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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

Richard Tolentino, on behalf of himself,
all others similarly situated, and the
general public,

Plaintiff,

vs.

24-Seven Senior Care LLC, a California
Limited Liability Company, and DOES 1
through 100, inclusive,

Defendants.

Case No. 23-CIV-00710

CLASS ACTION

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

Date: March 26, 2025

Time: 2:00 p.m.

Judge: Hon. Nicole S. Healy

Court: Dept. 28

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

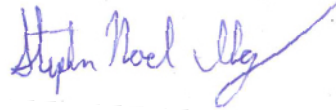
YOU ARE HEREBY NOTIFIED that on April 23, 2025 at 2:00 p.m. in Department 28 of the above-referenced Court, located at Central Court, 800 North Humboldt St., San Mateo, CA 94401, Plaintiff Richard Tolentino, individually and on behalf of all others similarly situated ("Plaintiff"), will ask the Court pursuant to California Code of Civil Procedure section 382 and California Rules of Court, Rule 3.769, to issue an order (1) preliminarily approving the proposed class settlement (and PAGA allocation), (2) approving the form of the class notice materials and approving distribution, (3) appointing a third-party claims administrator, and (4) setting a date for final settlement approval by this Court.

This motion is based upon this Notice of Motion and Motion for Preliminary Approval of Class Action Settlement, the Memorandum of Points and Authorities in Support of Motion for Preliminary Approval of Class Action Settlement, and the Declaration of Stephen Noel Ilg in Support of Preliminary Approval of Class Action Settlement and exhibits thereto, the Proposed Order Granting Preliminary Approval of the Settlement and PAGA allocation, the proposed forms of notice of settlement, and such other and further material or argument as may be presented at the hearing on this motion in addition to the Court's records to date in this action.

Respectfully Submitted,

DATED: March 26, 2025

ILG Legal Office, PC



Stephen Noel Ilg
Attorneys for Plaintiff
Richard Tolentino

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Richard Tolentino (“Plaintiff”) seeks preliminary approval of a proposed class action settlement of wage and hour claims against Defendant 24-Seven Senior Care LLC (“Defendant” or “24-Seven”) (collectively, the “Parties”) upon the terms set out in the Amended Joint Stipulation of Class Action Settlement Agreement (“Settlement”), a copy of which is attached as Exhibit 1 to the Declaration of Stephen Noel Ilg (“Ilg Decl.”) submitted in support hereof. This Settlement of \$120,000 is a stellar result given this very small class of only 77 workers, most of which are part-time, and many of which only worked a few pay periods. The realistic damages analysis for the class action claims indicates that the maximum exposure is only slightly higher than the settlement amount, making this settlement an excellent recovery for this group. The settlement equates to 32% of the maximum damages analysis for all claims but is almost 100% of the maximum damages based on a realistic assessment of which claims could prevail at trial.

Plaintiff requests that the Court take the following actions in response to this Motion:

1. Preliminarily approve the proposed class settlement (including PAGA allocation);
2. Approve the form of the class notice materials and approve distribution;
3. Appoint Simpluris, Inc. as the settlement administrator (“Administrator”); and
4. Set a date for final settlement approval by this Court.

Attached to the Ilg Declaration as Exhibit 2 is a Declaration from a representative of the proposed Claims Administration company, demonstrating why they are qualified to administer this class action settlement. And attached as Exhibit 3 is a Declaration from the proposed Class Representative, Richard Tolentino, describing his contributions to this litigation.

The current operative complaint in this action is the First Amended Complaint, which alleges the following causes of action on behalf of the Settlement Class under California law: (1) failure to provide sick leave in violation of the Labor Code; (2) failure to pay overtime wages in violation of the Labor Code and Wage Orders; (3) failure to provide meal and rest periods; (4)

1 failure to pay final wages on time in violation of the Labor Code; (5) failure to furnish wage and
2 hour statements; (6) unfair business practices in violation of the Business & Professions Code;
3 and (7) Plaintiff also sought civil penalties under the Private Attorneys General Act (PAGA).

4 For purposes of this Settlement only, the Parties stipulated to the conditional certification
5 of the following Settlement Class, defined as: All current and former hourly-paid, non-exempt
6 employees who worked for Defendant in the State of California at any time on or after February
7 14, 2019 (i.e., the date that is four years prior to February 14, 2023, when the Action was filed),
8 through the date of entry of a Court order granting preliminary approval of this settlement.

9 The Parties also stipulated to the conditional certification of the following proposed
10 PAGA Settlement Sub-Class, defined as: All class members who worked for Defendant in the
11 State of California at any time on or after February 14, 2022 through the date of entry of a Court
12 order granting preliminary approval of this Settlement.”

13 The calculations below include the absolute maximum exposure of Defendant if Plaintiff
14 prevailed on all possible theories. However, it is not a realistic assessment of the maximum
15 damages because Plaintiff is not likely to recover for final pay and wage statement penalties
16 because there was a good faith dispute about the claims which would trigger derivative versions
17 of those penalties. Note that Plaintiff is not bringing a direct claim for final pay (Section 203) or
18 wage statement penalties (Section 226) and so Plaintiff would have to win the derivative version
19 to recover the penalties. A more realistic damages and penalties analysis is the following:

20 Maximum exposure (which omits final pay and wage statement claims) is as follows:
21 Class action claims would trigger a maximum of: \$122,870.00 which includes interest for meal
22 break, rest break, and overtime claims. In addition, PAGA penalties would be a maximum of
23 \$122,375. (Ilg Decl. ¶ 23.)

