UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Jason Frank, Erich Peasley, William Waters, and Robert Wilhelm, Plaintiffs, -v- Gold'n Plump Poultry, Inc., Defendant.	Court File No. 04-CV-1018 PJS/RLE

MEMORANDUM IN SUPPORT OF MOTION FOR FINAL APPROVAL OF COLLECTIVE AND CLASS ACTION SETTLEMENT

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INTRODUCTION

Named Plaintiffs Jason Frank, Erich Peasley, William Waters, and Robert Wilhelm seek final approval of the settlement of this lawsuit, brought on behalf of employees at Gold'n Plump Poultry, Inc.'s poultry processing plants in Minnesota and Wisconsin. The settlement resolves whether Gold'n Plump should pay its employees for donning and doffing their protective gear and equipment. On February 14, 2008, this Court found the proposed settlement to be within the range of reasonableness and granted preliminary approval for a settlement covering the Plaintiff Class, which is comprised of a FLSA Class and a Rule 23 Settlement Class. (ECF No. 444, "Preliminary Approval Order"). Settlement Class Counsel disseminated notice according to the terms of the Preliminary Approval Order, causing mailed notice to be sent to approximately 3,500 individuals. As shown by the nearly 1,000 claim forms filed to date, members of the Plaintiff Class have overwhelmingly supported the proposed settlement. Only one request for exclusion, and two scant, purported objections have been filed.

The settlement provides a total of $3,875,000 to pay claims of the 250-member FLSA Opt-in Class and the approximately 3,500 member Rule 23 Settlement Class, and to pay litigation and settlement costs, and attorneys' fees. The settlement creates

a claims fund of $1,200,000. In addition, the settlement requires a change in business practices, from which class members and future Gold'n Plump employees will benefit.

The Rule 23 Settlement Class meets the requirements of Rule 23 of the Federal Rules of Civil Procedure; furthermore, this Court has already authorized a collective action under Section 16(b) of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 216(b). The settlement is the product of arm's length negotiations between the parties and is a fair, reasonable, and adequate resolution of Plaintiffs' claims. Accordingly, Plaintiffs request that the Court (1) grant final certification of the Rule 23 Settlement Class for purposes of settlement, (2) grant final approval of the proposed settlement, and (3) enter an Order for Final Judgment.

ANALYSIS

I. The Settlement Terms Demonstrate the Agreement is Fair, Adequate, and Reasonable.

The Settlement Agreement sets out the terms of the proposed settlement in greater detail. (*See* Regan Aff. Ex. 1). The settlement provides a total of $3,875,000 to pay claims of the Plaintiff Class, and to pay litigation and settlement costs, and attorneys' fees. The settlement creates a claims fund of $1,200,000. In addition, the settlement requires a change in business practices. The key provisions of the settlement include:

A. Class Member Payments. The settlement provides that each "Plaintiff

Class Member" ("FLSA Class members" and "Rule 23 Settlement Class members") who timely submits an approved claim form will receive compensation from the claims fund, subject to a $1,200,000 cap. This compensation represents back wages. The amount of compensation will be calculated using an effective hourly rate of $17.25, as follows:

- *For FLSA opt-in parties*: The opt-in party shall receive an additional 55 minutes per week (or .9166 hours). The opt-in party will receive compensation for time worked in excess of 40 hours at the employee's Effective Hourly Rate, as defined by the Settlement Agreement. The wages (not the minutes) will then be multiplied by two.

- *For Rule 23 Claimants working in Arcadia, Wisconsin*: Wisconsin members of the Rule 23 Settlement Class will receive an additional 55 minutes per week (or .9166 hours), and compensation for time worked in excess of 40 hours at the Effective Hourly Rate, as defined by the Settlement Agreement. The wages (not the minutes) will then be multiplied by 1.5.

- *For Rule 23 Claimants working in the Luverne or Cold Spring, Minnesota plants*: Minnesota members in the Rule 23 Settlement Class will receive an additional 55 minutes per week (or .9166 hours), and compensation for time worked in excess of 48 hours at the Effective Hourly Rate as defined by the Settlement Agreement. The wages (not the minutes) will then be multiplied by two.

See Regan Aff. Ex. 1, Settlement Agreement. Based upon preliminary analysis of certain class member time records, Settlement Class Counsel anticipate that the awards will average approximately $950, but could be as high as $2,500.

