

1 Jahan C. Sagafi (SBN 224887)
Molly J. Frandsen (SBN 320094)
2 **OUTTEN & GOLDEN LLP**
One California Street, 12th Floor
3 San Francisco, CA 94111
Telephone: (415) 638-8800
4 Facsimile: (415) 638-8810
E-Mail: jsagafi@outtengolden.com
5 E-Mail: mfrandsen@outtengolden.com

6 Melissa L. Stewart*
OUTTEN & GOLDEN LLP
7 685 Third Avenue, 25th Floor
New York, NY 10017
8 Telephone: (212) 245-1000
Facsimile: (646) 509-2060
9 E-Mail: mstewart@outtengolden.com

10 *admitted *pro hac vice*

11 *Attorneys for Plaintiffs and the Proposed Class and*
12 *Collective Members and Aggrieved Employees*

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 OMAR KAYED, JESUS PRADO,
16 SPENCER CARR, and ALONZO RIVAS
17 individually and on behalf of all others
similarly situated,

18 Plaintiffs,

19 v.

20 ODOO, INC. and ODOO, S.A.,

21 Defendants.
22
23
24

Case No. 3:23-cv-03728-LJC

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT**

Judge: Honorable Judge: Lisa J. Cisneros
Courtroom G – 15th Floor

Hearing Date: July 9, 2024
Hearing Time: 10:30 a.m.

Complaint Filed: July 27, 2023

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PLEASE TAKE NOTICE that on July 9, 2024, at 10:30 a.m., or as soon thereafter as the matter may be heard, in Courtroom G – 15th Floor of this Court’s San Francisco Courthouse, at 450 Golden Gate Avenue, San Francisco, California, Plaintiffs Omar Kayed, Jesus Spencer Carr, and Alonzo Rivas (“Plaintiffs”), will, and hereby do, move this Court to: (1) additionally certify the Classes; (2) preliminarily approve the Settlement pursuant to Fed. R. Civ. P. 23 and Section 216(b) of the FLSA; (3) appoint Plaintiffs as the Class Representatives, Plaintiff’s Counsel as Class Counsel, and ILYM Group as Settlement Administrator; (4) set appropriate deadlines; (5) approve the proposed class notice and forms; and (6) schedule a final status conference hearing.

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OTHER AUTHORITIES

27	Alba Conte & Herbert B. Newberg, 4 <i>Newberg on Class Actions</i> , § 13.15 (5th ed.).....	14
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1	Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions § 11:22 (4th ed.	
2	2002)	11
3	<i>Illustrative Forms of Class Action Notices: Overview</i> , Fed. Judicial Ctr.,	
4	https://www.fjc.gov/content/301253/illustrative-forms-class-action-notices-	
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6	Manual for Complex Litigation §§ 21.632-634 (4th ed. 2004)	10
7	Northern District of California, <i>Procedural Guidance for Class Action</i>	
8	<i>Settlements</i> , https://cand.uscourts.gov/forms/procedural-guidance-for-class-	
9	action-settlements/	<i>passim</i>

1 **MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION**

2 **I. INTRODUCTION**

3 Plaintiffs Omar Kayed, Jesus Prado, Alonzo Rivas, and Spencer Carr (collectively
4 “Plaintiffs”) respectfully seek preliminary approval of a \$4,500,000 non-reversionary common
5 fund settlement of this class, collective, and PAGA action on behalf of approximately 550
6 individuals (“California Class Members”, “New York Class Members,” “Putative Collective
7 Members,” and “PAGA Members,” as more fully defined below) as set forth in the parties’
8 Settlement Agreement and Release (“Settlement” or “Settlement Agreement”), attached as
9 Exhibit 1 to the Declaration of Melissa L. Stewart in Support of Plaintiffs’ Motion for
10 Preliminary Approval of Settlement (“Stewart Decl.”). The Settlement will resolve all claims
11 against Defendants Odoo, Inc. and Odoo, S.A. (“Defendants” or “Odoo”) in Plaintiffs’ Second
12 Amended Complaint (“SAC”). *See* ECF No. 50. The average estimated net recovery of \$4,997
13 per Class Member (or \$67.75 net average per workweek) is a strong result supporting approval.

14 The proposed settlement readily satisfies Rule 23 and applicable authority. *See Roes, 1-2*
15 *v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048-50, 1060 (9th Cir. 2019) (requirements of Fed. R.
16 Civ. P. 23); *Williams v. Superior Court*, 3 Cal. 5th 531, 549 (2017) (requirements of Cal. Lab.
17 Code § 2699(1)(2)); Northern District of California, *Procedural Guidance for Class Action*
18 *Settlements*, <https://cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/>
19 (last visited May 31, 2024) (“*District Guidance*”). The proposed settlement also satisfies the
20 Fair Labor Standards Act’s (“FLSA”) collective action requirements and applicable authority.
21 The parties have zealously litigated the case, with litigation over court-authorized notice to the
22 FLSA Collective, informal discovery for mediation purposes, and two separate mediation
23 sessions with the assistance of experienced class and collective action mediators, Judge Brian C.
24 Walsh and Louis Marlin, respectively, culminating with a fully executed memorandum of

1 understanding on January 22, 2024 and a fully executed Settlement Agreement on May 14,
2 2024.¹

3 **II. BACKGROUND**

4 **A. Factual Background**

5 Odoo is a business management software company with approximately 10 offices around
6 the world and its main United States office in San Francisco, California. SAC ¶ 2. Plaintiffs,
7 Class Members, Putative Collective Members, and PAGA Members work or worked for Odoo
8 nationwide, in the job titles of Account Executive, Account Manager, Channel Account
9 Manager, Partner Recruiter, Customer Success Manager, and Sales Specialist (collectively,
10 “Sales Representatives”). *Id.* ¶ 1.

11 Plaintiffs allege that Odoo uniformly misclassified Sales Representatives as exempt from
12 federal and state overtime provisions and failed to pay them any overtime wages. *Id.* ¶ 6.
13 Plaintiffs regularly worked more than 40 hours per workweek to meet demanding sales targets,
14 without receiving overtime compensation for all the hours worked. *Id.* ¶¶ 4-5. In addition to the
15 overtime claims, Plaintiffs Kayed, Prado, and Rivas allege that Odoo failed to: timely pay
16 California Class Members their proper overtime wages during employment and upon separation,
17 provide them with accurate wage statements, and reimburse them for a reasonable percentage of
18 their home internet bills. *Id.* ¶¶ 152-171. They also bring an Unfair Competition Law claim and
19 a Private Attorneys General Act (“PAGA”) claim based on these alleged violations. *Id.* ¶¶ 172-
20 179, 194-200. Plaintiff Carr additionally alleges that Odoo failed to provide New York Class
21 Members with accurate wage statements and wage notices. SAC ¶¶ 180-193.

22 Odoo denies these allegations, and the Court has not ruled on the merits.
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26 ¹ Plaintiffs will submit the settlement and approval motion to the LWDA simultaneously with the
27 filing of this motion, as required by Cal. Lab. Code § 2699(l)(2). Stewart Decl. ¶ 41. The
28 settlement administrator will send the Class Action Fairness Notice within 10 days of the filing
of this Motion. *See id.* Ex. 1 (Settlement Agreement) § 3.3.

