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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

ROQUE ZARATE JR., individually and on behalf of all similarly situated individuals and all "aggrieved employees" pursuant to Labor Code § 2698 et seq., Plaintiff, v. BILLY CHARLES CRAWFORD AND CODY ALAN CRAWFORD, individuals doing business as CRAWFORD ASSOCIATES, and DOES 1 through 50, inclusive, Defendants.	CASE NO: CVRI2403196 *Assigned to the Hon. Harold W. Hopp, Dept. 1* CLASS ACTION **NOTICE OF UNOPPOSED MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** **Date: April 24, 2025** **Time: 8:30 a.m.** **Dept.: 1** **RESERVATION ID: 693136276940** *Complaint Filed: June 10, 2024*

PLEASE TAKE NOTICE THAT on April 24, 2025 at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department 1 of the above-entitled Court, located at 4050 Main Street, Riverside, California 92501, Plaintiff Roque Zarate Jr. ("Plaintiff") will and hereby does move unopposed for an Order (1) preliminarily finding that the settlement between the parties falls within the range of reasonableness and approving the proposed class action settlement in the above-captioned case, (2) conditionally certifying, for settlement purposes only, a settlement class, (3) approving the appointment of Plaintiff Roque Zarate Jr. as Class Representative, (4) approving the appointment of Gaines & Gaines, APLC and Halavi Law, Inc. as Class Counsel, (5) approving the appointment of Phoenix Settlement Administrators as settlement administrator, (6) preliminarily approving the allocation of $12,000 from the Gross Settlement Amount to settle Plaintiff's representative claims under the Private Attorneys General Act (Lab. Code §§ 2698 et seq.), of which seventy-five percent (75%) will be paid to the Labor and Workforce Development Agency and twenty-five percent (25%) shall be paid to Aggrieved Employees as part of the Net Settlement Proceeds; (7) approving as to content and form the notice to the settlement class, and directing it be disseminated by the Settlement Administrator; and (8) setting a final fairness and approval hearing.

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

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

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This Motion will be based on the Memorandum of Points and Authorities set forth herein, the Settlement Agreement and Release of Claims, the Declarations of Daniel F. Gaines, Naveed Halavi, Jarrod Salinas, Billy Charles Crawford, Charles E.H. Gulley, and Roque Zarate Jr., such evidence or oral argument as may be presented at the hearing, and on the complete record and file herein.

DATED: April 2, 2025

Respectfully submitted,

GAINES & GAINES,
A Professional Law Corporation

By: Daniel Gaines
DANIEL F. GAINES
Attorneys for Plaintiff Roque Zarate Jr.
and Proposed Class Counsel

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Parties have reached a resolution of this class action and hereby submit their Settlement Agreement and Release of Claims ("Settlement", "Stipulation" or "Stip.") for the Court's approval. The Settlement is made and entered into by and between Plaintiff Roque Zarate Jr. ("Zarate" or "Plaintiff") and Defendant Billy Charles Crawford and Cody Alan Crawford, individuals doing business as Crawford Associates. ("Defendant").

The settlement occurred as a result of extensive arm's-length negotiations by experienced counsel with the assistance of a respected mediator with experience in the area of employment class actions. Most importantly, the settlement will result in significant financial benefit to the participating claimants, on terms that are by any measure fair, reasonable and adequate. *See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801-02. The proposed settlement provides for a non-revisionary class settlement in the gross amount of $225,000 to a settlement class of approximately 79 Class Members and 42 Aggrieved Employees, yielding average class payments of approximately $1,430 and average PAGA payments of $71.43. The highest paid Class Member who worked the entire Class Period would be paid approximately $4,245.36 and the lowest paid Class Member would be paid approximately $18.62.[1] As for the PAGA payments, the highest paid Aggrieved Employee who worked the entire PAGA Period would be paid approximately $117.03, and the lowest paid Aggrieved Employee would be paid approximately $1.41. Declaration of Daniel F. Gaines ("Gaines Decl.") at ¶ 16. As detailed below, the settlement is in the best interests of the class in light of all of the facts and circumstances and the risks and delays of further litigation.

For the foregoing reasons, the Parties respectfully request that the Court: (a) grant preliminary approval of the settlement agreement and preliminarily find that the settlement falls within the range of reasonableness; (b) conditionally grant certification of the proposed Settlement Class, for settlement purposes only; (c) approve the appointment of Plaintiff Roque Zarate Jr. as

[1] These numbers, along with the PAGA payments, were calculated based on the data provided at mediation (approximately 6,069 workweeks worked during the Class Period and 2,129 workweeks worked during the PAGA Period). These numbers may change slightly based on the total number of workweeks worked at the conclusion of the Class and PAGA Periods.