For those employees who are members of both the FLSA Class and the Rule 23 Settlement Class, no employee will receive double compensation under both federal and state law. To the extent the value of approved claims exceeds $1,200,000, the claim awards will be reduced pro rata so that the maximum payment to the Plaintiff Class is $1,200,000.

B. ***Change in Business Practices.***

- *Pre-shift punch and pay practices*. Pre-shift, employees will be permitted to punch in before donning in the supply area designated by Gold'n Plump any gear required by Gold'n Plump which Gold'n Plump does not permit to be taken home. Gold'n Plump, however, may set the earliest time at which employees may punch in. Compensation for employees shall begin at the time of the punch, absent unusual circumstances.

- *Meal periods*. Gold'n Plump shall pay employees for donning and doffing during lunch, and allow 30 minutes for lunch exclusive of donning and doffing. To do this, for employees entitled to a meal break, Gold'n Plump shall provide a 33 minute meal break, 30 minutes of which shall be unpaid, at its three processing facilities in Cold Spring, Minnesota, Luverne, Minnesota, and Arcadia, Wisconsin.

- *Post-shift punch and pay practices*. Post-shift, employees shall not be required to punch until after doffing all gear required by Gold'n Plump and which Gold'n Plump does not permit to be taken home. Gold'n Plump, however, may require employees to punch out immediately after doffing such gear. Employees shall be compensated through the post-shift punch absent unusual circumstances.

Based upon a formula that accounts for these business practice changes at each of

the plants, Settlement Class Counsel estimate the value of the relief to range between $200,000 to $325,000 per year.

C. Settlement Administrative Costs, Litigation Costs, and Attorneys' Fees. Gold'n Plump has agreed to pay $2,675,000 to Settlement Class Counsel to pay for past and future litigation costs such as court reporter and translation services, expert fees, costs of class notice and settlement notice, payments to the mediator, all settlement administration, as well as attorneys' fees.

D. Class Representative Service Payments. Settlement Class Counsel will apply to the Court for a service award of $12,500 to be paid to each Class Representative for their services to the Plaintiff Class. These payments will be made from the claims fund.

E. *Cy Pres* Beneficiaries. All funds remaining in the claims fund following the completion of the benefits allocation process are to be designated as a *cy pres* fund to be allocated to charitable organizations with ties to St. Cloud, Minnesota, Luverne, Minnesota, and Arcadia Wisconsin, to be designated by Settlement Class Counsel after the completion of settlement payments. Settlement Class Counsel will seek a separate order from the Court regarding that distribution at the appropriate time but no later than 60 days from the issuance of settlement payments to Plaintiff Class

members.

II. The Court-Ordered Notice Program is Constitutional and Has Been Fully Implemented.

Under the discretion granted to this Court by Rule 23 and the Fair Labor Standards Act, this Court approved the content of the proposed notice of settlement, and ordered that notice be disseminated by first class mail and publication. Preliminary Approval Order at 9-11. The Court-ordered notice has successfully apprised members of the class of their rights to participate in, object to, or exclude themselves from the settlement. Accordingly, the Court's notice plan fully complies with constitutional and statutory requirements for collective and class action notice of settlement.[1]

A. Implementation of the Notice Plan.

In accordance with the Court-approved notice plan in the Preliminary Approval

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[1] *Eisen v. Carlisle & Jacquelin*, 417 U.S. 175-76 (1974); *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975); *see also Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1153 (8th Cir. 1999); Fed. R. Civ. P. 23(c)(2), (e); 3 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* §§ 8.21, 8.39 (4th ed. 2002), (hereinafter "Newberg"); *Manual for Complex Litigation (Fourth)* § 30.41 (West/Fed. Jud. Ct. 2004) (hereinafter referred to as "Manual") ("Rule 23 . . . requires that individual notice in [opt-out] actions be given to all Class members 'who can be identified through reasonable effort,' with others given 'the best notice practicable under the circumstances' . . . . Due process does not require actual notice to parties who cannot reasonably be identified.").

Order, and with the assistance of independent claims administrator Analytics, Inc., over 3,700 long form notices were mailed to the last known address of each Plaintiff Class member appearing in Settlement Class Counsel's database (which includes information provided by Defendant Gold'n Plump) on February 22, 2008. (Mueller Aff. ¶ 3(f)). All Plaintiff Class members were sent the long form notice and a claim form. The long form notice was translated into Spanish and Somali by translation services experienced in legal translation, and was distributed by Analytics to any individual requesting it. (Mueller Aff. ¶ 3(g)-(j)), (Regan Aff. ¶ 2).

