

1 DAVID GLENN SPIVAK (SBN 179684)
david@spivaklaw.com

2 CAROLINE TAHMASSIAN (SBN 285680)
caroline@spivaklaw.com

3 THE SPIVAK LAW FIRM

4 8605 Santa Monica Bl

PMB 42554

5 West Hollywood, CA 90069

Telephone: (213) 725-9094

6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiff(s),

8 REBECCA KURKHILL, and all others similarly situated

9 (Additional attorneys for Plaintiff(s) on following page)

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

13 REBECCA KURKHILL, on behalf of herself
14 and all others similarly situated, and the general
15 public, and as "PAGA Members" on behalf of
16 other "PAGA Members" and the State of
California under the Labor Code Private
Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.
19

20 KENDO HOLDINGS INC., a Delaware
21 corporation; and DOES 1-50, inclusive,

22 *Defendant(s).*
23
24
25
26
27
28

Case No. 24STCV32366

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Hearing Date: April 8, 2026

Hearing Time: 9:00 a.m.

Hearing Dept.: SSC-17, The Honorable
Laura A. Seigle

Action filed: December 06, 2024

1 The Motion of Plaintiff Rebecca Kurkhill (hereafter referred to as “Plaintiff”) for
2 Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
3 The Honorable Laura A. Seigle presiding. The Court having considered the Motion, the Class
4 Action and PAGA Settlement Agreement (“Settlement” or “Settlement Agreement”), and
5 supporting papers, HEREBY ORDERS THE FOLLOWING:

6 1. The Court grants preliminary approval of the Settlement and the Settlement Class
7 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
8 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
9 has determined only that there is sufficient evidence to suggest that the proposed settlement might
10 be fair, adequate, and reasonable, and that any final determination of those issues will be made at
11 the final hearing. The Court will make a determination at the hearing on the motion for final
12 approval of class action settlement (the “Final Approval Hearing”) as to whether the Settlement
13 is fair, adequate and reasonable to the Settlement Class.

14 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
15 all current and former non-exempt employees who worked for Defendant Kendo Holdings Inc.
16 (“Defendant” or “Kendo”) in California during the Class Period. The “Class Period” shall mean
17 the period of time from December 06, 2020 through December 18, 2025.

18 3. Based on its records, Defendant estimates that, as of June 21, 2025, (1) there were
19 200 Class Members and 5,062 Total Pay Periods during the Class period and (2) there were 109
20 Aggrieved Employees who worked 2,311 Pay Periods during the PAGA Period. In the event that
21 the Class Data reflects that the number of pay periods as of June 21, 2025 exceeds 5,062 pay
22 periods by more than 10%, either the Gross Settlement Amount shall be proportionately
23 increased, on a percentage basis, to the extent that such pay periods exceed the 10% threshold, or
24 the Class Period and PAGA Period shall be proportionately decreased, on a percentage basis, to
25 the extent that such pay periods exceed the 10% threshold. If the Escalator Clause is triggered,
26 Defendant shall be entitled to select either an increase in the Gross Settlement Amount or a
27 decrease in the time periods covered by the Class Period and PAGA Period. For example, if the
28 number of pay periods as of June 21, 2025 exceeds 5,062 by 11%, then Defendant would elect to

1 either increase the Gross Settlement Amount by 1% or decrease the time periods covered by the
2 Class Period and PAGA Period by 1%. If Defendant selects to decrease the time periods covered
3 by the Class and PAGA period, the time period will be decreased by deducting time from the start
4 of the periods rather than the end of the time periods. If Defendant selects to increase the Gross
5 Settlement Amount, the Class Counsel Fees Payment, Class Representative Service Payment, and
6 PAGA Penalties will increase proportionally according to the number of additional pay periods.
7 If Defendant selects to decrease the Class Period and PAGA Period, the Parties will revise the
8 Class Notice to include the shorter Class and PAGA Periods.

9 4. “Effective Date” means the date of the latest of (a) entry of an order by the Court
10 granting Final Approval of the Settlement; or (b) if there are objections to the Settlement which
11 are not withdrawn, and if an appeal, review, or writ is not sought from the Final Approval Order
12 and Judgment, the sixty-first (61st) day after service of notice of entry of Judgment; or (c) if there
13 is an appeal, review, or writ, the dismissal or denial of the appeal, review, or writ, if the Judgment
14 is no longer subject to further judicial review.