Class Representative; (d) approve the appointment of Gaines & Gaines, APLC and Halavi Law, Inc., as Class Counsel; (e) approve appointment of Phoenix Settlement Administrators as the Settlement Administrator; (f) authorize the mailing of the proposed class action notice packet; (g) schedule a final fairness and approval hearing.

II. BACKGROUND AND PROCEDURAL HISTORY

On March 21, 2024 and June 10, 2024, Plaintiff Zarate exhausted the pre-filing requirements of the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Gaines Decl. at ¶ 6.

On June 10, 2024, Plaintiff Zarate initiated his Class and Representative Action in the Riverside County Superior Court by filing a complaint on behalf of himself, all others similarly situated, and "aggrieved employees." Gaines Decl. at ¶ 7.

On August 26, 2024, by a stipulation, Plaintiff filed his First Amended Complaint which alleged additional claims. The Action asserts claims against Defendant for (1) failure to pay all wages due (Labor Code §§ 226.7, 246, 510, 512, 1194, and IWC Wage Order 16-2001); (2) failure to provide rest periods or compensation in lieu thereof (Labor Code § 226.7 and IWC Wage Order 7-2001); (3) failure to provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 512, and IWC Wage Order 7-2001); (4) knowing and intentional failure to comply with itemized employee wage statement provisions (Labor Code §§ 226(a) and (e)); (5) failure to timely pay wages due at the separation of employment (Labor Code §§ 201-203); (6) violation of Business and Professions Code § 17200 for underlying violations of the Labor Code as set forth in the Action; 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 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 associated with the claims alleged in the Action, and further denies that the Action is appropriate for class treatment for any purpose other than this settlement. Defendant contends that it has complied at all times with the California Labor Code and is not liable for damages or civil penalties. It is also Defendant's position that, if this case were to be litigated, class certification would be inappropriate because Plaintiff is not an adequate Class Representative, Plaintiff's claims are not typical of putative class members, and individual issues predominate over class issues, among other defenses. The Action, the negotiation and execution of this Settlement Agreement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement Agreement (i) shall not be used as an admission, or as evidence of wrongdoing by the Defendant, or for any other purpose whatsoever; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any action before a civil court, criminal court, administrative agency of any type, or other tribunal; and (iii) shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for class certification in the Action or with respect to any other proceeding whatsoever. 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. <u>INVESTIGATION AND SETTLEMENT DISCUSSIONS</u>

Class Counsel have conducted a thorough investigation into the facts and law during the prosecution of this class action case, including the exchange of extensive informal discovery and the review and verification of statistical data and other facts and information provided by Defendant. Counsel for the Parties have investigated the applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and the damages and other losses claimed by Plaintiff. Gaines Decl. at ¶ 11. Specifically, Defendant provided Plaintiff's counsel with Defendant's employee handbook, a redacted list of employees, together with their dates of employment, during the Class Period and PAGA Period, and wage and time data for nearly 25% of the total shifts worked by all non-exempt employees during the Class Period. *Id.*

On October 22, 2024, following their exchange of information and documents regarding the Settlement Class and Aggrieved Employees and the claims and defenses asserted by the Parties, the Parties engaged in arm's-length negotiations with the assistance of an experienced wage and hour mediator and retired jurist, Hon. David Brown (Ret.), where the Parties were able to reach the resolution of the Action set forth herein. Gaines Decl. at ¶ 12.

Prior to mediation, Plaintiff's counsel and Defendant's counsel confirmed that they were not aware of any class, representative, or collective action in any other court or in this jurisdiction that asserts claims similar to those asserted in the action on behalf of a class or group of individuals some or all of whom would also be members of the Class defined in this Action. Gaines Decl. at ¶ 12. *See also* Declaration of Charles E.H. Gulley ("Gulley Decl.") at ¶ 5. Plaintiff's counsel performed one final search on Westlaw and the Department of Industrial Relations' PAGA search site on April 1, 2025, which confirmed there are no other pending wage and hour lawsuits or PAGA notice letters. Gaines Decl. at ¶ 12.

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

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

IV. LEGAL ANALYSIS

A. The Proposed Settlement Terms

1. The Settlement Class

The Parties have agreed to a settlement class composed of all non-exempt employees of Defendant Billy Charles Crawford and Cody Alan Crawford, individuals doing business as

Crawford Associates in California, at any time between June 10, 2020 and October 22, 2024 (the "Class Period"). Stip. at ¶ A(4).

