SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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MOHAMED JIMALE, UCHENNA OFODILE, RANDI BUTLER, and CHIEN TSAI, on behalf of themselves and all others similarly situated,	:	**Index No.: 613280/2025**
Plaintiffs,	:	
- against -	:	
INTERNATIONAL BUSINESS MACHINES CORPORATION,	:	
Defendant.	:	

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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF SETTLEMENT

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PRELIMINARY STATEMENT

Subject to final approval, Mohamed Jimale, Uchenna Ofodile, Randi Butler, and Chien Tsai (collectively, "Plaintiffs"), and International Business Machines Corporation ("IBM" or "Defendant") (together with the Plaintiffs, the "Parties") have settled this putative class and collective action for $2,500,000.00. After the Court preliminarily approved the settlement, (NYSCEF No. 28), the Settlement Administrator notified the Class and FLSA-Only Collective Members of the settlement. No class members have opted out or objected to the settlement.

Through this Unopposed Motion for Final Approval of Settlement ("Final Approval Motion"), Plaintiffs respectfully request that the Court: (1) grant final approval of the Settlement Agreement and Release ("Agreement"),[1] attached as Exhibit 1 to the Affirmation of Paolo Meireles ("Meireles Aff."); (2) approve the proposed General Release Payments for Plaintiffs; (3) approve Class Counsel's attorneys' fees and costs; (4) approve the Settlement Administrator's ("Administrator") reasonable costs and expenses; and (5) enter the proposed Final Order and Judgment attached as Exhibit 4 to the Meireles Aff.

BACKGROUND

Plaintiffs were employed by Defendant as Apprentices in IBM's apprentice program. Plaintiffs brought the instant action on behalf of themselves and all similarly situated Apprentices, seeking to recover unpaid wages, including overtime compensation for all hours worked over forty (40) per workweek. Specifically, Plaintiffs allege that Defendant discouraged and/or prohibited Apprentices from recording all of their overtime hours worked and committed other wage/hour violations, thereby violating the overtime requirements of the FLSA, the New York Labor Law and related regulations ("NYLL"), and the California Labor Code §§ 201-204, 206.5, 210, 218, 218.5,

[1] Unless otherwise indicated, all exhibits referenced herein are attached to the Meireles Aff.

218.6, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and 2802, *et seq.* and Wage Order No. 4-2001 (collectively, "California Wage and Hour Law"), as well as California Business & Professions Code §§ 17200 *et seq*. Defendant denies Plaintiffs' claims in their entirety and denies any liability whatsoever.

SUMMARY OF THE SETTLEMENT TERMS[2]

I. THE SETTLEMENT FUND

Defendant has agreed to pay a Maximum Settlement Amount of $2,500,000.00 that covers: (1) payments to all Claimants; (2) a total PAGA Allocation of $50,000.00 to be paid to PAGA Members and the California LWDA; (3) Court-approved General Release Payments of up to $7,500.00 each to the four named Plaintiffs; (4) Court-approved attorneys' fees of up to one-third of the Maximum Settlement Amount, plus costs and expenses; and (5) Settlement Administration Expenses incurred by the Claims Administrator. Ex. 1, Settlement Agreement ¶¶ 1.26, 1.30, 1.40, 3.1.A, 3.2, 3.3. The Maximum Settlement Amount does not include the employer's share of payroll taxes on the settlement payments attributed to wages for tax purposes, which IBM has agreed to pay separately in addition to the Maximum Settlement Amount. *Id.* ¶ 1.26.

II. ELIGIBLE EMPLOYEES

The Agreement identifies three distinct groups of eligible employees: New York Class Members, California Class Members (including PAGA Members),[3] and FLSA-Only Collective Members. Each Class Member who was employed by Defendant as an Apprentice in New York from March 15, 2017 through March 6, 2024 is a "New York Class Member." *Id.* ¶¶ 1.9, 1.13. Each Class Member who was employed by Defendant as an Apprentice in California from March

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[2] The following is a summary of the essential terms of the settlement. The Agreement contains all of the terms that the Parties seek the Court to approve. *See* Ex. 1.

[3] The PAGA Members are all Apprentices employed by IBM in California during from March 15, 2022 through March 6, 2024.

15, 2019 through March 6, 2024 is a "California Class Member." *Id.* New York Class Members and California Class Members are collectively referred to as "Class Members," or the "Class." *Id.* ¶ 1.9. The "FLSA Collective" includes all persons employed by Defendant as an Apprentice nationwide from March 15, 2020 through March 6, 2024. *Id.* ¶ 1.21. "FLSA-Only Collective Members" refers to members of the FLSA Collective who are not New York Class Members or California Class Members and thus only members of the FLSA Collective.[4] *Id.* Any Class Member who did not submit a timely and complete Opt-Out Statement pursuant to the Agreement are "Qualified Class Members." The term "Claimant" refers to (a) any Qualified Class Member, and (b) any FLSA-Only Collective Member who timely submitted a valid and complete Claim Form on or before the Claim Form Deadline and (c) any individual deemed a Claimant in accordance with Section 3.4 of the Agreement. *Id.* ¶¶ 1.7, 1.37, 2.6.A, 3.4.