1 **A. Eligible Members**

2 Subject to Court approval, the Eligible Members comprise: (a) “Class Members,” where
3 “Class Members” means those individuals employed by Odoo as Sales Representatives in
4 California between October 21, 2018 and the Release Date² (“California Class Members”), and
5 in New York between October 21, 2016 and the Release Date (the “New York Class Members”),
6 (b) Putative Collective Members, defined as Sales Representatives who work or worked for
7 Odoo nationwide except in California or New York between October 21, 2019 and the Release
8 Date, and (c) “PAGA Members,” defined as individuals employed by Odoo as Sales
9 Representatives in California from October 21, 2021 and the Release Date (the “PAGA Period”).
10 Stewart Decl., Ex. 1 §§ 1.5, 1.6, 1.8, 1.27, 1.28, 1.35, 1.37, 1.47, 1.49. A vast majority of the
11 Eligible Members are Class Members. The Eligible Members are estimated to be 550
12 individuals. Stewart Decl. ¶ 23. This estimate is based on data provided by Defendants prior to
13 the second mediation. *Id.*

14 **B. Settlement Amount**

15 The \$4,500,000 Total Settlement Amount will cover: (a) Settlement Payments to
16 Participating Class Members and Participating Collective Members for a capped number of
17 workweeks;³ (b) the PAGA Fund of \$150,000, with 75%, or \$112,500, paid to the California
18 Labor and Workforce Development Agency (“LWDA Payment”) and 25%, or \$37,500, paid to
19 PAGA Members (“PAGA Payment”); (c) Service Awards of up to \$15,000 for Plaintiffs Carr,
20 Kayed, and Prado, and \$10,000 to Plaintiff Rivas; (d) Plaintiffs’ Counsel’s attorneys’ fees of up

21 ² “Release Date” is either the date of preliminary approval of settlement by the Court, or if Odoo
22 elects, the date corresponding to the accrual of 40,565.8 Eligible workweeks, provided that such
23 date is earlier than both March 7, 2024 and the date of preliminary approval of the settlement. *Id.*
§ 1.49.

24 ³ The settlement is intended to cover no more than 36,878 workweeks. Should the total number
25 of workweeks increase by more than 10% (i.e., above 40,565.8 total workweeks), Odoo will
26 have the option to either increase the Total Settlement Amount by a proportionate additional
27 amount for each additional workweek beyond 40,565.8 or, if the 10% increase occurs before the
28 earlier of March 7, 2024 or the date of the Preliminary Approval Order, Odoo may elect to
shorten the Release Date to the date corresponding to the accrual of 40,565.8 workweeks instead
of paying more for each additional workweek beyond that threshold. Stewart Decl., Ex. 1 §
9.1(b).

1 to one-third of the Settlement Amount (\$1,500,000), as awarded by the Court; (e) litigation costs
2 and expenses of up to \$30,000, as awarded by the Court; and (f) settlement administration costs
3 not to exceed \$16,750. Stewart Decl., Ex. 1 §§ 1.3, 1.24, 1.26, 1.34, 1.36, 1.57, 1.61, 3.2, 9.1,
4 9.3(a), 9.4(a), 9.5. The Total Settlement Amount does not include Employer Payroll Taxes,
5 which Defendants will fund separately. *Id.* at § 1.61.

6 Participating Class and Putative Collective Members will receive a Settlement Check or,
7 if they elect, Electronic Payment for their proportionate share of the Net Fund (defined as the
8 amount remaining after attorneys' fees and costs, service awards, settlement administration costs,
9 and the PAGA Fund is deducted) based on the number of calendar weeks worked during the
10 relevant period and whether or not they signed an arbitration agreement. *Id.* §§ 1.2, 1.16, 1.17,
11 1.26, 9.6. Class and Putative Collective Members will receive 1 point for each Eligible
12 Workweek covered by an arbitration agreement with Odoo, and 1.5 points for each Eligible
13 Workweek not covered by such agreements. *Id.* § 9.6(a).

14 PAGA Members will be entitled to an additional PAGA Amount for their estimated
15 proportionate share of the PAGA Payment based on weeks worked in the PAGA Period. *Id.* §§
16 1.18, 9.5, 9.7.

17 **C. Release of Claims**

18 Participating Class Members and Putative Collective Members will receive a Settlement
19 Check without having to submit a claim form or take any action. They can also elect to receive
20 payment electronically. *Id.* § 4.2. Participating California Class Members will release all
21 "Released California Claims"⁴ and Participating New York Class Members will release
22
23

24 ⁴ "Released California Claims" means any and all California wage and hour claims pled in the
25 Operative Complaint, or that could have been pled based on the facts alleged in the Operative
26 Complaint, and that accrued during employment as an exempt-classified Sales Representative,
27 relating back to October 21, 2018, and continuing through the Release Date, including, without
28 limitations, all claims for unpaid overtime wages, claims related to wage statements, untimely
payment of wages, and unreimbursed expenses, and related claims for penalties, interest,
liquidated damages, attorneys' fees, costs, and expenses. *Id.* § 1.50.

1 “Released New York Claims.”⁵ *Id.* § 10.2.

2 Each Putative Collective Member and Participating Class Member who cashes a
3 Settlement Check or elects Electronic Payment will also release the “Released Collective
4 Claims.”⁶ *Id.* § 10.1. Additionally, PAGA Members will release all “Released PAGA Claims.”⁷
5 *Id.* § 10.3.

6 **D. Notice Procedure**

7 Within seven days of entry of the Preliminary Approval Order, Defendants’ Counsel shall
8 provide the Settlement Administrator and Plaintiffs’ Counsel with the Class List. *Id.* §§ 1.9, 4.1.
9 The Notices of Settlement shall be sent by the Settlement Administrator to the Eligible Members,
10 by first-class mail, e-mail, and text message within 21 days of entry of the Preliminary Approval
11 Order. *Id.* § 4.3. The Settlement Administrator shall use all commercially reasonable means to
12 confirm addresses and obtain new addresses, and to the extent a mailed Notice is returned, the
13 Settlement Administrator will skip-trace the returned mail up to two times. *Id.* § 4.4. Class
14 Members will have 60 days from the initial Notice mailing date or 30 days from the date of re-
15 mailing, whichever is later, provided that no re-mailings will be completed after the 60th day

16 ⁵ “Released New York Claims” means any and all New York wage and hour claims pled in the
17 Operative Complaint, or that could have been pled based on the facts alleged in the Operative
18 Complaint, and that accrued during employment as an exempt-classified Sales Representative,
19 relating back to October 21, 2016, and continuing through the Release Date, including, without
20 limitations, all claims for unpaid overtime wages, claims related to wage statements and wage
21 notices, and related claims for penalties, interest, liquidated damages, attorneys’ fees, costs, and
22 expenses. *Id.* § 1.53.

23 ⁶ “Released Collective Claims” means the wage and hour claims pled in the Operative
24 Complaint, or that could have been pled based on the facts alleged in the Operative
25 Complaint, and that accrued during employment as an exempt-classified Sales
26 Representative, relating back to October 21, 2019, and continuing through the Release
27 Date, including, without limitations, all state and federal claims for unpaid overtime wages
28 and related claims for penalties, interest, liquidated damages, attorneys’ fees, costs, and
expenses. *Id.* § 1.52.