The Aggrieved Employees are defined as all non-exempt employees of Defendant Billy Charles Crawford and Cody Alan Crawford, individuals doing business as Crawford Associates in California, at any time between March 21, 2023 and October 22, 2024 (the "PAGA Period") . Stip. at ¶ A(5).

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

The Parties agree to settle this Action for a Gross Settlement Amount of $225,000 (the "Gross Settlement Amount")[2]. The Gross Settlement Amount includes the attorneys' fees of Class Counsel; litigation costs and expenses (which includes, without limitation, all such fees and costs incurred to date, as well as such fees and costs to be incurred in documenting the settlement, providing any notices required as part of the settlement, securing Court approval of the settlement, and obtaining judgment in the Action); the Service Payment and General Release Payment to the Class Representative, as approved by the Court; the payment to the California Labor and Workforce Development Agency ("LWDA"); and all costs of administration, including, without limitation, settlement administration fees and expenses. All employer payroll tax obligations due on wage payments made from the Net Settlement Proceeds shall be paid by Defendant separately and apart from, and in addition to, the Gross Settlement Amount. Stip. at ¶ C(1)(a). Gaines Decl. ¶ 17. Billy Charles Crawford, Cody Alan Crawford and Crawford Associates shall be jointly and severally liable for all obligations under the Settlement. *Id.*

From the Gross Settlement Amount, Defendant will not oppose Plaintiff's counsel's application to the Court for up to 33.33% of the Gross Settlement Amount for attorneys' fees (projected to be $75,000). Stip. at ¶ C(1)(g).

From the Gross Settlement Amount, Defendant will not oppose Plaintiff's counsel's application to the Court for up to $10,000 in reimbursement of litigation costs and expenses. Stip. at ¶ C(1)(g).

[2] Defendant has represented that approximately 79 Class Members worked during the Class Period. Should this number increase by more than 5%, the Gross Settlement Amount shall increase 1.28% for each additional Class Member. Stip. at ¶ H(16).

From the Gross Settlement Amount, Defendant will not oppose Plaintiff's counsel's application to the Court for Service Payment and General Release Payment to the Plaintiff Roque Zarate Jr. in the gross amount of $10,000, in consideration for his efforts in instituting and participating in the Action and in exchange for the general release of all claims by Plaintiff Zarate. Stip. at ¶ C(1)(f).

From the Gross Settlement Amount, settlement administration fees paid to Phoenix Settlement Administrators will be no more than $5,000. Stip. at ¶ C(1)(i). Plaintiff's counsel attests that it obtained bids from both Phoenix Settlement Administrators and ILYM Group, Inc. Phoenix Settlement Administrators' bid was the least expensive option. Plaintiff's counsel has used Phoenix Settlement Administrators as the settlement administrator in many of their cases and attest that their work is excellent. Gaines Decl. at ¶ 18. Jarrod Salinas from Phoenix Settlement Administrators has provided a declaration describing the administrator's experience and outlining the details of its fee. Mr. Salinas' declaration is being filed concurrently with this Motion. *See generally* Declaration of Jarrod Salinas.

From the Gross Settlement Amount, the portion to be allocated for settlement of any and all claims for penalties under the PAGA is $12,000 ("PAGA Payment"), 75% ($9,000) of which shall be paid directly to the LWDA and 25% ($3,000) of which shall be paid to Aggrieved Employees as part of the Net Settlement Proceeds. Stip. at ¶ C(1)(e). The Parties determined that allocating approximately 5% of the Gross Settlement Amount to resolve Plaintiff's PAGA claims was fair, reasonable, and appropriate. Gaines Decl. at ¶ 19. This result is fair, reasonable, and appropriate, as settlements of PAGA claims impacting thousands of individuals have been approved as reasonable for amounts less than the payment in this case. *See Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27, 2012) ("Defendant has agreed to pay $10,000 as civil penalties pursuant to the PAGA . . . . Of the $10,000, 75 percent ($7,500) will be paid to the State of California, and the remainder ($2,500) will benefit the class . . . . The Court finds that the PAGA payment is set at a reasonable amount, and it shall be approved."); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D. Cal. Oct. 29, 2012) ("GTI agrees to allocate $10,000 to Plaintiff's PAGA claims, and will pay $7,500 to the LWDA, and $2,500 to participating Class Members on a pro-rata basis. This comports with settlement approval of PAGA awards in other cases. . . . Therefore, the Court will approve the allocation of the Settlement to Plaintiff's PAGA claim."); *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, 40 (E.D. Cal. June 11, 2012) ("Pursuant to the Settlement Agreement, the parties have agreed to pay $7,500 to the California Labor and Workforce Development Agency . . . . The Court finds that the PAGA Payment is set at a reasonable amount, and recommends that it be approved."); cf. *Gong-Chun v. Aetna Inc.*, 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11, 2012) ("Pursuant to the Settlement Agreement, Defendant has agreed to pay $15,000 to the California Labor and Workforce Development Agency . . . . The Court finds that the PAGA payment is set at a reasonable amount, and it shall be approved.").

