SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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| WHITNEY LOY AND STEPHANIE HANSON, on behalf of themselves and all others similarly situated,<br><br>Plaintiffs,<br><br>-against-<br><br>INTEL CORPORATION,<br><br>Defendant. | Index No. 610023/2026 |

**<u>MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT</u>**

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## PRELIMINARY STATEMENT

Plaintiffs Whitney Loy and Stephanie Hanson (collectively, "Plaintiffs") and Defendant Intel Corporation ("Defendant" or "Intel") have settled this action subject to Court approval. The proposed settlement satisfies all the criteria for preliminary settlement approval. Accordingly, Plaintiffs respectfully request that the Court: grant preliminary approval of the Class and Collective and PAGA Settlement Agreement ("Agreement");[1] provisionally certify the proposed Class under Article 9 of the New York Civil Practice Law and Rules ("CPLR"), for settlement purposes only; appoint Outten & Golden LLP ("O&G"), Shavitz Law Group, P.A., and Misiano Law as Class Counsel; appoint Analytics Consulting LLC as the Settlement Administrator; approve the Parties' agreed Notices of Proposed Class and Collective Action Settlement ("Notice"), Claim Form, and reminder postcard ("Reminder Notice"), and direct their distribution; and enter the Proposed Order.

## FACTUAL BACKGROUND

Plaintiffs brought this action on behalf of themselves and similarly situated co-workers who are or were employed by Intel as non-exempt, hourly employees, who were granted restricted stock units ("RSUs") by Intel, and who during the Relevant Periods[2] had RSUs issued by Intel vest ("Hourly Employees"), and now seek unpaid overtime wages and related damages pursuant to the Fair Labor Standards Act ("FLSA"), California state wage laws, and the

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[1] The Agreement is attached as Exhibit 1 to the Affirmation of Justin M. Swartz in Support of Plaintiffs' Motion for Preliminary Settlement Approval ("Swartz Aff."). Unless otherwise indicated, all exhibits hereto are attached to the Swartz Aff. All capitalized terms in this Motion are defined herein and/or in the Agreement.

[2] The "California Relevant Period" is April 10, 2021 through April 10, 2025, Agreement § 1.5; the "FLSA Relevant Period" is April 10, 2022 through April 10, 2025, i*d.* § 1.25; and the "California PAGA Period" is February 4, 2024 through April 10, 2025 *Id.* § 1.4.

California Private Attorneys General Act ("PAGA"). Plaintiffs allege, *inter alia*, that Intel deprived Hourly Employees of proper compensation, including overtime pay, by failing to include the value of vested RSUs in their regular rate of pay. NYSCEF No. 1 ¶ 21. The negotiated settlement of Five Million Dollars ($5,000,000.00) is fair and reasonable.

## I. <u>Investigation</u>

Before initiating this action, Plaintiffs' Counsel conducted a thorough investigation which included corporate research regarding Defendant's business locations, corporate ownership, and past federal and state litigation; and factual and legal research regarding the underlying merits of Plaintiffs' claims, possible defenses, the proper measure of damages, and the likelihood of class and collective certification. Swartz Aff. ¶ 14. Plaintiffs' Counsel also conducted in-depth interviews with Plaintiffs. *Id*. ¶ 15. These interviews helped Plaintiffs' Counsel determine the hours that Hourly Employees worked, the RSUs that they received, and Defendant's policies as they relate to the Class and Collective Members. *Id.* ¶ 16. Plaintiffs' Counsel also reviewed employment documents, including payroll information and RSU policy materials. *Id*. ¶ 17

## II. <u>Settlement Discussions</u>

On December 6, 2023, Plaintiffs' Counsel sent a letter to Intel outlining the claims and inviting Defendant to engage in pre-litigation settlement discussions on behalf of the group of similarly situated employees. *Id.* ¶ 18. After Defendant reviewed the letter, the Parties agreed to engage in a dialogue regarding the possibility of a resolution of the alleged claims and agreed to attend a mediation session with experienced wage and hour negotiator Dennis Clifford. *Id*. ¶ 19.

In advance of the mediation, Defendant produced data reflecting hours, overtime compensation, base compensation, and RSU grant dates, vesting dates, value, and plan policies, as well as Plaintiffs' personnel files. *Id*. ¶ 20. Plaintiffs' Counsel evaluated the claims and

Defendant's defenses based on the information produced by Defendant, as well as Plaintiffs' own investigation. *Id.* ¶ 21. Plaintiffs also used the information to calculate damages. *Id.* ¶ 22. Prior to the mediation, Plaintiffs produced a detailed mediation statement to Mr. Clifford and Plaintiffs produced their mediation brief to Defendant. *Id.* ¶ 23.

The Parties participated in a full-day mediation session with Mr. Clifford on September 9, 2024. *Id.* ¶ 24. The Parties were unable to resolve the claims at that time, but continued settlement discussions thereafter with the continued assistance of the mediator. *Id.* ¶ 25. Ultimately, Mr. Clifford gave a mediator's proposal and, on or about February 24, 2025, the Parties reached an agreement on the financial terms of the settlement and executed a term sheet on May 1, 2025. *Id.* ¶ 26. After extensive additional negotiations, including a second mediation session on July 18, 2025, several telephonic negotiating sessions, and voluminous correspondence, the Parties negotiated and executed the Agreement on February 5, 2026. *Id.* ¶ 27. At all times, settlement negotiations were conducted on an arm's-length basis. *Id.* ¶ 28.

