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Attorney for Plaintiff JOSE GUTIERREZ, individually, and on behalf of other members of the general public similarly situated;

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

JOSE GUTIERREZ individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

CONTINENTAL GLAZING, INC., a
California Corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 23STCV03011

*Assigned for all purposes to: Hon. Elihu M.
Berle, Dept. 6*

CLASS ACTION

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: May 13, 2025

Time: 10:00 a.m.

Department: 6

Complaint Filed: February 10, 2023

Trial Date: Not Set

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1 10. Setting a date for a hearing on final approval of the proposed settlement.

2 Pursuant to California Labor Code § 2699(1)(2), a copy of the proposed Settlement, as well as
3 information regarding the preliminary approval hearing on this matter, were submitted to the
4 California Labor Workforce Development Agency via online filing at
5 <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html> on March
6 27, 2025. *See* Kent Decl. ¶ 77, Ex. 2.

7 The Motion is based upon this Notice; the attached memorandum of points and authorities; the
8 Declaration of Jonathan D. Kent filed concurrently herewith and exhibits thereto; the Declaration of
9 Jose Gutierrez filed concurrently herewith; the pleadings and other records on file with the Court in this
10 matter; and any other further evidence or argument that the Court may properly receive at or before the
11 hearing.

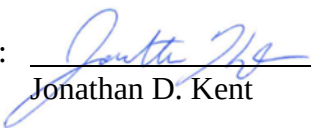
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13 Dated: March 27, 2025

KENT LEGAL, P.C.

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By: 
Jonathan D. Kent

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Attorney for Plaintiff
JOSE GUTIERREZ, individually, and on behalf
of other members of the general public similarly
situated;

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff JOSE GUTIERREZ (“Plaintiff”) seeks preliminary approval of a Class Action and
4 PAGA Settlement Agreement ("Agreement" or "Settlement") on behalf of all current and former non-
5 exempt employees who worked for Defendant CONTINENTAL GLAZING, INC. (“Defendant”) in
6 the state of California at any time from February 10, 2019, to the date of Preliminary Approval. The
7 Settlement terms are outlined as follows:

- 8 • Size of the Class: approximately 83 individuals.
- 9 • Number of Aggrieved Employees: approximately 53 individuals.
- 10 • Gross Settlement Amount: \$200,000, exclusive of employer-side payroll taxes.
- 11 • Administration Expenses Payment: not to exceed \$5,900.
- 12 • Requested Class Representative Service Payment: \$5,000 to Plaintiff Gutierrez.
- 13 • PAGA Penalties: \$20,000, 75% (\$15,000) of which will be paid to the California
14 Labor and Workforce Development Agency (“LWDA”) with the remaining 25%
15 (\$5,000) distributed to Aggrieved Employees.
- 16 • Requested Class Counsel’s fees and costs: \$66,600 plus actual litigation costs and
17 expenses not to exceed \$45,000.
- 18 • Net Settlement Amount: approximately \$57,500 to be distributed to Participating
19 Class Members.

20 As set forth herein, the Settlement is the product of informed discovery, arms-length
21 negotiations, and provides a fair, adequate, and reasonable recovery for the Class in light of the
22 relative strength of Plaintiff’s claims, the risk, expense, and uncertainty of further litigation, and the
23 benefit conferred by the Settlement. Plaintiff therefore respectfully requests that the Court grant
24 preliminary approval of the proposed Settlement, conditionally certify the Class, approve the
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1 proposed Class Notice, and set a hearing date for final settlement approval, among other requested
2 relief.

3 **II. FACTUAL BACKGROUND**

4 Defendant provides glazing services to commercial clients. Plaintiff was employed by
5 Defendant from December 4, 2020, to March 5, 2021, as a glazer. In early March 2021, Plaintiff
6 injured his back while lifting a heavy glass on the job. After filing a workers compensation claim,
7 Defendant terminated Plaintiff. Plaintiff, however, did not pursue a claim for wrongful termination,
8 and instead focuses only on the collective claims.

9 On February 1, 2022, Plaintiff filed a complaint with the Los Angeles Superior Court, Case
10 No. 22STCV03878, seeking penalties under the Private Attorney General Act (the “PAGA Action”).
11 On February 10, 2023, Plaintiff filed a wage and hour class action complaint with the Los Angeles
12 Superior Court, Case No. 23STCV03011 (“the Class Action”) against Defendant alleging the
13 following causes of action: (1) Unpaid Overtime; (2) Unpaid Meal Period Premiums; (3) Unpaid Rest
14 Period Premiums; (4) Unpaid Minimum Wages; (5) Final Wages Not Timely Paid; (6) Wages Not
15 Timely Paid During Employment; (7) Non-Compliant Wage Statements; (8) Failure to Keep
16 Requisite Payroll Records; (9) Failure to Reimburse Expenses; and (10) Violation of Business and
17 Professions Code § 17200, et seq. Plaintiff attempted to relate the cases, but Defendant opposed and
18 the Courts did not relate or consolidate the two actions.¹

19 Following the filing of the Action, Plaintiff and Defendant (collectively, “the Parties”)
20 engaged in formal discovery in both the PAGA Action and the Class Action. Discovery in the PAGA
21 Action was so contentious and heavily litigated that the Court in the PAGA Action appointed a
22 discovery referee, the costs of which were born by both sides unless the referee ruled otherwise.