The Net Settlement Proceeds is defined as the Gross Settlement Amount less the amounts approved and awarded by the Court for: attorneys' fees and documented litigation costs and expenses incurred or advanced by Class Counsel; the Service Payment and General Release Payment to the Class Representative; the payment to the LWDA pursuant to PAGA; and the costs of administering the settlement. Stip. at ¶ C(1)(b).

The Individual Payment Amount means the portion of the Net Settlement Proceeds distributable to each Class Member who participates in the Class Settlement (i.e., who does not submit a valid request for exclusion form) and each Aggrieved Employee, whether they participate in the Class Settlement or not. As to participating Class Members, the class portion of the Individual Payment Amount will be determined by dividing the Net Settlement Proceeds, less the $3,000 PAGA allocation, by the total number of weeks worked by the entire Settlement Class during the Class Period, net of opt outs, resulting in the class workweek value; and then multiplying the class workweek value by the number of weeks worked by each participating Class Member during the Class Period. As to the Aggrieved Employees, the PAGA portion of the Individual Payment Amount will be determined by dividing the PAGA settlement amount ($3,000) by the total number of weeks worked by all Aggrieved Employees during the PAGA Period, resulting in the PAGA workweek value; and then multiplying the PAGA workweek value by the number of weeks worked by each Aggrieved Employee during the PAGA Period. Stip. at ¶ C(1)(c).

Subject to Defendant's full payment of the Gross Settlement Amount and all associated employer payroll tax obligations, Plaintiff and Class Members who do not timely opt-out of the Settlement will be deemed to have fully released and discharged Defendant and their present and former officers, directors, employees, and agents ("Released Parties") from any and all claims and/or causes of action which accrued during the Class Period during employment in a non-exempt position in California, that are alleged, or that could have been alleged in the Action, based on the facts set forth in the First Amended Complaint in the Action, which arose during their employment in a non-exempt position in California during the Class Period (the "Released Class Claims"). No PAGA claims are encompassed in the Released Class Claims. Stip. at ¶ D(1) and D(3). Gaines Decl. at ¶ 20.

For tax purposes, the class portion of each Individual Payment Amount will be apportioned (a) 50% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); and (b) 50% equally as penalties and interest (reported on an IRS Form 1099, if required). The PAGA portion of each Individual Payment Amount will be apportioned 100% as penalties (reported on an IRS Form 1099, if required). All Individual Payment Amounts paid to Class Members and Aggrieved Employees will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law. Stip. at ¶ C(1)(d). Determining the Individual Payment Amounts' tax allocations is an art, not a science. The Parties believed that because approximately 50% of the damage model came from penalties and interest, as discussed below, that the Individual Payment Amounts should be allocated as such. Gaines Decl. at ¶ 21.

Finally, under the terms of the Settlement Agreement, the value of checks uncashed more than 180 days after issuance shall be proportionately redistributed to those Class Members who have cashed their checks based on the value of their first Settlement payment. Stip. at ¶ G(14). Gaines Decl. at ¶ 22.

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

Pursuant to PAGA, the Parties have agreed that $12,000 of the Gross Settlement Amount will be allocated to settle the claims brought under Labor Code § 2699 *et seq*. Pursuant to Labor Code § 2699(i), "civil penalties recovered by aggrieved employees shall be distributed as follows:

75 percent to the Labor and Workforce Development Agency…and 25 percent to the aggrieved employees." As such, 75% of the apportioned PAGA settlement amount – or $9,000 – shall be paid directly to the LWDA, and 25%, i.e., $3,000, shall be paid to Aggrieved Employees as part of the Net Settlement Proceeds. Stip. at ¶ C(1)(e).

Subject to Defendant's full payment of the Gross Settlement Amount and all associated employer payroll tax obligations, Plaintiff and the State of California will be deemed to have fully released and discharged the Released Parties from any and all PAGA claims and/or causes of action which accrued during the PAGA Period, that are alleged in Plaintiff's March 21, 2024 and June 10, 2024 pre-filing letters to the LWDA (the "Released PAGA Claims"). The Released PAGA Claims do not include any Aggrieved Employee's claim for wages or damages. No Aggrieved Employee may opt out of the PAGA portion of the Settlement. Stip. at ¶ D(2) and D(4). Gaines Decl. at ¶ 23.

