

D.LAW, INC.
Emil Davtyan (SBN 299363)
emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
Alvin B. Lindsay (SBN 220236)
a.lindsay@d.law
Enoch J. Kim (SBN 261146)
e.kim@d.law
Rose Sorial (SBN 271382)
r.sorial@d.law
Antonia McKee (SBN 344511)
a.bliznets@d.law
450 N Brand Blvd., Suite 840
Glendale, CA 91203
Telephone: (818) 962-6465
Fax: (818) 962-6469

Attorneys for Plaintiff RAUL N. RAMIREZ,
on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

RAUL N. RAMIREZ, an individual, on
behalf of himself and others similarly
situated,

Plaintiff,

v.

TENFOLD SENIOR LIVING, LLC, an
Oregon limited liability company; and DOES
1 through 50, inclusive,

Defendants.

Case No.: 24CV003161

CLASS ACTION

Assigned for All Purposes To:
Hon. Laurie A. Damrell

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

*[filed concurrently with Plaintiff's Notice of
Motion and Motion; Declaration of Enoch J.
Kim; Declaration of Raul N. Ramirez; and
[Proposed] Order]*

Date: July 11, 2025
Time: 9:00 a.m.
Dept.: 22

Original Complaint Filed: February 22, 2024
First Amended Complaint Filed: May 16, 2024
Trial Date: None Set

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Raul N. Ramirez (“Plaintiff”) seeks preliminary approval of a putative class and
4 representative action settlement with Defendant Tenfold Senior Living, LLC (“Defendant”)
5 (Plaintiff and Defendant are collectively referred to herein as “the Parties”) on behalf of himself and
6 a proposed class of all current and former non-exempt, hourly dining, culinary, housekeeping, and
7 maintenance individuals who worked for Defendant in California during the Class Period, which is
8 the period from May 1, 2020 to October 10, 2024 (“Class” or “Class Members”). After participating
9 in mediation, the Parties reached a settlement in the gross amount of \$265,000.00 to resolve the
10 foregoing action, subject to this Court’s final approval.

11 Pursuant to California Rules of Court 3.769(d) and (e), Plaintiff respectfully requests that
12 this Court grant preliminary approval of the proposed settlement agreement between the Parties,
13 the terms of which are set forth in the Class and PAGA Settlement Agreement and Release
14 (“Settlement Agreement” or “Settlement”).¹ (See Declaration of Enoch J. Kim (“Kim Decl.”),
15 Exhibit 1). The Settlement Agreement was reached after the Parties engaged in informal discovery
16 and investigation, participated in mediation with a skilled mediator, and negotiated at arms-length
17 through experienced counsel on both sides.

18 As discussed below, the proposed Settlement Agreement satisfies all criteria for preliminary
19 approval under California law, falls well within the range of reasonableness, and is in the best
20 interests of the Class. Accordingly, Plaintiff respectfully requests that the Court: (1) grant
21 preliminary approval of the Settlement; (2) conditionally grant certification of the proposed Class
22 solely for the purposes of Settlement, (3) approve the appointment of Apex Class Action LLC
23 (“Apex”) as Settlement Administrator, (4) authorize the Settlement Administrator to send the Notice
24 of Class Action and PAGA Settlement (“Class Notice”), attached to the Settlement Agreement as
25 Exhibit A, to the Class Members, (5) appoint Plaintiff as the Class Representative and Plaintiff’s
26

27 ¹ Plaintiff’s counsel has reviewed the Court’s “Checklist for Approval of Class Action and/or
28 PAGA Settlements” and Local Rule 2.99.05 and certifies that this briefing complies with the
checklist. (Kim Decl., ¶ 2).)

Counsel as Class Counsel, (6) and schedule a final fairness and approval of settlement hearing.

II. STATUS OF THE LITIGATION

A. Procedural History

Plaintiff worked as an hourly-paid, non-exempt employee for Defendant and seeks to represent approximately 284 current and former non-exempt employees employed by Defendant in California at any time during the Class Period. (Kim Decl., ¶ 3.) Defendant is a for-profit business that lists its principal address with the California Secretary of State in Bend, Oregon, but owns and operates senior living communities in Prairie City Landing and Bruceville Point, California. (*Id.*)

On February 22, 2024, Plaintiff commenced a Class Action by filing a Complaint alleging causes of action against Defendant for (1) Failure To Pay Minimum Wages For All Hours Worked, (2) Failure To Pay Wages And Overtime Under Labor Code § 510, (3) Meal Period Violation Under Labor Code § 226.7, (4) Rest Break Violation Under Labor Code § 226.7, (5) Violation Of Labor Code § 226(A), (6) Violation Of Labor Code § 221, (7) Violation Of Labor Code § 204, (8) Violation Of Labor Code § 203, (9) Failure To Maintain Records Required Under §§ 1174, 1174.5, (10) Failure To Produce Requested Employment Records Under Labor Code §§ 226, 1198.5, (11) Failure To Reimburse Necessary Business Expenses Under Labor Code § 2802, And (12) Violation Of Business & Professions Code § 17200 *et seq.* (the “Action”). (Kim Decl., ¶ 4.)

Plaintiff submitted a PAGA notice (LWDA-CM-1012539-24) to the Labor and Workforce Development Agency (“LWDA”) on February 22, 2024. (Kim Decl., ¶ 5.) On May 16, 2024, Plaintiff filed his First Amended Complaint (“Operative Complaint”), which added claims for penalties under PAGA, Labor Code §2698. (*Id.*)

Plaintiff contends that Defendant failed to pay all wages due and owing by requiring systematic off the clock work, failed to pay all wages due on a timely basis during employment and upon termination, failed to pay overtime at the proper rates, failed to provide meal and rest breaks, failed to furnish and maintain accurate wage statements, failed to maintain accurate records, and failed to reimburse necessary business expenses. (*Id.* at ¶ 6.)