III. NOTICE TO PUTATIVE COLLECTIVE AND CLASS MEMBERS

On September 16, 2025, pursuant to the Preliminary Approval Order (NYSCEF No. 28), the Claims Administrator properly disseminated the Court-approved Notice of Proposed Collective Action ("FLSA-Only Notice") and Claim Form to all 569 FLSA-Only Collective Members, and the Court-approved Notice of Proposed Class, Collective, and Representative Action Settlement and Fairness Hearing ("Class Notice," and collectively with the FLSA-Only Notice, the "Notices") to all 266 Class Members, via U.S. First Class Mail. *See* Ex. 2 ("Administrator Aff.") ¶ 9. The Notices advised Class and Collective Members of their rights with respect to the settlement, applicable deadlines, the Final Fairness Hearing, their estimated settlement payments, and how to obtain additional information. *See id*. Ex. A, Ex. B. The Notice also informed them of Plaintiffs' requests for General Release Payments and of Class Counsel's

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[4] A subset of New York and California Class Members are also FLSA Collective Members.

request for attorneys' fees and reimbursement of expenses. *See id*. On October 16, 2025, the Claims Administrator mailed Reminder Postcards to 518 FLSA-Only Collective Members who had not submitted a Claim Form as of that date. Ex. 2 (Administrator Aff.) ¶ 10.

During the notice period, Class Counsel assisted the Administrator by speaking with Claimants about the terms of the settlement and answering their questions about the claims, settlement terms and settlement procedures. Meireles Aff. ¶ 19. The Administrator made appropriate and reasonable efforts to locate updated addresses of FLSA Collective and Class Members for whom Notice was returned as undeliverable. It re-mailed approximately 52 FLSA-Only Collective Notices that initially came back as undeliverable. Ex. 2 (Administrator Aff.) ¶ 11. Only 15 of the approximately 569 FLSA-Only Collective Notices remain undeliverable. *See id.* ¶¶ 9, 11. The Administrator re-mailed 7 Class Notices that initially came back as undeliverable. *Id.* ¶¶ 9, 12. Only one (1) of the approximately 266 Class Notices remains undeliverable. *Id.* ¶¶ 9, 12. No Class Members have opted out of, or objected to, the settlement. *Id.* ¶¶ 16, 17. 191 FLSA-Only Collective Members have opted-in. *Id.* ¶ 19.[5]

IV. RELEASES

The Agreement provides that upon entry of the Final Order and Judgment, each and every Plaintiff and Claimant will fully release and discharge Defendant and associated Released Parties from state, local, and federal wage and hour claims arising from their employment as an Apprentice up through and including August 6, 2024. Ex. 1 (Agreement) ¶¶ 3.7.A, 3.7.B. PAGA Members will also release claims for penalties under the California Private Attorneys General Act ("PAGA") arising during their employment as Apprentices from March 15, 2022 through August 6, 2024. *Id.*

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[5] This includes Plaintiffs Mohamed Jimale and Uchenna Ofodile, who filed Consent to Join Forms before the notice went out. Administrator Aff. ¶ 19; NYSCEF No. 2. Plaintiffs Randi Butler and Chien Tsai are Class Members. Administrator Aff. ¶ 18.

¶¶ 1.32, 3.7.C. Plaintiffs will also each execute a General Release in exchange for a General Release Payment, subject to final approval. *Id.* ¶¶ 1.22, 3.3, 3.7.D.

V. ALLOCATION FORMULA AND PAYMENT

Plaintiffs and Claimants will be allocated a proportionate share of the Net Settlement Fund based on the state(s) in which the individual worked (New York, California, or anywhere else in the United States) and the number of Applicable Workweeks worked.[6] *Id.* ¶ 3.5.A. The formula for calculating these shares is set forth in the Agreement. *Id.* ¶ 3.5. Settlement shares of FLSA-Only Collective Members who did not opt in will be added to the Net Settlement Fund to be distributed to Class Members such that the entire Net Settlement Fund will be paid out and there will be no reversion of unclaimed funds to Defendant. *Id.* ¶ 3.5.C.

Within forty-five (45) days after the Effective Date, the Settlement Administrator will distribute settlement checks as set forth in the Agreement. *Id.* ¶ 3.1E. Claimants and PAGA Members will have one hundred eighty (180) calendar days after each check date to redeem their settlement payments. *Id.* ¶ 3.5F.

ARGUMENT

I. THE PROPOSED SETTLEMENT MEETS THE REQUIREMENT FOR APPROVAL.

CPLR § 908 requires judicial approval for any compromise of claims brought on a class basis. CPLR § 908. This approval process has three steps: (1) preliminary approval of the proposed settlement; (2) dissemination of notice to all class members; and (3) final approval after class members have had the opportunity to be heard. CPLR § 908; *e.g.*, *Lopez v. Dinex Grp., LLC*, No. 155706/14, 2015 N.Y. Slip Op. 31074 (U), at *2-4 (Sup. Ct., N.Y. County 2015). This process

[6] PAGA Members will be entitled to an additional PAGA amount based on the weeks worked in California during the PAGA Period. *Id.* ¶ 3.5.B.

protects class members' due process rights while enabling the Court to safeguard class members' interests. *Garcia v. Pancho Villa's of Huntington Vill., Inc.*, No. 09 Civ. 486, 2012 U.S. Dist. LEXIS 70144, at *11 (E.D.N.Y. May 21, 2012).