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25 ¹ The PAGA Action and the Class Action may be collectively referred to as the “Action.” Moreover, the Parties request
26 that this Court consolidate the PAGA Action with the Class Action and assume jurisdiction over the PAGA Action so
that it may determine whether to grant preliminary approval of this settlement on a global level.

1 Because of this, the costs incurred by Plaintiff in the two actions is higher than typical for a case of
2 this size. Following several discovery motions and hearings, the Parties agreed to engage in private
3 mediation with Kim Deck, Esq., a well-respected mediator with substantial experience handling wage
4 and hour matters. Kent Decl. ¶ 17.

5 In advance of mediation, Defendant took the deposition of Plaintiff, and Plaintiff provided
6 responses to written discovery. Defendant also provided Plaintiff with extensive discovery including
7 all relevant policies and handbooks in place during the Class Period, which included all applicable
8 policies relating to meal breaks, rest breaks, timekeeping, the payment of wages and other relevant
9 areas of investigation, Plaintiff's personnel file, copies of the time and payroll data for the putative
10 class, and figures and information regarding the class size and composition. With this data for the
11 Class, Class Counsel were able to perform a comprehensive damages analysis and estimate
12 Defendant's potential violations, liability, and exposure, including, and not limited to, analyzing time
13 and pay data, considering potential meal period violations, potential rest period violations, potential
14 synthetic meal period recordings, unpaid meal and rest period premiums, rounding, overtime and
15 premium payments, etc. Therefore, this discovery and investigation allowed Class Counsel to perform
16 a comprehensive damages analysis and estimate Defendant's potential liability. Kent Decl. ¶ 18.

17 After extensive review of these documents, on December 2, 2024, the Parties attended
18 mediation with Kim Deck, Esq. At the mediation, Defendant maintained it had substantial defenses
19 to the alleged violations. At the mediation, the Parties also engaged in intensive settlement discussions
20 and debated their respective positions and exchanged views regarding the strengths and weaknesses
21 of the alleged claims. Kent Decl. ¶ 19. After a full day of mediation the Parties did not reach a
22 resolution. The mediator, however, continued to speak with both sides and thereafter issued a
23 mediator's proposal for what she thought would be a fair and reasonable settlement at the gross
24 amount of \$200,000, which the Parties accepted. Kent Decl. ¶ 20.

1 Thereafter, the Parties utilized the Los Angeles Superior Court’s class action and PAGA
2 settlement form and worked diligently to negotiate and memorialize the terms of a long form
3 settlement agreement. On or about March 27, 2025, after extensive discussions and multiple revisions
4 to the agreement, the Parties entered into a fully executed Class Action and PAGA Settlement
5 Agreement. Kent Decl. ¶ 21.

6 Now, following substantial investigation and extensive settlement negotiations, Plaintiff
7 moves for preliminary approval of this Settlement and has provided notice of the proposed PAGA
8 settlement to the LWDA. Kent Decl. ¶¶ 22-23, 77, Exs. 1-2.

9 **III. THE SETTLEMENT TERMS**

10 A. Class Definition

11 For purposes of settlement only, the Parties have agreed that the Class shall be defined as: all
12 persons employed by Defendant and classified as non-exempt who worked for Defendant at any time
13 during the Class Period. Kent Decl. ¶ 24; Agreement ¶¶ 1.5. The Class Period and release of claims
14 covers the time period from February 10, 2019, to the date of Final Approval (“Class Period”). Kent
15 Decl. ¶ 24; Agreement ¶¶ 1.13, 5.2. The proposed Class consists of approximately 83 Class Members.
16 Kent Decl. ¶ 24.

17 For purposes of settlement only, the Parties have agreed that Aggrieved Employees shall be
18 defined as: a person employed by Continental in California and classified as a non-exempt employee
19 who worked for Continental during the PAGA Period. Kent Decl. ¶ 25; Agreement ¶ 1.4. The PAGA
20 Period and release of PAGA claims covers the time period from February 1, 2021 to the date of Final
21 Approval. Kent Decl. ¶ 25; Agreement ¶¶ 1.31, 5.3. It is estimated that there are approximately 53
22 Aggrieved Employees. Kent Decl. ¶ 25.

23 B. Amount of Settlement

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1 The Parties have agreed to settle the Class and PAGA claims at issue in the Action for a non-
2 reversionary Gross Settlement Amount of \$200,000, exclusive of any employer-side payroll taxes.
3 Kent Decl. ¶ 26; Agreement ¶¶ 1.22, 3.1.