B. Investigation

1 Before filing the lawsuit, Class Counsel conducted a thorough investigation and researched
2 the facts and circumstances underlying the pertinent issues and applicable law. (*Id.* at ¶ 7.) This
3 required thorough discussions and interviews between Class Counsel and Plaintiff, in addition to
4 the above-described research into the various legal issues involved in the case. (*Id.*) After filing the
5 lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the
6 action, including (1) conducting informal discovery and meeting and conferring with defense
7 counsel about same; (2) reviewing and analyzing records and data, as well as employment-related
8 policies; (3) reviewing Plaintiff's personnel file and other documentation; (4) interviewing Plaintiff
9 regarding potential Class Members; (5) researching the applicable law and potential defenses; (6)
10 constructing damage models based on interpretations of California law and the facts and numbers
11 provided by Defendant; and (7) reviewing information provided by Defendant in response to
12 informal discovery and in advance of the mediation. (*Id.*) The Parties conducted their own
13 evaluations of the potential recoveries based on the claims alleged in the Action, including
14 consulting experts. (*Id.*)

15 Defendant, for its part, vigorously contested liability, the amount of claimed damages, and
16 the propriety of class certification. (*Id.* at ¶ 8.) After analyzing the relevant documents and other
17 gathered data, Class Counsel believed that this case was appropriate for resolution via mediation.
18 (*Id.*) Given the high level of risk present for both sides, the Parties elected to mediate Plaintiff's
19 claims and attempt settlement. (*Id.*)

20 **C. Settlement Efforts**

21 On October 10, 2024, the Parties participated in an all-day mediation with David Lowe, Esq.,
22 a skilled mediator experienced in wage and hour class actions. (Kim Decl., ¶ 9.) During mediation,
23 counsel for Plaintiff and Defendant discussed all aspects of the case, including the risks of continued
24 litigation and the risks to both parties of proceeding with a class certification motion, as well as the
25 law relating to unpaid wages, meal periods, rest periods, wage statements, and final pay. (*Id.*)
26 Following mediation, the Parties accepted a mediator's proposal outlining general settlement terms
27 to resolve the lawsuit. (*Id.*) The Parties continued to work together on a long-form Settlement
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1 Agreement following mediation, which resulted in the Settlement Agreement before the Court for
2 approval. (*Id.*)

3 From Class Counsel’s review of the strengths and weaknesses of the case and the risks and
4 delays posed by further litigation, Class Counsel believes that the Settlement is fair and reasonable.
5 (*Id.* at ¶ 10.) Further, the Settlement Agreement was the product of a non-collusive settlement
6 process in which the Parties were forced to make significant compromises in the interest of reaching
7 a full and complete settlement of the lawsuit. (*Id.*)

8 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

9 **The Class/Class Period and Aggrieved Employees/PAGA Period:** The Settlement
10 Agreement defines the “Class” as “all current and former non-exempt, hourly dining, culinary,
11 housekeeping, and maintenance individuals who worked for Defendant in California during the
12 Class Period,” which is May 1, 2020, to October, 2024. (Kim Decl., Exhibit 1, Settlement
13 Agreement, ¶¶ 1.5, 1.12.) The Settlement Agreement also defines “Aggrieved Employees” as “all
14 current and former non-exempt, hourly dining, culinary, housekeeping, and maintenance
15 individuals who worked for Defendant in California during the PAGA Period,” which is February
16 22, 2023, through October 10, 2024. (Kim Decl., Exhibit 1, Settlement Agreement, ¶¶ 1.4, 1.34.)

17 **Key Financial Terms:** Under the terms of the proposed Settlement Agreement, Defendant
18 has agreed to pay \$265,000.00 (“Gross Settlement Amount”) on a non-reversionary basis. (Kim
19 Decl., Exhibit 1, Settlement Agreement, ¶ 3.1.) In addition to and separate from the Gross
20 Settlement Amount, Defendant will pay the employers’ portion of any payroll taxes on the wage
21 allocation portion of the individual settlement payments to Class Members. (*Id.*)

22 The Net Settlement Amount, available for distribution to Class Members, is the Gross
23 Settlement Amount, less Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel
24 Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service
25 Payment, and the Administration Expenses Payment. (Kim Decl., Exhibit 1, Settlement
26 Agreement, ¶ 1.29.) These amounts are detailed as follows:

- 27 • Class Counsel Fees and Litigation Expenses Payment: Up to one-third of the Gross

Settlement Amount, or **\$88,333.33**, to Class Counsel as attorneys' fees for the litigation and resolution of this Action and up to **\$20,000.00** for actual costs incurred in this Action. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 3.2.2);

- Class Representative Service Payment: Up to **\$10,000.00** to Plaintiff as an award for his service as the class representative (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 3.2.1);
- Settlement Administration Costs Payment: A not-to-exceed amount of **\$8,500.00** to the Settlement Administrator for its fees and costs to administer the Settlement (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 3.2.3);
- PAGA Penalties Payment: **\$10,000.00** for settlement of claims for civil penalties under PAGA, with 25% (\$2,500.00) allocated to the Aggrieved Employees ("Individual PAGA Payments") and 75% (\$7,500.00) allocated to the LWDA ("LWDA PAGA Payment") (Exhibit 1, Settlement Agreement, ¶ 3.2.5).

If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be **\$128,166.67**. (Kim Decl., at ¶ 12.) Twenty percent (20%) of the "Net Settlement Amount" will be allocated to the settlement of wage claims (the "Wage Portion") and will be subject to tax withholding and reported on an IRS W-2 Form. (*Id.*) Each Class Member's share of the Net Settlement Amount ("Individual Settlement Payment") will be calculated based on the number of workweeks the Class Member worked during the Class Period. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 1.24.) For the approximately 284 Class Members (if no exclusions), the average gross Individual Settlement Payment, using a straight average, is \$451.29. The estimated average amount each Class Member will receive per workweek based on the Net Settlement Amount and 13,158 workweeks is \$9.74. (Kim Decl., ¶ 12.) If the Court approves a lesser amount for any of the above requested allocations from the Net Settlement Amount, the remainder will be added to the Net Settlement Amount to be distributed to Class Members. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 3.2.5.2.)

