

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK**

**KELLY BLACK, CHIDUBEM ANYANWU,
LAURA BARRERA, CAROLINE FILAN,
CAROLINE HARRIS, MICHELLE SIMS,
NICOLE TANG, SAMHAOIR RULAND,
SAMANTHA RYAN, and LEORA
VAINSELBOIM, on behalf of themselves
and all others similarly situated,**

Plaintiffs,

v.

ALPHASIGHTS INC.,

Defendant.

Index No. 613283/2023

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY SETTLEMENT APPROVAL**

TABLE OF CONTENTS

PRELIMINARY STATEMENT	vii
FACTUAL BACKGROUND.....	1
PROCEDURAL BACKGROUND.....	2
I. INVESTIGATION.....	2
II. SETTLEMENT DISCUSSIONS.....	2
SUMMARY OF THE SETTLEMENT TERMS.....	4
I. ELIGIBLE MEMBERS.....	4
II. THE SETTLEMENT FUND	4
III. RELEASES.....	5
IV. ALLOCATION FORMULA	7
V. CLAIMS ADMINISTRATOR	7
VI. PROPOSED NOTICE	8
VII. CLASS AND COLLECTIVE ACTION SETTLEMENT PROCEDURE	8
ARGUMENT.....	11
I. SETTLEMENT PROCEDURE	11
A. The Proposed Settlement is Fair, Adequate, and Reasonable.....	11
B. The Proposed Settlement Is the Product of Extensive, Arm’s-Length Negotiations.	13
C. The Proposed Settlement Has No Obvious Deficiencies.....	14
II. CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE.....	14

A.	The Class Certification Statute Should Be Liberally Construed.	15
B.	All Prerequisites of CPLR § 901 Are Satisfied.	16
1.	Numerosity: Joinder of All Members Is Impracticable.	17
2.	Questions of Law and Fact Common to the Class Predominate.....	17
3.	Plaintiffs’ Claims Are Typical of the Claims of the Class.....	18
4.	Plaintiffs Will Fairly and Adequately Protect the Interests of the Class. .	19
5.	A Class Action is Superior to Other Available Methods.....	21
C.	CPLR § 902 Factors Support Provisional Certification of a Settlement Class.....	21
III.	PLAINTIFFS’ COUNSEL SHOULD BE APPOINTED AS CLASS COUNSEL.....	22
IV	THE PROPOSED NOTICE IS APPROPRIATE.	23
V.	PLAINTIFFS ALSO SEEK APPROVAL OF THE FLSA SETTLEMENT.	23
	CONCLUSION.....	24

TABLE OF CONTENTS

CASES	PAGE(S)
<i>Ackerman v. Price Waterhouse</i> , 252 A.D.2d 179 (1st Dep't 1998)	15
<i>Adams v. Bigsbee Enters.</i> , No. 14 Civ. 3615, 2015 N.Y. Slip Op. 52008(U) (Sup. Ct. Albany County 2015)	19
<i>Beckman v. KeyBank, N.A.</i> , 293 F.R.D. 467 (S.D.N.Y. 2013)	20
<i>Beller v. William Penn Life Ins. Co. of N.Y.</i> , 37 A.D.3d 747 (2d Dep't 2007)	15
<i>Blum v Merrill Lynch & Co., Inc.</i> , No. 15 Civ. 1636, 2016 U.S. Dist. LEXIS 197385 (S.D.N.Y. May 15, 2017)	20
<i>Borden v. 400 E. 55th St. Assocs., L.P.</i> , 24 N.Y.3d 382 (2014)	17, 21
<i>Caballero v. Senior Health Partners, Inc.</i> , No. 16 Civ. 326, 2018 U.S. Dist. LEXIS 207128 (E.D.N.Y. Dec. 7, 2018)	11
<i>Capilupi v. People's United Fin., Inc.</i> , No. 15 Civ. 5247, 2018 U.S. Dist. LEXIS 167550 (E.D.N.Y. Sept. 27, 2018)	20
<i>Carlin v. Singh Hosp. Grp.</i> , 2013 N.Y. Misc. LEXIS 7176, 2013 N.Y. Slip Op. 34200(U) (Sup. Ct. Nassau County 2013)	17
<i>Cherry v. Res. Am., Inc.</i> , 15 A.D.3d 1013 (4th Dep't 2005)	18
<i>City of New York v. Maul</i> , 14 N.Y.3d 499 (2010)	15
<i>Clark v. Ecolab, Inc.</i> , No. 04 Civ. 4488, 2009 U.S. Dist. LEXIS 108736 (S.D.N.Y. Nov. 27, 2009)	12
<i>Fiala v. Metro. Life Ins. Co., Inc.</i> , 899 N.Y.S.2d 531 (Sup. Ct. N.Y. Cnty. 2010)	11
<i>Friar v. Vanguard Holding Corp.</i> , 78 A.D.2d 83 (2d Dep't 1980)	19
<i>Galdamez v. Biordi Constr. Corp.</i> , 05 Civ. 107984, 2006 N.Y. Slip Op. 51969(U) (Sup. Ct. N.Y. County 2006)	19, 21
<i>Garcia v. Pancho Villa's of Huntington Vill. Inc.</i> , No. 09 Civ. 486,	

