

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CLARK VANDERHEYDEN, et al.,

Plaintiffs,

v.

APFS, LLC

Defendant.

Case No. 1:21-cv-02242

**MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF THE JOINT STIPULATION OF SETTLEMENT
AND MOTION FOR CERTIFICATION OF CLASS**

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....iv

I. INTRODUCTION..... 1

II. DEFINITIONS.....3

III. FACTUAL AND PROCEDURAL BACKGROUND.....4

 A. Nature of the Claims..... 4

 B. Procedural History of the Litigation..... 5

IV. SUMMARY OF THE SETTLEMENT TERMS.....6

 A. The Proposed Settlement Class and Class Period..... 6

 B. The Common Fund..... 6

 C. Direct Payments to Class Members..... 6

 D. Release of Claims.....7

 E. Settlement Administration..... 7

 F. Notice of Settlement.....8

 G. Service Award.....8

 E. Plaintiffs’ Counsel’s Attorneys’ Fees and Litigation Expenses..... 9

V. ARGUMENT.....9

 A. The Standard of Review Under Rule 23(e)(1)..... 9

 B. Settlement of Class Action Litigation is Favored..... 10

 C. The Proposed Settlement is Fair, Reasonable, and Adequate..... 11

 1. Plaintiffs’ Counsel Has Adequately Represented the Class..... 12

 2. The Settlement was Negotiated at Arm’s Length..... 13

 3. The Relief Provided to the Class is Adequate..... 14

 a. The costs, risks, and delay of trial and appeal.....15

 b. The effectiveness of the proposed method distributing relief to Class Members.....16

c.	The relief provided to the class is adequate considering the terms of the proposed award of attorneys’ fees.....	167
d.	The relief provided to the class is adequate considering there are no agreements required to be identified under Rule 23(e).....	178
4.	The Settlement Treats Class Members Equitably to One Another.....	178
D.	Class Certification for Settlement Purposes is Appropriate.....	18
1.	The Class is Sufficiently Numerous.....	129
2.	The Class Shares Common Issues.....	20
3.	Named Plaintiff Milindawad’s Claims are Typical of Class Members.....	21
4.	Adequacy of Representation is Satisfied	21
5.	Class-Wide Issues Predominate Over Individual Issues and Class Action is Superior to Individual Litigation.....	23
E.	Plaintiff’s Counsel Should Be Appointed as Class Counsel.....	24
F.	The Court Should Approve Parties’ Proposed Settlement Notice Program.....	25
G.	The Settlement Meets the Standard for Approval Under the FLSA.....	26
H.	Scheduling the Final Approval Hearing Is Appropriate.....	29
VI.	CONCLUSION	27

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Amchem Prods. Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	23
<i>Armstrong v. Bd. Of School Dir. Of City of Milwaukee</i> , 616 F. 2d 305 (7th Cir. 1980).....	11
<i>Bainter v. Akram Investments, LLC</i> , 2018 WL 4943884 (N.D. Ill. Oct. 9, 2018).....	13
<i>Barragan v. Evanger’s Dog & Cat Food Co.</i> , 259 F.R.D. 330 (N.D. Ill. 2009)	18
<i>Carnegie v. Household Int’l, Inc.</i> , 376 F.3d 656 (7th Cir. 2004).....	23
<i>De La Fuente v. Stokeley-Van Camp, Inc.</i> , 713 F.2d 225 (7th Cir. 1983).....	20
<i>Doe v. Guardian Life Ins. Co. of Am.</i> , 145 F.R.D. 466 (N.D. Ill. 1992)	19
<i>EEOC v. Hiram Walker & Sons, Inc.</i> , 768 F.2d 884 (7th Cir. 1985).....	14
<i>Furman v. At Home Stores LLC</i> , 2017 WL 1730995 (N.D. Ill. May 1, 2017).....	13
<i>Gaskill v. Gordon</i> , 160 F.3d 361 (7th Cir. 1998).....	17
<i>Gaspar v. Linvatec Corp.</i> , 167 F.R.D. 51 (N.D. Ill. 1996)	19, 21
<i>Gautreaux v. Pierce</i> , 690 F.2d 616 (7th Cir. 1982).....	11
<i>American Int’l Group, Inc. v. ACE INA Holdings, Inc.</i> , 2011 WL 3290302 (N.D. Ill. July 26, 2011).....	9
<i>In re AT & T Mobility Wireless Data Servs. Sales Litig.</i> , 270 F.R.D. 330 (N.D. Ill. 2010)	11, 23
<i>In re Cont’l Ill. Sec. Litig.</i> , 962 F. 2d 566 (7th Cir. 1992).....	16
<i>In re Dairy Farmers of Am., Inc.</i> , 80 F. Supp. 3d 838 (N.D. Ill. Feb. 20, 2015).....	16
<i>In re Mexico Money Transfer Litig.</i> , 164 F. Supp. 2d 1002 (N.D. Ill. 2000).....	15
<i>In re Trans Union Corp. Privacy Litig.</i> , 2008 WL 11358136 (N.D. Ill. Jan. 3, 2008).....	11
<i>In re Viropharma Inc. Sec. Litig.</i> , 2016 WL 312108 (E.D. Pa. Jan. 25, 2016).....	13
<i>Isby v. Bayb</i> , 75 F.3d 1191 (7th Cir. 1996).....	10, 12, 14, 15
<i>Jamie S. v. Milwaukee Pub.</i> , 668 F.3d 481 (7th Cir. 2012).....	19

Jobns v. DeLeonardis,
 145 F.R.D. 480 (N.D. Ill. 1992) 22

Keele v. Wexler,
 149 F.3d 589 (7th Cir. 1998)..... 20

Kernats v. Comcast, Nos. 09 C 3368 and 09 C,
 2010 WL 4193219 (N.D. Ill. Oct. 20, 2010)..... 18

Kurgan v. Chiro One Wellness Centers LLC,
 2014 WL 642092 (N.D. Ill. Feb. 19, 2014)..... 20, 21

Lively v. Dynegy, Inc.,
 2007 WL 685861 (S.D. Ill. March 2, 2007)..... 21

Lynn’s Food Stores, Inc. v. United States,
 679 F.2d 1350 (11th Cir. 1982) 25

Magpayo v. Advoc. Health & Hosps. Corp.,
 2018 WL 950093 (N.D. Ill. Feb. 20, 2018)..... 23

Patterson v. Gen. Motors Corp.,
 631 F.2d 476 (7th Cir. 1980)..... 21

Phillips Petroleum Co. v. Shutts,
 472 U.S. 797 (1985)..... 24

Retired Chicago Police Ass’n v. City of Chicago,
 7 F.3d 584 (7th Cir. 1993) 20

Reynolds v. Beneficial Nat’l Bank,
 288 F.3d 277 (7th Cir. 2002).....9

Riordan v. Smith Barney,
 113 F.R.D. 60 (N.D. Ill. 1986) 22

Rosario v. Livaditis,
 963 F.2d 1013 (7th Cir. 1992)..... 18, 20

Ross v. RBS Citizens, N.A.,
 667 F.3d 900 (7th Cir. 2012).....18, 19, 20

Sanchez v. Roka Akor Chicago LLC,
 2017 WL 1425837 (N.D. Ill. April 20, 2017) 16

Schmidt v. Smith & Wollensky LLC,
 268 F.R.D. 323 (N.D. Ill. 2010) 18, 22

Scholes v. Stone, McGuire & Benjamin,
 143 F.R.D. 189 (N.D. Ill 1992) 23

Smith v. Adventist Midwest Health, No. 16 C 7606,
 2017 WL 8895628 (N.D. Ill. Nov. 17, 2017) 20

Smith v. Sprint Common’s Co.,
 387 F.3d 612 (7th Cir. 2004)..... 23

Swanson v. Am. Consumer Indus.,
 415 F.2d 1326 (7th Cir. 1966)..... 19

Uhl v. Throroughbred Tech. & Telecomms., Inc.,
 309 F.3d 978 (7th Cir. 2002)..... 21

Villanueva v. Davis Bancorp, Inc.,
 2011 WL 2745936 (N.D. Ill. July 8, 2011)..... 18

Wahl v. Midland Credit Mgmt., Inc.,
 243 F.R.D. 291 (N.D. Ill. 2007) 21

Wal-Mart Stores, Inc. v. Dukes,
 564 U.S. 338, 131 S. Ct. 2541 (2011)..... 19, 20

Williams-Green v. J. Alexander's Rests., Inc.,
277 F.R.D. 374 (N.D. Ill. 2011) 18
Yon v. Positive Connections, Inc.,
2005 WL 628016 (N.D. Ill. Feb. 2, 2005)..... 19

Statutes

29 U.S.C. 2013

Rules

Fed. R. Civ. P. 23passim
Fed. R. Civ. P. 23(a).....18, 19, 23
Fed. R. Civ. P. 23(b) 18
Fed. R. Civ. P. 23(c)..... 24, 25
Fed. R. Civ. P. 23(e).....passim
Fed. R. Civ. P. 23(g)..... 24
FRCP 26 12
FRE 408 12

Other Authorities

2 ALBA CONTE & HERBERT B. NEWBERG, NEWBERG ON CLASS ACTIONS § 11.41 (3d ed. 1992) 10
2 NEWBERG & CONTE, § 11.22, 11.25, 11-36, 11-37..... 10

I. INTRODUCTION.

Clark Vanderheyden and Chariya Milindawad (Named Plaintiffs)—on behalf of themselves, the Rule 23 Class Members (as that term is defined herein), and the Opt-in Plaintiffs (as that term is defined herein)—and APFS, LLC d/b/a Addison Group (Defendant, together with Plaintiffs, the Parties) have reached a settlement of this lawsuit (the Action). *See* Ex. 1. Plaintiffs allege Defendant failed to pay the Class Members and the Opt-in Plaintiffs overtime for hours worked in excess of 40 hours in a workweek, in violation of the Fair Labor Standards Act (FLSA), and as to the Class Members (some of whom are also Opt-in Plaintiffs), also the Illinois Minimum Wage Law (IMWL), and Illinois Wage Payment and Collection Act (IWPCA) (the IMWL and IWPCA are referred to collectively as IWA). *See* Doc. 64. The settlement agreement is memorialized in the Joint Stipulation of Settlement (Agreement), which is attached as *Exhibit 1*.

The Parties' Agreement is the result of arm's-length negotiations conducted by experienced counsel for all Parties after formally and informally exchanging information over the course of a year. The terms of the Agreement are reasonable, appropriate, and fair to all Parties and individuals involved—it covers the Named Plaintiffs, the approximately 85 Illinois Class Members with Rule 23 claims regarding IWA violations, and the seventy-three (73) Opt-in Plaintiffs with claims regarding FLSA violations (together, the Settlement Class Members).¹

If the Agreement is approved, the Rule 23 Class Members will receive an “Important Notice Regarding Unpaid Overtime Settlement with APFS, LLC d/b/a Addison Group” (Notice) form notifying them of the settlement, attached as *Exhibit 1-C*. These Class Members will have the opportunity to (a) submit a Request for Exclusion from the settlement or (b) make an objection to

¹ Nine (9) of the Class Members are also Opt-in Plaintiffs.

the settlement. *See* Ex 1 at ¶¶ 5(f)—(g), 7(f), 8. Within ten days of the Objection and Exclusion Deadline, Named Plaintiffs will move for Final Approval. *Id.* at 7(g).

If the Court grants Final Approval, the Class Members and Opt-in Plaintiffs will receive a “Settlement Letter” notifying them of the terms of the Settlement (Letter), attached as *Id.* at ¶ 7(j); *Exhibit 1-D*. Within 30 days of Defendant depositing the Settlement Amount (to occur within 7 days of the Effective Date, as that term is defined within the Agreement), the Settlement Administrator will disburse Settlement Payment checks. Settlement Class Members will then have 150 days to negotiate the check. *See* Ex 1 at *Id.* at ¶¶ 7(j), 7(n). The settlement timeline is set out in more detail within the Agreement. *Id.* at ¶ 7.

As demonstrated *infra*, the Parties’ Agreement is a fair and reasonable resolution of a *bona fide* dispute between the Parties. Therefore, Named Plaintiffs respectfully request the Court preliminarily approve the Agreement as it relates to the Rule 23 Class Members’ claims and the Opt-in Plaintiffs’ FLSA claims. *See, generally*, Ex. 1. Further, Named Plaintiffs seek the Court’s preliminary approval of the following payments: (i) a Service Award to each Named Plaintiff in the amounts of \$3,000 and \$7,000, respectively; (ii) 40% of the Settlement Amount, in an amount of \$380,000.00, to cover Plaintiffs’ Counsel’s Attorneys’ Fees and Litigation Expenses; and (iii) Settlement Administration Costs, in an amount not to exceed \$6,500.00. *See* Ex. 1 at ¶¶ 4(b)(ii), (iii), (iv).

Additionally, pursuant to Federal Rule of Civil Procedure 23(e)(1), an order directing Notice to the Rule 23 class is justified where the Court concludes it will likely be able to (1) approve the settlement as fair, reasonable, and adequate, and (2) certify the class for purposes of judgment on the settlement. Accordingly, Named Plaintiffs request—and Defendants do not oppose—that the Court permit the issuance of Notice to the Rule 23 class of the proposed settlement, approve the form and manner of notice to the class, appoint Plaintiff’s counsel as class counsel, appoint Simpluris, Inc. (Simpluris) to administer the class notice plan and to fulfill the duties of the Settlement Administrator

as outlined in the Agreement, and schedule a final approval hearing to determine whether the Settlement should be finally approved. The Agreement as well as the relevant Notice and Letter are attached hereto. *See* Ex. 1; Ex. 1-C, *Notice*, Ex. 1-D, *Letter*.

II. DEFINITIONS

- a. “Action” means the civil action filed in the Northern District of Illinois, *Clark Vanderbeyden, et al. v. APFS LLC d/b/a Addison Group*, Case Number 1:21-cv-02242.
- b. “Class Members” means all current and former recruiters listed on *Exhibit 1-A* employed by Defendant in the State of Illinois at any time between March 8, 2019 and November 1, 2021 for a period of twelve (12) months or less who were paid a salary and no overtime compensation, and consisting of no more than eighty-five (85) persons, including the nine (9) Opt-In Plaintiffs who meet these parameters.
- c. “Opt-In Plaintiffs” shall mean the seventy-three (73) Settlement Class Members who have filed a Notice and Consent to join the Action and are listed on *Exhibit 1-B*.
- d. “Settlement Class Members” means the Class Members and Opt-In Plaintiffs, less any Excluded Settlement Class Members.
- e. “Excluded Settlement Class Members” means the Class Members who submit a Request for Exclusion and the Opt-In Plaintiffs who do not negotiate their check within one hundred and fifty days of the Check Cashing Deadline.
- f. “Check Cashing Deadline” means 150 days from the date when the Settlement Administrator mails the Settlement Payments.
- g. “Settlement Administrator” shall mean Simpluris, a qualified third-party settlement administrator mutually agreeable to the Parties.
- h. “Settlement Amount” shall mean Nine Hundred Fifty Thousand Dollars (\$950,000.00).
- i. “Settlement Payments” means the amounts to be paid to Settlement Class Members from the Net Settlement Fund as described in Section 4 of the Joint Stipulation of Settlement.
- j. “Net Settlement Fund” refers to the Settlement Fund less the amounts awarded by the Court for Plaintiffs’ Attorneys’ Fees and Litigation Expenses, the Named Plaintiffs’ Service Awards, the Settlement Administration Costs, and any taxes associated with the aforementioned payments except the employer’s share of applicable state and federal payroll taxes associated with the Settlement Payments made to the Settlement Class Members.

