

**ARBITRATION
BEFORE HUNTER R. HUGHES III, ARBITRATOR
HUNTER HUGHES ADR**

Dulce Chimilio, Jeff McLaughlin, and David
Schachner, on behalf of themselves and all others
similarly situated,

Claimants,

v.

Forrester Research, Inc.,

Respondent.

**CLAIMANTS' UNOPPOSED MOTION FOR APPROVAL OF SETTLEMENT,
SERVICE AWARDS, AND ATTORNEYS' FEES AND COSTS**

I. INTRODUCTION

Following an investigation, informal discovery, and extensive arm's length negotiations between experienced counsel, Claimants Dulce Chimilio, Jeff McLaughlin, and David Schachner ("Claimants"), individually and on behalf of all other Eligible Employees,¹ and Respondent Forrester Research, Inc. ("Forrester" or "Respondent"), agreed, subject to Arbitrator approval, to resolve this wage and hour action on a collective-wide basis for significant monetary relief. The settlement satisfies the criteria for approval of a Fair Labor Standards Act ("FLSA") collective action settlement because it resolves a bona fide dispute; it was the result of arm's length settlement negotiations conducted by counsel well-versed in wage and hour law with the assistance of an experienced mediator; and it is fair, reasonable, and adequate.

¹ "Eligible Employees" means the approximately 560 individuals identified by Forrester before and during mediation and employed by Forrester in the United States with the exempt-classified job titles of Account Executive, Account Manager, Customer Success Manager, and other similar job titles.

Accordingly, Claimants respectfully request that the Arbitrator enter the Proposed Award: (1) approving the \$5,500,000 settlement amount as fair, adequate, and reasonable; (2) certifying the case as a collective action for settlement purposes only; (3) authorizing the distribution of the proposed Notices, Reminder Notices, and PAGA Check Enclosure Letter,² in accordance with the terms of the Settlement Agreement; (4) approving a Service Award of \$12,500.00 to each Claimant for their service to the Eligible Employees; (5) approving Claimants' request for one-third of the settlement fund for attorneys' fees; (6) approving reimbursement of \$5,431.67 to Claimants' Counsel for reasonably incurred costs and expenses; (7) dismissing the case with prejudice; (8) enjoining the Participating Collective Members from proceeding against Releasees for the Released Claims; (9) incorporating the terms of the Settlement Agreement; and (10) retaining jurisdiction to enforce the Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Claims

Claimants bring this FLSA collective action for unpaid overtime wages on behalf of themselves and other Eligible Employees who Forrester employed and classified as exempt from FLSA protections during the Collective Period.³ Claimants allege that Forrester violated the FLSA by misclassifying them and other Eligible Employees exempt and failing to pay them overtime for

² The Settlement Agreement and Release ("Settlement Agreement") is attached as Exhibit 1 to the Affidavit of Melissa L. Stewart in Support of Claimants' Unopposed Motion for Approval of Settlement, Service Award, and Attorneys' Fees and Costs ("Stewart Aff."). The Notices, Reminder Notices, and PAGA Check Enclosure Letter are attached as Exhibits A, B, and C to the Settlement Agreement, respectively. The Proposed Award is attached as Exhibit 2 to the Stewart Affidavit.

³ The Collective Period means October 7, 2016 to June 28, 2023 for Putative Collective Members employed by Forrester in New York; October 7, 2018 to June 28, 2023 for Putative Collective Members employed by Forrester in California; and October 7, 2019 to June 28, 2023 for all other Putative Collective Members.

the hours they worked over 40 hours in a workweek, even though their primary duties consist of non-exempt tasks. Statement of Claim ¶¶ 4, 11, 32-33.

B. Overview of Investigation, Mediation, and Settlement Negotiations

Before the initiation of this action, Claimants' Counsel conducted a thorough investigation into the merits of the potential claims and defenses. Claimants' Counsel focused the investigation and legal research on the underlying merits of the Eligible Employees' claims, the damages to which they were entitled, and the propriety of collective action certification. Stewart Aff. ¶ 15. Claimants' Counsel also conducted in-depth interviews with Claimants and other former Eligible Employees. *Id.*

On August 19, 2022, Claimants' Counsel informed Respondent by letter of the allegation that Eligible Employees were not paid proper overtime compensation for all hours worked over forty in a workweek, and of Claimants' intent to initiate litigation if a pre-litigation settlement could not be reached. *Id.* ¶ 16. On October 7, 2022, the Parties agreed to toll the claims on behalf of Claimants and Eligible Employees. *Id.* The Parties then agreed to attempt to resolve this dispute through private mediation. *Id.*

After agreeing to participate in mediation, the Parties engaged in an exchange of informal discovery to attempt to resolve this matter without litigation. *Id.* ¶ 17. Respondent produced data to allow the Parties to calculate damages, including data related to the number of Eligible Employees in relevant job titles, their compensation and time records, and the number of workweeks within the period at issue. *Id.* Respondent also produced corporate policies and personnel file documents for Claimants. Claimants' Counsel analyzed this data and constructed a damages model. *Id.* ¶ 18. Claimants' Counsel also produced Claimants' detailed mediation declarations to support their claims. *Id.* In preparation for mediation, the Parties drafted and

exchanged mediation statements setting forth their respective positions as to liability and damages, along with a draft term sheet. *Id.*

On April 11, 2023, the Parties attended a full-day, good-faith, arm's length mediation with Anne Marie Estevez, an experienced wage and hour mediator. *Id.* ¶ 19. During that meeting, the Parties were unable to reach a resolution of the claims but agreed to continue settlement discussions. *Id.* On April 20, 2023, with the continued assistance of Ms. Estevez, the Parties agreed to a resolution of the matter and a settlement in principle according to a mediator's proposal made by Ms. Estevez on April 19, 2023. *Id.* The parties then engaged in lengthy negotiations over the final Settlement Agreement, which was fully executed on August 22, 2023. *Id.*; Stewart Aff., Ex. 1 ("Settlement Agreement").

Claimants now file this unopposed Approval Motion and the Statement of Claim concurrently with the Arbitrator to obtain approval of the Settlement.