⁷ “Released PAGA Claims” means any and all claims relating to penalties under California’s
Private Attorney General Act (“PAGA”) pled in the Operative Complaint and PAGA
Notice Letter, or that could have been pled based on the facts alleged in the Operative
Complaint and PAGA Notice Letter, and that accrued during employment as an exempt-
classified Sales Representative, relating back to October 21, 2021 and continuing through
the Release Date. *Id.* § 1.54.

1 following the initial mailing, to object to the Settlement or to opt out. *Id.* §§ 1.4, 5.1, 6.1. All
2 Settlement funds will be paid out, i.e., there will be no reversion to Defendants. *Id.* § 9.2.

3 **E. Settlement Administration**

4 The Settlement Administrator estimates that its costs will be approximately \$16,750.
5 Declaration of Lisa Mullins (“ILYM Decl.”) ¶ 11 & Ex. C. Plaintiffs sought bids from four
6 settlement administrators before selecting ILYM Group (“ILYM”), an administrator with
7 significant expertise, skill, and experience. Stewart Decl. ¶ 50. The Settlement Administrator’s
8 anticipated costs amount to just 0.37% of the Total Settlement Amount, which is reasonable
9 given the amount and complexity of the work to be performed and is in line with settlement
10 administration fees in comparable cases. *Id.* ¶ 53.

11 **F. Class Representative Service Awards to Be Requested in Fee Motion**

12 Under the Settlement, Plaintiffs Kaye, Prado, and Carr will request Class Representative
13 Service Awards of up to \$15,000 each. Stewart Decl., Ex. 1, § 9.4(a). Plaintiff Rivas will
14 request a Class Representative Service Award of up to \$10,000. *Id.* Plaintiffs will present
15 evidence and argument supporting these awards as reasonable in the forthcoming fee motion.

16 Courts in this District traditionally approve service awards of this amount and more
17 based on several factors: (1) the actions the plaintiff has taken to protect the interests of the
18 class, (2) the degree to which the class has benefitted from those actions, (3) the time and effort
19 that representatives put into the litigation, and (4) the reasonable fears of workplace retaliation.
20 *See Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334-35 (N.D. Cal. 2014) (quoting *Staton*
21 *v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003)); *see also Galeener v. Source Refrigeration &*
22 *HVAC, Inc.*, No. 13 Civ. 4960, 2015 U.S. Dist. LEXIS 193092, at *11 (N.D. Cal. Aug. 20,
23 2015) (approving service awards of \$27,000, \$25,000, and \$15,000); *Walton v. AT&T Servs.*,
24 No. 15 Civ. 3653, 2018 U.S. Dist. LEXIS 245928, at *8 (N.D. Cal. Feb. 14, 2018) (approving
25 \$20,000 award); *Browner v. Bank of Am. N.A.*, No. 14 Civ. 2702, 2016 U.S. Dist. LEXIS 4975,
26 at *15-16 (N.D. Cal. Jan. 14, 2016) (approving \$15,000 award).

1 The proposed Service Awards are reasonable in light of (a) the value created by Plaintiffs
2 in initiating and prosecuting this action (factor two, above); (b) the effort and time they invested
3 to pursue claims on behalf of all Eligible Members (factors one and three); and (c) the risks they
4 incurred of adverse action from potential employers, business partners, landlords, and others by
5 virtue of serving as the public face of adversarial litigation against an employer (factor four, as
6 well as broader considerations).

7 First, Plaintiffs made this Settlement possible. If they had not stepped forward, the
8 litigation would not have occurred, and the Eligible Members likely would have received
9 nothing. Second, Plaintiffs spent significant time providing information to assist Plaintiffs'
10 Counsel with pre-suit investigation, providing Plaintiffs' Counsel with information throughout
11 the litigation, submitting initial disclosures and declarations in support of the motion for court-
12 authorized notice, and staying apprised of developments in the case. Stewart Decl. ¶ 27. Third,
13 Plaintiffs assumed considerable reputational risks with respect to their current and future
14 employers by putting their names on a wage and hour complaint.⁸ Plaintiffs' names are
15 prominently visible in public records. For example, a Google search of "Kayed Odoo" yields
16 several results on the first page describing this litigation. *Id.* ¶ 28. While any named plaintiff
17 faces potential risk when putting their name on a complaint, the risks are higher here. As
18 Plaintiffs will further detail in the forthcoming service award motion, as Sales Representatives in
19

20 ⁸ "[C]ourts recognize the 'unique risks' named plaintiffs in employment class actions face
21 with respect to future employment." *Walsh v. CorePower Yoga LLC*, No. 16 Civ. 5610, 2017
22 U.S. Dist. LEXIS 163991, at *40(N.D. Cal. Oct. 3, 2017); *see also, e.g., Lopez v. Mgmt. &*
23 *Training Corp.*,
24 No. 17 Civ. 1624, 2020 U.S. Dist. LEXIS 70029, at *30 (S.D. Cal. Apr. 20, 2020) (class
25 representatives
26 "face stigma upon future employment opportunities having sued a former employer"); *Beesley v.*
27 *Int'l Paper Co.*, No. 06 Civ. 703, 2014 U.S. Dist. LEXIS 12037, at *13-13 (S.D. Ill. Jan. 31,
28 2014)
(acknowledging that litigation against one's employer "carries unique risks and fortitude
including alienation from employers or peers"); *Singleton v. Domino's Pizza, LLC*, 976 F. Supp.
2d 665, 691(D. Md. 2013) (noting that named plaintiffs risk future employers finding out,
through a simple Google search, that they filed a class action lawsuit against their prior
employer).

1 the software sales industry, Plaintiffs’ work requires a visible internet presence. Plaintiffs often
2 use LinkedIn and other social media to perform their job responsibilities and are frequently
3 recruited via LinkedIn. *Id.* ¶ 29. Fourth, in contrast to other Eligible Members, all Plaintiffs
4 signed a general release of claims in consideration for the service awards. *Id.* Ex. 1 § 10.4. In
5 short, Plaintiffs’ participation in the case was imperative to its success, and the requested service
6 awards are reasonable in light of the substantial recovery and applicable precedent.