B. <u>Two-Step Approval Process</u>

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

> Approval of class action settlements involves a two-step process. First, counsel submit the proposed terms of settlement and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly 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.

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

[3] 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.

Computer (2001) 91 Cal.App.4th 224, 234-35. "The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing." 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).

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

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

Id. at § 11.24.

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

C. <u>Procedures for Settlement Before Class Certification.</u>

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

> The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal . . . may be set out in conditional orders granting tentative approval to the various items submitted to the court. Three basic rulings are often

[4] 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.

> 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.

As required by Labor Code § 2699(l)(2), concurrent with Plaintiff's submission of the Stipulation to the Court, his counsel is transmitting it, together with this Motion, to the LWDA. Gaines Decl. at ¶ 44; **Exhibit C**.

1. **<u>The Settlement Class Should Be Certified for Settlement Purposes</u>**

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

a. **<u>The Settlement Class is Ascertainable</u>**

The proposed Settlement Class is ascertainable. The class definition, the size of the Class, and the means for identifying the members of the class determine whether the class is ascertainable. *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members are identifiable from Defendant's employment and payroll records. Further, the Settlement Class is sufficiently numerous to warrant certification. According to Defendant's records, the Class comprises approximately 79 members. Gaines Decl. ¶ 40.

b. **<u>Questions of Law or Fact Common to Members of the Settlement Class Predominate</u>**

The Class Members' claims all stem from a common source: members of the Settlement Class allege that Defendant violated the same Labor Code provisions in connection with their employment in non-exempt positions. All members of the Class seek the same relief under the same California laws (related to unpaid wages, unpaid meal and rest period premiums, inaccurate or incomplete wage statements, failure to timely pay wages due upon separation, and derivative claims). Under these circumstances, the commonality requirement is satisfied for purposes of certifying the Settlement Class for settlement purposes. Gaines Decl. at ¶ 41.

c. The Proposed Class Representative's 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 Plaintiff and proposed Class Representative Roque Zarate Jr. is a former non-exempt employee who worked for Defendant in the State of California during the Class Period. He alleges that Defendant failed to pay him all wages, failed to provide him meal and rest periods, failed to comply with itemized employee wage statement provisions, and failed to timely pay his wages at the separation of employment, in violation of Labor Code §§ 201, 202, 226(a), 226.3, 226.7, 246, 510, 512, 558, 1194, 2698, and 2699, among other Labor Code provisions. He alleges the same claims as those that the members of the Settlement Class would reasonably be expected to allege based on the course of conduct alleged herein. Gaines Decl. at ¶ 42.

Plaintiff has also demonstrated that he will aggressively and competently assert the interests of the proposed Settlement Class; he has taken an active role in the litigation and has no apparent conflicts with other class members. Gaines Decl., ¶ 43. *See generally*, Declaration of Roque Zarate Jr. Furthermore, Plaintiff has retained competent counsel, experienced in litigating class action claims in the employment context. *See* Gaines Decl. ¶¶ 2-5; Halavi Decl. ¶¶ 2-5.

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.

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where, as here, such counsel have been involved in informal discovery and negotiations for some period of time, appear to be competent, have experience with this type of litigation, and have exchanged substantial evidence with the opposing party. *See Newberg on Class Actions, supra*, § 11.47; *In re Paine Webber Ltd. P'ships Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 ("[s]o long as the integrity of the arm's-length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement . . . [citations] and 'great weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation"); *see* Gaines Decl. ¶¶ 2-5, 13, 24-38; Halavi Decl. ¶¶ 6-8.

Here, the Parties' counsel have a great deal of experience in class action litigation and specialize in employment wage and hour matters. Moreover, counsel for both Parties conducted an extensive investigation of the factual allegations involved in this case. The Parties have engaged in a broad exchange of documents, data, records and other information. Each side has apprised the other, informally and at a formal mediation, of their respective factual contentions, legal theories and defenses, resulting in extensive arm's-length negotiations taking place among the Parties. *See* Gaines Decl. ¶¶ 2-5, 13, 24-38; Halavi Decl. ¶¶ 2-8.

1. **<u>The Settlement Falls Within The "Ballpark" of Reasonableness</u>**

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

Plaintiff's counsel created a comprehensive damage analysis using sampling information obtained through informal discovery. The sampling included approximately 25% of all non-exempt California employees employed during the Class Period and data from approximately 25% of shifts worked by all non-exempt California employees during the Class Period. The damage analysis reveals that the negotiated settlement falls within a realistic range of recovery on Class Members' claims. Gaines Decl. ¶ 24.

