employees as part of the Net Settlement Proceeds; (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.

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1 This Motion will be based on the Memorandum of Points and Authorities set forth herein,
2 the Settlement Agreement and Release of Claims, the Declarations of Daniel F. Gaines and Andrew
3 Ruiz, such evidence or oral argument as may be presented at the hearing, and on the complete
4 record and file herein.

5
6 DATED: September 9, 2024

Respectfully submitted,

7 GAINES & GAINES,
8 A Professional Law Corporation

9 *Daniel F. Gaines*
10 By: _____

DANIEL F. GAINES
ALEX P. KATOFISKY
Attorneys for Plaintiff Andrew Ruiz
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 of Claims (“Settlement”, “Stipulation” or “Stip.”) for the Court’s approval.
5 The Settlement is made and entered into by and between Plaintiff Andrew Ruiz (“Plaintiff” or
6 “Ruiz”), individually and on behalf of all others similarly situated, and Alpha Teknova, Inc.
7 (“Defendant”).

8 Prior to bringing this lawsuit, Plaintiff notified Defendant of his allegations that Defendant
9 failed to comply with various California wage and hour laws, as now more fully set forth in his
10 Complaint. Defendant vehemently denied any liability or wrongdoing of any kind. It was only
11 after extensive arm’s-length negotiations by experienced counsel with the assistance of a respected
12 mediator with experience in the area of employment class actions that Plaintiff was able to convince
13 Defendant to agree to the terms of the Settlement. Defendant continues to deny that Plaintiff or the
14 putative class would be able to recover on the causes of action set forth in the Complaint, or even
15 that the dispute is appropriate for class treatment. Nevertheless, because of the efforts of Plaintiff
16 and his counsel, the settlement will result in significant financial benefit to the participating
17 claimants, on terms that are by any measure fair, reasonable and adequate. *See Dunk v. Ford Motor*
18 *Co.* (1996) 48 Cal. App. 4th 1794, 1801-02. The proposed settlement provides for a non-
19 revisionary class settlement in the gross amount of \$372,500 to a settlement class of approximately
20 215 Class Members, yielding gross payments of nearly **\$1,733** each. As detailed below, the
21 settlement is in the best interests of the class in light of all of the facts and circumstances and the
22 risks and delays of further litigation.

23 For the foregoing reasons, the Parties respectfully request that the Court: (a) grant
24 preliminary approval of the settlement agreement and preliminarily find that the settlement falls
25 within the range of reasonableness; (b) conditionally grant certification of the proposed Settlement
26 Class, for settlement purposes only; (c) approve the appointment of Plaintiff Andrew Ruiz as Class
27 Representative; (d) approve the appointment of Gaines & Gaines, APLC as Class Counsel; (e)
28 approve appointment of Phoenix Settlement Administrators as the Settlement Administrator; (f)

1 authorize the mailing of the proposed class action notice packet; and (g) schedule a final fairness
2 and approval hearing.

3 **II. BACKGROUND AND PROCEDURAL HISTORY**

4 On August 29, 2023, Plaintiff notified the California Labor and Workforce Development
5 Agency (“LWDA”) of claims under the Private Attorneys General Act of 2004 (“PAGA”). Plaintiff
6 contends that this exhausted the pre-filing requirements under PAGA. Declaration of Daniel F.
7 Gaines (“Gaines Decl.”) at ¶ 6.

8 The Parties subsequently tolled the statute of limitations on all of Plaintiff’s claims, so that
9 they could exchange informal discovery and participate in pre-litigation settlement discussions,
10 including a mediation. Gaines Decl. at ¶ 7.

11 On June 20, 2024, Plaintiff initiated his Action in the San Benito County Superior Court by
12 filing a class and PAGA representative action complaint on behalf of himself and all other similarly
13 situated individuals. Gaines Decl. at ¶ 8.

