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8
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF ALAMEDA**
12

13 CHRISTINA PERKINS, on behalf of herself
14 and all others similarly situated,

15 *Plaintiff,*

16 vs.

17 TOUCHSTONE CLIMBING INC., a
18 California Corporation; and DOES 1 through
19 50, inclusive,

Defendants.

Case No. 23CV029864

*Assigned for all purposes to the Honorable
Judge Patrick McKinney*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT AND
CERTIFICATION OF SETTLEMENT
CLASS; MEMORANDUM OF POINTS
AND AUTHORITIES**

*[Filed concurrently with Declaration of Shaun
Setareh, Declaration of Christina Perkins,
Declaration of Lisa Mullins in support thereof,
and [Proposed] Order]*

Date: September 3, 2026
Time: 1:30 p.m.
Place: Department 18
Reservation ID: 544996397469

Complaint Filed: March 23, 2023

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on September 3, 2026, at 1:30 p.m., or as soon thereafter as the
3 matter may be heard in Department 18 of the above-entitled Court located at Rene C. Davidson
4 Courthouse, 1225 Fallon Street, Oakland, California 94612, Plaintiff CHRISTINA PERKINS
5 (“Plaintiff”) will and does hereby move this Court for an Order:

- 6 • Preliminarily approving the Class Action and PAGA Settlement;
- 7 • Certifying the Settlement Class for settlement purposes only;
- 8 • Appointing Plaintiff Christina Perkins as the Class Representative;
- 9 • Appointing Setareh Law Group as Class Counsel;
- 10 • Appointing ILYM Group, Inc. as Settlement Administrator;
- 11 • Directing that notice be mailed to the Settlement Class via the Settlement Administrator;
- 12 and
- 13 • Scheduling a hearing date for the Motion for Final Approval of Class Action and PAGA
- 14 Settlement.
- 15

16 This motion is made pursuant to California Rules of Court 3.769. This motion will be based
17 upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities,
18 the Declaration of Shaun Setareh, the Declaration of Christina Perkins, and the Declaration of Lisa
19 Mullins on behalf of the Settlement Administrator, and the exhibits attached thereto, the arguments of
20 counsel, the documents filed in this action, and any other matters as may be properly presented on or
21 before the hearing on this motion.
22

23
24 DATED: August 12, 2026

SETAREH LAW GROUP

25
26 /s/ Shaun Setareh

27 SHAUN SETAREH
BRADLEY FAGNANI
FARRAH GRANT
Attorneys for Plaintiff
28 CHRISTINA PERKINS

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Christina Perkins (“Plaintiff”) seeks preliminary approval of a **\$1,000,000.00** non-
4 reversionary class and representative action settlement consisting of wage-and-hour and representative
5 claims under the California Private Attorneys General Act of 2004 (“PAGA”) against Defendant
6 Touchstone Climbing Inc. (“Defendant” or “Touchstone”).¹ No Class Member will have to make a
7 claim. Checks will be mailed directly, and any excess or uncashed checks will be remitted to the
8 California State Controller’s Office, unless practice and precedent in the Alameda County Superior
9 Court requires distribution to a *cy pres* recipient, in which case the Parties have agreed the recipient
10 will be the Legal Aid Foundation of Los Angeles (“LAFLA”), subject to Court approval.

11 Plaintiff now moves for preliminary approval of the Settlement Agreement. The Settlement is
12 an excellent result. The Gross Settlement Amount (“GSA”) is **\$1,000,000.00**, which will be
13 administered to the Settlement Class through a notice and allocation process designed to be cost-
14 efficient and beneficial to the Settlement Class. The Settlement Agreement provides for customary
15 deductions from the GSA — attorneys’ fees, litigation costs, administration costs, a service payment,
16 and PAGA penalties — each set forth in detail in Section II below. The **\$1,000,000.00** common
17 settlement fund represents approximately 24.5% of Plaintiff’s risk-adjusted estimate of the maximum
18 realistic exposure in this case, including PAGA penalties, and approximately 53.2% of Plaintiff’s risk-
19 adjusted estimate of exposure exclusive of PAGA penalties. (Declaration of Shaun Setareh (“Setareh
20 Decl.”) ¶¶ 31-32.) The Net Settlement Amount will be distributed to Participating Class Members on
21 a *pro rata* basis according to the number of Workweeks each worked during the Class Period, and the
22
23
24

25 ¹ The Class Action and PAGA Settlement Agreement (“Settlement Agreement” or “Settlement”)
26 signed by all parties and counsel is attached as Exhibit 1 to the Declaration of Shaun Setareh, filed
27 concurrently herewith. The Settlement Agreement will be cited herein as “Settlement.” Capitalized
28 terms used but not otherwise defined herein have the meanings set forth in the Settlement
Agreement. The Class Notice is attached to the Settlement as Exhibit A and is cited herein as the
“Notice.”

1 PAGA Settlement Fund will be distributed *pro rata* to Aggrieved Employees according to Workweeks
2 worked during the PAGA Period. (Settlement ¶ 49(c), (h).)