15 5. This action is provisionally certified pursuant to section 382 of the California Code
16 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
17 purposes of settlement only with respect to the proposed Settlement Class.

18 6. No later than twenty-one (21) calendar days after the Court grants Preliminary
19 Approval of the Settlement, Kendo will deliver the Class Data to the Administrator in a Microsoft
20 Excel spreadsheet. To protect Class Members’ privacy rights, the Administrator must maintain
21 the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no
22 other purpose, and restrict access to the Class Data to Administrator employees who need access
23 to the Class Data to effect and perform under this Agreement. Kendo has a continuing duty to
24 immediately notify Class Counsel if it discovers that the Class Data omitted class member
25 identifying information and to provide corrected or updated Class Data as soon as reasonably
26 feasible. Without any extension of the deadline by which Kendo must send the Class Data to the
27 Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to
28 reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

1 7. No later than three (3) business days after receipt of the Class Data, the
2 Administrator shall notify Class Counsel that the list has been received and state the number of
3 Class Members, PAGA Members, Class Pay Periods, and PAGA Pay Periods in the Class Data.

4 8. Using best efforts to perform as soon as possible, and in no event later than fifteen
5 (15) days after receiving the Class Data, the Administrator will send to all Class Members
6 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class
7 Notice substantially in the form attached to the Settlement Agreement as Exhibit A. The first page
8 of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment
9 and/or Individual PAGA Payment payable to the Class Member, and the number of Class Pay
10 Periods and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing
11 Class Notices, the Administrator shall update Class Member addresses using the National Change
12 of Address database.

13 9. No later than five (5) business days after the Administrator’s receipt of any Class
14 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice
15 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
16 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class
17 Notice to the most current address obtained. The Administrator has no obligation to make further
18 attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the
19 USPS a second time.

20 10. Class Counsel’s contact information is David Glenn Spivak, Esq., The Spivak Law
21 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel’s
22 contact information is Kent J. Sprinkle, Candace DesBaillets, and Sophia Jimenez of CDF Labor
23 Law LLP, 4660 La Jolla Village Drive, Suite 740, San Diego, CA 92122.

24 11. The deadlines for Class Members’ written objections, Challenges to Pay Periods
25 and/or Pay Periods (disputes), and Requests for Exclusion will be extended an additional 14 days
26 beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is
27 re-mailed. The Administrator will inform the Class Member of the extended deadline with the
28 re-mailed Notice Packet.

1 12. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
2 discovers any persons who believe they should have been included in the Class Data and should
3 have received Class Notice, the Parties will expeditiously meet and confer in person or by
4 telephone, and in good faith, in an effort to agree on whether to include them as Class Members.
5 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class
6 Members, and the Administrator will send, via email or overnight delivery, a Notice Packet
7 requiring them to exercise options under the Settlement Agreement not later than 14 days after
8 receipt of Class Notice, or the deadline dates in the Notice Packet, which ever are later.

9 13. Requests for Exclusion. Class Members who wish to exclude themselves from
10 (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed
11 written Request for Exclusion no later than forty-five (45) days after the Administrator mails the
12 Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-
13 mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that
14 reasonably communicates the Class Member's election to be excluded from the Settlement and
15 includes the Class Member's name, address and email address or telephone number. To be valid,
16 a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

17 14. The Administrator may not reject a Request for Exclusion as invalid because it
18 fails to contain all the information specified in the Class Notice. The Administrator shall accept
19 any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of
20 the person as a Class Member and the Class Member's desire to be excluded. The Administrator's
21 determination shall be final and not appealable or otherwise susceptible to challenge. If the
22 Administrator has reason to question the authenticity of a Request for Exclusion, the
23 Administrator may demand additional proof of the Class Member's identity. The Administrator's
24 determination of authenticity shall be final and not appealable or otherwise susceptible to
25 challenge.

26 15. Every Class Member who does not submit a timely and valid Request for
27 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
28 benefits and bound by all terms and conditions of the Settlement, including the Participating Class

1 Members' Release under Paragraph 5.2 of the Settlement Agreement, regardless of whether the
2 Participating Class Member actually receives the Class Notice or objects to the Settlement.