7 **G. Attorneys’ Fees and Costs to Be Requested in Fee Motion**

8 Consistent with the Settlement Agreement, in their fee motion, Counsel will apply for
9 attorneys’ fees of one-third of the Total Settlement Amount of \$4,500,000 (i.e., \$1,500,000),
10 plus out-of-pocket costs incurred in prosecuting the action, of up to \$30,000. *Id.* § 9.3(a). As of
11 May 24, 2024, Counsel’s lodestar is already \$631,305 reflecting over 938 attorney and paralegal
12 hours, in addition to estimated litigation costs of \$25,702. Stewart Decl. ¶¶ 56, 64. These
13 amounts do not account for future work to be performed to (1) secure preliminary approval; (2)
14 oversee implementation of notice and respond to Eligible Member inquiries during the notice
15 period; (3) brief and argue final approval; and (4) oversee implementation of the Settlement and
16 report to the Court regarding the final steps in the litigation, including the Post-Distribution
17 Accounting required by the District Court’s Guidance. *Id.* ¶¶ 56, 64. The current multiplier on
18 Plaintiffs’ Counsel’s lodestar is 2.38, which will decrease as Plaintiffs’ Counsel continue to
19 perform work for the benefit of the Class and Collective Members, such as briefing, preparing
20 for, and arguing for settlement approval, responding to Class and Collective Members’
21 questions, and overseeing settlement administration. *Id.* ¶ 57. California courts have previously
22 awarded multipliers in this range. *Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 225
23 (2001) (“Multipliers can range from 2 to 4 or even higher.”). Plaintiffs will argue in their
24 forthcoming fee motion that the multiplier is justified here based on the relevant factors
25 including that the settlement amount of approximately \$4,997 per person is an excellent result
26
27
28

1 and that this case presented complex legal questions requiring substantial attorney skill and
2 zealous advocacy.

3 **H. Handling of Unclaimed Funds**

4 Any settlement amounts allocated to Class Members who submit Opt-Out Statements
5 will become part of the Net Fund to be distributed to Putative Collective Members and
6 Participating Class Members. Stewart Decl., Ex. 1, § 9.1(a). The Settlement provides that any
7 unclaimed funds from Settlement Checks that are not cashed after a reasonable time (despite
8 Plaintiffs' Counsel's and the Settlement Administrator's robust efforts to reach Eligible
9 Members and provide replacement checks where necessary) shall be deposited in the
10 Participating Class Member, Putative Collective Member, or PAGA Member's name as
11 unclaimed property under applicable state procedure for unclaimed property. *Id.* at § 9.2(b).

12 **I. Appointment of Class Representative and Class Counsel**

13 Plaintiffs propose that they be appointed Class Representatives and that their counsel –
14 Jahan C. Sagafi, Melissa L. Stewart, and Molly J. Frandsen of Outten & Golden LLP – be
15 appointed Class Counsel.

16 **IV. ARGUMENT**

17 Settlement approval “involves a two-step process in which the Court first determines
18 whether a proposed class action settlement deserves preliminary approval and then, after notice
19 is given to class members, whether final approval is warranted.” *Nat'l Rural Telecomm. Coop. v.*
20 *DirecTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004); *see also* Manual for Complex Litigation
21 §§ 21.632-634 (4th ed. 2004). Preliminary approval requires two elements: first, the court must
22 determine that the settlement class meets the requirements for class certification if it has not yet
23 been certified, *see* Fed. R. Civ. P. 23(a), (b); and second, the court must determine that the
24 settlement is fair, reasonable, and adequate, *see* Fed. R. Civ. P. 23(e)(2). *See Hanlon v. Chrysler*
25 *Corp.*, 150 F.3d 1011, 1025-26 (9th Cir. 1998).

1 **A. Certification of the Rule 23 Classes Is Proper.**

2 For settlement purposes only, the parties agree to certification of the California and New
3 York classes. “The validity of use of a temporary settlement class is not usually questioned.”
4 Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions § 11:22 (4th ed. 2002). The
5 proposed Classes are coextensive with the Classes proposed in the operative Second Amended
6 Complaint. Stewart Decl. ¶ 22; *District Guidance* § 1(a). The relevant factors also weigh in
7 favor of conditional certification for purposes of settlement.

8 **1. Rule 23(a) Is Satisfied.**

9 First, numerosity is met because joinder of Class Members would be impractical. *See*
10 Fed. R. Civ. P. 23(a)(1). Plaintiffs estimate that there are approximately 428 California Class
11 Members and 121 New York Class Members. Stewart Decl. ¶ 23. These classes readily satisfy
12 Rule 23(a)(1)’s numerosity requirement.

13 Second, commonality is met because “there are questions of law or fact common to the
14 class.” Fed. R. Civ. P. 23(a)(2). The Ninth Circuit “construe[s]” this requirement
15 “permissively.” *Hanlon*, 150 F.3d at 1019. Even though proposed Class Members “may
16 possess different avenues of redress,” so long as “their claims stem from the same source,” there
17 is sufficient commonality “to satisfy the minimal requirements of Rule 23(a)(2).” *Id.* at 1019-
18 20. There are common issues presented here because Plaintiffs have alleged a single policy of
19 classifying all Sales Representatives as exempt from overtime protections. Common legal and
20 factual questions about Defendants’ pay practices accordingly predominate over individual
21 questions in both the New York and California Classes. Here, common issues include, but are
22 not limited to: whether Odoo misclassified Class Members as overtime-exempt and therefore
23 failed to compensate them for hours worked in excess of 40 hours per workweek; whether Odoo
24 unlawfully failed to keep and furnish Class Members with accurate wage statements; whether
25 Odoo unlawfully failed to timely pay wages due during employment and upon separation in
26 violation of the California Labor Code; whether Odoo failed to reimburse California Class

Members for reasonable and necessary business expenses; and whether Odoo failed to provide the New York Class Members with accurate wage notices. SAC ¶¶ 87, 99.

Third, typicality is satisfied. Rule 23(a)(3) typicality requires a finding that the “claims or defenses of the representative parties [be] typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). Under the rule’s “permissive” standard, “representative claims are ‘typical’ if they are reasonably co-extensive with those of absent class members; they need not be substantially identical.” *Johnson v. Triple Leaf Tea, Inc.*, No. 14 Civ. 1570, 2015 U.S. Dist. LEXIS 170800, at *7 (N.D. Cal. Nov. 16, 2015) (quoting *Hanlon*, 150 F.3d at 1020). Here, Plaintiffs are typical of the Classes they propose to represent because they worked as Sales Representatives in California and New York and were subject to the same policy of exempt classification and related violations. Plaintiffs’ claims, therefore, arise from the same set of facts and legal theories and the typicality requirement is satisfied.

Fourth, Plaintiffs have fairly and adequately protected the interests of the California and New York classes. *See* Fed. R. Civ. P. 23(a)(4). The adequacy requirement is met where class representatives (1) have common, and not antagonistic, interests with unnamed class members; and (2) will vigorously prosecute the interests of the class through qualified counsel. *See Hanlon*, 150 F.3d at 1020; *cf. Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625-27 (1997) (adequacy not satisfied where named plaintiffs’ interests were in conflict with absent class members’). Here, Plaintiffs share a common interest with the Class Members they seek to represent, in that they all allege that they suffered the same type of injury, and they share an interest in vigorous prosecution. Plaintiffs have vigorously represented the interests of their fellow Class Members and devoted substantial time to the prosecution of this action. Stewart Decl. ¶ 24.