III. SUMMARY OF THE SETTLEMENT TERMS

A. The Settlement Fund and Settlement Claims Administration

The Settlement Agreement establishes a settlement fund of \$5,500,000.000 to settle the claims against Respondent (the "Gross Fund"). Settlement Agreement ¶¶ 1.14, 5.1(i). The Gross Fund represents the maximum amount to be paid by Respondent, assuming the settlement includes no more than 52,048 workweeks.⁴ *Id.* ¶ 4.5. The Gross Fund includes Arbitrator-approved Claimants' attorneys' fees and costs; any and all amounts to be paid to Participating Collective Members; the PAGA Fund; the cost of settlement administration; the cost of arbitration; any Arbitrator-approved Service Awards; all interest; and all liquidated damages. *Id.* ¶ 1.14. The Total

⁴ Should the number of workweeks subject to the release exceed 52,048 (50,532 + 3%), the Gross Fund will increase by a proportionate additional amount for each additional workweek, as described in Section 5.1(ii) of the Settlement Agreement. Settlement Agreement ¶ 4.5.

Settlement Amount is exclusive of Respondent's payroll tax obligations. *Id.* Within twenty-one (21) days of the Effective Date,⁵ Respondent will fund the Settlement by paying the full amount of the Total Settlement Amount into a Qualified Settlement Fund ("QSF") established by the Settlement Administrator. *Id.* ¶ 5.1(iii).

The Parties have retained Rust Consulting, Inc., an independent, experienced wage and hour claims administrator, to serve as the Settlement Administrator in this matter. Stewart Aff. ¶ 29. As set forth below and fully explained in the Settlement Agreement, the responsibilities of the Settlement Administrator include the following: (1) establishing a QSF account; (2) preparing, printing, and disseminating to the Claimants and Putative Collective Members the Settlement Packets, including the Notice (via mail, email, and text), Settlement Checks with "back-of-the-check releases," and (for PAGA Members) the PAGA Check Enclosure Letter; (3) sending the Reminder Notice (via mail, email, and text) to Putative Collective Members regarding the payment; (4) updating addresses with the U.S. Postal Service's National Change of Address ("NCOA") database; (5) maintaining an email address which Collective Members can use to make inquiries and provide address updates; (6) making commercially reasonable searches for new contact information for Collective Members whose Settlement Packets are returned as undeliverable with no forwarding information; (7) determining the amount of payments allocated to each Putative Collective Member in accordance with this Agreement, along with the amount of all payroll taxes to be paid and deductions to be withheld; (8) distributing any approved Service Awards and attorneys' fees and expenses; (9) calculating and paying all appropriate taxes and

⁵ The "Effective Date": means the thirty (30) days after the Court issues an order confirming the Arbitrator's Approval Award and the deadline to appeal the confirmation elapses, per Mass. Gen. Laws Ann. Ch. 251 §§ 12(b), 13(a). Settlement Agreement ¶ 1.8. The "Court" means the Middlesex Superior Court (Massachusetts), which shall be the court in which the Approval Award shall be confirmed by the Parties. Settlement Agreement ¶ 1.7.

complying with all applicable tax reporting obligations, including preparing and filing all applicable tax forms; (10) determining the tax characterization of the Service Awards; (11) calculating the tax liability of Respondent and advising Respondent of such liability at least ten (10) days prior to the tax payment so that it can make a separate payment; (12) remitting required amounts to the LWDA pursuant to the provisions of PAGA; (13) referring to Claimants' Counsel all inquiries by Putative Collective Members regarding matters not within the Settlement Administrator's duties specified herein; (14) retaining and providing a copy of Settlement Checks endorsed by the Participating Collective Members to Claimants' and Respondent's Counsel; (15) timely responding to communications from the Parties and their counsel; (16) reporting on the status of the settlement to the Parties on a weekly basis; (17) handling the California unclaimed property process for any Settlement Check to a PAGA Member not cashed; (18) maintaining adequate records of its activities, including the dates of the mailing(s) of Settlement Packet, returned mail and other communications and attempted written or electronic communications with Putative Collective Members; (19) protecting the personal data of Putative Collective Members, including Social Security numbers, from public disclosure; and (20) such other tasks as set forth herein, or as the Parties mutually agree, or as otherwise determined by the Settlement Administrator as necessary in effectuating its duties. Settlement Agreement ¶ 4.1. Rust Consulting, Inc. has agreed to perform these services for an amount not to exceed \$20,500. Stewart Aff. ¶ 30.

B. Eligible Employees

Pursuant to the Settlement Agreement, and for the purpose of settlement only, the Parties have agreed that those eligible to participate in the settlement, referred to as "Eligible Employees," which means the approximately 560 individuals identified by Forrester before and during

mediation and employed by Forrester during the Collective Period in the United States with the exempt-classified job titles of Account Executive, Account Manager, Customer Success Manager, and other similar job titles. *Id.* ¶ 1.9. Eligible Employees that have worked in California during the “PAGA Period” (October 7, 2021 through June 28, 2023) are also PAGA Members. *Id.* ¶¶ 1.9, 1.24.

No later than seven (7) days after the Effective Date, Respondent shall provide the Settlement Administrator with a list, in electronic form, of the names, Last Known Contact Information, social security numbers, state(s) worked, and dates of employment as an Eligible Employee for each Putative Collective Member during the Collective Period, and the number of Eligible Workweeks,⁶ including any Highly Compensated Workweeks⁷ and Incentive Workweeks,⁸ and the data that forms the basis for that calculation similar to the form that was provided to Claimants’ Counsel in advance of mediation (“Collective List”). *Id.* ¶ 4.5. Within seven (7) days after the Settlement Administrator receives the Collective List from Respondent, the Settlement Administrator will calculate the number of Eligible Workweeks, Highly Compensated Workweeks, and Incentive Workweeks and will provide the numbers by category (including state breakdowns) to the Parties. *Id.* The Settlement Administrator shall send Settlement Packets and, additionally, for PAGA Members, the PAGA Check Enclosure Letter, to

⁶ Settlement Agreement ¶ 1.10 (“Eligible Workweeks” are each calendar week worked by an Eligible Employee during the Collective Period except those workweeks where an employee was on a leave of absence or used paid time off such as vacation or sick time for the entire workweek.).

⁷ Settlement Agreement ¶ 1.15 (“Highly Compensated Workweeks” are Eligible Workweek in a calendar year in which a Putative Collective Member received more than \$100,000 in total compensation in any calendar year between 2016 and 2019, or \$107,432 in total compensation in any calendar year between 2020 and 2023, while working in any state except California.).

⁸ Settlement Agreement ¶ 1.16 (“Incentive Workweeks” are Eligible Workweek in a calendar year in which a Putative Collective Member earned more than fifty percent (50%) of his or her total compensation in incentive compensation, including bonuses and commissions.).

