IN ARBITRATION

Laura Carlton, and Kenisha Morgan, on behalf of themselves and all others similarly situated, Claimants, v. Universal Protection Service, LP d/b/a Allied Universal Security Services, Universal Protection Service, LLC, d/b/a Allied Universal Security Services, Respondents.	**UNOPPOSED MOTION FOR APPROVAL OF FLSA COLLECTIVE AND PAGA SETTLEMENT** Arbitrator: Thomas J. Crane

MOTION FOR APPROVAL OF FLSA AND PAGA SETTLEMENT

Claimants Laura Carlton and Kenisha Morgan, individually and on behalf of themselves and all others similarly situated (collectively "Claimants"), by and through counsel, submit this Unopposed Motion for Approval of FLSA and PAGA Settlement. Claimants respectfully request that the Arbitrator enter an Order approving the proposed FLSA and PAGA Settlement that Claimants and Respondents Universal Protection Service, LP and Universal Protection Service, LLC ("Respondents" or "Allied") have negotiated. (*See* **Ex. A**, the "proposed Settlement" or "Settlement Agreement.") Counsel for the Parties believe the proposed Settlement represents a fair and reasonable resolution of the claims at issue in this case and will provide substantial relief to the participants who will benefit from the proposed Settlement. The Settlement Agreement also provides for fair and reasonable attorneys' fees and costs to counsel for Claimants. For the additional reasons below, the Parties believe the Arbitrator should approve the proposed Settlement.

I. INTRODUCTION

Claimants filed a lawsuit against Allied on June 15, 2023 in federal court in Colorado. (Ex. C, ECF No. 1 (Pls.' Original Compl.).) In their Original Complaint, Claimants alleged that Respondent violated the FLSA and state law by requiring Claimants and similarly situated employees to work off-the-clock without compensation. The Parties engaged in intensive early motion practice in Colorado concerning the ability of any court to hear this dispute due to the presence of various defenses asserted by Respondent including but not limited to that the claims should be heard in arbitration, were not viable under both federal and state law, and that in any event could not proceed on a nationwide basis before this matter was transferred to the Central District of California for further proceedings. Counsel involved in this case also previously engaged in years long litigation of similar claims in *Moore et al. v. Allied Universal Security Services et al.*, Case No. 2:2019cv09506 (C.D. CA). Informed by Respondents' asserted defenses and the years of prior litigation, the Parties stipulated to a narrowed collective action that the Court granted on February 5, 2025. (ECF No. 108) Approximately 10,000 individuals have opted-in to the lawsuit and stand to benefit from the proposed settlement.

The Parties engaged in extensive informal discovery of the opt-ins' claims and potential damages after the close of the opt-in period. The Parties then mediated on March 2, 2026. In advance of the mediation, Respondent produced extensive records and data sufficient for the Parties to calculate exposure models and to better understand the merits of each Parties' respective claims and defenses. (**Ex. B**, Forester Declaration at ¶ 7.) Furthermore, the Parties had already engaged in the prior litigation, which only resolved after multiple mediation sessions and numerous depositions. The Parties in this case utilized a respected and California-based wage and hour class action mediator, Allison Eckstrom, to mediate the case and Mediation resulted in an initial impasse, that was only resolved through a mediator's proposal. (*Id.*, at ¶ 9.) That proposal resulted in a Memorandum of Understanding, and eventually the Settlement Agreement now submitted to the Arbitrator.

Since having reached the settlement in principle, the Parties have agreed to the settlement terms of the proposed Settlement, and have drafted the necessary documentation of the Settlement, proposed notice to the settlement class, an amended complaint, and this Motion for Approval. Accordingly, Claimants respectfully submit the proposed Settlement for approval.

II. OVERVIEW OF THE PROPOSED SETTLEMENT

A. Terms of the Settlement

The Settlement Agreement (attached as Exhibit A), establishes a maximum gross settlement amount of $2,500,000.00 (the "Gross Settlement Fund"), which will be apportioned as follows:

1. Class Representative Enhancement Payments of $15,000.00 to the Named Plaintiffs for being instrumental in the early investigation and certification of the case, and for reputational damage based on their public support of the litigation, which is within the range of that was already approved in *Moore* ($20,000 approved in similar awards).

2. Repayment of Class Counsel's incurred costs, which are estimated not to exceed $135,000, which is less than 30% of the amounts needed and approved by this Arbitrator in *Moore*.

3. Attorneys' Fees ($833,333). Attorneys' fees payable to Class Counsel representing 1/3 of the Gross Settlement Fund, which is also less than the 40% factor that was approved in *Moore*.

4. PAGA Penalties ($290,000), which are adjusted *pro rata* for the $500,000 amount that was approved in *Moore* and informed by Claimant's Counsel's investigation of these issues. 65% of the PAGA penalties will be remitted to the California Labor and Workforce Development Agency ("LWDA") per the PAGA statute (California Labor Code 2698-2699.6 ("PAGA")). The remaining 35% will be distributed to the PAGA Participants. (Ex. A, p. x.)

