

the Putative Collective Members, as defined in the Settlement, may receive a portion of the settlement fund in accordance with the Settlement's terms in exchange for their release of certain wage and overtime wage claims and the dismissal of this case with prejudice. Any Putative Collective Member who does not participate by cashing their settlement check will not release any claims and will not be bound by the Settlement. Under the Settlement, each Putative Collective Member will receive a notice specifying his or her share of the settlement fund and explaining that, by cashing their check, they will be deemed to have provided federal and state law releases of wage claims as defined in the Settlement.

Named Plaintiff also seeks approval of the settlement of his California Labor Code Private Attorneys General Act of 2004 ("PAGA") claims concerning himself and the aggrieved non-exempt surveillance investigators who worked for Defendant in California during the time period of August 14, 2022 to the date of approval of the Settlement (the "PAGA Settlement Members"). Pursuant to the Settlement, Plaintiff and the PAGA Settlement Members will receive checks representing their share of the amount the Parties agreed to pay in connection with the settlement and release of claims for penalties under PAGA. They will be deemed to have released the PAGA Released Claims as defined in the Settlement.

Named Plaintiff hereby moves the Court for an Order approving the terms reflected in the Settlement, dismissing the case with prejudice, and retaining jurisdiction to administer and enforce the terms of the Settlement until the conclusion of the settlement administration process.

The Parties agree that the terms of the Settlement represent a fair, adequate and reasonable compromise of the claims at issue in light of the existence of disputed issues of fact, disputed issues of law with respect to liability, uncertainty as to whether the Named Plaintiff would be deemed similarly situated to the Putative Collective Members, uncertainty as to whether the Named Plaintiff would obtain a judgment in favor of himself and the Putative Collective Members or PAGA Settlement Members,

and the risk of possible appeals. The Parties agree there are good faith disputes as to whether the Named Plaintiff and Putative Collective Members worked uncompensated regular or overtime hours; if so how many; and if so, whether Defendant had any reason to know that they worked any such additional hours. A copy of the Settlement Agreement and a proposed Approval Order are attached hereto as Exhibits A and B, respectively.

STATEMENT OF FACTS

Named Plaintiff and Putative Collective Members are individuals who worked for AUCI. In 2023, Plaintiff's Counsel investigated allegations that Putative Collective Members worked unpaid hours and did not receive meal and rest breaks, accurate itemized wage statements, timely pay during and on separation of employment, and reimbursement for business expenses. Following the investigation, Plaintiff's Counsel sent Defendant correspondence summarizing Named Plaintiff's potential claims and invited Defendant to engage in a dialogue regarding the possibility of an exchange of information and resolution of the potential claims.

Defendant denies the allegations made by Named Plaintiff and denies liability for all damages and other claims for relief asserted in this Action. Even though the Parties disputed their adversary's legal position and Defendant maintains that Named Plaintiff and Putative Collective Members received compensation for all time worked as well as proper meal and rest breaks, the Parties agreed to try to resolve these claims through a formal mediation. The Parties commenced a privileged, confidential exchange of information about the claims, including timekeeping and pay information for Putative Collective Members, and legal arguments regarding the issues at play in this case. Plaintiff's Counsel conducted in-depth research about the hours Putative Collective Members worked, the duties they performed and their claims that they were not paid all compensation owed, and the timekeeping and compensation practices applicable to them.

Defendant denied that it violated the FLSA and California state law, denied that Plaintiffs and the Putative Collective Members worked uncompensated hours or were denied proper breaks, accurate wage statements or reimbursement for business expenses, denied that Named Plaintiff would be able to conditionally certify a collective action, and contended that this would be a strong defense case for summary judgment.

The Parties mediated this matter with wage and hour class action mediator Lou Marlin, Esq. and agreed to terms of a settlement on January 30, 2024. The Parties then reached an agreement in principle on the terms of the settlement.

The Parties subsequently negotiated and drafted the comprehensive Settlement. The Settlement provides for a Claims Administrator to establish a Gross Fund, for the benefit of Named Plaintiff, all Putative Collective Members, and the PAGA Settlement Members as defined in the Settlement and to be distributed as follows:

- The Putative Collective Members who cash their settlement checks become “Qualified Collective Members.” Under the formula, each Putative Collective Member will receive an amount for each Eligible Pay Period worked during the Collective Period.
- To Named Plaintiff, a general release/enhancement payment in the amount of \$7,000, as consideration for his work performed on behalf of the Putative Collective Members and his general release in addition to the standard releases provided by Qualified Collective Members.
- To Plaintiff’s Counsel, one-third of the Gross Fund for attorneys’ fees, including those in connection with securing this Settlement and implementing this Settlement; plus reimbursement of their costs and litigation expenses.
- To the Claims Administrator, funds sufficient to cover settlement administration costs incurred in administering the Settlement including, but not limited to, providing notice to the Putative Collective Members, calculating and disbursing Settlement proceeds, calculating and remitting taxes, and establishing a Qualified Settlement Fund.
- \$50,000 of the Gross Fund will be allocated to the resolution of Plaintiff Ernst’s representative claims for penalties under PAGA. As required by PAGA, 75%, or \$37,500, of the PAGA Settlement Amount shall be paid to the California Labor and Workforce Development Agency (“LWDA”) and 25%, or \$12,500, of the PAGA Settlement Amount will be allocated to PAGA Settlement Members in separate and individual PAGA Settlement Payment Checks, the amount

of which will be determined pro-rata based on the individual's number of Eligible Pay Periods worked during the PAGA Period and shall be in addition to any allocation they receive if they choose to cash their check to receive the amounts discussed above.

Named Plaintiff, without opposition from Defendant, now seeks this Court's approval of this Settlement; approval of a general release/enhancement award to the Named Plaintiff; approval of Plaintiff's Counsel's request for attorneys' fees and costs; and authorization to send notice of the settlement to Putative Collective Members and PAGA Settlement Members.

MEMORANDUM OF LAW

Section 216(b) of the FLSA authorizes employees to bring an action on behalf of themselves and others similarly situated to recover unpaid compensation. For settlement purposes only, the Parties agree that this case should be certified as a collective action.

Settling parties routinely seek judicial approval of a proposed settlement to ensure its fairness and to give effect to the FLSA releases. *See Dunham v. Brevard Cnty. Sch. Bd.*, 401 So. 2d 888, 889 (Fla. 5th DCA 1981) (recognizing state court jurisdiction over FLSA claims); *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1353, 1355 (11th Cir. 1982) (acknowledging court's power to approve FLSA settlement). The law favors compromise and settlement of class and collective action lawsuits. *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984) (noting "strong judicial policy favoring settlement"). There is a strong presumption in favor of FLSA settlements of this kind because "the Court is generally not in as good a position as the parties to determine the reasonableness of an FLSA settlement" and "[i]f the parties are represented by competent counsel in an adversary context, the settlement they reach will, almost by definition, be reasonable." *Bonetti v. Embarq Management Co.*, 715 F. Supp. 2d 1222, 1227 (M.D. Fla. 2009).

Approval is warranted where a settlement resolves a *bona fide* dispute between the parties "with respect to coverage [and] amount due under the Act[.]" is fair and reasonable, and is the product of

serious, informed, arms-length negotiations. *Lynn's Food Stores*, 679 F.2d at 1353 n.8; *Bennett*, 737 F.2d at 987 n.9. Based upon Plaintiff's Counsel's extensive expertise and experience in wage and hour matters, the Settlement is fair, just, and adequate to settle the claims of Named Plaintiff and Putative Collective Members. In reaching the Settlement, Named Plaintiff took into account the uncertain outcome and risk of any litigation, including Defendant's defenses to the Named Plaintiff's claims.

The Settlement confers substantial benefits upon the Named Plaintiff and Putative Collective Members – a gross, per-person average of about \$2,260 each for unpaid wages and damages. Its terms represent a successful resolution of the claims given that a trier of fact might conclude that the Putative Collective Members are not entitled to any relief, or to relief in an amount less than the amount agreed to in the Settlement, or that a court might not allow the claims to proceed collectively. Defendant also agreed to include in the Settlement an amount for modest general release/enhancement award to the Named Plaintiff and an amount for Plaintiff's attorneys' fees and costs.

The PAGA settlement is also fair and reasonable as it covers potential penalties to the PAGA Settlement Members who would need to prove willful violations of the Labor Code to be entitled to such penalties. The settlement appropriately accounts for such risks and provides PAGA Settlement Members with additional settlement monies for the PAGA penalties. Where, as here, PAGA penalties are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *Reed v. Thousand Oaks Toyota*, No. 56-2012-00419282-CU-OE-VTA, 2013 WL 8118716 (Cal. Super. Ct. Apr. 8, 2013) (class action settlement approved for \$108,624, with \$1,500 allocated towards PAGA penalties); *Bolton v. U.S. Nursing Corp.*, No. 12-CV-4466-LB, 2013 WL 5700403 (N.D. Cal.

Oct. 18, 2013) (approving class action settlement for \$1,700,000, with \$15,000 allocated towards PAGA).

ATTORNEYS' FEES AND COSTS

After the Court has confirmed that the terms of the Settlement are fair to the Named Plaintiff and Putative Collective Members, it may separately review the Parties' agreement as to the provision of fees and costs to Plaintiff's Counsel. The Settlement reflects payment to Plaintiff's Counsel from the Gross Fund an amount for attorneys' fees equivalent to one-third of the Gross Fund, and reimbursement of their reasonable costs and litigation expenses.² Plaintiff's Counsel asserts that the amount of attorneys' fees and costs is reasonable in light of the fact that the Settlement was only obtained after extensive investigation, research, pre-mediation legal briefing, mediation, and negotiations. That Plaintiff's Counsel litigated this matter on a contingency fee basis, risking non-payment, further supports the attorneys' fees request.