Putative Collective Members via First Class United States Mail within fourteen (14) days of the Funding Date. *Id.* ¶ 4.6. The Settlement Packet will include the Arbitrator-approved Notice and a Settlement Check in the amount based on each Putative Collective Member's pro rata settlement share. *Id.* The Settlement Administrator will also send email and text Notices (substantially in the form of Exhibits A-1 & A-2 attached to the Settlement Agreement) seven (7) days after mailing the Settlement Packets. *Id.*

The Settlement Administrator shall issue Reminder Notices after thirty (30), sixty (60), and ninety (90) days from the issuance of checks via mail, email, and text message (substantially in the form of Exhibits B-1, B-2, and B-3 to the Settlement Agreement) to the Putative Collective Members, reminding them to cash their cash their checks. *Id.* ¶ 4.7. Throughout, the Settlement Administrator will make reasonable efforts to obtain updated contact information, and then re-mail Settlement Checks to Putative Collective Members whose Settlement Checks are returned by the post office as undeliverable. *Id.*

Eligible Employees will have either (a) one hundred and twenty (120) days from the date their initial Settlement Packet is mailed – i.e., when their check is issued – or (b) one hundred and twenty (120) days from the last reissuance of their Settlement Check due to an incorrect address, which occurred no later than the 120th day of the original check cashing period, to cash their check. *Id.* ¶ 4.8.

Eligible Employees who timely cash their Settlement Checks and sign a release are deemed “Participating Collective Members” and are entitled to receive a share of the Settlement. *Id.* ¶ 1.25. Any checks that remain uncashed after the one hundred and twenty (120) day period shall be void and the associated monies shall revert to Respondent, save the PAGA Checks, which the Settlement Administrator shall disburse to the California Unclaimed Property Fund. *Id.* ¶ 4.8.

Eligible Employees who do not cash a Settlement Check are not Participating Collective Members (unless otherwise agreed to in writing by the Parties or approved by the Arbitrator) and do not release their claims against the Releasees, as described in Section 6 of the Settlement Agreement, but they do waive their right to receive a payment associated with the Settlement. *Id.*

C. Release

Participating Collective Members will release Respondent and all Releasees from the Released Claims as defined in section 6.1 of the Settlement Agreement, which generally include any and all wage and hour and wage payment claims, including federal and state and local statutory and common law claims alleged in the arbitration demand or that could have been alleged based on the facts alleged, and that arose during their employment as an Eligible Employee during the Relevant Period. Settlement Agreement. ¶ 6.1.

If the Arbitrator approves and Claimants accept their Service Awards, Claimants will provide a general release as described in section 6.2 of the Settlement Agreement, save any claims or rights that cannot be released as a matter of law. *Id.* ¶ 6.2.

D. Allocation Formula

Participating Collective Members will receive a settlement payment from the Net Fund pursuant to an allocation formula based on the number of weeks they worked during the Collective Period. *Id.* ¶ 5.4(i). For Each Eligible Workweek that is not also a Highly Compensated Workweek or Incentive Workweek, Putative Collective Members will receive two and one-half (2.5) points for each Eligible Workweek in California, one and one-half (1.5) points for each Eligible Workweek in Massachusetts, and one (1) point for each Eligible Workweek in any other state. *Id.* ¶ 5.4(i)(b). For each Highly Compensated Workweek that is not also an Incentive Workweek, Putative Collective Members will receive three-quarters of a point (0.75) for each

Eligible Workweek in any other state (except California employees, who are not subject to Highly Compensated Workweeks). *Id.* ¶ 5.4(i)(c). For each Incentive Workweek, Putative Collective Members will receive one-tenth of a point (0.1) for each Eligible Workweek in any state. *Id.* ¶ 5.4(i)(d). Each Putative Collective Member's proportionate share will be calculated by (1) adding all points for all Putative Collective Members together to obtain the "Denominator"; (2) dividing the number of points for each Putative Collective Member by the Denominator to obtain their "Portion of the Net Fund"; and (3) multiplying each Putative Collective Member's Portion of the Net Fund by the Net Fund. *Id.* ¶ 5.4(i)(e)(1)-(3). The Settlement Administrator will mail checks to each Putative Collective Member subject to applicable employee payroll taxes and withholdings.⁹ *Id.* ¶ 5.4(iv).

Participating PAGA Members will receive a settlement payment from the PAGA Fund pursuant to an allocation formula based on the number of weeks they worked during the PAGA Period. *Id.* ¶ 5.4(ii). PAGA Members will receive one (1) point for each Eligible PAGA Workweek. *Id.* ¶ 5.4(ii)(a). Each PAGA Member's proportionate share will be calculated by (1) adding all points for all PAGA Members together to obtain the "Denominator"; (2) dividing the number of points for each PAGA Member by the Denominator to obtain their "Portion of the PAGA Payment"; and (3) multiplying each PAGA Member's Portion of the PAGA Payment by the PAGA Payment. *Id.* ¶ 5.4(ii)(b)(1)-(3).

Putative Collective Members and PAGA Members will have the later of (i) the one hundred and twenty (120) calendar day-period beginning immediately after the Settlement Administrator first sends the Notice and Settlement Checks to the Putative Collective Members; or (ii) one

⁹ Respondent will pay the employer's payroll taxes separately from the Gross Fund. Settlement Agreement ¶¶ 1.14, 5.1(i).

hundred and twenty (120) calendar days from the Settlement Administrator's re-mailing of a Settlement Check that was returned as undeliverable by U.S. Mail, provided that reissuances will occur on a rolling basis and no later than the 120th day of the original period, to cash their settlement checks. *Id.* ¶ 5.4(v). If an Eligible Employee disputes the amount in their Settlement Check, they must do so within the one hundred and twenty (120) day period. *Id.* ¶ 5.4(iii). If successful, a revised Settlement Check will be issued no later than seven (7) days after the close of the original period. *Id.*

E. Service Awards

The Settlement Agreement provides that, with Arbitrator approval, Claimants will receive a Service Award of up to Twelve Thousand Five Hundred Dollars (\$12,500) in recognition of their assistance rendered in obtaining the benefits of the settlement for the Putative Collective Members as well as the risks they took to do so. *Id.* ¶ 5.3(i); Stewart Aff. ¶ 26. Claimants assisted counsel in the investigation of the claims, helped prepare for the mediation by discussing mediation strategy and settlement terms, submitted detailed declarations in advance of mediation, remained on-call and available during the mediation session, answered questions from counsel during the mediation session, and reviewed, approved, and signed the settlement agreement. Stewart Aff. ¶ 20. Respondent does not oppose this payment. Settlement Agreement ¶ 5.3(i).