2012 U.S. Dist. LEXIS 70144 (E.D.N.Y. May 21, 2012)	11
<i>Geiger v. Am. Tobacco Co.</i> ,	
181 Misc. 2d 875 (Sup. Ct. Queens County 1999)	18
<i>Gilman v. Merrill Lynch, Pierce, Fenner & Smith</i> ,	
404 N.Y.S.2d 258 (Sup. Ct. N.Y. Cnty. 1978)	22
<i>Indergit v. Rite Aid Corp.</i> ,	
293 F.R.D. 632 (S.D.N.Y. 2013)	21
<i>In re Initial Pub. Offering Sec. Litig.</i> ,	
226 F.R.D 186 (S.D.N.Y. 2005)	12
<i>Isufi v. Prometal Const., Inc.</i> , No. 12 Civ. 653265,	
2017 N.Y. Slip Op. 30643(U) (Sup. Ct. N.Y. County 2017)	16
<i>Jiannaras v. Alfant</i> , No. 09 Civ. 21262,	
2012 N.Y. Misc. LEXIS 6692 (Sup. Ct. Queens Cnty. Apr. 6, 2011)	11
<i>Kehn v. Plainview Hosp., LLC</i> , No. 12 Civ. 9866,	
2014 N.Y. Slip Op. 33985(U) (Sup. Ct. Nassau County 2014)	16
<i>Klein v. Robert's Am. Gourmet Food, Inc.</i> ,	
28 A.D.3d 63 (2nd Dep't 2006)	11, 12
<i>Kolb v. Bankers Consec Life Ins. Co.</i> , No. 13 Civ. 5116,	
2014 N.Y. Slip Op. 33984(U) (Sup. Ct. Nassau Cnty. 2014)	16
<i>Krebs v. Canyon Club, Inc.</i> ,	
22 Misc.3d 1125(A), 2009 N.Y. Slip Op. 50291(U), at *5 (Sup. Ct. Westchester Cnty. 2009)	
..... <i>passim</i>	
<i>Long v. HSBC USA Inc.</i> , No. 14 Civ. 6233,	
2015 U.S. Dist. LEXIS 122655 (S.D.N.Y. Sept. 11, 2015)	23
<i>Lopez v. Dinex Grp., LLC</i> , No. 14 Civ. 155706,	
2015 N.Y. Slip Op. 31074(U), *3 (Sup. Ct. N.Y. Cnty. 2015)	11
<i>Macaluso v. Woodbury Int'l, Inc.</i> , No. 12 Civ. 3216,	
2013 N.Y. Slip Op. 34211 (Sup. Ct. Nassau County 2013)	16
<i>Nawrocki v. Proto Constr. & Dev. Corp.</i> ,	
82 A.D.3d 534 (1st Dep't 2011)	21
<i>Pajaczek v. CEMA Const.</i> ,	
18 Misc. 3d 1140(A), 2008 N.Y. Slip. Op. 50386(U), at *4 (Sup. Ct. N.Y. Cnty. 2008)	19, 21
<i>Pesantez v. Boyle Envtl. Servs., Inc.</i> ,	
251 A.D.2d 11 (1st Dep't 1998)	16, 18, 21

<i>Piccolo v. Top Shelf Provisions, Co. Inc.</i> , No. 16 Civ. 6930, 2019 U.S. Dist. LEXIS 132695 (E.D.N.Y. Aug. 7, 2019)	14
<i>Pludeman v. N. Leasing Sys., Inc.</i> , 74 A.D.3d 420 (1st Dep't 2010)	15
<i>Pruitt v. Rockefeller Ctr. Props.</i> , 167 A.D.2d 14 (1st Dep't 1991)	16, 18
<i>Reyes v. 600 W. 169th Rest., Inc.</i> , No. 16. Civ. 159303, 2018 N.Y. Slip Op. 32730 (Sup. Ct. N.Y. Cnty. 2018)	12,13
<i>Reyes v. Altamarea Grp., LLC</i> , No. 10 Civ. 6451, 2011 U.S. Dist. LEXIS 115984 (S.D.N.Y. Aug. 16, 2011)	13
<i>Schrivver v. Golden Corral Corp.</i> , No. 17 Civ. 136, 2017 U.S. Dist. LEXIS 204372 (N.D. Ohio Dec. 11, 2017)	20
<i>Stecko v. RLI Ins. Co.</i> , 121 A.D.3d 542 (1st Dep't 2014)	16, 18, 21
<i>Sukhnandan v. Royal Health Care of Long Island LLC</i> , No. 12 Civ. 4216, 2014 U.S. Dist. LEXIS 105596 (S.D.N.Y. July 31, 2014)	23
<i>In re Traffic Exec. Ass'n-E. R.Rs.</i> , 627 F.2d 631 (2d Cir. 1980)	12
<i>Weinberg v. Hertz Corp.</i> , 116 A.D.2d 1 (1st Dep't 1986)	15
<i>Weinstein v. Jenny Craig Operations, Inc.</i> , 2013 N.Y. Slip Op. 51783(U) (Sup. Ct. N.Y. Cnty. 2013)	17, 18, 19
<i>Yim v. Carey Limousine NY, Inc.</i> , No. 14 Civ. 5883, 2016 U.S. Dist. LEXIS 47134 (E.D.N.Y. Mar. 31, 2016)	13

STATUTES

29 U.S.C. §216	1, 23, 24
29 U.S.C.	<i>passim</i>
Cal. Bus. & Prof. Code §§ 17200, et seq.	2
Cal. Lab. Code §§ 2698, et seq	2
CPLR § 901	<i>passim</i>
CPLR § 902	15, 21, 22
CPLR § 904	23

CPLR § 908 10, 22, 23

OTHER

Herbert B. Newberg & Alba Conte, Newberg on Class Actions (“Newberg”)(5th ed.).....11,12

PRELIMINARY STATEMENT

Plaintiffs Kelly Black, Chidubem Anyanwu, Laura Barrera, Caroline Filan, Caroline Harris, Michelle Sims, Nicole Tang, Samhahir Ruland, Samantha Ryan, and Leora Vainshelboim (collectively, “Plaintiffs”) and Defendant AlphaSights Inc. (“Defendant” or “AlphaSights”) have settled this class and collective action subject to Court approval. The proposed Settlement satisfies all the criteria for preliminary settlement approval. Accordingly, Plaintiffs respectfully request that the Court: (1) grant preliminary approval of the Settlement Agreement and Release (“Agreement”);¹ (2) provisionally certify the proposed Class under Article 9 of the New York Civil Practice Law and Rules (“CPLR”), for settlement purposes only; (3) conditionally certify the proposed Collective (as defined below) pursuant to 29 U.S.C. §216(b), for settlement purposes only; (4) appoint Outten & Golden LLP (“O&G”) as Class Counsel, for settlement purposes only; (5) appoint Rust Consulting (“Rust”) as the Claims Administrator; (6) approve the Parties’ agreed Notice of Proposed Class and Collective Action Settlement (“Class and Collective Notice”), Claim Form, and reminder notice (“Reminder Notice”), and direct their distribution; and (7) enter the Proposed Order Granting Preliminary Approval.