5. Net Settlement Fund. After all of the above amounts are deducted, the net distribution to the Settlement Class is $1,241,667.

6. Consideration.

a) Each FLSA Opt-in Plaintiff who cashes a settlement check discharges all claims, rights, demands, liabilities, and causes of action under the federal Fair Labor Standards Act associated with time worked as an hourly-paid Security Guard during the Class Period (as defined in Ex. A, at ¶ 9.), and is entitled to receive a share of the Net Settlement Fund based upon the number of workweeks worked during their employment with Respondents as an hourly-paid Security Guard during the Class Period (Ex. A, at ¶ 9.);

b) Each PAGA Participant who is sent the Notice Packet releases and discharges all claims based on the California Private Attorneys General Act (California Labor Code 2698-2699.6 ("PAGA")) during the PAGA Period (Ex. A, at ¶ 10), and is entitled to receive a share of the PAGA Penalties based on the length of their employment with Respondent during the PAGA Period (Ex. A, at ¶ 10).

Within 14 days after the entry of an order of the Court confirming the Arbitrator's Award approving the proposed FLSA Settlement, the Settlement Administrator will mail the Notice Packets to the Settlement Class Members, based on their respective last-known residential addresses provided through the opt-in process to be provided to the Settlement Administrator by the Respondent. (Ex. A, at ¶ 45).The Settlement Administrator will be responsible for updating addresses through skip-traces and similar means. (Ex. A, at ¶ 43).The Notice Packets to be approved are short and plain statements of the Settlement containing timely and accurate information regarding: the claims made in the lawsuit, the terms of the

Settlement as approved by the Arbitrator, the payment(s) from the Net Settlement and/or PAGA penalties that the Settlement Class will receive, how the settlement payments were calculated, and the contact information of the Settlement Administrator and Class Counsel in the event that the Settlement Class Member has any questions regarding the Agreement. (Ex. A-A.)

No action will be required of the Settlement Class Members to participate in the lawsuit. Each Settlement Class Member will receive their proportionate share under the Settlement Agreement in their respective Notice Packet. (Ex. A-A.)However, amounts associated with any checks that are uncashed will be retained by to Respondent, up to 20% of the Net Settlement Amount. (Ex. A, ¶ 17.) If less than 80% of the Net Settlement Amount is claimed, all unclaimed funds that do not revert to Respondent will inure to the benefit of the cy pres beneficiary, Public Justice.[1] (*Id.*) Any uncashed checks for money under PAGA will revert to the California State Controllers Unclaimed Funds. (Ex. A, ¶. 40.)

III. ARGUMENTS AND AUTHORITIES

A. Legal Standard for Approval of FLSA Settlements.[2]

Because of the strong public interest in FLSA cases, most courts find that disputes of FLSA cases may only be settled or compromised with supervision. *See Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1352-53 (11th Cir. 1982). This procedural mechanism ensures that an employee may not waive his claims under the FLSA through an employer's coercion. *See Pike v. Cty. of San Bernardino*, No. EDCV 17-1680, 2019 WL 8138439, at *1 (C.D. Cal. Nov. 25, 2019). If an FLSA settlement reflects a reasonable compromise, it may be approved "to promote the policy of encouraging settlement of litigation." *Khanna*

[1] https://www.publicjustice.net/

[2] As explained further herein, and pursuant to the Parties' Settlement Agreement, Claimants have amended their Complaint to remove all state-specific wage claims pleaded pursuant to Rule 23 of the Federal Rules of Civil Procedure, and, apart from the PAGA claims, the Settlement Agreement releases only FLSA claims. (*See* **Ex. D** Proposed Amended Complaint.)

v. Inter-Con Sec. Sys., Inc., No. CIV S-09-2214 KJM GGH, 2012 WL 4465558, at *10 (E.D. Cal. Sept. 25, 2012).

"While the Ninth Circuit has not specifically addressed the question of whether FLSA claims may only be settled and resolved in two ways, district courts in the Ninth Circuit have followed *Lynn's Food Stores*." *Ambrosino v. Home Depot U.S.A., Inc.*, No. 11cv1319 L(MDD), 2014 WL 3924609, at *1 n.1 (S.D. Cal. Aug. 11, 2014). *See also, e.g.*, *Khanna*, 2012 WL 4465558, at *10 ("A court may not approve an FLSA settlement without determining whether it is 'a fair and reasonable resolution of a bona fide dispute.'" (quoting *Lewis v. Vision Value, LLC*, No. 1:11-cv-01055-LJO-BAM, 2012 WL 2930867, at *2 (E.D. Cal. July 18, 2012))); *Campanelli v. Hershey Co.*, No. C 08-1862 BZ, 2011 WL 3583597, at *1 (N.D. Cal. May 4, 2011) ("This case is not proceeding as a class action under Rule 23 so that Rule's requirement for approval of class action settlements does not obtain. However, courts have held that FLSA settlements which are not approved by the Department of Labor should be presented for court approval and that 'the District Court may enter a stipulated judgment only after scrutinizing the settlement for fairness.'" (quoting *Lynn's Food Stores, Inc.*, 679 F.2d at 1353)).