No affirmative duties imposed on Class: The settlement agreement does not impose any affirmative duties on Participating Class Members. (Kim Decl., ¶ 73.) No claim form is required

1 to participate in the Settlement. (*Id.*) Individuals who wish to opt out or object may do so. (*Id.*)

2 **Class Notice Procedures:** Not later than fourteen (14) calendar days after the Court grants
3 Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Settlement
4 Administrator in the form of a Microsoft Excel spreadsheet. (Kim Decl., ¶ 13, Exhibit 1, Settlement
5 Agreement, ¶ 7.4.1.) The Settlement Administrator will mail the Class Notice to all Class Members
6 in no event later than ten (10) days following the receipt of Class Data via first class United States
7 Postal Service (“USPS”) mail. (Kim Decl., ¶ 13, Exhibit 1, Settlement Agreement, ¶ 7.4.2.) Before
8 mailing the Class Notice, the Settlement Administrator will update Class Member addresses using
9 the National Change of Address database. (*Id.*) The Class Notice includes a summary of the case
10 and settlement terms and provides Class Members with detailed instructions on how to exclude
11 themselves, object to the settlement, and dispute the number of workweeks and/or pay periods
12 attributed to each Class Member per Defendant’s records. (Kim Decl., ¶ 13.)

13 Any mailing returned to the Settlement Administrator as undeliverable will be sent within
14 three (3) days via First Class U.S. Mail to the forwarding address affixed thereto, if applicable. (Kim
15 Decl., ¶ 13, Exhibit 1, Settlement Agreement, ¶ 7.4.3.) If no forwarding address is provided, the
16 Settlement Administrator will attempt to determine the correct address again using all reasonably
17 available sources and methods, including the National Change of Address database, skip traces, and
18 direct contact by the Settlement Administrator with Class Members, and re-mail the Class Notice to
19 the most current address obtained. (*Id.*) Class Members will have sixty (60)² days from the mailing
20 of the Class Notice (plus an additional fourteen (14) calendar days if they receive a re-mailed Notice)
21 to opt out of or object to the Settlement or to dispute the number of Workweeks and/or pay periods.
22 (Kim Decl., ¶ 13, Exhibit 1, Settlement Agreement, ¶ 7.4.4.)

23 **Settlement Administrator:** The parties selected Apex Class Action LLC (“Apex”) to
24 handle the notice and administration of the Settlement based on the competitiveness of their bid,
25 their competency in administering settlements, and their responsiveness to the parties’ counsel and
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27 ² The Settlement Agreement provides for forty-five (45) days but the Parties through their counsel have agreed to
28 extend the notice period to sixty (60) days. The sixty (60) day notice period will also be reflected in the Class Notice.

1 settlement class members. (Kim Decl., ¶ 13, Exhibit 1, Settlement Agreement, §7.1). Apex has
2 experience administering class action and PAGA settlements, has procedures in place to protect the
3 security of class data, adequate insurance in the event of a data breach or defalcation of funds, and
4 is qualified to administer the Settlement. (*See* Declaration of Michael Sutherland, which also
5 includes a breakdown of the anticipated costs of class notice.) In addition, Apex will have a website
6 for Class Members to review and reference for details regarding the Final Approval Hearing and
7 any Final Approval Order and Judgment. (Kim Decl., ¶ 13.) If the Court grants final approval of
8 the Settlement, a copy of the Final Approval Order and Judgment will be posted on this website for
9 Class Members to review. (*Id.*) The website will be provided to Class Members in the Class Notice
10 that is mailed to them. (*Id.*)

11 **Funding and Payment of Settlement:** Defendant shall fully fund the Gross Settlement
12 Amount and the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting
13 the funds to the Settlement Administrator within 30 days after the Effective Date, which is when the
14 Court enters a Judgment on its Order Granting Final Approval of the Settlement, and when the
15 Judgment is final. The judgment will be final if after the Court grants final approval of the Settlement
16 and no objection is filed; if an objection is filed, the Gross Settlement Amount will be funded on the
17 day after the deadline for filing a notice of appeal from the judgment (65th day following entry of
18 judgment provided no appeal is filed), or if a timely appeal is filed, the day after the appellate court
19 affirms the judgment. (Kim Decl., Exhibit 1, Settlement Agreement, ¶¶ 1.18, 4.3.) Within ten (10)
20 days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will issue
21 payments to Class Members pursuant to the terms of the Settlement Agreement. (Kim Decl., Exhibit
22 1, Settlement Agreement, ¶ 4.4.) Checks will be mailed by First Class U.S. Mail to each Class
23 Member and will be valid for 180 calendar days from the date of mailing. (Kim Decl., Exhibit 1,
24 Settlement Agreement, ¶ 4.4.1.) Any uncashed amounts after 180 days will be transferred to the
25 California Controller's Office in the name of the Class Member. (Kim Decl., Exhibit 1, Settlement
26 Agreement, ¶ 4.4.3.)

27 **Class Member Release:** The Class Member release of claims will not become effective
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1 until after the Effective Date has passed and Defendant has fully funded the Gross Settlement
2 Amount including its share of payroll taxes. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 5).
3 The release period ends on October 10, 2024, prior to the date of the preliminary approval hearing.
4 Further, the release of claims is tailored in scope to claims that were or could have been alleged
5 based on the facts in the Operative Complaint that arose during the Class Period.

