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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN DIEGO
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16 DANIEL CHILDERS, an individual, on behalf
17 of himself and on behalf of all persons
18 similarly situated,

19 Plaintiffs,

20 vs.

21 OPTIONS FOR ALL, INC., a Corporation;
22 and DOES 1 through 50, inclusive,

23 Defendants.

CASE NO.: **37-2022-00043155-CU-OE-CTL**

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date:
Hearing Time:

Judge: Hon. Loren G. Freestone
Dept.: 64

Date Action Filed: November 26, 2022
Trial Date: Not set

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PRELIMINARY APPROVAL ORDER

1 This matter, having come before the Honorable Loren G. Freestone of the Superior Court
2 of the State of California, in and for the County San Diego, on August 30, 2024, for the motion by
3 Plaintiff Daniel Childers (“Plaintiff”) for preliminary approval of the class settlement with
4 Defendant Options for All, Inc. (“Defendant”). The Court, having considered the briefs, argument
5 of counsel and all matters presented to the Court and good cause appearing, hereby GRANTS
6 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

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8 **IT IS HEREBY ORDERED:**

9 1. The Court preliminarily approves the Class Action and PAGA Settlement
10 Agreement (“Agreement”) attached as Exhibit #1 to the Declaration of Kyle Nordrehaug in
11 Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. This is based
12 on the Court’s determination that the Settlement set forth in the Agreement is within the range of
13 possible final approval, pursuant to the provisions of Section 382 of the California Code of Civil
14 Procedure and California Rules of Court, rule 3.769.

15 2. This Order incorporates by reference the definitions in the Agreement, and all
16 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

17 3. The Gross Settlement Amount is Seven Hundred Twenty Thousand Dollars
18 (\$720,000). It appears to the Court on a preliminary basis that the settlement amount and terms
19 are fair, adequate and reasonable as to all potential Class Members when balanced against the
20 probable outcome of further litigation and the significant risks relating to certification, liability and
21 damages issues. It further appears that investigation and research have been conducted such that
22 counsel for the Parties are able to reasonably evaluate their respective positions. It further appears
23 to the Court that settlement at this time will avoid substantial additional costs by all Parties, as
24 well as avoid the delay and risks that would be presented by the further prosecution of the Action.
25 It further appears that the Settlement has been reached as the result of serious and non-collusive,
26 arms-length negotiations. The Court therefore preliminarily finds that the Settlement is fair,

adequate, and reasonable when balanced against the probable outcome of further litigation and the significant risks relating to certification, liability, and damages issues.

4. The Agreement specifies an attorneys' fees award not to exceed one-third of the Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$42,000, and proposed Class Representative Service Payment to the Plaintiff in an amount not to exceed \$10,000. The Court will not approve the amount of attorneys' fees and costs, nor the amount of any service award, until the Final Approval Hearing.

5. The Court recognizes that Plaintiff and Defendant stipulate and agree to certification of a class for settlement purposes only. This stipulation will not be deemed admissible in this or any other proceeding should this Settlement not become final. For settlement purposes only, the Court conditionally certifies the following Class: "all individuals employed by Defendant Options for All, Inc. in California who were classified as non-exempt during the period September 27, 2019 to February 12, 2024, or the date on which the total number of workweeks worked by the Class Members equals 68,839 (the "Class Period"), whichever is sooner."

6. The Court concludes that, for settlement purposes only, the Class meets the requirements for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class is ascertainable and so numerous that joinder of all members of the Class is impracticable; (b) common questions of law and fact predominate, and there is a well-defined community of interest amongst the members of the Class with respect to the subject matter of the litigation; (c) the claims of the Plaintiff are typical of the claims of the members of the Class; (d) the Plaintiff can fairly and adequately protect the interests of the members of the Class; (e) a class action is superior to other available methods for the efficient resolution of this controversy; and (f) counsel for the Class is qualified to act as counsel for the Class and the Plaintiff is an adequate representative of the Class.

7. The Court provisionally appoints Plaintiff as the representative of the Class. The Court provisionally appoints Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class.

1 8. The Court hereby approves, as to form and content, the Court Approved Notice of
2 Proposed Settlement of Class Action and Hearing Date for Final Court Approval (“Class Notice”)
3 attached to the Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and
4 accurately inform the Class of all material elements of the proposed Settlement, of the Class
5 Members’ right to be excluded from the Class by submitting a written opt-out request, and of each
6 Class Member’s right and opportunity to object to the Settlement. The Court further finds that the
7 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
8 and this Order meets the requirements of due process, is the best notice practicable under the
9 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
10 Court orders the mailing of the Class Notice by first class mail, pursuant to the terms set forth in
11 the Agreement.