- k. “Effective Date” means the date by which this Settlement is approved as provided in the Agreement and the Court enters the Final Approval Order.²

III. FACTUAL AND PROCEDURAL BACKGROUND.

A. Nature of the Claims.

In April 2021, Vanderheyden filed this Action on behalf of himself and others similarly situated, alleging Defendant violated the Fair Labor Standards Act (“FLSA”), 29 U.S.C. 201, *et seq.* *See* Doc. 1. Vanderheyden alleged Defendant failed to pay certain workers earned overtime as required by federal law. *Id.* Named Plaintiffs then added claims regarding Defendant’s alleged violations of the IWA. *See* Doc. 64. Specifically, Named Plaintiffs allege Defendant misclassified its Recruiters as exempt from overtime pay, and paid them a salary for all hours worked, including those in excess of 40 hours in a workweek, without overtime compensation. *Id.* The operative Complaint further alleges Class Members regularly worked more than 40 hours in individual work weeks but Defendant did not pay them overtime wages for the hours they worked in excess of 40 hours, in willful violation of the FLSA and IWA. *Id.* Defendant denies these allegations, disputes that it violated any law, and raises affirmative defenses, including assertions that (1) the Recruiters were exempt from the IWA’s and FLSA’s overtime requirements, (2) Plaintiffs were paid lawfully under the applicable laws, (3) Defendant acted in good faith, and (4) Defendant did not willfully or intentionally violate the FLSA. *See, e.g.,* Doc. 29; Doc. 34.

² In the event that objections are made to the Settlement by any person, then the Effective Date means the date on which the Court’s Final Approval Order is no longer appealable, or if an appeal is filed, the date on which such appeal is final and no further action is required by the Court. *See* Ex. 1 at ¶ 1(e). Notwithstanding the foregoing, the Parties agree to waive all rights to appeal on entry of the Final Approval Order, except that Plaintiffs’ Counsel may appeal an award of Plaintiffs’ Counsel’s fees and costs, should the sum awarded by the Court fall below that requested. *Id.* Accordingly, where the Final Approval Order entered by the Court grants the relief sought by the Parties as set forth in the Joint Stipulation of Settlement and in the absence of any objection by a Class Member, the Effective Date shall be the date of the Final Approval Order. *Id.*

B. Procedural History of the Litigation.

Plaintiff Vanderheyden commenced the litigation on April 27, 2021. *See* Doc. 1. On June 29, 2021, Defendants filed their Answer to Plaintiff's First Amended Complaint. *See* Doc. 29. Shortly thereafter, the parties conducted a Rule 26(f) conference. After serving Initial Disclosures, counsel for the Parties began discussing the possibility of settlement. On September 21, 2021, after numerous discussions and exchange of proposals regarding the scope of the stipulated class, the Parties filed their Joint Stipulation for Conditional Certification and Notice. *See* Doc. 38. On October 19, 2021, the Court conditionally certified the collective and authorized Notice pursuant to the Joint Stipulation. *See* Doc. 39. On December 13, 2021, the Parties agreed mediate the claims in the case. *See* Doc. 49.

Ultimately, the Parties agreed to mediate with Lynn Cohn, a well-regarded Northwestern professor and Chicago-based wage and hour mediator. In advance of the mediation, the parties exchanged comprehensive payroll and wage and hour information to create a class-wide damage model. Likewise, the Parties extensively briefed the law and the facts to Ms. Cohn (including exchanging damage calculations with one another) such that both Parties entered the negotiations with eyes wide open. *Id.* at ¶ 6.

On February 15, 2022, the parties participated in a remote Zoom mediation with Ms. Cohn. The mediation lasted all day and was productive in terms of negotiating a dollar amount but, of equal importance, non-monetary terms like settlement structure, direct mailing of checks, and no reversion of settlement funds. However, the Parties did not reach a settlement at the mediation. The Parties continued negotiating extensively for the weeks that followed—including multiple telephone conferences between counsel and Ms. Cohn—and reached an agreement regarding the terms sheet on April 5, 2022. Over the following months, the parties memorialized the term sheet in the formal Stipulation of Settlement before the Court. *See* Ex. 1.

IV. SUMMARY OF THE SETTLEMENT TERMS.

A. The Proposed Settlement Class and Class Period.

The Parties ask the Court to certify a Rule 23 class of:

“All current and former recruiters employed by Defendant in the State of Illinois at any time between March 8, 2019 and November 1, 2021 for a period of twelve (12) months or less who were paid a salary and no overtime compensation, consisting of no more than 85 persons.”

Id. at ¶ 6(a). As discussed, *infra*, the Court previously approved the Parties’ stipulation to conditional certification of the FLSA collective.

B. The Common Fund.

The Settlement Amount in the common Settlement Fund is \$950,000.00, from which the following payments shall be made: (i) Settlement Payments to the Settlement Class Members, (ii) Attorneys’ Fees and Litigation Expenses of no more than \$380,000.00 (representing 40% of the common Settlement Fund), (iii) Named Plaintiffs’ Service Awards, in the amounts of Seven Thousand Dollars (\$7,000.00) to Vanderheyden, and Three Thousand Dollars (\$3,000.00) to Milindawad and (iv) Settlement Administration Costs of more than \$6,500.00, and (v) any taxes associated with the aforementioned payments except the employer’s share of applicable state and federal payroll taxes associated with the Settlement Payments made to the Settlement Class Members.³ *See* Ex. 1 at ¶¶ 1(m)—1(u); 4(a)—4(b), 6(a). Settlement Payments are based on each Class Member’s work history, including the Class Members’ actual compensation and number of weeks worked in the relevant period. *Id.* at ¶ 4(b), 7(i); Ex. 1-C *Notice*; Ex. 1-D, *Letter*.

C. Direct Payments to Rule 23 Class Members.

Class Members are not required to submit a claim form to participate in this settlement. *See*

³ Apart from the Settlement Amount, Defendant will be responsible for payment of the employer’s share of applicable state and federal payroll taxes associated with the Settlement Payments made to the Named Plaintiffs and Settlement Class Members. *See* Ex. 1 at ¶¶ 4(a)—4(c).

Ex. 1 at ¶¶ 5(f), 8, Ex. 1-C, *Notice*. Class Members who do not exclude themselves from the settlement will be issued checks, which they must negotiate within 150 days. *See* Ex. 1 at ¶¶ 1(w), 7(j), 7(n), Ex. 1-C, *Notice*. If any Settlement Class Member's Settlement Payment check is not negotiated by the Check Cashing Deadline, then Plaintiffs' Counsel shall perform another calculation of Settlement Payments as detailed in the Stipulation of Settlement, but including only the remaining Settlement Class Members who negotiated their Settlement Payment check within One Hundred Fifty (150) days (the "Eligible Settlement Class Members"). *See* Ex. 1 at ¶ 7(n). The Settlement Administrator would then redistribute the unclaimed Settlement Payments to the Eligible Settlement Class Members in accordance with the calculations provided by Plaintiffs' Counsel. *Id.*

D. Release of Claims.

Class Members who do not submit a Request for Exclusion will release all wage and hour claims or causes of action arising from March 8, 2019 through May 15, 2022 and which arise out of or are related to the allegations in the Complaint, including, but not limited to, those brought under the FLSA and the IWA. *See* Ex. 1 at ¶¶ 1(i), 1(q), 5(c), 5(f)—5(g). Opt-in Plaintiffs who are not Class Members who negotiate their settlement checks will likewise release all wage and hour claims or causes of action arising from April 27, 2018 through May 15, 2022 and which arise out of or are related to the allegations in the Complaint, including but not limited to claims arising under the Fair Labor Standards Act, state wage payment laws, including Illinois and Minnesota wage payment laws, or any parallel local law. *Id.* at ¶¶ 1(i), 1(q), 4(e)(iii), 5(c)—5(d). Named Plaintiffs release such wage and hour claims, and further release any claims growing out of their employment with, treatment at, and separation from Defendant, as well any claims regarding wages or compensation received from Defendant, and as is more fully detailed within the Agreement. *Id.* at ¶¶ 5(a)(i)—5(a)(iv), 5(b). However, Named Plaintiffs do not release—and specifically retain—the right to pursue a claim for workers' compensation benefits, if applicable. *Id.* at ¶ 5(a)(v).

E. Settlement Administration.

The Parties have selected Simpluris to act as the Settlement Administrator. *Id.* at ¶1(p). The duties of the Settlement Administrator are set forth in the Agreement and include: (1) facilitating Notice to the Class Members; (2) determining the employer's share of payroll employment taxes on the Settlement Payments; (4) mailing Notice Materials to Class Members and maintaining a telephone line and/or settlement website as a resource for Settlement Class Members to update their contact information; (5) withholding federal and state taxes on the determined amounts (6) issuing each Settlement Class Member an IRS Form W-2 in connection with each Settlement Payment; (7) issuing an IRS Form 1099 for the liquidated damages portion of each Settlement Payment; (8) receiving objections and Requests for Exclusion from Class Members who submit them, and providing a list of those Class Members to the Parties; (9) delivering Settlement Payments to Settlement Class Members, along with the Letter explaining the settlement; (10) delivering Named Plaintiffs' Service Awards; (11) wiring to Plaintiffs' Counsel the Attorney's Fees and Litigation Expenses awarded by the Court; (12) establishing and controlling a Qualified Settlement Fund in which the Settlement Fund will be deposited. *Id.* at ¶¶ 4(e)(i), 7(e), 7(i)—7(m); Ex. 1-C, *Notice*, Ex. 1-D, *Letter*. The cost of administering the Settlement will be paid from the Settlement Fund. *Id.* at ¶¶ 1(l), 4(b)(iv).

F. Notice of Settlement.

The proposed notice program includes the Notice (*See* Ex. 1-C, *Notice*) notifying Class Members the lawsuit settled, identifying the Class Member's estimated recovery, explaining how the amount was calculated, describing how the Class Member can object to the settlement or request to be excluded from it, and disclosing information regarding the Final Approval Hearing. *See* Ex. 1 at ¶ 8. Class Members will receive the Notice of Settlement from the Settlement Administrator by mail. *Id.* at ¶ 7(e).

Prior to mailing the Notice of settlement, Plaintiffs' Counsel will provide the Settlement Administrator with the final Settlement Payment calculations, the Class Data, the Class Notice, and any additional information the Settlement Administrator needs to facilitate Notice. *Id.* at ¶¶ 7(d)—(e). The Settlement Administrator will operate a telephone line and/or website that will allow Class Members to update their contact information or request more information about the Stipulation of Settlement. *Id.* at ¶ 7(l).

G. Service Award.

The Stipulation of Settlement provides for Service Awards to the Named Plaintiffs—Seven Thousand Dollars (\$7,000.00) to Vanderheyden, and Three Thousand Dollars (\$3,000.00) to Milindawad. *Id.* at ¶¶ 4(b)(2), 6(d). Named Plaintiffs will execute the general release of Defendants (containing a broader release than the general Class Members' release). *Id.* at ¶¶ 5(a)—5(b). The Notice of settlement will advise Class Members about the request for the Service Awards. *See* Ex. 1-C, *Notice*.

H. Plaintiffs' Counsel's Attorneys' Fees and Litigation Expenses.

Plaintiffs' Counsel will apply to the Court for payment of attorneys' fees and costs from the Settlement Fund. *See* Ex. 1 at ¶¶ 4(b)(iii), 6(a). Under the Agreement, the total Attorney's Fees and Litigation Expenses sought shall not exceed \$380,000.00 (40% of the common fund) *Id.* Defendant does not object to Class Counsel's application within these limits. *Id.* The Notice of Settlement advises Class Members about the request for Attorneys' Fees and Costs. *See* Ex. 1-C, *Notice*.

V. ARGUMENT

A. The Standard of Review Under Rule 23(e).

“Federal Rule of Civil Procedure 23(e)(2) requires court approval of any settlement that effects the dismissal of a class action. The district court must determine that a class action settlement is fair, adequate, and reasonable, and not a product of collusion.” *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 279 (7th Cir. 2002) (cites omitted). At the preliminary approval stage, courts review class action

settlements to determine whether notice is justified by a showing that the court will likely be able to approve the settlement under Rule 23(e)(2) and certify the class for settlement purposes. FED. R. CIV. P. 23(e)(1)(B).

Under Rule 23(e)(1), as amended December 1, 2018, the Court must direct Notice to the class of a settlement upon determining that Notice is justified because the Court concludes it is “more likely than not” to finally approve the settlement and certify a settlement class. *See* FED. R. CIV. P. 23(e)(1)(B). The amendments specify that before finally approving a settlement, a court should consider whether (1) the class was adequately represented; (2) the settlement was negotiated at arm’s length; (3) the relief is adequate, taking into account the costs, risks, and delay of trial and appeal; how the relief will be distributed; the terms governing attorneys’ fees; and any side agreements; and (4) whether class members are treated equitably relative to each other. *Id.*; *American Int’l Group, Inc. v. ACE INA Holdings, Inc.*, Nos. 07 C 2898, 09 C 2026, 2011 WL 3290302, at *6 (N.D. Ill. July 26, 2011). Named Plaintiffs respectfully submit, *infra*, this settlement meets (and exceeds) the requirements for preliminary approval, certification of the Rule 23 settlement class, and issuance of Notice.

B. Settlement of Class Action Litigation is Favored.

Federal courts strongly favor and encourage settlements, particularly in class actions, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Isby v. Bayb*, 75 F.3d 1191, 1196 (7th Cir. 1996) (“Federal courts naturally favor the settlement of class action litigation.”); *see also* 2 ALBA CONTE & HERBERT B. NEWBERG, NEWBERG ON CLASS ACTIONS § 11.41 (3d ed. 1992) (collecting cases). The traditional means for handling wage claims like those at issue here—individual litigation—would unduly tax the court system, require a massive expenditure of public and private resources and, given the relatively small value of the claims of the individual Class Members, would be impracticable. The proposed

Agreement, therefore, is the best vehicle for Class Members to receive the relief to which they are entitled in a prompt and efficient manner.

The *Manual for Complex Litigation* describes a three-step procedure for approval of class action settlements:

- (1) Preliminary approval of the proposed settlement at an informal hearing;
- (2) Dissemination of mailed and/or published notice of the settlement to all affected class members; and
- (3) A “formal fairness hearing” or final settlement approval hearing, at which class members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented.

Manual for Complex Lit., Fourth, § 21.632–34. This procedure, used by courts in this Circuit and endorsed by the leading class action treatise, safeguards the due process rights of absent class members and enables the Court to fulfill its role as the guardian of class interests. *See* 2 NEWBERG & CONTE, § 11.22, *et seq*

The Parties request the Court grant preliminary approval of the proposed Joint Stipulation of Settlement. The purpose of preliminary evaluation of proposed class action settlements is to determine whether the settlement is within the “range of reasonableness,” and thus whether notice of the settlement’s terms should be issued to the Class and a formal fairness hearing scheduled. *Id.* at § 11.25, 11-36, 11-37. During the preliminary approval stage, the district court decides whether the proposed settlement falls “within the range of possible approval.” *In re AT & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 346 (N.D. Ill. 2010), citing *Armstrong v. Bd. Of School Dir. Of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980) *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998). If so, the court should grant preliminary approval of the settlement, authorize the parties to give Notice of the proposed settlement to class members, and schedule a formal fairness hearing. *In re AT & T Mobility*, 270 F.R.D at 346; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982). At the formal fairness hearing, class members may be heard and further evidence and argument concerning

the fairness, adequacy, and reasonableness of the settlement may be presented. Neither formal Notice nor a hearing is required at the preliminary approval stage; the Court may grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the Court's discretion. *See, e.g., In re Trans Union Corp. Privacy Litig.*, No. 00 C 4729, 2008 WL 11358136, at *6 (N.D. Ill. Jan. 3, 2008) (preliminary approval inquiry often involves an informal presentation of the parties' proposals to the court).

C. The Proposed Settlement is Fair, Reasonable, and Adequate.

Pursuant to Rule 23(e)(1)(B)(i), the Court may preliminarily approve a class action settlement if it "will likely be able to approve the proposal under Rule 23(e)(2)" which entails reviewing four enumerated factors. Plaintiffs addresses each factor in turn.

1. Plaintiffs' Counsel has Adequately Represented the Settlement Class Members.

This factor focuses "on the actual performance of counsel acting on behalf of the class." FED. R. CIV. P. 23, Advisory Committee Notes (Dec. 1, 2018) (hereafter "Advisory Committee Notes"). In this case, the adequacy factor is satisfied. Plaintiffs' Counsel and the Named Plaintiffs pursued this case vigorously on behalf of the Settlement Class Members. Plaintiffs' Counsel's pre-mediation investigation was robust, and it included conferral with both Named Plaintiffs and numerous Opt-in Plaintiffs. *See* Ex. 2, Josephson Decl. ¶ 13.