14 The Complaint alleges claims against Defendant for (1) failure to pay all wages due (Labor
15 Code §§ 226.7, 246, 510, 512, 558, 1194, and 1194.2 and IWC Wage Order 1-2001); (2) failure to
16 provide rest periods or compensation in lieu thereof (Labor Code § 226.7 and IWC Wage Order 1-
17 2001); (3) failure to provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7,
18 512 and 558 and IWC Wage Order 1-2001); (4) knowing and intentional failure to comply with
19 itemized employee wage statement provisions and recordkeeping requirements (Labor Code §§
20 226(a) and (e), 1174, 1174.5, and 1198); (5) failure to timely pay wages due at the separation of
21 employment (Labor Code §§ 201-203, 227.3); (6) violation of Business and Professions Code §
22 17200 for underlying violations of the Labor Code as set forth in the complaint in the Action; and
23 (7) civil penalties pursuant to PAGA for underlying violations of the Labor Code as set forth in the
24 complaint in the Action. Gaines Decl. at ¶ 9.

25 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged
26 in the Action, and further denies that the Action is appropriate for class treatment for any purpose
27 other than this settlement. Defendant contends that it has complied at all times with the California
28 Labor Code and California and federal law. Defendant further contends that even if a Court were

1 to determine that it had inadvertently failed to pay any of the putative class members, its actions
2 were at all times in good faith, and any violations would have been inadvertent. Accordingly, the
3 putative class would be unable to recover any penalties that rely on willful or malicious violation
4 of the law. Defendant further contends that Plaintiff and other former employees would be
5 prevented from recovering on any claims regardless of the merits because of releases they signed
6 in exchange for valid consideration, and any such claims would be offset by the consideration paid.
7 It is Defendant's position that, if this case were to be litigated, class certification would be
8 inappropriate because Plaintiff is not an adequate Class Representative, Plaintiff's claims are not
9 typical of putative class members, and individual issues predominate over class issues, among other
10 defenses. The Action, the negotiation and execution of this Settlement Agreement, and all acts
11 performed or documents executed pursuant to or in furtherance of this Settlement Agreement (i)
12 shall not be used as an admission, or as evidence of wrongdoing by the Defendant, or for any other
13 purpose whatsoever; (ii) shall not be an admission or evidence of fault on behalf of Defendant in
14 any action before a civil court, criminal court, administrative agency of any type, or other tribunal;
15 and (iii) shall not be deemed to be, and may not be used as, an admission or evidence of the
16 appropriateness of these or similar claims for class certification in the Action or with respect to any
17 other proceeding whatsoever. Gaines Decl. at ¶ 10.

18 The Class Representative contends that Defendant violated the California Labor Code and
19 Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
20 certification. Gaines Decl. at ¶ 11.

21 **III. INVESTIGATION AND SETTLEMENT DISCUSSIONS**

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

1 The Parties agreed to participate in nonbinding mediation of Plaintiff's claims. On June 6,
2 2024, following their exchange of information and documents regarding the Settlement Class and
3 the claims and defenses asserted by the Parties, the Parties engaged in arm's-length negotiations
4 with the assistance of an experienced wage and hour mediator, Brandon McKelvey, Esq. The
5 mediation ended with the resolution set forth herein. Gaines Decl. at ¶ 13.

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

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

20 **IV. LEGAL ANALYSIS**

21 **A. The Proposed Settlement Terms**

22 **1. The Settlement Class**

23 The Parties have agreed to a settlement class composed of all current and former employees
24 of Defendant who were employed in California as a non-exempt employee during the Class Period.
25 Stip. at ¶ A(4).

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

27 The Parties agree to settle the Action for a Gross Settlement Amount of \$372,500 ("the
28

1 Gross Settlement Amount”).¹ The Gross Settlement Amount includes the attorney’s fees of Class
2 Counsel; litigation costs and expenses (which include, without limitation, all such fees and costs
3 incurred to date, as well as such fees and costs to be incurred in documenting the settlement,
4 providing any notices required as part of the settlement, securing Court approval of the
5 settlement, and obtaining judgment in the Action); the Service Award/General Release Payment
6 to the Class Representative, as approved by the Court; the payment to the California Labor and
7 Workforce Development Agency (“LWDA”); all costs of administration, including, without
8 limitation, settlement administration fees and expenses; and all employer payroll tax obligations
9 due on wage payments made from the Net Settlement Proceeds. Stip. at ¶ C(1)(a).