In addition, Plaintiffs are represented by adequate counsel. Outten & Golden LLP has extensive experience litigating complex civil rights and employment class actions and have vigorously prosecuted this action on behalf of Plaintiffs and Class Members through two mediations, motion practice, informal discovery, and early formal discovery. *Id.* ¶ 11 (collecting

cases). For example, in one case, Judge Chhabria found that Outten & Golden “ha[d] capably and effectively represented the Settlement Class Members’ interests,” and praised them for “their outstanding work on this case.” *Zamora v. Lyft, Inc.*, No. 16 Civ. 02558, 2018 U.S. Dist. LEXIS 166618, at *10 (N.D. Cal. Sept. 26, 2018); *see also, e.g., Walsh v. CorePower Yoga LLC*, No. 16 Civ. 5610, 2017 U.S. Dist. LEXIS 20974, at *24-25 (N.D. Cal. Feb. 14, 2017) (“[Outten & Golden] ha[s] a proven track record in the prosecution of class actions as they have successfully litigated and tried many major class action cases.”). For these reasons, Plaintiffs’ Counsel satisfy the adequacy requirement of Rule 23(a)(4).

2. Certification Is Proper Under Rule 23(b)(3).

Rule 23(b)(3) requires that common questions predominate over individual ones, and that a class action is superior to other available methods for adjudicating the controversy. *See* Fed. R. Civ. P. 23(b)(3). Both requirements are met here.

The proposed classes are sufficiently cohesive to satisfy predominance. *See Amchem*, 521 U.S. at 623 (Predominance “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.”) (citation omitted). Predominance does not require “that each element of [a plaintiff’s] claim [be] susceptible to classwide proof.” *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 469 (2013) (internal quotation marks and citation omitted). Rather, “[t]he predominance inquiry asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (quotation omitted). Here, Plaintiffs allege a single policy of classifying all Sales Representatives as exempt from overtime protections, and other claims – related to timely payments and wage statements – are largely derivative of the misclassification question. Common legal and factual questions about Odoo’s pay practices accordingly predominate over individual questions.

Superiority rests on factors like individual Class Members’ desire to bring individual actions and the utility of concentrating the litigation in one forum. *See* Fed. R. Civ. P. 23(b)(3). Here, “there is no indication[] that class members seek to individually control their cases, that

individual litigation is already pending in other forums, or that this particular forum is undesirable for any reason.” *Tierno v. Rite Aid Corp.*, No. 05 Civ. 02520, 2006 U.S. Dist. LEXIS 71794, at *33 (N.D. Cal. Aug. 31, 2006); *see also Amchem*, 521 U.S. at 615 (internal citation omitted). Individual lawsuits from more than one hundred plaintiffs, for modest damages, would be wasteful and inefficient for the court system. *See, e.g., Whiteway v. FedEx Kinko’s Off. & Print Servs., Inc.*, No. 05 Civ. 2320, 2006 U.S. Dist. LEXIS 69193, at *30 (N.D. Cal. Sept. 13, 2006) (citing *Tierno*, 2006 U.S. Dist. LEXIS 71794, at *19). Because the class mechanism will achieve economies of scale for Class Members, conserve judicial resources, and preserve public confidence in the system by avoiding repetitive proceedings and preventing inconsistent adjudications, superiority is met.

3. Plaintiffs’ Counsel Should Be Appointed as Class Counsel.

Adequacy of class counsel depends on (1) work performed on the matter, (2) experience, (3) knowledge of the law, and (4) the resources that class counsel can commit. *See* Fed. R. Civ. P. 23(g)(1)(A). Plaintiffs’ Counsel readily satisfy these criteria, as set forth above. *See supra* § IV(A)(1); *see also* Stewart Decl. ¶ 11.

B. The Settlement Is Fair, Reasonable, and Adequate.

Once the Court has found class certification to be proper, the next step of the preliminary approval process is to assess whether the settlement is “fundamentally fair, adequate, and reasonable.” *Hanlon*, 150 F.3d at 1026 (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)). Typically, the first-stage analysis looks for “obvious deficiencies,” with preliminary approval being granted if the settlement is non-collusive and within the range of possible final approval. *Walsh*, 2017 U.S. Dist. LEXIS 20974, at *19 (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)).⁹

When considering whether to grant approval, courts often “put a good deal of stock in the

⁹ *See also Cancilla v. Ecolab, Inc.*, No. 12 Civ. 3001, 2015 U.S. Dist. LEXIS 106249, at *9 (N.D. Cal. Aug. 12, 2015) (focusing preliminary approval analysis on “noncollusive negotiations,” the lack of “obvious deficiencies” or “preferential treatment,” and being “with[in] the range of possible approval”) (internal citations omitted); Alba Conte & Herbert B. Newberg, 4 *Newberg on Class Actions*, § 13.15 (5th ed.).

product of an arm[']s-length, non-collusive, negotiated resolution.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (citations omitted). Courts may also assess the following factors, which are assessed in greater detail at final approval: (1) “the strength of the plaintiffs’ case”; “the risk, expense, complexity, and likely duration of further litigation”; and “the risk of maintaining class action status throughout the trial”; (2) “the amount offered in settlement”; (3) the extent of discovery completed and the stage of the proceedings”; and (4) “the experience and views of counsel.” *Hanlon*, 150 F.3d at 1026 (internal citation omitted).

1. Plaintiffs’ Case Faced Significant Risks.

“Approval of a class settlement is appropriate when ‘there are significant barriers plaintiffs must overcome in making their case.’” *Betancourt v. Advantage Human Resourcing, Inc.*, No. 14 Civ. 1788, 2016 U.S. Dist. LEXIS 10361, at *10-11 (N.D. Cal. Jan. 28, 2016) (quoting *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 851 (N.D. Cal. 2010)). Here, Plaintiffs face substantial obstacles to class-wide recovery. Stewart Decl. ¶ 42.

First, Defendants will argue that well over half of the Eligible Members were subject to individual arbitration agreements that should foreclose participating in a class or collective action. *Id.* ¶ 43. While Plaintiffs would challenge the validity and enforceability of these agreements, Plaintiffs’ Counsel are experienced class action litigators and recognize the challenges associated with these arguments. *Id.* Moreover, Sales Representatives compelled to arbitration who wish to pursue a recovery would be required to participate in intensive individual arbitrations, including document production, deposition testimony, and testifying at the arbitration hearing, to recover on a misclassification claim with a relatively small dollar value. *Id.* ¶ 44; *see, e.g., Arredondo v. Southwestern & Pac. Specialty Fin., Inc.*, No. 18 Civ. 1737, 2022 U.S. Dist. LEXIS 23758, at *31 (E.D. Cal. Feb. 9, 2022) (granting preliminary approval of settlement where “it may be cost prohibitive for putative class members [bound by arbitration agreements] to pursue wage claims on an individual basis”) (citation omitted).

Second, Plaintiffs may face obstacles in winning class certification or maintaining the class and collective through trial. Stewart Decl. ¶ 45. Defendants would likely argue that

1 differences among Sales Representatives’ job duties or compensation levels preclude class
2 certification or warrant decertification of a collective, if certified. Although Plaintiffs disagree,
3 Plaintiffs recognize that obtaining and maintaining class certification is always a significant
4 obstacle. *Id.*

5 Third, a trial on the merits would involve significant risks for Plaintiffs on liability issues.
6 *Id.* ¶ 46. Odoo would argue that Sales Representatives were properly classified as overtime-
7 exempt (as “administrators,” outside salespeople, commissioned salespeople, or some
8 combination of exemptions). Although Plaintiffs believe that Sales Representatives’ job duties
9 do not qualify them for any of the relevant exemptions, Plaintiffs’ Counsel recognizes that each
10 exemption inquiry is highly contextual and that litigation of exemption defenses inherently poses
11 risks. *Id.* Odoo would also dispute the number of hours Sales Representatives claim to have
12 worked. Without contemporaneous records of time worked (which Odoo did not maintain),
13 proving the existence and extent of overtime hours worked would also be an evidentiary
14 challenge. *Id.* ¶ 47.