Through discovery and data produced pursuant to FRCP 26 and FRE 408, Plaintiffs' Counsel possess all the information necessary to evaluate the merits of the claims. Net of all fees and costs, the average recovery for each Settlement Class Member is estimated to be \$3,775.51, with the maximum Settlement Payment being \$22,994.05 and the minimum Settlement Payment being \$250.00. *See* Ex. 1 at ¶¶ 1(v),4(d); *see also* Ex. 2, Josephson Decl. ¶ 8. The settlement is an exceptional result.

In this context, Plaintiffs' Counsel's position that this settlement represents an excellent recovery for class members should carry particular weight. For almost 20 years, Plaintiffs' Counsel

have devoted nearly their entire practice to prosecuting wage and hour claims nationwide (having been either lead counsel or co-counsel in over 1,400 wage and hour class and collective actions or individual cases) and they have a deep knowledge of wage and hour practices in this industry, the type of evidence that typically exists, and how to value these claims. *Id.* at ¶¶ 5-10. In fact, Plaintiffs’ Counsel have obtained key rulings relevant to the claims in this case. Plaintiffs’ Counsel’s deep knowledge of the industry and the law confirms—beyond the metrics which likewise prove as much—that this settlement represents an excellent recovery for Settlement Class Members. *Id.*; *Isby*, 75 F.3d at 1200 (“the district court was entitled to give consideration to the opinion of competent counsel that the settlement was fair, reasonable and adequate.”).

The Court should find the Settlement Class Members have been adequately represented.

2. The Settlement was Negotiated at Arm’s Length.

This factor focuses on whether the settlement negotiations “were conducted in a manner that would protect and further the class interests.” *See* FED. R. CIV. P. 23(e), Advisory Committee Notes. Here, this factor is satisfied because the settlement was achieved through arm’s-length negotiations culminating in a full-day mediation session overseen by noted wage and hour mediator Lynn Cohn. *See* Ex. 2, Josephson Decl. at ¶ 17; *In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at *8 (E.D. Pa. Jan. 25, 2016) (noting that “participation of an independent mediator ... virtually [e]nsures that the negotiations were conducted at arm’s length and without collusion between the parties”) (quotes omitted).

Again, after extensive research, the Parties engaged settlement negotiations over several months. The Parties had a full opportunity to analyze the pertinent factual and legal issues and assess the strengths and weaknesses of the claims and defenses at issue in this case. The Action did not resolve at the mediation; it was only through additional negotiations facilitated by the mediator in the days and weeks following the mediation that the Parties reached agreement. *See* Ex. 2, Josephson Decl.

at ¶ 17. This is sufficient to establish a contested litigation. *See, e.g., Bainter v. Akram Investments, LLC*, No. 17 C 7064, 2018 WL 4943884, at *1 (N.D. Ill. Oct. 9, 2018) (holding the contested litigation prong was satisfied where the parties “actively litigated the case for one year”); *Furman v. At Home Stores LLC*, No. 1:16-CV-08190, 2017 WL 1730995, at *1 (N.D. Ill. May 1, 2017) (finding litigation was contested where the defendant denied that it violated wage and hour law, the parties reviewed comprehensive payroll data in reaching the settlement, and the settlement was the result of arm’s-length negotiations).

The Court should find the settlement was negotiated at arm’s length.

3. The Relief Provided to the Settlement Class Members is Adequate.

Rule 23(e) charges the Court to consider whether “the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3). *See* FED. R. CIV. P. 23(e)(2)(c)(i-iv).

In this case, these factors clearly weigh in favor of settlement approval. All of the factors identified by Rule 23(e)(c)(2) should be viewed in light of the meaningful monetary benefit this settlement confers on the Settlement Class Members and the fact that Settlement Class Members will be mailed a check without the need to participate in a claims process. One of the key considerations in evaluating a proposed settlement is the strength of the plaintiffs’ case compared to the amount of the defendant’s offer. *See Isby*, 75 F.3d at 1199. However, “district courts have been admonished ‘to refrain from resolving the merits of the controversy or making a precise determination of the parties’ respective legal rights.’” *Id.* at 1197-98 (quoting *EEOC v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir. 1985)). Accordingly, when deciding whether to approve the Settlement, this Court must focus on fairness and reasonableness, but not on the substantive law governing the Class Representatives’ claims. *Isby*, 75 F.3d at 1197.

Here, Defendant has agreed to pay a substantial sum to Settlement Class Members given the risks associated with continued litigation. After the payment of Class Counsel's Attorneys' Fees, Litigation Expenses, Service Awards, Settlement Administration Costs, by Plaintiffs' calculations, Settlement Class Members are receiving more than the estimated overtime wages owed if they worked 45 hours in each week they worked under a three-year statute of limitations. *See* Ex. 2, Josephson Decl. at ¶ 19. This is an excellent result given that Defendant vigorously disputes the Class Members were unlawfully denied overtime wages and further argues it complied with the IWA and FLSA. For this reason, as well as the reasons set forth in the subsections below, the excellent result for Settlement Class Members supports preliminary approval.

The Court should find Plaintiffs' Counsel provided adequate relief to the Settlement Class Members.

a. The costs, risks, and delay of trial and appeal.

Considering the costs, risks, and delay associated with trial and appeal, the proposed settlement satisfies Rule 23(e)(2)(c)(i). As noted *supra*, the settlement confers a significant monetary payment to the Settlement Class Members. This would be an excellent recovery in any wage and hour case, and particularly when weighed against the procedural and substantive risks in the case. Procedurally, the settlement provides a class-wide recovery right now, with no risks associated with maintaining class and conditional certification. Although Plaintiffs are confident certification is proper, maintaining certification of the FLSA collective and obtaining certification of the Illinois wage and hour class is not guaranteed. Obtaining this same result at trial would require defeating motions for decertification of the collective and opposition to class certification.

Absent settlement, the Parties would have engaged in extensive written and oral discovery relating to certification, liability, and damages. Motion practice would have included briefing on collective and class certification, as well as dispositive motions. The Settlement provides collective and

class-wide resolution while avoiding the risks and increased expenses associated with continued litigation, including potential appeals. *See Isby*, 75 F.3d at 1199; *see also In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d 1002, 1019 (N.D. Ill. 2000). This factor weighs strongly in favor of settlement approval.

b. The effectiveness of the proposed method distributing relief to Settlement Class Members.

Under this factor, the Court “scrutinize[s] the method of claims processing to ensure that it facilitates filing legitimate claims” and “should be alert to whether the claims process is unduly demanding.” *See* Advisory Committee Notes. In this case, Settlement Class Members are not required to file claim forms to receive a settlement payment. *See* Ex. 1-C, *Notice*. Instead, unless Class Members request to be excluded, they will be sent a check for their settlement amount. *See* Ex. 1 at ¶¶ 5(f), 7(f), 8. Moreover, the Settlement Administrator will mail every individual covered by the settlement an individualized Notice form that explains the settlement. *See* Ex. 1 at ¶ 7(e); Ex. 1-C, *Notice*. Class Members who do not exclude themselves and all Opt-in Plaintiffs will be mailed checks following final approval of the Settlement without the need to take any additional action. *See* Ex. 1 at ¶ 7. The robust Notice program and direct distribution of Settlement Payments to Settlement Class Members supports preliminary approval of the Agreement. This factor also weighs in favor of settlement approval.

c. The relief provided to the Settlement Class Members is adequate considering the terms of the proposed award of attorneys’ fees.

This factor recognizes that “[e]xamination of the attorney-fee provisions may also be valuable in assessing the fairness of the proposed settlement.” *See* Advisory Committee Notes. In this case, Plaintiff will petition the Court for an award of Attorneys’ Fees and Litigation Expenses of up to 40% of the common fund (\$380,000.00) to include reasonable Litigation Expenses in the case. *See* Ex. 1 at ¶¶ 4(b)(iii), 6(a). This amount is well within the range of reasonable attorneys’ fees awarded in common

fund cases in this Circuit, especially considering it also covers Litigation Expenses. *See In re Cont'l Ill. Sec. Litig.*, 962 F. 2d 566, 572 (7th Cir. 1992) (the “usual range for contingent fees is between 33 and 50 percent.”); *In re Dairy Farmers of Am., Inc.*, 80 F. Supp. 3d 838, 845 (N.D. Ill. Feb. 20, 2015) (in class actions, “usual range for contingent fees is between 33 and 50 percent”); *Sanchez v. Roka Akor Chicago LLC*, No. 14-cv-4645, 2017 WL 1425837, at * 6 (N.D. Ill. April 20, 2017) (in wage and hour case, “Plaintiffs’ request for effectively 39.5% of the common fund [was] consistent with the market in the Northern District of Illinois” and was therefore granted); *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (“typical contingent fee is between 33 and 40 percent”).

At the final approval stage, Plaintiffs will fully brief the fairness and reasonableness of the requested attorneys’ fees under the Seventh Circuit’s factors. In the meantime, it is likely that the amount of the proposed attorneys’ fees will support final approval because courts in the Northern District of Illinois and around the Seventh Circuit routinely award a similar percentage for attorneys’ fees from a common fund. This factor too weighs in favor of settlement approval.

d. The relief provided to the Settlement Class Members is adequate considering there are no agreements required to be identified under Rule 23(e).

The only agreement between the Parties is the Joint Stipulation of Settlement, which is attached to this Motion. There are no other agreements regarding the Settlement Class Members or Attorneys’ Fees related to this settlement. This factor weighs in favor of settlement approval.

4. The Settlement Treats Settlement Class Members Equitably to One Another.

This factor seeks to prevent the “inequitable treatment of some class members vis-a-vis others.” *See* Advisory Committee Notes. In this case, Plaintiffs’ Counsel diligently created an allocation formula fair to all Settlement Class Members. Settlement Payments are calculated on a *pro rata* basis based on the number of applicable work weeks they worked based on the data produced by

Defendant. *See* Ex. 1 at ¶ 4(b), 7(i); Ex. 1-C, *Notice*; Ex. 1-D, *Letter*. Thus, this factor favors preliminary approval of the Agreement.

D. Class Certification for Settlement Purposes is Appropriate

The Court “will likely be able to... certify the class[es] for purposes of judgment on the proposal.” *See* FED. R. CIV. P. 23(e)(1)(B). A determination of class certification requires a two-step analysis. FED. R. CIV. P. 23(b). First, class certification is appropriate where the plaintiff shows that the following four Rule 23(a) factors are satisfied: numerosity (the class must be so large that individual joinder is “impracticable”), typicality (named plaintiffs’ claims are typical of the class’s claims), commonality (questions of law or fact common to the class), and adequacy of representation (the class representative must be able to fairly and adequately protect class interests). FED. R. CIV. P. 23(a)(1) – (4).

Second, the action must qualify under one of the three subsections of Rule 23(b). FED. R. CIV. P. 23(b); *Rosario v. Livaditis*, 963 F.2d 1013, 1017 (7th Cir. 1992). Rule 23(b) is satisfied on a showing of one of three circumstances: (1) separate lawsuits would create the risk of inconsistent judgments or would be dispositive of the interests of nonparty class members; or (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or (3) questions of law or fact common to the class predominate over questions affecting individual members, and the class action is superior to other available methods. Fed. R. Civ. P. 23(b)(1) – (3).⁴

⁴ Federal courts in Illinois routinely grant class certification of wage claims. *See, e.g., Ross v. RBS Citizens, N.A.*, 667 F.3d 900, 910 (7th Cir. 2012); *Kernats v. Comcast*, Nos. 09 C 3368 and 09 C 4305, 2010 WL 4193219, at *1 (N.D. Ill. Oct. 20, 2010) (IMWL claims for overtime pay); *Schmidt v. Smith & Wollensky LLC*, 268 F.R.D. 323 (N.D. Ill. 2010) (IMWL claims for overtime pay); *Williams-Green v. J. Alexander’s Rests., Inc.*, 277 F.R.D. 374 (N.D. Ill. 2011) (IMWL claims for minimum wages); *Villanueva v. Davis Bancorp, Inc.*, No. 09 C 7826, 2011 WL 2745936, at *1 (N.D. Ill. July 8, 2011) (IMWL claims for owed overtime pay); *Barragan v. Evanger’s Dog & Cat Food Co.*, 259 F.R.D. 330 (N.D. Ill. 2009) (IMWL claims for owed overtime pay).

In this case, the proposed settlement class satisfies Rule 23 and should be certified for settlement purposes.

1. The Class is Sufficiently Numerous.

Rule 23(a)(1) requires a class large enough that the joinder of all members would be “impracticable.” Impracticability does not mean “impossibility,” but only difficulty or inconvenience in joining all members of the class. *Doe v. Guardian Life Ins. Co. of Am.*, 145 F.R.D. 466, 471 (N.D. Ill. 1992). To determine whether joinder is impracticable, courts must consider the circumstances unique to each case. *Swanson v. Am. Consumer Indus.*, 415 F.2d 1326, 1333 (7th Cir. 1966). These circumstances include whether it is feasible for class members to bring individual suits and whether it is judicially efficient for the court to try such individual cases. *Gaspar v. Linvatec Corp.*, 167 F.R.D. 51, 56 (N.D. Ill. 1996). “To require a multiplicity of suits by similarly situated small claimants would run counter to one of the prime purposes of a class action.” *Swanson*, 415 F.2d at 1333.

Courts consistently hold that if there are 39 or more class members, numerosity is satisfied and no further inquiry on impracticability of joinder is required. *See, e.g., Yon v. Positive Connections, Inc.*, No. 04 C 2680, 2005 WL 628016, at *2 (N.D. Ill. Feb. 2, 2005) (certifying state law class where documents showed 39 employees owed overtime pay); *Swanson v. Am. Consumer Indus., Inc.*, 415 F.2d 1326, 1333 n.9 (7th Cir. 1969) (a class of forty is generally sufficient to satisfy Rule 23(a)(1)). In this case, there are 85 Class Members (and 73 Opt-ins). *See* Ex. 1-A, Ex. 1-B. A class of this size easily satisfies the numerosity requirement.

2. The Class Shares Common Issues.

For a class to be certified, questions of law or fact must exist common to the class. FED. R. CIV. P. 23(a)(2). The commonality requirement depends on a common contention that is capable of class-wide resolution, thus allowing the truth of an issue central to the claim to be determined “in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, 131 S. Ct. 2541, 2551 (2011); *see also Ross v.*

RBS Citizens, N.A., 667 F.3d 900, 908 (7th Cir. 2012); *Jamie S. v. Milwaukee Pub. Schs.*, 668 F.3d 481, 497 (7th Cir. 2012) (plaintiff must demonstrate that putative class members all “suffered the same injury”). “To satisfy the commonality element, it is enough for plaintiffs to present just one common claim.” *Ross*, 667 F.3d at 908 (citing *WalMart*, 131 S. Ct. at 2556).

Commonality is satisfied here. All of the Settlement Class Members were allegedly denied overtime for hours worked beyond 40 hours in a workweek. The common questions raised by the IWA allegation (and FLSA allegations) in this case include: whether Defendant employed the Class Members; whether the Class Members were exempt from overtime requirements; whether Defendant had a policy of misclassifying Settlement Class Members as exempt from the overtime provisions; and whether Defendant’s alleged violations resulted from a continuing course of conduct; whether Defendant’s alleged illegal pay practice applied to the Class Members. *See* Doc. 64 at ¶ 81. These common questions are sufficient to meet the Rule 23(a) commonality requirement. *See Smith v. Adventist Midwest Health*, No. 16 C 7606, 2017 WL 8895628, at *4 (N.D. Ill. Nov. 17, 2017) (commonality requirement met when all clinicians shared the same compensation structure and were classified as exempt); *Kurgan v. Chiro One Wellness Centers LLC*, No. 10-cv-1899, 2014 WL 642092, at *6 (N.D. Ill. Feb. 19, 2014) (commonality satisfied when common question of liability turned on uniform exempt classification of employees). Thus, commonality is likely to be satisfied here.