24 The table below displays estimated maximum damages:

25 ///

26 ///

27 ///

Claim	Time Period	Class Size	Workweeks / Max Damages or Civil Penalties
All non-PAGA Combined	February 14, 2019, up to present	77	2,066 aggregate workweeks / \$466,870 aggregate (including interest on applicable claims)
Overtime	February 14, 2019, up to present	77	\$41,320.00 (+ 10% Interest per Lab Code 218.6, CCP 1021.5)
Meal and rest breaks	February 14, 2019, up to present	77	\$20,660 for Meal Break claims and \$41,320 for Rest Break claims (+ 10% Interest per Lab Code 218.6, CCP 1021.5)
Sick leave	February 14, 2019, up to present	77	\$9,240.00 (+ 10% Interest per Lab Code 218.6, CCP 1021.5)
Final Pay	February 14, 2019, up to present	40	Workweeks is irrelevant to §203 calculation / \$240,000
Wage Statement	February 14, 2019, up to present	26	\$104,000.00
All PAGA Combined	February 14, 2022, to Present	26	445 pay periods / \$235,125.00 aggregate
Sick leave	February 14, 2022, up to present	26	\$11,125.00
Overtime	February 14, 2022, up to present	26	\$44,500.00
Meal and rest	February 14, 2022, up to present	26	\$22,250.00 for Meal Break and

breaks	to present		\$44,500.00 for Rest Break
Final Pay	February 14, 2022, up to present	15	Workweeks is irrelevant to §203 calculation / \$1,500
Wage Statement	February 14, 2022, up to present	26	\$111,250.00

(Ilg Decl. ¶ 23.) Details on the calculations are included in the Ilg Decl. (*Id.*)

All criteria for preliminary approval are satisfied. The Settlement resulted from discovery and investigation by both Parties into the strength of the claims and defenses. The terms of the Settlement are objectively fair, adequate, and reasonable to the Class and are the product of arm's-length negotiations. Defendant has agreed to pay One Hundred and Twenty Thousand Dollars and Zero Cents (\$120,000.00) to settle this matter for the time period from February 14, 2019, through the date the Court grants preliminary approval. This Settlement provides excellent value to the Class.

Table 1 below (Ilg Decl. ¶ 21.) shows the range of payouts including and excluding the PAGA allocation. These amounts are significant given the amounts at issue and risks of litigation.

Table 1

	NSA (w/PAGA)	NSA (w/o PAGA)
	\$ 53,000.00	\$ 46,000.00
Highest	\$ 5,524.25	\$ 4,794.63
Lowest	\$ 27.35	\$ 23.74
Mean	\$ 898.31	\$ 779.66
Median	\$ 328.17	\$ 284.83

II. CASE BACKGROUND

A. The Parties and Class Members at Issue

24-Seven Senior Care LLC is in the senior home care industry. 24-Seven is authorized to and does conduct business in the State of California, including but not necessarily limited to

1 Foster City, California. (Ilg Decl. ¶ 2.)

2 Plaintiff Tolentino began working for Defendant on January 2, 2017, and was terminated
3 on October 28, 2022. Plaintiff and Class Members worked as home caregivers, with job duties
4 that included but were not limited to providing home health care services including frequent
5 housekeeping duties and preparing meals for individuals. (Ilg Decl. ¶ 3.)

6 **B. Summary of Allegations**

7 Defendant did not pay overtime to employees when they worked in excess of 8 hours in
8 one shift, including Plaintiff based on Defendant's view that the governing Wage Order would
9 not require overtime pay after eight hours of work. Accordingly, even when Plaintiff worked
10 longer shifts, he would be paid the same hourly rate for all work. (Ilg Decl. ¶ 4.)

11 Plaintiff alleges that Defendant did not provide proper meal and rest breaks to its
12 employees, including Plaintiff. Defendant does not have any policy describing entitlement to
13 meal and rest breaks. In fact, Defendant told employees there were not permitted to leave the
14 premises. (Ilg Decl. ¶ 4.)

15 Defendant did not provide employees timely and accurate wage and hour statements,
16 including Plaintiff. Because Defendant did not pay for overtime or meal and rest breaks,
17 Plaintiff's paychecks were consistently short. Thus, wage statements were not accurate. (Ilg
18 Decl. ¶ 4.)

19 Defendants denied sick leave to its employees, including Plaintiff. (Ilg Decl. ¶ 4.)

20 Defendant did not pay final wages on time to its employees, including Plaintiff. Because
21 Defendant did not pay for overtime or meal and rest breaks, Plaintiff's paychecks were
22 consistently short. Thus, he still has not received all of his wages, and it has been more than thirty
23 (30) days. (Ilg Decl. ¶ 4.)

24 On February 14, 2023, Plaintiff Richard Tolentino filed this case against Defendant 24-
25 Seven Senior Care LLC alleging claims for violations of wage and hour laws. Plaintiff amended
26 the complaint once on June 29, 2023, as discovery and investigation unfolded. In the operative
27 pleading, Plaintiff alleges, on behalf of himself and the Class, that they are owed damages,
28

penalties, interest, attorneys' fees and costs because Defendant (1) failed to provide sick leave, (2) failed to pay overtime wages to the class members, (3) failed to provide meal and rest periods, (4) failed to pay final wages on time to the class members, (5) failed to provide accurate itemized wage statements to the class members, (4) engaged in unfair business practices, and (5) violated the Private Attorney General Act (PAGA).

Plaintiff brought this action on behalf of himself and an hourly employee class, consisting of all current and former hourly-paid, non-exempt employees who worked for Defendant in the State of California at any time on or after February 14, 2019 (i.e., the date that is four years prior to February 14, 2023, when the Action was filed).

C. Investigation, Discovery, and Litigation

The discovery conducted in this case was thorough. The Parties have spent considerable time investigating and litigating the claims, defenses, and alleged damages at issue in the lawsuit. Investigation and discovery preceded the filing of the case in February 2023 and continued through May 23, 2024, when the Parties attended their first and final mediation. (Ilg Decl. ¶ 5.)