With this Final Approval Motion, Plaintiffs request that the Court now take the final step – granting final approval of the Agreement, approving General Release Payments and Class Counsel's fees and costs, and authorizing the Administrator to disburse the settlement fund.

A. The Proposed Settlement Is Fair, Adequate, and Reasonable.

Courts examine "the fairness of the settlement, its adequacy, its reasonableness and the best interests of the class members." *Fiala v. Metro. Life Ins. Co., Inc.*, 899 N.Y.S.2d 531, 537 (Sup. Ct., N.Y. County 2010); *accord Klein v. Robert's Am. Gourmet Food, Inc.*, 808 N.Y.S.2d 766, 774 (App. Div. 2d Dep't 2006). Courts consider the following factors: (1) likelihood of success; (2) support from the class; (3) settlement value balanced against the potential recovery, in light of litigation risks; (4) counsel's judgment; and (5) the issues at stake. *Jiannaras v. Alfant*, No. 09 Civ. 21262, 2012 N.Y. Misc. LEXIS 6692, at *10 (Sup. Ct., Queens County, Jan. 10, 2012). These factors are applied flexibly based on the circumstances of the case and the "strong judicial policy" favoring class action settlements. *Id.*, at *11. Here, each factor weighs in favor of approval.

1. Factors 1 & 5: Likelihood of Success and Issues at Stake.

Although Plaintiffs believe their case is strong, it is subject to risk. Of course, risks are inherent in any litigation. *See Klurfeld v. Equity Enters., Inc.*, 436 N.Y.S.2d 303, 310 (App. Div. 2d Dep't 1981) ("All lawsuits, more or less, present the risk of defeat[.]"). These risks are pronounced in wage and hour class actions like this one, which are "'inherently complex'" and burdened by "'costs, delays and multitude of other problems associated with them.'" *Johnson v. Brennan*, No. 10 Civ. 4712, U.S. Dist. LEXIS 105775, at *25 (S.D.N.Y. Sept. 16, 2011) (quoting

In re Austrian & German Bank Holocaust Litig., 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000)). These cases "typically involve complex mixed questions of fact and law" that must be resolved in accordance with "over [eight] decades of legal interpretation and administrative rulings." *Barrentine v. Arkansas-Best Freight Sys., Inc.*, 450 U.S. 728, 743 (1981).

Furthermore, "class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them." *Holocaust Litig.*, 80 F. Supp. 2d at 174. "[I]f settlement has any purpose at all, it is to avoid a trial on the merits because of the uncertainty of the outcome." *In re Ira Haupt & Co.*, 304 F. Supp. 917, 934 (S.D.N.Y. 1969); *see also Velez v. Majik Cleaning Serv.*, No. 03 Civ. 8698, 2007 U.S. Dist. LEXIS 46223, at *19 (S.D.N.Y. June 22, 2007) (settlement benefits plaintiffs because they "recover a monetary award immediately, without having to risk that an outcome unfavorable to the plaintiff.").

To succeed, Plaintiffs would have to, among other things: (1) defeat any procedural defenses that Defendant might raise; (2) prove that Apprentices within the Class performed work for which they were not properly compensated and that IBM had actual or constructive knowledge of that work, which would require several findings of fact and law in Plaintiffs' favor; and (3) and prove the amount of unpaid overtime that each Apprentice allegedly worked. Meireles Aff. ¶ 16.

Plaintiffs would also have to obtain class certification and maintain a class action through trial, which is not easy. *See, e.g., Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 480 (S.D.N.Y. 2013) (collecting wage and hour cases denying or decertifying class action status). Plaintiffs would need to secure this in the face of Defendant's vigorous opposition at each stage, including class certification (and decertification), dispositive motion practice, discovery, trial, and potential appeals. Meireles Aff. ¶ 15.

If this lawsuit continued, any recovery would not occur for years. *Id*. While Plaintiffs believe that they would ultimately prevail, the settlement eliminates these risks and allows Plaintiffs and Claimants to recover now. These factors favor approval. *See Charles v. Avis Budget Car Rental, LLC*, No. 152627/2017, 2017 N.Y. Slip Op. 32644(U), at *4 (Sup. Ct., N.Y. County 2017) (weighing that "Defendant has and will continue to vigorously contest Plaintiffs['] claims if the action does not settle" in favor of settlement).

2. Factor 2: Extent of Support from the Class.

The class's reaction to the settlement "is perhaps the most significant factor to be weighed in considering its adequacy." *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002)). A favorable reaction "supports judicial approval" as it is "strong evidence" of a fair deal. *Milton v. Bells Nurses Registry & Emp. Agency, Inc.*, No. 502303/2015, 2015 N.Y. Misc. LEXIS 4604, at *5 (Sup. Ct., Kings County, Dec. 14, 2015). A lack of objections "may itself be taken as evidencing the fairness of the settlement." *Weiss v. Drew Nat'l Corp.*, 465 F. Supp. 548, 551 (S.D.N.Y. 1979).

Class Members have shown an enthusiastic response and are eagerly awaiting approval. Meireles Aff. ¶ 19. Class Counsel have responded to numerous positive inquiries from Class Members regarding the settlement. *Id*. Moreover, no Class Members have objected to the settlement or excluded themselves from it. Ex. 2 (Administrator Aff.) ¶¶ 16, 17. "The fact that the vast majority of class members neither objected nor opted out is a strong indication' of fairness," and weighs in favor of approval. *See DeLeon v. Wells Fargo Bank, N.A.*, No. 12 Civ. 4494, 2015 U.S. Dist. LEXIS 65261, at *9 (S.D.N.Y. May 7, 2015).