3 In light of the risks of continuing with this litigation, Plaintiff submits that this proposed
4 Settlement, which guarantees that all Participating Class Members and Aggrieved Employees will be
5 paid without submitting a claim, is fair, reasonable, and adequate. Accordingly, Plaintiff respectfully
6 requests that the Court enter an order (a) granting preliminary approval of the Settlement; (b) certifying
7 the proposed Class for purposes of settlement only; (c) appointing Plaintiff Christina Perkins as the
8 Class Representative; (d) appointing Setareh Law Group as Class Counsel; (e) appointing ILYM
9 Group, Inc. as Settlement Administrator; (f) approving the proposed form and method of giving Class
10 Members notice of the action and the proposed Settlement; (g) directing that notice be given to Class
11 Members in the proposed form and manner; and (h) setting a hearing date and briefing schedule for
12 final settlement approval.

13 Based upon their evaluation, Plaintiff and Class Counsel have determined that the Settlement
14 is fair, reasonable, adequate, and in the best interest of the Settlement Class and Aggrieved Employees,
15 and request that this Court grant preliminary approval of the Settlement. (Setareh Decl. ¶¶ 27-30.)

16 **II. THE MAJOR TERMS OF SETTLEMENT**

17 Key provisions of the proposed Settlement include the following:

- 18 • The Parties stipulate to certification of the Settlement Class for purposes of settlement only.
19 (Settlement ¶ 48.)
- 20 • The Gross Settlement Amount is **\$1,000,000.00**, subject to increase only if the Escalator
21 Clause is triggered. (Settlement ¶¶ 17, 39, 49(a).)
- 22 • Defendant will not oppose Class Counsel's application for attorneys' fees of up to one-third
23 of the GSA, i.e., **\$333,333.33**. (Settlement ¶ 49(f).)
- 24 • Defendant will not oppose Class Counsel's application for reasonable litigation costs, not to
25 exceed **\$20,000.00**, to be paid from the GSA. Class Counsel has incurred litigation costs to
26 date of \$16,901.95. (Settlement ¶ 49(f); Setareh Decl. ¶¶ 37-38.)

- 1 • Defendant will not oppose an application for a Class Representative Service Payment in the
2 amount of up to **\$5,000.00** to Plaintiff Christina Perkins, to be paid out of the GSA. (Settlement
3 ¶ 49(e); Perkins Decl. ¶ 9.)
- 4 • The Parties have mutually selected ILYM Group, Inc. to serve as the Settlement Administrator,
5 subject to Court approval. Settlement Administration Costs will be paid from the GSA and are
6 not to exceed **\$14,000.00** unless the Escalator Clause is triggered or as otherwise approved by
7 the Parties and the Court. The costs of administration are currently estimated to be **\$13,750.00**.
8 (Settlement ¶ 49(g); Setareh Decl. ¶ 39; Declaration of Lisa Mullins (“Mullins Decl.”) ¶¶ 9-
9 10, Ex. C.)
- 10 • Out of the GSA, **\$100,000.00** is allocated to resolve the PAGA claims, with 75%, i.e.,
11 **\$75,000.00**, to be paid to the LWDA, and 25%, i.e., **\$25,000.00**, to be paid pro rata by
12 Workweek to Aggrieved Employees, i.e., all current and former hourly-paid or non-exempt
13 employees of Touchstone in California during the PAGA Period. (Settlement ¶ 49(h).)
- 14 • After deducting Class Counsel’s attorneys’ fees and litigation costs, the Service Payment,
15 Settlement Administration Costs, and the PAGA Penalties, the remainder — i.e., the Net
16 Settlement Amount (“NSA”) — will be distributed to Participating Class Members on a pro
17 rata basis according to the number of Workweeks worked during the Class Period. (Settlement
18 ¶¶ 21, 49(b)-(c).)
- 19 • This is a non-reversionary settlement. No Class Member is required to submit a claim to
20 receive an Individual Class Payment or Individual PAGA Payment; Participating Class
21 Members and Aggrieved Employees will automatically receive a check. (Settlement ¶ 49(k).)
- 22 • Defendant will separately pay, outside of and in addition to the GSA, the employer’s share of
23 payroll taxes due on the wage portion of the Individual Class Payments. (Settlement ¶¶ 39,
24 49(a).)
- 25 • Defendant will fund the GSA (and the employer’s share of payroll taxes) in three installments
26 over the course of one year: 50% (\$500,000) within 14 days after entry of judgment on an
27 order granting final approval that becomes final; 25% (\$250,000) within six months of the first
28

1 payment; and the remaining 25% (\$250,000) within six months of the second payment.
2 (Settlement ¶¶ 39, 72.)

- 3 • Any checks issued by the Administrator to Participating Class Members and Aggrieved
4 Employees shall be negotiable for 180 calendar days after mailing. Checks remaining
5 uncashed after that period will be remitted to the California State Controller's Office in the
6 name of the Participating Class Member or Aggrieved Employee, unless practice and
7 precedent in the Alameda County Superior Court requires the funds to be distributed to a cy
8 pres recipient, in which case the Parties have agreed the recipient will be the Legal Aid
9 Foundation of Los Angeles. (Settlement ¶ 75; Setareh Decl. ¶ 40.)
- 10 • If ten or more Class Members submit timely and valid Requests for Exclusion, Defendant may,
11 at its sole option, nullify the Settlement within fifteen calendar days of learning that the
12 threshold has been met, and Defendant will bear all related expenses, including applicable
13 Settlement Administrator fees, in that event. (Settlement ¶ 71.)

14 (Settlement, *generally*.)