10 From the Gross Settlement Amount, Defendant will not oppose Plaintiff’s counsel’s
11 application to the Court for up to 35% of the Gross Settlement Amount for attorneys’ fees (projected
12 to be \$130,375). Stip. at ¶ C(1)(g).

13 From the Gross Settlement Amount, Defendant will not oppose Plaintiff’s counsel’s
14 application to the Court for up to \$15,000 in reimbursement of litigation costs and expenses. Stip.
15 at ¶ C(1)(h).

16 From the Gross Settlement Amount, Defendant will not oppose Plaintiff’s counsel’s
17 application to the Court for a Service Award and General Release Payment to Plaintiff Andrew
18 Ruiz in the gross amount of \$15,000, in consideration for his efforts in instituting and participating
19 in the Action and in exchange for the general release of all claims by Mr. Ruiz. Stip. at ¶ C(1)(f).

20 From the Gross Settlement Amount, settlement administration fees paid to Phoenix
21 Settlement Administrators will be no more than \$10,000. Stip. at ¶ C(1)(i).

22 From the Gross Settlement Amount, the portion to be allocated for settlement of any and all
23 claims for penalties under the PAGA is \$20,000 (“PAGA Payment”), 75% (\$15,000) shall be paid
24 directly to the LWDA and 25% (\$5,000) shall be paid to Aggrieved Employees as part of the Net
25 Settlement Proceeds. Stip. at ¶ C(1)(e).

26 ¹ Defendant has represented that Class Members worked approximately 11,000 workweeks during
27 the Class Period. Should the workweek count increase by more than 10%, the Gross Settlement
28 Amount will increase proportionately above the 10% threshold. For example, if there are 12,650
workweeks (i.e., a 15% increase), the Gross Settlement Amount shall increase by 5%. Stip. at ¶
H(16).

1 The Net Settlement Amount is defined as the Gross Settlement Amount less the amounts
2 approved and awarded by the Court for: attorney's fees and documented litigation costs and
3 expenses incurred or advanced by Class Counsel; the Incentive Award to the Class Representative;
4 the payment to the LWDA pursuant to PAGA; and the costs of administering the settlement. Stip.
5 at ¶ C(1)(b).

6 "Individual Payment Amount" means the portion of the Net Settlement Proceeds
7 distributable to each Class Member who participates in the Class Settlement (i.e., who does not
8 submit a valid request for exclusion form) and each Aggrieved Employee, whether they participate
9 in the Class Settlement or not. As to participating Class Members, the class portion of the
10 Individual Payment Amount will be determined by dividing the Net Settlement Proceeds, less the
11 \$5,000 PAGA allocation, by the total number of weeks worked by the entire Settlement Class in a
12 non-exempt position in California during the Class Period, net of opt outs, resulting in the class
13 workweek value; and then multiplying the class workweek value by the number of weeks worked
14 by each participating Class Member in a non-exempt position in California during the Class Period.
15 As to the Aggrieved Employees, the PAGA portion of the Individual Payment Amount will be
16 determined by dividing the PAGA settlement amount (\$5,000) by the total number of weeks
17 worked by all Aggrieved Employees in a non-exempt position in California during the Class Period,
18 resulting in the PAGA workweek value; and then multiplying the PAGA workweek value by the
19 number of weeks worked by each Aggrieved Employee in a non-exempt position in California
20 during the Class Period. Stip. at ¶ C(1)(c).

21 For tax purposes, the class portion of each Individual Payment Amount will be apportioned
22 (a) 20% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); and (b)
23 80% equally as penalties and interest (reported on an IRS Form 1099, if required). The PAGA
24 portion of each Individual Payment Amount will be apportioned 100% as penalties (reported on an
25 IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members and
26 Aggrieved Employees will be subject to any applicable wage garnishments, liens, or other legally
27 mandated treatment as required by law. Stip. at ¶ C(1)(d).

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

2 Pursuant to PAGA, the Parties have agreed that \$20,000 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% (\$15,000) shall be paid directly to the LWDA and 25% (\$5,000) shall
7 be paid to Aggrieved Employees as part of the Net Settlement Proceeds. Stip. at ¶ C(1)(e).