15 In sum, although Plaintiffs would dispute each of Odoo’s arguments, a class trial, and the
16 formal discovery process to prepare for it would be long, arduous, and risky; and even if
17 Plaintiffs prevailed on each of their claims, they might face a lengthy appeals process. *Id.* ¶ 48.
18 Considering the myriad risks and delay that litigation would entail and based on Plaintiffs’
19 Counsel’s experience litigating class actions and employment lawsuits, it is the opinion of
20 Plaintiffs’ Counsel that the proposed Settlement is in the best interests of the Eligible Members.
21 *Id.*

22 **2. The Settlement Amount Is Appropriate.**

23 “[P]erhaps the most important factor” courts consider in determining whether to grant
24 preliminary approval is “plaintiffs’ expected recovery balanced against the value of the
25 settlement offer.” *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930, 935 (N.D. Cal. 2016) (quotation
26 omitted). Here, the monetary relief provides strong value to the Eligible Members.

1 Eligible Members stand to recover a gross award of approximately \$8,182 per Eligible
2 Member, and a net award (after deductions for attorneys' fees and costs, service awards,
3 administration costs, the PAGA fund) of approximately \$4,997 per Eligible Member. Stewart
4 Decl. ¶ 25. This equates to \$67.75 net per workweek. *Id.* This is a substantial portion of the
5 unpaid wages and other damages Eligible Members could have recovered at trial, as described
6 below. Plaintiffs' counsel used Odoo's payroll records to calculate actual damages for each
7 Eligible Member and arrive at the following estimated exposure for each claim. *Id.* ¶ 31.

8 **a. Recovery for Non-PAGA Claims**

9 Unpaid Overtime and Interest. Plaintiffs' Counsel estimated overtime damages based on
10 five hours of unpaid overtime per Eligible Member, assuming they worked overtime in 90% of
11 workweeks (to account for periods of vacations, leave, and other days off). Odoo did not
12 maintain records of Eligible Members' work hours or breaks, so Plaintiffs estimated the average
13 overtime hours per week based on interviews with Plaintiffs and Plaintiffs' observations of their
14 co-workers. Plaintiffs calculated exposure using the workweek cap of 40,565.8 workweeks.
15 Accordingly, Plaintiffs estimated a total exposure of approximately **\$10,932,442** in unpaid
16 overtime wages plus interest. *Id.* ¶ 32.

17 FLSA Liquidated Damages. Unless it can show a good faith defense, an employer who
18 violates the FLSA is liable to employees for liquidated damages equal to the unpaid overtime
19 wages. 29 U.S.C. §§ 216(b), 260. Liquidated damages are also available under the N.Y.L.L.
20 N.Y.L.L. § 198(1-a). Here, based on the assumptions above, the Settlement Class could have
21 recovered **\$8,471,402** in liquidated damages (an amount equal to the unpaid wages for the
22 workweeks within the three-year FLSA period for California Class Members and the six-year
23 period for New York Class Members) if Plaintiffs succeeded in rebutting Odoo's good faith
24 defense. *Id.* ¶ 33.

25 Waiting Time Penalties. Labor Code § 203 provides a penalty of up to thirty days' pay
26 where an employer willfully fails to pay an employee all owed wages at the time of separation.

Using an average 8-hour day, and the 30-day penalty, Plaintiffs' Counsel estimated waiting time penalties as approximately **\$1,861,016**. *Id.* ¶ 34.

Wage Statement and Wage Notice Penalties. Labor Code § 226(e)(1) provides statutory penalties in the amount of \$50 for the initial pay period and \$100 for each subsequent pay period, up to a maximum of \$4,000 where an employer knowingly and intentionally fails to provide an accurate wage statement to an employee. Here, the California Class could have recovered **\$707,700** in wage statement penalties. Stewart Decl. ¶ 35. In New York, the penalty for failing to provide an accurate wage statement is \$250 for each work day that Odoo failed to provide them with accurate wage statements, or a total of up to \$5,000 per employee. *See* N.Y.L.L. §§ 195(3), 198(1-d). The New York Class could have recovered **\$594,000** in wage statement penalties. Stewart Decl. ¶ 35. New York also has a penalty provision for failure to provide wage notices, which provides a penalty of \$50 per day, or a total of up to \$5,000 per employee. *See* N.Y.L.L. §§ 195(1), 198(1-b). The New York Class could have recovered **\$564,750** in wage notice penalties. Stewart Decl. ¶ 35.

Unreimbursed Expenses. Plaintiffs allege that Odoo failed to reimburse California Class Members for a reasonable percentage of their home internet, in violation of Labor Code § 2802. Plaintiffs estimate the exposure as **\$202,000**, assuming that California Class Members incurred \$50 per month in home internet bills, and used 50% of their home internet for business purposes. This may be an overestimate, because Plaintiffs calculated the exposure for the full liability period, but the claim may be weaker in non-COVID time periods, when Class Members were permitted to work in the office. Stewart Decl. ¶ 36.

In sum, the maximum total exposure for Eligible Members' wage and hour claims, excluding PAGA claims, is approximately **\$23,333,310**. The Total Settlement Amount (minus the \$150,000 PAGA Fund) thus represents a 18.6% recovery of the total maximum exposure. Stewart Decl. ¶ 37. This recovery is substantial given the risks of prevailing on liability and recovering the maximum possible damages and penalties, as described above. Thus, the settlement is well within the range of reasonableness. *See, e.g., In re Mego Fin. Corp. Sec.*

Litig., 213 F.3d 454, 459 (9th Cir. 2000) (finding a gross recovery of approximately one sixth (16.67%) of the potential recovery adequate in light of litigation risks); *Villegas v. J.P. Morgan Chase & Co.*, No. 09 Civ. 00261, 2012 U.S. Dist. LEXIS 16670, at *17 (N.D. Cal. Nov. 20, 2012) (preliminarily approving a settlement where the gross amount represented approximately 15% of the potential recovery).

This recovery is particularly reasonable given that well over half of the Eligible Members, including Plaintiff Rivas, were subject to arbitration agreements. The allocation formula, awarding 1 point per Eligible Workweek to arbitration bound workweeks (“Arbitration Workweeks”), and 1.5 points per Eligible Workweek to workweeks not bound by arbitration, is also reasonable, as it reflects the higher risks for arbitration bound Eligible Members, who would likely be required to participate in intensive individual arbitrations to obtain recovery. Stewart Decl. ¶ 38.

Plaintiffs’ Counsel have litigated similar overtime claims on behalf of sales representatives where a large number of the class members were subject to arbitration agreements, and provide two comparators. *See District Guidance* § 11.