Plaintiff contends that Defendant failed to pay Class Members all wages due. Defendant allegedly paid Class Members bonuses and/or non-base hourly wages, that were not included in their regular rate of pay for purposes of paying them meal and rest period premiums, sick pay, overtime, and double-time wages at the correct rates, in violation of Labor Code §§ 226.7, 246, 510, 512, 558, and 1194 and IWC Wage Order No. 16-2001. California Labor Code § 510 requires the payment of premium overtime compensation based on employees' regular rate of pay. United States Code § 207(e) defines the "regular rate" to include all remuneration for employment paid to or on behalf of the employee. California law mirrors federal law on the issue of computation of the regular rate of pay. The leading case on this issue is *Walling v. Youngerman-Reynolds Hardware Co.* (1945) 325 U.S. 419, 424, which explains that the "regular rate" is "all payments which the parties have agreed shall be received regularly during the workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties; it is an actual fact." This includes all forms of bonuses and other non-base hourly wages.

Here, when Class Members worked overtime hours and double-time hours, they contend that they were paid at one and one-half times and double-time the base hourly rate of pay. The bonuses and/or non-base hourly wages earned by Plaintiff and Class Members were not discretionary within the meaning of the applicable regulation 29 U.S.C. § 207(e), and accordingly, must have been included in their regular rate of pay for purposes of determining their overtime pay, double-time pay, sick pay, and meal period premiums. Gaines Decl. ¶ 25. Upon further investigation, this claim was minimal. *Id.* Only in approximately 6.5% of the workweeks worked during the Class Period did it appear that a Class Member earned overtime, double-time, or sick pay where a bonus and/or other non-base hourly wage was earned. *Id.* Plaintiff contends that the average underpayment of overtime wages was approximately $5. Accordingly, this claim was worth an estimated $1,972.43. *Id.* Taking the approximate 6.5% violation rate and applying it to the 2,129 pay periods during the PAGA Period resulted in an estimated 138 pay periods during the PAGA Period that exhibited an alleged underpayment of wages due to miscalculation of the regular rate. *Id.* Accordingly, Plaintiff contends that Defendant could be liable for up to $13,800 in PAGA civil penalties for this claim. *Id.*

Plaintiff argues that Defendant failed to permit or authorize Class Members to take timely 30-minute meal periods for shifts greater than 5 hours in length or second timely 30-minute meal periods for shifts greater than 10 hours in length, in violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 16-2001. Labor Code § 512 provides that employers may not employ an employee for a work period of more than five hours without providing a 30-minute meal period starting no later than the end of the fifth hour. Plaintiff contends that the wage and time data provided by Defendant through informal discovery demonstrates a facial meal period violation rate of 94%. Based upon these numbers, meal period premiums were allegedly owed. Further based on these numbers, Plaintiff contends that the damages on this claim were valued up to $570,486. Gaines Decl. ¶ 26. Applying a 100% violation rate and 2,129 pay periods during the PAGA Period, Plaintiff's counsel calculated that Defendant could be liable for up to $219,200 in PAGA civil penalties. *Id.*

Defendant allegedly failed to pay Class Members premium wages for missed, denied, and unauthorized rest periods in violation of Labor Code § 226.7 and IWC Wage Order 16-2001. Class Members allege that they were denied, and therefore unable to take, 10-minute rest periods for every four hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed, denied, and unauthorized rest period. Based on Plaintiff's representations about his experience, Plaintiff's counsel assumed a 100% violation rate for rest periods. Based upon this violation rate, damages were calculated on this claim at up to $606,900, which assumes a one-hour premium payment due for every shift greater than 3.5 hours in length (i.e., $20 for approximately 30,345 shifts). Gaines Decl. ¶ 27. Plaintiff's counsel's analysis concluded that Defendant could be liable for up to $212,900 in PAGA civil penalties on this claim. *Id.*

Plaintiff alleges that Defendant failed to issue Class Members accurately itemized wage statements. Specifically, Class Members were allegedly not paid all wages due, as detailed above. As a result, Plaintiff alleges that the wage statements issued by Defendant to Class Members failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(9). Plaintiff values the statutory damages on this claim at approximately $168,000, calculated at the rate of $50 for each of 42 initial wage statements during the applicable one-year limitations period and $100 for each of 2,087 subsequent wage statements during that period (and capped at $4,000 per employee). Gaines Decl. ¶ 28. Plaintiff's counsel further calculated Defendant's potential PAGA civil penalties at approximately $532,250 on this claim. *Id.*

Finally, Plaintiff alleges that Defendant failed to pay certain Class Members all wages due upon separation of employment, in violation of Labor Code §§ 201-203. As Defendant allegedly failed to pay them all wages due during the course of their employment, as described above, these wages were allegedly due and owing upon separation of employment yet went unpaid. Plaintiff calculates damages on this claim at $369,600 based on approximately 56 Class Members who left their employment with Defendant during the applicable limitations period. Based on approximately 20 former Aggrieved Employees during the PAGA Period, Plaintiff's counsel calculated that Defendant could be liable for up to $2,000 in PAGA civil penalties on this claim. Gaines Decl. ¶ 29.