3. Factor 3: The Value of the Settlement Balanced Against the Anticipated Recovery.

The value of the settlement compared to the anticipated recovery after trial, discounted for litigation risks, weighs heavily in favor of approval. The reasonableness of a settlement is not susceptible to the "use of a 'mathematical equation yielding a particularized sum.'" *Mendez v. MCSS Rest Corp.*, No. 16 Civ. 2746, 2022 U.S. Dist. LEXIS 154102, at *25 (E.D.N.Y. Aug. 26, 2022) (quoting *Frank v. Eastman Kodak Co*., 228 F.R.D. 174, 186 (W.D.N.Y. 2005)). Instead, "'there is a range of reasonableness with respect to a settlement – a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.'" *Frank*, 228 F.R.D. at 186 (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir.), *cert denied* 409 U.S. 1039 (1972)).

Although it is possible that Class Members would recover more money after maintaining class certification, winning a trial, and defeating any appeals, the settlement provides significant benefit of a guaranteed and substantial payment to Class Members now, rather than "speculative payment of a hypothetically larger amount years down the road." *Hosue v. Calypso St. Barth, Inc*., No. 160400/2015, 2017 N.Y. Slip Op. 31928(U), at *6 (Sup. Ct., N.Y. County Sept. 11, 2017). Weighing the settlement benefits against the risks of further litigation, the fact that Defendant will pay $2.5 million is an excellent result for the Class.

4. Factor 4: Judgment of Experienced Class Counsel Favors Final Approval.

Where counsel is experienced in the type of litigation at bar, courts afford class counsel's opinion of the settlement "considerable weight." *Smith v. Vista Org.*, No. 89 Civ. 48, 1991 U.S. Dist. LEXIS 10484, at *16 (S.D.N.Y. July 29, 1991); *see, e.g.*, *Gordon v. Verizon Commc'ns, Inc.*, 46 N.Y.S. 3d 557, 567 (N.Y. App Div. 1st Dep't 2017) (counsel's opinion weighed in favor of approval as the attorneys were "competent and experienced in the field of complex class action litigation" in the substantive area). This weighs in favor of approval because Class Counsel have drawn upon their wealth of wage and hour class action class action experience in reaching this settlement and advise that, in their judgment, the settlement is a fair, reasonable, and adequate compromise of the claims. *See* Meireles Aff. ¶ 13.

B. APPROVAL OF THE FLSA SETTLEMENT IS WARRANTED.

Plaintiffs also seek approval of the settlement of the FLSA claims in addition to the state law claims. FLSA claims are brought as a "collective action," in which employees must affirmatively "opt in" to the litigation. *See, e.g.*, *Ansoumana v. Gristede's Operating Corp.*, 201 F.R.D. 81, 84 (S.D.N.Y. 2001). FLSA collective actions do not involve the same due process concerns as class actions because individuals do not waive their FLSA rights unless they affirmatively join a FLSA settlement. *See Beckman*, 293 F.R.D. at 476. Accordingly, the standard for approval of the FLSA collective action portion of the settlement is lower than that for a class settlement. *See Chavarria v. N.Y. Airport Serv., LLC*, 875 F. Supp. 2d 164, 176 (E.D.N.Y 2012).

"Courts generally approve FLSA settlements when they are reached as a result of contested litigation to resolve bona fide disputes." *Id*. If the proposed settlement reflects a reasonable compromise of contested issues, a court should approve it. *Reyes v. Altamarea Grp.*, No. 10 Civ. 6451, 2011 U.S. Dist. LEXIS 115984, at *16 (S.D.N.Y. Aug. 16, 2011). Here, as discussed, the settlement involved contested claims and was the result of vigorous, arm's-length negotiations between capable counsel with two experienced mediators. Meireles Aff. ¶ 17. Because the settlement resolves a clear and actual dispute and was reached after arm's-length settlement negotiations, the settlement of the FLSA claims should be approved.

C. THE PAGA PORTION OF THE SETTLEMENT WARRANTS APPROVAL.

Pursuant to ¶ 1.30 of the Agreement, the Parties agreed to allocate $50,000 of the Maximum Settlement Amount (the "PAGA Allocation") as payment of penalties under the

California Labor Code §§ 2698 *et seq*.[7] Although PAGA settlements require court approval, the court and the parties are not obligated to follow class action procedures for obtaining approval of the settlement of PAGA claims. *See* Cal. Lab. Code § 2699(k)(2) (requiring court approval of PAGA claims); *Arias v. Sup. Ct*., 46 Cal. 4th 969, 985-86 (2009) (holding PAGA claims need not comply with the procedural requirements of class actions); *See Blake v. Hill & Co. Prop. Mgmt*., 2015 Cal. Super. LEXIS 13210 (San Francisco County Superior Court, Sep. 23, 2015) (granting *ex parte* application for settlement of PAGA claims); *see also Tighe, et al. v. Merrill Lynch, Pierce, Fenner & Smith, Inc*., et al., No. 50-2017-CA-012909 (Palm Beach Co. Ct. Dec. 29, 2017) (approving FLSA collective and PAGA settlement) (Order attached as Exhibit 3).

