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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA**

CHRISTINA NANCE, individually, and on  
behalf of other members of the general public  
similarly situated;

Plaintiff,

v.

YOUNG MEN'S CHRISTIAN  
ASSOCIATION OF THE EAST BAY DBA  
YMCA OF THE EAST BAY, a California  
nonprofit corporation; and DOES 1 through  
100, inclusive;

Defendants.

Case No.: 23CV040009

Assigned for All Purposes to:  
Honorable Noël Wise  
Department 21

**CLASS ACTION**

**NOTICE OF MOTION AND MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT,  
CONDITIONAL CERTIFICATION,  
APPROVAL OF NOTICE PACKET,  
SETTING OF FINAL APPROVAL  
HEARING DATE; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

**[Res ID: 119012569541]**

[Declaration of Proposed Class Counsel  
(Douglas Han); Declaration of Proposed  
Settlement Administrator (Jodey Lawrence);  
Declaration Joan Reilly; and [Proposed] Order  
filed concurrently herewith]

Hearing Date: October 8, 2024  
Hearing Time: 1:30 p.m.  
Hearing Place: Department 21

Complaint Filed: August 4, 2023  
FAC Filed: April 29, 2024  
Trial Date: None Set

1           **PLEASE TAKE NOTICE** that on October 8, 2024 at 1:30 p.m., or as soon as the matter  
2 may be heard, before the Honorable Noël Wise in Department 21 of the Alameda County Superior  
3 Court located at 1225 Fallon Street, Oakland, California, 94612, Plaintiffs Christina Nance and  
4 Dereka Williams (“Plaintiffs,” “Plaintiff Nance,” and “Plaintiff Williams”) will and hereby do  
5 move for an order:

- 6           • Granting Preliminary Approval of the proposed class action settlement described  
7           herein and as set forth in the Parties’ Class Action and PAGA Settlement  
8           Agreement (“Settlement Agreement,” “Settlement,” or “Agreement”), attached  
9           as **Exhibit 2** to the Declaration of Douglas Han, including, and not limited to, the  
10          means of allocation and distribution of funds;
- 11          • Conditionally certifying the Class for settlement purposes only;
- 12          • Appointing Plaintiffs as the class representatives;
- 13          • Appointing Justice Law Corporation as Class Counsel;
- 14          • Approving the Notice of Class Action Settlement (“Notice Packet”) attached as  
15          **Exhibit A** to the [Proposed] Order Preliminarily Approving Class Action  
16          Settlement and Setting Hearing for Final Approval of Settlement and Settlement  
17          Agreement;
- 18          • Directing the mailing of the Notice Packet with a postage-paid return envelope to  
19          the Class;
- 20          • Approving the deadlines for the notice and settlement administration process;
- 21          • Approving Phoenix Class Action Administration Solutions as the Settlement  
22          Administrator; and
- 23          • Scheduling a hearing to consider whether to grant Final Approval of the  
24          Settlement Agreement, at which time the Court will also consider whether to  
25          grant Final Approval of the requests for the Class Counsel Award, Class  
26          Representative Enhancement Payments, Settlement Administration Costs, and  
27          Private Attorneys General Act of 2004 (“PAGA”) Payment.

28   ///

1 This motion is based upon the following memorandum of points and authorities;  
2 Declaration of Proposed Class Counsel (Douglas Han); Declaration of the Proposed Settlement  
3 Administrator (Jodey Lawrence); Declaration Joan Reilly; [Proposed] Order filed concurrently  
4 with this motion; pleadings and other records on file with the Court in this matter; and such  
5 documentary evidence and oral argument as may be presented at the hearing on this motion.

6  
7 Dated: August 14, 2024

**JUSTICE LAW CORPORATION**

8 By:   
9 Douglas Han  
10 *Attorneys for Plaintiffs*

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1     **I.     INTRODUCTION**

2             This motion seeks preliminary approval of a non-reversionary wage-and-hour class action  
3 and representative PAGA settlement by Plaintiffs on behalf of themselves and all current and  
4 former non-exempt California employees of Defendant who were employed by Defendant Young  
5 Men’s Christian Association of the Easy Bay (“Defendant”) at any time between August 4, 2019  
6 and June 5, 2024 (“Class” and “Class Period”). At the time of mediation, the estimated number  
7 of Class Members was about 2,996. (Declaration of Douglas Han in Support of Motion For  
8 Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 7, 8.)