FACTUAL BACKGROUND

Plaintiffs brought this action on behalf of themselves and similarly situated employees who worked as Associates, alleging, among other things, that Associates should have been classified as non-exempt, overtime-eligible employees and, as a result, did not receive overtime pay; adequate wage notices, wage statements, meal periods, or rest breaks; or timely payment of wages, in

¹ The Agreement is attached as Exhibit 1 to the Affirmation of Melissa L. Stewart in Support of Plaintiffs’ Motion for Preliminary Settlement Approval (“Stewart Aff.”). Unless otherwise indicated, all exhibits hereto are attached to the Stewart Aff. All capitalized terms utilized in this Motion are defined herein and/or in the Agreement.

violation of the Fair Labor Standards Act (“FLSA”), New York law and/or California law.² See *Black et al. v. AlphaSights*, No. 613283/2023 (N.Y. Sup. Ct. May 25, 2023) NYSCEF No. 1 ¶¶ 2-5 (hereinafter Dkt. No. 1, Complaint (Compl.)). The negotiated Maximum Settlement Amount of Six Million Dollars and Zero Cents (\$6,000,000.00) is a fair compromise that easily falls within the range of reasonableness.

PROCEDURAL BACKGROUND

I. INVESTIGATION

Before initiating this action, the undersigned counsel (“Plaintiffs’ Counsel”) conducted a thorough investigation which included corporate research regarding Defendant’s business locations, corporate ownership, past federal and state litigation, as well as factual and legal research into the underlying merits of Plaintiffs’ claims, possible defenses, the proper measure of damages, and the likelihood of class and collective certification. Stewart Aff. ¶ 12. Plaintiffs’ Counsel also conducted in-depth interviews with the ten Plaintiffs and numerous other similarly situated Associates. *Id.* ¶ 13. These interviews helped Plaintiffs’ Counsel determine the hours that Associates worked, the nature of their duties, and Defendant’s policies as they relate to Associates. *Id.* ¶ 14. Plaintiffs’ Counsel also reviewed employment documents, including payroll information, wage notices, offer letters, and job descriptions. *Id.* ¶ 15.

II. SETTLEMENT DISCUSSIONS

On February 7, 2022, Plaintiffs’ Counsel sent a letter to Defendant outlining their FLSA and New York claims and inviting Defendant to engage in pre-litigation settlement discussions on behalf of the class of similarly situated employees; Plaintiffs’ Counsel sent a follow-up letter

² Plaintiffs also brought derivative claims for California Labor Code violations pursuant to the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (see Compl. ¶¶ 139-146), and the Private Attorneys General Act, Cal. Lab. Code §§ 2698, *et seq.* (*id.*, ¶ 10).

on February 17, 2022, outlining their additional California claims. *Id.* ¶ 16. After AlphaSights reviewed the letter, the Parties agreed to engage in a dialogue regarding the possibility of a resolution of the alleged claims and, on July 1, 2022, the Parties entered into an agreement outlining their commitment to participate in mediation and their confidentiality obligations. *Id.* ¶ 17. The Parties further agreed to an exchange of information and payroll data to facilitate settlement discussions. *Id.* ¶ 18.

The Parties subsequently agreed to participate in mediation with Dina Jansenson, an experienced mediator. *Id.* ¶ 19. Plaintiffs' Counsel evaluated the claims and Defendant's defenses based on the payroll data produced by Defendant, as well as Plaintiffs' own investigation. *Id.* ¶ 20. Plaintiffs also used Defendant's data to calculate estimated damages on a class-wide basis. *Id.* ¶ 21. Prior to the mediation, Plaintiffs submitted a detailed mediation statement to Ms. Jansenson and the Parties exchanged mediation briefs. *Id.* ¶ 22.

The Parties participated in a full-day mediation session with Ms. Jansenson on July 20, 2022. *Id.* ¶ 23. Although the case did not settle at that time, the Parties continued to engage in settlement discussions with the assistance of the mediator, resulting in the execution of a term sheet on September 14, 2022. *Id.* ¶ 24. Over the next several months, the Parties continued negotiating the terms of the finalized Agreement, which was fully executed on May 4, 2023. *Id.* ¶ 25. At all times, settlement negotiations were conducted on an arm's-length basis. *Id.* ¶ 26.

On May 25, 2023, Plaintiffs filed the instant matter seeking unpaid wages and related relief on behalf of Associates pursuant to federal, New York, and California law. *See Compl.*

SUMMARY OF THE SETTLEMENT TERMS

I. ELIGIBLE MEMBERS

The proposed Class consists of all Plaintiffs and Class Members. Ex. 1 (Agreement) § 2.10. Class Members include all individuals employed by AlphaSights as an associate in the Capital Markets, Corporate, Content, Growth/Consulting, Network Intelligence, Private Equity and/or Surveys business units/teams (“Associates”), classified as exempt and employed in: (a) New York at any time between May 25, 2017 through October 31, 2022 (“New York Class Members”); or (b) California at any time between May 25, 2019 through October 31, 2022 (“California Class Members”) (collectively, the “Covered Period”). *Id.* § 2.12.

Settlement Class Members means all Class Members who do not opt-out of the Settlement Class by timely submitting an Opt-Out Request. *Id.* § 2.45.

Participating Claimants means Plaintiffs and Class Members who submit a timely and valid Claim Form in response to the Class and Collective Notice. *Id.* § 2.36.

PAGA Members means any individual employed by AlphaSights in California as an Associate and classified as exempt at any time from January 5, 2022 until October 31, 2022. *Id.* § 2.34.

The “Collective” includes all Class Members employed by AlphaSights in New York or California at any time during the Covered Period.