15 **III. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

16 **A. The Parties**

17 Plaintiff Christina Perkins was employed by Defendant in an hourly, non-exempt position from
18 approximately August 20, 2021 through November 25, 2022. Plaintiff seeks to represent all current
19 and former hourly-paid or non-exempt employees employed by Defendant in California at any time
20 during the Class Period. Defendant is a California-based operator of climbing gyms that, at all relevant
21 times, employed hourly, non-exempt workers throughout California. (Setareh Decl. ¶ 11; Perkins
22 Decl. ¶ 3.)

23 Defendant estimates there are approximately 1,500 putative Class Members. (Setareh Decl. ¶
24 35.) The Class Period is defined as March 23, 2019 through the date the Court grants preliminary
25 approval, inclusive — four years before Plaintiff filed her original Complaint on March 23, 2023,
26 consistent with the four-year limitations period applicable to restitution for unpaid wages under
27 Business & Professions Code section 17200. The PAGA Period is defined as March 23, 2022 through
28 the date the Court grants preliminary approval, inclusive — one year before Plaintiff's March 23, 2023

1 PAGA notice to the LWDA and Defendant, consistent with the one-year statute of limitations
2 governing PAGA claims. (Settlement ¶¶ 10, 26; see Code Civ. Proc. § 340(a); Lab. Code §
3 2699.3(a)(1), (d).)

4 **B. The Complaints and Allegations**

5 On March 23, 2023, Plaintiff submitted her PAGA notice letter to the LWDA and Defendant,
6 and on the same day filed her putative class action Complaint against Defendant in the Alameda
7 County Superior Court, Case No. 23CV029864, alleging: (a) failure to provide meal periods (Lab.
8 Code §§ 204, 223, 226.7, 512 and 1198); (b) failure to provide rest periods (Lab. Code §§ 204, 223,
9 226.7 and 1198); (c) failure to pay hourly wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1197.1
10 and 1198); (d) failure to indemnify (Lab. Code § 2802); (e) failure to provide accurate written wage
11 statements (Lab. Code § 226); and (f) unfair competition (Bus. & Prof. Code § 17200, et seq.).
12 (Settlement ¶¶ 41, 41(a); Setareh Decl. ¶¶ 7-8.)

13 On July 18, 2023, after the LWDA declined to assert jurisdiction over the PAGA claims, Plaintiff
14 filed the operative First Amended Complaint (“FAC”), adding a claim for civil penalties pursuant to PAGA
15 (Lab. Code §§ 2698, et seq.). (Settlement ¶ 42; Setareh Decl. ¶ 9; FAC.) Defendant denies all of Plaintiff’s
16 allegations, contends it fully complied with all applicable wage-and-hour laws, and contends Plaintiff cannot
17 establish the requirements to certify a class. (Settlement ¶¶ 43, 85; Setareh Decl. ¶ 10.)

18 **C. The Exchange of Formal and Informal Discovery**

19 The Parties engaged in formal discovery in advance of resolving the Action. Plaintiff
20 propounded requests for production of documents and special interrogatories, to which Defendant
21 responded; Defendant propounded requests for production of documents, form interrogatories, and
22 special interrogatories, to which Plaintiff responded. (Setareh Decl. ¶ 12.)

23 The Parties’ investigation also included an extensive exchange of informal discovery,
24 including all payroll and timekeeping records for Class Members from the beginning of the Class
25 Period until a date immediately preceding mediation. Defendant produced Plaintiff’s personnel file, a
26 sampling of time and payroll data, Defendant’s employee handbook and written meal, rest, overtime,
27 payroll, timekeeping, and operational policies, and demographic data relating to the putative Class
28 and PAGA Group. (Setareh Decl. ¶¶ 13, 15-16.) Plaintiff retained an expert to analyze the produced

1 data with respect to potential damages and penalties in preparation for mediation and prepared a
2 confidential mediation brief. Plaintiff's counsel further analyzed representative timekeeping data
3 reflecting allegedly late, short, and missed meal periods, and reviewed data concerning shifts
4 exceeding 3.5, 5, 6, 8, 10, and 12 hours, as well as allegedly noncompliant meal periods and premium
5 payments reflected in Defendant's records, and evaluated the strengths and weaknesses of Plaintiff's
6 derivative wage statement penalty claims. (Setareh Decl. ¶¶ 15, 17, 19-20.) This investigation and
7 analysis provided Plaintiff and Class Counsel a meaningful basis upon which to evaluate the fairness
8 and adequacy of the proposed Settlement. (Setareh Decl. ¶ 21.)

9 **D. Investigation, Discovery, and Mediation**

10 On December 3, 2025, the Parties participated in a full-day mediation before Michael Young,
11 an experienced wage-and-hour mediator. (Settlement ¶ 46; Setareh Decl. ¶ 23.) During the mediation,
12 each side, represented by its respective counsel, recognized the substantial risk of an adverse result in
13 the Action, and the Parties agreed to avoid further litigation and to settle and resolve all claims to the
14 fullest extent permitted by law, without any admission of liability or wrongdoing by Defendant.
15 (Setareh Decl. ¶ 24.)

16 At the conclusion of mediation, extensive arm's-length negotiations, and after issuance of a
17 mediator's proposal, the Parties reached an agreement. The Parties entered into a Memorandum of
18 Understanding on February 10, 2026, memorializing the material terms of the Settlement, and, on July
19 15, 2026, executed the Settlement Agreement. (Settlement ¶ 46; Setareh Decl. ¶ 25.) The Parties have
20 not engaged in any collusion or improper negotiations, and have no agreements regarding the proposed
21 Settlement that are not reflected in the Settlement Agreement. (Setareh Decl. ¶ 26.)