9     **II.    BACKGROUND**

10            On August 4, 2023, Plaintiff Nance filed a wage-and-hour class action lawsuit in the  
11 Superior Court of California, County of Alameda, alleging eight (8) causes of action. (Han Decl.,  
12 *supra*, at ¶ 9.)

13            After engaging in discovery, investigations, and negotiation, the Parties remotely attended  
14 mediation with the mediator Deborah Saxe on March 5, 2024, resulting in the Parties reaching a  
15 tentative settlement via a mediator’s proposal. (Han Decl., *supra*, at ¶ 10.)

16            In line with the settlement, on March 21, 2024, Plaintiffs provided written notice to the  
17 California Labor and Workforce Development Agency (“LWDA”). (Han Decl., *supra*, at ¶ 11;  
18 Exhibit 3.) On April 8, 2024, Plaintiffs provided amended written notice to the LWDA updating  
19 the name of the employer. (*Id.* at ¶ 12; Exhibit 4.)

20            On April 29, 2024, Plaintiff Nance filed a First Amended Complaint that: (a) adjusted the  
21 “class” definition; (b) added Plaintiff Williams as a named plaintiff; (c) replaced the then-  
22 defendant with Defendant as the only named defendant; (d) incorporate additionally discovered  
23 factual allegations; and (e) add a cause of action for violation of Labor Code section 2698 (Private  
24 Attorneys General Act of 2004 (“PAGA”)). (Han Decl., *supra*, at ¶ 13; Exhibit 5.)

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1 **III. INVESTIGATION/ LITIGATION HISTORY**

2 **a. Discovery, Investigation, and the Parties’ Staunchly Conflicting Positions**

3 After filing this case, Plaintiffs propounded form interrogatories, special interrogatories,  
4 requests for admission, and requests for production of documents. (Han Decl., *supra*, at ¶ 15.)  
5 The Parties then met and conferred, agreed to engage in the informal exchange of information,  
6 and agreed to remotely attend mediation. (*Ibid.*)

7 Defendant produced documents relating to its policies, practices, and procedures. (Han  
8 Decl., *supra*, at ¶ 16.) As part of Defendant’s production, Plaintiffs also reviewed a sampling of  
9 time and pay records and information relating to the size and scope of the Class and Aggrieved  
10 Employees. (*Ibid.*) Putative class members were also located and interviewed to obtain a better  
11 understanding of the alleged day-to-day violations. (*Ibid.*)

12 Based upon the information provided by Defendant and interviews with putative class  
13 members, Plaintiffs contend – and Defendant denies – Defendant: (1) failed to provide employees  
14 with legally mandated meal and rest breaks and pay applicable premium wages consistently and  
15 properly; (2) failed to pay employees for all hours worked; (3) maintained an illegal rounding  
16 practice; (4) failed to factor non-discretionary bonuses into regular rate of pay; (5) failed to  
17 reimburse employees for necessary business expenses; (6) failed to issue compliant wage  
18 statements; and (7) failed to timely pay wages. (Han Decl., *supra*, at ¶¶ 18-26.)

19 **b. The Parties Were Able to Reach an Agreement on Settlement of the Action**

20 **i. The Parties Attended Mediation Which Led to the Settlement**

21 The Parties remotely attended mediation with an experienced wage-and-hour mediator.  
22 (Han Decl., *supra*, at ¶ 27.) Under the auspices of the mediator, the Parties reached a tentative  
23 settlement via a mediator’s proposal, the terms of which were memorialized in the Settlement  
24 Agreement that the Parties now seek Preliminary Approval of. (*Id.* at ¶ 27; Exhibits 2, 6.)