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

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

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

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

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

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

5
6 When the parties to an action reach a monetary settlement, they will
7 usually prepare and execute a joint stipulation of settlement, which
8 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.

9 *Id.* at § 11.24.

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

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

13 Pursuant to California Rules of Court, Rule 3.769(d), parties also may, at the preliminary
14 approval stage, request that the court provisionally approve certification of the class – conditioned
15 upon final approval of the settlement. “[P]re-certification settlements are routinely approved if
16 found to be fair and reasonable.” *Wershba, supra*, 91 Cal. App. 4th at 240. *Accord Dunk, supra*,
17 48 Cal. App. 4th at 1803 (although the settlement was reached before any “adversary certification,”
18 the court was satisfied that it was “fair, adequate and reasonable.”). *See also In re Baldwin-United*
19 *Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478³ (“many courts have employed this practice in the
20 name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”)

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

25 4 *Newberg on Class Actions*, at § 11.26.

26 As required by Labor Code § 2699(1)(2), concurrent with Plaintiff’s submission of the

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 Stipulation to the Court, his counsel is transmitting it, together with this Motion, to the LWDA.
2 Gaines Decl. at ¶ 32.

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

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

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

11 The proposed Settlement Class is ascertainable. The class definition, the size of the Class,
12 and the means for identifying the members of the class determine whether the class is ascertainable.
13 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
14 are identifiable from Defendant's employment and payroll records. Further, the Settlement Class
15 is sufficiently numerous to warrant certification. According to Defendant's records, the Class
16 comprises approximately 215 members. Gaines Decl. ¶ 28.

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

19 The Class Members' claims all stem from a common source: members of the Settlement
20 Class allege that Defendant violated the same Labor Code provisions in connection with their
21 employment in non-exempt positions. All members of the Class seek the same relief under the
22 same California laws (related to unpaid wages, unpaid meal and rest period premiums, inaccurate
23 or incomplete wage statements, failure to timely pay wages due upon separation, and derivative
24 claims). Under these circumstances, the commonality requirement is satisfied for purposes of
25 certifying the Settlement Class for settlement purposes. Gaines Decl. ¶ 29.

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

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

1 of conduct that gives rise to the claims of the class, and are based on the same legal theory.
2 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, named Plaintiff and proposed
3 Class Representative is a former non-exempt employee who worked for Defendant in the State of
4 California during the Class Period. He contends that Defendant failed to pay all wages, failed to
5 provide meal and rest periods, failed to comply with itemized employee wage statement provisions,
6 failure to reimburse expenses, and failed to timely pay wages at the separation of employment, in
7 violation of Labor Code §§ 201, 202, 226(a), 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5,
8 1194, 1198, 2698, and 2699, among other Labor Code provisions. He has the same claims as those
9 that the members of the Settlement Class would reasonably be expected to bring based on the course
10 of conduct alleged herein. Gaines Decl. ¶ 30.

11 Plaintiff has also demonstrated that he will aggressively and competently assert the interests
12 of the proposed Settlement Class; he has taken an active role in the litigation and has no apparent
13 conflicts with other class members. Gaines Decl. ¶ 31. Furthermore, Plaintiff has retained
14 competent counsel, experienced in litigating class action claims in the employment context. *See*
15 Gaines Decl. ¶¶ 2-5.

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

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

28 While the recommendations of counsel proposing the settlement are not conclusive, the

1 Court can properly take them into account, particularly where, as here, such counsel have been
2 involved in informal discovery and negotiations for some period of time, appear to be competent,
3 have experience with this type of litigation, and have exchanged substantial evidence with the
4 opposing party. *See Newberg on Class Actions, supra*, § 11.47; *In re Paine Webber Ltd. P'ships*
5 *Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 (“[s]o long as the integrity of the arm’s-length
6 negotiation process is preserved, however, a strong initial presumption of fairness attaches to the
7 proposed settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of
8 counsel, who are most closely acquainted with the facts of the underlying litigation”); *see* Gaines
9 Decl. ¶¶ 2-5, 12-13.