Case Name	<i>Aris Cienega & Zakeia Hampton v. Echo Global Logistics, Inc.</i> , No. 1:22-Civ-00644, N.D. Ill.	<i>Cody Wilson et al. v. Flock Freight, Inc.</i> , No. CIV SB 2200575, Cal. Super., San Bernardino Cnty.
Released Claims	Sales Representatives overtime and related claims under FLSA, Illinois and, California law.	Sales Representatives overtime and related claims under FLSA and California law.
Methods of Notice	mail, email, and text message	mail, email, and text message
Total Settlement Fund	\$6,575,000	\$1,850,000
Class Size	2,690	276
# to whom notice sent	2,651	276
Claim forms	Not required	Not required
Average Gross Recovery	\$2,444.24	\$6,702.90
Average Net Recovery	\$1,578.69	\$3,938
Amount to Cy Pres	\$65,951.27	\$17,567.32

Attorneys' Fees and Costs	One-third of the common fund (\$2,191,667.67) + \$54,137.22 for costs	One-third of the common fund (\$616,666.67) + \$18,931.88 for costs
Administration Costs	\$32,500	\$14,750
Total Exposure	Approx. \$24.35 million for unpaid wages only, using fluctuating workweek method of calculating overtime	\$8,648,758.43

The average recovery here of \$8,182 gross and \$4,997 net per Eligible Member compares favorably to other cases and is a strong result supporting approval. While it is always true that a larger settlement amount is theoretically possible, “the very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (quoting *Officers for Justice v. Civil Serv. Com.*, 688 F.2d 615, 624 (9th Cir. 1982)). Given the estimated total exposure and the risks that Plaintiffs would face in attempting to win on all arguments, the \$4,500,000 Total Settlement Amount is a strong recovery.

b. The PAGA Settlement Amount Is Reasonable.

Finally, the PAGA allocation of \$150,000 is reasonable. This represents 3.33% of the \$4,500,000 Total Settlement Amount.¹⁰ Stewart Decl. ¶ 39. Odoo’s maximum penalties for the 8,318 pay periods could be calculated as \$4,169,700 assuming that the penalties for the PAGA violations (overtime, timely pay during employment and upon separation, improper wage statements, and unreimbursed expenses) could be stacked and are calculated as initial violations. The proposed PAGA settlement amount of \$150,000 thus represents 3.6% of the exposure. Stewart Decl. ¶ 40. This recovery is reasonable because of courts’ discretion to reduce PAGA penalties (Cal. Lab. Code § 2699(e)(2)) and well within the range that courts routinely approve. *See, e.g., Billups-Larkin v. Aramark Servs., Inc.*, No. 21 Civ. 6852, 2023 U.S. Dist. LEXIS 122756, *9 (N.D. Cal. July 17, 2023) (finding PAGA payment that was approximately 1.9% of

¹⁰ Courts that look at the proportion of the PAGA settlement to the overall settlement recovery have approved similar proportionate recoveries. *See, e.g., Van Kempen v. Matheson Tri-Gas, Inc.*, No. 15 Civ. 66079660 (HSG), 2017 U.S. Dist. LEXIS 137182, at *6, *29-30 (N.D. Cal. Aug. 25, 2017) (1.4%).

the total potential value of the PAGA claim reasonable); *McLeod v. Bank of Am., N.A.*, No. 16 Civ. 3294, 2018 U.S. Dist. LEXIS 195314, at *4 (N.D. Cal. Nov. 14, 2018) (finding approximately 1.1% of estimated PAGA exposure to be adequate).

Given these considerations, Plaintiffs submit that the \$4,500,000 Total Settlement Amount, including the \$150,000 PAGA amount, is fair, reasonable, and adequate, and that the Settlement is in the best interest of the Class and Collective.

3. The Extent of Discovery Supports Settlement.

A settlement requires adequate discovery. The touchstone of this analysis is whether “the parties have sufficient information to make an informed decision about settlement,” including formal and informal discovery. *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (quoting *Linney*, 151 F.3d at 1239). Here, Plaintiffs investigated these claims carefully and zealously litigated them, efficiently moving into settlement discussions, supported by informal and initial formal discovery, to reach a reasonable settlement. Specifically, Odoo produced relevant policies and payroll data regarding Sales Representatives, and the parties exchanged detailed mediation statements. Plaintiffs served written discovery and the parties engaged in a thorough Fed. R. Civ. P. Rule 26(f) conference. Stewart Decl. ¶ 49. Thus, the Settlement results from Plaintiffs’ Counsel’s informed judgment about the strengths and weaknesses of the claims.

4. Counsel’s Experience and Views Support Approval.

“Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation.” *DirecTV, Inc.*, 221 F.R.D. at 528. “[P]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in litigation.” *Rodriguez*, 563 F.3d at 967 (quoting *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995)). Plaintiffs’ Counsel are some of the most experienced class action litigators in the country. Stewart Decl. ¶ 11. Plaintiffs’ Counsel specialize in prosecuting complex employment class actions, and over many years have successfully – and unsuccessfully – litigated many such cases, putting them in a

strong position to weigh the strengths and weaknesses of Plaintiffs’ claims and Odoo’s defenses. *Id.* ¶ 48. Based on their extensive experience, Plaintiffs’ Counsel believe that the settlement is fair, reasonable, and adequate. *Id.*

C. The Court Should Approve the FLSA Settlement.

1. Court Approval Is Required.

Longstanding Supreme Court and circuit court precedent holds that employees may only settle their FLSA claims under Department of Labor supervision or through a court-approved stipulated judgment. *See, e.g., Lynn’s Food Stores, Inc. v. United States*, 679 F.2d 1350, 1353 (11th Cir. 1982). *Lynn’s Foods* relied on earlier Supreme Court decisions which held that private settlements of FLSA claims are impermissible. *See id.* at 1354 (citing *Brooklyn Sav. Bank v. O’Neil*, 324 U.S. 697 (1945), and *D.A. Schulte, Inc. v. Gangi*, 328 U.S. 108 (1946)). In *Seminiano v. Xyris Enterprise*, the Ninth Circuit endorsed the *Lynn’s Foods* rule. 602 F. App’x 682, 683 (9th Cir. 2015) (“FLSA claims may not be settled without approval of either the Secretary of Labor or a district court.”). Thus, California federal district courts consistently hold that judicial approval is required for settlement of FLSA claims. *See, e.g., Gutierrez v. New Hope Harvesting, LLC*, No. 19 Civ. 7077, 2024 U.S. Dist. LEXIS 76786, at *3-4 (C.D. Cal. Apr. 26, 2024); *Quiruz v. Specialty Commodities*, No. 17 Civ. 3300, 2020 U.S. Dist. LEXIS 209498, at *6 (N.D. Cal. Nov. 9, 2020).

2. The FLSA Settlement Should Be Approved.

Courts in this district determine whether the named plaintiff is “similarly situated” to the individuals in the collective and then determine whether the settlement constitutes “a fair and reasonable resolution of a bona fide dispute.” *Quiruz*, 2020 U.S. Dist. LEXIS 209498, at *7 (citation omitted). “[T]he factors that courts consider when evaluating a collective action settlement are essentially the same as those that courts consider when evaluating a [class action] settlement under Rule 23(e).” *Id.* (citation omitted and alteration in the original).