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1                   **ii. The Settlement Was Reached as a Result of Arm’s-length Negotiations**

2           The Settlement was reached because of arm’s-length negotiations. (Han Decl., *supra*, at ¶  
3 30.) Though cordial and professional, the settlement negotiations have always been adversarial  
4 and non-collusive in nature. (*Ibid.*) At the mediation, the Parties’ counsel conducted extensive  
5 arm’s-length settlement negotiations until an agreement was reached. (*Ibid.*)

6           Plaintiffs and Class Counsel believe in the merits of the case but recognize the expense  
7 and length of additional proceedings necessary to continue the litigation. (Han Decl., *supra*, at ¶  
8 31.) Plaintiffs and Class Counsel also considered the uncertainty and risk of further litigation,  
9 potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiffs and  
10 Class Counsel believe the settlement set forth in the Agreement is fair, adequate, and reasonable  
11 and is in the Class Members’ best interests. (*Ibid.*)

12                   **iii. The Settlement Is the Result of Thorough Investigation and Discovery**

13           The Parties investigated and evaluated the factual strengths and weaknesses of the claims  
14 and defenses before reaching the Settlement and engaged in sufficient investigation, research, and  
15 discovery. (Han Decl., *supra*, at ¶ 32.) The information produced permitted Class Counsel to  
16 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has  
17 reached the stage where the Parties understand “the strength of the case; the reasonableness of the  
18 settlement in light of the attendant risks of litigation, and in light of the best possible recovery”  
19 sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*,  
20 at ¶ 32; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

21                   **c. Terms of the Settlement**

22                   **i. Deductions from the Settlement**

23           The Parties agreed (subject to the Court’s approval) that this action be settled and  
24 compromised for the non-reversionary total sum of \$3,000,000 (“Maximum Settlement Amount”)  
25 which includes the: (1) attorneys’ fees of up to \$1,050,000 (35% of the Maximum Settlement  
26 Amount); (2) attorneys’ costs of up to \$30,000; (3) Class Representative Enhancement Payments  
27 totaling \$20,000; (4) Settlement Administration Costs of up to \$30,000; and (4) PAGA Payment  
28 of up to \$100,000. (Han Decl., *supra*, at ¶ 28.)

1                                    **ii. Calculation of Settlement Payments**

2            After all Court-approved deductions from the Maximum Settlement Amount, it is  
3            estimated \$1,770,000 (“Net Settlement Amount”) will be distributed to the Settlement Class  
4            Members, resulting in a gross *average* Individual Settlement Payment of \$590.79. (Han Decl.,  
5            *supra*, at ¶ 29.)

6            The Settlement Administrator will calculate and disburse the Individual Settlement  
7            Payments using the formula set forth in the Agreement. (Han Decl., *supra*, at ¶ 27; Exhibit 2,  
8            *supra*, at ¶ 57(a)(i).) The Settlement Administrator will also calculate and disburse Individual  
9            PAGA Payments using the formula set forth in the Agreement. (*Id.* at ¶ 57(a).)

10                                  **iii. The Allocation of 25% to Wages and 75% to Interest and Penalties Is**  
11                                  **Justified Under the Claims of this Action**

12            Individual Settlement Payments will be allocated: (1) twenty-five percent (25%) to the  
13            payment of wages; and (2) seventy-five percent (75%) to interest, penalties, liquidated damages,  
14            and other damages. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at ¶ 57(a)(ii).)