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

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

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

27 Plaintiff contends that Defendant failed to pay Class Members all wages due in two separate
28 ways. Defendant allegedly paid Class Members bonuses that were not included in their regular rate

1 of pay for purposes of paying them meal and rest period premiums, sick pay, vacation wages,
2 overtime, and double time wages at the correct rates, in violation of Labor Code §§ 226.7, 246,
3 510, 512, 558, and 1194. Instead, it paid Class Members meal and rest period premiums, sick pay
4 wages, vacation wages, and overtime and double time wages based only on the base hourly rate of
5 pay, thus depriving them of all wages earned, in violation of Labor Code §§ 226.7, 246, 510, 512,
6 558, and 1194.⁴ Gaines Decl. ¶ 17.

7 California Labor Code § 510 requires the payment of premium overtime compensation
8 based on employees' regular rate of pay. Labor Code § 207(e) defines the "regular rate" to include
9 all remuneration for employment paid to or on behalf of the employee. California law mirrors
10 federal law on the issue of computation of the regular rate of pay. The leading case on this issue is
11 *Walling v. Youngerman-Reynolds Hardware Co.* (1945) 324 U.S. 419, 424, which explains that the
12 "regular rate" is "all payments which the parties have agreed shall be received regularly during the
13 workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties; it is
14 an actual fact." This includes all forms of bonuses and shift differential wages. *See also Ferra v.*
15 *Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 (holding that "the calculation of premium
16 pay for a noncompliant meal, rest, or recovery period, like the calculation of overtime pay, must
17 account for not only hourly wages but also other nondiscretionary payments for work performed
18 by the employee" because the terms "regular rate of compensation under section 226.7(c)" and
19 "regular rate of pay under section 510(a)" are "synonymous" and "encompasses all
20 nondiscretionary payments, not just hourly wages."). Here, when Class Members worked overtime,
21 double time, or earned meal period or other premium wages, they were paid at one and one-half
22 times the base hourly rate of pay. The non-base wages earned by Class Members were not
23 discretionary within the meaning of the applicable regulation (29 U.S.C. § 207(e)), and accordingly,
24 must have been included in their regular rate of pay for purposes of determining their overtime and
25 double time pay, sick pay, and meal and rest period premiums. Class Members are entitled to

26 ⁴ All statements pertaining to the merits of Plaintiff's claims in this memorandum, whether factual
27 allegations or legal contentions, are made only by Plaintiff. Defendant does not admit or concede
28 the accuracy of any of such statements, despite its lack of opposition to this motion. For example,
Defendant contends both that it has paid all wages due and owing to its employees, and that
California law does not require vacation wages be paid at the regular rate of pay.

1 significant restitution as a result. Gaines Decl. ¶ 18.

2 Plaintiff also argues 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, by requiring that they
4 perform work-related activities off-the-clock, without compensation. An employer is obligated to
5 pay the wages of an hourly employee for all time that the employee is under the control of the
6 employer, and this includes all the time the employee is suffered or permitted to work, whether or
7 not required to do so. When Class Members performed work-related activities off-the-clock, they
8 were under the control of Defendant and required to be compensated for all hours worked. Gaines
9 Decl. ¶ 19.

10 Plaintiff further argues that Defendant failed to permit or authorize Class Members to take
11 timely and/or uninterrupted 30-minute meal periods for shifts greater than 5 hours in length, in
12 violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 1-2001. Labor Code § 512
13 provides that employers may not employ an employee for a work period of more than 5 hours
14 without providing a 30-minute meal period starting no later than the end of the 5th hour. Class
15 Members were routinely unable to take a proper meal period when they worked shifts in excess of
16 5 hours in duration and a second meal period when they worked shifts in excess of 10 hours in
17 duration. Plaintiff contends that he and other Class Members were rarely able to receive timely
18 meal breaks due to understaffing. When Plaintiff was able to take a meal break, they were
19 frequently interrupted, as discussed above. Gaines Decl. ¶ 20.