Class Counsel propounded written discovery, including lengthy sets of document requests and interrogatories. (Ilg Decl. ¶ 6.) The Parties met and conferred, and Plaintiff was able to obtain a class list. (Ilg Decl. ¶ 6.) Class Counsel spoke with many class members and obtained supporting witness declarations. (Ilg Decl. ¶ 7.) The Parties also propounded and responded to written discovery, including lengthy sets of special interrogatories and documents requests. Class Counsel met and conferred on multiple occasions regarding allegedly inadequate discovery responses exchanged class-wide data prior to mediation to enable the Parties to conduct detailed damages assessments. (Ilg Decl. ¶ 8.)

D. Settlement Negotiations

On May 23, 2024, the Parties engaged in arm's length negotiations during a mediation session facilitated by William Kampf of Wiliam Kampf Mediation (<https://wkmediation.com/>) — an experienced and well-respected neutral. The mediation resulted in settlement in principle with Mr. Kampf's assistance and a tentative agreement with the key terms. The parties continued

to negotiate the full set of terms for several weeks. (Ilg Decl. ¶ 9.)

III. KEY SETTLEMENT TERMS

A. Settlement Amount

The Parties agreed to a non-reversionary settlement of \$120,000, the “Maximum Settlement Amount” (“MSA”), utilizing a checks-mailed distribution procedure, paid in two installments. (Settlement §5.) (Ilg Decl. ¶ 10.) The amount that will be available for distribution to Class Members is the “Net Settlement Amount” or “NSA.” (Settlement §5.) The NSA shall mean the Maximum Settlement Amount of \$120,000 minus: (a) Court-approved Class Representative service payments of up to \$7,500.00; (b) actual litigation costs to Class Counsel of up to \$7,500.00; (c) Court-approved attorneys’ fees of up to one-third of the MSA (up to \$40,000.00); (d) claims administration expenses of up to \$12,000¹; (e) PAGA Allocation of \$7,000 (i.e., payments to LWDA of \$5,250 and distribution of \$1,750 to the Settlement Class); and (f) applicable taxes and withholdings. (Settlement §§ 4. D. (2), (3), (4) (5), (6), (7), (8)) Accordingly, the NSA including the PAGA allocation will be a minimum of \$53,000, minus applicable taxes and withholdings. Excluding the PAGA allocation, the NSA is a minimum of \$46,000, minus applicable taxes and withholdings. This amount is non-reversionary; if the Court approves a lesser amount of any of the above-referenced costs, the NSA will increase proportionately. (Ilg Decl. ¶ 11.)

The Administrator will determine each participating Settlement Class member’s proportionate total weeks worked during the Class Period, by multiplying the NSA by a fraction, the numerator of which is the participating Settlement Class member’s total weeks worked during the Class Period, and the denominator of which is the total amount of weeks worked by all participating Settlement Class members during the Class Period. (Settlement § 5.B.i.)

Each participating Class member who worked during the PAGA time period (i.e., February 14, 2022, to Present) will also receive a portion of the remaining PAGA penalty

¹ Plaintiffs solicited four bids from experienced class action administrators. The lowest bid was from Simpluris, Inc, who had a maximum cap of \$11,108.

allocation (i.e. 25% of PAGA amount, which will be payable to participating Class members) similarly based on each participating Class member's proportionate total weeks worked during the PAGA time period. (Settlement § 5.B.ii.)

For purposes of calculating applicable taxes and withholdings, each Settlement Share shall be allocated as follows: Twenty percent (20%) as wages; and eighty percent (80%) as penalties and interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class members W-2 Forms for amounts deemed "wages" and 1099 Forms for the amounts allocated as penalties and interest (Settlement §§ 5.F., 5.H.)²

B. Administrator

The proposed Administrator is Simpluris, Inc., which has significant experience, addressed in more detail in the Ilg Decl. (Ilg Decl. ¶ 13.) The Settlement Administrator's costs shall be paid out from the MSA. The Settlement Administrator shall be responsible for sending notices to the Settlement Class (including a Spanish-language translation), calculating Settlement Shares, and preparing all checks and mailings. The Settlement Administrator shall provide weekly reports to both Class Counsel and Defense Counsel as to class participation with respect to opt-outs and objections, and other duties as described in the Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the MSA by Class Counsel only after Settlement Shares and the Notice of Settlement Distribution have been mailed to all participating Settlement Class members. A maximum of \$12,000 is requested to reimburse costs of the Administrator. (Settlement § 8.) (Ilg Decl. ¶ 14.)

C. Release of Claims

With respect to the time period of February 14, 2019, through the date of preliminary approval, Plaintiff and Settlement Class Members release each and every claim which was alleged or could have been alleged on behalf of the Settlement Class in the Action, including but not limited to, all claims related to or arising out of the operative complaint. However, the release

² The PAGA penalties are, by definition, non-wages.

does not apply to Class Members who timely opt out of the Settlement³. (Settlement § 3.)

D. Disputes

Settlement Class Members will have the opportunity, should they disagree with the information stated in their Notice of Settlement Award, to submit a dispute with documentation to show contrary information, as explained in the Class Notice. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted, and will make a determination after consulting with the Parties. Defendant's records, including time and pay records, shall be presumptively determinative in any dispute or challenge by a Settlement Class member over entitlement to payment, share of payment or membership in the class. The Parties and the Settlement Administrator will evaluate any documentation timely submitted and discuss in good faith how many work weeks should be credited to each Settlement Class member so that a good faith resolution can be reached as to any disputes timely submitted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Shares under the terms of the Settlement Agreement. (Settlement § 10.E.)

E. Uncashed Checks

The expiration date of the settlement checks will be one hundred and twenty (120) calendar days from the date that the settlement checks are mailed. The amount of any settlement checks that are returned as undeliverable or not cashed by a Settlement Class Member within one hundred and twenty (120) calendar days of the date of the mailing of the settlement checks shall become null and void, and such monies plus interests accrued thereon shall be distributed to the nonprofit "Legal Aid at Work" (LAAW), located at located at 180 Montgomery Street, Suite 600, San Francisco, CA 94104, pursuant to Code of Civil Procedure section 384. (Settlement § 5. I.) (Decl. ¶ 15)

IV. PRELIMINARY APPROVAL SHOULD BE GRANTED

³ Other than the PAGA claim which is not subject to an opt-out procedure.