First, the collective has already been conditionally certified. *See* ECF No. 33. Plaintiffs are similarly situated when they share “a similar issue of law or fact material to the disposition of

1 their FLSA claims.” *Campbell v. City of Los Angeles*, 903 F.3d 1090, 1117 (9th Cir. 2018).
2 Plaintiffs have demonstrated that conditional certification was appropriate by identifying a
3 common policy that classifies them as exempt from overtime under FLSA. *See Karl v. Zimmer*
4 *Biomet Holdings, Inc.*, No. 18 Civ. 4176, 2019 U.S. Dist. LEXIS 111705, at *7 (N.D. Cal. July
5 2, 2019) (sales representatives similarly situated where they alleged they were victims of a
6 common misclassification policy).

7 Second, for the same reasons that the Court should approve the Rule 23 class settlement,
8 the Court should approve the FLSA settlement. *See supra*, Section IV.B.

9 **3. The Court Should Approve the Proposed Settlement Administrator.**

10 The parties have agreed on ILYM, a well-regarded settlement administrator, to be the
11 Settlement Administrator after soliciting bids from four experienced and reputable
12 administrators. Stewart Decl. ¶ 50. Over the last two years, ILYM has administered 14 other
13 settlements for Plaintiffs’ Counsel. ILYM Decl ¶ 2; *District Guidance* § 2(a).

14 With this Motion, Plaintiffs provide a declaration and supporting exhibits from ILYM
15 regarding its procedures for handling class member data. ILYM Decl. ¶ 3 & Ex. B. ILYM has
16 confirmed that it takes responsibility for potential errors and confirms it maintains insurance for
17 such instances. *Id.* ILYM’s anticipated costs of approximately \$16,750 are modest both in
18 absolute terms and relative to the value of the Settlement. Odoo will pay the settlement
19 administration costs, which will be deducted from the Total Settlement Amount. Stewart Decl.
20 Ex. 1 § 3.2.

21 **D. The Court Should Approve the Proposed Notices and Administration Plan.**

22 The proposed Notices are the “best notice . . . practicable under the circumstances. Fed.
23 R. Civ. P. 23(c)(2)(B). The proposed Notices are consistent with the *District Guidance* and
24 modern best practices set forth by the Federal Judicial Center.”¹¹ Stewart Decl., Ex. 1, Ex. A
25 (Notices). The notice must include the following in “easily understood language”:

26
27 ¹¹ *See Illustrative Forms of Class Action Notices: Overview*, Fed. Judicial Ctr.,
28 <https://www.fjc.gov/content/301253/illustrative-forms-class-action-notices-introduction> (last
visited May 31, 2024).

1 (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims,
2 issues, or defenses; (iv) that a class member may enter an appearance through an
3 attorney if the member so desires; (v) that the court will exclude from the from the
4 class any member who requests exclusion; (vi) the time and manner for requesting
5 exclusion; and (vii) the binding effect of a class judgment on members under Rule
6 23(c)(3).

7 Fed. R. Civ. P. 23(c)(2)(B). Notice is satisfactory if it “generally describes the settlement in
8 sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be
9 heard.” *Churchill Vill., LLC v. GE*, 361 F.3d 566, 575 (9th Cir. 2004) (citations omitted). The
10 parties’ proposed Notices include all required information. Stewart Decl., Ex. 1, Ex. A
11 (Notices).

12 The proposed Notices provide information regarding the claims and the settlement
13 agreement, the rights and options for Eligible Members, and how they can obtain additional
14 information. *Id.* The Notice to Class Members explains that they may object or opt out and that
15 Class Members who do not timely opt out will be Class Members for settlement purposes and
16 will release the Released Class Claims, and that if they cash their Settlement Check or elect
17 Electronic Payment, they will also release the Released Collective Claims. The Notice to
18 Putative Collective Members explains that if they cash their Settlement Check or elect Electronic
19 Payment, they will release the Released Collective Claims. *Id.* The scope of the releases is the
20 same as the claims in the SAC. *See District Guidance* § 1(b). The proposed Notices state that
21 Class Members who affirmatively opt out and Putative Collective Members who do not cash a
22 Settlement Check or elect Electronic Payment will not receive a settlement payment, but also
23 will not be subject to any release of claims. Stewart Decl., Ex. 1, Ex. A (Notices). The proposed
24 Notices provide instructions for accessing case documents on the docket and contain contact
25 information for Plaintiffs’ Counsel, facilitating Eligible Members’ abilities to ask questions and
26 learn information. *See District Guidance* § 3(c). The Notices explain how Eligible Members
27 may elect to receive their payment electronically and include a link to the website where they
28 may select their preferred payment options. Stewart Decl., Ex. 1, Ex. A (Notices). The Notices

will also list the date of the final approval hearing, and that it may be subject to change without further notice. *Id.*; *District Guidance* § 3(d).

The parties have agreed, subject to Court approval, to have the Settlement Administrator send the proposed Notice via text, email, and First-Class U.S. Mail to the last-known addresses and phone numbers of the Eligible Members as included in the Class List. Stewart Decl. Ex. 1, § 19(a). Returned Notices will be skip traced twice to get an updated address and then re-mailed or re-sent by other relevant means. *Id.* §§ 3.3, 4.4.

Accordingly, the proposed notice plan complies with Rule 23 and due process.

V. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED.

Plaintiffs, after consultation with Defendants, propose that the Court adopt the following schedule for effectuating the various steps in the settlement approval process described above.

Event	Proposed Date
Preliminary Approval Hearing	July 9, 2024
Entry of Preliminary Approval Order (assumed for purposes of calculating subsequent dates)	July 9, 2024
Defendants to provide Class List to Administrator	July 16, 2024
Notice disseminated by Settlement Administrator	July 30, 2024
Motion for attorneys' fees, costs, and service awards	August 24, 2024
Deadline for exclusions and objections, except as extended for remailings	September 28, 2024
Final Approval Motion	October 8, 2024
Final Approval Hearing	November 12, 2024

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court: (1) conditionally certify the Classes; (2) preliminarily approve the Settlement pursuant to Fed. R. Civ. P. 23 and Section 216(b) of the FLSA; (3) appoint Plaintiffs as the Class Representatives, their counsel as Class Counsel, and ILYM as Settlement Administrator; (4) set appropriate deadlines; (5) approve the proposed class notice and forms; and (6) schedule a final approval hearing.

Respectfully submitted,

Dated: June 4, 2024

By: /s/ Jahan C. Sagafi

Jahan C. Sagafi (SBN 224887)

Molly J. Frandsen (SBN 320094)

OUTTEN & GOLDEN LLP

One California Street, 12th Floor

San Francisco, CA 94111

Tel.: (415) 638-8800

Fax: (415) 638-8810

Email: jsagafi@outtengolden.com

Email: mfrandsen@outtengolden.com

Melissa L. Stewart*

OUTTEN & GOLDEN LLP

685 Third Avenue, 25th Floor

New York, NY 10017

Tel.: (212) 245-1000

Fax: (646) 509-2060

Email: mstewart@outtengolden.com

Attorneys for Plaintiffs and Proposed

Class and Collective Members and

Aggrieved Employees

*Admitted *pro hac vice*