20 Plaintiff pleads that Defendant failed to pay Class Members premium wages for missed,
21 denied and unauthorized rest periods in violation of Labor Code § 226.7 and IWC Wage Order 1-
22 2001. Class Members were denied, and therefore unable to take, 10-minute on-the-clock rest
23 periods for every four hours of work or major fraction thereof, but were not paid premium wages
24 of one hour's pay for each missed, denied and unauthorized rest period. Plaintiff also contends that
25 Defendant maintained a policy requiring employees to remain on the company premises during
26 their rest breaks. This violates *Augustus v. ABM Security Services, Inc.* (2016) 5 Cal. 5th 257, 269
27 (holding that the rest period requirement "obligates employers to permit and authorizes employees
28 to take off-duty rest periods. That is, during rest periods employers must relieve employees of all

1 duties and relinquish control over how employees spend their time.” An employer may not place
2 any limitations on where employees may go or not go during their rest periods). Gaines Decl. ¶ 21.

3 Class Members were required to incur expenses in the performance of their job duties for
4 which they were not fully reimbursed, in violation of Labor Code § 2802. Class Members were
5 required to use their personal cell phones and personal tools to perform work for Defendant, but
6 were not fully reimbursed by Defendant for these expenses. This practice violates Labor Code §
7 2802. Gaines Decl. ¶ 22.

8 Plaintiff alleges that Defendant failed to issue Class Members accurately itemized wage
9 statements. Specifically, Class Members were not paid all wages due, as detailed above. As a
10 result, the wage statements issued by Defendant to Class Members fail to accurately state all gross
11 wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor
12 Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable
13 hourly rates in effect during the pay period and the corresponding number of hours worked at each
14 hourly rate, in violation of Labor Code § 226(a)(9). Gaines Decl. ¶ 23.

15 Defendant failed to pay certain Class Members all wages due upon separation of
16 employment, in violation of Labor Code §§ 201-203. As Defendant failed to pay them all wages
17 due during the course of their employment, as described above, these wages were due and owing
18 upon separation of employment yet went unpaid. Gaines Decl. ¶ 24.

19 Defendant maintained numerous defenses to Plaintiff’s claims. It contends that it timely
20 paid all wages due, always provided meal and rest breaks as require by law, and reimbursed all
21 expenses as required by law. It contends that Plaintiff would not succeed in certifying a class. It
22 contends that even if Plaintiff prevailed on all of his claims, any damages are far less than proffered
23 by Plaintiff. The settlement reflects a compromise of disputed claims. When the costs and risks of
24 non-certification and loss on the merits are considered, Plaintiff’s counsel are of the opinion that
25 the settlement reached is clearly a favorable one. Gaines Decl. ¶ 25.

26 The settlement for each Class Member is fair, reasonable and adequate, given the inherent
27 risk of litigation, the risk relative to class certification and the costs of pursuing such litigation. The
28 settlement shall finally resolve all claims of the Class Members as alleged in the Action. Gaines

Decl. ¶ 26.

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

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

Moreover, Class Members who do not opt out may, upon providing proper notice to the 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 Plaintiff Andrew Ruiz as the Class Representative;
4. Appointing Gaines & Gaines, APLC as Class Counsel;
5. Approving Phoenix Settlement Administrators as Settlement Administrator;
6. Preliminarily approving the allocation of \$20,000 from the Gross Settlement Amount to settle Plaintiff's 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%) shall be paid to Class Members as part of the Net Settlement Proceeds.
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 their last known addresses, telephone numbers, social security numbers, and their dates of employment in a non-exempt position in California during the Class Period ("Settlement Class Information")	10 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail the Notice and the Exclusion Form to Class Members	20 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Class Members to submit a written Exclusion Form to the Settlement Administrator	45 calendar days after the initial mailing of the Notice to Class Members
Last day for Class Members to submit an objection to the Settlement Administrator	45 calendar days after the initial mailing of the Notice to Class Members
Last day for Class Counsel to file and serve moving papers in support of final settlement approval and request for attorneys' fees and costs	10 calendar days before the final settlement approval hearing date
Last day for Class Counsel to file with the Court and serve declaration by Settlement Administrator specifying the due diligence undertaken with regard to the mailing of the Notice	10 calendar days before the final settlement approval hearing date
Final settlement approval hearing	_____, at _____.m. (approximately 90 days after entry of the Order granting this Motion)

DATED: September 9, 2024

Respectfully submitted,

GAINES & GAINES,
A Professional Law Corporation

By: *Daniel F. Gaines*

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