This $50,000 PAGA Allocation is "fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc.,* (2021) 72 Cal.App.5th 56, 77, *disapproved of on other grounds by Turrieta v. Lyft, Inc.*, 16 Cal. 5th 664 (2024)). Courts have approved PAGA settlements for $20,000 or less. *See, e.g., Hicks v. Toys 'R' Us–Delaware, Inc.,* (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving $5,000 PAGA payment in $4 million settlement); *Chu v. Wells Fargo Invest. LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1 (approving PAGA payment of $7,500 in $6.9 million settlement). Indeed, PAGA settlements for as little as $0 have been approved. *See Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated $0 to PAGA claim).

[7] The PAGA Members are all Apprentices employed by IBM in California during from March 15, 2022 through March 6, 2024. Ex. 1 (Agreement) ¶ 1.32.

II. THE REQUESTED GENERAL RELEASE PAYMENTS SHOULD BE APPROVED.

The four Plaintiffs request General Release Payments of $7,500 each, in addition to their allocated share of the settlement, as consideration for a release of their individual claims only. Ex. 1 (Agreement) ¶¶ 1.22; 3.3.

The requested General Release Payments are in consideration for Plaintiffs' release of their individual claims, and additionally will compensate "plaintiffs for the effort and inconvenience of consulting with counsel" for the duration of the case, otherwise participating in the case, and achieving a class-wide benefit. *Cox v. Microsoft Corp.*, 907 N.Y.S.2d 436, at 436 (Sup. Ct., N.Y. County, Feb. 2, 2007). They "are particularly appropriate in the employment context." *Frank*, 228 F.R.D. at 187; *see, e.g.*, *Silberblatt v. Morgan Stanley*, 524 F. Supp. 2d 425, 435 (S.D.N.Y. 2007) ("A class representative who has been exposed to a demonstrable risk of employer retaliation or whose future employability has been impaired may be worthy of receiving an additional payment[.]").

Plaintiffs were instrumental to the initiation and prosecution of this action. Meireles Aff. ¶ 20. Their services included but were not limited to: informing counsel of the facts initially and throughout the case; providing Class Counsel with relevant documents in their possession; and being available by phone and providing additional information during and in advance of the multiple mediations. *Id.* ¶ 21. Plaintiffs' actions exemplify the reasons courts grant service payments. *See Frank*, 228 F.R.D. at 187 (recognizing the important role that plaintiffs play as the "primary source of information" by responding to counsel's questions and reviewing documents). Plaintiffs took a significant risk by coming forward to represent other workers in this public lawsuit against IBM, one of the largest employers in their industry. Meireles Aff. ¶ 22.

The Notices informed Class and FLSA Collective Members of the total amount to be paid as General Release Payments, and no Class Member has objected. Ex. 2 (Administrator Aff.) ¶ 17; Ex. A and B (Notices). The General Release Payments of $7,500 respectively are reasonable and well within the range courts award in wage and hour matters. *E.g.*, *Rodriguez v. Joseph Eletto Transfer, Inc.*, No. 5431/16, 2016 N.Y. Slip Op. 32592(U) (Sup. Ct., Nassau County 2016) (awarding lead plaintiff $15,000); *Karic v. Major Auto. Co., Inc.*, No. 09 Civ. 5708, U.S. Dist. LEXIS 57782, at *25 (E.D.N.Y. April 27, 2016) ($20,000 to each of the seven named plaintiffs); *Mentor v. Imperial Parking Sys.*, No. 05 Civ. 7993, U.S. Dist. LEXIS 132831, at *7, *15 (S.D.N.Y. Dec. 15, 2010) ($40,000 and $15,000 to named plaintiffs).

III. CLASS COUNSEL'S FEES AND COSTS SHOULD BE APPROVED.

The Court should approve the requested attorneys' fees and litigation costs. To date, Class Counsel have collectively spent 677.1 hours on this matter. Meireles Aff. ¶ 31. Since sending a demand letter three years ago, Class Counsel put in substantial work to negotiate a significant-value, risk-free settlement for class members and to obtain approval of the settlement. Meireles Aff. ¶ 23. Class Counsel (1) identified claims and class members; (2) negotiated and obtained data from Defendant; (3) analyzed the data; (4) constructed detailed damages analyses for two mediations; (5) attended two separate, full-day mediations and engaged in substantial related settlement conferences and communications; and (6) negotiated a settlement agreement and related approval motion papers. Meireles Aff. ¶ 24. Should this settlement be approved, Class Counsel will continue to spend time through the end of the claims administration process, as Plaintiffs and Claimants continue to reach out to Class Counsel with questions or for updates on the Agreement. Meireles Aff. ¶ 25.

Although courts may calculate attorneys' fees using either the lodestar or percentage-of-the-recovery method, where, as here, "a settlement establishes a common fund, the percentage method is often preferable because '[t]he lodestar method has the potential to lead to inefficiency and resistance to expeditious settlement because it gives attorneys an incentive to raise their fees by billing more hours.'" *Milton*, 2015 N.Y. Misc. LEXIS 4604, at *12 (cleaned up); *see also Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 122 (2d Cir. 2005) ("The trend in this Circuit is toward the percentage method, which 'directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.'").