3. Named Plaintiff Milindawad’s Claims are Typical of Class Members.

The Rule 23(a)(3) requirement of typicality is met here as well. “The question of typicality in Rule 23(a)(3) is closely related to the preceding question of commonality,” *Rosario*, 963 F.2d at 1018, but this requirement “primarily directs the district court to focus on whether the named representatives’ claims have the same essential characteristics as the claims of the class at large.” *Retired Chicago Police Ass’n v. City of Chicago*, 7 F.3d 584, 596–597 (7th Cir. 1993). Plaintiffs contend that claims of the class representative Milindawad and Class Members are typical if they arise from the same

practice or course of conduct and are based on the same legal theory. *Keele v. Wexler*, 149 F.3d 589, 595 (7th Cir. 1998); *De La Fuente v. Stokeley-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983). “Typical does not mean identical, and the typicality requirement is liberally construed.” *Gaspar v. Linvatec Corp.*, 167 F.R.D. 51, 57 (N.D. Ill. 1996). The fact that there is some factual variation among the class grievances will not defeat a class action. *Patterson v. Gen. Motors Corp.*, 631 F.2d 476, 481 (7th Cir. 1980).

The Named Plaintiffs⁵ claims arise from the same alleged factual and legal circumstances—Defendant’s alleged misclassification policy and the denial of overtime pay—that form the bases of the Rule 23 claims asserted on behalf of the Class Members. These allegations therefore meet the typicality requirement. *See Kurgan*, 2014 WL 642092, at *7 (typicality met when plaintiffs’ claims and the claims of all potential class members “arise from the same course of action by Defendant: the misclassification and the alleged failure to pay overtime.”). Therefore, typicality is also likely to be satisfied.

4. Adequacy of Representation is Satisfied.

Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a)(4). Adequacy is satisfied when the class representatives have “the same interest and suffer the same injury as the class members.” *Lively v. Dynege, Inc.*, No. 05-cv-00063, 2007 WL 685861, at *11 (S.D. Ill. Mar. 2, 2007) (citing *Uhl v. Throroughbred Tech. & Telecomms., Inc.*, 309 F.3d 978, 985 (7th Cir. 2002)). To determine whether the Named Plaintiff has met the adequacy requirement of Rule 23(a)(4), the Court must ask whether she: (1) has “antagonistic or conflicting claims with other members of the class;” (2) has “a sufficient interest in the outcome of the case to ensure vigorous advocacy;” and (3) has counsel that is “competent, qualified, experienced

⁵ Vanderheyden worked in Minnesota, and did not work in Illinois, but he alleged he and the Class Members were denied overtime.

and able to vigorously conduct the litigation.” *Wabl v. Midland Credit Mgmt., Inc.*, 243 F.R.D. 291, 298 (N.D. Ill. 2007) (quotes and cites omitted).

There is no evidence here that the proposed Named Plaintiffs (proposed class representatives) have interests that are antagonistic to the Class Members (or the Opt-in Plaintiffs). Like other Class Members, the Named Plaintiffs worked for Defendant as salaried, exempt Recruiters.. The Settlement Class Members allegedly suffered the same alleged overtime violation—misclassification—and thus have sufficient interest in the outcome of the case. Furthermore, Plaintiffs’ counsel are experienced class action attorneys and have acted as representative counsel in numerous actions in federal and state courts. *See* Ex. 2, Josephson Decl. ¶ 3; *see also Schmidt v. Smith & Wollensky LLC*, 268 F.R.D. 323, 328 n.5 (N.D. Ill. 2010) (“[Douglas M. Werman and Maureen A. Salas] [are] qualified to serve as class counsel in the pending litigation because they are highly experienced attorneys and have acted as class counsel in similar actions in federal and state courts.”). Therefore, as with the other factors, adequacy will be satisfied.

5. Class-Wide Issues Predominate Over Individual Issues and Class Action is Superior to Individual Litigation.

Class certification is appropriate under Rule 23(b)(3) where “questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and ... a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” As discussed *supra*, the proposed settlement class thus satisfies Rule 23(b)(3).

An action demonstrates a “predominance” of common questions where “the group for which certification is sought seeks to remedy a common legal grievance.” *Riordan v. Smith Barney*, 113 F.R.D. 60, 65 (N.D. Ill. 1986). The test is not whether resolution of “common issues” would be dispositive of the entire litigation. *Id.* Rather, as the court observed in *Jobns v. DeLeonardis*, 145 F.R.D. 480, 484-85 (N.D. Ill. 1992):

[Subsection (b)(3)] merely requires that the class claims have a dominant, central focus. Satisfaction of this criterion normally turns on the answer to one basic question: is there an essential common factual link between all class members and the defendant for which the law provides a remedy?

For the reasons set forth *supra* with respect to commonality under Rule 23(a)(2) and typicality under Rule 23(a)(3), there exist predominating common questions of fact and law, and the Class Members' claims arose from the same actions of as those of Named Plaintiffs. In addition, the fact that the Parties are asking to certify the class for settlement purposes weighs in favor of finding that the predominance elements are satisfied. *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 619-20 (1997); *Smith v. Sprint Common's Co.*, 387 F.3d 612, 614 (7th Cir. 2004); *In re AT&T Mobility Wireless Data Services Sales Litig.*, 270 F.R.D. at 344. Because Rule 23(b)(3) certification is proposed in the context of a settlement, the "court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial." *Amchem Prods., Inc.*, 521 U.S. at 620 (cites omitted). Any manageability or predominance concerns relating to individual proceedings and defenses are satisfied by the settlement and its claims resolution process. *See Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 660 (7th Cir. 2004).

A class action is also superior to other methods of adjudication in this case. Judicial economy and efficiency, as well as consistency of judgments, would be achieved through the certification of the class. *See Scholes v. Stone, McGuire & Benjamin*, 143 F.R.D. 189 (N.D. Ill 1992). The alternative is a multitude of individual lawsuits and piecemeal litigation. Likewise, a class action is an appropriate method for the fair and efficient adjudication of the controversy between the Class Members and Defendant. In this proceeding, the parties will be allowed to resolve the claims of 85 Class Members (and 73 Opt-ins) in one coordinated proceeding. *In re AT&T Mobility Wireless Data Services Sales Litig.*, 270 F.R.D. at 344. Defendant will also benefit by being spared the expense and potential inconsistency of scores of individual lawsuits. *See Magpayo v. Advoc. Health & Hosps. Corp.*, No. 16-CV-01176, 2018 WL 950093, at *16 (N.D. Ill. Feb. 20, 2018).

D. Plaintiff's Counsel Should Be Appointed as Class Counsel.

Michael Josephson of Josephson Dunlap, LLP, Richard “Rex” Burch of Bruckner Burch PLLC, and Douglas M. Werman of Werman Salas P.C. should be appointed as Class Counsel. Rule 23(g), which governs the standards and framework for appointing class counsel for a certified class, sets forth four criteria the district court must consider in evaluating the adequacy of proposed counsel: (1) “the work counsel has done in identifying or investigating potential claims in the action; (2) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (3) counsel’s knowledge of the applicable law; and (4) the resources that counsel will commit to representing the class.” FED. R. CIV. P. 23(g)(1)(A). The Court may also consider any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class. FED. R. CIV. P. 23(g)(1)(B). Plaintiffs’ Counsel meet all of these criteria and have been appointed class counsel in wage and hour class actions many times before. *See* Ex. 2, Josephson Decl. at ¶¶ 3-10.

E. The Court Should Approve Parties’ Proposed Settlement Notice Program.

When a class action lawsuit is settled, “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” FED. R. CIV. P. 23(e)(1)(B). To that end, Rule 23 requires “the best notice that is practicable under the circumstances, including individual notice to all class members who can be identified through reasonable effort.” FED. R. CIV. P. 23(c)(2)(B). To protect the rights of absent class members, a court must require the best notice practicable. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985). Such notice can be effectuated through “United States mail, electronic means, or other appropriate means.” *Id.* Also, any notice “must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion;

and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).” FED R. CIV. P. 23(c)(2)(B).

Here, all of the above requirements are satisfied. Pursuant to the Stipulation of Settlement, Simpluris, an experienced third-party Settlement Administrator, will be provided with the name, last known address, employee ID number, last known telephone number, and dates of employment of each Settlement Class Member, and he will mail the Notice. *See* Ex. 1 at ¶¶ 7(b)—(e); *see also* Ex. 1-C, *Notice*. Individuals will have 60 days from the mailing of the Notice to exclude themselves from or object to the settlement. *See* Ex. 1 at ¶¶ 8. In addition, Class Members can obtain more information on the settlement website or from the settlement telephone line. *Id* at ¶ 7(l).

Moreover, the Notice form is written in clear language and accurately describes the nature of the action, the settlement, the scope of the release, and the process Class Members must follow to exclude themselves from or object to the Settlement. *See* Ex. 1-C, *Notice*. Importantly, each notice packet includes an individualized page informing Class Members of their anticipated award and an explanation of how it was calculated. *Id*. This detailed Notice protects the rights of absent class members, thereby weighing in favor of settlement approval.

F. The Standard of Review for Approval Under the FLSA.

The Court previously approved the Parties’ stipulation to conditional certification of this FLSA collective:

“All individuals employed by Addison Group who held the job title junior recruiter or recruiter, or was a consultant performing recruiting duties from April 27, 2018” through May 15, 2022, and who “were paid a salary without receiving overtime compensation for any workweek from April 27, 2018” through May 15, 2022, and who “did not exceed 18 months of employment with Addison Group at any point from April 27, 2018” through May 15, 2022.

See Doc. 38; Doc. 39. Named Plaintiffs now request the Court approve the FLSA settlement as set forth in the Agreement. *See* Ex. 1.

Where the litigation arises from a private enforcement action under Section 216(b) of the

FLSA, the standard for approval of a settlement is straightforward: a district court should approve a settlement if it was reached as a result of contested litigation and it is a fair and reasonable resolution of a bona fide dispute between the parties. See *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1352-54 (11th Cir. 1982) (citing *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697 (1945)); *Butler v. Am. Cable & Tel., LLC*, No. 09 Civ. 5336, 2011 WL 4729789, at *9 n.9 (N.D. Ill. Oct. 6, 2011); *Roberts v. Apple Sauce, Inc.*, No. 3:12-cv-830, 2014 WL 4804252, at *1 (N.D. Ind. September 25, 2014). The Court, therefore, should perform two inquiries before approving an FLSA settlement. First, the Court must be satisfied that the settlement was the product of “contested litigation.” Second, the Court must be satisfied that the settlement involves a fair and reasonable resolution of a *bona fide* dispute between the Parties. Typically, courts rely on the adversarial nature of a litigated FLSA case resulting in settlement as indicium of fairness. *Lynn's Food Stores, Inc.*, 679 F.2d at 1354. If the proposed settlement reflects a reasonable compromise over contested issues, the Court may approve the settlement to promote the policy of encouraging settlement of litigation. *Id.*

Based on the vigorously contested nature of this litigation and the quality of the settlement, this Court should conclude that this Settlement is a reasonable resolution of a *bona fide* dispute in contested litigation. As discussed *supra*, this litigation was contested. See *Furman v. At Home Stores LLC*, No. 1:16-CV-08190, 2017 WL 1730995, at *1 (N.D. Ill. May 1, 2017) (finding litigation was contested where the defendant denied that it violated the FLSA, the parties reviewed comprehensive payroll data in reaching the settlement, and the settlement was the result of arm's-length negotiations); *Koszyk v. Country Fin. a/k/a CC Servs., Inc.*, No. 16 CIV. 3571, 2016 WL 5109196, at *1 (N.D. Ill. Sept. 16, 2016) (finding, among other things, that FLSA settlement resulted from “contested litigation with substantial informal discovery, and arm's-length negotiations”).

Again, a *bona fide* dispute over liability clearly existed. “A bona fide dispute exists when an employee makes a claim that he or she is entitled to unpaid wages and when settlement requires

resolution of the payment due.” *Woods v. Club Cabaret, Inc.*, No. 1:15-CV-01213-JEH, 2017 WL 4054523, at *9 (C.D. Ill. May 17, 2017) (finding a *bona fide* dispute). Here, Named Plaintiffs alleged Defendant violated the FLSA because it required certain individuals to work more than 40 hours a week without paying them overtime as required. Defendant denied the allegations, asserted the Settlement Class Members were properly paid for all time worked, were properly classified, were not entitled to overtime, and denied that the Settlement Class Members are entitled to any damages. This procedural posture, where Defendant denied the material facts and any violation of the FLSA, vigorously defended their position throughout the litigation, where the Parties conducted informal discovery, and the Parties engaged in significant settlement negotiations, demonstrates a *bona fide* dispute between the Parties. *Swartz v. D-J Eng’g, Inc.*, 2016 WL 633872 (D. Kan. Feb. 17, 2016).

Further, the FLSA release should be approved for Settlement Class Members who are Class Members that do not opt out of the Settlement as well as the Opt-In Plaintiffs who are not Settlement Class Members and who negotiate their settlement checks.. See e.g., *Abarado v. Int’l Laser Prods., Inc.*, Order Granting Final Approval of Class and Collective Action Settlement, No. 18-cv-07756, p. 3-4 (N.D. Ill. Jan. 24, 2020) (approving release of FLSA claims for settlement class members who signed limited endorsement on the back of the settlement check, which served as a properly filed consent form and agreement to be bound by the settlement); *Magpayo*, Order Granting Final Approval of Class Settlement, No. 16-cv-01176 (N.D. Ill. May 14, 2019), ECF No 134 at * 4 (same).

For these reasons and the reasons discussed *supra*, the Court should approve the FLSA settlement.

G. The Requested Service Award Should Be Approved

“Service awards are well suited in employment litigation because the plaintiffs assume the risk that future employers may look unfavorably upon them if they file suit against former employers.” *Brewer v. Molina Healthcare, Inc.*, No. 1:16-CV-09523, 2018 WL 2966956, at *2 (N.D. Ill. June 12, 2018).

Courts may make separate awards to class representatives in recognition of their risks taken, time expended and benefits to the class. *See Espenscheid v. Direct Sat USA, LLC*, 688 F.3d 872, 876-77 (7th Cir. 2012).

Named Plaintiffs took significant actions to protect the interests of potential collective action members, and those actions resulted in a substantial benefit to Settlement Class Members. *See Brewer*, No. 1:16-CV-09523, 2018 WL 2966956, at *3. (“In agreeing to file this class action suit in their name and through their increased participation in the case, they undertook the significant risk that, “should the suit fail, [he could] find [himself] liable for the defendant's costs or even, if the suit [was] held to have been frivolous, for the defendant’s attorneys’ fees.”). Finally, Named Plaintiffs spent time and effort in furthering the litigation, including providing information to his attorneys.

The requested service awards are in line with other service payments recently awarded to named plaintiffs in FLSA actions. *See Briggs v. PNC Fin. Servs. Grp., Inc.*, No. 1:15-CV-10447, 2016 WL 7018566, at *3 (N.D. Ill. Nov. 29, 2016) (approving \$12,500 service award each to two plaintiffs in FLSA settlement); *Castillo v. Noodles & Co.*, No. 16-cv-03036, 2016 WL 7451626, at *6-8 (N.D. Ill. Dec. 23, 2016) (approving \$10,000 service award each for four named plaintiffs in FLSA wage action).⁶ The requested service awards represent 2.5% of the Gross Settlement Fund, which is a reasonable percentage. *See Parker v. Jekyll & Hyde Entm’t Holdings, L.L.C.*, No. 08 civ 7670, 2010 WL 532960, at *2 (S.D.N.Y. Feb 9, 2010) (finding that service awards totaling approximately 11% of total recovery are reasonable); *Reyes v. Buddha-Bar NYC*, No. 08 Civ. 2494, 2009 WL 5841177, at *8, *13 (S.D.N.Y. May 28, 2009) (awards of \$7,500 each to three named plaintiffs, representing approximately 3% of the total

⁶ *See also Hart v. RCI Hosp. Holdings, Inc.*, No. 09 CIV. 3043 PAE, 2015 WL 5577713, at *19 (S.D.N.Y. Sept. 22, 2015) (approving \$15,000 service payments for each of two named plaintiffs in state and federal wage action); see also 4 Newberg on Class Actions § 11.38, at 11- 80 (citing empirical study from 2006 that found average award per class representative to be \$16,000).