II. THE SETTLEMENT FUND

Defendant has agreed to pay up to Six Million Dollars (\$6,000,000) (the “Maximum Settlement Amount”), which will be used to pay: (1) all Settlement Payments to Participating Claimants, including the employee’s share of payroll taxes (*id.* § 2.46); (2) Enhancement Awards of up to Seven Thousand Dollars (\$7,000) to each of the Plaintiffs (*id.* § 2.22); (3) Plaintiffs’

Counsel's attorneys' fees of up to one-third of the Maximum Settlement Amount, plus reimbursement of actual litigation expenses and costs (*id.* § 4.6.1); (4) the Claims Administrator's fees and costs (*id.* § 2.28); (5) a PAGA Settlement Amount of Forty Thousand Dollars (\$40,000) (Twenty-Five Percent (25%), or Ten Thousand Dollars (\$10,000), of which is allocated to PAGA Settlement Payments and Seventy-Five Percent (75%), or Thirty Thousand Dollars (\$30,000), of which is allocated to the Labor and Workforce Development Agency Payment) (*id.* § 4.6.5); and (6) a Reserve Fund of Fifty Thousand Dollars (\$50,000) that will be used to pay late and disputed claims (*id.* § 2.42). The employer's share of payroll taxes will be paid by Defendant separately from and in addition to the Maximum Settlement Amount. *Id.* § 2.28.³

III. RELEASES

Class Members who do not timely opt-out of the Settlement Class by timely submitting an Opt-Out Request will become Settlement Class Members and be bound by the "Released State and Local Law Claims."⁴ *Id.* §§ 2.40, 2.45. Participating Claimants (*i.e.*, those who timely and

³ Any Unclaimed Funds shall revert to Defendant. *Id.* §2.49. Additionally, any uncashed PAGA Settlement Payments shall revert to the California Unclaimed Property Fund under the name of that individual. *Id.*

⁴ "Released State and Local Law Claims" means any and all wage and hour claims, obligations, demands, actions, rights, causes of action, and liabilities against Defendant Releasees, of whatever kind and nature, character, and description, whether known or unknown, and whether anticipated or unanticipated, arising under state and local law, whether in law or equity, whether sounding in tort, contract, statute, common law, or other applicable law or regulation including claims that the Settlement Class Member does not know of or suspect to exist in his/her favor, that accrued while the Settlement Class Member was employed in a Covered Position during the Covered Period, for any type of relief related to wage and hour claims, including without limitation, claims for wages, damages, premium pay, unpaid costs, expenses, and related claims for penalties (including any applicable late payment penalties), liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, based on the following categories of allegations: (a) all claims asserted or which could have been asserted in the Threatened Litigation which arose under the facts alleged and/or applicable state or local wage and hour laws and regulations; (b) all claims under applicable state

validly submit a Claim Form) will be bound by the “Released Federal Law Claims.”⁵ *Id.* §§

2.39, 2.45. PAGA Members will be bound by the “Released PAGA Claims.”⁶ *Id.* § 2.41.

or local laws and regulations for the failure to pay any type of overtime compensation or other wages (including minimum wage, late payments of wages, or business expenses); (c) all claims arising under any applicable state or local laws or regulations for the failure to provide or pay for meal periods and/or rest periods; (d) all claims under applicable state or local laws or regulations, including but not limited to alleged recordkeeping violations stemming from or based on alleged misclassification; (e) all claims arising under any applicable state or local laws or regulations for the failure to furnish accurate, itemized wage statements or other notices; and (f) all claims for penalties or additional damages arising from the claims described in (a) through (e) inclusive above under applicable state or local law. The Released State and Local Claims are the claims meeting the above definition under any and all applicable state and local statutes, regulations or common law (including, but not limited to, the New York Labor Law and New York State Department of Labor Regulation for New York Class Members and the California Labor Code, applicable California Wage Orders, and the California Unfair Business Practices Law for California Class Members), as well as any federal, state or local claims related to any claim for benefits arising from any Settlement Payment under this Settlement Agreement, including but not limited to the Employee Retirement Income Security Act (“ERISA”). *Id.* § 2.40.

⁵ “Released Federal Law Claims” means any and all wage and hour claims, obligations, demands, actions, rights, causes of action, and liabilities against Defendant Releasees, of whatever kind and nature, character, and description, whether known or unknown, and whether anticipated or unanticipated arising under the FLSA, as amended, 29 U.S.C. § 201, *et. seq.*, and any and all derivative and/or related federal claims, including but not limited to claims under any legal theory for failure to pay minimum wage, failure to pay overtime, failure to pay for all hours worked, failure to keep accurate records, any and all claims for recovery of overtime pay, minimum wage, premium pay, interest, and/or penalties, that accrued while the Participating Claimant was employed in a Covered Position during the applicable Covered Period, for any type of relief related to wage and hour claims, including without limitation, claims for wages, penalties, liquidated damages, interest, attorneys’ fees, litigation costs, or equitable relief. *Id.* § 2.39.

⁶ “Released PAGA Claims” means any and all wage and hour claims, obligations, demands, actions, rights, causes of action, and liabilities against Defendant Releasees, of whatever kind and nature, character, and description, whether known or unknown, and whether anticipated or unanticipated, arising from the Released State and Local Law Claims, under the California Private Attorneys General Act that accrued while a PAGA Member was employed in a Covered Position during the Covered Period. *Id.* § 2.41. All PAGA Members are bound by this release of PAGA claims upon the Effective Date. *Id.*

Additionally, in consideration of the Enhancement Awards, each of the Plaintiffs will execute and agree to an individual general release agreement. *Id.* § 2.22, 4.6.2.

IV. ALLOCATION FORMULA

The Claims Administrator will determine the Settlement Payments for each Class Member pursuant to the Settlement Formula which allocates each Class Member's share based on the number of Workweeks worked during the Covered Period.⁷ *Id.* § 4.8.1. To calculate each Class Member's proportionate amount, the Claims Administrator will: (a) calculate and add the number of Workweeks for each Class Member in a Covered Position in each year during the Covered Period together to obtain the "Total Workweeks;" (b) divide the Net Settlement Amount by the Total Workweeks to determine the "Workweek Amount;" and (c) multiply each Class Member's Workweeks by the Workweek Amount to determine each Class Member's Settlement Payment. *Id.* The Claims Administrator will determine the PAGA Settlement Payment for each PAGA Member on a pro-rata basis according to the PAGA Members' PAGA-eligible Workweeks as well. *Id.* § 4.6.5. Each PAGA Member will receive a PAGA Settlement Payment that is separate from their Settlement Payment. *Id.*

V. CLAIMS ADMINISTRATOR

The Parties have selected Rust Consulting to serve as Claims Administrator following a competitive bidding process. Stewart Aff. ¶ 27. Pursuant to Section 2.28 of the Agreement, Rust's fees and costs in this matter shall be paid from the Maximum Settlement Amount. Ex. 1 (Agreement) § 2.28.