Applying the test from *Lynn's Food Stores, Inc.*, the first step is to determine whether a bona fide dispute exists, so as not to "shield employers from the full cost of complying with the statute." See *Pike*, 2019 WL 8138439, at *2. Then, courts consider the totality of the circumstances of the settlement within the context of the FLSA. *Id.* (citing *Seguin v. Cty. of Tulare*, No. 1:16-cv-01262-DAD-SAB, 2018 WL 1919823, at *2 (E.D. Cal. Apr. 24, 2018)).

The following factors are relevant when evaluating settlements under [the] FLSA:

> (1) the plaintiff's range of possible recovery; (2) the stage of proceedings and amount of discovery completed; (3) the seriousness of the litigation risks faced by the parties; (4) the scope of any release provision in the settlement agreement; (5) the experience and views of

counsel and the opinion of participating plaintiffs; and (6) the possibility of fraud or collusion.

Id. (citing *Selk v. Pioneers Mem'l Healthcare Dist.*, 159 F. Supp. 3d 1164, 1173 (S.D. Cal. 2016)). As made clear in *Selk*, these factors should not be applied rigidly, but rather "adjust[] or depart[] from those factors when necessary to account for the labor rights at issue." 159 F. Supp. 3d at 1173. In considering the factors under a "totality of the circumstances" approach, the decisionmaker "must ultimately be satisfied that the settlement's overall effort is to vindicate, rather than frustrate, the purposes of the FLSA. *Id.* (citing *Dees v. Hydradry, Inc.*, 706 F. Supp. 3d 1227, 1247 (M.D. Fla. 2010)). To that end, if a proposed collective action settlement "reflect[s] a reasonable compromise over contested issues," it should be approved.[3] *Lee v. The Timberland Co.*, No. 07 Civ. 2367, 2008 WL 2492295, at *2 (N.D. Cal. June 19, 2008); 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."). "Typically, courts regard the adversarial nature of a litigated FLSA case to be an adequate indicator of the fairness of the settlement." *Khait*, 2010 WL 2025106, at *7.

Throughout the country, a one-step approval process, rather than the two-step process for settlement approval of class actions, is appropriate in FLSA settlements that do not include classes under Federal Rule of Civil Procedure 23, such as is the case here. *See, e.g.*, *Yue Zhou v. Wang's Rest.*, No. 05 Civ. 0279, 2007 WL 172308, at *1-3 (N.D. Cal. Jan. 17, 2007) (endorsing one-step process

[3] Approval of an FLSA collective action settlement does not require the full Rule 23 settlement analysis, because an FLSA settlement "does not implicate the same due process concerns as does a Rule 23 settlement." *See, e.g.*, *Khait v. Whirlpool Corp.*, No. 06 Civ. 6381, 2010 WL 2025106, at *6 (E.D.N.Y. Jan. 20, 2010); *but see Stevens v. Safeway Inc.*, No. CV 05-01988 MMM (SHx), 2008 WL 11496497, at *4 (C.D. Cal. Feb. 25, 2008) ("[FLSA] standard is similar to that used in evaluating settlements under Rule 23(e) of the Federal Rules of Civil Procedure.").

for approval of FLSA collective action settlement).[4] This is because collective actions under Section 216(b) of the FLSA ("Section 216(b)"), 29 U.S.C. § 216(b), do not implicate the same due process concerns as Rule 23 class actions. *Selk v. Pioneers Mem'l Healthcare Dist.*, 159 F. Supp. 3d 1164, 1172 (S.D. Cal. 2016). Unlike Federal Rules of Civil Procedure Rule 23 class actions, FLSA collective actions require similarly situated employees to affirmatively opt-in and be bound by any judgment, meaning that "the due process implications of a lack of formal notification post-settlement are less worrisome." *Id.*; *O'Connor v. Oakhurst Dairy*, No. 2:140cv000192-NT, 2015 WL 2452678, at *4 (D. Maine 2015) ("[W]ith an opt-in collective action, only individuals who affirmatively chose to join the litigation will be bound by its outcome."); see also *Genesis Healthcare Corp. v. Symczyk*, 133 U.S. 66, 74 (2013) ("Rule 23 actions are fundamentally different from collective actions under the FLSA[.]").