6 **Aggrieved Employee Release:** The Aggrieved Employee release of claims will not become
7 effective until after the Effective Date has passed and Defendant has fully funded the Gross
8 Settlement Amount including its share of payroll taxes. (Kim Decl., Exhibit 1, Settlement
9 Agreement ¶ 5). The release period ends on October 10, 2024, prior to the date of the preliminary
10 approval hearing. (Kim Decl., Exhibit 1, Settlement Agreement ¶¶ 1.34, 5.3). Further, the release of
11 claims is tailored in scope to claims for PAGA civil penalties that are alleged or which reasonably
12 could have been alleged based on the facts alleged in the Operative Complaint and the PAGA Notice
13 to the LWDA that accrued during the PAGA Period. (*Id.*) The Class Notice addresses the fact that
14 an aggrieved employee may not opt out of the PAGA Settlement.

15 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

16 Express judicial policy favors maintaining wage and hour actions as class actions. *Prince v.*
17 *CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.* (1981)
18 29 Cal. 3d 462. Any doubt as to the appropriateness of class treatment should be resolved in favor
19 of class certification, subject to later modification if necessary. *Richmond*, 29 Cal. 3d at 473-75.)
20 The decision to certify a class is a procedural one and should be based on the allegations in the
21 operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v.*
22 *Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.

23 To certify a settlement class, the Court must find the two primary requirements for
24 maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-
25 defined community of interest in the questions of law and fact involving the parties to be
26 represented. *See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab*
27 *Company* (1967) 67 Cal. 2d 695, 704. These criteria are met here for the reasons set forth below.

1 **A. There Is a Numerous and Ascertainable Class**

2 Whether a class is ascertainable is determined by examining the class definition, the size of
3 the class, and the means available for identifying class members. *See Vasquez, supra*, 4 Cal. 3d at
4 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271.
5 Class members are “ascertainable” when they may be readily identified without unreasonable
6 expense or time.

7 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that the
8 numerosity and ascertainability elements are satisfied here. Class Members are all current and
9 former non-exempt, hourly dining, culinary, housekeeping, and maintenance individuals who
10 worked for Defendant in California during the Class Period (May 1, 2020, to October 10, 2024).
11 Defendant has identified 284 Class Members based on a review of its payroll and personnel records.
12 (*Id.*, ¶ 15.)

13 Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

14 **B. There Is a Well-Defined Community of Interest**

15 A community of interest is established by the predominance of common issues of law and
16 fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

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18 [D]oes not depend upon an identical recovery, and the fact that each
19 member of the class must prove his separate claim to a portion of any
20 recovery by the class is only one factor to be considered ... The mere
21 fact that separate transactions are involved does not of itself preclude
22 a finding of the requisite community of interest so long as every
member of the alleged class would not be required to litigate numerous
and substantial questions to determine his individual right to recover
subsequent to the rendering of any class judgment which determined
in plaintiffs’ favor whatever questions were common to the class.

23 *Id.* at 809.

24 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
25 common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the
26 Class is united in its proof. (Kim Decl., ¶ 16.) Because Plaintiff has alleged a single scheme, “the
27 relevant proof [does] not vary among class members” and “clearly presents a common question
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1 fundamental to all class members.” See *In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY
2 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust Litigation*, (SDNY
3 1997) 169 F.R.D. 493, 518). California courts show “no hesitancy” in inferring class-wide causation,
4 class-wide injury, and class-wide damages when a common course of action has been shown. *B.W.I.*
5 *Custom Kitchen*, 191 Cal. App. 3d at 1350. This inference “eliminates the need for each class
6 member to prove individually the consequences of the defendants’ actions to him or her.” *Id.* at 1351
7 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).

8 This action involves, *inter alia*, a determination about Defendant’s alleged failure to pay
9 wages and overtime due to off-the-clock work, failure to provide meal and rest periods, the resulting
10 failure to pay timely and final wages when required and to provide accurate wage statements, failure
11 to reimburse business expenses, and largely derivative claims under the UCL and PAGA. (Kim
12 Decl., ¶ 16.) Plaintiff contends Defendant’s practices affected Class Members in the same way and
13 presents questions that are suitable for common adjudication because all Class Members were
14 subject to the same employment policies and practices. (*Id.*) The outcome of litigation in this matter
15 depends upon questions that are common to Class Members. (*Id.*)

16 C. The Named Plaintiff’s Claims Are Typical

17 A class representative’s claims are typical when they arise from the same event, practice, or
18 course of conduct that gives rise to the claims of other putative class members, and if their claims
19 rest on the same legal theories. The class representative’s claims must be “typical” but not
20 necessarily identical to the claims of other class members. It is sufficient that the representative is
21 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
22 *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
23 (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the law in California that the class
24 representative must have identical interests with the class members.”). Thus, it is not necessary that
25 the class representative should have personally incurred all the damages suffered by each of the
26 other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

27 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
28

1 Plaintiff's claims are typical of Class Members' claims because they arose from the same factual
2 basis and are based on the same legal theories. (Kim Decl., ¶ 17.) Thus, Plaintiff's claims are typical
3 of the claims of the putative Class. (*Id.*)

4 **D. Adequacy of Class Counsel and Class Representative**

5 As detailed below, Class Counsel are experienced in class actions, have represented their
6 clients zealously, and have no conflicts of interest. (Kim Decl., ¶¶ 18, 74-80.) The Class
7 Representative's interests are aligned with those of the Class Members, as he has suffered the same
8 injuries as the Class Members and has no conflicts of interest. (*Id.* at ¶ 18.) Plaintiff has not shrunk
9 from this responsibility. (*Id.*) Indeed, Plaintiff has devoted a substantial amount of time and energy
10 to litigating this Action and effectuating a settlement. (*Id.*) Therefore, Class Counsel and the Class
11 Representative are adequate.