Preliminary approval requires a plan for dissemination of notices to class members, and a final settlement approval hearing, which serves class members' due process rights and the court's role as the guardian of the Class' interests. *See* Cal. Rule of Court 3.769; 4 Conte & Newberg, *Newberg on Class Actions*, §11.22 *et seq.* (4th Ed. 2002); Civ. Code § 1781(f).⁴

At the preliminary approval stage, the court has broad powers to determine whether the proposed settlement is fair under the circumstances of the case. *See Wershba v. Apple Computer, Inc.* 91 Cal. App. 4th 224, 234-35 (2001). Preliminary approval is warranted if the settlement falls within "the range of reasonableness." *See North County Contractor's Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-1090 (1994). *See also Newberg on Class Actions*, § 11.25.

The settlement is fair, adequate, reasonable, and in the Class' best interests. It was reached after significant litigation, avoids significant risks of continued litigation, provides great value to the Class, and is the result of the independent assessment of counsel and extensive arms-length negotiation before an experienced mediator. (Ilg Decl. ¶ 16.)

A. Evaluation of the Settlement Supports Preliminary Approval

The settlement should be fair, reasonable, and adequate for class members overall. *Dunk*, 48 Cal. App. 4th at 1801. A presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act diligently; and (3) counsel is experienced in similar litigation. *Id.* at 1802. *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006).

The law favors settlement, particularly in class actions where substantial resources can be saved by avoiding the time and costs of litigation. *See Newberg on Class Actions* § 11:41; *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). For preliminary approval, the court makes an "initial evaluation" of the fairness of the settlement on the basis of the written and oral submissions. *See Manual for Complex Litigation*, § 21.632. The court considers several

⁴ California courts may seek guidance from federal law regarding certification issues. *See Vasquez v. Super. Ct.*, 4 Cal. 3d 800 (1971); *Green v. Obledo*, 29 Cal. 3d 126, 145-146 (1981).

factors, including “the strength of Plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel.” *Kullar v. Foot Locker Retail Inc.*, 168 Cal. App. 4th 116, 128 (2008).

1. Settlement Reached After Extensive Investigation and Discovery

The extensive discovery conducted in this matter have given Plaintiff and Class Counsel a sound understanding of the merits and worth of Class Members’ claims.

Class Counsel propounded written discovery, including lengthy sets of document requests and interrogatories. (Ilg Decl. ¶ 6.) The Parties met and conferred and Plaintiff obtained a class list. (Ilg Decl. ¶ 6.) Class Counsel spoke with a significant number of class members and obtained declarations from several of them. (Ilg Decl. ¶ 7.) Plaintiff and one of the class members also shared documents, including the Defendant’s employee handbook, as well as relevant communications. (Ilg Decl. ¶¶ 8, 18.) The Parties also exchanged class-wide data prior to mediation to enable the Parties to conduct detailed damages assessments. (Ilg Decl. ¶ 8.)

2. Settlement is the Result of Arm’s-Length Negotiations and Mediation

California courts recognize that “a presumption of fairness exists where ... [a] settlement is reached through arm’s-length bargaining.” *Wershba*, 91 Cal. App. 4th at 245. “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement’s fairness.” *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986).

The Parties mediated over the course of a full day before William Kampf of William Kampf Mediation, a highly respected mediator and former litigator. The mediation was conducted at arms-length and progressed toward a resolution. The Parties entered into a tentative agreement, which has been memorialized in the full-form Settlement Agreement. (Ilg Decl. ¶ 19.)

3. The Proposed Settlement is Reasonable Given the Strengths and Weaknesses of Plaintiff’s Claims, and Defendant’s Defenses

1 Plaintiff's claims stemmed from Defendant's alleged failure to comply with wage and
2 hour laws and derivative penalties. Plaintiff contends the claims have merit and are supported by
3 evidence. Defendant denies all of Plaintiff's claims, contentions, and allegations. Defendant
4 further contends Plaintiff would not be able to prevail at trial. (Ilg Decl. ¶ 20.)

5 Following the California Supreme Court's remand of *Naranjo v. Spectrum Security*
6 *Services, Inc.*, 13 Cal.5th 93 (2022), the California Court of Appeal for the Second Appellate
7 District held that waiting time penalties and wage statement penalties could not be imposed on
8 the defendant-employer there as it had not committed "knowing and intentional" violations of
9 the wage statement statute, and had not "willfully" failed to pay all wages due at the end of
10 employment because it had a good faith belief that it was not violating California's wage and
11 hour laws. Given this, even if Plaintiff were to prevail in his overtime or meal and rest break
12 claims, derivative penalties under Sections 203 and 226 may not succeed because of Defendant's
13 viable good faith defense that it had honestly (but mistakenly) been paying employees under the
14 wrong Wage Order.

15 Consequently, Plaintiff acknowledges the risk associated with continued litigation.
16 Defendant denied all of the claims alleged by the Plaintiff. In light of the facts uncovered in
17 discovery, the risk posed by Defendant's defenses, and the *Naranjo* decision, Class Counsel
18 believes that continued litigation would be protracted, uncertain, and contrary to the interests of
19 Class Members. In light of these realities, settlement is the best way to resolve the disputes
20 between Defendant and Class Members. (Ilg Decl. ¶ 21.)

21 Plaintiff contends he has a reasonable chance of prevailing on the overtime, meal break,
22 rest break, and sick leave claims but likely would not prevail on the derivative claims for wage
23 statement and final pay. As detailed in the section immediately below, this deal is an unusually
24 valuable settlement given the strengths and weaknesses of the claims. The fact that these 77
25 workers are mostly part-time workers and the fact that many of the 77 only worked a few pay
26 periods, makes the \$120,000 maximum settlement amount very significant. Table 1 below shows
27 the range of payouts including and excluding the PAGA allocation. These amounts are
28

significant given the amounts at issue and risks of litigation.