F. Attorneys' Fees and Costs

Under the Settlement Agreement and as set forth herein, Claimants' Counsel requests Arbitrator approval of an award of up to \$1,833,333.33 (one-third of the \$5,500,000 Gross Fund) as attorneys' fees, plus up to an additional \$7,500 to reimburse Claimants' Counsel for actual, reasonable out of pocket costs and litigation expenses. Settlement Agreement ¶ 5.2(i). Respondent does not oppose this payment. *Id.*

IV. ARGUMENT

A. Arbitrator Approval Of The FLSA Settlement Is Appropriate.

Section 216(b) of the FLSA permits employees to bring private actions to recover wages on their behalf and on behalf of “other employees similarly situated.” 29 U.S.C. § 216(b). Proposed settlements under the FLSA require approval. *See Lynn’s Food Stores, Inc. v. U.S.*, 679 F.2d 1350, 1352-54 (11th Cir. 1982) (citing *Brooklyn Savings Bank v. O’Neil*, 324 U.S. 697 (1945)). Pursuant to a private enforcement action under Section 216(b) of the Act, a district court or arbitrator may approve a settlement reached as a result of contested litigation to resolve a bona fide dispute between the parties over FLSA coverage. *See Lynn’s Food Stores, Inc.*, 679 F.2d at 1352-54. In considering a settlement, the decision maker may enter a stipulated judgment after it determines that the settlement is “a fair and reasonable resolution of a bona fide dispute over FLSA provisions.” *Drexler v. TEL NEXX, Inc.*, No. 13 Civ. 13009, 2019 U.S. Dist. LEXIS 141642, at *3 (D. Mass. Aug. 21, 2019) (quoting *Lynn’s Food Stores, Inc.*, 679 F.2d at 1355).

B. One-Step Approval Is Standard for FLSA Settlements.

A one-step approval process is the norm in FLSA settlements that do not include Rule 23 classes. This is because collective actions under Section 216(b) of the FLSA do not implicate the same due process concerns as Rule 23 class actions. Collective actions under Section 216(b) require workers to affirmatively opt-in to the litigation, unlike in a Federal Rule of Civil Procedure 23 class action. *See, e.g., Lauture v. A.C. Moore Arts & Crafts, Inc.*, No. 17 Civ. 10219, 2017 U.S. Dist. LEXIS 87928, at *2-3 (D. Mass. June 8, 2017) (endorsing one-step process for approval of FLSA collective action settlement and collecting cases); *Koszyk v. Country Fin.*, No. 16 Civ. 3571, 2016 U.S. Dist. LEXIS 126893, at *2 (N.D. Ill. Sept. 16, 2016) (“A one-step settlement approval process is appropriate.”).

Accordingly, “[u]nlike Rule 23, section 216(b) does not require a district court to notify potential claimants about a proposed settlement.” *Haskett v. Uber Techs., Inc.*, 780 F. App’x 25, 27 (4th Cir. 2019) (per curiam); *see also Scott v. Chipotle*, 954 F.3d 502, 519 (2d Cir. 2020) (“Rule 23’s requirements . . . are intended to protect the due process rights of absent class members, which is not a consideration in a nonrepresentative action such as a collective action under § 216(b).”). There is no need to require that the settlement provide for opt-outs or objections where individuals are not part of the settlement unless they decide to participate in it. *See Johnson v. VCG Holding Corp.*, 802 F. Supp. 2d 227, 233 (D. Me. 2011) (“The central difference between collective certification under the FLSA and under Rule 23 is the FLSA’s requirement that those interested in joining the putative class opt in, while Rule 23 certification requires the uninterested to opt out.”) (citing *Cameron-Grant v. Maxim Healthcare Servs., Inc.*, 347 F.3d 1240, 1249 (11th Cir. 2003)).

C. The Settlement Should Be Approved.

1. The Settlement Resolves a Bona Fide Dispute.

Settlements reached as a result of contested litigation to resolve bona fide disputes are appropriate and should be approved. *See, e.g., Lynn’s Food Stores, Inc.*, 679 F.2d at 1355; *Lauture*, 2017 U.S. Dist. LEXIS 87928, at *2; *Scovil v. FedEx Ground Package Sys., Inc.*, No. 10 Civ. 515, 2014 U.S. Dist. LEXIS 33361, at *5 (D. Me. Mar. 14, 2014). If a proposed settlement reflects a reasonable compromise over contested issues, a decisionmaker should approve the settlement. *See Lynn’s Food Stores, Inc.*, 679 F.2d at 1354 (“If a settlement in an employee FLSA suit does reflect a reasonable compromise over issues . . . we allow the district court to approve the settlement. . . .”); *Belcher v. CHA Cos.*, No. 10 Civ. 420, 2011 U.S. Dist. LEXIS 39063, at *2 (E.D. Va. Mar. 16, 2011) (“[W]hen a proposed settlement reflects a reasonable compromise over bona fide disputes, court approval promotes the policy of encouraging settlement while protecting an

employee’s rights under FLSA.”); *see also* William B. Rubenstein, *Newberg on Class Actions* § 13.44 (5th Ed.) (“The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding lengthy trials and appeals.”).

To determine if the settlement resolves a bona fide dispute, courts may examine the pleadings as well as the representations made in the Settlement Agreement. *See Lauture*, 2017 U.S. Dist. LEXIS 87928, at *2 (bona fide dispute where “uncertain legal and factual issues” remained).

Here, the parties dispute whether Forrester denied Eligible Employees proper compensation by misclassifying them as overtime-exempt employees and failing to pay them an overtime premium for all hours worked over forty per week. Claimants allege that this was the case for them and the Putative Collective Members. *See* Statement of Claim ¶¶ 32-34. To prove their case, Claimants would have to prove that their primary duties were non-exempt. *See* 29 U.S.C. § 213(a)(1); 29 C.F.R. § 541.200; *Drexler*, 2019 U.S. Dist. LEXIS 141642, at *4 (“The pleadings and record before the Court demonstrate that a bona fide dispute exists concerning Defendants’ classification of Plaintiff as exempt from overtime wages pursuant to the administrative exemption. . . . Plaintiff represents that he spent as much as eighty percent of his time on developing or revising technical manuals and argues that he was not properly classified as an administrative employee as a result.”). Forrester disputes all of Claimants’ claims, denies all of the allegations made by Claimants, and denies that it is liable or owes damages to anyone with respect to the alleged facts or causes of action asserted. Settlement Agreement § 9.1; *Stewart Aff.* ¶ 23; *see also Compton v. N. Cent. Va. Rests., Inc.*, No. 20 Civ. 73, 2022 U.S. Dist. LEXIS 159070, at *12 (W.D. Va. Sept. 2, 2022) (bona fide dispute existed where, “[m]ost critically, Defendant has refused to concede that its . . . practices violate the FLSA”); *Woolfson v. Caregroup, Inc.*, No.