12 **E. Predominance and Superiority**

13 Individual issues do not predominate over those common to the class. (Kim Decl., ¶ 19.) As
14 explained, *supra*, Plaintiff alleges there are common issues of law and fact given that Plaintiff and
15 all Class Members were subjected to the same policies and pay practices during the relevant time
16 period. (*Id.*) Plaintiff and Class Members seek meal and rest premiums, unpaid wages and overtime,
17 reimbursement for business expenses, and penalties for work performed as non-exempt employees
18 for Defendant. (*Id.*) Plaintiff alleges that these issues are suitable for common adjudication because
19 all Class Members were allegedly subject to the same employment policies, and Plaintiff contends
20 the practices applied uniformly to all Class Members. (*Id.*)

21 Plaintiff contends that class resolution is superior to other available methods for the fair and
22 efficient adjudication of the controversy as there is little interest or incentive for Class Members to
23 individually control the prosecution of separate actions. (*Id.* at ¶ 20.) Although the alleged injury
24 resulting from Defendant's policies and practices are real and significant, the cost of individually
25 litigating each such case against Defendant would easily exceed the value of any relief that could
26 be obtained by any one Class Member individually. (*Id.*) If Class Members are forced to litigate
27 their claims individually, it would potentially result in over 284 individual actions against
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1 Defendant, each for relatively small amounts. (*Id.*) Hence, an individual suit would prove
2 uneconomical for potential plaintiffs because litigation costs would dwarf a potential recovery. (*Id.*)

3 **VI. THE THREE-STEP APPROVAL PROCESS**

4 California Rule of Court 3.769 requires court approval of the settlement of class action
5 lawsuits. Preliminary approval is merely the first of three steps that comprise the approval procedure
6 for settlements of class actions. *See* Manual for Complex Litigation, Second §30.44 (1993); *Dunk*
7 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The second approval step is the dissemination
8 of notice of the settlement to all Class Members. *Id.* The third step is a final settlement approval
9 hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of
10 the settlement may be presented and Class Members may be heard. *Id.*

11 The determination of whether a settlement should be preliminarily approved requires, “basic
12 information about the nature and magnitude of the claims in question and the basis for concluding
13 that the consideration being paid for the release of those claims represents a reasonable
14 compromise.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. However, the
15 record need not contain an explicit statement of the maximum theoretical amount that the class could
16 recover. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399,
17 409 (“*Kullar* does not... require any such explicit statement of value; it requires a record which
18 allows “an understanding of the amount that is in controversy and the realistic range of outcomes of
19 the litigation.”). “If the proposed settlement appears to be the product of serious, informed, non-
20 collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment
21 to class representatives or segments of the class, and falls within the range of possible approval, then
22 the court should direct that notice be given to the Class Members of a formal fairness hearing, at
23 which evidence may be presented in support of and in opposition to the settlement.” Manual for
24 Complex Litigation, Second § 30.44, at 229.

25 In deciding whether to approve a proposed class action settlement, the Court must find that
26 a proposed settlement is “fair, adequate, and reasonable” and falls within the “range of approval.”
27 *Dunk*, 48 Cal.App.4th at 1801-02. The trial court considers all relevant factors, such as “the strength
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1 of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of
2 maintaining class action status through trial, the amount offered in settlement, the extent of
3 discovery completed and the stage of the proceedings, the experience and views of counsel, the
4 presence of a governmental participant, and the reaction of the Class Members to the proposed
5 settlement." *Id.* The Settlement satisfies all of these requirements.

6 **VII. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

7 The Court's decision to preliminarily approve a settlement is granted great deference as an
8 exercise within its broad discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
9 234-235. As a matter of public policy, courts both encourage the use of the class action device and
10 favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429,
11 434 ("Courts have long acknowledged the importance of class actions as a means to prevent a failure
12 of justice in our judicial system."); *Class Plaintiffs v. City of Seattle* (1992) 955 F.2d 1268, 1276
13 ("[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation
14 is concerned."). Applying the above factors, the proposed settlement provides a substantial benefit
15 to the Class. It is fair, reasonable, and adequate, and should be preliminarily approved.

16 **A. The Settlement is the Result of Serious, Informed, Non-Collusive Negotiations.**

17 The proposed Settlement was reached as a result of arm's length negotiations after the
18 completion of pertinent discovery and the exchange of necessary class data. (Kim Decl. ¶ 22.) The
19 negotiations have been, at all times, adversarial and non-collusive in nature. (*Id.*) *See*, 4 Newberg
20 on Class Actions § 13:45 (5th ed.) (due to the preference of settlement over litigation, "a court will
21 presume that a proposed class action settlement is fair when certain factors are present, particularly
22 evidence that the settlement is the product of arms-length negotiation, untainted by collusion.").
23 Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that
24 there were substantial risks and uncertainty in proceeding with litigation. (*Id.*) As discussed below,
25 Defendant presented multiple defenses to Plaintiff's claims, both on the merits and with respect to
26 class certification. (*Id.*) Thus, while Plaintiff was prepared to litigate these claims through class
27 certification, and ultimately trial, success was far from guaranteed. (*Id.*) Assistance from a well-

1 respected mediator ensured negotiations between the Parties were non-collusive and well-informed.
2 (*Id.*)

3 **B. Extent of Discovery and Stage of Proceedings**

4 As stated above, the Parties engaged in substantial informal discovery before the Settlement
5 was reached to allow them to fully evaluate the class claims and Defendant's defenses. (*Id.* at ¶ 23.)
6 This litigation has reached the stage where the Parties have a clear view of their respective strengths
7 and weaknesses in this case. (*Id.*)

8 **C. The Strength of Plaintiff's Case and the Risk, Expense, Complexity, and**
9 **Likely Duration of Any Litigation.**

10 Plaintiff's claims are based on Defendant's alleged failure to pay wages (including
11 overtime), failure to provide meal and rest periods, failure to reimburse business expenses, the
12 resulting failure to pay final wages when required and provide accurate wage statements, and largely
13 derivative claims under the UCL and PAGA. (*Id.* at ¶ 24).