Based on the data calculated by Plaintiff's counsel, and presuming findings of liability would result, the estimated maximum amount of damages that Class Members theoretically could be awarded at trial is approximately $1,716,958.43, inclusive of unpaid overtime wages, meal and rest period premiums, waiting time penalties, and wage statement penalties. The estimated maximum amount of PAGA civil penalties that Aggrieved Employees theoretically could be awarded at trial is approximately $973,850. However, Plaintiff's counsel believes that a more accurate number is $212,900, based on one penalty per pay period at $100 per penalty. As discussed below, it is unlikely that this Court would allow Plaintiff to stack PAGA penalties, as it would likely be found to be unjust, arbitrary, oppressive, and/or confiscatory, and therefore, Plaintiff's counsel believes that $212,900 is the most accurate estimation of potential PAGA civil penalties Defendant could be found liable for. Gaines Decl. ¶ 30.

There were numerous risks to recovery here which required a compromise to resolve the Actions at this juncture of the litigation. Defendant argued, *inter alia*, that any bonus or premium wages paid were discretionary, such that it properly paid all wages, including overtime, sick pay, and meal and rest premiums at the correct rates. It forcefully maintained that it enforced legally complaint practices and written policies regarding meal and rest periods, that provided all employees with proper, timely meal and rest break opportunities and breaks, and any missed meal and rest periods were waived by employees. Defendant argued that no wage statement penalties or waiting time penalties would be recovered because it paid all wages due, it acted in good faith at all times, and Class Members suffered no actionable injury. It also took the position that PAGA penalties could not be stacked, and the Court would likely exercise its discretion to reduce or eliminate them altogether, based on the alleged weakness of the claims asserted. It also contended that a class could not be certified because of manageability concerns, among other issues, particularly with respect to the claims for meal and rest periods. Finally, Defendant argued that Plaintiff faced the risk that he would not obtain a maximum damage/penalty award on all (or any of) his claims. Gaines Decl. ¶ 31.

Defendant strongly contends that its policies and practices do not violate any laws. It contends that it properly paid all wages and provided for all meal and rest periods and fully compensated its employees for all time worked. It further contends that the wage statements it provided to its employees are fully compliant with California law. Gaines Decl. ¶ 32.

Defendant also contended that the Ninth Circuit has held that heightened PAGA penalties are not appropriate where the defendant was not notified by the Labor Commissioner or any court that it was committing any violation of the law. *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144

(9th Cir. 2021). *See also Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 340 (reversing heightened penalties awarded by trial court for Labor Code § 226.3 because "the plain language of the statute [Labor Code § 226.3] provides that heightened penalties apply only where the employer fails to provide wage statements or fails to keep required records.") Further, courts are often hesitant to award a heightened penalty where there is no prior citation by the Labor Commissioner. *See Bernstein* at 1144. *See also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 (holding that "[u]ntil the employer has been notified that it is violating a Labor Code provision…the employer cannot be presumed to be aware that its continuing underpayment of employee's is a violation subject to penalties.") (internal quotations omitted). Defendant was not notified by the Labor Commissioner or any court that it was subject to the California Labor Code, and has not been previously cited by the Labor Commissioner for Labor Code violations. Therefore, any violations prior to Plaintiff's LWDA letter are not subject to heightened penalties. Gaines Decl. at ¶ 33.

Additionally, Defendant contended that there is no California authority that expressly permits the practice of counting multiple PAGA violations/penalties that occur within the same pay period, known as "stacking" penalties. Plaintiff's counsel is aware of no court that has actually stacked such PAGA penalties for multiple violations (meaning the "market" for PAGA settlements is based on no stacking of penalties) and given the circumstances of this case, it is unlikely that this Court would impose a massive penalty by stacking the PAGA penalty claims against Defendant. Gaines Decl. at ¶ 34. Although stacking penalties is not unlawful, the majority of cases that address awards of PAGA penalties focus on the court's discretion to reduce awards. *See Romo v. GMRI, Inc.*, 2014 WL 11320647, at *7 (C.D. Cal. Feb. 18, 2014) ("The court retains discretion over awards under a PAGA claim . . . ."); *Cardenas v. McLane Foodservice, Inc.*, 2011 WL 379413, at *4 (C.D. Cal. Jan. 31, 2011) ("The PAGA text also provides the Court with the discretion to limit the amount Plaintiffs may recover from the employer."); *Bright v. 99c Only Stores* (2010) 189 Cal. App. 4th 1472, 1480 n.8 ("The trial court has discretion to award less than the maximum amount of the civil penalty . . . ."). Based thereon, the non-stacking/one penalty per pay period is an appropriate evaluation for maximum potential PAGA civil penalties exposure in this case. Gaines Decl., ¶ 34.