Moreover, Plaintiff contends that the efficient resolution of this case, without prolonged litigation, was a direct result of Plaintiff's Counsel's experience in handling complex litigation and extensive knowledge of wage and hour law. *See, e.g., Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1300 (11th Cir. 1988) (explaining that "[f]rom 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"). In order to make this litigation possible, Plaintiff's Counsel agreed to and did advance the expenses and costs of litigation,

² Courts frequently approve attorneys' fee awards of thirty-three and one-third percent or greater in FLSA cases. *See, e.g., Moultry v. Cemex*, No. 07 Civ. 453, Dkt. 145 (M.D. Fla. Aug. 20, 2008) (approving settlement of FLSA collective action providing for disbursement of one-third of common fund as payment for attorneys' fees and costs); *Mansfield v. Castaways Backwater Café, Inc.*, No. 07 Civ. 401, 2008 U.S. Dist. LEXIS 62909, at *2 (M.D. Fla. Aug. 18, 2008) (adopting magistrate's order approving 40% contingency fee from settlement amount in FLSA action).

discovery, and mediation for the benefit of Named Plaintiff and Putative Collective Members. It is appropriate that the Court approve the reimbursement of these necessary expenses and costs to Plaintiff's Counsel from the common settlement fund pursuant to the terms of the Settlement.

Defendant does not oppose Plaintiff's Counsel's request for attorneys' fees and costs in the amounts provided by the Settlement.

NOTICE OF OPPORTUNITY TO PARTICIPATE IN SETTLEMENT

To facilitate this Settlement, this Court should authorize the Parties, via the Settlement Administrator, to mail the Parties' agreed-upon settlement notice and checks to Putative Collective Members (see Exhibit B to the Joint Stipulation of Settlement and Release), informing them of the settlement, the release provided if they participate in the collective action settlement, and how to participate by cashing their settlement checks. *See Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 168-69 (1989). The notice also advises Putative Collective Members that those who elect not to participate will not be bound by the Settlement. Finally, the notice describes the PAGA settlement and release.

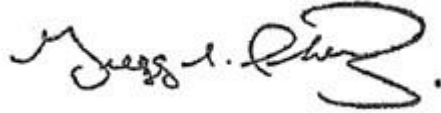
CONCLUSION

In sum, Named Plaintiff submits this Settlement as a fair and reasonable resolution of the disputed issues in this lawsuit, consistent with the goal of securing "the just, speedy, and inexpensive determination of every action." Fla. R. Civ. P. 1.010. Accordingly, Named Plaintiff requests that this Court: (1) enter the proposed Agreed Order on this Unopposed Motion for Approval of Collective Action Settlement and PAGA Settlement, attached as Exhibit B; (2) approve Plaintiff's Counsel's request for attorneys' fees, costs, and expenses; (3) approve Named Plaintiff's request for general release/enhancement award; (4) authorize notice to the Putative Collective Members of their opportunity to participate in the Settlement; (5) dismiss the case with prejudice; and (6) retain

jurisdiction to administer and enforce the Settlement until the conclusion of the settlement administration process.

Dated: March 5, 2024

Respectfully submitted,

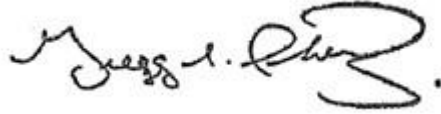
A handwritten signature in black ink, appearing to read "Gregg I. Shavitz". The signature is fluid and cursive, with a large, stylized "S" at the end.

Gregg I. Shavitz
Florida Bar No. 11398
E-mail: gshavitz@shavitzlaw.com
SHAVITZ LAW GROUP, P.A.
951 Yamato Road, Suite 285
Boca Raton, FL 33431
Telephone: (561) 447-8888
Facsimile: (561) 447-8831

***Attorneys for Named Plaintiff, Putative Collective Members,
and PAGA Settlement Members***

CERTIFICATE OF SERVICE

I hereby certify that on 5th day of March 2024, a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court by using Florida Courts E-filing Portal and served on all counsel of record on the service list below by electronic mail.

A handwritten signature in black ink, appearing to read "Gregg I. Shavitz", is positioned above a horizontal line.

Gregg I. Shavitz

SERVICE LIST

Kelly Eisenlohr-Moul, Esq. (FL Bar No. 1003246)
MARTENSON HASBROUCK & SIMON LLP
2573 Apple Valley Road NE
Atlanta, GA 30319
Email: keisenlohr-moul@martensonlaw.com
Attorneys for Defendant