14 Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members at least minimum
15 wages for all hours worked and proper overtime wages for hours worked in excess of eight hours in
16 a day and 40 hours in a week. (Kim Decl., ¶ 25.) Specifically, Plaintiff alleges that Defendant
17 required Plaintiff and Class Members to arrive and perform work off the clock before their scheduled
18 shift start times, including undergoing COVID screenings. (*Id.*) Moreover, due to the heavy volume
19 of work and personnel shortages, Plaintiff alleges that Class Members were compelled to work after
20 clocking out at the end of their scheduled shifts to perform tasks such as cleaning and taking out the
21 trash. (*Id.*) Plaintiff also alleges that Defendant failed to incorporate non-discretionary, cash
22 bonuses, and/or shift differential pay into the regular rate of pay used to calculate and pay overtime
23 wages to Class Members. (*Id.* at ¶ 42.)

24 Defendant contends that it did not require off the clock work, paid for all reported hours
25 worked, that Class Members were instructed and required to record all hours worked, that any
26 alleged off the clock work was performed without Defendant's knowledge and was de minimis, and
27 that it paid wages at the proper rates. (Kim Decl., at ¶ 43.) Defendant also argues that given its
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1 written policies and practices, any unrecorded hours are likely subject to individualized inquiry and
2 unlikely to be certified. (*Id.*) Given the difficulty in certifying this claim, Class Counsel applied a
3 significant discount to damages based on this theory. (*Id.*)

4 Plaintiff also alleges that Defendant failed to provide Plaintiff and Class Members with
5 lawful first and second meal periods. (Kim Decl., ¶ 27.) For example, Plaintiff alleges that
6 Defendant's policy required Class Members to take a meal break once instructed to do so by the
7 kitchen lead and once they or management found adequate coverage. (*Id.*) Plaintiff alleges that
8 constant short-staffing led to recurrent late meal periods, and on-duty meal periods, that were
9 interrupted by customer, management, and work demands. (*Id.*)

10 Defendant contends that Class Members were given a reasonable opportunity to take their
11 meal periods, and when compliant meal periods were not provided, Defendant provided premium
12 pay to Class Members as reflected in their time and pay records. (Kim Decl., ¶ 28.) Defendant also
13 contends that the relevant Class Members signed valid meal period waivers. (*Id.*) Defendant further
14 contends that the meal break claim requires individualized inquiries which would preclude class
15 certification. (*Id.*) If Defendant's contentions are proven true and prevail in trial, the likely outcome
16 would be no recovery for the Class Members on the meal break claim. (*Id.*)

17 Plaintiff also contends that Defendant did not provide Class Members with paid 10-minute
18 rest breaks for every four hours or major fraction thereof. (Kim Decl., ¶ 29.) Plaintiff contends that
19 job requirements and duties required of Class Members consistently manifested in a failure to
20 authorize and permit Class Members to take all their required rest breaks. (*Id.*)

21 Defendant maintains that it did provide a reasonable opportunity for Class Members to take
22 duty-free rest breaks during their shifts and dispute all allegations that rest breaks were not provided.
23 (Kim Decl., ¶ 30.) Considering that unlike meal periods, rest breaks need not be recorded, these
24 violations would likely be difficult to prove at trial and potentially depress the damages ultimately
25 awarded. (*Id.*) Therefore, Class Counsel applied significant and appropriate discounts to the rest
26 break claim. (*Id.*)

27 Additionally, Plaintiff alleges that Defendant required Plaintiff and Class Members to use
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1 their cellular phones for work, including downloading the timekeeping app and responding to calls
2 from management, for which they were not reimbursed. (Kim Decl., ¶ 31.) Defendant maintained
3 that individualized issues relating to this claim would preclude class certification. (*Id.*)

4 As for the wage statement and waiting time penalties claims, Defendant contends that these
5 claims are merely derivative of the underlying claims and that Plaintiff and Class Members would
6 be unable to first establish liability for the underlying claims for the reasons described above. (Kim
7 Decl., ¶ 32.) Defendant further contends that even if they could first establish liability for the
8 underlying claims, Plaintiff and Class Members would be unable to establish that Defendant's
9 conduct was willful and knowing as required by the relevant statutes since Defendant acted in good
10 faith to provide accurate wage statements and pay all wages due to Plaintiff and Class Members.
11 (*Id.*) Thus, Defendant contends that the wage statement and waiting time penalties claims to have
12 little to no value. (*Id.*)

13 Further, Defendant contends that the PAGA claim is also derivative of the underlying claims
14 in the Action and ultimately fails because the underlying claims have no merit. (Kim Decl., ¶ 33.)
15 Defendant also contends that even if Plaintiff and Class Members could establish Labor Code
16 violations, the Court has the discretion to award less than the maximum civil penalty amount and
17 would award substantially less civil penalties here because Defendant acted in good faith to comply
18 with the relevant wage and hour laws and any violations were minor and technical in nature. (*Id.*)

19 Defendant generally denies all claims alleged in the Action and further denies class and/or
20 representative treatment is appropriate for any purpose other than this Settlement and that it
21 complied with all applicable laws. (Kim Decl., ¶ 34.) However, Defendant has concluded that further
22 litigation would be protracted and expensive and that it is desirable that the Action be fully and
23 finally settled in the manner and upon the terms and conditions herein. (*Id.*)

24 As stated above, while Plaintiff and Class Counsel contend the claims asserted in the Action
25 have merit, they also acknowledge the expense, delay, and risks of continued litigation. (Kim Decl., ¶
26 35.) Although the Parties engaged in significant informal discovery in advance of mediation, the
27 Parties still had significant discovery to complete had the matter not settled. (*Id.*) This would have
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1 required the expenditure of substantial time and resources by both Parties that would have very
2 likely spanned several years. (*Id.*) Even if Plaintiff were to certify the classes, the Parties would
3 incur considerably more attorney fees and costs through a possible decertification motion, trial, and
4 possible appeal. (*Id.*) This Settlement avoids those risks and the accompanying expense. (*Id.*)