22 **E. Reasonableness of the Settlement**

23 Plaintiff's counsel believes the Settlement is in the best interest of the Settlement Class based
24 on their investigation and discovery, their detailed understanding of the issues raised, and the outcome
25 of extensive settlement negotiations. Plaintiff's counsel balanced the Settlement against the probable
26 outcome of class certification, liability, the range of recovery at trial, the risks of losing class
27 certification, losing at trial, or not recovering as much as provided by the proposed Settlement, as well
28

as the difficulties and complexity of the litigation, the lengthy process of litigating to judgment, and the various possible delays and appeals. (Setareh Decl. ¶¶ 27-30.)

IV. DESCRIPTION OF THE SETTLEMENT

A. Contingent Nature of The Settlement

Solely for purposes of settling this case, the Parties agree to certification of the Settlement Class and to treatment of the representative PAGA claims on a settlement basis only. (Settlement ¶ 48.)

B. Appointment of Settlement Class Counsel.

The Parties have agreed to the appointment of Setareh Law Group as Class Counsel. (Settlement, Preamble.) As detailed in the Declaration of Shaun Setareh, Class Counsel is highly experienced in wage-and-hour class action and PAGA litigation. (Setareh Decl. ¶¶ 3-6.)

C. Appointment of Administrator

The Parties have agreed to the appointment of ILYM Group, Inc. (“ILYM”) to serve as the Settlement Administrator and to provide notice to the Class Members. (Settlement, Def. ¶ 2; Setareh Decl. ¶ 39.) The settlement administration costs are currently estimated to be \$13,750.00, based on an estimated Class of approximately 1,500 Class Members, which Class Counsel believes is a reasonable fee for a settlement of this size. (Setareh Decl. ¶ 39; Mullins Decl. ¶ 10, Ex. C.) The costs of the Settlement Administrator approved by the Court will be paid from the GSA. (Settlement ¶ 49(g).)

D. Description of the Settlement Class and PAGA Group; Escalator Clause

The “Class” means all current and former hourly-paid or non-exempt employees employed by Defendant in California at any time during the Class Period (March 23, 2019 through the date the Court grants preliminary approval, inclusive). “Aggrieved Employees” means all current and former hourly-paid or non-exempt employees employed by Defendant in California at any time during the PAGA Period (March 23, 2022 through the date the Court grants preliminary approval, inclusive). “Participating Class Members” means all Class Members who do not timely and validly submit a Request for Exclusion. (Settlement, Def. ¶¶ 4, 6, 10, 26-27.)

The Settlement Agreement includes an Escalator Clause to protect the Class if the estimated Workweek count proves too low. The GSA was calculated based on Defendant’s estimated 100,856 total

1 Workweeks during the Class Period (through December 3, 2025) and estimated PAGA Pay Periods during
2 the PAGA Period (through December 3, 2025). If the total number of Workweeks during the Class Period
3 exceeds 100,856 by more than ten percent (i.e., exceeds 110,942 Workweeks), Defendant has the option of
4 (1) making a proportional increase to the GSA, or (2) adjusting the end of the release period so that the end
5 date coincides with a time when no more than 110,942 Workweeks will be released by Class Members.
6 (Settlement ¶ 17.)

7 **E. Scope of The Release**

8 **1. Release by Participating Class Members**

9
10 Upon entry of the Final Approval Order and Defendant's funding of the Settlement Amount
11 and required employer-side payroll taxes, Plaintiff and all Participating Class Members will release
12 the Released Parties from the Released Class Claims for the Class Period. The Released Class Claims
13 include the claims stated in the operative Complaint and those claims that reasonably could have been
14 brought based on the facts alleged in the Complaint, including but not limited to claims for failure to
15 provide meal and rest periods, failure to pay hourly and overtime wages, failure to indemnify, failure
16 to provide accurate wage statements, and related penalties and unfair competition claims. (Settlement
17 ¶¶ 32, 50-52.)

18 **2. Release of PAGA Claims**

19 Upon entry of the Final Approval Order and Defendant's funding of the Settlement Amount
20 and required employer-side payroll taxes, Plaintiff, in her individual capacity and on behalf of the
21 State of California and the LWDA, will release the Released Parties from the Released PAGA Claims
22 for the PAGA Period. Regardless of whether a Class Member submits a valid Request for Exclusion,
23 neither Plaintiff nor any Aggrieved Employee has the right to opt out of the release of the Released
24 PAGA Claims. (Settlement ¶¶ 33, 53-55.)

25 **3. General Release by Plaintiff**

26 As a material term of the Settlement, Plaintiff will provide a general release in favor of the
27 Released Parties of all claims, known and unknown, whether suspected or unsuspected, arising from
28

1 the beginning of time through the execution of the Settlement Agreement, together with a waiver of
2 California Civil Code section 1542. (Settlement ¶¶ 56-59.)