4 C. Allocation of the Gross Settlement Amount

5 The Gross Settlement Amount is a Common Fund and therefore, includes all requested costs,
6 fees, and other allocations. As stated above, the Gross Settlement Amount includes: (1) attorneys'
7 fees in the amount of thirty-three and one-third percent (33 1/3%) of the Gross Settlement Amount,
8 equaling \$66,600.00; (2) litigation costs, not to exceed \$45,000; (3) administration expenses payment,
9 not to exceed \$5,900; (4) a class representative service payment in the amount of \$5,000 to Plaintiff
10 Gutierrez; and (5) PAGA Penalties of \$20,000, 75% of which shall be distributed to the LWDA and
11 25% of which will be distributed to Aggrieved Employees. Kent Decl. ¶ 27; see also Agreement ¶¶
12 3.1, 3.2.

13 After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net
14 Settlement Amount of approximately \$57,500.00 shall be distributed and paid to the Participating
15 Class Members. The Net Settlement Amount will be distributed and paid to Participating Class
16 Members on a pro-rata basis based on the number of weekly pay periods worked during the Class
17 Period. Kent Decl. ¶ 28; Agreement ¶¶ 1.28, 3.2.4. Payments to Participating Class Members shall be
18 allocated as ten percent (10%) wages and ninety percent (90%) penalties and interest. Kent Decl. ¶
19 30; Agreement ¶ 3.2.4.1. Defendant shall be responsible for all employer-side payroll taxes on the
20 wage portion of each settlement payment; employer-side payroll taxes shall be paid by Defendant
21 separately from and in addition to the Gross Settlement Amount. Kent Decl. ¶ 31; Agreement ¶ 3.1.
22 In addition, Aggrieved Employees will receive a pro-rata share of the funds from the PAGA Penalties
23 allocated for distribution to aggrieved employees based on the number of pay periods worked during
24 the PAGA Period. Payments to Aggrieved Employees shall be allocated one hundred percent (100%)
25 as penalties. Kent Decl. ¶ 32; Agreement ¶¶ 3.2.5.1, 3.2.5.2.

33. Pursuant to the terms of the Agreement, Defendant shall pay \$200,000 and Defendant's share of payroll taxes no later than fourteen (14) days after final approval is granted. Kent Decl. ¶ 33; Agreement ¶ 4.3. Within fourteen (14) days after Defendant funds the Gross Settlement Amount, the Administrator will issue payments to: (a) the Participating Class Members; (b) the Aggrieved Employees; (c) the LWDA; (d) Plaintiff; (e) Class Counsel, and (f) itself. Kent Decl. ¶ 33; Agreement ¶ 4.4.

The proposed Agreement is a non-reversionary, non-claims made settlement. All money from the Net Settlement Amount will be distributed to the Class Members. No money from the Settlement will revert to Defendant. Kent Decl. ¶ 34; Agreement ¶ 3.1. Any residue from Individual Class Payment checks or Individual PAGA Payment checks issued to Class Members and Aggrieved Employees remaining uncashed after 180 days will be distributed to the State Controller's Unclaimed Property Fund to be held in trust for such Class Members and Aggrieved Employees pursuant to California's Unclaimed Property Law. As such, no "unpaid residue" under California Code of Civil Procedure § 384 will result from the Settlement. Kent Decl. ¶ 35; Agreement ¶¶ 4.4.1, 4.4.3.

D. Release of Wage and Hour Claims

In exchange for participating in the Settlement, Participating Class Members will release their wage and hour claims against Defendant and the Released Parties, as defined in the Agreement. However, the release for Participating Class Members will only occur upon the complete funding of the Gross Settlement Amount and is narrowly tailored to only release claims based upon the facts alleged in the Operative Complaint in the Action, for the Class Period. The proposed Settlement also resolves all of the Aggrieved Employees' claims arising under PAGA for the PAGA Period. Kent Decl. ¶ 36; Agreement ¶¶ 5, 5.2, 5.3.

IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

The settlement of a class action requires court approval. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996). “In general, questions whether a settlement was fair and reasonable, whether

1 certification of the class was proper, and whether the attorney fee award was proper are matters
2 addressed to the trial court's broad discretion." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th
3 224, 234-35 (2001) (disapproved on other grounds).

4 The review and approval of a proposed class action settlement involves a two-step process.
5 See Cal. Rules of Court, Rule 3.769(c). First, counsel submits the proposed terms of settlement and
6 the Court makes a preliminary assessment of whether the settlement appears to be sufficiently within
7 the range of a fair settlement to justify providing notice of the proposed settlement to class members.
8 After notice is provided to the class, the Court must conduct a second inquiry into whether the
9 proposed settlement is fair, reasonable and adequate. *See id.*

10 The initial evaluation of the settlement at the preliminary approval step "is not a fairness
11 hearing." *Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir.
12 1980). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only
13 whether the proposed settlement is within the range of possible approval and, as a result, "whether
14 there is any reason to notify the class members of the proposed settlement and to proceed with a
15 fairness hearing." A presumption of fairness exists where: (1) the settlement is reached through arm's
16 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
17 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
18 small. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006).