⁷ If the total number of Workweeks is greater than 75,000, the Settlement Payments for Class Members will be determined by the Claims Administrator using the Alternative Settlement Formula set forth in Appendix A to the Agreement. *Id.*, Appx. A.

VI. PROPOSED NOTICE

The Agreement provides that the Claims Administrator will disseminate the Class and Collective Notice advising Class Members of the Settlement via First Class U.S. Mail and e-mail. *Id.* § 4.4.3. In the event that a Class and Collective Notice to a Class Member is returned as undeliverable, the Claims Administrator shall take reasonable steps to obtain the correct address, including up to two skip traces, and will attempt a re-mailing and/or re-emailing to any Class Member for whom it obtains a more recent address or email address, but no re-mailing and/or re-emailing shall occur more than sixty (60) calendar days after the Claim Form Mailing Date (as defined below). *Id.* § 4.4.4. The Class and Collective Notice includes an enclosed Claim Form, which Class Members can return via mail using an enclosed pre-paid envelope, e-mail, or an online submission portal created and maintained by the Claims Administrator. *Id.* § 4.4.3. Class Members shall have sixty (60) calendar days after the Claim Form Mailing Date (or twenty-one (21) calendar days from the re-mailing date in the event a Class and Collective Notice is re-mailed, whichever is later) to submit a Claim Form. *Id.* § 2.5. The Claims Administrator will send a Reminder Notice via e-mail within the later of thirty (30) calendar days after the initial dissemination of the Class and Collective Notice or fourteen (14) calendar days after the re-mailing date to those Class Members who have not submitted a Claim Form or opted out. *Id.* § 4.4.5.

VII. CLASS AND COLLECTIVE ACTION SETTLEMENT PROCEDURE

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

1. Within fifteen (15) business days of the Order Granting Preliminary Approval, Defendant's Counsel will provide the Claims Administrator with Class Member Data containing each Class Member's name, last known mailing address, last known personal email address, social security number, state(s) where employed, and dates of employment in a relevant position. *Id.* §§ 2.13, 4.4.1.

2. Within fifteen (15) business days of receiving the Class Member Data from Defendant, the Claims Administrator shall mail via First Class U.S. mail and e-mail the Court-approved Class and Collective Notice, and shall include a postage pre-paid return envelope with the physical mailing. *Id.* § 4.4.3.
3. Within fifteen (15) business days of receipt of the Class Member Data, the Claims Administrator shall establish an online submission portal that allows Class Members to submit Claim Forms. *Id.* § 4.4.3.
4. The Claims Administrator will take reasonable steps to obtain the correct address of any Class Members for whom the Class and Collective Notice is returned as undeliverable, including up to two skip traces, and will attempt a re-mailing and/or re-emailing to any Class Member for whom it obtains a more recent address or email address. *Id.* § 4.4.4. Class and Collective Notices will not be resent more than sixty (60) calendar days after the Claim Form Mailing Date. *Id.* §§ 2.5, 4.4.4.
5. The Claims Administrator will send a reminder via e-mail within the later of thirty (30) calendar days after the initial mailing, or fourteen (14) calendar days after the re-mailing, to all Class Members who have not returned a Claim Form or opted out. *Id.* § 4.4.5.
6. The Claim Form Deadline will be sixty (60) calendar days after the date the Claims Administrator initially mails the Class and Collective Notice to the Class (“Claim Form Mailing Date”), except for Class Members to whom the Class and Collective Notice is resent, for whom the Claim Form Deadline shall be the later of sixty (60) calendar days after the Claim Form Mailing Date or twenty-one (21) calendar days after any re-mailing. Class Members can opt-out of the Settlement or object to it until the Claim Form Deadline. *Id.* §§ 4.4.13, 4.4.15. The date of the postmark on the return mailing envelope or the date of the return email will be the exclusive means to determine whether an Opt-Out Request has been timely submitted. *Id.* § 4.4.13. In the event the date is not included on the postmark, the Opt-Out Request will be presumed to have been mailed three (3) calendar days prior to the date the Claims Administrator receives the Opt-Out Request. *Id.* § 4.4.13. The Parties may file with the Court written responses to any filed objections no later than seven (7) calendar days before the Fairness Hearing. *Id.* § 4.4.15.
7. At the Fairness Hearing, Plaintiffs shall request that the Court enter an Order Granting Final Approval in accordance with the Agreement, including: (a) certifying the collective and classes for purposes of settlement only; (b) entering Judgment in accordance with the terms of the Agreement; (c) approving the Settlement as fair, adequate, reasonable, and binding on all Settlement Class Members; (d) dismissing the Settlement Action with prejudice; (e) entering an order permanently enjoining all Settlement Class Members from pursuing and/or seeking to reopen claims that have been released by the Agreement; and (f) incorporating the terms of the Agreement. *Id.* § 4.3.4.

8. The Effective Date will be the date on which the Judgment becomes a Final Judgment, which shall be the latest of: (a) the date of final affirmance on an appeal of the Judgment; (b) the date of final dismissal, with prejudice, of the last pending appeal from the Judgment; or (c) if no appeal is filed, the expiration date of the time for the filing or noticing of any form of valid appeal from the Judgment. *Id.* §§ 2.21, 2.24. Notwithstanding the foregoing, any proceeding or order, or any appeal, or petition for a writ pertaining solely to the award of attorneys' fees, attorneys' costs, and/or Administrative Costs shall not in any way delay or preclude the Judgment from becoming a Final Judgment. *Id.* at § 2.24.
9. Within fifteen (15) business days after the Effective Date, Defendant will make a one-time deposit of all Court-approved and claimed amounts from the Maximum Settlement Amount into a Qualified Settlement Fund to be established as a trust by the Claims Administrator. *Id.* § 4.10.
10. Within twenty (20) business days after the Effective Date (the "Settlement Payment Mailing Date"), the Claims Administrator shall mail the Settlement Payments to Participating Claimants, the PAGA Settlement Payments to PAGA Members, Enhancement Payments to Plaintiffs, and the Labor and Workforce Development Agency Payment to the California Labor and Workforce Development Agency, and shall wire attorneys' costs and fees to Class Counsel. *Id.* §§ 4.6.1, 4.8.1, 4.11.1, 4.11.2.
11. Within sixty (60) calendar days after the Settlement Payment Mailing Date, the Claims Administrator will send out reminders via e-mail to any Participating Claimants who have not yet cashed their checks, reminding them of the one hundred twenty (120) calendar day deadline by which to cash or deposit their Settlement Payment checks. *Id.* § 4.11.3.
12. Class Members will have one hundred twenty (120) calendar days following the Settlement Payment Mailing Date to cash or deposit their Settlements Payment checks. Any checks issued pursuant to the Agreement that are not cashed or deposited within the later of one hundred twenty (120) calendar days from the date of mailing or twenty-one (21) calendar days after a re-mailing shall become void (with the exception of any PAGA Settlement Payment check), and the applicable Plaintiff, Participating Claimant, PAGA Member or Class Counsel shall not be entitled to another check or any other monetary payments as a result of the Settlement. *Id.* § 4.11.3. Any PAGA Settlement Check not cashed shall revert to the California Unclaimed Property Fund under the name of the PAGA Member. *Id.*