An attorneys' fees award of one-third of the settlement fund plus litigation expenses is appropriate here. *See, e.g., Varela v. Bldg. Serv. Indus., LLC*, No. 600037/16, 2018 N.Y. Slip Op. 33514(U), at *4-5 (Sup. Ct., Nassau County June 21, 2018) (awarding one-third of the settlement fund). "[C]ourts routinely grant requests of one-third of settlement funds for attorney's fees in wage and hour class actions such as this." *Hastings v. Regeis Care Ctr., LLC*, No. 23900/2016E, 2018 N.Y. Misc. LEXIS 11289, at *11 (Sup. Ct., Bronx County, Oct. 23, 2018).

Under the percentage method, Class Counsel will recover less than 1.78 times their lodestar amount.[8] Their full fees were $467,147.50 as of the filing of this motion and will continue to increase. Awarding attorneys' fees of one-third of the total settlement fairly and reasonably compensates attorneys for the full benefit they secured for the class and for the work that they have

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8 The fees sought by Class Counsel are certainly reasonable considering that courts routinely approve multipliers above and beyond the lodestar as reasonable fee awards in class cases. *See, e.g.*, *Cohan v. Columbia Sussex Mgmt., LLC*, No. 12 Civ. 3203, 2018 WL 4861391, at *5 (E.D.N.Y. Sept. 28, 2018) (collecting cases in which courts routinely approve fees that are "two to six times the lodestar"); *Weston v. TechSol, LLC*, No. 17 Civ. 0141, 2018 WL 4693527, at *9 (E.D.N.Y. Sept. 26, 2018) (same); *accord Tanski v. AvalonBay Communities, Inc.*, No. 15 Civ. 6260, 2020 WL 2733989, at *3 (E.D.N.Y. May 26, 2020) (collecting cases with multipliers ranging from 2.02 to 3.5 and noting that multipliers exceeding 4 are routine).

and will do to obtain approval and effectuate the settlement. As a direct result of Counsel's skillful negotiations, 266 Class Members will receive settlement checks and 569 Collective Members were given the opportunity to receive a check by submitting a short, straightforward Claim Form. *See* Ex. 2 (Administrator Aff.) ¶ 9. In addition, unlike many other approved class action settlements where unclaimed amounts revert to the defendant, here, the entirety of the $2.5 million fund will be paid out maximizing recovery to the Claimants, and no amounts will revert to Defendant. Meireles Aff. ¶ 18. Class Counsel should be compensated for providing these benefits. *Lopez v. Dinex Grp. LLC*, No. 155706/14, 2015 NY Slip Op 31866(U) ¶ 23 (Sup. Ct., N.Y. County 2015, Oct. 5 2015).

A. The Requested Fee is Fair and Reasonable.

New York courts consider several factors to determine whether a fee request is reasonable:

> [T]he risks of the litigation, whether counsel had the benefit of a prior judgment, standing at bar of counsel for the plaintiffs and defendants, the magnitude and complexity of the litigation, responsibility undertaken, the amount recovered, the knowledge the court has of the case's history and the work done by counsel prior to trial, and what it would be reasonable for counsel to charge a victorious plaintiff.

Charles, 2017 N.Y. Slip Op. 32644(U), at *4 (cleaned up). Here, all factors weigh in favor of approval.

B. Risks of Litigation Warrant the Requested Fees.

The risk of litigation "is perhaps the foremost factor to be considered in determining the award of appropriate attorneys' fees." *Taft v. Ackermans*, No. 02 Civ. 7951, 2007 U.S. Dist. LEXIS 9144, at *30 (S.D.N.Y. Jan. 31, 2007). Courts will grant a "substantial fee award" to "recognize the outsize risks that [class counsel] took in investing in [an] uncertain lawsuit." *Hart v. RCI Hosp. Holdings, Inc.*, No. 09 Civ. 3043, 2015 U.S. Dist. LEXIS 126934, at*42 (S.D.N.Y. Sept. 22, 2015) (noting that during the litigation period class counsel "retained its obligations to pay salaries and overhead, and assuredly forewent other potential clients and cases. A law firm is a business, too."); *see also Hastings*, 2018 N.Y. Misc. LEXIS 11289, at *11-12 ("Such 'contingency fees provide access to counsel for individuals who would otherwise have difficulty obtaining representation . . . and transfer a significant portion of the risk of loss to the attorneys taking a case.'" (quoting *deMunecas v. Bold Food LLC*, No. 09 Civ. 440, 2010 U.S. Dist. LEXIS 87644, at *21 (S.D.N.Y. Aug. 23, 2010))).

Wage and hour laws present unique challenges and risks that make their enforcement particularly difficult. Individual recoveries may be modest and pursuing individual claims may not be worthwhile for the plaintiff or firm. Meireles Aff. ¶ 26. That is why almost all wage and hour litigation operates on a contingency model, with fees paid as a percentage of the settlement, should one be secured. Attorneys' fees rise and fall with the fate of the class -- sometimes, that means the attorneys earn more in fees than their lodestar reflects, while sometimes, that means attorneys take a bath on fees. *Id.* ¶ 27.