19 Preliminary approval does not require a court to make a final determination that the settlement
20 is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after
21 notice of the settlement has been given to the class members and they have had an opportunity to
22 object or exclude themselves from the settlement. *See* Cal. R. Ct. 3.769(g). In considering a potential
23 class settlement, the court need not reach any ultimate conclusions on the issues of fact and law which
24 underlie the merits of the dispute and need not engage in a trial on the merits. *See Officers for Justice*
25 *v. Civil Service Commission of City and County of San Francisco*, 688 F.2d 615, 625 (1982).

1 **V. THE SETTLEMENT IS PRESUMED FAIR**

2 A. Arm's-Length Bargaining

3 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
4 reached through arm's-length bargaining.” *Wershba*, 91 Cal.App.4th at 245 (disapproved on other
5 grounds); *see also Clark v. Am. Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009). Here, the
6 Parties engaged in arms-length, non-collusive negotiations at all times. This litigation was hotly
7 contested, and settlement negotiations were at all times arm's length and adversarial. The Parties
8 engaged in a full day of private mediation with a highly respected mediator who ultimately presented
9 a mediator's proposal. Thereafter, the Parties engaged in additional extensive negotiations before
10 finalizing the long-form agreement presently before the Court. At all times, Plaintiff was willing and
11 prepared to litigate this matter if the Parties had been unable to reach a favorable resolution. Kent
12 Decl. ¶¶ 40-41.

13 B. Sufficient Investigation and Discovery by Experienced Class Counsel

14 Courts typically assess the status of discovery in determining whether a class action settlement
15 agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. As discussed above, the
16 Parties engaged in extensive discovery prior to reaching a settlement. Prior to mediation, the Parties
17 exchanged extensive written discovery, which resulted in multiple discovery hearings. Ultimately,
18 Defendant produced time records and payroll records for all Class Members, written policies
19 including the employee handbooks in effect during the Class Period, stand-alone wage and hour
20 policies, and other relevant documents. Defendant also provided records reflecting the number of
21 putative class members, the number of current versus former employees; the total weekly pay periods
22 worked by the Class and Aggrieved Employees, the putative class members' average rate of pay, and
23 additional information regarding the Class Members' various job positions and job duties. This
24 discovery and investigation allowed Plaintiff to conduct a class-wide assessment and analysis of
25 potential damages with the help of their retained expert, Larsen Analytics. The Parties extensively

briefed issues regarding class certification and liability and provided their analyses to the mediator who helped the Parties debate the strengths and weakness of their positions. Kent Decl. ¶¶ 40-41.

Additionally, settlement negotiations were conducted by highly capable and experienced counsel. Class Counsel is a respected member of the bar with strong records of vigorous and effective advocacy and is experienced in handling complex wage and hour class action litigation. Kent Decl. ¶¶ 2-11. Accordingly, Class Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions and Recovery Risks

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable. *Wershba*, 91 Cal.App.4th at 246, 250 (disapproved on other grounds). In evaluating the reasonableness of a settlement, a trial court must consider “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008).

Here, the reasonableness of the Settlement is underscored by the fact that Defendant has legal and factual grounds for defending the Action. Based upon Class Counsel's experience litigating similar complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class certification and the merits absent a settlement. Kent Decl. ¶¶ 43-67.

1. Class Counsel's Analysis of the Maximum Available Liability and Damages

Prior to mediation, Class Counsel analyzed the time and payroll records provided by Defendant and other relevant documents and discovery. Based on the discovery provided, Class

Counsel and their retained expert were able to perform a comprehensive damages analysis and estimate Defendant's potential violations, liability, and exposure, including, and not limited to, analyzing time and pay data, considering potential meal period violations, potential rest period violations, potential synthetic meal period recordings, potential unpaid meal or rest period premiums, overtime and premium payments, etc. This discovery and investigation allowed Class Counsel to perform a comprehensive damages analysis and estimate Defendant's potential liability. Kent Decl. ¶ 18. Based on the discovery provided, Class Counsel estimated with respect to the class claims at issue, with all claims adjudicated in favor of the Class, Defendant faced a potential liability of \$1,881,508.66. This estimated maximum liability includes: \$203,425.71 for meal period violations; \$203,425.71 for rest period violations; \$305,138.57 for unpaid wages; unreimbursed business expenses in the amount of \$54,247.20; waiting time penalties in the amount of \$316,800.00; penalties for inaccurate wage statements in the amount of \$85,750.00; and \$241,621.47 for interest on qualifying damages. Plaintiff also estimated non-duplicative PAGA penalties of approximately \$471,100.00 including penalties for violations of Labor Code §§ 204 and 1174(d). Kent Decl. ¶ 42.

2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments.

While Plaintiff believes Defendant faced significant exposure, substantial barriers to a class recovery exist and Plaintiff faced numerous challenges attempting to bring the alleged claims on a class and representative basis. Defendant contended that Plaintiff's claims were not suitable for class certification because individual issues and affirmative defenses would predominate should this case go to trial. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1051 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014). While Plaintiff and Class Counsel disagree with Defendant's predictions, they also recognize that there is a significant risk that the Court may deny class certification. Kent Decl. ¶¶ 43-44; see also, Findings of the Study of California Class Action Litigation, 2000-2006, available at <http://www.courts.ca.gov/documents/class-action-lit-study.pdf>

1 (finding that only 21.4% of class actions were certified either as part of a settlement or as part of a
2 contested certification motion).