\$710,000 settlement amount, was reasonable). Accordingly, the requested service awards are reasonable, and this Court should approve the request.

H. Scheduling the Final Approval Hearing is Appropriate.

The last step in the settlement approval process is a final fairness hearing at which the Court may hear all evidence and argument necessary to make its settlement evaluation. Proponents of the Settlement may explain the terms and conditions of the Settlement and offer argument in support of final approval. In addition, Class Members, or their counsel, may be heard in support of or in opposition to the Settlement. The Court will determine after the Final Approval Hearing whether the Settlement should be approved, and whether to enter a final approval order and judgment under Rule 23(e). Plaintiffs request that the Final Approval Hearing be scheduled as soon as possible after they file their Motion for Final Approval of the Settlement, which Plaintiffs anticipate will be filed approximately 100 days after the instant motion is filed.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs request the Court grant their Unopposed Motion for Preliminary Approval of the Joint Stipulation Of Settlement and Motion for Certification of Class and enter the contemporaneously submitted Proposed Order (*See* Ex. 1, Stipulation of Settlement, Ex. 3, Proposed Order).

Dated: August 12, 2022

Respectfully submitted,

By: */s/ Carl Fitz* _____

Michael A. Josephson

Andrew W. Dunlap

Carl Fitz

Rachael Rustmann

JOSEPHSON DUNLAP

11 Greenway Plaza, Suite 3050

Houston, TX 77046

T: (713) 352-1100

F: (713) 352-3300

mjosephson@mybackwages.com

adunlap@mybackwages.com

cfitz@mybackwages.com

AND

Douglas M. Werman

Maureen A. Salas

WERMAN SALAS P.C.

77 West Washington, Suite 1402

Chicago, IL 60602

T: (312) 419-1008

dwerman@fshalaw.com

msalas@fshalaw.com

AND

Richard J. Burch

BRUCKNER BURCH PLLC

11 Greenway Plaza, Suite 3025

Houston, TX 77046

T: (713) 877-8788

F: (713) 877-8065

rburch@brucknerburch.com

Attorneys for Plaintiff & The Putative Class Members

EXHIBIT 1

STIPULATION OF SETTLEMENT

This Joint Stipulation of Settlement (“Joint Stipulation”) was made and entered into by Named Plaintiffs Clark Vanderheyden and Chariya Milindawad (“Named Plaintiffs”), on behalf of themselves, the Opt-In Plaintiffs (as that term is defined herein) and all Class Members (as that term is defined herein) (collectively, “Settlement Class Members”), and APFS LLC d/b/a Addison Group (“Defendant”), and is conditioned upon the Court’s approval.

1. DEFINITIONS

The following terms, when used in this Joint Stipulation, have the meanings set forth below, except when they are otherwise or more precisely defined in another section.

(a) “Action” means the civil action filed in the Northern District of Illinois, *Clark Vanderheyden, et al. v. APFS LLC d/b/a Addison Group*, Case Number 1:21-cv-02242.

(b) “Plaintiffs’ Counsel” or “Plaintiffs’ Attorneys” means Josephson Dunlap, LLP, Werman Salas, P.C. and Bruckner Burch PLLC.

(c) “Court” means the United States District Court for the Northern District of Illinois, Eastern Division.

(d) “Class Members” means all current and former recruiters listed on *Exhibit A* employed by Defendant in the State of Illinois at any time between March 8, 2019 and November 1, 2021 for a period of twelve (12) months or less who were paid a salary and no overtime compensation, and consisting of no more than eighty-five (85) persons, including the nine (9) Opt-In Plaintiffs who meet these parameters.

(e) “Effective Date” means the date by which this Settlement is approved as provided herein and the Court enters the Final Approval Order. In the event that objections are made to the Settlement by any person, then the Effective Date means the date on which the Court’s Final Approval Order is no longer appealable, or if an appeal is filed, the date on which such appeal is final and no further action is required by the Court. Notwithstanding the foregoing, the Parties agree to waive all

rights to appeal on entry of the Final Approval Order, except that Plaintiffs' Counsel may appeal an award of Plaintiffs' Counsel's fees and costs, should the sum awarded by the Court fall below that requested. Accordingly, where the Final Approval Order entered by the Court grants the relief sought by the Parties as set forth in this Joint Stipulation and in the absence of any objection by a Class Member, the Effective Date shall be the date of the Final Approval Order.

(f) "Excluded Settlement Class Members" means any Class Members who submit a Request for Exclusion as defined in Section 8(b) and all Opt-In Plaintiffs who do not negotiate their check within one hundred and fifty days of the Check Cashing Deadline.

(g) "Opt-In Plaintiffs" shall mean the seventy-three (73) Settlement Class Members who have filed a Notice and Consent to join the Action and are listed on *Exhibit B* hereto.

(h) "Parties" means the Settlement Class Members and Defendant, collectively and, separately, each a "Party."

(i) "Released Parties" means Defendant and its former and present parents, subsidiaries, and affiliated corporations and their respective officers, directors, shareholders, members, managers, representatives, employees, family members and agents, and any other successors, assigns, or legal representatives.

(j) "Settlement" shall mean the resolution of the Action as effectuated by this Joint Stipulation.

(k) "Settlement Account" shall be a Qualified Settlement Fund established and controlled by the Settlement Administrator under Section 468B of the Internal Revenue Code and Treas. Reg. §1.468B-1, 26 C.F.R. § 1.468B-1, *et seq.*, in which the Settlement Fund will be deposited.

(l) "Settlement Administration Costs" shall mean the fees and costs of the Settlement Administrator.

(m) "Attorney's Fees" means the fees reasonably incurred by Plaintiffs' Counsel in connection with the Action, including any multiplier, as determined by the Court.

(n) “Litigation Expenses” means any reasonable out of pocket costs incurred by Plaintiffs’ Counsel in connection with the Action.

(o) “Service Awards” means additional payments to the Named Plaintiffs—in the amounts of Seven Thousand Dollars (\$7,000.00) to Vanderheyden, and Three Thousand Dollars (\$3,000.00) to Milindawad—in compensation for services personally performed in connection with the Action.

(p) “Settlement Administrator” shall mean Simpluris, Inc., a qualified third-party settlement administrator mutually agreeable to the Parties.

(q) “Settlement Class Members” means the Class Members and Opt-In Plaintiffs, less any Excluded Settlement Class Members.

(r) “Settlement Amount” shall mean Nine Hundred Fifty Thousand Dollars (\$950,000.00).

(s) “Settlement Fund” shall refer to the common settlement fund that will be funded by Defendant in the Settlement Amount, as well as the employer’s share of applicable state and federal payroll taxes associated with the Settlement Payments made to the Settlement Class Members, and that will be distributed in accordance with this Joint Stipulation.

(t) “Net Settlement Fund” refers to the Settlement Fund less the amounts awarded by the Court for Plaintiffs’ Attorneys’ Fees and Litigation Expenses, the Named Plaintiffs’ Service Awards, the Settlement Administration Costs and any taxes associated with the aforementioned payments except the employer’s share of applicable state and federal payroll taxes associated with the Settlement Payments made to the Settlement Class Members.

(u) “Settlement Payments” means the amounts to be paid to Settlement Class Members from the Net Settlement Fund as described in Section 4 of this Joint Stipulation.

(v) “Minimum Settlement Payment” shall mean the amount of Two Hundred Fifty Dollars (\$250.00).

(w) “Check Cashing Deadline” means 150 days from the date when the Settlement Administrator mails the Settlement Payments.

(x) “Class Data” means the information described in Section 7(b) of this Joint Stipulation.

2. THIS JOINT STIPULATION IS CONTINGENT ON COURT APPROVAL

Plaintiffs’ Counsel will prepare a motion to the Court requesting approval of the terms of this Joint Stipulation and certification of a class pursuant to Federal Rule of Civil Procedure 23 consisting of the Class Members. All obligations of Defendant hereunder, including but not limited to payment of the Settlement Amount, shall be contingent upon the Court’s approval of this Settlement and certification of a class consisting of the Class Members for Settlement purposes. If, for any reason, the material terms of this Joint Stipulation are not approved by the Court, the Parties will work in good faith to modify the Settlement in order to obtain court approval. Whether or not the Joint Stipulation is approved, neither the Joint Stipulation nor any document, statement, proceeding, or conduct related to this Joint Stipulation, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to any Party. Though if approved, the Joint Stipulation may be used for purposes of enforcing the terms of this Joint Stipulation. Pending Court approval, the Action is stayed and the Parties shall not pursue any discovery or otherwise litigate the claims at issue, except the Parties may jointly seek certification of the aforementioned class consisting of the Class Members for purposes of facilitating this Joint Stipulation.

3. STATEMENT OF NO ADMISSION

(a) Although the Parties do not abandon the positions they took in the Action, they believe that continued litigation would be protracted, expensive, uncertain, and contrary to their best interests. In light of these realities, the Parties believe that this Joint Stipulation is fair, reasonable, and the best way to resolve the disputes between and among them.

(b) Defendant denies all claims as to liability, wrongdoing, damages, penalties, interest, fees, injunctive relief and all other forms of relief, as well as the class and collective allegations asserted in the Action. Defendant further denies that this Action is appropriate for class or collective treatment for any purpose other than settlement. Defendant has agreed to resolve the Action via this Joint Stipulation, but to the extent this Joint Stipulation is deemed void, Defendant does not waive, but rather expressly reserves, all rights to challenge any and all claims and allegations asserted by Named Plaintiffs in the Action, any Opt-In Plaintiff and/or any Class Member should the case proceed, upon all procedural and substantive grounds, including without limitation the ability to challenge collective and class action treatment on any grounds.

4. MONETARY TERMS OF SETTLEMENT

(a) In order to settle the Action, and as consideration for the release of claims from Named Plaintiffs and Settlement Class Members, dismissal of the Action, and the other good and valuable consideration described herein, Defendant will deposit the Settlement Amount into the Settlement Account, which shall be used to provide for: (i) Settlement Payments to Settlement Class Members, as described in this Joint Stipulation; (ii) Service Awards to the Named Plaintiffs; (iii) Plaintiffs' Attorneys' Fees; (iv) Plaintiffs' Litigation Expenses; (v) Settlement Administration Costs; and (vi) any taxes associated with the aforementioned payments except the employer's share of applicable state and federal payroll taxes associated with the Settlement Payments made to the Settlement Class Members.

(b) The Settlement Fund shall be allocated as follows, subject to Court approval:

(i) The Net Settlement Fund available for Settlement Class Members' *pro rata* Settlement Payments shall be the Settlement Fund minus the amounts paid to (1) the Named Plaintiffs as Service Awards; (2) Plaintiffs' Counsel for Plaintiffs' Attorneys' Fees and Litigation Expenses; (3) the Settlement Administrator for Settlement Administration Costs, and (4) any taxes associated with the aforementioned payments except the employer's share

of applicable state and federal payroll taxes associated with the Settlement Payments made to the Settlement Class Members, and all subject to the limits described herein. The specific amounts to be deducted from the Settlement Fund are set forth below in subparagraphs (ii), (iii), (iv) and (v).

(ii) In addition to their *pro rata* share of the Net Settlement Fund, and in exchange for the release set forth in Section 5(a), Named Plaintiffs shall each receive an additional payment—in the amounts of Seven Thousand Dollars (\$7,000.00) to Vanderheyden, and Three Thousand Dollars (\$3,000.00) to Milindawad—as Service Awards for their service in the Action.

(iii) A sum of no more than Three Hundred Eighty Thousand Dollars (\$380,000.00) shall be paid to Plaintiffs' Counsel for Plaintiffs' Attorneys' Fees and Litigation Expenses.

(iv) A sum no greater than \$6,500.00 shall be paid to the Settlement Administrator for Settlement Administration Costs.

(v) Any taxes associated with the aforementioned payments except the employer's share of applicable state and federal payroll taxes associated with the Settlement Payments made to the Settlement Class Members, as calculated by the Settlement Administrator

(c) Defendant's total obligation under this Joint Stipulation shall not exceed the Settlement Amount, inclusive of all payments described in this section and the employees' portion of any legal and tax withholdings, but excluding Defendant's payment of the employer's share of applicable state and federal payroll taxes associated with the Settlement Payments made to the Named Plaintiffs and Settlement Class Members.

(d) The Named Plaintiffs and each Settlement Class Member's Settlement Payment shall be calculated by Plaintiffs' Counsel as outlined in the Memorandum of Law Support of Unopposed Motion to Certify. If a Settlement Class Member's Settlement Payment is less than \$250, the

Settlement Class Member's Settlement Payment will be increased to the Minimum Settlement Payment of \$250.

(e) The Settlement Administrator shall issue one check for each Settlement Payment allocated as follows:

(i) One half of each Settlement Payment will represent wages. Regular employee payroll deductions shall be taken out of this portion of each Settlement Class Member's Settlement Payment as determined by the Settlement Administrator. The Settlement Administrator shall withhold federal and state taxes on that amount for all Settlement Class Members based upon a flat withholding rate, which is reasonable and customary in accordance with Treas. Reg. 31.3402(g)-1(a)(2), and as is calculated by the Settlement Administrator. State tax will be withheld according to applicable state and federal withholding requirements, which the Settlement Administrator shall be responsible for appropriately completing. The Settlement Administrator shall issue each Settlement Class Member an IRS Form W-2 for this portion of the Settlement Payment.

(ii) The other half of each Settlement Payment will represent liquidated damages. Payroll and tax deductions shall not be taken from this portion of each Settlement Class Member's Settlement Payment or from the Service Awards distributed to the Named Plaintiffs. The Settlement Administrator shall issue each Settlement Class Member an IRS Form 1099 for the liquidated damages portion of each Settlement Payment. The Settlement Administrator shall also issue the Named Plaintiffs an IRS Form 1099 for their Service Awards.

(iii) The back of each Settlement Payment check sent to a Settlement Class Member who is an Opt-In Plaintiff and not a Class Member will contain the following limited endorsement:

I agree to release, and not sue for, all wage and hour claims or causes of action against Defendant and the Released Parties that were asserted in the lawsuit (Northern District of Illinois Case Number 1:21-cv-02242) arising from April 27, 2018 through May 15, 2022, including overtime claims under the Fair Labor Standards Act or any parallel local or state law.

(f) Defendant shall be responsible for payment of the employer's portion of all applicable payroll taxes for each Settlement Payment.

(g) None of the amounts paid to the Named Plaintiffs or any Settlement Class Member shall create any credit for, or be included in, or otherwise affect or alter the calculation or accrual of any employee benefit plans, programs, agreements or policies supplied, sponsored, maintained, contributed or otherwise provided by Defendant, including for purposes of any incentive plan.

5. RELEASE OF CLAIMS AND NO RE-EMPLOYMENT

(a) In exchange for their Service Awards, following the Court's approval of this Joint Stipulation, Named Plaintiffs shall release and discharge the Released Parties from:

- (i) all claims raised or which could have been raised in the Action;
- (ii) all claims, actions, causes of action, class allegations, demands, damages, costs, liabilities, debts, obligations, attorneys' fees, loss of wages and benefits, loss of earning capacity, mental anguish, pain and suffering, or other relief permitted to be recovered or related to, or in any way growing out of Named Plaintiffs' employment with, treatment at, separation from or wages from Defendant;
- (iii) all claims arising under Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, the National Labor Relations Act, as amended, the Equal Pay Act, the Fair Labor Standards Act, as amended, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, as amended, the Family and Medical Leave Act, 42 U.S.C. § 1981, the Employee Retirement Income Security Act, as amended, the Worker Adjustment and Retraining Notification Act ("WARN"), Illinois wage and hour laws (including the Illinois Minimum Wage Law and Illinois Wage Payment and Collection Act), Minnesota wage and hour laws, Illinois and Minnesota WARN statutes, and any other federal, state, or municipal statute, order, regulation, or ordinance on account of, or any damages or injury related to or in any way growing out of Named Plaintiffs' employment with, treatment at, separation from or compensation from Defendant; and
- (iv) all claims arising under common law, including, but not limited to, tort claims or breach of contract claims (express or implied), intentional interference with

contract, intentional infliction of emotional distress, negligence, defamation, violation of public policy, wrongful or retaliatory discharge, tortious interference with contract, and promissory estoppel on account of, or any damages or injury related to or in any way growing out of Named Plaintiffs' employment with, treatment at, separation from or compensation from Defendant.