## SUMMARY OF SETTLEMENT TERMS

### I. Class, Collective, and PAGA Members

Putative Collective Members are all current and former non-exempt, hourly employees employed by Intel in the United States outside of California at any time from April 10, 2022 to April 10, 2025 (the "FLSA Relevant Period")[3] and who during such time had RSUs issued by Intel vest. Agreement § 1.25, 1.50.

Putative Class Members are all current and former non-exempt, hourly employees employed by Intel in California at any time from April 10, 2021 through April 10, 2025 (the

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[3] Plaintiff Whitney Loy's FLSA Relevant Period is February 21, 2021 through April 10, 2025. *Id.* § 1.25.

"California Relevant Period")[4] and who during such time had RSUs issued by Intel vest. Agreement §§ 1.5, 1.49.

PAGA Members are all current and former non-exempt, hourly employees employed by Intel in California at any time from February 4, 2024 through April 10, 2025 (the "California PAGA Period") and who during such time had RSUs issued by Intel vest. Agreement §§ 1.4, 1.40.

## II. The Settlement Fund

Defendant has agreed to pay Five Million Dollars ($5,000,000.00) to cover: (1) individual settlement awards for Participating Class Members and Participating Collective Members; (2) PAGA Amount of $100,00 with $35,000 allocated to PAGA Members and $65,000 allocated to California's Labor and Workforce Development Agency ("LWDA"); (3) General Release Payments of up to $10,000.00 each named Plaintiffs ($20,000.00 total); (4) Plaintiffs' Counsel's attorneys' fees of no more than one-third of the Total Gross Fund, plus reimbursement of actual litigation expenses and costs ; and (5) the Settlement Administrator's fees and costs not to exceed $80,000.00. *Id.* § 7.1-7.2.

Unclaimed funds are handled as follows: (a) for Participating Class Members, any Settlement Check not cashed within 120 days of issuance will be distributed to Make the Road New York under the *cy pres* doctrine, *id.* § 7.2(A); (b) for Putative Collective Members, any check not cashed after the expiration of the Check Cashing Period, will revert to Defendant, *id.* § 7.2(B); (c) for PAGA Members, any Settlement Check not cashed within 120 days (plus accrued

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[4] Plaintiff Stephanie Hanson's California Relevant Period is February 21, 2021 through April 10,2025. *Id.* § 1.5.

interest) will be sent to the Controller of the State of California for unclaimed property processing. *Id.* § 7.2(C). Any unclaimed or undistributed funds left in the Collective Fund will revert to Defendant. *Id.* § 5.5(D).

## III. Releases

Participating Collective Members who timely deposit their Settlement Check will, upon the Court's entry of the Final Approval Order and Defendant's payment of all consideration due according to the Agreement, release the Released Parties from any liability, claims, wages, premiums, fringes, liquidated damages, penalties, or fees and costs arising out of or relating to Defendant's alleged failure to include RSUs' value in Participating Collective Members' regular rates of pay during the FLSA Relevant Period whether pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* or analogous state wage and hour law. Agreement § 9.1(A). Putative Collective Members who do not become Participating Collective Members by submitting a claim form will not receive Settlement Checks and will not release any claims. *Id.*

Class Members who do not timely opt out of the settlement will, upon the Court's entry of the Final Approval Order and Defendant's payment of the Total Gross Fund and applicable Employer Payroll Taxes, release the Released Parties from any liability, claims, wages, premiums, fringes, liquidated damages, penalties, or fees and costs arising out of or relating to Defendant's alleged failure to include RSUs' value in Participating Class Members' regular rates of pay during the California Relevant Period pursuant to any California state law, including but not limited to claims for alleged unpaid wages and premiums, inaccurate wage statements, untimely payment of wages during employment, and untimely payment of wages upon separation. *Id.* § 9.2(A). Participating Class Members who timely deposit their Settlement Check shall release the Released Parties from any liability, claims, wages, premiums, fringes, liquidated damages, penalties, or fees and costs arising out of or relating to Defendant's alleged failure to include RSUs' value in Participating Class Members' regular rates of pay during the FLSA Relevant Period pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* *Id.* § 9.2(B). Participating Class Members who do not cash a Settlement Check will not release their claims arising under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* *Id.* § 9.2(C).

Upon the Court's entry of the Final Approval Order and Defendant's payment of all consideration due herein, all PAGA Members, the LWDA, and the State of California, shall release the Released Parties from any PAGA liability, claims for PAGA civil penalties, or any other relief under PAGA arising out of or relating to Defendant's alleged failure to include RSUs' value in PAGA Members' regular rates of pay during the California PAGA Period, including but not limited to PAGA claims for alleged unpaid wages or premiums, inaccurate wage statements, untimely payment of wages during employment, and untimely payment of wages upon separation. *Id.* § 9.2(3).

Additionally, in consideration of the General Release Payments, Plaintiffs will each agree to a general release. *Id*. § 9.4.

## IV. <u>Allocation of the Fund</u>

The Net Fund will consist of the $5,000,000 maximum settlement amount less Court-approved attorneys' fees, litigation expenses, settlement administrator costs, and individual enhancement awards. The Net Fund will be allocated as follows: 22% of the Net Fund will be allocated to Putative Class Members (i.e., the Class Fund) and 78% of the Net Fund will be allocated to Putative Collective Members (i.e., the Collective Fund). *Id*. § 7.1(B). From the Class Fund, $100,000 will be allocated as the PAGA Amount, and, as set forth in the PAGA statute, 65% of the PAGA Amount ($65,000) will be payable to the LWDA, and the remaining 35% of the PAGA Amount ($35,000) will be payable to PAGA Members. *Id*.