3 For instance, a large portion of Defendant's estimated liability lies in Plaintiff's meal period
4 claims. Plaintiff's meal period theory of liability was based upon Defendant's failure to provide
5 timely, full, and/or uninterrupted meal periods. Defendant argued that it had compliant policies and
6 practices and that there were individualized issues with respect to the alleged violations. Meal period
7 claims have become increasingly difficult to certify in recent years and Defendant contended its
8 practices were lawful. *See Brinker*, 53 Cal. 4th at 1034-35. Accordingly, Class Counsel had to
9 consider the risk that the Court would find validity in this individualized proof defense to the
10 certification of Plaintiff's meal period claim. Similarly, Plaintiff would likely face difficulties proving
11 the alleged rest period violations, as Defendant was not required to record these breaks. Plaintiff
12 contended that Defendant failed to provide Class Members with timely, full, and uninterrupted rest
13 periods. Defendant claimed it allowed employees to take their state mandated rest periods and given
14 the lack of records demonstrating rest period violations, there were legitimate concerns Plaintiff
15 would not be able to certify this claim or prove substantial damages. Kent Decl. ¶¶ 45-50.

16 Plaintiff also faced challenges certifying and proving liability for his minimum wage and
17 overtime claims. These claims were largely based on alleged unrecorded, off-the-clock work
18 performed by Class Members both before and after their shifts. Defendant contended it did not permit
19 off-the-clock work and that it was not aware off-the-clock work was being performed. Defendant
20 argued that even if a class could be certified, the individualized nature of the claims presented
21 substantial concerns regarding the manageability of the case and the risk the Court could find these
22 issues prevented certification. Plaintiff also argued that Defendant utilized non-neutral rounding
23 practices for at least a portion of the Class Period. While employers may round time worked by
24 employees, such practices are permissible only where "it is used in such a manner that it will not
25 result, over a period of time, in failure to compensate the employees properly for all the time they

1 have actually worked.” *See See’s Candy Shop Inc. v. Superior Court*, 210 Cal. App. 4th 889 (2012).
2 While Plaintiff believed that Defendant’s practices substantially favored Defendant, Defendant
3 contended any such practice was neutral and that such practices have been widely upheld. Kent Decl.
4 ¶¶ 51-53.

5 Plaintiff’s reimbursement claim would likely present similar problems of individualized
6 proof. Plaintiff’s claim was based on the purchase and use of personal cellphones required for putative
7 class members to perform their job duties. Defendant contended that the reason for why a putative
8 class member undertook certain expenses and failed to receive reimbursement for certain expenses
9 would raise individual issues that could not be certified. Defendant also contended Plaintiff would be
10 unable to prove these damages with sufficient certainty. Kent Decl. ¶ 54.

11 There are also substantial risks associated with Plaintiff’s waiting time penalties and wage
12 statement claims. These claims were derivative of Plaintiff’s previous claims and if certification was
13 denied on those underlying claims, these claims would also likely fail. Further, even if Plaintiff
14 prevailed on his underlying off-the-clock claims, he would still be required to demonstrate that
15 Defendant’s violations of Labor Code § 203 were willful violations, a difficult prospect. *See, e.g.,*
16 *Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013) (holding that “an employer’s reasonable,
17 good faith belief that wages are not owed may negate a finding of willfulness”). Wage statement
18 claims have also seen varying treatment at the appellate level because such claims have an element
19 of discretion attached to them rather than a pure calculation of damages after liability is proven. *Cf.,*
20 *Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) *with Price v. Starbucks Corp.*, 192
21 Cal.App.4th 1136 (2011). Accordingly, these derivative claims, which comprised a substantial
22 portion of Defendant’s estimated potential liability, are extremely risky. Kent Decl. ¶ 55-58.

23 Class Counsel also separately contemplated the risks of proceeding with the PAGA action and
24 the potential liability Defendant could face from this claim. The Parties agreed during settlement
25 negotiations to allocate \$20,000 of the Settlement towards the PAGA claims, which represents

1 approximately 10% of the Gross Settlement Amount. This percentage of the settlement allocated to
2 the PAGA claims is well above the range in wage and hour settlements regularly approved in both
3 state and federal court for cases that include both a class and PAGA action. Courts have approved
4 allocations of as little as 1% of the Gross Settlement Amount. Class Counsel also recognizes that the
5 PAGA claims would be subject to the same defenses and risks as Plaintiff's class claims, as well as
6 defenses unique to PAGA, the substantial risk that PAGA penalties may not be stacked for violations
7 based on the same conduct, and the substantial risk that PAGA penalties may be reduced where they
8 are duplicative, arbitrary or oppressive. As part of the valuation of the potential PAGA claims, Class
9 Counsel included claims under Labor Code § 204 and 1174(d). The value of Plaintiff's claim under
10 Labor Code § 204 could be recovered either through Labor Code § 210 or PAGA, but as a matter of
11 law, Plaintiff is not entitled to a duplicative recovery. *See* Labor Code § 210(c) (permitting recovery
12 of penalties through § 210 or PAGA, but not both). Plaintiff's claims under Labor Code § 1174(d)
13 were arguably only recoverable under PAGA. *See Caliber Bodyworks, Inc. v. Superior Court*, 134
14 Cal.4th 365, 383 (2005). Kent Decl. ¶¶ 59-66.