15            The allocation of wages, interest, and penalties indicated above was based on the realistic  
16            exposure that Plaintiffs could expect to receive for meal and rest break premiums and unpaid and  
17            underpaid wages if the case went to trial. (Han Decl., *supra*, at ¶ 52.) Plaintiffs then added the  
18            \$402,248.74 to the low-end realistic exposure for unpaid wages due to off-the-clock work and  
19            rounding and underpaid overtimes wages, sick leave, and premium wages (\$402,248.74 +  
20            \$1,033,636.14 + \$33,098.47 + \$18,318.17 = \$1,487,301.52). (*Ibid.*) The realistic exposure of  
21            \$1,487,301.52 that Plaintiffs can expect to receive if they were to prevail at trial for meal and rest  
22            break premiums, low-end unpaid wages due to off-the-clock work and rounding, and underpaid  
23            overtime wages, sick leave, and premium wages represents about twenty-six percent (26.45%) of  
24            the low-end total realistic exposure and PAGA penalties ( $\$1,487,301.52 \div 5,623,235.22 = 0.2645$   
25             $\times 100 = 26.45\%$ ). (*Ibid.*) Since this represents about twenty-five percent (25%) of wages,  
26            allocating Individual Settlement Payments as twenty-five percent (25%) to the payment of wages  
27            and other taxable damages and seventy-five percent (75%) to interest, penalties, liquidated  
28            damages, and other damages is appropriate. (*Ibid.*)

1                   **iv. Notice to the Class**

2           The Class Data shall be delivered to the Settlement Administrator no later than thirty (30)  
3 calendar days after the Court grants Preliminary Approval of the Settlement. (Han Decl., *supra*,  
4 at ¶ 27; Exhibit 2, *supra*, at ¶ 56(a).) No later than fifteen (15) calendar days after receiving the  
5 Class Data, the Settlement Administrator will send the Notice Packet with a translation to all  
6 Class Members via first-class United States Postal Service Mail. (*Id.* at ¶ 56(c).)

7                   **v. Distribution of Funds**

8           The Maximum Settlement Amount and subsequent settlement payments to be made will  
9 be funded and disbursed in the manner and time set forth in the Settlement Agreement. (Han  
10 Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at ¶ 57.)

11          Participating Class Members and Aggrieved Employees must cash in their settlement  
12 checks within one hundred eighty (180) calendar days after the date of their mailing. (Han Decl.,  
13 *supra*, at ¶ 27; Exhibit 2, *supra*, at ¶ 57(a)(iv).) Uncashed settlement checks will be canceled after  
14 the void date and transmitted to the *cy pres* recipient California Court Appointed Special  
15 Advocate (CASA) Association. (*Ibid.*) California Court Appointed Special Advocate (CASA)  
16 Association is an appropriate to serve as a *cy pres* recipient (See Declaration of Joan Reilly.) The  
17 Parties have no connection to or relationship with the *cy pres* recipient California Court Appointed  
18 Special Advocate (CASA) Association that would create the appearance of impropriety. (See  
19 declarations filed herewith.)

20                   **vi. Release of Claims**

21          Upon the Effective Date, Settlement Class Members (including Plaintiffs), on behalf of  
22 themselves and their respective former and present representatives, agents, attorneys, heirs,  
23 administrators, successors, and assigns, fully release and forever discharge the Released Parties  
24 from the Class Released Claims. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at ¶¶ 9, 27, 48.)

25          In addition to the Class Released Claims, in exchange for the consideration recited in the  
26 Agreement, including, but not limited to, the Class Representative Enhancement Payments,  
27 Plaintiffs, for themselves and for any decedent, heirs, legal representatives, successors and  
28 assigns, do hereby irrevocably and unconditionally release, acquit and forever discharge the

Released Parties, from any and all claims, demands, damages, liquidated damages, monies, penalties, restitution, injunctive relief, attorneys’ fees, costs, liabilities and/or causes of action of whatever kind or character, whether known or unknown, which Plaintiffs ever had, now have, have asserted or may hereafter assert or claim to have against the Released Parties arising out of or relating in any way to any acts, circumstances, facts, transactions, or omissions based on facts occurring up to and including the date Plaintiffs sign the Agreement. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at ¶ 49.) Plaintiffs shall also be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits Plaintiffs may otherwise have had pursuant to section 1542 of the Civil Code. (*Ibid.*)

Regarding class action releases, “[A] court may release not only those claims alleged in the complaint and before the court, but also claims which ‘could have been alleged by reason of or in connection with any matter or fact set forth or referred to in’ the complaint.”” (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scope of the releases in this case are acceptable because they are limited to the scope of the allegations in the operative complaints. Moreover, the released claims are ““based on *the identical factual predicate* as that underlying the claims in the settled class action.”” (*Ibid.*) In other words, the released claims do not ““go beyond the scope of the allegations in the operative complaint ... .”” (*Ibid.*)