The Settlement Administrator will determine the settlement amount for each individual pursuant to the formulas listed in Section 7.1 of the Agreement. Participating Class Members will receive one (1) point for each Eligible Workweek worked in California during the California Relevant Period, Putative Collective Members will receive one (1) point for each Eligible Workweek worked outside of California during the FLSA Relevant Period, and PAGA Members will receive one (1) point for each Eligible Pay Period worked in California during the PAGA Period. *Id*. § 7.5.1. To calculate each individual's Individual Settlement Payments, the Settlement Administrator will add all points for all Participating Class Members, all points for all Putative Collective Members, and all points for all PAGA Members, respectively, together to obtain the "Denominator" for each group; divide the number of points for each Participating Class Member, Putative Collective Member, and PAGA Member by the respective Denominator (e.g., a Putative Collective Member's Eligible Workweeks worked outside of California during the FLSA Relevant Period will be divided by the total Eligible Workweeks worked outside of California during the FLSA Relevant Period for all Putative Collective Members) to obtain each Participating Class Member's, Putative Collective Member's, and PAGA Member's "Portion of the Net Fund;" and multiply each Participating Class Member's Portion of the Class Fund by the Class Fund, multiply each Putative Collective Member's Portion of the Net Fund by the Collective Fund, and multiply each PAGA Member's Portion of the Net Fund by 35% of the PAGA Fund ($35,000) to determine each Class Member's, Putative Collective Member's, and PAGA Member's Individual Settlement Payment. *Id*.

## V. Settlement Administrator

The Parties have selected Analytics Consulting LLC to serve as Settlement Administrator following a competitive bidding process. Agreement §§ 1.6, 4.1. Settlement Administration Costs will not exceed $80,000.00 and will be paid from the Total Gross Fund. *Id*. § 4.2.

## VI. <u>Settlement Notice</u>

**Class Members:** The Settlement Administrator will disseminate the Notice to Class Members via First Class U.S. Mail within 21 days of the Court's entry of a Preliminary Approval Order. *Id*. § 5.1(A). The Notice to Class Members will advise them of: (i) the relevant settlement terms and Individual Settlement Payment applicable to the recipient; (ii) their ability to opt-out of the Settlement; (iii) their right to timely assert an objection to the Settlement; and (iv) the resolution of the PAGA Members' claims. *Id*. § 5.1(B). Within 14 days after the close of the Opt-out Period, the Settlement Administrator will disseminate the Notice Confirming Class Membership and enclosed, postage-paid return envelope via First Class U.S. Mail to all Participating Class Members, advising them of: (i) the fact that they are Participating Class Members; and (ii) providing them thirty (30) days to elect to authorize disclosure of their contact information to Class Counsel by returning the Consent to Disclose enclosed therewith via U.S. Mail or e-mail, or otherwise authorizing such disclosure. *Id*. § 5.1(E). Only those Participating Class Members who elect to authorize such disclosure will have their contact information provided to Class Counsel within seven (7) days of the close of the Contact Disclosure Consent Deadline), in accordance with the terms of this Agreement. *Id*. § 5.1(E).

**Collective Members:** The Settlement Administrator will disseminate the Notice to Settlement Approval to Collective Members via First Class U.S. Mail and e-mail, along with a Claim Form, and postage-paid return envelope, within 21 days of the Effective Date. *Id*. § 5.5(A)-(B). The Notice of Settlement Approval will advise Putative Collective Members of (i) the relevant settlement terms and Individual Settlement Payment applicable to the recipient; and (ii) their right to timely complete and return an enclosed Claim Form to the Settlement Administrator to participate in the Settlement. *Id*. § 5.5(B). Putative Collective Members must complete and return a Claim Form to the Settlement Administrator postmarked by and/or otherwise received via e-mail on or before, the close of the sixty (60) day Opt-in Period to participate in and be bound by the Settlement and receive a Settlement Check. *Id.* The Claim Form will also contain release and opt-in language. *Id.* The Settlement Administrator will issue a reminder notice 30 days after the initial mailing by U.S. Mail and e-mail. *Id.*

In the event that any notice mailed to a Class or Putative Collective Member is returned as undeliverable, the Settlement Administrator shall take reasonable steps to obtain the correct address, including up to two (2) skip traces, and shall attempt a re-mailing to any Class or Putative Collective Member for whom it obtains a more recent address. *Id*. § 5.2.

## VII. <u>Settlement Procedure</u>

Plaintiffs respectfully submit the following proposed schedule for final resolution of this matter for the Court's consideration and approval:

1. Within seven business (7) days of the Preliminary Approval Order, Defendant's Counsel will provide the Settlement Administrator with the Class List. *See* Agreement § 5.1.

2. Within twenty-one (21) days of the Preliminary Approval Order, the Settlement Administrator shall send the Notice of Preliminary Approval to all Putative Class Members via First-Class U.S. Mail. *Id*. §§ 5.4(A)-(B).

3. Putative Class Members will have thirty (30) days from the Notice mailing date to opt out of or object to the Settlement. *Id.* §§ 5.4 (C)-(D).