09 Civ. 11464, 2010 U.S. Dist. LEXIS 145990, at *5 (D. Mass. Sept. 13, 2010) (approving FLSA settlement where it was “the result of arms-length negotiations between experienced counsel representing the interests of the plaintiffs and defendant, after thorough factual and legal investigation”).

Forrester also would dispute damages, particularly the number of hours Claimants and the Putative Collective Members worked. Stewart Aff. ¶ 22. Claimants would have tried to prove that Eligible Employees regularly worked around 7.5 overtime hours per week on average, whereas Forrester would have argued that they worked little overtime or even none at all. *Id.* It is not a foregone conclusion that Claimants could prove their case. Claimants’ hours fluctuated from week to week and Claimants had different estimations for the average number of overtime hours that they worked each week. *Id.* There is therefore a reasonable dispute over both liability and damages. *See Lopez v. NTI, LLC*, 748 F. Supp. 2d 471, 478 (D. Md. 2010) (“[A]n FLSA settlement should be approved if the settlement ‘does reflect a reasonable compromise over issues, such as FLSA coverage or computation of back wages, that are actually in dispute.’” (quoting *Lynn’s Food Stores, Inc.*, 679 F.2d at 1354)).

2. The Settlement is Fair and Reasonable Considering the Totality of the Circumstances.

To determine whether the settlement is fair and reasonable, courts in the First Circuit consider the “totality of the circumstances,” which may include factors like:

(1) the plaintiff’s range of possible recovery; (2) the extent to which the settlement will enable the parties to avoid anticipated burdens and expenses in establishing their respective claims and defenses; (3) the seriousness of the litigation risks faced by the parties; (4) whether the settlement agreement is the product of arm’s-length bargaining between experienced counsel; and (5) the possibility of fraud or collusion.

Drexler, 2019 U.S. Dist. LEXIS 141642, at *5. This settlement easily meets all of these

requirements.

Regarding the first factor, the settlement provides excellent value to Claimants and Putative Collective Members given the range of possible recovery. The settlement amount of \$5,500,000.00 is substantial. After deductions for attorneys' fees and costs, service awards, the estimated settlement administration and arbitration costs, and the PAGA Fund, the average recovery from the Net Fund is approximately \$6,300 per person. Stewart Aff. ¶ 25. By Claimants' counsel's estimate, the gross recovery represents approximately 19.24% of maximum damages (including liquidated damages, treble damages, penalties, and statutory damages), assuming an average of 7.5 overtime hours per week for 90% of the workweeks in the liability period and using the fluctuating workweek method of calculating damages. This is a reasonable recovery based on the risks of proceeding to litigation, discussed below. *See Bradford v. Naples Causeway Dev., LLC*, No. 21 Civ. 00015, 2022 U.S. Dist. LEXIS 140157, at *5-6 (D. Me. Aug. 8, 2022) (approving settlement amount of 20.8% of total recovery); *Li v. HLY Chinese Cuisine Inc.*, 596 F. Supp. 3d 439, 448 (E.D.N.Y. 2022) (approving a settlement giving the plaintiff 13.8% of the total alleged damages); *Zorn-Hill v. A2B Taxi LLC*, No. 19 Civ. 1058, 2020 U.S. Dist. LEXIS 170608, at *9 (S.D.N.Y. Sept. 17, 2020) (approving a settlement amount representing 12.5% of the plaintiff's total recovery).

Furthermore, the Settlement provides that an additional \$50,000.00 of the Total Settlement Amount will be allocated to the settlement of the PAGA Group's claims, which represents approximately 0.9% of the Settlement. Stewart Aff. ¶ 27. This is particularly reasonable here, where PAGA Members make up a small portion of the Putative Collective Members.¹⁰ Courts

¹⁰ Approximately 66 individuals of the 560 total Putative Collective Members comprise the PAGA Group. Stewart Aff. ¶ 26.

that look at the proportion of the PAGA settlement to the overall settlement recovery have approved proportionate recoveries in this range. *See, e.g., Van Kempen v. Matheson Tri-Gas, Inc.*, No. 15 Civ. 660, 2017 U.S. Dist. LEXIS 137182, at *29-30 (N.D. Cal. Aug. 25, 2017) (1.4 percent); *Chu v. Wells Fargo Invs., LLC*, Nos. 05 Civ. 4526, 06 Civ. 7924, 2011 U.S. Dist. LEXIS 15821, at *4 (N.D. Cal. Feb. 16, 2011) (less than 1 percent).

Regarding the second factor, the settlement permits both parties to avoid anticipated burdens and expenses of litigation. Given the fact-intensive nature of Forrester's anticipated exemption defenses, this case would likely involve lengthy discovery, extensive motion practice, and trial work. For example, there is a risk that Claimants may not succeed on a motion for conditional certification or in maintaining a collective through trial. Respondent likely would argue that the differences among various job titles and other individualized questions precluded certification or that these differences would warrant decertification of a collective. Although Claimants disagree, Respondent could prevail on such arguments. *See, e.g., DeWalt v. Greencroft Goshen, Inc.*, 902 F. Supp. 2d 1127, 1134 (N.D. Ind. 2012) ("[D]etermining exactly where the line is between administrative and pure sales jobs is not clear for every position and must be determined on a case-by-case basis."); *O'Donnell v. Robert Half Int'l, Inc.*, 534 F. Supp. 2d 173, 181 (D. Mass. 2008) (finding plaintiffs failed to "identify a common policy" to which managers were subject and denying certification of staffing manager collective).