- (v) Notwithstanding the foregoing release and discharge of claims discussed in Section 5(a)(i)–(iv), Named Plaintiffs do not release or discharge and specifically retain the right to pursue a claim for workers' compensation benefits, if applicable.
- (vi) Named Plaintiffs hereby acknowledge that they have had opportunity to consult with an attorney of their choosing regarding this Joint Stipulation, and specifically the release and discharge of claims discussed in Section 5(a)(i)–(v), prior to executing this Joint Stipulation. Named Plaintiffs further acknowledge that they have the right to consider this Joint Stipulation for at least twenty-one (21) days prior to executing it. If Named Plaintiffs sign this Joint Stipulation before this twenty-one-day period has fully elapsed, they do so voluntarily, with the advice of counsel, and with full and complete understanding of all the terms of this Joint Stipulation, and specifically the release and discharge of claims discussed in Section 5(a)(i)–(v). Named Plaintiffs also acknowledge that the Service Awards discussed above provide separate and valuable consideration for the release of each of the statutory and other claims identified above, including any claim under the Age Discrimination in Employment Act. For a period of seven (7) days following their respective signing of this Joint Stipulation, each Named Plaintiff may revoke this Joint Stipulation by providing written notification of such action to Michael R. Phillips, McGuireWoods LLP, 77 West Wacker Dr., Suite 4100, Chicago, Illinois 60601.

(b) In exchange for their Service Awards and Settlement Payments, the Named Plaintiffs also agree not to re-apply for any form of employment with Defendant or any of the Released Parties.

(c) In exchange for their Settlement Payment, Settlement Class Members who are Class Members and Opt-in Plaintiffs and who negotiate their Settlement Payment check shall be deemed to have released and discharged the Released Parties from all wage and hour claims or causes of action arising from April 27, 2018 through May 15, 2022 and which arise out of or are related to the allegations in the Second Amended Complaint filed in the Action, including but not limited to claims arising under the Fair Labor Standards Act, state wage payment laws, including Illinois and Minnesota

wage payment laws, or any parallel local law, including any related claims for liquidated damages, penalties, attorneys' fees and costs, expenses, and interest for such owed overtime pay.

(d) In exchange for their Settlement Payment, Settlement Class Members who are Opt-In Plaintiffs and who are not Class Members and who negotiate their Settlement Payment check shall be deemed to have released and discharged the Released Parties from wage and hour claims or causes of action arising from April 27, 2018 through May 15, 2022 which arise out of or are related to the allegations in the Second Amended Complaint filed in the Action, including but not limited to claims arising under the Fair Labor Standards Act, any applicable state wage payment laws, including Illinois wage payment laws, or any applicable parallel local law, including any related claims for liquidated damages, penalties, attorneys' fees and costs, expenses, and interest for such owed overtime pay.

(e) Settlement Class Members who are Opt-In Plaintiffs who do not negotiate their check shall not release their federal, local or state overtime claims against Defendant pursuant to this Joint Stipulation.

(f) Class Members who do not submit a Request for Exclusion shall be deemed to have released and discharged the Released Parties from all wage and hour claims or causes of action arising from March 8, 2019 through May 15, 2022 and which arise out of or are related to the allegations in the Second Amended Complaint filed in the Action, including but not limited to claims arising under the Fair Labor Standards Act, any applicable state wage payment laws, including Illinois wage payment laws, or any applicable parallel local law, including any related claims for liquidated damages, penalties, attorneys' fees and costs, expenses, and interest for such owed overtime pay.

(g) Class Members who submit a Request for Exclusion shall not release their federal, local or state overtime claims against Defendant pursuant to this Joint Stipulation.

6. ATTORNEYS' FEES, LITIGATION EXPENSES AND SERVICE AWARDS

(a) Plaintiffs' Counsel shall make an application to the Court for Attorneys' Fees and Litigation Expenses. The Attorneys' Fees and Litigation Expenses sought will not exceed the amount

of \$380,000.00. Plaintiffs' Counsel shall file such application with the Motion for Approval of the Joint Stipulation and Motion for Certification of:

a class of "All current and former recruiters employed by Defendant in the State of Illinois at any time between March 8, 2019 and November 1, 2021 for a period of twelve (12) months or less who were paid a salary and no overtime compensation, consisting of no more than 85 persons."

Defendant will not oppose awards of Attorneys' Fees or Litigation Expenses that do not exceed the amounts in Section 4(b)(3).

(b) Named Plaintiffs and Plaintiffs' Counsel understand and agree that Plaintiffs' Counsel's Attorneys' Fees and Litigation Expenses will be the full, final, and complete payment of all attorneys' fees and costs arising from and/or relating to the representation of the Named Plaintiffs and Settlement Class Members or any other attorneys' fees and costs associated with the investigation and/or prosecution of the Action. As an inducement to Defendant to enter into this Joint Stipulation, and as a material condition thereof, Named Plaintiffs and Plaintiffs' Counsel hereby irrevocably and unconditionally release, acquit, and forever discharge any claim they may have against Defendant for attorneys' fees or costs arising from or relating to the individuals and matters identified in this Joint Stipulation. Furthermore, Named Plaintiffs and Plaintiffs' Counsel represent and warrant that no attorney, other than Plaintiffs' Counsel, has any attorney's fee lien on or claim to any proceeds arising out of, by virtue of, or in connection with the Action, and that the terms of this Joint Stipulation shall fully satisfy any and all claims by any attorney arising out of or by virtue of or in connection with the Action.

(c) All of Defendant's own legal fees, costs and expenses incurred in this Action shall be borne by Defendant.

(d) Plaintiffs' Counsel shall apply for Service Awards to Named Plaintiffs—in the amounts of Seven Thousand Dollars (\$7,000.00) to Vanderheyden, and Three Thousand Dollars

(\$3,000.00) to Milindawad in acknowledgment of their time spent providing documents and information for the prosecution of this litigation on behalf of Settlement Class Members, as well as conferring with Plaintiffs' Counsel, and filing the Action. The Service Awards shall be paid from the Settlement Fund. Defendant agrees not to oppose such application, so long as it is consistent with the provisions of this Joint Stipulation.

7. SETTLEMENT TIMELINE

The Parties agree to the following timeline for the completion of the Settlement and dismissal of the Action:

(a) Settlement Approval and Class Certification: Named Plaintiffs shall file an Unopposed Motion for Certification of the Class discussed in Section 6(a) and Approval of this Joint Stipulation as soon as practicable.

(b) Production of Class Data: Within ten (10) calendar days of the execution of this Joint Stipulation, Defendant shall provide Class Counsel with the following information in a usable electronic format for all Class Members: (i) name, (ii) employee ID number, (iii) last known address, (iv) last known telephone number, and (v) dates of employment. Contemporaneously, Defendant shall provide Plaintiffs' Counsel with the following information for all Settlement Class Members: (i) name, (ii) employee ID number, (iii) last known address, (iv) last known telephone number; and (v) dates of employment. Plaintiffs' Counsel and the Settlement Administrator agree to keep this information confidential and use it only for the sole purpose of administering the settlement.

(c) Calculation of Settlement Payments: Within five (5) business days of receipt of the Class Data, Plaintiffs' Counsel will provide Defendant with a final calculation of the Settlement Payments prepared in accordance with Section 4 above (the "Final Calculations"). Defendant will have five (5) business days to review and approve of the Final Calculations. Consent will not be unreasonably withheld.

(d) Delivery of Final Calculations and Update of Settlement Class Members' Addresses: Plaintiffs' Counsel will provide the Settlement Administrator with the Final Calculations that includes all of the Class Data, word versions of the Class Notice and any additional information that the Settlement Administrator needs to facilitate notice to the Class Members. Defendant will provide the Settlement Administrator with Social Security numbers for the Settlement Class Members. The Settlement Administrator will verify the most recent mailing addresses for the Class Members by using the National Change of Address (NCOA) Database, or a comparable database.

(e) Notice: Within seven (7) days of receipt of the Final Calculations and Class Notice, the Settlement Administrator will mail the Class Notice that is attached hereto as *Exhibit C* to all Class Members.

(f) Objections and Requests for Exclusion: Within sixty (60) days from the mailing of the Class Notice, (i) all objections to the Settlement from Class Members must be postmarked and mailed to the Settlement Administrator and to counsel for the Parties; and (ii) all Requests for Exclusion from Class Members who wish to be excluded from the Settlement must be postmarked and mailed to the Settlement Administrator (the "Objection and Exclusion Deadline"). Within five (5) business days of the Objection and Exclusion Deadline, the Settlement Administrator shall provide the Parties with a list of the names of all the Class Members who have submitted timely and valid objections or Requests for Exclusion and any documentation submitted by the Class Members in support thereof.

(g) Motion for Final Approval: Within ten (10) days of the Objection and Exclusion Deadline, Named Plaintiffs shall file an Unopposed Motion for Final Approval of the Settlement.

(h) Funding the Settlement Account: Within seven (7) days of the Effective Date, Defendant will deposit the Settlement Amount into the Settlement Account.

(i) Payment of the Employer Share of Payroll Taxes: Within fourteen (14) days of the Effective Date, the Settlement Administrator shall determine the employer's share of payroll

employment taxes on Settlement Payments to Settlement Class Members, and shall communicate such amount to Defendant with a detailed explanation of the calculations. In the event of any dispute as to the calculation of the employer's share of payroll taxes, the Parties and Settlement Administrator shall meet and confer in good faith in an attempt to resolve the dispute. If the dispute cannot be resolved, it shall be submitted to the Court for a final determination. Within fourteen (14) days of the date the Settlement Administrator notifies Defendant of the amount of the employer's share of payroll taxes, or within fourteen (14) days after any dispute related to the amount is finally resolved (whichever is later), Defendant shall make an additional payment to the Settlement Account for payroll taxes as may be necessary. The Settlement Administrator shall thereafter remit and report the applicable portions of the payroll tax payment to the appropriate taxing authorities on a timely basis for all Settlement Class Members who timely negotiate their settlement checks. Defendant agrees to reasonably cooperate with the Settlement Administrator to the extent necessary to determine the employer's share of payroll tax required under this Section. To the extent Defendant has remitted excess payroll taxes to the Settlement Account, the Settlement Administrator shall return those funds to Defendant within fourteen (14) days after the Check Cashing Deadline.

(j) Issuance of Settlement Payments and Service Awards: No later than thirty (30) days after Defendant deposits the Settlement Amount into the Settlement Account in accordance with Section 7(h) of this Joint Stipulation, the Settlement Administrator shall make the following payments:

(i) The Settlement Administrator shall deliver Settlement Payments via First Class U.S. Mail to each Settlement Class Member for his or her *pro rata* share of the Settlement Fund as computed in Section 4 of this Joint Stipulation. The Settlement Payment checks shall be negotiable by Settlement Class Members until the Check Cashing Deadline. The Settlement Administrator shall include a letter drafted by Plaintiffs' Counsel, attached as *Exhibit D* to this Joint Stipulation, with each check to each Settlement Class Member explaining the terms of the settlement. The face of each check shall clearly state that the check must be negotiated within 150 days from the date of mailing.

(ii) The Settlement Administrator shall deliver via First Class U.S. Mail to Plaintiffs' Counsel the Named Plaintiffs' Service Awards.

(iii) The Settlement Administrator shall deliver via wire to Plaintiffs' Counsel the Attorney's Fees and Litigation Expenses awarded by the Court.

(k) Checks Returned as Undeliverable. If any Settlement Payment check is returned to the Settlement Administrator as undeliverable with a forwarding address, the Settlement Administrator will forward the Settlement Payment to the forwarding address. If any Settlement Payment is returned to the Settlement Administrator as undeliverable without a forwarding address, the Settlement Administrator will run a new search for the Settlement Class Members' updated address through available databases, such as Accurant or an equivalent commercial database, and will forward the Settlement Payment to the new address obtained in this manner, if any. If, after this second mailing, the Settlement Payment is again returned as undeliverable, and if no other forwarding address is provided by the Settlement Class Member or otherwise located by the Check Cashing Deadline, the mailing process shall end for that Settlement Class Member shall end and if they are an Opt-In Plaintiff who is not a Class Member, they shall become an Excluded Settlement Class Member.

(l) Telephone Line and Website. The Settlement Administrator shall operate a telephone line and/or website as a resource for Settlement Class Members to update their contact information. The letter drafted by Plaintiffs' Counsel, attached as *Exhibit D* to this Joint Stipulation, shall include the applicable telephone number and/or website address. The Parties shall jointly approve any message(s) or information provided via the telephone line and website.

(m) Settlement Payment Summary. Within fourteen (14) days of the expiration of the Check Cashing Deadline, the Settlement Administrator shall provide to Defendant and Plaintiffs' Counsel: (A) scanned copies of the negotiated Settlement Payment checks, and (B) a list, in Excel format, of the names of all Settlement Class Members including, for each: (1) the amount of the Settlement Class Member's Settlement Payment; (2) the amount of the Settlement Payment attributed

to wages; (3) the amount of the Settlement Payment attributed to liquidated damages; and (4) an accounting of all cashed Settlement Payments and the residual amount remaining in the Settlement Account.

(n) Distribution of Unclaimed Settlement Payments. If any Settlement Class Member's Settlement Payment check is not negotiated by the Check Cashing Deadline, then Plaintiffs' Counsel shall perform another calculation of Settlement Payments in accordance with Section 4 above, but including only the remaining Settlement Class Members who negotiated their Settlement Payment check within One Hundred Fifty (150) days (the "Eligible Settlement Class Members"). The Claims Administrator will redistribute the unclaimed Settlement Payments to the Eligible Settlement Class Members in accordance with the calculations provided by Plaintiffs' Counsel. The distribution of unclaimed funds shall be made within forty-five (45) days of the expiration of the One Hundred Fifty (150) day expiration deadline.

(o) Dismissal of the Action: The Parties shall seek to have the Action dismissed with prejudice within thirty (30) days after the Effective Date.

8. PROCEDURE FOR OBJECTING TO OR REQUESTING EXCLUSION FROM SETTLEMENT

(a) Procedure for Objecting. The Class Notice shall provide that Class Members who wish to object to the Settlement must mail a detailed written statement objecting to the Settlement and explaining the reasons why to the Settlement Administrator, and counsel for the Parties. Such written statement must be postmarked no later than sixty (60) days after the mailing of the Class Notice (i.e., the Objection and Exclusion Deadline defined Section 7(f)). The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether an objection to the Settlement has been timely submitted. Class Members who fail to submit timely written objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

(b) Procedure for Requesting Exclusion. The Class Notice shall provide that Class Members who wish to exclude themselves from the Settlement must submit a written statement requesting exclusion from the Class on or before the Objection and Exclusion Deadline, which statement must also contain the Class Member's name, address, telephone number, date and signature and must be returned by mail to the Settlement Administrator at a specified address, and must be postmarked on or before the Objection and Exclusion Deadline (a "Request for Exclusion"). The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Class Member who submits a valid Request for Exclusion will not be entitled to any recovery under the Settlement and will not be bound by the Settlement or have any right to object, appeal or comment thereon.

9. NULLIFICATION OF SETTLEMENT AGREEMENT

(a) This Joint Stipulation is contingent upon full and Final Approval by the Court. If: (i) the Court does not enter an order approving the Joint Stipulation; or (ii) the settlement of the Action does not become final for any other reason, this Joint Stipulation shall be null and void.

(b) Defendant also has the option to void this Joint Stipulation if the number of Class Members who make timely Requests for Exclusion is equal to 15% or more of the total number of Class Members. If Defendant chooses to exercise this option, it must give notice, in writing, to Plaintiffs' Counsel within seven (7) days of the Objection and Exclusion Deadline. If Defendant elects to void this Joint Stipulation, it will be responsible for the Settlement Administration Costs, if any, prior to the date that Defendant provides written notice to Plaintiffs' Counsel of its intention to void this Joint Stipulation.