5 **D. The Risk of Maintaining Class Action Status Through Trial.**

6 Plaintiff has not yet filed his motion for class certification, and as such, the extent to
7 which Plaintiff's proposed classes are certifiable is somewhat speculative. (*Id.* at ¶ 36.) Absent
8 settlement, there is a risk that there would not be a certified class at the time of trial, or if there were,
9 it could consist of a significantly smaller group of employees than the proposed Settlement Class,
10 resulting in less overall recovery. (*Id.*)

11 Finally, in class actions, decertification is always a possibility, and there is always a risk that
12 a trial of this magnitude can become unmanageable. (*Id.* at ¶ 37.) Cases like *Duran v. U.S. Bank*
13 *Nat. Assn.* (2014) 59 Cal. 4th 1, 34 address the complexity of using statistical samples in class
14 actions and demonstrate that decertification is a real risk that Class Counsel must consider. (*Id.*) A
15 class trial would have also required expert witnesses, the accrual of extensive litigation costs, and
16 the commitment of extensive further time and financial resources. (*Id.*) Finally, given the complexity
17 and unsettled nature of the issues, it is somewhat likely that any outcome at trial would have resulted
18 in a lengthy and costly appeal. An appeal would result in further delay for the Class Members who
19 have already waited years for resolution in this matter. (*Id.*) Risk and legal uncertainty must be dealt
20 with in any litigation, and this Settlement was the product of compromise accounting for those risks
21 and uncertainty. (*Id.*)

22 **E. The Presence of a Governmental Participant**

23 Class Counsel will be submitting the Settlement Agreement and this Motion to the LWDA
24 concurrently with the filing of this Motion pursuant to Labor Code § 2699(1)(2). (*Id.* at ¶ 38.)

25 **F. The Amount Offered in Settlement is Fair Given the Potential Value of the**
26 **Claims.**

1 If the Court approves the requested allocations from the Gross Settlement Amount of
2 \$265,000.00 as addressed above, the Net Settlement Amount is estimated to be \$128,166.67. (Kim
3 Decl., ¶ 12.) There are approximately 284 total Class Members. (*Id.*) If there are no exclusions from
4 the Class, the average gross Individual Settlement Payment, per Class Member, using a straight
5 average, is \$451.29. (*Id.*) The estimated average amount each Class Member will receive per
6 workweek based on the Net Settlement Amount and 13,158 workweeks is \$9.74. (*Id.*)

7 Based on an analysis of Plaintiff's time and pay records and a sampling of time and pay
8 records for the Class, Plaintiff estimated the potential realistic exposure for the main claims as
9 follows: **\$53,599.00** for unpaid wages claims, including minimum and overtime wages, due to off
10 the clock work; **\$49,156.00** for meal period violations; **\$129,877.50** for rest period violations;
11 **\$53,520.00** for wage statement penalties; **\$132,707.60** in waiting time penalties; **\$7,100.00** for
12 unreimbursed business expenses; and **\$10,000.00** for PAGA penalties. (*Id.* at ¶¶ 41-64.) As such, the
13 total estimated realistic exposure Defendant could face is **\$435,960.10**. (*Id.* at ¶ 67.)

14 The Gross Settlement Amount of \$265,000.00 represents a recovery for the Class of
15 approximately 60% of the total realistic exposure Plaintiff estimated that Defendant could face on
16 the primary claims in this case. (*Id.*) Plaintiff and Class Counsel submit that this is an optimal result
17 in the face of uncertainty and the prospects of protracted and contested litigation through class
18 certification, summary judgment, and trial, and particularly in light of all of the factors described
19 above. (*Id.*)

20 **G. A Balance of Risk Factors and *Kullar* Analysis Support Approval**

21 In deciding whether to approve the settlement, the Court must balance these risk factors
22 against an "understanding of the amount in controversy and the realistic range of outcomes of the
23 litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133; *Munoz v. BCI*
24 *Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-09. The court "must stop
25 short of the detailed and thorough investigation that it would undertake if it were actually trying the
26 case" *Munoz*, at 408. Plaintiff's counsel used the comprehensive data and documents provided
27 to perform an analysis of the potential exposure Defendant faced on Plaintiff's main class-wide
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1 claims, establishing the realistic range of outcomes in this case. As noted above, the Gross
2 Settlement Amount represents a recovery of approximately 60% of the estimated total realistic
3 exposure facing Defendant. (Kim Decl., ¶ 67.)

4 There was a very real prospect that nothing would be recovered by the Class if litigation
5 continued and class certification were ultimately denied. At the same time, further litigation would
6 require the expenditure of significant time and financial resources, and there is always the possibility
7 of adverse developments in the law and the likelihood of extended battles in both the trial court and
8 courts of appeal. Settlement is a prudent compromise that benefits the Class Members promptly.

9 H. Experience and Views of Counsel

10 Experienced counsel, operating at arm's length, have weighed the strengths of the case,
11 examined all the issues and risks of litigation, and endorsed the proposed settlement. Class Counsel
12 are experienced in class actions, have represented their clients zealously, and have no conflicts of
13 interest. (Kim Decl., ¶¶ 74-80.) Class Counsel submits the Settlement is fair, adequate, and
14 reasonable in view of the risks and other considerations addressed and is well-suited for final
15 approval upon completion of the administration process. (Kim Decl., ¶ 80.)

16 VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE 17 CLASS MEMBERS.

18 To be deemed proper, a notice must provide the Class Members with sufficient information
19 to make an informed decision as to whether to accept or object to the settlement. *Mullane v. Central*
20 *Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314. The notice must apprise the Class Members
21 of the pendency of the action; reasonably convey information regarding the settlement and the Class
22 Members' rights, entitlements, and obligations; and affords Class Members the opportunity to
23 present their objections. *Id.*

24 The proposed Class Notice provides all the information a reasonable person would need to
25 make a fully informed decision about the settlement. It will notify all Class Members of the terms
26 of the Settlement, its effect on their rights, their options as Class Members (i.e., participate, object,
27 opt-out, and dispute work weeks), and procedures for exercising those options. (Kim Decl., ¶ 13.)