Finally, Defendant contended it acted within the requirements of California law at all times as to all Class Members and Aggrieved Employees. In particular, Defendant contends that it paid all employees all minimum and overtime wages due. Defendant also contends that it has compliant meal and rest break practices. Defendant further contends that not every pay period at issue involved an alleged Labor Code violation. Moreover, Defendant maintained that even if the Court did award PAGA civil penalties, the Court could and would *substantially* reduce the penalties awarded based on the discretionary factors contained in Labor Code § 2699(e)(2) ("In any action by an aggrieved employee . . . , a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."). Gaines Decl., ¶ 35.

The reasonable damages and/or penalties that Class Members could expect to be awarded at trial are uncertain. Class certification is a tremendous risk, and Plaintiff's counsel believes that the risk entailed in losing a class certification motion is up to 50%, particularly as to the meal and rest break claims. All penalty claims alleged are wholly derivative of the unpaid wage claims, such that if Plaintiff does not prevail on those claims, he will not recover a penny of penalties (and these penalties represent a substantial portion of her damage model). Accordingly, when the costs and risks of non-certification and loss on the merits are considered, Plaintiff's counsel are of the opinion that the settlement reached is clearly a favorable one. Gaines Decl., ¶ 36.

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The table below shows the maximum potential recovery on each claim alleged by Plaintiff, presuming findings of liability, and the realistic recovery on each such claim, as gauged by Plaintiff's counsel, applying a 75% discount (representing a 50% discount for class certification risks and a 50% discount for the risk of a loss on the merits). Gaines Decl., ¶ 37.

CLAIM	**MAXIMUM POTENTIAL REOVERY**	**REALISTIC RECOVERY**
Unpaid Wages – Failure to Blend	$1,972.43	$493.11
Meal Breaks	$570,486.00	$142,621.50
Rest Breaks	$606,900.00	$151,725.00
Wage Statements	$168,000.00	$42,000.00
Waiting Time Penalties	$369,600.00	$92,400.00
PAGA Penalties – All Claims	$212,900.00	$53,225.00
TOTAL:	$1,929,858.43	$482,464.61

The settlement for each Class Member and Aggrieved Employee and the State of California is fair, reasonable and adequate, given the inherent risk of litigation, the risk relative to class certification and the costs of pursuing such litigation. The Settlement shall finally resolve all claims alleged in the Action. Gaines Decl. ¶ 38.

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

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. Per the Declaration of Jarrod Salinas, the proposed notice to be sent to Class Members will be sent in both English and Spanish. *See* Declaration of Jarrod Salinas at Exhibit B. The Declaration of Billy Charles Crawford discusses the likely age and education experience of Class Members and their ability to read and comprehend English. *See* Declaration of Billy Charles Crawford at ¶¶ 2-4.

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 Roque Zarate Jr. as the Class Representative;

4. Appointing Gaines & Gaines, ALPC and Halavi Law, Inc., as Class Counsel;

5. Approving Phoenix Settlement Administrators as Settlement Administrator;

6. Preliminarily approving the allocation of $12,000 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 Aggrieved Employees 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;

8. Setting the following schedule of settlement proceedings:

EVENT	**TIMING**
Last day for Defendant to provide to the Settlement Administrator a list of all Class Members and Aggrieved Employees, 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 (for Class Members) and the PAGA Period (for Aggrieved Employees) ("Settlement Class Information")	10 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail Notice, Exclusion, and Objection Forms 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 Objection Form to the Settlement Administrator	45 calendar days after the initial mailing of the Notice to Class Members

EVENT	**TIMING**
Last day for Class Counsel to file and serve moving papers in support of final settlement approval and request for attorneys' fees and costs	16 Court 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, Exclusion, and Objection Forms	16 Court days before the final settlement approval hearing date
Final settlement approval hearing	______________________, at 8:30 a.m. (approximately 95 days after entry of this Order)

DATED: April 2, 2025

Respectfully submitted,

GAINES & GAINES,
A Professional Law Corporation

By: Daniel Gaines
DANIEL F. GAINES
Attorneys for Plaintiff Roque Zarate Jr.
and Proposed Class Counsel