4. Within fourteen (14) days of the close of the Opt-Out Period, the Settlement Administrator will distribute the Notice Confirming Class Membership to all Participating Class Members via U.S. Mail and e-mail. Participating Class Members will have thirty (30) days to authorize disclosure of their contact information to Class Counsel by returning the Consent to Disclose enclosed

therewith via U.S. Mail or e-mail. Only those Participating Class Members who elect to authorize such disclosure will have their contact information provided to Class Counsel within seven (7) days of the close of the Contact Disclosure Consent Deadline), in accordance with the terms of this Agreement. *Id*. §5.4 (E).

5. Per the schedule set by the Court in the Preliminary Approval Order, after the Opt-out Period, Plaintiffs will submit the Final Approval Motion. *Id*. § 6.1.

6. At the At the Fairness Hearing and through the Final Approval Motion, the Parties shall request that the Court, among other things: (1) finally certify the Class and Collective for purposes of settlement only, and include the names of those Putative Class Members who have opted out of the Settlement; (2) approve the Settlement and this Agreement as fair, reasonable, adequate, and binding on all Participating Claimants; (3) approve of the Notice of Settlement Approval and Claim Form and direct their dissemination to Putative Collective Members; (4) order the Settlement Administrator to distribute Settlement Checks to the Participating Claimants; (5) approve the General Release Payments, Attorneys' Fees and Litigation Expenses, administration expenses, the PAGA Amount and payment to the LWDA, and other payments to be made from the QSF; (6) order dismissal with prejudice of all released claims (with the exact language of each set forth in the order itself) asserted in the Action, pursuant to Sections 9.1 through 9.4 of this Agreement; (7) order entry of the Final Approval Order in accordance with this Agreement; and (8) retain jurisdiction over the interpretation, implementation, and enforcement of this Agreement as well as any and all matters arising out of, or related to, the interpretation, implementation, and enforcement of this Agreement and of the Settlement contemplated hereby. *Id*. § 6.2.

7. The Effective Date will be first date the Court's Final Approval Order is no longer appealable, which shall be thirty-one (31) days after the Parties' Final Approval Motion is granted by the Court if no timely appeal of such order is filed, or if an appeal is filed, the date on which such appeal is finally resolved, the remittitur issued, and no further timely appeal may be taken. *Id*. § 1.18.

8. Defendant shall pay the Total Gross Fund into the Qualified Settlement Fund established by the Settlement Administrator within seven (7) days of the Effective Date. *Id*. § 7.1(C).

9. Within twenty-one (21) days of the Effective Date, the Settlement Administrator will issue the Notice of Settlement Approval, along with a Claim Form, and postage-paid return envelope, via First Class U.S. Mail and e-mail to Putative Collective Members. Putative Collective Members must complete and return a Claim Form to the Settlement Administrator postmarked by and/or otherwise received via e-mail on or before, the close of the sixty (60) day Opt-in Period to participate in and be bound by the Settlement and receive a Settlement Check. The Claim Form will contain release and opt-in language. *Id*. § 5.5(B). The

Settlement Administrator will send a Reminder postcard via First Class U.S. Mail and e-mail 30 days after the initial notice distribution. *Id*. § 5.5(C).

10. Twenty-one (21) days after the Effective Date, the Settlement Administrator will pay the Court-approved Attorneys' Fees and Litigation Expenses to Class Counsel and General Release Payments to Plaintiffs. *Id*. §§ 7.3(C); 7.4(D).

11. Within twenty-one (21) days following the close of the Opt-In Period, the Settlement Administrator with send payments to Participating Claimants. *Id*. § 7.5.2. Participating Claimants will have one hundred and twenty (120) days of the date checks are issued by the Settlement Administrator to cash, deposit, or otherwise negotiate their checks. *Id*. § 7.5.3.

12. Sixty (60) days after initial distribution of Settlement Checks, the Settlement Administrator shall issue a reminder postcard to Participating Claimants who have not yet cashed their checks. *Id.* § 7.5.4.

13. After the check cashing period, unclaimed funds will be distributed in accordance with Section 7.2 of the Agreement.

## ARGUMENT

### I. Class Action Settlement Procedure

CPLR § 908 requires judicial approval for any compromise of claims brought on a class basis. This approval process includes three steps: (1) approval of the proposed settlement as fair, adequate, and reasonable after submission to the Court of a written motion for approval; (2) dissemination of notice of settlement to class members; and (3) a final settlement approval hearing at which any class members who have objected to the settlement may be heard regarding the settlement and argument concerning the fairness, adequacy, and reasonableness of the settlement. *See McMillan v. Euromarket Designs Inc. d/b/a Crate & Barrel*, No. 601313/2024, NYSCEF No. 13 (Sup. Ct., Nassau Cnty. 2024) (approving similar settlement procedure); *Chowdhury v. Tastes on the Fly N.Y, LLC*, No. 609227/2023, NYSCEF No. 18 (Sup. Ct., Nassau Cnty. 2023) (same).

With this motion, Plaintiffs ask the Court to take the first step – provisionally certifying Class, granting preliminary approval to the Agreement, approving the Parties' proposed Notices, and authorizing Analytics to distribute the proposed Notice of Preliminary Approval of Settlement and Notice Confirming Class Membership.