The short form of notice was published in the publications listed in the Settlement Agreement between February 24, 2008 and March 15, 2008, in English, Spanish, and Somali. (Mueller Aff. ¶ 4, Ex. H). In addition, notice was published on the settlement website, created separate and apart from Settlement Class Counsel's firm websites, advising Plaintiff Class members of the proposed settlement and directing them to the Settlement Agreement, Notice (in English, Spanish, and Somali), and the claim forms. (Regan Aff. ¶ 3).

B. Settlement and Claims Administration

As required by the Settlement Agreement, Analytics has mailed notice to each known Plaintiff Class member and maintained a toll-free number in an effort to

educate the Class about the settlement, the approval process, and their rights as Plaintiff Class members. As of April 3, 2008, Analytics has received 844 calls to the settlement information line, including calls from Somali and Spanish-speaking individuals. In response to requests, Analytics has sent 122 copies of the Notice in English, 59 in Somali, and 23 in Spanish. (Mueller Aff. ¶ 3(j)-(i)). Settlement Class Counsel have also maintained the website, and taken calls from Plaintiff Class members requesting copies of the Notice, or a translated copy of the Notice and claim form. (Regan Aff. ¶ 3). The website has received over 900 hits. (Regan Aff. ¶ 3). As of April 3, 2008, 936 individuals have submitted claim forms. (Mueller Aff. ¶ 5).

Requests for exclusion were to have been postmarked no later than March 31, 2008, and sent to Settlement Class Counsel, Defendant's counsel, and the Clerk of the Court. As of April 4, 2008, Settlement Class Counsel received one opt out, and received only two letters of purported objection, one of which is not from a class member. (Regan Aff. Exs. 2-4).

Analytics' responsibilities in the claims administrations process will continue at least through July 2008, as the deadline for submitting claims forms is June 1, 2008. Analytics' efficient and effective handling of the notice process, under tight time constraints, is evidence that the claims procedure and distribution of Plaintiff Class

payments will continue in fully adequate fashion.

III. The Court Should Grant Final Certification of this Action as a Class Action for Settlement Purposes.

Plaintiffs incorporate by reference the FLSA collective action and Rule 23 class certification analysis set forth in their Memorandum in Support of Motion for Order Certifying Class for Settlement Purposes, Preliminarily Approving Proposed Settlement, Approving Form and Dissemination of Class Notice, and Setting Date for Hearing on Final Approval, as well as their memoranda supporting certification of the FLSA Class. (ECF Nos. 360, 384, 390, 441). Based on the analysis set forth therein, this Court finally certified the following class for settlement purposes under the Fair Labor Standards Act:

> All current or former production or sanitation employees, defined as hourly nonexempt employees in live receiving, evisceration, second processing, and sanitation, who filed opt-in notices in the Action and who worked for Gold'n Plump at any time in the three years preceding the date the employee opted into this Action, including all of the Named Plaintiffs and the persons who were the subject of ECF No. 319, shall be members of the "FLSA Class." Persons who opted into this lawsuit but who did not work in live receiving, evisceration, second processing, or sanitation at any time in the three years preceding the date the employee opted into this Action are not part of the FLSA Class.

In addition, based on the analysis of the Rule 23 factor sets set forth therein, the Court certified the following class under Rule 23(b)(3):

> All current or former production or sanitation employees, defined as hourly nonexempt employees in live receiving, evisceration, second processing, and sanitation, who worked for Gold'n Plump in Minnesota at any time between February 24, 2001 and December 21, 2007, or who worked for Gold'n Plump in Wisconsin at any time between February 24, 2002 and December 21, 2007, shall be members of the "Rule 23 Settlement Class."

Preliminary Approval Order at 6 (ECF No. 444).

Nothing has changed since the Court certified the FLSA Class and granted preliminary certification to the Rule 23 Settlement Class. As previously noted by this Court, the Plaintiff Class is sufficiently well-defined and cohesive for purposes of effecting the proposed settlement. Moreover, the present case meets every requirement for certification under Rule 23. As such, final certification of the Plaintiff Class is appropriate.

IV. The Court Should Grant Final Approval of the Settlement.

As set forth in Plaintiffs' memorandum supporting preliminary approval of the settlement, this Court must engage in a two-step process when considering whether to approve a settlement under Rule 23 of the Federal Rules of Civil Procedure or the Fair Labor Standards Act. (*See* ECF No. 360, Preliminary Approval Memorandum, at 11-15). The first step in the class action settlement approval process has already been completed here. In the first step, the Court granted preliminary approval of the

settlement on February 14, 2008. The Court's preliminary evaluation found the settlement to be within the range of possible final approval, rendering worthwhile the class-wide notice plan and the scheduling of a formal fairness hearing. (Preliminary Approval Order at 7-11).