3 **F. Tax Treatment**

4 For each Individual Class Payment to a Participating Class Member, 20% will be allocated as
5 wages subject to withholding of all applicable local, state, and federal taxes and reported on IRS Form
6 W-2, and 80% will be allocated to non-wage claims, statutory penalties, and interest, from which no
7 taxes will be withheld, and reported on IRS Form 1099. Individual PAGA Payments to Aggrieved
8 Employees will be treated entirely as civil penalties and reported on IRS Form 1099. (Settlement ¶
9 49(d), (h).) In addition to the amounts paid from the GSA, Defendant will separately pay the
10 employer's share of payroll taxes owed on the wage portion of the Individual Class Payments; these
11 employer-side payroll taxes are exclusive of, and not deducted from, the GSA. (Settlement ¶¶ 39,
12 49(a).) The Administrator will be responsible for issuing all necessary W-2, 1099, and other tax forms
13 required by law for all amounts paid pursuant to the Settlement. (Settlement ¶ 62.)

14 **G. Notice To Class Members of Settlement**

15 Within fourteen calendar days after entry of the Preliminary Approval Order, Defendant will
16 provide the Class Data to ILYM. (Settlement ¶ 63.) ILYM will run the Class Data against the National
17 Change of Address ("NCOA") database maintained by the United States Postal Service before
18 mailing, and will mail the Notice, in English, by first-class mail, within ten calendar days following
19 receipt of the Class Data. (Settlement ¶¶ 63, 65.) Should any notices be returned as undeliverable,
20 ILYM will use standard devices, including skip-tracing, to obtain updated addresses and will promptly
21 re-mail the Notice, extending the deadline to respond to the later of the original Response Deadline or
22 fifteen days after re-mailing. (Settlement ¶¶ 65-66; Mullins Decl. ¶¶ 6-7.)

23 Class Members will have thirty calendar days from the date the Notice is mailed (the
24 "Response Deadline") to submit a Request for Exclusion, an objection, or a dispute regarding their
25 recorded Workweeks. (Settlement, Def. ¶ 23; ¶¶ 65, 68-70.) The Notice explains, among other things:
26 (i) the nature of the Action; (ii) a summary of the Settlement's principal terms, including the amounts
27 of attorneys' fees, litigation costs, and the Service Payment that will be requested; (iii) the Class and
28 the Aggrieved Employee group; (iv) each Class Member's estimated Individual Class Payment and,

1 if applicable, Individual PAGA Payment, and the formula used to calculate those amounts; (v)
2 instructions for submitting a Request for Exclusion, an objection, or a Workweek dispute, and the
3 applicable deadlines; (vi) the claims to be released; and (vii) the date, time, and location of the Final
4 Approval Hearing. (See Notice, Settlement Ex. A.)

5 **H. The Proposed *Cy Pres* Recipient Is Appropriate**

6 Code of Civil Procedure section 384 governs the distribution of unpaid residual funds in class
7 action settlements and requires that any cy pres recipient have a nexus to either the objectives of the
8 underlying litigation or the interests of the class members. Cal. Code Civ. Proc. § 384(b).

9 Pursuant to the Settlement, any settlement checks remaining uncashed 180 days after issuance will be
10 remitted to the California State Controller’s Office in the name of the Participating Class Member or
11 Aggrieved Employee pursuant to state unclaimed property law, unless practice and precedent in the
12 Alameda County Superior Court requires that such funds instead be distributed to a cy pres recipient,
13 in which case the Parties have agreed that the Legal Aid Foundation of Los Angeles (“LAFLA”) is an
14 appropriate cy pres recipient, subject to Court approval. (Settlement ¶ 75; Setareh Decl. ¶ 40.)

15 LAFLA is a nonprofit 501(c)(3) organization whose mission is to provide free civil legal
16 services to low-income individuals in Los Angeles County, including representation and advocacy on
17 employment and wage-and-hour matters affecting vulnerable workers. LAFLA’s Employment Rights
18 Project directly serves low-wage workers seeking to enforce the same categories of Labor Code
19 protections at issue in this Action, including unpaid wages, meal and rest period violations, and
20 retaliation. Any residual funds distributed to LAFLA would therefore be used for a purpose consistent
21 with, and substantially related to, the rights the Class sought to vindicate in this litigation. LAFLA has
22 no financial or business relationship with any of the Parties, Class Counsel, or Defense Counsel that
23 would create an appearance of impropriety or conflict of interest in connection with the proposed
24 distribution. (Setareh Decl. ¶ 40.) Accordingly, LAFLA is an appropriate cy pres recipient under Code
25 of Civil Procedure section 384 and applicable case law. See *In re Microsoft I-V Cases* (2006) 135
26 Cal.App.4th 706; *Nachshin v. AOL, LLC* (9th Cir. 2011) 663 F.3d 1034 (requiring a driving nexus
27 between the plaintiff class, the class’s claims, and the cy pres recipient).

28 **I. Notice And PAGA Payment To The LWDA**

1 Plaintiff previously provided the LWDA notice of the alleged PAGA violations on March 23,
2 2023, and the LWDA declined to assert jurisdiction. (Settlement ¶¶ 41-42; FAC ¶ 117.) Upon filing
3 the Motion for Preliminary Approval of Class Action and PAGA Settlement and Certification of
4 Settlement Class, Class Counsel will upload a copy to the LWDA as required by Labor Code section
5 2699(1)(2). (Settlement ¶ 76(e); Setareh Decl. ¶ 41.) Seventy-five percent of the \$100,000.00 PAGA
6 Penalties, i.e., \$75,000.00, will be paid to the LWDA in satisfaction of civil penalties under PAGA.
7 (Settlement ¶ 49(h).)