## II. <u>The Class Settlement Should Be Preliminary Approved.</u>

In reviewing a motion for preliminary approval, 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, 531 (Sup. Ct., N.Y. Cnty. 2010) (citing *Klein v. Robert's Am. Gourmet Food, Inc.*, 28 A.D.3d 63, 73 (2d Dep't 2006)). This analysis is made in light of the "strong judicial policy" favoring the settlement of class action suits. *Jiannaras v. Alfant*, No. 21262/2009, 2012 N.Y. Misc. LEXIS 6692, at *11 (Sup. Ct., Queens Cnty. 2012). Courts refer to New York and federal precedent in making this determination, given the similarity of the two statutory schemes. *See, e.g.*, *Fiala*, 899 N.Y.S.2d at 605-06 (collecting cases); *Klein*, 28 A.D.3d at 73-74 (relying on federal authority to assess reasonableness of settlement).

At this first step of settlement approval, the Parties "submit the proposed terms of settlement and the judge makes a preliminary fairness evaluation." Manual for Complex Litigation (Fourth) § 21.632 at 320 (2004); *see* Newberg, § 13:10 ("[I]f a court's preliminary evaluation of the proposed settlement shows that it [is neither illegal nor collusive and is within the range of possible approval], the court will direct that notice of the settlement be given to the class members[.]"). After the notice period, the Court will evaluate the settlement with the benefit of the class members' input and can, in its discretion, schedule a hearing to address any concerns of objectors. *McMillan*, No. 601313/2024, NYSCEF No. 13 (Sup. Ct., Nassau Cnty.

May 24, 2024) (preliminarily approving settlement and leaving full fairness hearing to court's discretion).

Preliminary approval is subject to a less rigorous standard than final approval. At final approval, the Court "balance[s] the value of that settlement against the present value of the anticipated recovery following a trial on the merits, discounted for the inherent risks of litigation." *Klein*, 28 A.D.3d at 73. Preliminary approval is granted "'[w]here the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval[.]'" *In re Initial Pub. Offerings Sec. Litig.*, 226 F.R.D 186, 191 (S.D.N.Y. 2005); *see Reyes v. 600 West 169th Rest.*, Inc., No. 159303/2016, 2018 N.Y. Slip Op. 32730(U), at *2 (Sup. Ct., N.Y. Cnty. 2018) (granting preliminary approval where settlement was "the result of extensive, arm's length negotiations by counsel well-versed in the prosecution of wage and hour class and collective actions, and [ ] the proposed settlement has no obvious deficiencies").

### A. The Proposed Settlement is the Product of Extensive, Arm's-Length Negotiations.

This settlement is the result of extensive arm's-length negotiations. Swartz Aff. ¶ 28. As discussed above, the Parties exchanged substantial pre-suit discovery relating to liability and damages. *Id.* ¶ 20. Subsequently, Plaintiffs' Counsel created a detailed damages model based on the data provided by Defendant. *Id.* ¶ 22. In addition, the Parties engaged in vigorous settlement negotiations, which included attending a full day class-wide mediation before Dennis Clifford, an experienced wage and hour class and collective action mediator, and a second mediation session to finalize the settlement agreement. *Id.* ¶ 27. These negotiations were conducted at arm's length at all times and produced a result that Plaintiffs' Counsel believes is in the best interests of the class in light of the costs and risks of continued litigation. *Id*. ¶ 29.

### B. The Settlement Has No Obvious Deficiencies.

The proposed settlement has no obvious deficiencies. As explained above, the proposed settlement was reached only after extensive, arm's length negotiations between the Parties and their counsel, who considered the advantages and disadvantages of continued litigation. *Id*. ¶¶ 18-28 (outlining the parties' negotiation efforts). Plaintiffs' Counsel believes that this settlement achieves all the objectives of the litigation, namely a substantial monetary settlement to class and collective members who were subjected to Defendant's allegedly unlawful wage and hour policies. *Id*. ¶ 30. Plaintiffs' Counsel, who have a great deal of experience in the prosecution and resolution of wage and hour class actions, have carefully evaluated the merits of the case and the proposed settlement. *Id*. ¶¶ 31-32. Plaintiffs' Counsel recognize that the apparent strengths of Plaintiffs' claims are no guarantee against a complete or partial defense verdict. *Id*. ¶ 32; *see, e.g.*, *Gold v. N.Y. Life Ins. Co.*, No. 653923/2012, 2015 N.Y. Misc. LEXIS 3254, at *16 (Sup. Ct. N.Y. Cnty. Sept. 4, 2015) (finding for employer at summary judgment in overtime exemption case). Furthermore, if a judgment were obtained against Defendant at trial, the relief might be no greater, and indeed might be less, than that provided by the proposed settlement. Swartz Aff. ¶ 33.

## III. <u>Certification of the Settlement Class Is Appropriate.</u>

Plaintiffs allege that Defendant violated wage laws by failing to include the value of RSUs, which Plaintiffs assert are non-discretionary bonuses, in non-exempt employees' regular rate of pay, resulting in underpayment of overtime. The instant motion seeks an order pursuant to Article 9 of the CPLR conditionally certifying the following Class:

all current and former non-exempt, hourly employees employed by Defendant in California at any time during the California Relevant Period, and who during such time had RSUs issued by Intel vest.

As explained below, the proposed settlement Class satisfies each of the statutory requirements of CPLR § 901 and the factors set forth in CPLR § 902. *See, e.g.*, *Pludeman v. N. Leasing Sys., Inc.*, 74 A.D.3d 420, 421-22 (1st Dep't 2010) (citing *Weinberg v. Hertz Corp.*, 116 A.D.2d 1, 4 (1st Dep't 1986), aff'd, 69 N.Y.2d 979 (1987)) (analyzing CPLR §§ 901 and 902). Accordingly, Plaintiffs respectfully submit that the proposed settlement Class should be certified.