As described in section II, above, notice of the settlement was then disseminated, in accordance with the Preliminary Approval Order and the parties' Settlement Agreement. (Mueller Aff. ¶¶ 3-5; Regan Aff. ¶¶ 2-3). The significant number of Class members utilizing the avenues of communication made available to them indicates that the notice plan has been successful.

The last step in the approval process is the fairness hearing and final approval of the settlement. At the fairness hearing, Plaintiff Class members will have an opportunity to present their comments or objections regarding the settlement, and Settlement Class Counsel (and Counsel for Defendant) will present evidence and argument supporting the Settlement's fairness, adequacy, and reasonableness.[2]

A. The Settlement is Presumptively Fair.

When faced with a motion for final approval of a class action settlement, the

[2] *See* Manual § 30.41.

Court is to determine whether the settlement is "fair, reasonable, and adequate."[3] The Court's inquiry must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned. Thus, when assessing the fairness, reasonableness and adequacy of the proposed settlement, the Court does not have the responsibility of trying the case or ruling on the merits of the matters resolved by the proposed agreement.[4] "Rather, 'the very purpose of compromise is to avoid the delay and expense of such a trial.'"[5]

This Court should begin its analysis with a presumption that the proposed

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[3] Fed. R. Civ. P. 23(e)(1)(C); *see also Prudential*, 148 F.3d at 316; David F. Herr, *Annotated Manual for Complex Litigation (Fourth)* § 21.632 (2004) (hereinafter referred to as "Ann. Manual"). As described in the *Manual for Complex Litigation*:

> Fairness calls for a comparative analysis of the treatment of class members vis-à-vis each other and vis-à-vis similar individuals with similar claims who are not in the class. Reasonableness depends on an analysis of the class allegations and claims and the representativeness of the settlement to those claims. Adequacy involves a comparison of the relief granted relative to what class members might have obtained without using the class action process.

Manual, § 21.62, at 315.

[4] *White*, 836 F. Supp. at 1477.

Settlement is fair and valid:

> [A] presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.[6]

As described in the Plaintiffs' memorandum supporting their motion for preliminary approval of the settlement, before reaching the proposed settlement, the parties engaged in extensive factual investigation and thorough discovery. The parties exchanged thousands of pages of documents and deposed dozens of witnesses. Plaintiffs, along with their expert Robert Radwin, spent days conducting plant inspections at all three Gold'n Plump plants to develop a methodology for determining the amount of time plaintiffs spent donning and doffing their required gear. The results of that discovery have been recently summarized for the Court, in the briefing and affidavits accompanying Plaintiffs' motions to compel discovery on Gold'n Plump's advice of counsel defense (ECF Nos. 286-290, 321), as well more fully

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[5] *Id.* (quoting *Grunin*, 513 F.2d at 124).

[6] 4 Newberg at § 11.41; *see also Little Rock School Dist. v. Pulaski County Special School Dist. No. 1*, 921 F.2d 1371, 1391 (8th Cir. 1990) (recognizing that settlements are presumptively valid); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal 1980) (analyzing above-cited factors); *accord Grier v. Chase Manhattan Auto. Fin. Co.*, No. 99-180, 2000 WL 175126, *5 (E.D. Pa. Feb. 16, 2000) (Regan Aff. Ex. 7)

in the briefing and affidavits accompanying Gold'n Plump's motion to decertify the FLSA class and to deny certification under Rule 23. (ECF Nos. 360-363)

Unquestioningly, the parties negotiated the proposed settlement in good faith and at arm's length. The parties engaged in hard-fought settlement negotiations, including mediation sessions before Magistrate Judge Erickson and Joe Dixon, Esq. of Henson & Efron. Counsel for each of the parties consider the proposed settlement to be a fair resolution of their respective differences based upon the numerous rulings received in this Court. In light of their experience, the Court should accord their assessment considerable weight.[7]

Thus, counsel for each of the parties—who are experienced plaintiffs' class action and defense attorneys—have fully evaluated the strengths, weaknesses, and equities of the parties' respective positions. This factor has been noted by both courts and commentators as supporting the fairness and reasonableness of a class action settlement.[8] Moreover, this proposed settlement was achieved after the litigation was fully mature, if not aged, and on the eve of trial.