Regarding the third factor, a trial on the merits would involve significant risk for Claimants as to both liability and damages. Claimants would have to defeat Respondent's argument that Eligible Employees were subject to the administrative exemption. Some courts have found that workers in arguably similar positions were properly classified as exempt. *See, e.g., Burton v. Appriss, Inc.*, 682 F. App'x 423, 428 (6th Cir. 2017) (affirming summary judgment and finding

account manager exempt where sales was only part of her duty, but primary one was to “manage existing client relations”); *Hines v. State Room, Inc.*, 665 F.3d 235, 247 (1st Cir. 2011) (affirming summary judgment to employer and finding that sales managers were properly classified as exempt workers); *Verkuilen v. MediaBank, LLC*, 646 F.3d 979, 982 (7th Cir. 2011) (account manager exempt where she had to “learn about the customer’s business” and help the company determine how its software product could “be adapted to the customer’s needs”); *Cash v. Cycle Craft Co.*, 508 F.3d 680, 686 (1st Cir. 2007) (affirming summary judgment to employer and finding that customer service manager was exempt). Although Claimants believe these cases are distinguishable, and that they could ultimately establish Respondent’s liability, this would require significant factual development. In addition, as noted above, even if Claimants prevailed on the exemption issue, Respondent would almost certainly vigorously dispute the amount of damages, especially as to those individuals who it claims also meet the highly compensated exemption.

Regarding the fourth and fifth factors, the settlement was the result of extensive pre-suit investigation, informal discovery, and substantial arm’s-length negotiations, and was reached without fraud or collusion. Stewart Aff. ¶ 19. After sending a letter to Respondent informing it of Claimants’ claims in August 2022, Claimants’ Counsel spent around seven months working with Respondent to obtain data and information related to the claims, analyze the data, and prepare for mediation, including drafting a detailed mediation statement. *Id.* ¶¶ 16-18. Then, on April 11, 2023, the Parties attended a full-day mediation session with Anne Marie Estevez, an experienced wage and hour mediator. *Id.* ¶ 19. During that meeting, the Parties were unable to reach a resolution of the claims but agreed to continue settlement discussions. *Id.* On April 20, 2023, with the continued assistance of Ms. Estevez, the Parties agreed to a resolution of the matter and a settlement in principle according to a mediator’s proposal made by Ms. Estevez on April 19, 2023.

Id. Accordingly, considering the totality of the circumstances, the settlement was the result of substantial arm's-length negotiations and contains no fraud or collusion, as should be evident from the nature of the dispute, the parties' mediation efforts, and value of the settlement to the Claimants and Putative Collective Members.

D. The Arbitrator Should Approve the Proposed Notice.

The Arbitrator should also approve the proposed Notice exhibits, which provide initial notice of the settlement by mail, e-mail, and text message, and three rounds of reminder notices thirty (30), sixty (60), and ninety (90) days after the initial distribution. *See* Settlement Agreement §§ 4.6, 4.7 & Exs. A, B. The proposed Notices sufficiently inform Putative Collective Members of the terms of the settlement, including how Putative Collective Members may participate, the settlement payment to which they are entitled, the scope of the release, and the award for attorneys' fees and costs. *See, e.g., Lauture*, 2017 U.S. Dist. LEXIS 87928, at *3-4 (approving class notice that, *inter alia*, described allocation formula, steps to participate, consequences of non-participation, and scope of release); *Lapan v. Dick's Sporting Goods, Inc.*, No. 13 Civ. 11390, 2015 U.S. Dist. LEXIS 169508, at *7-9 (D. Mass. Dec. 11, 2015) (approving class notice that, *inter alia*, described settlement terms and fee allocation); *Michaud v. Monro Muffler Brake, Inc.*, No. 12 Civ. 353, 2015 U.S. Dist. LEXIS 32526, at *33 (D. Me. Mar. 17, 2015) (approving "notices [that]. . . communicate accurate information about the suit in order to enable potential collective action members to make informed decisions about whether to participate") (internal quotation omitted); *see also Prena v. BMO Fin. Corp.*, No. 15 Civ. 9175, 2015 U.S. Dist. LEXIS 65474, at *3 (N.D. Ill. May 15, 2015) (approving one-step settlement notice when it was "sufficiently in plain English to explain the important points: the terms of the settlement, the allocation formula, the amount of the entitlement, how to opt-in, and that cashing the check is equivalent to releasing

the claim”); *Bozak v. FedEx Ground Package Sys., Inc.*, No. 11 Civ. 738, 2014 U.S. Dist. LEXIS 106042, at *9 (D. Conn. July 31, 2014) (approving FLSA notice providing notice of settlement terms and options facing collective).

E. Claimants’ Service Awards Should Be Approved as Fair and Reasonable.

Claimants request approval of a Service Award of \$12,500 each. This request is reasonable given the significant contributions they made to advance the prosecution and resolution of the lawsuit. In exchange for their Service Awards, Claimants will each provide a general release as described in the Settlement Agreement. See Settlement Agreement § 6.2.

Service awards are appropriate because named plaintiffs in class and collective action lawsuits “play a crucial role in bringing justice to those who may otherwise have no access to judicial enforcement of their rights.” *Lauture*, 2017 U.S. Dist. LEXIS 87928, at *9; *Scovil*, 2014 U.S. Dist. LEXIS 33361, at *23 (“Because a named plaintiff is an essential ingredient of any class action, an incentive award can be appropriate to encourage or induce an individual to participate in the suit.”). This is especially true in employment litigation. See *Bozak*, 2014 U.S. Dist. LEXIS 106042, at *11-12 (“[I]n employment litigation, the plaintiff is often a former or current employee of the defendant, and thus, by lending his name to the litigation, he has, for the benefit of the class as a whole, undertaken the risk of adverse actions by the employer or co-workers.” (quoting *Velez v. Majik Cleaning Serv., Inc.*, No. 03 Civ. 8698, 2007 U.S. Dist. LEXIS 46223, at *23 (S.D.N.Y. June 22, 2007))); see generally Nantiya Ruan, *Bringing Sense to Incentives: An Examination of Incentive Payments to Named Plaintiffs in Employment Discrimination Class Actions*, 10 Emp. Rts. & Emp. Pol’y J. 395 (2006).

Service awards serve the important purpose of compensating plaintiffs and claimants for the time and effort expended in assisting the prosecution of the dispute, the risks incurred by

becoming and continuing as a claimant, and any other burdens sustained by claimants. *See, e.g., In re Celexa & Lexapro Mktg. & Sales Practices Litig.*, No. MDL 09-2067, 2014 U.S. Dist. LEXIS 125041, at *25 (D. Mass. Sept. 8, 2014) (“The purpose of [] incentive awards is to reimburse the plaintiffs for their effort in pursuing the claims on behalf of the entire class.”) (citation omitted); *Bussie v. Allamerica Fin. Corp.*, No. 97 Civ. 40204, 1999 U.S. Dist. LEXIS 7793, at *11-12 (D. Mass. May 19, 1999) (noting courts consider, *inter alia*, efforts of the named plaintiff in granting awards). Service awards are commonly awarded to those who serve the interests of a class and/or collective.