8 **J. Class Members' Right To Opt Out**

9 Any Class Member, other than Plaintiff, who wishes to opt out of the Settlement must submit
10 a written Request for Exclusion to the Administrator, postmarked on or before the Response Deadline,
11 that includes the Class Member's full name, address, telephone number, the last four digits of the
12 Class Member's social security number or date of birth, and signature. (Settlement ¶ 70(a).) A Class
13 Member who timely and validly requests exclusion will not receive an Individual Class Payment and
14 will not be bound by the class release, but will remain bound by the release of PAGA claims to the
15 extent permitted by law, and, if an Aggrieved Employee, will still receive an Individual PAGA
16 Payment. (Settlement ¶¶ 54, 70(a).)

17 **K. Class Members' Right To Object**

18 Any Class Member, other than Plaintiff, who does not submit a valid and timely Request for
19 Exclusion may object to the terms of the Settlement by submitting a written objection to the
20 Administrator, postmarked by the Response Deadline, that includes the objecting Class Member's
21 identifying information, dates of employment, and the basis for the objection, including any
22 supporting legal authority, evidence, or documentation. An objecting Class Member remains eligible
23 to receive monetary compensation under the Settlement. (Settlement ¶ 70(c).)

24 **V. ARGUMENT**

25 **A. The Court Should Conditionally Certify the Settlement Class Because It Meets All**
26 **the Requirements for Class Certification for Settlement Purposes Only Under Code**
27 **of Civil Procedure Section 382**

28 Under Code of Civil Procedure § 382, class certification is warranted so long as there is "a

1 numerous and ascertainable class with a well-defined community of interest among its members” and a
2 “class action proceeding is superior to other means for a fair and efficient adjudication of the litigation.”
3 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332. “The certification question
4 is ‘essentially a procedural one that does not ask whether an action is legally or factually meritorious.’”
5 *Id.* at 326 (quoting *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-440).

6 “[I]t is also well established that trial courts should use different standards to determine the
7 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard
8 of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior Court* (2003) 113
9 Cal. App. 4th 836, 859 (citing *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1807 n.19
10 (“*Dunk*”). As shown below, the Settlement Class easily meets all of the requirements for certification
11 for settlement purposes.

12 **1. Objectively Ascertainable and Sufficiently Numerous Class**

13 A class is ascertainable when it may be readily identified via an objectively stated definition
14 without unreasonable expense or time by reference to official records. *Rose v. City of Hayward* (1981)
15 126 Cal. App. 3d 926, 932. No set number of class members is required to maintain a class action.
16 *Hebbard v. Colgrove* (1972) 28 Cal. App. 3d 1017, 1030. Here, the Settlement Class may be readily
17 ascertained by reference to Defendant’s personnel records, and Defendant estimates there are
18 approximately 1,500 putative Class Members. (Setareh Decl. ¶ 35.)

19 **2. Predominance of Common Questions**

20 A question of law or fact is common to the members of a class if it may be resolved through
21 common proof. *See Jaimez*, 181 Cal. App. 4th at 1305. As for predominance, it “is a comparative
22 concept, and ‘the necessity for class members to individually establish eligibility and damages does not
23 mean individual fact questions predominate.’” *Sav-on*, 34 Cal.4th at 334. Thus, “[i]ndividual issues do
24 not render class certification inappropriate so long as such issues may effectively be managed.” *Id.*

25 Here, Plaintiff alleges Defendant’s liability arises from the same set of facts and legal
26 questions that apply equally to all Class Members: that Defendant maintained uniform policies and
27 practices resulting in a failure to provide meal periods (FAC ¶¶ 18-20, 41-52), a failure to provide
28 rest periods (FAC ¶¶ 21-22, 53-62), a failure to pay hourly and overtime wages, including for off-

the-clock work (FAC ¶¶ 23-29, 63-78), a failure to indemnify necessary business expenses (FAC ¶¶ 30-34, 79-86), and a failure to provide accurate wage statements (FAC ¶¶ 35-40, 87-94).

3. Typicality of Plaintiffs' Claims

Typicality “requires a showing that the class representative has claims or defenses typical of the class.” *See, e.g., Fireside Bank v. Super. Ct. (Gonzalez)* (2007) 40 Cal.4th 1069, 1090.

Plaintiff’s claims are typical of those of the Class Members. Like other Class Members, Plaintiff was an hourly, non-exempt employee of Defendant in California who was allegedly denied compliant meal and rest periods, was not paid all hourly wages owed, was not reimbursed for necessary business expenses, and did not receive accurate wage statements. (FAC ¶¶ 17-40; Perkins Decl. ¶ 3.) *See Classen*, 145 Cal. App. 3d at 46 (representative plaintiffs need not share all the same claims with class members; they need only have claims that are “typical of the class”).

4. Adequacy of Plaintiff and Class Counsel to Represent the Class

The adequacy requirement is met where the named plaintiff is represented by counsel qualified to conduct the litigation and the plaintiff’s interest in the litigation is not antagonistic to the class’s interests. *McGhee v. Bank of America* (1976) 60 Cal. App. 3d 442, 450-51.

Plaintiff has no conflict of interest with absent Class Members and has agreed to place the Class’s interests above her own. (Perkins Decl. ¶¶ 6, 8, 11; Setareh Decl. ¶ 33.) *See Global Minerals, supra*, 113 Cal. App. 4th at 851 (the inquiry into the adequacy of a class representative is intended to uncover any conflicts between the plaintiff and the class he or she seeks to represent). Class Counsel, Setareh Law Group, is knowledgeable and experienced in wage-and-hour class action litigation. (Setareh Decl. ¶¶ 3-6.)