#### **d. Counsel for Both Parties Are Experienced in Similar Litigation**

The Parties’ counsel are experienced in wage-and-hour, employment law and class actions. (Han Decl., *supra*, at ¶¶ 2-6; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf of employees for Labor Code violations. (*Ibid.*) Thus, Class Counsel’s experience guided their determination to endorse the Settlement.<sup>1</sup> (*Ibid.*)

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<sup>1</sup> The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Class Notice has been provided to the Class Members, and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

1 **IV. ARGUMENT**

2 **a. Class Action Settlements Are Subject to Court Review**

3 California Rules of Court, rule 3.769 requires court approval for class action settlements.<sup>2</sup>  
4 “Before final approval, the court must conduct an inquiry into the fairness of the proposed  
5 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for  
6 preliminary approval of class settlements:

7 (a) A settlement or compromise of an entire class action, or a cause of action in  
8 a class action, or as to a party, requires the approval of the court after  
9 hearing.

10 (c) Any party to a settlement agreement may serve and file a written notice of motion  
11 for preliminary approval of the settlement. The settlement agreement and proposed  
12 notice to class members must be filed with the motion, and the proposed order  
13 must be lodged with the motion.

14 Courts have discretion to approve settlements that are fair, not collusive, and consider “all  
15 the normal perils of litigation as well as the additional uncertainties inherent in complex class  
16 actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den. *sub*  
17 *nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.)

18 **b. The Settlement Is a Reasonable Compromise of Claims**

19 Understanding the sum in controversy is an important factor in if the settlement “of the  
20 class members’ claims is reasonable in light of the strengths and weaknesses of the claims and  
21 the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th  
22 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th  
23 399, 409.) The most important factor is “the strength of the case for plaintiffs on the merits,  
24 balanced against the amount offered in settlement.” (*Kullar*, at p. 130; see also *Munoz*, at p. 409.)

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28 <sup>2</sup> The California Supreme Court authorized California’s trial courts to use Federal Rule 23  
and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court*  
(1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where  
appropriate, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 *Kullar* instructs the court is not to “decide the merits of the case or to substitute its  
2 evaluation of the most appropriate settlement for that of the attorneys.” (*Kullar v. Foot Locker*  
3 *Retail, Inc., supra*, 168 Cal.App.4th at p. 133.) *Kullar* does not require an explicit statement of the  
4 maximum amount the class could recover if plaintiff prevailed on all his claims, provided there  
5 is a record allowing ““an understanding of the amount that is in controversy and the realistic range  
6 of outcomes of the litigation.”” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles, supra*, 186  
7 Cal.App.4th at p. 409.) In other words, “as the court does when it approves a settlement as in  
8 good faith under Code of Civil Procedure § 877.6, the court must at least satisfy itself that the  
9 class settlement is within the ‘ballpark’ of reasonableness.” (*Kullar*, at p. 133.)

10 **i. The Maximum Settlement Amount of \$3,000,000 Is Fair and Reasonable**

11 The Settlement Agreement was only possible following significant investigation and  
12 evaluation of the relevant policies and procedures and data produced for the putative class,  
13 permitting Class Counsel to engage in a comprehensive analysis of liability and potential  
14 damages. (Han Decl., *supra*, at ¶ 32.)

15 The claims are predicated on the alleged: (1) failure to properly pay overtime wages; (2)  
16 failure to provide meal and rest breaks and pay applicable premiums properly and consistently;  
17 (3) failure to pay minimum wages; (4) failure to timely pay wages; (5) failure to issue compliant  
18 wage statements; (6) failure to reimburse business expenses; (7) violation of PAGA; and (8)  
19 violation of Business & Professions Code sections 17200. (Han Decl., *supra*, at ¶ 33.) Defendant  
20 vehemently denies the theories of liability. (*Id.* at ¶ 34.)