Under the FLSA, "parties may elect to opt in but a failure to do so does not prevent them from bringing their own suits at a later date." *McKenna v. Champion Int'l Corp.*, 747 F.2d 1211, 1213 (8th Cir. 1984), *abrogated on other grounds by Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 169-70 (1989). Accordingly, courts do not apply the exacting standards for approval of a class action settlement under Rule 23 to FLSA settlements. *See, e.g.*, *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 476 (S.D.N.Y. 2013) ("[T]he standard for approval of an FLSA settlement is lower than for a class action under Rule 23."). *See also Woods v. N.Y. Life Ins. Co.*, 686 F.2d 578, 579-80 (7th Cir. 1982) (discussing due process

[4] *See also Root v. Ames Dep't Stores, Inc.*, 989 F. Supp. 274, 274 (D. Mass. 1997) (noting that FLSA-only settlement did not deprive those who elected not to opt in of any cause of action); *Koszyk v. Country Fin. a/k/a CC Servs., Inc.*, No. 16 Civ. 3571, 2016 WL 5109196, at *1 (N.D. Ill. Sept. 16, 2016) (approving one-step settlement approval process for FLSA collective action); *Bozak v. FedEx Ground Package Sys., Inc.*, No. 11 Civ. 738, 2014 WL 3778211, at *2-3 (D. Conn. July 31, 2014) (same); *Dixon v. Zabka*, No. 11 Civ. 982, 2013 WL 2391473, at *1- 2 (D. Conn. May 23, 2013) (same); *Campbell v. Advantage Sales & Mktg. LLC*, No. 09 Civ. 1430, 2012 WL 1424417, at *1-2 (S.D. Ind. Apr. 24, 2012) (same); *Aros v. United Rentals, Inc.*, Nos. 10 Civ. 73, 11 Civ. 1281, 11 Civ. 1282, 11 Civ. 1283, 11 Civ. 1284, and 11 Civ. 1285, 2012 WL 3060470, at *2 (D. Conn. July 26, 2012) (same).

concerns present in Rule 23 class actions that are not present in collective actions brought under Section 216(b)).

Thus, the approval of settlements of FLSA claims is a separate, but related, analysis from the approval of settlements of class action claims. While § 216(b) authorizes collective actions, the FLSA does not expressly set forth criteria for courts to consider in determining whether an FLSA settlement should be approved, nor has the Ninth Circuit established any particular criteria.

B. Legal Standard for Approval of PAGA Claims.

Under the Labor Code Private Attorneys General Act ("PAGA"), an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. *Iskanian v. CLS Transp. L.A., LLC*, 59 Cal. 4th 348, 380, 327 P.3d 129 (2014).

PAGA is "a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies." *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court*, 46 Cal. 4th 993, 1003, 209 P.3d 937 (2009). The statute provides a mechanism for private enforcement of California Labor Code violations for the public benefit. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986, 209 P.3d 923 (2009).

To incentivize employees to bring PAGA actions, the statute provides aggrieved employees 35 percent of the recovered civil penalties. Cal. Lab. Code, § 2699(i). The remaining 65% is distributed to the Labor and Workforce Development Agency ("LWDA") "for enforcement of labor laws and education of employers and employees about their rights and responsibilities under [the Labor Code]." *Id.*

A PAGA settlement must receive approval from a neutral. *Id.* at § 2699(l)(2). The proposed settlement must be submitted to the LWDA at the same time it is submitted to the neutral. *Id.* at § 2699(i).

Federal district courts considering the issue of PAGA approval have recognized that "neither the California legislature, nor the California Supreme Court, nor the California Courts of Appeal, nor the California Labor & Workforce Development Agency ("LWDA") has provided any definitive answer" as to what the appropriate standard is for approval of a PAGA settlement. *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1075 (C.D. Cal. 2017). In the absence of such a standard, courts have approved PAGA settlements upon a showing that the settlement terms are "fundamentally fair, adequate, and reasonable in light of PAGA's policies and purposes." *Id.*

Courts have also relied upon guidance from the LWDA:

> It is thus important that when a PAGA claim is settled, the relief provided for under [] PAGA be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public and [] the settlement [should] meet[] the standards of being "fundamentally fair, reasonable, and adequate" with reference to the public policies underlying [] PAGA.

O'Connor v. Uber Techs., Inc., 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016) (quoting LWDA Response).

Additional factors that are useful to consider include the strength of a plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the amount offered in settlement, the extent of discovery completed, and the experience and views of counsel. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008).

Other courts assessing the terms of a PAGA settlement for the same purpose have found that the risks posed by the court's discretionary authority to reduce an award of PAGA penalties when it would be "unjust, arbitrary and oppressive, or confiscatory" to impose the full amount may be reasonable and justifiable grounds for approving a settlement payment that is lower than the maximum PAGA penalties that may possibly accrue at trial. *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal 2016). In addition, courts may consider whether the deterring effect of the public policies underpinning PAGA are met by the proposed settlement. *See Iskanian*, 59 Cal. 4th at 379.