Table 1

	NSA (w/PAGA)	NSA (w/o PAGA)
	\$ 53,000.00	\$ 46,000.00
Highest	\$ 5,524.25	\$ 4,794.63
Lowest	\$ 27.35	\$ 23.74
Mean	\$ 898.31	\$ 779.66
Median	\$ 328.17	\$ 284.83

(Ilg Decl. ¶ 21.) The PAGA claims are properly at issue before this Court.

4. *Settlement is Reasonable and Provides Substantial Value to the Class*

A settlement is not judged against what might have been recovered at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. *Wershba*, 91 Cal. App. 4th at 224; *Stambaugh v. Super. Court*, 62 Cal. App. 3d 231, 236 (1976). To allow this Court to assess the reasonableness of the settlement, Plaintiff provides an assessment of damages below. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008).

Plaintiff contends he has a reasonable chance of prevailing on the overtime, meal break, rest break, and sick leave claims but likely would not prevail on the derivative claims for wage statement and final pay. If Plaintiff could prevail on all claims—including wage statement and final pay—then the settlement would be approximately 34% of the maximum damages, an excellent result. Given that Plaintiff and the class likely would not prevail on the derivative wage statement or final pay claims, the maximum damages would only be \$122,870 which is only slightly higher than the amount of the settlement here, making this deal an unusually valuable settlement. (Ilg Decl. ¶ 22.)

The basis for this estimate is detailed more thoroughly in the Ilg Decl. Discovery revealed there are 77 Class Members who worked approximately 2,066 workweeks. Plaintiff's counsel's investigation revealed that Class Members worked an average of 2.0 hours of unpaid overtime each week. (Class Members work no more than 3 days a week). However, Class Members were already paid for this time, they just were not paid at 1.5 times the regular rate. The alleged overtime damages are calculated as: (2,066 workweeks)(2.0 hours per week)(regular rate)(0.5).

1 Damages for each claim are provided above in Section I (*see* pages 1 and 2 herein), and in the
2 Ilg Decl. (Ilg Decl. ¶ 22.)

3 The gross Settlement amount is \$120,000 which equates to approximately 32% of the
4 total civil damages. If one excludes the PAGA allocation of \$7,000 then \$113,000 divided by
5 total damages is 24%. If one ignores the wage statement and final pay claims, which are only
6 pled as derivative claims, then the settlement is 92% of the maximum damages even after
7 subtracting the PAGA allocation (i.e., \$113,000 / maximum realistic damages of \$122,870). (Ilg
8 Decl. ¶ 24.)

9 Plaintiff's representative PAGA claims were brought on behalf of himself and nonparty,
10 aggrieved employees (the "PAGA Settlement Sub-Class")-defined as all hourly employees who
11 worked for Defendants during the relevant time PAGA period-in order to enforce labor
12 standards. Plaintiff believes that notices of the alleged violations were submitted online and by
13 mail to the LWDA before the PAGA claim was added to the civil case; however, when plaintiff's
14 counsel attempted to upload a copy of the settlement agreement to the government portal, this
15 case did not appear in the search database. Counsel reviewed documents in the case file which
16 appeared to show a certified mail receipt to the LWDA and another copy to Defendant. Counsel
17 submitted the original PAGA letter to the online portal which allowed for the upload of the
18 settlement agreement. After submission of the two notices (the first one which may have only
19 been mailed and the second submission of the same notice which was uploaded to the online
20 portal), the agency did not investigate, presumably for a lack of resources. Plaintiff's lawsuit
21 therefore augments the State's limited enforcement capabilities and encourages compliance with
22 the Labor Code. After the Court's initial order, Counsel investigated further. The Associate
23 Attorney in charge of exhausting pre-filing remedies is no longer at this firm. It now appears that
24 the original notice may have only been sent to the government by mail instead of using the online
25 portal. Counsel contacted the LWDA directly and explained that we believe the original letter
26 was submitted online and by mail but at least by mail before the claim was submitted to the civil
27 court, but the initial submission date online does not show in the LWDA database. The LWDA
28

1 was unable to confirm or deny the date the letter was sent in by mail or if it was submitted
2 electronically. At this point, more than 65 days have passed and the LWDA has not indicated
3 any intention to investigate. While it is possible the exhaustion step was not completed before
4 the claim was added to the civil case, the exhaustion steps clearly have been now based on the
5 second submission. (Ilg Decl. ¶ 46.)

6 Plaintiff can confirm that the First Amended Complaint ("FAC") was submitted to the
7 LWDA via the LWDA's online portal on December 11, 2024. (Ilg Decl. ¶ 47.)

8 *5. Class Counsel Is Experienced and Recommends Settlement*

9 While the recommendations of counsel proposing the settlement are not conclusive, the
10 Court can properly take them into account, particularly where, as here, they have been involved
11 in litigation for some period of time, appear to be competent, have experience with this type of
12 litigation, and have obtained substantial data from the opposing party. See *Newberg on Class*
13 *Actions*, §11.47. Counsel is experienced and recommends that the Court approve the settlement.
14 (Ilg Decl. ¶¶ 1, 25.)

15 The Parties were fully informed of the legal issues and potential damages as they entered
16 settlement negotiations, as they had engaged in extensive investigation and discovery. In
17 reaching settlement, counsel on both sides relied on substantial litigation experience in similar
18 employment class actions and a thorough analysis of the legal and factual issues presented in this
19 case. (Ilg Decl. ¶ 26.) See *7-Eleven Owners*, 85 Cal.App.4th at 1152 (noting that recommendation
20 of settlement from seasoned litigators favors preliminary approval).

21 Class Counsel believes that the claims, causes of action, allegations and contentions
22 asserted in this action have merit. However, Class Counsel recognizes and acknowledges the
23 expense and delay of continued lengthy proceedings necessary to prosecute the case against
24 Defendant through trial and appeals. Class Counsel has taken into account the uncertain outcome
25 of the litigation, the risk of continued litigation in complex actions such as this, as well as the
26 difficulties and delays inherent in such litigation, such as the difficulty of obtaining/maintaining
27 certification and prevailing on the merits at trial. (Ilg Decl. ¶ 27.)