21 While Plaintiffs believe the case is suitable for certification, uncertainties with respect to  
22 certification are present. (Han Decl., *supra*, at ¶ 35.) As the California Supreme Court ruled in  
23 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is a matter  
24 of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores, Inc.* have  
25 reached different conclusions concerning certification of wage-and-hour claims.<sup>3</sup> (*Ibid.*)

26 \_\_\_\_\_  
27 <sup>3</sup> (See e.g. *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification  
28 of class claiming misclassification and ordering summary adjudication in favor of employees],  
review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for  
illustrative purposes only]; *Walsh v. IKON Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440

1                   **ii. The PAGA Payment of \$100,000 Is Reasonable**

2           The provisions of the Labor Code potentially triggering PAGA penalties include, but are  
3 not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226, 226.3, 226.7, 229,  
4 246(l), 510, 512(a), 558, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802.  
5 (Han Decl., *supra*, at ¶ 45.) Defendant asserted, regardless of the results of the underlying causes  
6 of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant  
7 maintained it had a strong argument it would be unjust to award maximum PAGA penalties given  
8 the law’s unsettled state. (Han Decl., *supra*, at ¶ 45; *Thurman v. Bayshore Transit Mgmt.* (2012)  
9 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Without stacking and  
10 limited to the initial violation, the PAGA penalties would be limited to **\$150,000** (1,500  
11 employees x \$100 initial violation) on the low-end and **\$1,050,000** (1,500 employees x \$100  
12 initial violation x 7 theories of recovery) on the high-end. (Han Decl., *supra*, at ¶¶ 46-49.)

13           Plaintiffs recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*,  
14 at ¶ 50.) Many of the causes of action brought were duplicative of the statutory claims. (*Ibid.*)  
15 The maximum penalties for each pay period are likely not justified, and it was arguable the Court  
16 would award the maximum penalties. (*Ibid.*) Thus, allocating \$100,000 to PAGA civil penalties  
17 was reasonable given that Defendant is paying an additional \$2,900,000 in the class settlement.  
18 (*Ibid.*) When PAGA penalties are negotiated in good faith and “there is no indication that [the]  
19 amount was the result of self-interest at the expense of other Class Members,” such amounts are  
20 generally considered reasonable.<sup>4</sup> (*Ibid.*)

21           Considering the defenses, supporting evidence, and position the case is not suitable for  
22 class treatment, the Settlement is reasonable, adequate, and fair.

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24           \_\_\_\_\_  
25 [affirming decertification of class claiming misclassification]; *Aguiar v. Cintas Corp. No. 2*  
26 (2006) 144 Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson’s Inc.* (2006)  
141 Cal.App.4th 1422 [affirming denial of certification].)

27           <sup>4</sup> (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009  
28 U.S.Dist.LEXIS 33900, at \*24; see e.g. *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579,  
“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any  
damages to the PAGA claims”.)

**c. Discount Analysis Justifies the Settlement**

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$20,758,035.88** on the low-end and **\$22,826,186.72** on the high-end. (Han Decl., *supra*, at ¶ 51.)

| Category                                  | Potential Exposure                                    | Certification Risk | Merits Risk | Realistic Exposure                                  |
|-------------------------------------------|-------------------------------------------------------|--------------------|-------------|-----------------------------------------------------|
| Rest Break Premiums                       | \$1,455,594.04                                        | 70%                | 60%         | \$174,671.29                                        |
| Meal Break Premiums                       | \$1,137,887.27                                        | 60%                | 50%         | \$227,577.45                                        |
| Overtime/Minimum Wage: Off-the-Clock Work | \$4,134,544.54 to \$6,202,695.38                      | 50%                | 50%         | \$1,033,636.14 to \$1,550,673.84                    |
| Rounding                                  | \$94,567.07                                           | 30%                | 50%         | \$33,098.47                                         |
| Regular Rate                              | \$61,060.56                                           | 40%                | 50%         | \$18,318.17                                         |
| Unreimbursed Business Expenses            | \$1,187,848                                           | 35%                | 75%         | \$193,025.30                                        |
| Wage Statement Penalty                    | \$3,075,000                                           | 75%                | 75%         | \$192,187.50                                        |
| Waiting Time Penalty                      | \$9,611,534.40                                        | 75%                | 75%         | \$600,720.90                                        |
| <b>MAXIMUM TOTAL EXPOSURE</b>             | <b>\$20,758,035.88 to \$22,826,186.72<sup>5</sup></b> |                    |             | <b>\$2,473,235.22 to \$2,990,272.92<sup>6</sup></b> |