15 For all claims and when considering the settlement generally, Class Counsel recognized that,
16 even if Plaintiff prevailed at class certification, proving the amount of wages due to each Class
17 Member would be an expensive, time-consuming, and extremely uncertain proposition. In order to
18 prove liability and damages, Class Counsel would be required to spend hundreds of additional hours
19 obtaining discovery and likely substantial motion practice. Obtaining cooperation of current
20 employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against
21 a current employer. On the other hand, Defendant would likely be able to obtain the cooperation of
22 its employees. Moreover, even if Plaintiff prevailed possible appeals would substantially delay any
23 recovery by the Class. Kent Decl. ¶ 67.

24 Therefore, taking into account the risks connected with certifying the alleged class claims,
25 Class Counsel discounted Defendant's estimated potential liability by 50%. In consideration of

merits-based risk factors, even if a class were certified and the claims were brought to trial, Class Counsel reduced Defendant's estimated liability for Plaintiff's meal and rest period claims, and minimum wage and overtime claims by 65%. In light of the fact that Plaintiff's wage statement penalty claims, waiting time penalties, and interest were not only derivative and reliant upon the prior claims but faced their unique risks, Plaintiff discounted these claims by 75% for merits related defense. Moreover, in light of the unique risks for unreimbursed business expenses, Plaintiff discounted this claim by 75% for merits related defenses. Kent Decl. ¶¶ 47, 50, 53-54, 56, 58. As to Plaintiff's PAGA claims, there was a 50% discount applied to account for the risks associated with establishing manageability, a discount of 50% was applied to account for the risks associated with succeeding on the merits, establishing liability, and proving the extent of penalties that are warranted, and a discount of 75% was applied in light of the unique risks to PAGA including the likely discretionary reduction of penalties by the Court given the circumstances of the Action and outside considerations. This resulted in an adjusted liability of \$282,869.16. Kent Decl. ¶ 66. Accordingly, in light of the Parties' respective legal positions and the risks to potential recovery, it is clear that the Gross Settlement Amount is fair, adequate, and reasonable. Kent Decl. ¶ 68.

VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

Code of Civil Procedure § 382 provides that three basic requirements must be met in order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact affecting the parties to be represented; and (3) certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class is superior to other methods. *See Dunk*, 48 Cal.App.4th at 1806. Plaintiff contends that this matter, which is primarily based upon Defendant's wage and hour policies and practices, satisfies the class certification requirements under California Code of Civil Procedure § 382. Defendant denies Plaintiff's allegations, but for purposes of this Settlement only, Defendant has stipulated to certification of the proposed class action.

1 A. An Ascertainable and Numerous Class Exists

2 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the
3 size of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148
4 Cal.App.3d 862, 873 (1983). In this case, all three considerations strongly favor class certification.

5 Here, the Class is defined as all current and former non-exempt employees of Defendant who
6 were employed by Defendant in the state of California at any time from August 27, 2017 to the date
7 of Preliminary Approval. Kent Decl. ¶ 24; Agreement ¶¶ 1.5, 1.13. This provides a clear and definite
8 scope for the proposed class.

9 Next, the Class is sufficiently numerous. There is no magic number that satisfies the
10 numerosity requirement. Under the Federal Rules, there is no bright line number, but courts consider
11 the minimum number to be 40 individuals. Under California law, there is no set number either, but
12 “our Supreme Court has upheld a class representing the 10 beneficiaries...” *Hendershot v. Ready to*
13 *Roll Transportation, Inc.*, 228 Cal.App.4th 1213, 1222 (2014) citing *Rose v. City of Haywood*, 126
14 Cal.App.3d 926, 934 (1981). Here, the estimated Class size of 83 Class Members plainly favors class
15 certification.

16 Finally, the question whether class members are easily identifiable turns on whether a plaintiff
17 can establish “the existence of an ascertainable class.” *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695 at 706
18 (1967). The existence of an ascertainable class in this case can be established through Defendant’s
19 payroll records, and the class definition is sufficiently specific to enable the Parties, potential Class
20 Members and the Court to determine the parameters of the Class. *See Clothesrigger, Inc. v. GTE*
21 *Corp.*, 191 Cal. App. 3d 605, 617 (1987) (proposed class defined as all persons nationwide
22 subscribing to telephone service since January 1, 1981, who were charged for long distance calls
23 deemed “plainly” ascertainable).