However, without articulating a precise standard, courts have made clear that aggrieved employees seeking approval of a PAGA settlement need not satisfy class action requirements when seeking civil penalties under PAGA. *Arias*, 46 Cal. 4th at 975.

C. The Proposed Settlement Represents a Compromise of a Bona Fide Dispute, and Provides a Fair and Reasonable Resolution of Claimants' Claims.

1. Disputed Issues in this Case, Including Arbitration Agreements as to the Claimants, the Potential for Decertification, and the Applicability of Liquidated Damages Demonstrate the Parties' Entitlement to Settle the Lawsuit.

The proposed Settlement brings to an end vigorously contested and years long litigation. During the litigation, the Parties have contested, among other issues (1) the scope of Claimants' claims asserted in their Complaint; (2) whether a collective action can be maintained under Section 216(b), including in light of purportedly binding arbitration agreements, some of which include class and collective action waivers; and (3) whether the Settlement Class Members performed compensable off-the-clock work.

As discussed above, there must be a bona fide dispute before a Court may permit the parties to compromise the value of a plaintiff's FLSA case. *Pike*, 2019 WL 8138439, at *2 ("The reason for this requirement is to safeguard against an employee waiving his or her claims for wages, overtime compensation, or liquidated damages when there is no actual dispute between the parties." (quoting *Dashiell v. Cty. of Riverside*, No. EDCV 15-00211 JGB (SPx), 2018 WL 3629915, at *3 (C.D. Cal. July 19, 2018))).

In *Pike*, the disputed issues included the plaintiff's contention that the employees' workload would be impossible to complete without working significant overtime, while the defendant's position was that the employees' workloads did not require overtime, and it paid all overtime that was reported. *Id.* at *2-3. As in Pike, the Parties' claims and defenses demonstrate significant disputes regarding arbitration, FLSA coverage, liability and damages.

2. The Totality of the Circumstances Demonstrates that the Proposed Settlement is Fair and Reasonable, Provides Meaningful Relief to the Putative Collective Action Members, and Should Be Approved.

a. The Proposed Net Settlement Equates To A Greater Recovery Per Plaintiff Than In Moore.

Using data and pay records provided by Respondent, Class Counsel were able to determine an approximate amount of potential damages owed to the Settlement Class Members. (Ex. B ¶¶ 7-8.) This data demonstrates that, on average, the Settlement Class Members would have had to have work multiple hours off-the-clock before they were due any money by Respondent, given that gap-time claims are not recognized under the FLSA. *See Maciel v. City of Los Angeles*, 569 F. Supp. 2d 1038, 1055 (C.D. Cal. 2008) ("'Gap time' refers to time that is not covered by the overtime provisions because the time exceeds the internal employer's policy, but does not exceed the straight-time limits under the FLSA. […] Provided the actual number of hours worked divided by the employee's salary at the regular rate does not fall below the minimum wage requirements of the FLSA, a 'pure gap time' claim is untenable.").

Nonetheless and as detailed in Exhibit B, ¶ 8, the settlement of this matter was informed by the settlement terms in Moore that were approved by this arbitrator. That matter was resolved on behalf of 29,107 individuals while this dispute covers fewer than the 10,000 remaining individuals who have affirmatively consented to bring similar claims. Thus, that this matter that covers roughly 34% of the claimants covered in Moore resolved for greater than a 50% rate over that prior settlement is indicative of the reasonableness of this proposed settlement. Additionally, any individual opt-in for whom it is determined did not work during the applicable period will still recover $50, rather than the $20 allocated in *Moore*. Ex. A, ¶. 39(c).)

Accordingly, the proposed FLSA Settlement Agreement provides real value to many individuals whose claims might be barred by the prohibition of damages for "gap time" and as detailed herein exceeds the average amount allocated in *Moore*.

b. The Parties Completed Sufficient Discovery to Appropriately Evaluate the Claims and Defenses that Affect this Proposed FLSA Settlement.

Although the Parties did not complete formal discovery in the interest of saving considerable attorneys' fees, Respondent reviewed millions of pay and time records for the Settlement Class Members, a significant percentage of whom were employed by Respondents in California, in anticipation of mediation and provided informal discovery and data to Claimants' Counsel, including a sampling of time and pay data, in order to assist in preparation for mediation. And Claimants' Counsel also surveyed hundreds of opt-ins about their individual work experiences. (Ex. B, ¶ 7.) The informal production, investigation, and analysis were more than adequate to gain an understanding of the spectrum of possible damages in the lawsuit, as well as to understand the significant issues that stood in the way of many of the Settlement Class Members' likelihood of recovering damages in this case and exceeded the related efforts conducted in *Moore*.