(c) If the settlement of the Action becomes void for any of the reasons specified in Section 9 (a) or (b) above, any order or judgment entered by the Court in furtherance of this Joint Stipulation shall be treated as void *ab initio* and the Parties agree that nothing in this Joint Stipulation shall be used or construed by or against any party as a determination, admission or concession of any issue of law

or fact in the Action, and that Defendant does not waive, and expressly reserves, all rights to challenge all allegations and claims upon procedural and factual grounds, including without limitation the ability to challenge class and/or collective action treatment on any grounds and/or to assert any and all defenses as if this Joint Stipulation was not entered into. In such a case, the Parties and any funds to be awarded under this Joint Stipulation shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Joint Stipulation, and the Parties shall proceed in all respects as if this Joint Stipulation had not been executed.

(d) In the event an appeal is filed related to this Joint Stipulation, administration of the settlement of the Action shall be stayed pending final resolution of the appeal or other appellate review.

10. MUTUAL FULL COOPERATION

The Parties agree that they will fully cooperate with each other to effectuate and implement all terms and conditions of this Joint Stipulation, and exercise good-faith efforts to accomplish the terms and conditions of this Joint Stipulation. At no time shall the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit Requests for Exclusion from the Settlement.

11. CONFIDENTIALITY

Named Plaintiffs shall not discuss the monetary amounts within this Agreement with any third parties other than their counsel, their accountants and tax advisers, their spouses and immediate family or other Settlement Class Members. The Parties acknowledge and agree that the terms of the Settlement Agreement may be disclosed to the Court and/or the Settlement Administrator in connection with the approval, administration or enforcement of the agreement and nothing herein shall restrict or prohibit such disclosure. Notwithstanding the foregoing, the Parties may not otherwise publicly disclose, publicize or issue press releases regarding the monetary amounts within this Joint Stipulation or the settlement of the Action more generally.

12. CONSTRUCTION

The terms and conditions of this Joint Stipulation are the result of lengthy, intensive, arms-length negotiations between the Parties. Accordingly, this Joint Stipulation is not to be construed in favor of or against any Party by reason of the extent to which any Party or its counsel participated in the drafting of the Joint Stipulation.

13. INTEGRATION

This Joint Stipulation contains the entire agreement between the Parties relating to the Settlement, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. There are no undisclosed side agreements between the Parties or their counsel. No rights hereunder may be waived except in writing.

14. BINDING ON SUCCESSORS AND ASSIGNS

This Joint Stipulation shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

15. MODIFICATION

This Joint Stipulation may not be changed, altered, or modified, except in writing and signed by the Parties and approved by the Court. This Joint Stipulation may not be discharged except by performance with its terms or by a writing signed by the Parties and approved by the Court.

16. APPLICABLE LAW

The terms of this Joint Stipulation shall be governed by and construed in accordance with Illinois law.

17. THIS SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE

The Parties warrant and represent they have conducted a thorough investigation of the facts and claims alleged in the Action. The Parties further represent and warrant that they believe this Settlement is a fair and reasonable resolution of this Action and that they have arrived at this

Settlement in arms-length negotiations, accounting for all relevant factors, present and potential. This Settlement was reached after extensive negotiations, facilitated by Mediator Lynn Cohn.

18. RETENTION OF JURISDICTION

The Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Joint Stipulation and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement embodied in this Joint Stipulation and all orders and judgments entered in connection therewith.

19. COUNTERPARTS

This Joint Stipulation may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Joint Stipulation, which shall be binding upon and effective as to all Parties in accordance with the Effective Date defined herein. Electronic signatures compliant with the ESIGN Act and signatures transmitted by fax or .pdf shall have the same effect as an original ink signature.

20. PARTIES' AUTHORITY

The signatories hereto represent that they are fully authorized to enter into this Joint Stipulation and bind the respective Parties to its terms and conditions.

By: *Clark Vanderheyden*
Clark Vanderheyden (Jun 27, 2022 16:05 CDT)
Plaintiff, Clark Vanderheyden

Dated: Jun 27, 2022

By: *Chariya Milindawad*
Chariya Milindawad (Jun 25, 2022 10:02 CDT)
Plaintiff, Chariya Milindawad

Dated: Jun 25, 2022

By: _____
APFS LLC

Dated: _____

Settlement in arms-length negotiations, accounting for all relevant factors, present and potential. This Settlement was reached after extensive negotiations, facilitated by Mediator Lynn Cohn.

18. RETENTION OF JURISDICTION

The Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Joint Stipulation and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement embodied in this Joint Stipulation and all orders and judgments entered in connection therewith.

19. COUNTERPARTS

This Joint Stipulation may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Joint Stipulation, which shall be binding upon and effective as to all Parties in accordance with the Effective Date defined herein. Electronic signatures compliant with the ESIGN Act and signatures transmitted by fax or .pdf shall have the same effect as an original ink signature.

20. PARTIES' AUTHORITY

The signatories hereto represent that they are fully authorized to enter into this Joint Stipulation and bind the respective Parties to its terms and conditions.

By: _____
Plaintiff, Clark Vanderheyden

Dated: _____

By: _____
Plaintiff, Chariya Milindawad

Dated: _____

By: *Reg Buchenroth*
APFS LLC

Dated: July 6, 2022

d/b/a Addison Group

Its: Executive Vice President, Human Resources

By: Peg Buchenroth

JOINT STIPULATION OF SETTLEMENT**Exhibit A – Class Members**

	<u>Name</u>
1	Nicklaus Andre
2	Katelyn Bailey
3	Dominick Bellavia
4	John Bertane
5	Alicia Bertrand
6	Hailey Bialas
7	Kari Blanks
8	Korryn Brewer
9	Melissa Caldwell
10	Sarah Caldwell
11	Kristina Chaplain
12	Kelly Clausen
13	Ismael Covarrubias
14	Phil Croom
15	Elizabeth Daehler
16	Hannah Dallio
17	Kyle Darling
18	Emily DaValle
19	Amanda Dietrich
20	Danielle Drockton
21	Brennan Eastwood
22	Anna Ellis
23	Madison Fisher
24	Molly Fortune
25	Sean Freedberg
26	Nena Fruendt
27	Allison Gaffney
28	Zoe Geerdes
29	Francesca Giammarco
30	Justin Goetz
31	Dylan Graham
32	Courtney Greenberg
33	Krista Hammer
34	Harrison Heitmeyer
35	Jonathan Heitz
36	Katherine Hennessey
37	Edyn Herbert

38	Alexis Hummel
39	Callilla Issangya
40	Lucas Jahnke
41	Nicole Kardas
42	Michelle Karp
43	Shannon Kennedy
44	Dusan Krcadinac
45	Allysa Krestan
46	Greg Kulis
47	Kevin LeBlanc
48	Patrick Lifka
49	Kaitlyn Marra
50	Madison Marucci
51	Daniel Matusik
52	Pina Merola
53	Riley Miller
54	Michael Moran
55	Julia Nelson
56	Blake Nizko
57	Christina Novak
58	John Novakovich
59	Claire O'Hallaron
60	Sydney O'Rourke
61	Alex Pasiewicz
62	Karlie Payne
63	Michael Prassa
64	Natasha Rand
65	Zachary Razik
66	Staci Roberts
67	Christina Robertson
68	Philip Robertson
69	Martin Rodriguez
70	Jacqueline Romero
71	Jillian Russell
72	Molly Saban
73	Colton Schambach
74	Molly Schroeder
75	Julia Shine
76	Alexa Snodgrass
77	Taylor Sparks
78	Claire Spinner
79	Logan Szymczak
80	Brittany Talley

81	Madeleine Ulery
82	Matthew Wehby
83	Michael Wolf
84	Sabrina Wulf
85	Helen Zhang

JOINT STIPULATION OF SETTLEMENT**Exhibit B - Opt-In Plaintiffs**

	<u>Name</u>
1	Vanderheyden, Clark
2	Thurston, Krista
3	Durrschmidt, Ryan
4	Cladera, Nathalie
5	Mamassian, Brian
6	Levi, Jennifer
7	Milindawad, Chariya
8	Wolf, Michael
9	Dean, Jeff
10	Berman, Lucie
11	Brown, Courtney
12	Ellis, Anna
13	Fertig, Margaret
14	Fleming, Benjamin
15	Harrison, Emily
16	Kow, Amanda
17	Novakovich, John
18	Peterson, Bradley
19	Roberts, Devin
20	Stelfox, Katelyn
21	Volpentesta, Brianna
22	Wimberly, Hannah
23	Adams-Ashton, Lacy
24	Adkins, Matthew
25	Crabtree, Andrew
26	Gibbs, Matthew
27	Murayama, Garrett
28	Ramos, Victor
29	Schwarz, Elizabeth
30	West, Zachary
31	Arthur, Olivia
32	Capita, Jaclyn
33	Hoyt, McCall
34	Orozco, Charles

34	Pence, Jessica
36	Pool, Emmaline
37	Robertson, Kaitlyn
38	Russo, Carolyn
39	Schur, Kaley
40	Baker, Michael
41	DellaGala, Lana
42	Green, Roderick
43	Jackson, Rahnisha
44	Merola, Pina
45	Retaleato, Natalie
46	Walling, Hunter
47	Lansing, Rachel
48	O'Bier, Collin
49	Brinig, Brendan
50	Broussard, Taryn
51	DaValle, Emily
52	Simkiss, Timothy
53	Smith, Rachel
54	Robertson, Christina
55	Rogachevsky, Nathaniel
56	Saban, Molly
57	Schalberg (Hammer), Krista
58	Yapel, Victoria
59	Cherry, Isbeth
60	Hughes, Hayley
61	Johnson, Stefon
62	Lee, Alexandria
63	Miller, Jeremie
64	Mulzac, Dean
65	White, Macye
66	Gillis, Sarah
67	Price, Quinn
68	Shinn, Sophie
69	Beauchamp, James
70	Epley, Carolyn
71	Harralson, Anneka
72	Rucker, Kaitlyn

73

LeBlanc, Kevin

JOINT STIPULATION OF SETTLEMENT

Exhibit C

IMPORTANT NOTICE REGARDING UNPAID OVERTIME SETTLEMENT WITH APFS, LLC D/B/A ADDISON GROUP.

To: «First_Name» «Last_Name»

Re: Your Right to Overtime Pay from Settlement with APFS, LLC d/b/a Addison Group (Addison Group)

THE AMOUNT OF THE ESTIMATED SETTLEMENT PAYMENT IF THE COURT GRANTS FINAL APPROVAL: \$ _____

WHY AM I GETTING THIS NOTICE?

You are getting this notice because you worked as a Recruiter¹ in Illinois at any time between March 8, 2019 and November 1, 2021 for a period of twelve (12) months or less, were paid a salary and no overtime compensation.

A lawsuit against Addison Group for Recruiters who meet the class definition has settled. The lawsuit alleged that Plaintiffs and certain Recruiters were not paid proper overtime. Plaintiffs argued that even though they were classified as exempt, no exemption applied.

Addison Group denies these allegations and contends that you were at all times paid lawfully and properly for your work.

THIS NOTICE IS TO INFORM YOU THAT **YOU ARE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT IN THIS CASE, AS DESCRIBED BELOW. YOU ARE NOT REQUIRED TO DO ANYTHING TO RECEIVE YOUR SHARE OF THE SETTLEMENT.**

YOUR PRO RATA SHARE OF THE SETTLEMENT.

Your settlement payment is based on your work history, including the number of weeks worked in the relevant period. Your pro rata share was determined after deducting the (a) costs of administering this settlement; (b) service awards for the Named Plaintiffs; and (c) attorneys' fees and costs.

When you receive your settlement payment you will have 150 days from the date the Settlement Administrator mails your check to endorse and negotiate the check you will receive. If you don't negotiate the check, you will not be entitled to any compensation from Addison Group or the Released Parties.

¹ Recruiters includes junior recruiter; recruiter; consultant performing recruiting duties; or some combination of these positions working for Addison Group

YOUR**OPTIONS:**

You May:	Description:			
Receive Settlement Money – No Action Required.	<p>If you participate in this settlement, you will receive an estimated settlement allocation of «ESTIMATE». You do not need to do anything to accept the settlement other than sign and cash the Settlement Check that will be sent after the Court grants final approval of this Settlement.</p> <p>If you negotiate the Settlement Check you will be releasing all wage and hour claims or causes of action arising from March 8, 2019 through May 15, 2022 and which arise out of or are related to the allegations in the Second Amended Complaint filed in the Action, including but not limited to claims arising under the Fair Labor Standards Act, state wage payment laws, including any applicable state wage payment laws, including Illinois wage payment laws, or any parallel local law, including any related claims for liquidated damages, penalties, attorneys’ fees and costs, expenses, and interest for such owed overtime pay.</p>			
Exclude Yourself From The State Settlement Class.	<p>If you do not want to participate in the settlement of the state law claims in the Action, you must elect to exclude yourself. If you elect to exclude yourself, you will not receive any money, and you will not be waiving any rights or claims that you may have against the Released Parties.</p> <p>To exclude yourself, your request must be in writing and mailed to the Settlement Administrator by XXX. Your statement (“Request for Exclusion”) must also contain your name, address, telephone number, date and signature. It must be returned by mail to the Settlement Administrator, at this address:</p> <p style="text-align: center;">Mike Sutherland Simpluris, Inc.</p> <p>The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether your Request for Exclusion has been timely submitted. If you submit a valid Request for Exclusion you will not be entitled to any recovery under the Settlement and will not be bound by the Settlement or have any right to object, appeal or comment on the Settlement.</p>			
Object To The Settlement for State Settlement Class	<p>If you think the Settlement is unfair for a valid reason, you may object to the Settlement. Objections must be in writing and mailed separately to the Settlement Administrator and counsel for the Parties at:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; text-align: center;">Mike Sutherland Simpluris, Inc.</td> <td style="width: 33%; text-align: center;">Michael Josephson Josephson Dunlap LLP 11 Greenway Plaza Suite 3050 Houston, Texas 77046</td> <td style="width: 33%; text-align: center;">Michael R. Phillips McGuireWoods LLP, 77 West Wacker Drive Suite 4100 Chicago, Illinois 60601</td> </tr> </table>	Mike Sutherland Simpluris, Inc.	Michael Josephson Josephson Dunlap LLP 11 Greenway Plaza Suite 3050 Houston, Texas 77046	Michael R. Phillips McGuireWoods LLP, 77 West Wacker Drive Suite 4100 Chicago, Illinois 60601
Mike Sutherland Simpluris, Inc.	Michael Josephson Josephson Dunlap LLP 11 Greenway Plaza Suite 3050 Houston, Texas 77046	Michael R. Phillips McGuireWoods LLP, 77 West Wacker Drive Suite 4100 Chicago, Illinois 60601		

You May:	Description:		
	<p>Your objection should clearly explain why you object to the proposed Settlement and must state that either you or someone on your behalf intends to appear at the Final Approval and Fairness Hearing. Filing an objection does not preserve your right to receive a portion of the Settlement or to opt-out of participating in the Settlement. The deadline to file an objection is XXX.</p> <p>The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether an objection to the Settlement has been timely submitted. Class Members who fail to submit timely written objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.</p>		
Attend The Final Approval Hearing – Not Required.	<p>It is not required, but you may attend the hearing regarding the final disposition of this settlement. The hearing will be held on XXX at XXX at The United States District Court House, Court Room XXX, XXXX. If no objections are filed with the Court, the Judge may waive the hearing. Written notice to counsel for the Parties of intention to attend the hearing is required. Notice must be mailed to:</p> <table data-bbox="380 953 1065 1150"> <tr> <td>Michael Josephson Josephson Dunlap LLP 11 Greenway Plaza Suite 3050 Houston, Texas 77046</td> <td>Michael R. Phillips McGuireWoods LLP, 77 West Wacker Drive Suite 4100 Chicago, Illinois 60601</td> </tr> </table>	Michael Josephson Josephson Dunlap LLP 11 Greenway Plaza Suite 3050 Houston, Texas 77046	Michael R. Phillips McGuireWoods LLP, 77 West Wacker Drive Suite 4100 Chicago, Illinois 60601
Michael Josephson Josephson Dunlap LLP 11 Greenway Plaza Suite 3050 Houston, Texas 77046	Michael R. Phillips McGuireWoods LLP, 77 West Wacker Drive Suite 4100 Chicago, Illinois 60601		

WHAT DOES THE COURT THINK?