3 16. Every Class Member who submits a valid and timely Request for Exclusion is a
4 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
5 right to object to the class action components of the Settlement. Because future PAGA claims are
6 subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who
7 are PAGA Members are deemed to release the claims identified in Paragraph 5.3 of the Settlement
8 Agreement and are eligible for an Individual PAGA Payment. PAGA Members shall not have an
9 opportunity to opt out of receiving an Individual PAGA Payment or release the Released PAGA
10 Claims.

11 17. Challenges to Calculation of Pay Periods. Each Class Member shall have forty-
12 five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14)
13 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Pay
14 Periods allocated to the Class Member in the Class Notice. The Class Member may challenge the
15 allocation by communicating with the Administrator via fax, email or mail. The Administrator
16 must encourage the challenging Class Member to submit supporting documentation. In the
17 absence of any contrary documentation, the Administrator is entitled to presume that the Class
18 Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class
19 Data. The Administrator's determination of each Class Member's allocation of Class Pay Periods
20 shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall
21 promptly provide copies of all challenges to calculation of Class Pay Periods to Defense Counsel
22 only and the Administrator's determination of the challenges.

23 18. Objections to Settlement. Only Participating Class Members may object to the
24 class action components of the Settlement and/or this Agreement, including contesting the
25 fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
26 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

27 19. Participating Class Members may send written objections to the Administrator, by
28 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire

1 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
2 Participating Class Member who elects to send a written objection to the Administrator must do
3 so no later than forty-five (45) days after the Administrator's mailing of the Class Notice (plus an
4 additional fourteen (14) days for Class Members whose Class Notice was re-mailed).

5 20. Non-Participating Class Members have no right to object to any of the class action
6 components of the Settlement.

7 21. No later than fourteen (14) days before the date by which Plaintiff is required to
8 file the Motion for Final Approval of the Settlement, the Administrator will provide to Class
9 Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due
10 diligence and compliance with all of its obligations under this Agreement, including, but not
11 limited to, its mailing of Class Notices, the number of Class Notices returned as undelivered, the
12 re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for
13 Exclusion from Settlement it received (both valid or invalid), and the number of written
14 objections. The Administrator will supplement its declaration as needed or requested by the
15 Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s)
16 in Court.

17 22. The Court approves, as to form and content, the Class Notice in substantially the
18 form attached as Exhibit A to the Settlement Agreement.

19 23. The Court approves, for settlement purposes only, David Glenn Spivak and
20 Caroline Tahmassian of The Spivak Law Firm as Class Counsel.

21 24. The Court approves, for settlement purposes only, Rebecca Kurkhill as the Class
22 Representative.

23 25. The Court approves ILYM Group, Inc. as the Administrator.

24 26. The Court preliminarily approves Class Counsel's request for attorneys' fees and
25 costs subject to final review by the Court.

26 27. The Court preliminarily approves the estimated Administrator costs payable to the
27 Administrator subject to final review by the Court.

28 28. The Court preliminarily approves Plaintiff's Class Representative Service

1 Payment subject to final review by the Court.

2 29. A Final Approval Hearing shall be held on _____ at
3 _____**.m.** in Department SSC-17 of the Superior Court for the State of
4 California, County of Los Angeles, located at the 312 North Spring Street, Los Angeles, CA
5 90012 to consider the fairness, adequacy and reasonableness of the proposed Settlement
6 preliminarily approved by this Preliminary Approval Order, and to consider the application of
7 Class Counsel for attorneys' fees and costs and the Class Representative Service Payment to the
8 Class Representative. The notice of motion and all briefs and materials in support of the motion
9 for final approval of class action settlement and motion for attorneys' fees and litigation costs
10 shall be served and filed with this Court sixteen (16) Court days before the Final Approval
11 Hearing. Plaintiff's counsel must give notice to any known objecting party of any continuance of
12 the hearing of the motion for final approval.

13 30. If for any reason the Court does not execute and file a Final Approval Order and
14 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the
15 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
16 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
17 litigation, as more specifically set forth in the Settlement.

18 31. The Court expressly reserves the right to adjourn or continue the Final Approval
19 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give
20 prompt notice of any continuance to Settlement Class Members who object to the Settlement.

21 **IT IS SO ORDERED.**

22
23 _____
24 **DATE**

THE HONORABLE LAURA A. SEIGLE
JUDGE OF THE SUPERIOR COURT