Based on this analysis, the realistic recovery for this case is **\$2,473,235.22** on the low-end and **\$2,990,272.92** on the high-end. (Han Decl., *supra*, at ¶ 61.) The Maximum Settlement Amount is about thirteen (13.14%) of the maximum potential exposure and one hundred percent (100.33%) of the realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re General Motors Corp. Engine Interchange Litigation* (7th Cir. 1979) 594 F.2d 1106, 1124; *Acosta v. TransUnion, LLC* (C.D. Cal. 2007) 240 F.R.D. 564, 575.) “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” (*Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of

<sup>5</sup> (Han Decl., *supra*, at ¶¶ 36-44.)

<sup>6</sup> (*Id.* at ¶¶ 53-60.)

1 outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual  
2 settlements. The proposed settlement is not to be judged against a hypothetical or speculative  
3 measure of what might have been achieved by the negotiators”). Nevertheless, the Settlement  
4 provides significant recovery for the Class Members.

5 **d. Conditional Certification of the Class Is Appropriate**

6 Code of Civil Procedure section 382 “authorizes class actions ‘when the question is one  
7 of a common or general interest, of many persons, or when the parties are numerous, and it is  
8 impracticable to bring them all before the court.’” (*Sav-On Drug Stores, Inc. v. Superior Court*,  
9 *supra*, 34 Cal.4th at p. 326.) The California courts will certify class actions where the plaintiff  
10 identifies “both [1] an ascertainable class and [2] a well-defined community of interest among  
11 class members.” (*Ibid.*)

12 The Class is ascertainable and numerous as to make it impracticable to join all Class  
13 Members, and there are common questions of law and fact amongst the Class. (Han Decl., *supra*,  
14 at ¶ 62.) Plaintiffs contend, as former hourly-paid, non-exempt employees of Defendant, their  
15 claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect  
16 the interests of the Class. (*Ibid.*) Plaintiffs also assert the prosecution of separate actions by  
17 individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

18 **i. The Proposed Class Is Ascertainable and Sufficiently Numerous**

19 “Ascertainability is required in order to give notice to putative class members as to whom  
20 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)  
21 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs  
22 by describing a set of common characteristics sufficient to allow a member of that group to  
23 identify himself or herself as having a right to recover based on the description.” (*Bartold v.*  
24 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be  
25 sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

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1 This case involves approximately 2,996 Class Members, meaning the Class is sufficiently  
2 numerous. (Han Decl., *supra*, at ¶ 63; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th  
3 1524, 1531, n.5 [finding a proposed class of “as many as 190 current and former employees” is  
4 sufficiently numerous].)

5 **ii. The Class Members Share a Well-defined Community of Interest**

6 The community of interest requirement “embodies three factors: (1) predominant common  
7 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and  
8 (3) class representatives who can adequately represent the class.” (*Sav-On Drug Stores, Inc. v.*  
9 *Superior Court, supra*, 34 Cal.4th at p. 326.) “[T]he community of interest requirement for  
10 certification *does not mandate that class members have uniform or identical claims.*” (*Capitol*  
11 *People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692  
12 (emphasis in original).) Rather, courts focus on the defendant’s internal policies and “pattern and  
13 practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs  
14 renders class certification appropriate.” (*Ibid.*)

15 **1. Common Issues Predominate**

16 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory  
17 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*  
18 *Department of Developmental Services, supra*, 155 Cal.App.4th at p. 690.) Courts determine  
19 whether the elements necessary to establish liability are susceptible to common proof, even if the  
20 class members must individually prove their damages. (*Brinker Restaurant Corp. v. Superior*  
21 *Court* (2012) 53 Cal.4th 1004, 1024). These types of claims are regularly granted class  
22 certification when the plaintiff can present evidence of common policies. (See e.g. *Jones v. JGC*  
23 *Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS  
24 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.*  
25 (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS 2904 [court  
26 certified class of dancers on state law claims].)