ARGUMENT

I. SETTLEMENT PROCEDURE

CPLR § 908 requires judicial approval for any compromise of claims brought on a class basis. This approval process includes three steps:

1. Preliminary approval of the proposed Settlement after submission to the Court of a written motion for preliminary approval;
2. Dissemination of notice of settlement to all class members; and
3. A final settlement approval hearing at which class members may be heard regarding the settlement and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented.

Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* (“Newberg”), § 13.1 (5th ed.); *see, e.g., Lopez v. Dinex Grp., LLC*, No. 14 Civ. 155706, 2015 N.Y. Slip Op. 31074(U), *3 (Sup. Ct. N.Y. Cnty. 2015). This process protects the class members’ due process rights and enables the Court to safeguard the 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 Motion, Plaintiffs request that the Court take the first step: provisionally certifying the Class for settlement purposes only, conditionally certifying the Collective for settlement purposes only, granting preliminary approval of the Agreement, approving the proposed Class and Collective Notice, Claim Form, and Reminder Notice, and authorizing the Claims Administrator to distribute the Class and Collective Notice, Claim Form and Reminder Notice.

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

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, 537 (Sup. Ct. N.Y. Cnty. 2010). This analysis is made in light of the “strong judicial policy” favoring the settlement of class action suits.

Jiannaras v. Alfant, No. 09 Civ. 21262, 2012 N.Y. Misc. LEXIS 6692, at *11 (Sup. Ct. Queens Cnty. Apr. 6, 2011) (internal quotation marks omitted); *see Caballero v. Senior Health Partners, Inc.*, No. 16 Civ. 326, 2018 U.S. Dist. LEXIS 207128, at *9 (E.D.N.Y. Dec. 7, 2018). Courts refer to New York and federal precedent in making this determination, given that the two statutory schemes are similar. *See, e.g., Fiala*, 899 N.Y.S.2d at 537 (collecting cases); *Klein v. Robert’s Am. Gourmet Food, Inc.*, 28 A.D.3d 63, 72 (2nd Dep’t 2006) (relying on federal authority to assess reasonableness of settlement).

At this first step in the settlement approval process, 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). The Court need only find that there is “‘probable cause’ to submit the [settlement] to class members and hold a full-scale hearing as to its fairness.” *In re Traffic Exec. Ass’n-E. R.R.s.*, 627 F.2d 631, 634 (2d Cir. 1980); *see Newberg*, § 13:10 (“[I]f a court’s preliminary evaluation of the proposed settlement showed that it [is neither illegal nor collusive and is within the range of possible approval], the court would 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. *Clark v. Ecolab, Inc.*, No. 04 Civ. 4488, 2009 U.S. Dist. LEXIS 108736, at *14 (S.D.N.Y. Nov. 27, 2009) (preliminary approval “simply allows notice to issue to the class and for class members to object to or opt-out of the settlement”).

Preliminary approval is subject to a less rigorous standard than final approval. At the final approval stage, the Court “balanc[es] 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, however, 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. Offering Sec. Litig.*, 226 F.R.D 186, 191 (S.D.N.Y. 2005) (internal quotation marks omitted); *see also Reyes v. 600 W. 169th Rest., Inc.*, No. 16. Civ. 159303, 2018 N.Y. Slip Op. 32730, at *1 (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”); *Yim v. Carey Limousine NY, Inc.*, No. 14 Civ. 5883, 2016 U.S. Dist. LEXIS 47134, at *9 (E.D.N.Y. Mar. 31, 2016) (“Preliminary approval of settlements should be given if the settlement is the result of serious, informed and non-collusive negotiations and the proposed settlement has no obvious deficiencies[.]” (internal quotation marks omitted)).

B. The Proposed Settlement Is the Product of Extensive, Arm’s-Length Negotiations.

This Settlement is the result of extensive, arm’s-length negotiations. Stewart Aff. ¶ 29. As discussed above, the Parties exchanged substantial pre-litigation discovery relating to liability and damages. *Id.* ¶ 30. Subsequently, Plaintiffs’ Counsel created a detailed damages model based on the data provided by Defendant. *Id.* ¶ 31. In addition, the Parties engaged in vigorous settlement negotiations, which included attending a full-day, class-wide mediation before Dina Jansenson, an experienced wage and hour and class and collective action mediator. *Id.* ¶ 32. That the Settlement was reached with the expert assistance of Ms. Jansenson demonstrates that it is a

product of arm's-length negotiations. *See Reyes v. Altamarea Grp., LLC*, No. 10 Civ. 6451, 2011 U.S. Dist. LEXIS 115984, at *11 (S.D.N.Y. Aug. 16, 2011) (finding class and collective settlement reached with mediator indicative of arm's length negotiation and complying with due process). 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. Stewart Aff. ¶ 33.