While the data was not obtained through formal discovery, the net result meets the standard requiring "sufficient information to make an informed decision about settlement." *Pike*, 2019 WL 8138439, at *4 (quoting *Saleh v. Valbin Corp.*, No. 17-CV-00593-LHK, 2018 WL 6002320, at *3 (N.D. Cal. Nov. 15, 2018) (*See also* Ex. B, Arbuckle Decl., ¶ 20.)) The substantial number of documents and records reviewed by counsel for both Parties for a period of three years prior to the filing of the lawsuit included all relevant information as to the Settlement Class Members, including a sampling of timekeeping and pay data, their total weeks of work, pay periods, average rate of pay, and average total hours worked per week. (*Id.*)

c. The Substantial Risks Presented by the Lawsuit Necessitated the Compromise of the Settlement Class Members' Alleged Back Wages per the Proposed FLSA Settlement.

As discussed above, and as was the case in *Pike*, the significant factual disputes relating to the measure of potential damages in off-the-clock cases such as this one, coupled with additional litigation risks related to arbitration agreements and the likelihood of decertification based on individualized issues inherent in establishing that off-the-clock work was performed and that Respondents knew or should have known about it, were substantial risks necessitating compromise.

In *Dashiell*, the court explained that "[c]ourts favor settlement where there is a significant risk that litigation might result in a lesser recover[y] for the class or no recovery at all." 2008 WL 3629915, at *4 (quoting *Seguin v. Cty. of Tulare*, No. 1:16-cv-01262-DAD-SAB, 2019 WL 1919823, at *4 (E.D. Cal. Apr. 23, 2018)). Here, due to the significant issues with the Settlement Class Members average length workweek, and the possibility that any alleged time spent working off-the-clock would not necessarily result in damages as it would all be "gap time," Claimants may not be able to demonstrate damages even if they were able to show that significant time was spent working off-the-clock. See *Pike*, 2019 WL 8138439, at *4 ("As many of these hours were undocumented, Plaintiffs may not recover all of their alleged unpaid overtime if they proceed to trial. Thus, Plaintiffs risk lesser recovery without settlement.").

Furthermore, as in *Pike*, this case was settled on the basis of a three-year statutory period. Because there is a significant likelihood that Claimants would be unable to demonstrate willfulness, there is a correlated high likelihood that many of the Participating Claimants would receive a lower award of damages if the case proceeded to trial, or no damages at all. *See id.* at *4 ("As detailed above, if

Plaintiffs were unable to establish Defendant's willfulness, recovery would be less than that proposed by the Settlement Agreement").

d. The Scope of the Release Is Appropriately Tailored to the Factual Predicate of the Lawsuit.

The proposed Settlement provides that each Settlement Class Member who has opted into the lawsuit and received a settlement check will:

> release[] and discharge[] for the Class Period all claims, rights, demands, liabilities and causes of action arising out of or related to the allegations of the operative complaint in the Lawsuit for unpaid wages and/or liquidated damages or penalties under the federal Fair Labor Standards Act (29 U.S.C. § 201-219 ("FLSA")). (Ex. A, ¶ 26.)

As in *Pike*, the release provision is appropriately limited, and the "scope of the release is no greater than the scope of the claims in the Complaint." 2019 WL 8138439, at *4. Furthermore, the release appropriately applies only to those who have already affirmatively opted in to this FLSA lawsuit. The release does not reflect any overreaching and weighs in favor of approval.

e. Class Counsel View the Proposed Settlement as a Superior Result Given the Risks Associated with the Case.

Decisionmakers accord significant weight to the opinions of plaintiffs' counsel in FLSA cases. *See Dashiell*, 2018 WL 3629915, at *4 (quoting *Selk v. Pioneers Mem'l Healthcare Dist.*, 159 F. Supp. 3d 1164, 1176 (S.D. Cal. 2016).) Class Counsel have significant experience in class and collective action wage cases. (Ex. B, ¶ 5.) In light of the significant complexity of the case, the bevy of potential issues that could lead to a limited or zero dollar recovery for the Settlement Class Members, and in light of the substantial recovery for the Settlement Class Members given the class at issue in the lawsuit under the proposed FLSA Settlement, Class Counsel believe the proposed FLSA Settlement to be fair and reasonable. (*Id.*, ¶ 24.)

f. The Parties Negotiated the Proposed Settlement Over an Arms'-Length Adversarial Mediations – The Settlement Was Not Obtained by Fraud or Collusion.

Decisionmakers typically find that there is a low likelihood of fraud or collusion where a settlement is obtained through formal mediation before an impartial neutral. *See Dashiell*, 2018 WL 3629915, at *4. Here, as described above, the Parties participated in a massive review of documents, interviews of opt-ins, and data analysis of time and pay records, and required a mediator's proposal to reach the settlement in this case. (*See* Ex. B, ¶¶ 21, 22.) There should be no argument that this settlement was the result of fraud or collusion.

g. The Proposed Service Awards Are Proper In Light of the Claimants' Contributions.

The proposed Settlement provides that, subject to the Arbitrator's approval, the representatives will receive a service award for being instrumental in the early investigation and certification of the case, and for reputational damage based on their public support of the litigation. (Ex. A, ¶ 35.)