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1 Plaintiffs assert common issues of fact and law predominate as to each of the claims  
2 alleged. (Han Decl., *supra*, at ¶ 64.) Plaintiffs contend all persons employed by Defendant as non-  
3 exempt employees in California during the Class Period were subject to the same or similar  
4 policies, practices, and procedures described in detail above. (*Ibid.*)

## 5 **2. Plaintiffs' Claims Are Typical of the Class Claims**

6 Typical claims rely on legal theories and facts that are substantially like those of other  
7 class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

8 Plaintiffs are former employees of Defendant and allege that they and the Class Members  
9 were employed by the same company and injured by Defendant's common policies, practices,  
10 and procedures related to the claims described above. (Han Decl., *supra*, at ¶ 65.) Plaintiffs seek  
11 relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, the  
12 claims arise from the same employment practices and are based on the same legal theories as  
13 those applicable to the Class. (*Ibid.*)

## 14 **3. Plaintiffs Are Adequate to Represent the Class**

15 Plaintiffs have proven to be adequate representatives. (Han Decl., *supra*, at ¶ 66.)  
16 Plaintiffs have conducted themselves diligently and responsibly in representing the Class,  
17 understand their fiduciary obligations, and actively participated in the prosecution of this case.  
18 (*Ibid.*) Plaintiffs also have no interests averse to the interests of the Class Members. (*Ibid.*)

## 19 **4. Class Action Is Superior for the Fair and Efficient** 20 **Adjudication of this Controversy**

21 A class action is superior to other available means for the fair and efficient adjudication  
22 of this controversy. Plaintiffs contend the joinder of all Class Members is impractical and that  
23 class treatment will permit many similarly situated persons to prosecute their common claims for  
24 settlement purposes simultaneously in a single forum without the duplication of effort and  
25 expense. Because some Class Members are current employees, Plaintiffs believe the fear of  
26 retaliation further supports the superiority of class-wide relief as this fear deters legal redress.

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**f. Notice to Class Members Complies with California Rules of Court, Rule 3.769(f)**

California Rules of Court, rule 3.769(f), provides:

If the court has certified the action as a class action, notice of the final approval hearing must be given to class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.

The Notice Packet meets all these requirements. The Notice Packet advises the Class Members of their right to participate in the Settlement; how and when to object to or request exclusion from the Settlement; and the date, time, and location of the Final Approval Hearing.

Plaintiffs submit the Settlement is in the best interests of the Class, as it is fair, adequate, and reasonable. Under the applicable class action criteria and guidelines, the Settlement should be preliminarily approved by the Court, the Class should be conditionally certified for purposes of settlement only, and the Notice Packet should be approved.

**JUSTICE LAW CORPORATION**

By: D. Han  
Douglas Han  
Attorneys for Plaintiffs

**PROOF OF SERVICE  
1013A(3) CCP**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, California 91103 and my electronic address is manderson@justicelawcorp.com.

On August 14, 2024, I served the foregoing document described as

**NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CERTIFICATION, APPROVAL OF NOTICE PACKET, SETTING OF FINAL APPROVAL HEARING DATE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

for the following case: **Nance, et al. v. Young Men's Christian Association of the East Bay dba YMCA of the East Bay**  
LWDA/Court Case No.: **LWDA Case No.: CM-1017849-24**  
**Court Case No.: 23CV040009**  
**Alameda County Superior Court**

on interested parties in this action by electronically submitting as follows:

State of California  
Labor & Workforce Development Agency  
800 Capitol Mall, MIC-55  
Sacramento, California 95814

**[X] BY ELECTRONIC SUBMISSION**

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

**[X] STATE**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 14, 2024, at Pasadena, California.



\_\_\_\_\_  
Mariah Anderson