C. The Proposed 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.* ¶ 33. Plaintiffs' Counsel believes this Settlement achieves all the objectives of the litigation, namely a substantial monetary settlement to Class Members. *Id.* ¶ 34. Plaintiffs' Counsel, who has a great deal of experience in the prosecution and resolution of wage and hour class actions, has carefully evaluated the merits of the case and the proposed Settlement. *Id.* ¶ 35. Plaintiffs' Counsel recognizes that the apparent strengths of Plaintiffs' claims are no guarantee against a complete or partial defense verdict. *Id.* ¶ 36. Furthermore, even 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. *Id.* ¶ 37; *see, e.g., Piccolo v. Top Shelf Provisions, Co. Inc.*, No. 16 Civ. 6930, 2019 U.S. Dist. LEXIS 132695 (E.D.N.Y. Aug. 7, 2019) (finding for the employees on wage statement and notices claims, but for employer on wage claims).

II. CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE.

Plaintiffs allege that Defendant violated wage laws by misclassifying its Associates and thereby failing to provide all earned wages. The instant motion seeks an order pursuant to Article 9

of the CPLR conditionally certifying the Class and following sub-classes for settlement purposes only:

New York Class: All Associates classified as exempt and employed in New York at any time between May 25, 2017 through October 31, 2022.

California Class: All Associates classified as exempt and employed in California at any time between May 25, 2019 through October 31, 2022.

See Ex. 1 (Agreement) § 2.12.

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); *Ackerman v. Price Waterhouse*, 252 A.D.2d 179, 191 (1st Dep’t 1998) (same). Accordingly, Plaintiffs respectfully submit that the proposed settlement Class should be certified for settlement purposes only.

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 Article 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. Canyon Club, Inc.*, 22 Misc.3d 1125(A), 2009 N.Y. Slip Op. 50291(U), at *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. 12 Civ. 3216, 2013 N.Y. Slip Op. 34211, at *3 (Sup. Ct. Nassau County 2013) (internal quotation marks omitted)); *see also Pruitt v. Rockefeller Ctr. Props.*, 167 A.D.2d 14, 21 (1st Dep’t 1991) (“[A]ny error, if there is to be one, should be . . . in favor of allowing the class action.” (internal quotation marks omitted)).

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 quotation marks omitted)); *Pesantez v. Boyle Envtl. Servs., Inc.*, 251 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 Consec Life Ins. Co.*, No. 13 Civ. 5116, 2014 N.Y. Slip Op. 33984(U), at *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.”); *Kehn v. Plainview Hosp., LLC*, No. 12 Civ. 9866, 2014 N.Y. Slip Op. 33985(U), at *4-6 (Sup. Ct. Nassau County 2014) (certifying wage and hour class); *Isufi v. Prometal Const., Inc.*, No. 12 Civ. 653265, 2017 N.Y. Slip Op. 30643(U), at *6 (Sup. Ct. N.Y. County 2017) (same).

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, Plaintiffs contend that the proposed Class meets all of Section 901(a)’s prerequisites and should therefore be certified for settlement purposes only.

1. Numerosity: 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 Hosp. Grp.*, 2013 N.Y. Misc. LEXIS 7176, 2013 N.Y. Slip Op. 34200(U), at *3 (Sup. Ct. Nassau County 2013) (“[A] class of 40 or more has been found to raise a presumption of numerosity”); *Krebs*, 2009 N.Y. Slip Op. 50291(U), at *5 (“[C]ourts presume that numerosity is satisfied where the proposed class contains around 40 members” (collecting cases)). Here, there are more than 100 Class Members. Stewart Aff. ¶ 38. Under these circumstances, Plaintiffs assert that joinder is both impracticable and undesirable, and the “numerosity” requirement is clearly satisfied.

2. Questions of Law and Fact Common to the Class 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.*, 2013 N.Y. Slip Op. 51783(U), at *4 (Sup. Ct. N.Y. Cnty. 2013) (internal quotation marks omitted)); *see also Borden v. 400 E. 55th St. Assocs., L.P.*, 24 N.Y.3d 382, 399 (2014) (noting that a “predominant legal question involves one that applies to the entire class”).

This standard requires “predominance, not identity or unanimity, among class members[.]” *Krebs*, 2009 N.Y. Slip Op. 50291(U), at *8 (internal quotation marks 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*, 2013 N.Y. Slip Op. 51783(U), at *3-4 (finding commonality where plaintiffs alleged that they were subjected to uniform time keeping practices); *Cherry v. Res. Am., Inc.*, 15 A.D.3d 1013 (4th Dep’t 2005) (finding predominance because defendants used a common method to manipulate the calculation of royalties).

“The fundamental issue . . . is whether the proposed class action asserts a common legal grievance, *i.e.*, whether the 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. Queens County 1999), *aff’d*, 277 A.D.2d 420 (2d Dep’t 2000) (internal quotation marks omitted); *see also Pesantez*, 251 A.D.2d at 12 (citing *Pruitt*, 167 A.D.2d at 22).

Here, according to Plaintiffs, Class Members are unified by common factual allegations, namely that Defendant allegedly committed the same violations of federal and state laws by classifying them as exempt, non-overtime eligible employees and, as a result, not providing Class Members with overtime pay; adequate wage notices, wages statements, meal periods, or rest breaks; or timely payment of wages. 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.

3. Plaintiffs’ Claims Are Typical of the Claims of the Class.

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 Const.*, 18 Misc. 3d 1140(A), 2008 N.Y. Slip. Op. 50386(U), at *4 (Sup. Ct. N.Y. Cnty. 2008); see *Galdamez v. Biordi Constr. Corp.*, No. 05 Civ. 107984, 2006 N.Y. Slip Op. 51969(U), at *3 (Sup. Ct. N.Y. County 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.*, No. 14 Civ. 3615, 2015 N.Y. Slip Op. 52008(U), at *6 (Sup. Ct. Albany County 2015) (internal quotation marks omitted). Accordingly, the plaintiffs can satisfy typicality even if they do “not share every claim asserted on behalf of every member of every subclass.” *Id.*

In this case, Plaintiffs assert that their claims are typical of the claims of the Class Members they seek to represent. Plaintiffs and Class Members all worked for Defendant as Associates. Plaintiffs contend that typicality is present because the claims arise from the same conduct, based on the same legal theory, and Plaintiffs and the Class Members were subjected to the same alleged wrong. See, e.g., *Weinstein*, 2013 N.Y. Slip Op. 51783(U), at *5 (finding typicality where the plaintiffs’ and class members’ wage claim arose out of the same course of conduct); *Galdamez*, 2006 N.Y. Slip Op. 51969(U), at *3 (plaintiffs’ claims typical where they are based on same cause of action).