B. Standard For Granting Preliminary Settlement Approval

Cases brought as class actions may only be settled upon court approval and then only after a determination that the settlement is fair, adequate, and reasonable is made. *In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723. Courts have broad discretion to make this determination and consider factors, such as the strength of plaintiff’s 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, the experience and views of counsel, and the reaction of

1 the class members to the proposed settlement. *See also, Dunk*, 48 Cal. App. 4th at 1800-01;

2 California Rule of Court 3.769 sets forth the procedures for settlement of class actions in
3 California. A two-step process is required: the court first preliminarily approves the settlement and
4 directs that class members be notified, and then, following notice, conducts a final approval hearing to
5 inquire into the fairness of the settlement before entering judgment.

6 In deciding whether to grant preliminary approval, courts are to give “due regard” to “what is
7 otherwise a private consensual agreement between the parties.” *Sutter Health Uninsured Pricing Cases*
8 (2009) 171 Cal. App. 4th 495, 505. When approving a settlement, “the court need not ‘reach any
9 ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for
10 it is the very uncertainty of the outcome in litigation and avoidance of wasteful and expensive litigation
11 that induce consensual settlements.’” *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268,
12 1291 (quoting *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625).

13 **C. This Court Should Grant This Motion and Issue an Order Preliminarily Approving**
14 **the Settlement Because It Is Fair, Adequate, And Reasonable**

15 **1. The Settlement Resulted From Serious, Informed, Non-Collusive**
16 **Negotiations**

17 The Parties reached this Settlement only after conducting extensive and protracted arm’s-
18 length negotiations through an experienced and knowledgeable mediator, Michael Young. (Setareh
19 Decl. ¶¶ 23, 25.) The Parties have not engaged in any collusion or improper negotiations, and have no
20 side agreements regarding the proposed Settlement that are not reflected in the Settlement Agreement.
(Setareh Decl. ¶ 26.)

21 **2. Sufficient Fact Investigation and Discovery Has Occurred to Assess the**
22 **Fairness of the Settlement**

23 As discussed above, Plaintiff’s counsel engaged in both formal discovery and extensive
24 informal investigation that allowed them to evaluate the merits of the Class Members’ claims and
25 Defendant’s defenses, as well as the range of possible recoverable damages. (Setareh Decl. ¶¶ 12-22.)
26 Based on that investigation and discovery, Plaintiff and her counsel are of the opinion that the
27 Settlement is fair, reasonable, adequate, and in the Class Members’ best interest. (Setareh Decl. ¶¶ 27,
28 29-30; Perkins Decl. ¶ 8.)

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1 Despite a total potential recovery of approximately \$2 million on all class claims, including
2 statutory penalties, and \$4 million including PAGA penalties, Plaintiff recognizes the challenges she
3 faces in certifying a class action and establishing liability on the wage-and-hour and PAGA claims,
4 and estimates that her likelihood of prevailing on all causes of action, and thus of recovering anything
5 close to \$4 million on behalf of the Class, is very unlikely. (Setareh Decl. ¶ 32.) For those claims, if
6 any, that are certified for class treatment, Plaintiff must prevail at a trial on the merits. (Id.)

7 Courts regularly approve settlements where the recovery is less than one quarter of the maximum
8 potential realistic recovery. *E.g., Bravo v. Gale Triangle* (C.D. Cal. 2017) 2017 WL 708766 *9
9 (approving settlement where recovery was 7.5% of projected maximum recovery amount); *Officers for*
10 *Justice v. Civil Service Com'n of City & County of S.F.* (9th Cir. 1982) 688 F.2d 615, 628 (“[A] cash
11 settlement amounting to only a fraction of the potential recovery will not per se render the settlement
12 inadequate or unfair.”) Here, the GSA — approximately 24.5% of the total estimated realistic exposure
13 including PAGA penalties, and approximately 53.2% of Plaintiff’s risk-adjusted estimate of exposure
14 exclusive of PAGA penalties— is reasonable in comparison to the likely potential award at trial, and meets or
15 exceeds percentages routinely approved by courts.

16 **(a) The Uncertainties Faced Justify the Discounted Settlement Figure**

17 Defendant strongly denies any liability and the propriety of class certification for any reason
18 other than settlement. (Settlement ¶¶ 43, 85.) Continued litigation of this lawsuit presented Plaintiff
19 and Defendant with substantial legal risks that were, and continue to be, very difficult to assess.
20 (Setareh Decl. ¶ 32.) With respect to the claims asserted on behalf of the Settlement Class, significant
21 risks support the reduced compromise amount, including the risk that Plaintiff would be unable to
22 establish liability for the alleged unpaid straight time and overtime wages, meal-and-rest-period, and
23 PAGA claims given Defendant's factual and legal defenses, including Defendant's contentions that
24 straight time and overtime were properly paid and that employees generally received compliant meal
25 and rest breaks. *See Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal.4th 1, 39 & fn. 33 (2014) ("*Duran*"), citing
26 *Dilts v. Penske Logistics, LLC*, 2014 WL 205039 (S.D. Cal. 2014) (dismissing certified off-the-clock
27 claims based on proof at trial).
28