12 9. The Court hereby appoints ILYM Group, Inc. as Administrator. No later than
13 fifteen (15) days after preliminary approval of the Settlement by the Court, Defendant shall
14 provide to the Administrator an electronic spreadsheet with the Class Data. The Administrator
15 will perform address updates and verifications as necessary prior to the mailing of the Class
16 Notice. Using best efforts to mail it as soon as possible, and in no event later than 14 days after
17 receiving the Class Data, the Administrator will mail the Class Notice Packets to all Class
18 Members via first-class U.S. Mail. Before mailing Class Notices, the Administrator shall update
19 Class Member addresses using the National Change of Address database.

20 10. The Court hereby preliminarily approves the proposed procedure for exclusion
21 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
22 from the Class as provided in the Class Notice by following the instructions for requesting
23 exclusion from the Class that are set forth in the Class Notice. All Requests for Exclusion must be
24 postmarked by no later than the Response Deadline, which is forty-five (45) calendar days after
25 the date of the mailing of the Class Notice and be received by the Administrator. If the Class
26 Notice Packet is re-mailed, the Response Deadline will be extended an additional 14 days. Any
27 such person who chooses to opt out of and be excluded from the Class will not be entitled to any
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1 recovery under the Settlement and will not be bound by the class portion of the Settlement or have
2 any right to object, appeal or comment thereon. Class Members who have not requested exclusion
3 shall be bound by all determinations of the Court, the Agreement and the Judgment. A Request
4 for Exclusion may only opt out that particular individual, and any attempt to effect an opt out of a
5 group, class, or subclass of individuals is not permitted and will be deemed invalid. Subject to the
6 Court's final approval of the Settlement, the Aggrieved Employees will be paid their allocation of
7 the PAGA Penalties and will remain bound by the release of the Released PAGA Claims.

8 11. Any Class Member who has not opted out ("Participating Class Member") may
9 appear at the final approval hearing and may object or express the Member's views regarding the
10 Settlement and may present evidence and file briefs or other papers that may be proper and
11 relevant to the issues to be heard and determined by the Court as provided in the Notice.
12 Participating Class Members will have until the Response Deadline, which is forty-five (45)
13 calendar days from the date of the mailing of the Class Notices, to submit their written objections
14 to the Administrator in accordance with the instructions in the Class Notice. If the Class Notice
15 Packet is re-mailed, the Response Deadline for written objections will be extended an additional
16 14 days. Alternatively, Participating Class Members may appear at the Final Approval Hearing to
17 make an oral objection.

18 12. A Final Approval Hearing shall be held before this Court on January 31, 2025, at
19 10:30 a.m. in Department 64 at the San Diego County Superior Court to determine all necessary
20 matters concerning the Settlement, including: whether the proposed settlement of the Action on
21 the terms and conditions provided for in the Agreement is fair, adequate and reasonable and
22 should be finally approved by the Court; whether the Final Approval Order and Judgment should
23 be entered herein; whether the plan of allocation contained in the Agreement should be approved
24 as fair, adequate and reasonable to the Class Members; and to finally approve attorneys' fees and
25 costs, the service award, and the expenses of the Administrator. All papers in support of the
26 motion for final approval and for attorneys' fees, costs and service award, to be heard at the Final
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1 Approval Hearing, shall be filed with the Court and served on all counsel no later than sixteen (16)
2 court days before the hearing.

3 13. Neither the Settlement nor any exhibit, document, or instrument delivered
4 thereunder shall be construed as a concession or admission by Defendant in any way that the
5 claims asserted have any merit or that this Action was properly brought as a class or representative
6 action, and shall not be used as evidence of, or used against Defendant as, an admission or
7 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
8 omission by Defendant or with respect to the truth of any allegation asserted by any person.
9 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
10 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
11 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
12 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,
13 evidence of a presumption, concession, indication or admission by Defendant of any liability,
14 fault, wrongdoing, omission, concession or damage.

15 14. In the event the Settlement does not become effective in accordance with the terms
16 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
17 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
18 and the Parties shall revert to their respective positions as of before entering into the Agreement,
19 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
20 including all available defenses and affirmative defenses, and arguments that any claim in the
21 Action could not be certified as a class action and/or managed as a representative action. In such
22 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
23 referred to in litigation for any purpose.

24 15. The Court reserves the right to adjourn or continue the date of the final approval
25 hearing and all dates provided for in the Agreement without further notice to Class Members and
26 retains jurisdiction to consider all further applications arising out of or connected with the
27 proposed Settlement.

1 16. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
2 further orders of the Court at the Final Approval Hearing.

3 **IT IS SO ORDERED.**

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5 Dated: _____

HON. LOREN G. FREESTONE
JUDGE, SUPERIOR COURT OF CALIFORNIA

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PRELIMINARY APPROVAL ORDER