24 B. The Class Shares a Well-Defined Community of Interest

25

26

1 The community of interest requirement embodies three factors: (1) predominant questions of
2 law and fact; (2) class representatives with claims or defenses typical of the class; (3) class
3 representatives who can adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806. Plaintiff easily
4 satisfies all three requirements.

5 The commonality criterion requires the existence of common question of law or fact and is
6 generally established with the issues of predominance and typicality. *See Daar*, 67 Cal. 2d 695, 706.
7 What is required is that a common question of fact or law exists which predominates over issues
8 unique to individual plaintiffs. The existence of individual issues or facts—generally present in any
9 case arising from employment—is not a bar to class certification as long as they do not render class
10 litigation unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v.*
11 *Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

12 Here, the alleged claims present sufficient common issues of law and fact that predominate
13 and warrant class certification. Plaintiff alleges that Defendant denied compliant meal and rest periods
14 to employees, failed to properly compensate employees for missed meal or rest periods, required
15 employees to perform work off-the-clock, and failed to fully compensate employees for all time
16 worked. These policies and practices mean that Defendant failed to pay minimum and overtime
17 wages, and other related claims. Plaintiff alleges that these practices were uniform as to all Class
18 Members and thus, class treatment is appropriate.

19 To satisfy the typicality requirement, California law does not require that a plaintiff have
20 claims identical to the other class members. Rather, the test of typicality for a class representative is
21 whether other members have the same or similar injury, whether the action is based on conduct which
22 is not unique to the named plaintiff, and whether other class members have been injured by the same
23 alleged course of conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The
24 typicality requirement for a class representative refers to the nature of the claim or defense of the
25 representative, and not to the specific facts from which it arose or the relief sought. *See id.*

1 Here, Plaintiff alleges that his claims are similar to those of the other Class Members. Plaintiff
2 alleges his claims arise out of the same alleged facts and course of conduct giving rise to the claims
3 of the other Class Members. Finally, Plaintiff's claims are typical of the other Class Members because
4 he seeks the same relief for the alleged violations. Because Plaintiff's claims are based upon the same
5 alleged conduct and practices as those of Class Members, the typicality requirement has been
6 satisfied.

7 Finally, the question of adequacy of representation "depends on whether the plaintiff's
8 attorney qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to
9 the interests of the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these
10 considerations are satisfied. Counsel for Plaintiff include well-regarded and accomplished lawyers
11 who are qualified and experienced in employment-related, class-action litigation. Kent Decl. ¶¶ 2-11.
12 Plaintiff will vigorously, adequately and fairly represent the interests of the Class. Because Plaintiff's
13 claims are typical of other Class Members and are not based on unique circumstances, there is no
14 antagonism between the interests of Plaintiff and the Class.

15 C. A Class Action Is Superior to a Multiplicity of Litigation

16 Under the circumstances, proceeding as a class action is a superior means of resolving the
17 Action, as the Class Members and the court will derive substantial benefits. Class certification would
18 serve as the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23
19 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will
20 come forward to prove his or her separate claim and whether the class approach would actually serve
21 to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same
22 operative facts would unduly burden the courts and could lead to inconsistent results. Therefore, class
23 action proceedings are superior to individual litigation.

24 **VII. THE REQUESTED CLASS REPRESENTATIVE SERVICE PAYMENT IS**
25 **REASONABLE**

1 Plaintiffs in class action and PAGA lawsuits are eligible for reasonable service payments as
2 compensation “for the expense or risk they have incurred in conferring a benefit on other members
3 of the class.” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Courts
4 routinely grant approval of class action settlement agreements containing enhancements for the class
5 representatives, which are necessary to provide incentive to represent the class and are appropriate
6 given the benefit the class representatives help to bring about for the class. *See In re Online DVD*
7 *Rental*, 779 F.3d 934, 947-948 (9th Cir. 2014) (approving incentive award 417 times larger than
8 individual payments).

9 Plaintiff initiated and has stepped forward in this litigation to serve as a class representative
10 on behalf of his former co-workers and the LWDA, who will now benefit from the Settlement.
11 Plaintiff invested substantial time and effort into this litigation, including his own research, reviewing
12 documents, providing Class Counsel with relevant documents and information related to his
13 employment with Defendant, providing the facts and evidence necessary to attempt to prove his
14 allegations, and having numerous and extensive discussions with Class Counsel about the case.

15 Plaintiff made himself available, actively monitored the status of the case, assisted in
16 preparation for mediation, and reviewed the Settlement and discussed its terms with Class Counsel.
17 In short, Plaintiff played an instrumental role in the successful litigation to this case. Further, the
18 requested amount is also extremely reasonable given the benefit gained by other Class Members. The
19 Class Representative Service Payment also serves to recognize the actual risk Plaintiff assumed by
20 putting himself on the public record in a class and representative employment lawsuit.

21 The requested Class Representative Service Payment to Plaintiff also recognizes the fact that,
22 as part of the Settlement, Plaintiff is agreeing to a general release of any and all claims he may have
23 against Defendant, which is far broader than the narrow release applicable to the Class. For these
24 reasons, Plaintiff requests that a Class Representative Service Payment of \$5,000 be preliminary
25 approved by the Court. See Gutierrez Decl. ¶¶ 3-16; Kent Decl. ¶ 69.