1 Plaintiff also faced the risk that individualized inquiries into whether each employee received
2 compliant meal and rest periods, or whether and why any employee worked off the clock, would defeat
3 class certification or class-wide liability, including the risk that Defendant's challenged policies would
4 not ultimately support class certification or a class-wide liability finding. See *Duran*, 59 Cal.4th at 14
5 & fn. 28; *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 585 (2000) (employer not required to pay
6 employees for time spent performing work of which the employer had no knowledge). Related to this
7 was the risk that individual differences among Class Members could be construed as pertaining to
8 liability rather than solely to damages, see *Duran*, 59 Cal.4th at 19, that uncertainties regarding the
9 legality of Defendant's policies could preclude class-wide awards of statutory penalties under Labor
10 Code section 226(e), and that class treatment could be deemed improper as to one or more claims
11 outside the settlement context. Plaintiff further faced the risk that she would not recover wage-
12 statement penalties under Labor Code section 226 absent a showing of willfulness or knowing intent,
13 particularly given Defendant's asserted good-faith defenses.

14 Even for those claims, if any, that were certified for class treatment, Plaintiff would still have
15 been required to prevail at a trial on the merits, with the attendant risk of a prolonged and expensive
16 trial, lengthy and costly appellate litigation on both liability and certification issues, and potential
17 exposure to Defendant's attorneys' fees and costs had the case proceeded unsuccessfully. Plaintiff also
18 faced the risk that any PAGA penalty award would be substantially reduced by the Court in its
19 discretion under Labor Code section 2699(e)(2), which permits a court to award a lesser penalty where
20 an unreduced award would be unjust, arbitrary and oppressive, or confiscatory. Although Plaintiff's
21 analysis calculated PAGA penalties of \$2,198,077.32, that figure was unlikely to be realized at trial,
22 as the ultimate penalty award is always subject to the Court's discretion. In *Carrington v. Starbucks*,
23 30 Cal.App.5th 504, 529 (2018), the Court of Appeal affirmed the trial court's reduction of PAGA
24 meal-break penalties from the \$50 maximum per initial violation to just \$5 per initial violation, based
25 on the defendant's good-faith compliance efforts and the minimal nature of the violations; and in
26 *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1136 (2012), the court
27 affirmed a 30 percent reduction of the maximum penalty. Proceeding to trial thus risked a similar
28 outcome, yielding a recovery that would be a mere fraction of Plaintiff's estimate—compounded by

1 the risk that Defendant would be unable to pay a higher amount than the GSA even if one were
2 awarded.

3 In light of the uncertainties of protracted litigation, the Settlement amount reflects a fair and
4 reasonable compromise recovery for the Class Members (Setareh Decl. ¶ 32.) Moreover, each
5 Settlement Class Member will be given the opportunity to opt out, allowing those who think they have
6 claims greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*)

7 **D. The Court Should Grant This Motion and Issue an Order Directing That Notice Be
8 Sent**

9 “The notice given to the class must fairly apprise the class members of the terms of the proposed
10 compromise and of the options open to dissenting class members.” *Trotsky v. L.A. Fed. Sav. & Loan*
Ass’n (1975) 48 Cal. App. 3d 134, 151-52.

11 The Class Notice explains (i) information regarding the nature of the Action; (ii) a summary of
12 the Settlement’s principal terms, including the amounts of attorneys’ fees, litigation costs, and the
13 Service Payment requested; (iii) the Class and the Aggrieved Employee group; (iv) each Class Member’s
14 estimated Individual Class Payment and, if applicable, Individual PAGA Payment, and the formula used
15 to calculate those amounts; (v) instructions on how to submit a Request for Exclusion, an objection, or a
16 Workweek dispute; (vi) the deadlines by which Class Members must postmark such submissions; (vii)
17 the claims to be released; and (viii) the date, time, and location of the Final Approval Hearing. (See
18 Notice, Settlement Ex. A.).

19 **E. The Court Should Set A Hearing For Final Approval**

20 Finally, the Court should set a formal hearing to conduct an inquiry into the fairness of the
21 proposed settlement. Cal. Rule Ct. 7.769(e), (g).

22 **VI. CONCLUSION**

23 For the foregoing reasons, Plaintiff respectfully submits that the Settlement’s terms are fair,
24 adequate, and reasonable and that it is in the best interest of the Class Members. The Class should
25 be conditionally certified, the Settlement preliminarily approved, notice directed to the Class, and
26 a final approval hearing scheduled.

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DATED: August 12, 2026

SETAREH LAW GROUP

/s/ Shaun Setareh
SHAUN SETAREH
BRADLEY FAGNANI
FARRAH GRANT
Attorneys for Plaintiff
CHRISTINA PERKINS



Superior Court of Alameda County Public Portal

Make a Reservation

PERKINS vs TOUCHSTONE CLIMBING, INC.

Case Number: 23CV029864 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2023-03-23 Location: Rene C. Davidson Courthouse - Department 18

Reservation

Case Name: PERKINS vs TOUCHSTONE CLIMBING, INC.	Case Number: 23CV029864
Type: Motion re: (Preliminary Approval of Class Action Settlement)	Status: RESERVED
Filing Party: CHRISTINA PERKINS (Plaintiff)	Location: Rene C. Davidson Courthouse - Department 18
Date/Time: 09/03/2026 1:30 PM	Number of Motions: 1
Reservation ID: 544996397469	Confirmation Code: CR-9WB8ZBKDM9TLNRRMV

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount: \$1.00	Type: Visa
Account Number: XXXX6086	Authorization: 04008G
Payment Date: n/a	

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