Class Counsel believes that the Settlement confers substantial benefits upon the Class Members and that an independent review of the Settlement Agreement by the Court will confirm this conclusion. (Ilg Decl. ¶ 28.)

B. The Notice Procedure is Reasonable

The Notice procedure is reasonable. Within thirty (30) business days after entry of an order preliminarily approving this Settlement Agreement, Defendant will provide the Settlement Administrator with the names, last known mailing addresses, last known telephone numbers, social security numbers, total weeks worked during the Class Period, and total weeks worked during the PAGA Period for all Class Members (the “Class Data”). The Class Data shall be provided to the Settlement Administrator in a mutually agreed-upon electronic format satisfactory to the Settlement Administrator. (Settlement § 10.A.)

Within twenty (20) days from receipt of the Class Data, the Settlement Administrator shall (i) run the names of all Class Members through the National Change of Address (“NCOA”) database to determine any updated addresses for Class Members; (ii) update the addresses of any Class Member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Share for each Class Member; (iv) provide its calculations to Defense Counsel and Class Counsel for approval (in an anonymized list that shall not disclose the names or any identifying information of any Settlement Class member); and (v) mail a Notice Packet by first class mail to each Class Member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing. Class Members will have 45 days to object/opt out of the Settlement. (Settlement § 10.B., 10.C.)

Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address. Any re-mailed notices will get sixty (60) days to respond. (Settlement § 10.F.)

C. The Notice Satisfies Due Process

To protect the rights of absent class members, the court must provide the best notice practicable. *See Phillips Petroleum Co. v. Shuts*, 472 U.S. 797, 811-12 (1985); *Eisner v. Carlisle & Jacquelyn*, 417 U.S. 156, 174-175 (1974). The purpose of due process is to provide affected class members the right to be heard at a meaningful time, in a meaningful manner. It does not guarantee any particular procedure but rather requires only notice reasonably calculated to apprise interested parties of the action affecting their interests and an opportunity to object. *Ryan v. California Interscholastic Federation*, 94 Cal. App. 4th 1048, 1072 (2001).

The proposed Notice meets this standard. *See* Rule of Court 3.769(f); *Philips Petroleum Co. v. Shuts*, 472 U.S. 797, 811-12 (1985) (“best practicable” notice provides a description of the litigation and explanation of the right to opt out or object). A true and correct copy of the proposed form of Class Notice is attached to the Settlement as Exhibit A. Attached to the Settlement as Exhibit B is a Notice of Settlement Award which provides the data that would be used to calculate the Class Member’s settlement share and an estimate of the share. (Ilg Decl. ¶ 29.) The Class Notice includes: (1) contact information for Class Counsel; (2) the contact information for the Claims Administrator; (3) instructions on how to opt-out, object, or dispute workweeks; and (4) explains what rights are being released. (Ilg Decl. ¶ 30.) A Spanish translation of all notice materials (Exhibit A, B, and C to the Settlement Agreement) will be provided to Class Members. (Ilg Decl. ¶ 14.)

The Notice fulfills the requirement of neutrality. *See Newberg on Class Actions* § 8:39. It informs Class Members about the Settlement, including the formula that will be used to calculate payments, the date and location of the final approval hearing, and the process of objecting to the Settlement or appearing at the final approval hearing. *See* Cal. Rules of Court 3.769(f).

Any Class Member who intends to object to the fairness of this Settlement must submit a written objection by mailing it to the Administrator by the response deadline. (Settlement § 10.D.)

D. Proposed Service Payments, Attorneys Fees, and Costs are Reasonable

Plaintiff understands the Court will not rule on the proposed service payment, attorney fees or legal costs until the Final Fairness Hearing. Plaintiff intends to request a \$7,500 service payment for the Plaintiff/class representative, one-third of the MSA (or \$40,000.00) in attorneys' fees, and a maximum of \$7,500 in litigation costs. Defendant will not oppose these requests. Plaintiff will file a motion for an award of service payments, attorneys' fees and costs to be heard contemporaneously with the final approval hearing. (Ilg Decl. ¶ 31.)

The Parties agreed to a non-reversionary settlement of \$120,000, the "Maximum Settlement Amount" ("MSA"), utilizing a checks-mailed distribution procedure. (Settlement § 5.) The amount that will be available for distribution to Class Members is the "Net Settlement Amount" or "NSA." The NSA shall mean the Maximum Settlement Amount of \$120,000 minus: (a) Court-approved Class Representative service payments of up to \$7,500.00; (b) actual litigation costs to Class Counsel of up to \$7,500.00; (c) Court-approved attorneys' fees of up to one-third of the MSA (up to \$40,000.00); (d) claims administration expenses of up to \$12,000; (e) PAGA Allocation of \$7,000 (i.e., payments to LWDA of \$5,250 and distribution of \$1,750 to the Settlement Class); and (f) applicable taxes and withholdings. (Settlement §§ 4. D. (2), (3), (4) (5), (6), (7), (8)) Accordingly, the NSA including the PAGA allocation will be a minimum of \$53,000, minus applicable taxes and withholdings. Excluding the PAGA allocation, the NSA is a minimum of \$46,000, minus applicable taxes and withholdings. This amount is non-reversionary; if the Court approves a lesser amount of any of the above-referenced costs, the NSA will increase proportionately. (Ilg Decl. ¶ 11.)

V. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED

The last step in the approval process is the final approval hearing, at which the Court may hear any further evidence and argument necessary to evaluate the proposed Settlement. *See* Cal. Rules of Court 3.769(b). Plaintiff proposes a final approval hearing on or after January 16, 2025.