Class Counsel took tremendous risks in pursuing this matter under a complete contingency agreement and have not received any compensation since the investigation began over two and a half years ago. *Id.* ¶ 28. Recognizing the "significant risks" undertaken by attorneys who work on contingency, the New York State Court of Appeals has upheld contingency fees of one-third or higher, where such fee arrangements are embodied in executed retainer agreements, as here. *See In re Lawrence*, 24 N.Y.3d 320, 339, 341 (2014) (upholding 40 percent contingency and stating that, "[a]s a general rule, we enforce clear and complete documents, like the revised retainer agreement, according to their terms.").

The "purposes of [the NYLL and FLSA are] served by adequately compensating attorneys who protect wage and hour rights." *Matheson v. T-Bone Rest. LLC.*, No. 09 Civ. 4214, 2011 U.S.

Dist. LEXIS 143773, at *20-21 (S.D.N.Y. Dec. 13, 2011). For those same reasons, "[p]ublic policy . . . favors approving a common fund attorneys' fee award in wage and hour class actions" because it ensures attorneys are both willing and financially able to prosecute relatively low-value claims on behalf of clients who likely could not otherwise afford representation. *Lopez*, 2015 NY Slip Op 31866(U), ¶¶ 12-13 (collecting cases).

1. The Litigation's Magnitude and Complexity, and the Responsibility Counsel Undertook, Warrant Recovery of the Requested Fees.

This case presents complex issues of law, fact, and class-action procedure. The magnitude, complexity, and numerous legal and factual issues involved in the resolution of the class claims favor awarding the requested fees. *See Frank*, 228 F.R.D. at 189 (mixed questions of fact and law supported attorneys' fees representing approximately 40% of the common fund).

2. Counsel Did Not Have the Benefit of a Prior Judgment.

Counsel did not benefit from a prior judgment when this action was filed, nor during the pendency of the action, Meireles Aff. ¶ 29, weighing in favor of the fee request.

3. The Amount Recovered is Proportional to the Requested Fees.

Class Counsel's work has led to the creation of a substantial fund, which represents a substantial portion of the wages that Claimants would have achieved had they prevailed on all of their claims, maintained class and collective certification, and survived an appeal. *See Cheeks*, 796 F.3d at 207 (2d Cir. 2015) (wage-and-hour plaintiffs often settle for between $500 and $2,000 in unpaid wages). Here, average settlement award is $4,743.47 to Class Members and $1,524.52 to FLSA-Only Collective Members. Ex. 2 (Administrator Aff.) ¶¶ 18, 19. The settlement is an excellent result.

4. The Case History and Work Done by Counsel Was Substantial.

Class Counsel's time invested in this case was significant and reasonable. Meireles Aff. ¶ 31. Class Counsel will spend additional time overseeing settlement administration, for which they will not be compensated. *Id.* ¶ 36; *Beckman*, 293 F.R.D. at 482 (counsel are often "called upon to perform work" after approval, assisting with settlement administration and talking to class members).

5. Counsel Maintains Reputable Standing Among the Bar.

Class Counsel have extensive experience representing workers in wage and hour class actions and an excellent reputation among the employment law bar. *See, e.g.*, *Capilupi v. People's United Fin., Inc.*, No. 15 Civ. 5247, 2018 U.S. Dist. LEXIS 167550, at *6 (E.D.N.Y. Sept. 27, 2018) ("Class Counsel [including Shavitz Law Group] are well qualified, experienced, and have aggressively litigated this action, thereby demonstrating their adequacy as counsel for the class."); *Hernandez v. Merrill Lynch & Co.*, 2013 WL 1209563, at *8 (S.D.N.Y. Mar. 21, 2013) (noting attorneys at Shavitz Law Group ". . . are experienced employment lawyers with good reputations among the employment law bar"); *Halleen v. Belk, Inc.*, 2018 WL 6701278, at *6 (E.D. Tex. Dec. 20, 2018) (stating Shavitz Law Group attorneys "are experienced labor and employment attorneys, who are well-versed in litigating complex FLSA collective actions."); *Mancia v. HSBC Securities (USA) Inc.*, 2016 N.Y. Misc. LEXIS 496, at *10-11 (Kings County Supreme Court, Feb., 19, 2016) (appointing SLG as class counsel and collecting cases where SLG has been appointed class counsel based upon its expertise); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 473 (S.D.N.Y. 2013) (SLG attorneys have "acted as lead counsel or co-counsel on dozens of wage and hour class and collective actions"); *Palacio v. E*TRADE Fin. Corp.*, 2012 U.S. Dist. LEXIS 41886, 2012 WL 1058409, at *2 (S.D.N.Y. Mar. 12, 2012) (appointing Shavitz Law Group as Class Counsel based on their experience in numerous wage and hour collective and class actions). *See also* Meireles Aff. ¶ 11.

6. The Fee is Consistent with What a Victorious Plaintiff Would Pay.

One-third of a recovery is a standard fee award for successful employment class actions, and consistent with the Plaintiffs' retainer agreement. *See* Meireles Aff. ¶ 30; *Friedman v. Northville Indus. Corp.*, 1991 N.Y. Misc. LEXIS 837, at *12 (Sup. Ct., Suffolk County Dec. 4, 1991) ("[Retainer] agreements are strong evidence of what members of the class have found to be a reasonable fee.").