“[I]ncentive awards are an efficient and productive way to encourage members of a class to become class representatives, and to reward the efforts they make on behalf of the class.” *Lucken Family Ltd. P’ship, LLP v. Ultra Res., Inc.*, No. 09 Civ. 1543, 2010 U.S. Dist. LEXIS 144366, at *16 (D. Colo. Dec. 22, 2010) (citations omitted). “[I]t is appropriate to reward wage and hour plaintiffs who obtain tangible benefits for their fellow workers.” *Mullins v. S. Ohio Pizza, Inc.*, 17 Civ. 426, 2019 U.S. Dist. LEXIS 11019, at *17 (S.D. Ohio Jan. 17, 2019). When reviewing incentive awards, courts consider “(1) the steps these individuals have taken to protect the interests of the class, (2) the degree to which the class has benefited from those actions, (3) the amount of time and effort they have expended in pursuing the litigation, and (4) any negative effects that they have risked.” *Lauture*, 2017 U.S. Dist. LEXIS 87928, at *9; *see also Scovil*, 2014 U.S. Dist. LEXIS 33361, at *22. Each of these considerations weigh in favor of the requested Service Awards here.

First, Claimants spent a significant amount of time and effort, and took significant risk to protect the interests of the Putative Collective Members, and those actions resulted in a substantial benefit to the Putative Collective Members. They participated in an extensive pre-suit

investigation, reviewed and approved correspondence to Forrester, provided important factual information prior to mediation (including documents supporting their claims), conferred with counsel regarding settlement strategy and settlement numbers, provided detailed declaration testimony that aided negotiations, provided Counsel with settlement authorization, remained on-call to answer questions and approve settlement offers during the mediation session, answered counsel's questions during the mediation session and after while the parties continued to negotiate, reviewed and commented on the terms of the Settlement, and reviewed and executed a consent-to-join form. Stewart Aff. ¶ 20. Courts have approved service awards for similar activities. See, e.g., *Lauture*, 2017 U.S. Dist. LEXIS 87928, at *9 (approving \$15,000 award for plaintiffs that participated in a pre-suit investigation, provided information and documents crucial to establishing the plaintiffs' claims, and assisting plaintiffs' counsel in analyzing documents and preparing for mediation); *Miller v. Fresh Inc.*, Suffolk Civ. A. No. 14-889, 2015 Mass. Super. LEXIS 786, at *2 (Mass. Super. July 15, 2015) (granting service award considering "time and effort spent by Plaintiff as the Class Representative"); *Mazard v. BTLS, Inc.*, Suffolk Civ. A No. 14-1726, 2014 Mass. Super. LEXIS 2314, at *3 (Mass. Super. Oct. 3, 2014) (granting service award considering "time and effort expended by Plaintiff in litigating this action as the class representative"); *Sewell v. Bovis Lend Lease, Inc.*, No. 09 Civ. 6548, 2012 U.S. Dist. LEXIS 53356, at *40-43 (S.D.N.Y. Apr. 16, 2012) (service awards of \$15,000 and \$10,000 where plaintiffs provided counsel with relevant documents, assisted counsel in preparing for mediation, participated in litigation strategy, and reviewed and commented on the terms of the settlement); see also *Parker v. Jekyll & Hyde Ent. Holdings, L.L.C.*, No. 08 Civ. 7670, 2010 U.S. Dist. LEXIS 12762, at *5 (S.D.N.Y. Feb. 9, 2010) (awards of up to \$15,000 are "consistent with the range of incentive awards that have been approved in similar wage and hour cases") (citations omitted).

Second, Putative Collective Members have benefited from the Claimants' efforts. Claimants provided Claimants' Counsel with important information about their claims, which informed Claimants' Counsel's investigation, mediation, and settlement of the case. As a result, Claimants have achieved a significant \$5.5 million settlement on behalf of approximate 560 current and former Forrester employees. As noted above, Putative Collective Members are likely to receive a significant percentage of the total damages they stood to recover at trial, even after fees and costs are subtracted from the Total Settlement Amount. *Stewart Aff.* ¶ 25.

Third, Claimants expended significant time and effort in pursuing their claims. They dedicated many hours to this dispute, including by submitting a detailed declarations in advance of mediation, sharing documents, and having lengthy discussions related to job duties to help Claimants' Counsel determine the strength of their claims in light of Forrester's exemption defenses. *Id.* ¶ 20.

Finally, the Claimants undertook significant reputational risk with respect to their current and future employers by putting their names on a wage-and-hour case like this one. Claimants face the risk that current or prospective employers will learn of their involvement in the case, which could hurt their future job or business opportunities. *See Bozak*, 2014 U.S. Dist. LEXIS 106042, at *13-14.

The Service Awards are within the range of incentive awards approved by federal courts in the First Circuit, Massachusetts state courts, and nationwide. *See, e.g., Lauture*, 2017 U.S. Dist. LEXIS 87928, at *5 (approving \$15,000 service awards to named plaintiffs in misclassification settlement); *Beasley v. Custom Commc'ns, Inc.*, No. 15 Civ. 583, 2017 U.S. Dist. LEXIS 219975, at *9 (E.D.N.C. Oct. 24, 2017) (approving \$15,000 awards for two named plaintiffs in FLSA misclassification case); *DeLeon v. Wells Fargo Bank, N.A.*, No. 12 Civ. 4494, 2015 U.S. Dist.

LEXIS 65261, at *15 (S.D.N.Y. May 7, 2015) (approving \$15,000 service to plaintiff for “participating in a lawsuit against her former employer and the efforts she made on behalf of the class, including producing documents, continuously speaking with Class Counsel, and actively participating in the mediation”); *Lucken Family Ltd. P’ship*, 2010 U.S. Dist. LEXIS 144366, at *18 (approving \$10,000 incentive award); *Shea v. Weston Golf Club*, Middlesex Civ. A. No. 02-1826 (Mass. Super. 2009) (approving \$25,000 incentive payments for lead plaintiffs); *Fernandez v. Four Seasons Hotel*, Suffolk Civ. A. No. 02-4689 (Mass. Super. 2008) (same). Accordingly, the requested Service Awards should be approved.