VI. CLASS CERTIFICATION FACTORS ARE SATISFIED

A. Legal Standard

Class certification is appropriate upon a showing of the existence of "[1] an ascertainable

1 and sufficiently numerous class, [2] a well-defined community of interest, and [3] substantial
2 benefits from certification that render proceeding as a class superior to the alternatives.” *Ayala v.*
3 *Antelope Valley Newspapers, Inc.*, 59 Cal. 4th 522, 529-30 (2014) (citing *Brinker Restaurant*
4 *Corp. v. Sup. Ct.*, 53 Cal. 4th 1004, 1021(2012)). In turn, the community of interest requirement
5 embodies three factors: (1) predominant common questions of law or fact; (2) class
6 representatives with claims or defenses typical of the class; and (3) class representatives who can
7 adequately represent the class.” *Ayala*, 59 Cal. 4th at 530. At the class certification stage, the
8 question is not whether the plaintiffs will prevail on the merits, but rather, whether the plaintiffs
9 meet the requirements such that class treatment would be appropriate. *See Sav-On Drug Stores,*
10 *Inc. v. Superior Court*, 34 Cal. 4th 319, 327 (2004) (“focus in a certification dispute is on what
11 type of questions—common or individual—are likely to arise in the action, rather than on the
12 merits of the case”); *Capitol People First v. Dep’t of Dev. Serv.*, 155 Cal. App. 4th 676, 688-89
13 (2007) (“certification question does not inquire whether the action is factually or legally
14 meritorious”). However, a plaintiff need not show that every issue in the case is capable of class-
15 wide resolution, and may establish propriety of class treatment by showing “ways to manage
16 effectively proof of any elements that may require individualized evidence.” *Ayala* at 533.

17 California’s class action procedures are virtually identical to the federal versions.
18 California courts may look to federal authority for guidance on matters involving class action
19 procedures, where the caselaw is much more robust. (*Vasquez v. Superior Court*, 4 Cal. 3d 800,
20 820–821, (1971); *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 709; (1967); *Caro v. Procter & Gamble*
21 *Co.*, 18 Cal. App. 4th 644, 656 (1993).) Moreover, California Rule of Court, Rule 3.767 “is
22 virtually identical to Federal Rules of Civil Procedure, Rule 23(d)(1)(D).” *In re BCBG Overtime*
23 *Cases*, 163 Cal. App. 4th 1293, 1298 (2008). Rule 23 of the Federal Rules of Civil Procedure
24 provides that certification is warranted when all four requirements of Rule 23(a) and at least one
25 requirement of Rule 23(b) are met. This Court should certify the classes and subclasses described
26 herein under Rules 23(a) and 23(b)(3).

27 Here, all of the requirements necessary for class certification are satisfied.

B. The Putative Class is Readily Ascertainable and Sufficiently Numerous

Class members are ascertainable and identifiable because they may be readily identified without unreasonable expense or time by reference to official records. *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 932 (1981). Here, the putative class members have already been identified. The Class consists of at least 77 former and current employees who worked for Defendants at numerous California locations. (Ilg Decl. ¶ 48.). In deciding whether numerosity is met, the Court determines “whether...the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.” *Dunbar v. Albertson’s, Inc.*, 141 Cal. App. 4th 1422, 1430 (2006). Here, with at least 77 class members, joinder would be impracticable, which weighs in favor of certification. *See Hebbard v. Colegrove*, 28 Cal. App. 3d 1017, 1030 (1972) (class of 28 members satisfied numerosity requirement).

C. The Community of Interest Requirement is Satisfied

“As a general rule, if the defendant’s liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually provide their damages.” *Hicks v. Kaufman & Broad Home Corp.*, 89 Cal. App. 4th 908, 916 (2001). The class members’ claims “must depend upon a common contention” and “[t]hat common contention...must be of such a nature that it is capable of class-wide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011)

1. Common Question of Defendants’ Failure to Pay Overtime Wages is a Prerequisite to Each Cause of Action and Involves Common Inquiries

Resolution of this lawsuit turns on common questions: e.g. did Defendants fail to pay employees overtime wages when they worked in excess of eight hours a day and forty in a week? Answering this common question is a prerequisite to every claim in this action, making the lawsuit particularly suitable for class treatment. *See Wal-Mart Stores, Inc.*, supra, 131 S.Ct. at 2551 (“What matters to class certification...[is] the capacity of a class-wide proceeding to generate common answers apt to drive resolution of the litigation”). According to the overtime

1 requirements set out in Wage Orders, the evidence relevant to the factual question of whether
2 Class Members were paid overtime wages when they worked in excess of eight hours a day is
3 common among all class members. All employees were subject to common policies and
4 procedures. (Ilg Decl. ¶ 49.)

5 2. Common Question of Whether Plaintiffs and Class Members were Paid Overtime
6 Wages Can Be Proven Through Common Evidence

7 The key Common Questions (did the Class work overtime hours without proper overtime
8 payments?) can be answered with common evidence. More specifically, classwide timekeeping
9 and payroll records establish when Class Members worked and what they were already paid.
10 Furthermore, companywide evidence about the type of work performed by Defendant provides
11 common evidence to establish which Wage Order sections govern the overtime issue—a common
12 answer to the key common question using common evidence. Plaintiff's secondary argument also
13 relies on common evidence; that is, Plaintiff can also prove overtime was owed based on the
14 common job duties of all Class Members who performed the same work. That common evidence
15 would also provide a common issue to the key common question. Thus, a classwide trial would
16 be superior to individual trials. (Ilg Decl. ¶ 50.)

17 Labor Code section 1194 invalidates any agreement between an employer and an
18 employee to work for less than the minimum or overtime wage required under the applicable
19 Wage Orders. Labor Code section 510 defines a day's work as 8 hours and states that any work
20 in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek
21 must be compensated at the rate of no less than one and one-half times the regular rate of pay.