1 **VIII. REQUESTED ATTORNEYS' FEES AND COSTS**

2 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions
3 will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal, Inc.*,
4 82 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be equivalent
5 to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id.* at 47.
6 In cases where class members present claims against a common fund and the defendant agrees to the
7 use of a percentage of the fund as part of the settlement, use of the percentage method is appropriate.
8 *Id.* at 32.

9 Here, the requested attorneys’ fees of \$66,600.00, which is thirty-three and one-third (33
10 1/3%) of the common fund, will be disclosed to Class Members in the proposed Class Notice. *See*
11 Exhibit A to Agreement. The requested fee was freely negotiated, is common in the legal marketplace,
12 and is not opposed by Defendant. The Motion for Final Approval will elaborate on the nature of the
13 legal services provided and will also support Class Counsel’s request for the reimbursement of
14 litigation costs not to exceed \$45,000. Kent Decl. ¶ 70.

15 **IX. NOTICE TO THE CLASS, THE OPT OUT AND OBJECTION PROCESS MEETS**
16 **DUE PROCESS REQUIREMENTS**

17 Utilizing the Los Angeles Superior Court’s model notice form, the Parties jointly drafted a
18 Class Notice which will be delivered to the Class Members and agreed to having Apex Class Action
19 Administration administer the Settlement subject to Court approval. Kent Decl. ¶ 71; *see* Agreement,
20 Ex. A. The Class Notice will include information regarding the nature of the lawsuit, a summary of
21 the terms of the Settlement, the Class definition, information on how to object and opt-out,
22 information regarding the release of the class and PAGA claims, and the date of the Final Approval
23 Hearing. The Class Notice will also list each Class Member’s total pay periods during the Class Period
24 and the PAGA Period and the approximate Individual Class Payment and Individual PAGA Payment.
25 *Id.* The Class Notice will indicate that the Court has determined only that there is sufficient evidence

1 to suggest that the proposed settlement might be fair, adequate and reasonable, and a final
2 determination of such issues will be made at the final hearing. *Id.*

3 No later than seven (7) days after the Court grants preliminary approval of the Settlement,
4 Defendant will provide the Class Data to the Administrator including the Class Member's name, last-
5 known mailing address, Social Security number, number of pay periods worked during the Class
6 Period, and number of pay periods worked during the PAGA Period. Kent Decl. ¶ 72; Agreement ¶¶
7 1.8, 4.2. The Administrator shall perform any searches necessary for confirmation of the Class
8 Members' addresses and shall mail the Class Notice in both English and Spanish to all Class Members
9 within ten (10) days of receiving the Class Data from Defendant. Kent Decl. ¶ 73; Agreement ¶ 7.4.2.

10 In determining whether to approve a settlement of a class action, a trial court has virtually
11 complete discretion as to the manner of giving notice to class members, and review on appeal is
12 governed by the abuse of discretion standard. *See In re Cellphone Fee Termination Cases*, 186
13 Cal.App.4th 1380 (2010). Here, Class Counsel is not aware of an alternative method of providing
14 notice to the Class which would result in a higher likelihood of actual notice. The original source of
15 the mailing addresses is from each Class Member, who provided the information to Defendant. Kent
16 Decl. ¶ 74. As a fail-safe, additional searches will be performed on any notice returned as non-
17 deliverable. *See* Agreement ¶ 7.4.3.

18 Any Class Member who wishes to be excluded from the Settlement must mail the
19 Administrator a signed written request for exclusion including their name, address, and email address
20 or telephone number. The request for exclusion must be postmarked no later than sixty (60) calendar
21 days after mailing of the Class Notice. Aggrieved Employees who opt-out of the class settlement shall
22 still receive a payment from the PAGA Penalties, if eligible, and will release the Released PAGA
23 Claims regardless of their decision to opt-out of the class settlement. Agreement ¶¶ 7.5.1, 7.5.4.

24 Any Class Member wishing to object to the approval of this Settlement must send to the
25 Administrator a signed written statement containing their name, address, and phone number and state
26

1 the specific reason for the objection. Such written objections must be mailed to the Administrator
2 within sixty (60) calendar days following the initial mailing of the Class Notice. Class Members may
3 also appear and object at the final approval hearing, regardless of whether they have submitted a
4 written objection. Agreement ¶ 7.7.2.

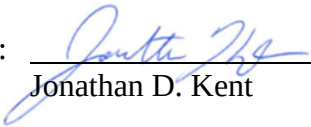
5 **X. CONCLUSION**

6 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's
7 Motion for Preliminary Approval and the relief requested herein.

8
9 Dated: March 27, 2025

KENT LEGAL, P.C.

10
11 By: _____

12 
Jonathan D. Kent

13 Attorney for Plaintiff
14 JOSE GUTIERREZ, individually, and on behalf
15 of other members of the general public similarly
16 situated;
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