**A. The Class Certification Statute Should Be Liberally Construed.**

New York's class certification statute is "liberally construed." *Beller v. William Penn Life Ins. Co. of N.Y.*, 37 A.D.3d 747, 748 (2d Dep't 2007). Article 9 is "broadly construed not only because of the general command for liberal construction of all CPLR sections (see CPLR 104), but also because it is apparent that the Legislature intended [A]rticle 9 to be a liberal substitute for the narrow class action legislation which preceded it." *City of New York v. Maul*, 14 N.Y.3d 499, 509 (2010) (quoting *Friar v. Vanguard Holding Corp.*, 78 A.D.2d 83, 91 (2d Dep't 1980)).

Further, "the class action procedure serves a salutary purpose of permitting numerous [employees] to band together to address a common wrong[.]" *Krebs v. The Canyon Club, Inc.*, 22 Misc. 3d 1125(A), *5 (Sup. Ct., Westchester Cnty. 2009). Thus, "where the case is doubtful, the benefit of any doubt should be given to allowing the class action . . . ." *Macaluso v. Woodbury Int'l, Inc.*, No. 3216/12, 2013 N.Y. Slip Op. 34211, *3 (Sup. Ct., Westchester Cnty. 2013).

New York courts frequently find wage and hour claims appropriate for class certification. *See, e.g.*, *Stecko v. RLI Ins. Co.*, 121 A.D.3d 542, 543 (1st Dep't 2014) ("[A]s we have previously held, a class action is the superior vehicle for resolving wage disputes since . . . the costs of prosecuting individual actions would result in the Class Members having no realistic day in court") (internal citation omitted); *Pesantez v. Boyle Envtl. Servs., Inc.*, 215 A.D.2d 11, 12 (1st Dep't 1998) (class action is the "best method of adjudicating" wage and hour dispute); *see also Kolb v. Bankers Conseco Life Ins. Co.*, No. 5116/13, 2014 N.Y. Slip Op. 33984(U), *5 (Sup. Ct., Nassau Cnty. 2014) ("A class action has been found superior to the prosecution of individualized claims for resolving plaintiffs' underpayment of wage claims.").

**B. All Prerequisites of CPLR § 901 Are Satisfied.**

CPLR § 901(a) provides that one or more members of a class may sue as representative parties on behalf of a class if:

1. the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable ["numerosity"];
2. there are questions of law or fact common to the class which predominate over any questions affecting only individual members ["predominance"];
3. the claims or defenses of the representative parties are typical of the claims or defenses of the class ["typicality"];
4. the representative parties will fairly and adequately protect the interests of the class ["adequacy"]; and
5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy ["superiority"];

As outlined below, these Class meets all Section 901(a)'s prerequisites and should therefore be certified for settlement purposes.

**1. Joinder of All Members is Impracticable.**

Section 901(a)(1) requires that the class be so numerous that joinder of all class members is impracticable. Courts have held the general threshold for impracticability of joinder to be around 40 class members. *See, e.g.*, *Carlin v. Singh Hospitality Grp., Inc.*, No. 14702/12, 2013 NY Slip Op. 34200(U), *3 (Sup. Ct., Nassau Cnty. 2013) ("[A] class of 40 or more has been found to raise a presumption of numerosity."); *Krebs*, 22 Misc. 3d 1125(A), *5 ("[C]ourts presume that numerosity is satisfied where the proposed class contains around 40 members.") (collecting cases). Here, there are approximately putative 14,000 Class and Collective Members. Swartz Aff. ¶ 34. Under these circumstances, joinder is both impracticable and undesirable, and the "numerosity" requirement has been satisfied.

### 2. Common Questions of Law and Fact Predominate.

To satisfy the predominance requirement, Plaintiffs "must show that the nature of the claims is such as to indicate a predominance of common issues of law and fact over individual questions of damages[.]" *Weinstein v. Jenny Craig Operations, Inc.*, 41 Misc. 3d 1220(A), *4 (Sup. Ct., N.Y. Cnty. 2013), *aff'd*, 138 A.D.3d 546 (1st Dep't 2016) (internal citation and quotation marks omitted).

This standard requires "predominance, not identity or unanimity, among class members[.]" *Krebs*, 22 Misc. 3d 1125(A), *8 (internal citation omitted); *see, e.g.*, *Stecko*, 121 A.D.3d at 543 (finding commonality where class members shared claims that defendants failed to pay appropriate wages and benefits); *Weinstein*, 41 Misc. 3d 1220(A), *3-4 (finding commonality where plaintiffs alleged that they were subjected to uniform time keeping practices).

"The fundamental issue . . . is whether the proposed class asserts a common legal grievance, i.e., whether common issues predominate over or outweigh the subordinate issues that pertain to individual members of the class." *Geiger v. Am. Tobacco Co.*, 181 Misc. 2d 875, 883 (Sup. Ct., N.Y. Cnty. 1999), aff'd, 277 A.D.2d 420 (2d Dep't 2000); *see also Pesantez*, 251 A.D.2d at 12 (citing *Pruitt v. Rockefeller Ctr. Props.*, 167 A.D.2d 14, 22 (1st Dep't 1991)). The presence of "subsidiary questions of law or fact not common to the class," such as damages, will not defeat otherwise common claims. *Krebs*, 22 Misc. 3d 1125(A); *see Borden v. 400 E. 55th St.*

*Assoc.*, L.P., 24 N.Y.3d 382, 399 (2014) ("[T]he legislature enacted CPLR 901(a) with a specific allowance for class actions in cases where damages differed among the plaintiffs[.]"). A wage-and-hour plaintiff can satisfy this element by showing that the employer's common wage-payment policies caused a common harm. *See, e.g.*, *Ferrari v. Natl. Football League*, 153 A.D.3d 1589, 1591 (4th Dep't 2017) ("It is thus well established that 'the amount of damages suffered by each class member typically varies from individual to individual, [and] that fact will not prevent the suit from going forward as a class action if the important legal or factual issues involving liability are common to the class.'").