1 The standard for determining the adequacy of notice is whether it has “a reasonable chance
2 of reaching a substantial percentage of the class members.” *Cartt v. Superior Court* (1975) 50
3 Cal.App.3d 960, 974. Here, the Class Notice will be sent via first-class mail to each of the 284 Class
4 Members at their addresses from Defendant’s records. (Kim Decl., ¶ 13, Exhibit 1, Settlement
5 Agreement ¶¶ 4.2, 7.4.2.) Not later than fourteen (14) calendar days after the Court grants
6 Preliminary Approval of the Settlement, Defendant will deliver the Class Information to the
7 Settlement Administrator in the form of a Microsoft Excel spreadsheet. (*Id.*) The Settlement
8 Administrator will mail the Class Notice to all Class Members in no event later than ten (10) days
9 following the Preliminary Approval Date via first class USPS. (*Id.*) If the USPS does not provide a
10 forwarding address, the Settlement Administrator shall conduct a Class Member Address Search
11 and re-mail the Class Notice to the most current address obtained. (Kim Decl., ¶ 63, Exhibit 1,
12 Settlement Agreement, ¶¶ 1.10, 7.4.3.) Class Notice should be approved as the best and most
13 practicable way to ensure the greatest possible number of Class Members will receive notice. (Kim
14 Decl., ¶ 73.)

15
16 **IX. THE STIPULATED CLASS COUNSEL AWARD AND CLASS COUNSEL FEES**
17 **AND COSTS PAYMENT ARE REASONABLE AND SHOULD BE APPROVED.**

18 Class Counsel respectfully requests, without opposition from Defendant, a Class Counsel
19 Fees Payment of \$88,333.33 (up to one-third of the Gross Settlement Amount) and a reasonable
20 Class Counsel Litigation Expenses Payment not to exceed \$20,000.00, subject to approval by the
21 Court. (Kim Decl. ¶ 68.)

22 Class Counsel submits it has the requisite experience, knowledge, and resources to serve as
23 Class Counsel and to zealously represent the Class. (Kim Decl., ¶¶ 74-80.) Class Counsel has
24 incurred substantial hours in prosecuting this Action on a contingency basis and will not receive any
25 compensation for their efforts until recovery is obtained for the Class. (Kim Decl. ¶ 68.) In addition,
26 Class Counsel’s efforts in reaching the Settlement on behalf of the Class will confer a significant
27 benefit to the Class. (*Id.*) As such, the requested Class Counsel Fees Payment and Class Counsel
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1 Litigation Expenses Payment are reasonable.

2 **X. THE CLASS REPRESENTATIVE SERVICE PAYMENT IS FAIR AND**
3 **REASONABLE**
4

5 “At the conclusion of a class action, the class representatives are eligible for a special
6 payment in recognition of their service to the class.” 5 Newberg on Class Actions § 17:1 (5th ed.).

7 Plaintiff is entitled to a reasonable service payment for his efforts and initiative in bringing
8 and helping to prosecute this action. (Kim Decl., ¶ 69.) Plaintiff spent significant time better
9 apprising himself of his rights, deciding whether remedial action should be taken and how it should
10 be taken, searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff
11 discussing the case and the law. (*Id.*)

12 Both before and after the filing of this lawsuit, Plaintiff conferred with Class Counsel on to
13 discuss every aspect of his case. (Kim Decl., ¶ 70.) Plaintiff provided Class Counsel with
14 information about Defendant and about the industry generally, produced and reviewed documents,
15 identified witnesses, consulted with Class Counsel regarding litigation strategy, participated in the
16 mediation process, monitored the progress of the litigation with Class Counsel, and reviewed and
17 signed the Settlement Agreement. (*Id.*)

18 In light of the foregoing, Class Counsel believes that the \$10,000.00 service award to the
19 Class Representative is fair and reasonable. (Kim Decl., ¶ 71.)

20 **XI. THE ACTION REQUESTED AS A PART OF THE MOTION FOR**
21 **PRELIMINARY APPROVAL**

22 Plaintiff respectfully requests this Court, as part of the preliminary approval process, to
23 grant the following relief and make the following orders:

- 24 1. Review and approve the Settlement Agreement;
25 2. Review and approve the Class Notice, attached to the Settlement Agreement as Exhibit
26 A;
27 3. Consider and determine that the proposed class action settlement as set forth in the
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1 Settlement Agreement preliminarily appears fair, reasonable, and adequate;

2 4. Enter an order conditionally certifying the action as a class action for settlement
3 purposes only and preliminarily approving the proposed class action settlement and the Settlement
4 Agreement;

5 5. Approve and appoint D.Law, Inc. to serve as Class Counsel for settlement purposes;

6 6. Approve and appoint Apex Class Action, LLC as the Settlement Administrator to handle
7 the notice and claims procedures as set forth in the Settlement Agreement;

8 7. Approve the proposed settlement's allocation of funds to claims made under PAGA;

9 8. Order Defendant to disclose to the Settlement Administrator the Class Member's name,
10 last-known mailing address, email address, telephone number, Social Security number, hire dates,
11 and termination dates as set forth in the Settlement Agreement;

12 9. Order Apex to mail the Class Notice to Class Members; and

13 10. Set a date for the Final Approval Hearing.

14 Dated: June 17, 2025

D.LAW, INC.

15 By /s/ Enoch J. Kim

16 Emil Davtyan

17 David Yeremian

18 Alvin B. Lindsay

19 Enoch J. Kim

Rose Sorial

Antonia McKee

Attorneys for Plaintiff and Settlement Class