22 Defendant did not pay overtime to employees when they worked in excess of 8 hours in
23 one shift, including Plaintiff. Plaintiffs and Class Members are and were expected to work in
24 excess of 8 hours in a day and/or 40 hours in a week, resulting in many hours that were unpaid or
25 were not paid at the appropriate overtime rates of pay. Plaintiffs and Class Members were entitled
26 to receive one-and-one half times the hourly wage for each hour worked past 8 hours in one day,
27 one-and-one half times the hourly wage for each hour worked past 40 hours in one week, and
28

twice the hourly wage for each hour worked past 12 hours in one day and for all hours over 8 during their seventh consecutive day of work in one week. (Ilg Decl. ¶ 51.).

3. Common Questions of Law and Fact Predominate in Each Cause of Action

In addition to the central question of unpaid employee overtime, the predominance of commonality also extends to each of the causes of action asserted by Plaintiffs on behalf of the proposed class. Commonality likewise applies to the final wages, wage and hour statements, and unfair business practices claims. For instance, under California law, employees must be paid for hours worked in excess of 8 hours in a day and/or 40 hours in a week. In addition, California Labor Code section 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge. Section 202 provides that all earned and unpaid wages of an employee who resigns are due and payable immediately if the employee provided at least seventy-two hours' notice; otherwise, wages of an employee who resigns are due within seventy-two hours of resignation. (Ilg Decl. ¶ 52.).

Since Class Members frequently worked hours that should have triggered overtime rates, common evidence will be used to show that Class Members who resigned or were discharged were not paid overtime wages they earned. Plaintiffs' claims for wage statement violations and unfair business practices are similarly derivative of the overtime claim, thereby also warranting a finding of predominance. These derivative claims depend on proof of the underlying overtime claim. (Ilg Decl. ¶ 53.)

Classwide evidence proves Defendant's liability for overtime pay. As detailed above, classwide evidence shows all class members should have been paid according to the 8-hour daily overtime rule. One key legal issue is whether Wage Order 15, regarding household occupations, applies and which overtime rules govern these workers. In the unlikely event the Court analyzes job duties of specific job categories, common evidence would still show liability for overtime. Common evidence would include the company's class wide payroll practices and policies as well as class member testimony. (Ilg Decl. ¶ 54.).

1 Plaintiff will also use common evidence to calculate damages, including class-wide
2 payroll records and class member testimony. (Ilg Decl. ¶ 55.)

3 **D. The Typicality Requirement is Satisfied**

4 Plaintiffs' claims against Defendants are typical of the class because they are "similarly
5 situated." *B.W.I. Custom Kitchen v. Ownes-Illinois, Inc.*, 191 Cal. App. 3d 1341, 1347 (1987).
6 Here, Plaintiff interviewed numerous Class Members which confirmed that all employees had the
7 same job duties and were denied the same overtime compensation due to Defendants' policies.
8 (Ilg Decl. ¶ 56.) This satisfies the typicality requirement. *See Guifu Li v. A Perfect Franchise,*
9 *Inc.*, 2011 WL 4635198, at *8 (N.D. Cal. Oct. 5, 2011).

10 **E. The Adequacy Requirement is Satisfied**

11 The adequacy requirement is met by fulfilling two conditions: (1) the named plaintiffs
12 must be represented by counsel qualified to conduct the litigation; and (2) the named plaintiffs'
13 interest in the litigation must not be antagonistic to the interests of the class, i.e., they must have
14 no disabling conflict of interest that might hinder the prosecution of the action on behalf of the
15 class. *See McGhee v. Bank of Am.*, 60 Cal. App. 3d 442, 450-51 (1976). Here, there is no evidence
16 or indication that Plaintiffs have any interest antagonistic to those of the class. To the contrary,
17 the class representative and class members share a common interest in challenging Defendants'
18 unlawful actions. Plaintiff understood the nature of this action and his duties as class
19 representatives and have assisted counsel in the prosecution of this litigation. (Ilg Decl. ¶ 57.)

20 Moreover, Plaintiff retained counsel who are qualified, experienced, and knowledgeable
21 in the issues raised in this litigation, and who have adequate class action and litigation experience.
22 (Ilg Decl. ¶ 25.)

23 **F. A Class Action Is Superior To The Alternative Of Multiple, Repetitive**
24 **Individual Actions, And Will Benefit Both The Litigants And The Court**

25 Class treatment in this case is superior to any other method of adjudicating the claims
26 made on behalf of the at least 77 class members in this case. Absent class adjudication, handling
27 this high number of individual claims addressing individual issues repetitively would only strain
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1 limited judicial resources. On the other hand, judicial economy will be achieved through class-
2 wide adjudication. Where, as here, common questions of law and fact predominate, courts find
3 that making that determination in a single class action is superior to making that same
4 determination repeatedly in numerous individual adjudications. *See Norris-Wilson v. Delta-T*
5 *Group, Inc.*, 270 F.R.D. 596, 612 (S.D. Cal. 2010). Given the predominant common issues of
6 facts and law in this case, the class action proceeding will fairly and efficiently adjudicate the
7 controversy. Evidence consisting of common policies and practices affecting all class members
8 can be used as common proof and resolve the common question of whether Defendants had a
9 policy of not paying employees overtime wages properly. Damages can be proven through
10 reference to representative evidence consisting of class member testimonies and company records
11 upon which reasonable class-wide and individual damage estimates would be based. Damages
12 can also be assessed through a survey designed and analyzed by an expert witness retained by
13 Plaintiffs. (Ilg Decl. ¶ 58.)

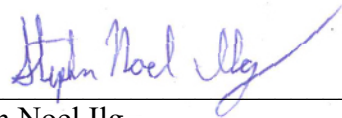
14 **VII. CONCLUSION**

15 For all the reasons set forth herein, Plaintiff respectfully requests that the Court
16 preliminarily approve the proposed settlement and set a date for the final approval hearing.

17
18 Respectfully Submitted,

19 DATED: March 26, 2025

ILG Legal Office, PC

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21 

22 Stephen Noel Ilg
23 Attorneys for Plaintiff
24 Richard Tolentino