F. Claimants’ Counsel’s Request for Attorneys’ Fees and Costs is Reasonable.

The Arbitrator should award attorneys’ fees as a percentage of the total fund made available to the Putative Collective Members. “[F]ee awards to counsel further the remedial goals of the FLSA by enabling plaintiffs to obtain the assistance of competent counsel.” *Compton*, 2022 U.S. Dist. LEXIS 159070, at *12-13. When counsel’s efforts result in the creation of a common fund, counsel is “entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995). “[W]here an attorney succeeds in creating a common fund from which members of a class are compensated for a common injury inflicted on the class. . . . the attorneys whose efforts created the fund are entitled to a reasonable fee—set by the court—to be taken from the fund.” *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). “The rationale for the doctrine is an equitable one: it prevents unjust enrichment of those benefitting from a lawsuit without contributing to its cost.” *Id.*; *accord In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 585 (S.D.N.Y. 2008) (“Fees and expenses are paid from the common fund so that all class members contribute equally towards the costs associated

with litigation pursued on their behalf.”).

Although there are two ways to compensate attorneys for successful prosecution of statutory claims — the lodestar method and the percentage-of-the-fund method — courts generally favor awarding fees in common fund cases based upon a percentage of the fund. *See In re Thirteen Appeals*, 56 F.3d at 307 (noting that “use of the percentage of the fund method in common fund cases is the prevailing praxis”); *Scovil*, 2014 U.S. Dist. LEXIS 33361, at *20-21 (selecting percentage-of-funds approach and noting that the First Circuit permits this approach). Awarding a percentage of the common fund is widely recognized as advantageous not only because of its simplicity, but also because it properly aligns the interests of counsel and the collective. *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (percentage-of-the-funds method “directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation” (internal citation and quotation marks omitted)).

Claimants’ Counsel prosecuted the claims of the Claimants and Putative Collective Members based on an agreement that, if successful, they would seek a fee from any recovery as a percentage of the fund. *Stewart Aff.* ¶ 31. This approach promotes early resolution and removes the incentive for plaintiffs’ lawyers to engage in wasteful litigation in order to increase their billable hours. *See Wal-Mart Stores, Inc.*, 396 F.3d at 121. Where attorneys’ fees are limited to a percentage of the total, courts can expect attorneys to make cost-efficient decisions. *See Brian T. Fitzpatrick, Do Class Action Lawyers Make Too Little?*, 158 U. Pa. L. Rev. 2043, 2051-52 (2010) (“To better align the interests of class counsel and the class, judges began compensating class counsel by awarding them a percentage of the class’s recovery. This way, the more the class recovers, the more class counsel are paid, and class counsel have no incentive to drag cases on

unnecessarily.”).

The percentage-of-the-fund method promotes early resolution of cases and removes the incentive for plaintiffs’ lawyers to engage in wasteful litigation in order to increase their billable hours. See *In re Thirteen Appeals*, 56 F.3d at 307 (“using the [percentage of the fund] method in a common fund case enhances efficiency”); see also *Norman v. Hous. Auth. of the City of Montgomery*, 836 F.2d 1292, 1300 (11th Cir. 1988) (“From the beginning and throughout a case, expertise in negotiations and tactics often advances a client’s cause more quickly and effectively than the sustained and methodical trench warfare of the classical litigation model.”). Where attorneys’ fees are limited to a percentage of the total, there is a strong disincentive for attorneys “to be inefficient or to drag [their] feet in pursuing settlement options.” *In re Thirteen Appeals*, 56 F.3d at 307.

Moreover, the percentage method preserves judicial resources because it permits courts to focus on the benefit conferred upon a class or collective rather than the cumbersome task of reviewing complicated and lengthy billing documents. *Id.* (“[T]he [percentage of the fund] method permits the judge to focus on a showing that the fund conferring a benefit on the class resulted from the lawyers’ efforts.” (internal quotation omitted)).

The attorneys’ fee request of one-third of the Gross Settlement Amount is reasonable. The requested fee is the customary percentage of the fund awarded to successful counsel in similar FLSA cases. See e.g., *Graham v. Famous Dave’s of Am., Inc.*, No. 19 Civ. 0486, 2022 U.S. Dist. LEXIS 224376, at *29 (D. Md. Dec. 12, 2022) (collecting cases and noting that one-third of the fund is “in line with fees awarded in other FLSA cases”); *Compton*, 2022 U.S. Dist. LEXIS 159070, at *12 (“An attorneys’ fee award of 1/3 of the total settlement fund plus litigation expenses is generally appropriate in a wage-and-hour case.”); see also *Lapan v. Dick’s Sporting Goods*, No.

13 Civ. 11390 (D. Mass. April 19, 2016) (approving one-third of \$3.3 million settlement plus costs and expenses in misclassification case) (settlement approval motion at ECF No. 215); *Anderson v. HomeDelivery*, No. 11 Civ. 10313 (D. Mass. Dec. 17, 2014) (approving one-third of \$900,000 settlement fund in misclassification case) (final settlement approval motion at ECF No. 106); *Scovil*, 2014 U.S. Dist. LEXIS 33361, at *21 (collecting cases and noting that one-third is the market rate in Massachusetts); *Barbosa v. Publishers Circulation Fulfillment, Inc.*, No. 08 Civ. 10873 (D. Mass Nov. 25, 2009) (Dein, M.J.) (approving one-third of \$1.4 million settlement fund in misclassification case) (settlement approval motion at ECF No. 58).

The request for reimbursement of costs of \$5,431.67 is reasonable and will include Claimants' share of the mediation costs and other expenses incurred to successfully resolve this case. Stewart Aff. ¶ 32.

V. CONCLUSION

For the foregoing reasons, Claimants respectfully request the Arbitrator (1) approve the parties' \$5,500,000 settlement as fair, adequate, and reasonable, and adequate; (2) approve the proposed Notice and Settlement Packets and directing their distribution; (3) approve the requested Service Awards of \$12,500 for Claimants; (4) approve Claimants' request for one-third of the Total Settlement Amount, in the amount of \$1,833,333.33, and \$5,431.67 for actual reasonable out-of-pocket costs; (5) appoint Rust Consulting, Inc. as the Settlement Administrator for this case and approve the Settlement Administrator's costs of \$20,500; (6) enjoin Participating Collective Members from proceeding against Releasees for the Released Claims; (7) incorporate by reference the Settlement Agreement and Release; (8) enjoin the Participating Collective Members from proceeding against Releasees for the Released Claims; (9) dismiss the arbitration with prejudice; and (10) retain jurisdiction over this action for the purposes of enforcing the settlement.

Dated: November 16, 2023
New York, New York

Respectfully submitted,

By: /s/ Melissa L. Stewart

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