While the Court approved this settlement, the Court did not determine Addison Group (or anyone else) did anything wrong. The Court did not determine you are owed any money. Instead, this is a settlement payment which the Court approved as fair and reasonable in light of the claims and defenses asserted.

CONFIDENTIALITY

If you cash your check, you agree to keep the amount you are paid within the settlement confidential and not disclose this to third parties, except you may disclose it to your counsel, your accountants and tax advisers, your spouse and immediate family or other Settlement Class Members.

WHAT DOES ADDISON GROUP THINK?

Addison Group believes this settlement is a business solution to this dispute. Addison Group has, at all times, disputed that it or its subsidiaries violated any law. It believes its pay practices are fully compliant with all laws and that the class members are exempt from the overtime requirements Plaintiffs allege were not met.

WHAT IF I HAVE OTHER QUESTIONS?

This notice is only a summary. If you have additional questions, please call Plaintiffs' Counsel at **713-352-1100**. The 150-day deadline to cash your check will not be extended under any circumstances.

If you have questions, please call or email Carl Fitz or Michael Josephson at Josephson Dunlap LLP, 11 Greenway Plaza, Suite 3050, Houston Texas 77046 (713) 352-1100 or info@mybackwages.com

Please do not contact the Court regarding this settlement. The Court must remain neutral in this matter and cannot offer you advice.

FINAL APPROVAL

The Court will hold a Final Approval and Fairness Hearing on the fairness and adequacy of the Settlement on **XXX** in the United States District Court, *****

The Final Approval and Fairness Hearing may be continued without further notice to Class Members.

JOINT STIPULATION OF SETTLEMENT

Exhibit D

To: «First_Name» «Last_Name»

Re: Settlement with APFS, LLC D/B/A ADDISON GROUP of Your Unpaid Overtime Claim

The Parties have agreed to settle your claims in this Action. The Parties reached this settlement after months of negotiations, during which each side recognized the risk of an uncertain outcome. The Parties presented the proposed settlement to the Court for approval. The settlement has been filed with the Court. On XXX, the Court approved the FLSA portion of the settlement and preliminarily approved the state law portion of the settlement as fair and reasonable.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Addison Group or any Released Party that the claims in the Action have merit or that it has any liability to plaintiffs or the proposed class or collective on those claims. Addison Group and the Released Parties have denied and continue to deny any such liability and maintain that they complied with all applicable laws.

The Parties and their counsel have concluded that the Settlement is advantageous, considering the risks and uncertainties to each side of continued litigation. The parties and their counsel have determined that the settlement is fair, reasonable, and adequate and is in the best interests of the members of the class.

Enclosed is a check for \$_____ representing your share of the settlement. Your settlement payment is based on your work history, including the number of weeks worked in the relevant period. Your pro rata share was determined after deducting the (a) costs of administering this settlement; (b) service awards for the Named Plaintiffs; and (c) attorneys' fees and costs.

You have 150 days to endorse and deposit this check. If you do not cash the check, you will not be entitled to any compensation from Addison Group or the Released Parties.

In exchange for cashing your check, you will have agreed to releasing Releasees from all wage and hour claims or causes of action arising from April 27, 2018 through May 15, 2022 which have been asserted in the Second Amended Complaint filed in the Action, including but not limited to claims arising under the Fair Labor Standards Act, any applicable state wage payment laws, including Illinois wage payment laws, or any applicable parallel local law, including any related claims for liquidated damages, penalties, attorneys' fees and costs, expenses, and interest for such owed overtime pay.

Releasees is defined as Addison Group and its former and present parents, subsidiaries, and affiliated corporations and their respective officers, directors, shareholders, members, managers, representatives, employees, family members and agents, and any other successors, assigns, or legal representatives.

You will not have to pay Class Counsel any money directly. Addison Group is paying attorneys' fees and costs as part of the settlement.

Please remember that you are responsible for ensuring compliance with tax requirements relating your share of the settlement and your settlement check. For tax reporting purposes, any payments made pursuant to the Settlement shall be allocated as follows: (1) the settlement payment: (a) fifty percent (50%) shall be deemed payment in settlement of claims for unpaid wages; and (b) fifty percent (50%) shall be deemed payment in settlement of claims for penalties, liquidated damages, interest, and all other non-wage recovery. The Settlement Administrator will be responsible for issuing all tax forms and reporting payment to the appropriate federal, state or local agencies.

If you have questions, please contact Carl Fitz or Michael Josephson at 713-352-1100 or email info@mybackwages.com.

EXHIBIT 2

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CLARK VANDERHEYDEN, et al.,

Case No. 1:21-cv-02242

v.

APFS, LLC

DECLARATION OF MICHAEL A. JOSEPHSON

Pursuant to 28 U.S.C. § 1746, Michael A. Josephson, hereby declares as follows:

1. My name is Michael A. Josephson, and the facts contained in this declaration are within my personal knowledge and are true and correct.
2. This Declaration is submitted in support of Plaintiff's Unopposed Motion for Preliminary Approval of the Joint Stipulation of Settlement and Motion for Certification of Class.

Plaintiff's Counsel's Professional Background and Experience

3. I am a named and the managing partner at Josephson Dunlap, LLP ("JD"). JD is one of the preeminent Plaintiff oriented employment law firms in the country. Since its inception, JD has been lead counsel and/or held positions of substantial responsibility on steering committees in class and collective actions concerning wage and hour violations against numerous Fortune 500 companies. All of JD's attorneys are experienced trial lawyers, with active dockets in state and federal courts and arbitrations throughout the country.
4. I am licensed to practice in Texas and Pennsylvania. I have been practicing civil litigation continuously since being admitted to the Texas Bar in December 2000. I have practiced law and been admitted in courts located throughout California, Texas, Louisiana, Colorado, Ohio, New Mexico, Pennsylvania, New York, New Jersey, Alabama, Illinois, Massachusetts, Maryland, Mississippi, Oklahoma, South Carolina, North Dakota, Washington and North Carolina.
5. All of my professional time is devoted to challenging illegal wage and hour practices on behalf of current and former employees. My practice has been a "hands-on" approach; meaning that I personally perform the case work in all stages of the litigation, from drafting of the initial complaint to discovery and motion matters, trial and appeal, if necessary. When appropriate, my partners and several associates will assist me in various capacities and under my direct supervision. This "hands-on" approach has produced very favorable results in difficult and complex cases that have required a substantial amount of time, money and effort.
6. I estimate that I have been the attorney of record as either lead counsel or co-counsel in over 1,400 class and collective actions or individual cases seeking damages for unpaid overtime and wages based on allegations that employees worked off the clock, were misclassified, or were victims of regular rate and/or technical violations of both state and federal wage laws. All of these cases were handled on a contingency basis in which I received a percentage of the recovery and

advanced all of the costs of litigation. I estimate that I have represented tens of thousands of employees over the years and have been involved in litigating cases in almost every major industry, including national food processors, retailers, government agencies, call centers, chemical plants, oil and gas operators, technical companies, stadium service providers, and litigation service companies. In my practice I have litigated cases on behalf of Plaintiffs in wage and hour class and collective actions and arbitrations against the most respected employment litigation firms in the United States.

7. In my practice, I have litigated cases on behalf of workers in wage and hour cases and collective actions against the most respected litigation firms in the United States. These firms include, but are not limited to, KL Gates; Seyfarth Shaw; Littler Mendelson; Morgan, Lewis & Bockius; Gardere Wynne, Oglethorpe Deakins; Hunton & Williams; Orrick; Baker Botts; Jones Walker; Jackson Lewis; Norton Rose; and Locke Lorde.
8. Recently, one court found that attorneys at Josephson Dunlap “conduct[] themselves professionally, demonstrate[] deep knowledge of wage-and-hour law, and [are] diligent and responsive to the Court’s orders.” *Horton v. Right Turn Supply, LLC*, No. 2:19-cv-1271-NR, Doc. 48 at *8 (W.D. Pa. Apr. 23, 2020).
9. Carl A. Fitz, an associate at my office, has worked with me practicing wage and hour law since January 2020 at Josephson Dunlap. Mr. Fitz was licensed by the State Bar of Texas in 2017. In addition to Texas state courts, he is licensed in the U.S. Southern, Western, and Eastern Districts of Texas, and the U.S. District of Colorado. Likewise, he has been admitted *pro hac vice* in courts located throughout the country, including Illinois, Louisiana, Nevada, New Mexico, Oklahoma, and Pennsylvania. Prior to associating with Josephson Dunlap, Mr. Fitz practiced wage and hour law at Kennedy Hodges, LLP in Houston, Texas. Mr. Fitz has represented hundreds of workers in FLSA and analogous state law wage class and collective actions and helped recover millions of dollars in unpaid overtime wages for workers nationwide.
10. Richard (Rex) Burch is the managing shareholder of Bruckner Burch, PLLC, an employment law firm that maintains a national practice representing plaintiffs in employment law matters. Bruckner Burch is rated as a “Top Tier” (or “Tier 1”) law firm in employment law by the U.S. News & World Report and rated as an “A-V” firm by Martindale-Hubbell. Indeed, courts have referred to Mr. Burch and his firm as being “among the most experienced and best regarded in this specialized practice area[.]” *Kurgan v. Chiro One Wellness Centers, LLC*, No. 10-cv-1899, 2015 WL 1850599, at *4 (N.D. Ill. Apr. 21, 2015). Mr. Burch was licensed by the State Bar of Texas in 1997 and has practiced predominately employment and labor law, wage-and-hour law, and class and collective action litigation since. In addition to Texas state courts, Mr. Burch is licensed in the U.S. Courts of Appeal for the Second, Fifth, Sixth, and Ninth Circuits, and numerous District Courts across the country. Likewise, he has been admitted *pro hac vice* in various courts located throughout the United States. Mr. Burch has served as lead counsel for worked in several important wage-and-hour cases. *See, e.g., Roussell v. Brisker Intern., Inc.*, 441 Fed. Appx. 222 (5th Cir. 2011) (affirming jury verdict in favor of class of waiters in FLSA tip credit case); *Belt v. EmCare, Inc.*, 444 F.3d 403 (5th Cir. 2006) (finding, as a matter of first impression, that hourly nurse practitioners and physician assistants were entitled to overtime pay). In addition to litigating hundreds of wage-and-hour cases, Mr. Burch has given dozens of speeches on the FLSA at CLEs and similar professional gatherings; has written extensively on the FLSA, *see, e.g., Parker v. ABC Debt Relief, Ltd. Co.*, 3:10-cv-1332-P,

2013 WL 371573 (N.D. Tex. Jan 28, 2013) (citing Richard J. Burch, A Practitioner's Guide to Joint Employer Liability under the FLSA, 2 HOUS. BUS. & TAX. L.J. 393 (2002)); has written (or assisted in writing) several amicus briefs in FLSA cases, *see Fast v. Applebee's Intern., Inc.*, 638 F.3d 872 (8th Cir. Apr. 21, 2011) (co-author); *In re Novartis Wage and Hour Litig.*, 611 F.3d 141 (2d Cir. 2010) (co-author); *Cumbie v. Woody Woo, Inc.*, 596 F.3d 577 (9th Cir. 2010) (primary author); and has submitted comments specifically referenced and adopted by the United States Department of Labor in the regulations dealing with the FLSA's "tip credit" provisions. *See* 76 FR 11832-01, 18840, 18843 (April 5, 2011). Further, Mr. Burch served as lead counsel in the precedent setting civil rights case, *Spector v. Norveign Cruise Lines, Ltd.*, 545 U.S. 119 (2005) (foreign-flagged vessels are subject to the ADA). Finally, the "Best Lawyers in America" publication rated him the 2020 "Lawyer of the Year" in the category of "Employment Law – Individuals" for Houston, Texas, and he is routinely listed in Texas Monthly and Texas Lawyer as a "Super Lawyer."

Factual and Procedural Background.

11. Plaintiff Clark Vanderheyden filed his Original Complaint alleging wage and hour claims against Addison in April 2021.
12. I have been personally involved in the litigation against Defendant on behalf of Mr. Vanderheyden. I, or my associates under my direct supervision, have been responsible for drafting virtually all of the pleadings, correspondence with Defendant's Counsel, and related documents filed and exchanged during this litigation. I am deeply familiar with all the relevant facts, legal issues, and potential damages at issue in this case.
13. Prior to filing Plaintiff's Original Complaint, myself, my associate Carl Fitz, and our staff spent considerable time coordinating with and interviewing Vanderheyden, investigating the veracity of his allegations, looking into Defendant's business and payroll practices, researching the current law relating to overtime violations of the FLSA involving alleged exemption misclassification violations, reviewing PACER filings, and drafting the complaint.
14. Defendant's Counsel stated from the outset of this litigation that Defendant was ready, willing, and able to litigate this case to its conclusion. Defendant disagreed vehemently with many of the assertions in Vanderheyden's Complaint and vowed to defend the pay practices at issue.
15. Over the course of this litigation, the Parties fiercely contested whether Plaintiff (or the Putative Class Members) was properly classified as exempt from overtime pay, and whether Defendant's exemption classification of its recruiters was a willful violation of the FLSA.
16. Specifically, Defendant produced payroll data reflecting the compensation and hours worked by Plaintiff and the Putative Class Members. This encompassed dozens of pages of compensation records. Plaintiff's Counsel and their support staff spent substantial time sifting through the data and payroll information to formulate a damages calculation.

The Settlement Negotiations Were Informed, and the Settlement Will Provide Substantial Benefit to Plaintiff and Settlement Class Members

17. Based on a review of the documents produced by Defendant, there was a substantial risk that Defendant would prevail on its theory that Plaintiff and Putative Class Members were properly classified as exempt under the FLSA. These risks were taken into account throughout settlement negotiations with Defendant's counsel. The parties negotiated at arms' length and in good faith, including during a full-day mediation with experienced wage and hour mediator Lynn Cohn. After mediation, the Parties continued negotiating for weeks, facilitated by the mediator, and reached a fair and reasonable settlement. Mr. Vanderheyden approved the terms of the settlement in conjunction with the advice of his counsel.
18. Given the wealth of information acquired by Plaintiff's Counsel as to the pay practices at issue in this case, there is no doubt that Plaintiff's Counsel gathered sufficient information to adequately assess the liability issues and damages at stake in this case.

Plaintiff's Counsel's Attorney Fee Award is Reasonable Under the Circumstances of this Case and Given Plaintiff's Counsel's Experience

19. I believe that the Settlement is fair, adequate, and a reasonable compromise of the disputed claims. Using our damage calculations, based on payroll records provided by Defendant for the putative class, the Net Settlement Amount provides Plaintiff and the Settlement Collective Action Members with greater than their two-year FLSA back wages assuming a 45-hour workweek.
20. Pursuant to the Settlement, Plaintiffs will receive a sum certain, which covers unpaid overtime compensation (less income and payroll taxes) and attorneys' fees and costs. This amount is reasonable because the Parties vigorously disputed Plaintiff's exempt status, as well as the number of overtime hours for which Plaintiff alleges he is entitled to compensation.
21. The Settlement provides immediate and substantial relief without the attendant risks, including the burden of proof and delay of continued litigation.
22. Concerning attorney's fees and costs, the Settlement provides \$380,000.00 in attorney's fees and costs to Plaintiff's counsel, pending Court approval, and pursuant to Plaintiff's fee agreement with Plaintiff's counsel and is consistent with the FLSA. This fee award is reasonable in light of the benefit achieved for Plaintiff and consistent with the number of hours spent in pursuing Plaintiff's claims.
23. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Signed on August 12, 2022.

/s/ Michael A. Josephson
Michael A. Josephson