C. Class and Collective Members Do Not Oppose Class Counsels' Fee Request.

The Notices that all Class and FLSA-Only Collective Members received stated in clear, plain, and visible terms that Counsel would apply for attorneys' fees representing one-third of the total settlement fund, deducted from the total amount class members received from the settlement. *See* Ex. 2 (Administrator Aff.) Ex. 4, 5. By submitting a Claim Form, FLSA-Only Collective Members agreed to be bound by the settlement terms, including the fees provision: 191 FLSA-Only Collective Members have submitted Claim Forms. *Id.* ¶ 15. The Class Notice also clearly informed Class Members of their right to object to the settlement if they disagreed with any terms – no Class Members objected to the settlement or proposed fees. *Id.* ¶ 17.

D. Awarding a Percentage of the Fund Creates Attorney Incentives that Benefit the Class.

Awarding fees as a percentage of the overall settlement fund promotes efficiencies that directly benefit the class. It incentivizes attorneys to fully explore early resolution by removing any incentive to engage in wasteful litigation to increase their billable hours. Efficient lawyering and early resolution directly reduces the risks class members face from the inherent uncertainty of litigation.

Tying fees to a percentage of the overall settlement fund directly incentivizes attorneys to seek as large a settlement as possible on behalf of the class. A larger settlement means more money for class members and a larger fee award for the attorney. *See, e.g.*, *Wal-Mart Stores, Inc.*, 396 F.3d at 122 ("The trend in [the Second] Circuit is toward the percentage method, 'which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of the litigation.'") (cleaned up); *Reeves v. La Pecora Bianca, Inc.*, No. 151153/2018, 2020 N.Y. Misc. LEXIS 2679 *16 (Sup. Ct. N.Y. Cty. June 11, 2020) (the percentage method is preferable because "[t]he lodestar method has the potential to lead to inefficiency and resistance to expeditious settlement because it gives attorneys an incentive to raise their fees by billing more hours").

The efficiencies encouraged by the percentage-of-the-fund approach also preserves judicial resources by saving the Court from the cumbersome task of reviewing complicated and lengthy billing documents.[9] *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 48-49 (2d Cir. 2000) (The "primary source of dissatisfaction [with the lodestar method] was that it resurrected the ghost of Ebenezer Scrooge, compelling district courts to engage in a gimlet-eyed review of line-item fee audits.").

E. Counsel is Entitled to Reimbursement of Expenses Under the Settlement.

Class Counsel request reimbursement of $25,216.95 in out-of-pocket expenses, to be paid from the Maximum Settlement Amount. *See* Meireles Aff. ¶ 37. Attorneys may recover their litigation costs if such costs were incidental and necessary to the litigation. *See e.g.*, *Friedman*, 1991 N.Y. Misc. LEXIS 837, at *13 (approving $38,386.35 in costs). "[Recoverable] costs routinely include filing fees, process servers, postage, travel, and photocopying." *Capone v.*

[9] Should this Court wish to review Class Counsel's complete billing, they will submit it upon request.

Patchogue-Medford Union Free Sch. Dist., No. 04 Civ. 2947, 2011 U.S. Dist. LEXIS 18194, at *14 (E.D.N.Y. Feb. 23, 2011).

Here, Class Counsel's actual expenses to date of $25,216.95 were incidental and necessary to the representation of the Class. *See* Meireles Aff. ¶ 37. These reasonable expenses include court fees, Plaintiffs' share of the mediator's fees for multiple sessions, the PAGA filing fee, and similar necessary litigation expenses. *Id*.

F. The Settlement is An Excellent Result for the Class.

As articulated, this $2.5 million settlement not only achieves an excellent value for the Plaintiffs and Claimants, it provides them a guaranteed payment now, not contingent on years of litigation, which inherently includes the risk of no recovery.

G. The Settlement is the Product of Arms'-Length Negotiations.

This settlement in this matter is the result of vigorous, arms-length negotiations that took place following ordinary pre-suit settlement outreach by Class Counsel and two days of mediation with experienced mediators. Meireles Aff. ¶ 17.

CONCLUSION

Plaintiffs respectfully request that the Court grant the Final Approval Motion and enter the Proposed Order attached as Exhibit 4 to the Meireles Aff.

Dated: February 15, 2026
New York, New York

Respectfully submitted,

/s/ Michael Palitz

Michael Palitz (Bar No. 4841771)
mpalitz@shavitzlaw.com
SHAVITZ LAW GROUP, P.A.
477 Madison Avenue, 6th Floor
New York, New York 10022

Tel: (800) 616-4000
Fax: (561) 447-8831

Paolo C. Meireles (Bar No. 4913885)
pmeireles@shavitzlaw.com
Tamra C. Givens (admitted *pro hac vice*)
SHAVITZ LAW GROUP, P.A.
tgivens@shavitzlaw.com
622 Banyan Trail, Suite 200
Boca Raton, FL 33431
Telephone: (561) 447-8888

Attorneys for Plaintiffs and the Putative Classes and Collective

CERTIFICATION OF WORD COUNT

I hereby certify that the word count of this memorandum of law complies with the word limits of 22 New York Codes, Rules and Regulations § 202.8-b(a). According to the word processing system used to prepare this memorandum, the total word count for all printed text exclusive of the material omitted under 22 N.Y.C.R.R. § 202.8-b(b) is 6,440 words.

Dated: February 15, 2025
New York, New York

/s/ Michael Palitz
Michael Palitz