The service awards contemplated by the Settlement that are each $10,000 or less are consistent with – indeed, well below – the amount of awards given in comparable cases. *See, e.g.*, *Galeener v. Source Refrigeration & HVAC, Inc.*, 2015 WL 12976106, at *3 (N.D. Cal. 2015) ($27,000 and $25,000 to two class representatives); *Vedachalam v. Tata Consultancy Servs.*, No. 06 Civ. 0963, 2013 WL 3929129, at *2 (N.D. Cal. July 18, 2013) ($35,000 and $25,000 to class representatives); *Buccellato v. AT&T Operations, Inc.*, No. 10 Civ. 00465, 2011 WL 3348055, at *3 (N.D. Cal. June 30, 2011) ($20,000 to lead plaintiff); *Ross v. U.S. Bank Nat'l Ass'n*, No. 07 Civ. 2951, 2010 WL 3833922, at *4 (N.D. Cal. Sept. 29, 2010) ($20,000 service award for each of four class representatives); *Glass v. UBS Fin. Servs., Inc.*, No. 06 Civ. 4068, 2007 WL 221862, at *16-17 (N.D. Cal. Jan. 26, 2007) ($25,000 to each of four class representatives); see also *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266-67 (N.D. Cal. 2015) (observing that incentive awards up to $10,000 are typical).

h. Attorneys' Fees and Costs

The proposed Settlement is also fair and reasonable as it provides for an award to Class Counsel of attorneys' fees in an amount equaling no more than 1/3 of the Settlement Fund, and incurred and anticipated costs in a reasonable amount. (Ex. B, ¶ 10.)

In determining reasonableness of attorney's fees in collective action settlement the *Johnson* factors are applicable to class action settlements. *See Collins v. Sanderson Farms, Inc.*, 568 F. Supp. 2d 714, 729 (E.D. La. 2008) (discussing court's award of attorney's fees per *Johnson v. GA Hwy Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)). The factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the claimant's attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by claimant or the circumstances; (8) the amount of recovery and the results obtained; (9) counsel's experience, reputation, and ability; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the claimant; and (12) awards in similar cases. *Johnson v. GA Hwy Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974).

The compensation sought for Class Counsel represents 1/3 of the monetary settlement created by their efforts. This is well within the usual range of percentages awarded in similar cases. *See Moore* (40%); *Vela v. City of Houston*, 276 F.3d 659, 681 (5th Cir. 2001) (identifying customary contingency rate of 35-40%); *Quintanilla v. A & R Demolition, Inc.*, No. H-04-1965, 2008 WL 9410399, at *8 (S.D. Tex. May 7, 2008 (approving a settlement that awarded attorney's fees amounting to 40% of a common fund).

The agreed upon fees also provide compensation for the significant amount of time and labor expended by Class Counsel including: (a) all work already performed, and costs and expenses related to the fact-finding, prosecution and settlement of the lawsuit incurred through the date of the Settlement; (b) all work to be performed and costs to be incurred in fully and finally resolving the lawsuit; and (c) all work, costs and expenses incurred in connection with administering the settlement. Counsel's work includes investigating the underlying merits of the claim, representing nearly 10,000 opt-in plaintiffs, conducting informal discovery, calculating and analyzing detailed damage models, participating in settlement negotiations, engaging in motion practice, and communications with the Claimants and various opt-ins. Each of these efforts was essential to achieving an excellent result for Claimants.

Moreover, it is beyond dispute that Claimants had access to outstanding attorneys. The case required attorneys trained in collective action law and procedure. Class Counsel are so trained, have practiced employment law for many years, and are uniquely-qualified to handle the claims at issue due to the experience gained in *Moore* (Ex B., ¶ 4-6.) Additionally, working for Claimants necessarily prevented the firm from accepting other cases. *(Id.*, ¶ 27). Class Counsel also assumed considerable risk in taking the matter on as a contingency; including pre litigation efforts Class Counsel has worked on the case for over three years and has yet to recover any fees, expenses, or costs. (*Id.*, at ¶ 11). *See also*, *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 859-60 (E.D. La. 2007) ("Recognizing the contingent risk of nonpayment in [class action] cases, courts have found that class counsel ought to be compensated both for services rendered and for risk of loss or nonpayment assumed by carrying through with the case") (internal quotations and citations omitted). The complexity of this case, the experience of Counsel, and the risks assumed by Counsel support the requested, agreed upon fee award.

Finally, the award of the agreed upon attorney's fees, expenses and costs supports public policy in ensuring the availability of capable counsel to represent injured plaintiffs. *Jenkins v. Trustmark Nat'l Bank*, 300 F.R.D. 291, 300 (S.D. Miss. 2014). Thus, there is no reason to diminish the attorney's fees, costs, and expenses agreed upon by the Parties.