Here, Class Members are unified by common factual allegations, namely that Defendant committed the same violations of federal and state laws by failing to include the value of RSUs when calculating the regular rate of pay for non-exempt employees, which resulted in unpaid overtime compensation. These failures were pursuant to common policies and practices company-wide. Upon information and belief, Defendant subjected all non-exempt, hourly employees to the same RSU plan terms nationwide each year. Additionally, the RSU grants vest on regular, pre-determined dates each year. In light of these factual allegations, Plaintiffs contend that common questions of law and fact sufficiently predominate over any questions affecting only individual Class Members. *See, e.g.*, *Thomas v. Meyers Assoc., L.P.*, 39 Misc. 3d 1217(A) (Sup. Ct., N.Y. Cnty. 2013) (common questions predominated where "the heart of the [complaint] is the claim that [defendant] did not pay overtime and classified the brokers as exempt").

### 3. Plaintiff Hanson's Claims are Typical of Class Members' Claims.

CPLR § 901(a)(3) requires that the Plaintiffs' claims be "typical" of the proposed class. The typicality requirement is satisfied when the named Plaintiffs' claims "derive[] from the same practice or course of conduct that gave rise to the remaining claims of the class members and [are] based upon the same legal theory[.]" *Friar*, 78 A.D.2d at 99; *Pajaczek v. CEMA Constr.*, 18 Misc.3d 1140(A), *4 (Sup. Ct., N.Y. Cnty. 2008); *see Galdamez v. Biordi Constr. Corp.*, 13 Misc. 3d 1224(A), *3 (Sup. Ct., N.Y. Cnty. 2006), *aff'd*, 50 A.D.3d 357 (1st Dep't 2008).

A plaintiff's claim need only be typical, not "identical" to those of the class. *Adams v. Bigsbee Enters.*, 53 Misc.3d 1210(A), *6 (Sup. Ct., Albany Cnty. 2015) (internal citation omitted). Accordingly, the named plaintiffs can satisfy typicality even if they do "not share every claim asserted on behalf of every member of every subclass." *Id*. In the wage-and-hour context, courts regularly find representative plaintiffs' claims typical – despite alleged difference among class members – where the plaintiffs allege misclassification. *See, e.g.*, *Robinson v. Big City Yonkers, Inc.*, No. 600159/16, 2017 N.Y. Slip Op. 30177(U), *10-11 (Sup. Ct., Nassau Cnty. 2017); *Kolb*, 2014 N.Y. Slip Op. 33984(U), *4-5.

In this case, Plaintiff Hanson asserts that her claims are typical of the claims of the Class Members she seeks to represent. Plaintiff Hanson and Class Members all worked for Defendant as non-exempt, hourly employees during the relevant periods. Typicality is present because the claims arise from the same conduct, based on the same legal theory, and Plaintiff Hanson and the Class suffered from the same alleged wrong. *See, e.g.*, *Weinstein*, 41 Misc. 3d 1220(A), *5 (finding typicality where the plaintiffs' and class members' wage claim arose out of the same course of conduct).

#### 4. Plaintiff Hanson Will Fairly and Adequately Protect Class Members' Interests.

CPLR § 901(a)(4) requires that a class representative is "part of the class and possess[es] the same interest and suffer[ed] the same injury as the class members[.]" *Weinstein*, 41 Misc. 3d 1220(A), *5 (internal quotation marks omitted). Adequacy further requires that "counsel for the named Plaintiffs be competent and that the interests of the named Plaintiffs and the members of the class not be adverse." *Pajaczek*, 18 Misc.3d 1140(A), *4.

Here, Plaintiff Hanson stands to gain a pecuniary benefit through the successful prosecution of this action. Plaintiff Hanson seeks the same relief as all other Class Members – to be compensated for all unpaid wages and related damages. Furthermore, Plaintiff is familiar with the lawsuit and is fully aware of their claims, as well as the claims of the Class Members they seek to represent. Additionally, Plaintiff Hanson is represented by counsel with extensive experience in class actions, employment law, and civil litigation, including in this forum. Swartz Aff. ¶¶ 9, 13. Courts have found that O&G has years of experience prosecuting and settling wage and hour class actions, and are well-versed in wage and hour and class action law. *Id.* ¶ 13; *see, e.g.*, *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 473 (S.D.N.Y. 2013) (O&G attorneys "have substantial experience prosecuting and settling employment class actions, including wage and hour class actions[,] and are well-versed in wage and hour law and class action law.") (internal quotation marks omitted)).

**5. A Class Action is Superior to Other Available Methods.**

In accordance with CPLR § 901(a)(5), numerous New York state and federal courts have concluded that a class action is the superior method for resolving wage and hour claims. *See, e.g.*, *Indergit v. Rite Aid Corp.*, 293 F.R.D. 632, 658-59 (S.D.N.Y. 2013) (certifying class of allegedly misclassified managers); *Stecko*, 121 A.D.3d at 542-43 (certifying wage and hour class); *Nawrocki v. Proto Constr. & Dev. Corp.*, 82 A.D.3d 534, 536 (1st Dep't 2011) ("a class action is the superior vehicle for resolving this wage dispute").