4. Plaintiffs Will Fairly and Adequately Protect the Interests of the Class.

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*, 2013 N.Y. Slip Op. 51783(U), at *5 (internal quotation marks omitted). Adequacy further requires that “counsel for the named Plaintiffs be competent and that the interests of the named Plaintiff[] and the members of the class not be adverse.” *Pajaczek*, 2008 N.Y. Slip. Op. 50386(U), at *4.

Here, Plaintiffs stand to gain a pecuniary benefit through the successful prosecution of this action. Plaintiffs seek the same relief as all other Class Members – to be compensated for all allegedly unpaid wages and related damages. Furthermore, Plaintiffs are familiar with the lawsuit and are fully aware of their claims, as well as the claims of the Class Members they seek to represent. Additionally, Plaintiffs are represented by counsel with extensive experience in class actions and employment law. Stewart Aff. ¶ 39. Indeed, courts have found that Plaintiffs’ Counsel have years of experience prosecuting and settling wage and hour class actions and are well-versed in wage and hour and class action law. *See id.* at ¶ 40; *see, e.g., Capilupi v. People’s United Fin., Inc.*, No. 15 Civ. 5247, 2018 U.S. Dist. LEXIS 167550, at *5-6 (E.D.N.Y. Sept. 27, 2018) (“Class Counsel [O&G] are well qualified, experienced, and have aggressively litigated this action, thereby demonstrating their adequacy as counsel for the class.”); *Schrivver v. Golden Corral Corp.*, No. 17 Civ. 136, 2017 U.S. Dist. LEXIS 204372, at *3 (N.D. Ohio Dec. 11, 2017) (“Plaintiff’s Counsel, [O&G], . . . satisfy the adequacy requirement set forth in Rule 23(a)(4), because they are well-versed in wage and hour law and class action jurisprudence and have the experience and qualifications necessary to protect the interests of the Class.”); *Blum v Merrill Lynch & Co., Inc.*, No. 15 Civ. 1636, 2016 U.S. Dist. LEXIS 197385, at *6 (S.D.N.Y. May 15, 2017) (“The attorneys who prosecuted this case, at [O&G] . . . are experienced class action employment lawyers with good reputations among the employment law bar.”); *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 citation and 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 (affirming lower court decision 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”); *Krebs*, 2009 N.Y. Slip Op. 50291(U), at *1-2, 25 (certifying wage and hour class); *accord Pajaczek*, 2008 N.Y. Slip. Op. 50386(U), at *5; *Galdamez*, 2006 N.Y. Slip Op. 51969, at *1, 4; *Pesantez*, 251 A.D.2d at 12.

Plaintiffs assert that 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, Plaintiffs contend that 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 § 902 Factors Support Provisional 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. Merrill Lynch, Pierce, Fenner & Smith*, 404 N.Y.S.2d 258, 264 (Sup. Ct. N.Y. Cnty. 1978).

To the Parties' knowledge, there is no competing litigation against Defendant to recover the wages being sought by Plaintiffs in this case. Plaintiffs contend that the existence of more than 100 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 an appropriate forum to adjudicate the settlement. *See* CPLR § 902(4). Finally, Plaintiffs contend that 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).

III. PLAINTIFFS' COUNSEL SHOULD BE APPOINTED AS CLASS COUNSEL.

Plaintiffs' Counsel did substantial work identifying, investigating, prosecuting, and settling the claims, has substantial experience prosecuting and settling wage and hour class actions, and is well-qualified to represent the interests of the Class. Stewart Aff. ¶ 41; *see also Krebs*, 2009 N.Y. Slip Op. 50291(U), at *24 (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 2.B.4, Stewart Aff. ¶ 40.

IV. THE PROPOSED NOTICE IS APPROPRIATE.

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 Class and Collective Notice 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. Ex. 1, Ex. A (Class and Collective Notice). The Class and Collective Notice also describes the fees and costs that Plaintiffs’ Counsel will seek and the proposed Enhancement Awards to Plaintiffs, provides contact information for Plaintiffs’ Counsel and discloses the date, time, and place of the Fairness Hearing. *Id.* The proposed methods for distribution of notice – via e-mail and regular mail, with a reminder notice via e-mail, and skip tracing for undeliverable notices – are thorough and reasonable, and meet the requirements of CPLR § 904.

V. PLAINTIFFS ALSO SEEK APPROVAL OF THE FLSA SETTLEMENT.

Plaintiffs also seek approval of the settlement of the FLSA claims in addition to the state law claims and conditional certification of the proposed Collective pursuant to 29 U.S.C. § 216(b), for settlement purposes only. 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 [she] 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.* at 30. As such, for the reasons set forth herein, Plaintiffs request conditional certification of the proposed Collective for settlement purposes only and approval of the FLSA portion of the proposed Settlement.

CONCLUSION

Plaintiffs respectfully request that the Court: (1) grant preliminary approval of the Agreement; (2) provisionally certify the proposed Class under CLPR Article 9, for settlement purposes only; (3) conditionally certify the proposed Collective pursuant to 29 U.S.C. §216(b), for settlement purposes only; (4) appoint O&G as Class Counsel, for settlement purposes only; (5) appoint Rust as the Claims Administrator; (6) approve the Class and Collective Notice, Claim Form, and Reminder Notice, and direct their distribution; and (7) enter the Proposed Order Granting Preliminary Approval.

Dated: New York, New York
May 25, 2023

Respectfully submitted,

/s/ Melissa L. Stewart

Melissa L. Stewart
OUTTEN & GOLDEN LLP
685 Third Avenue, 25th Floor
New York, New York 10017
Telephone: (212) 245-1000

Jennifer Davidson
OUTTEN & GOLDEN LLP
1225 New York Ave. NW, Suite 1200B
Washington, DC 20005
Telephone: (212) 245-1000

/s/ James F. Misiano
James F. Misiano
JAMES F. MISIANO P.C.
130 Third Avenue
Brentwood, NY 11717
Telephone: (631) 396-0255

*Attorneys for Plaintiffs and
the Putative Class and Collective*