D. The Proposed Settlement Fairly, Adequately, and Reasonably Resolves Remaining PAGA Claims in Light of the *Hakeem* and *Moore* Settlements.

As with the FLSA component, the PAGA component of the Settlement is fair, reasonable, and adequate.

By way of background, on January 16, 2020, Respondent settled a case raising similar claims under PAGA, *Maged Hakeem, et al. v. Universal Protection Service, LP, et al.*, Case No. 34-2019-00270901, which pended in the Superior Court for the County of Sacramento. (Ex. C, p. 29.) The *Hakeem* settlement resolved claims seeking penalties for alleged PAGA violations including missed meal and rest breaks, waiting time penalties (*i.e.*, failure to pay all due and owing wages upon termination from employment for any reason), and wage statement violations. (*Compare* Ex. C, p. 6 *with* Ex. A, p. 5.) The *Hakeem* settlement provided $25,000.00 in recovery for all non-exempt employees in California for alleged PAGA violations for approximately 26 months, and the PAGA settlement was .25% of the total settlement amount in that case. The alleged violations included failure to pay all wages owed for work performed, failure to provide compliant meal and rest breaks, failure to provide accurate and complete wage statements, failure to reimburse business expenses, failure to timely pay all wages owed during employment and at the time of separation of employment. Similarly, in *Moore*, the approved PAGA settlement involved the same alleged violations on behalf of non-exempt California employees. The *Moore* settlement included a $500,000 PAGA settlement, which was 11.5% of the total $4,350,000 settlement in that case. Here, the Parties resolve similar claims for more value (more than 11.5% of the total settlement), even after Respondent has taken remedial measures post-*Hakeem* and *Moore* to resolve issues which might lead to violations of PAGA.

Additionally, Respondent has compliant statewide policies covering recording of hours worked and prohibiting off-the-clock work, provision of meal and rest breaks, prohibitions on using personal cell phones for work, and providing for timely pay on separation of employment. Given that Respondents' California employees work at thousands of different work sites with differing supervisors, staffing levels, and meal and rest break procedures, there are individualized issues bearing on establishing violations without a challenge based on manageability that could result in significantly narrowing the claim. *See Estrada v. Royal Carpet Mills, Inc.*, 15 Cal.5th 582 (2024). Among other things, employees at some sites are able to self-relieve themselves for meal and rest breaks, whereas at other sites and at times posts within a site, employees are relieved for meal and rest breaks by other employees. The type of break coverage and/or ability to self-relieve for breaks depends on a number of individualized factors, such as the security needs of the site and whether it feasible to leave a post unattended for a meal or rest break, the level of staffing at the site and whether other guards are qualified to provide coverage (e.g., some are armed and some are unarmed, and some have different security clearances), the proximity of the site to other sites and whether rover coverage is feasible, and whether customer personnel provide break coverage. Additionally, at some sites, meal breaks are paid, on-duty due to the nature of the work at the site (or on a particular post or shift), with varying justifications from site to site. There are also issues with establishing liability on a statewide basis for meal and rest break violations based on individual employees having daily attestations stating that they took their meal and rest breaks. Meanwhile, Respondents have explained there is no statewide policy that violates the law and provides a basis for assuming all employees are similarly situated or aggrieved. The same issues apply to alleged off-the-clock work. There is no known uniform written policy requiring that work be performed off-the-clock and investigation demonstrates that the circumstances surrounding pre-shift and post-shift work, if any, vary from employee to employee because some shifts have cold starts and cold stops where there is no oncoming security guard to brief, other sites may have security guards work overlapping shifts so that pass downs occur while both guards are on the clock, and still at other sites, pass downs information is prepared in writing and left at the post rather than doing a verbal pass down at shift change. Additionally, Respondents are taking the position that Claimant Morgan lacks standing to pursue some or all of the alleged violations because she did not personally suffer some or all of them. Accounting for all of these risks and challenges to establishing liability and the ability survive a manageability motion to narrow evidence and the scope of the claim, this Settlement provides $290,000.00 in recovery for alleged PAGA violations or more than 10x those in *Hakeem*. The Settlement properly requires notification to the LWDA, and payment of 65% of the recovery to the LWDA as required by statute. Further, the recovery properly deters conduct taken which allegedly violated the PAGA statute. *See Iskanian*, 59 Cal. 4th at 379. Given the superior outcome in this case, there is no reason to deny approval of the PAGA component of the lawsuit.

IV. CONCLUSION

For all of the foregoing reasons, Claimants respectfully request that the Arbitrator approve the Parties' proposed Settlement, and approve the form of Notice and other procedures proposed in this Memorandum.

Respectfully submitted,

By: *s/ Colby Qualls*____________
Colby Qualls

FORESTER HAYIE PLLC

Colby Qualls (Cal. Bar No. 350634)
cqualls@foresterhaynie.com

Counsel for Claimants and the Collective Action Members