Employing the class device here to resolve and settle this matter will achieve economies of scale for Class Members, conserve judicial resources, and preserve public confidence in the system by avoiding repetitive proceedings and preventing inconsistent adjudications. Accordingly, a class action settlement is superior to any alternative means of obtaining relief for Class Members. *Borden*, 24 N.Y.3d at 400 ("[T]o preserve judicial resources, class certification is superior to having these claims adjudicated individually.").

### C. CPLR Factors Support Conditional Certification of a Settlement Class.

CPLR § 902 also directs the Court to consider the following factors in exercising its discretion in favor of class certification:

1. the interest of members of the class in individually controlling the prosecution or defense of separate actions;

2. the impracticability or inefficiency of prosecuting or defending separate actions;

3. the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

4. the desirability or undesirability of concentrating the litigation of the claim in the particular forum; and

5. the difficulties likely to be encountered in the management of a class action.

Several of the Section 902 factors mirror the requirements of Section 901. *See Gilman v. Merril Lynch, Pierce, Fenner & Smith*, 93 Misc.2d 941, 948 (Sup. Ct., N.Y. Cnty. 1978).

To the Parties' knowledge, there is no other known litigation against Defendant to recover the wages being sought by Plaintiffs in this case. Swartz Aff. ¶ 35. The existence of approximately 14,000 Class Members, in and of itself, is a testament to both "the impracticability [and] inefficiency of prosecuting or defending separate actions[.]" *See* CPLR § 902(2). Moreover, the parties agree that this is the appropriate forum to adjudicate the settlement. *See* CPLR § 902(4). Finally, there are very few difficulties in managing a class action settlement asserting claims of this type, particularly when compared to the complication of managing multiple competing individual actions. *See* CPLR § 902(5).

## IV. <u>Plaintiffs' Counsel Should Be Appointed as Class Counsel.</u>

Plaintiffs' Counsel did substantial work identifying, investigating, prosecuting, and settling the claims, have substantial experience, and are well-qualified to represent the interests of the Class. Swartz Aff. ¶¶ 9, 13; *see also Krebs*, 22 Misc. 3d 1125(A), *20 (appointing class counsel on the basis of attorney's affirmation containing a description of his experience in litigating class actions). Moreover, as described above, courts have found Plaintiffs' Counsel to be adequate class counsel in wage and hour class and collective actions. *See* Section XX; Swartz Aff. ¶ 13.

## V. <u>The Proposed Notice Is Appropriate.</u>

CPLR § 908 requires that notice of the settlement of a class claim "be given to members of the class in such manner as the court directs." Here, the proposed Notice of Preliminary Approval of Settlement clearly describes the terms of settlement, the relief available to Class Members, and the procedures for participating, opting out of, or objecting to the settlement. Agreement, Exhibit A. The Notice also describes the fees and costs Plaintiffs' Counsel will seek and named Plaintiffs' proposed Service Awards, provides contact information for Plaintiffs' Counsel, and directs Class Members to the Settlement Administrator's online portal for information about the Fairness Hearing. *Id*. The proposed method for distribution of Notice, through U.S. Mail, is thorough and reasonable, and meets the requirements of CPLR § 904.

## VI. <u>Plaintiffs Also Seek Approval of the FLSA Settlement.</u>

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, unlike the opt-out procedure set forth in CPLR § 901. *See, e.g.*, *Sukhnandan v. Royal Health Care of Long Island LLC*, No. 12 Civ. 4216, 2014 U.S. Dist. LEXIS 105596, at *22-23 (S.D.N.Y. July 31, 2014). "[T]o warrant certification as a collective action under § 216(b) of the FLSA, the plaintiff must make at least a modest factual showing sufficient to demonstrate that [they] and potential plaintiffs together were victims of a common policy or plan that violated the law." *Long v. HSBC USA Inc.*, No. 14 Civ. 6233, 2015 U.S. Dist. LEXIS 122655, at *29-30 (S.D.N.Y. Sept. 11, 2015). Thus, "the standard for conditional certification as an FLSA collective is less stringent than the standard for certification of a class action[.]" *Id.* For the above reasons, Plaintiffs request approval of the FLSA portion of the settlement.

## CONCLUSION

Plaintiffs respectfully request that the Court preliminarily approve the settlement; conditionally certify the settlement Class; appoint O&G, Shavitz Law Group, P.A., and Misiano Law as Class Counsel; approve the proposed Notices; appoint Analytics Consulting LLC as Settlement Administrator; and enter the Proposed Order.

Respectfully submitted,

Dated: April 15, 2026

By: */s/ Justin M. Swartz*


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**CERTIFICATE OF COMPLIANCE WITH SECTION 202 8-B OF THE NEW YORK CODES, RULES AND REGULATIONS**

In accordance with Section 202 8-B Of The New York Codes, Rules And Regulations, I hereby certify that Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of Settlement contains 6,992 words, including footnotes, as established by Microsoft Word, the software used to prepare the Motion. The word count does not include the brief's cover page, table of contents, table of authorities, and signature block, which are exempted by the applicable Rules.

Date: April 15, 2026

*/s/ Justin M. Swartz*
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