(same); Manual at § 30.41.

[7] *See Grier*, 2000 WL 175126 at *5.

[8] *See Ellis*, 87 F.R.D. at 18 (citing cases and authorities).

In addition, the proposed settlement does not give undue preferential treatment to the named plaintiffs or other members of the Plaintiff Class, or permit excessive attorneys' fees. First, subject to Court approval, the proposed settlement provides for service awards of $12,500 each for the four Class Representatives in this matter. Such awards are routine, appropriate, and serve public policy by encouraging individuals to come forward to protect the rights of others, while at the same time compensating the Class Representatives for their time, effort, and inconvenience—including responding to discovery and testifying at depositions—in representing the interests of absent Class members.[9] None of the FLSA opt-in Plaintiffs, nor any of the absent Rule 23 Settlement Class members, were required to answer discovery or to testify. Further, had Plaintiffs not been successful at summary judgment or trial, the Class Representatives bore the risk of having to repay Gold'n Plump's taxable costs in this litigation—costs that represented the costs of defending a class, and not merely an individual suit. Thus, the payments of $12,500 are well-deserved and should be awarded.

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[9] *See, e.g.*, *In re Linerboard Antitrust Litig.,* No. MDL 1261, 2004 WL 1221350, *19 (E.D. Pa. Jun. 2, 2004) (incentive awards of $25,000) (Regan Aff. Ex. 7); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913 (S.D. Ohio 2001) ($50,000 incentive award); *see also* Manual § 30.42 at n.763; Order for Final Judgment, *Russo v. NCS Pearson, Inc.*,

Second, the proposed settlement provides for reasonable attorneys' fees and costs. Through their concurrent motion, Settlement Class Counsel seek attorneys' fees, plus costs and expenses, which include Plaintiffs' expert fees, the costs of private mediation, as well as all aspects of settlement administration, not to exceed $2,675,000. Gold'n Plump will pay these fees separately; no class member's payment from the claims fund will be reduced to reflect these fees and costs. As Settlement Class Counsel address in their motion for attorneys' fees, because each of the three statutes at issue in this case—FLSA, MFLSA, and WFLSA—provide for mandatory recovery of attorneys' fees and costs, Settlement Class Counsel may be fully compensated for their fees using a lodestar-multiplier method. Given the significant amount of work done in this case over a four- year period, the amount of risk and cost associated with the litigation and the benefits provided to the Class, the parties' agreement on fees and costs is well within the range of reasonableness.

Finally, as of April 4, 2008, counsel for both parties have received only one opt out and two purported objections from the approximately 3,500 individuals comprising the Plaintiff Class. One "objection" comes from a Rule 23 Settlement Class member, Larry Berg. Mr. Berg's letter does not provide reasons for why the

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Civ. No. 06-1481 (awarding $12,500 to each class representative) (Regan Aff. Ex. 5).

settlement should not be approved, and instead speaks to the reasons why more employees purportedly did not join the FLSA action in 2006. (*See* Regan Aff. Ex. 4). In fact, Mr. Berg has also filed a claim form with Analytics, demonstrating that he supports the monetary component of the settlement. (Regan Aff. ¶ 5). Counsel have also received a letter from Lynette Verner, who worked at the Luverne plant from only January 2008-March 2008. Ms. Verner is not a class member, having worked for Gold'n Plump after the close of the class period, and therefore she does not have standing to object. In any case, Ms. Verner's letter expresses only a concern that the injunctive relief set forth in the Settlement Agreement has not yet been effectuated; however, under the terms of the Settlement Agreement, Gold'n Plump has until the effective date of the Settlement Agreement to implement the policies and procedures that are the subject of the Settlement Agreement. (*See* Regan Aff. Ex. 1, Settlement Agreement ¶¶ 8, 15).[10]

[10] The Agreement defines "Effective Date" as occurring "14 days after the time for any Plaintiff Class member to appeal the Order for Final Judgment" or, if appealed, "the date on which all appellate proceedings resulting from such filing have finally been terminated." Regan Aff. Ex. 1, SA ¶ 15.

These letters do not nullify the overwhelmingly positive response of Plaintiff Class members. Because the settlement meets the criteria of fairness, it should be finally approved.

V. Other Factors Support the Conclusion that the Settlement is Fair, Reasonable, and Adequate.

In addition to being presumptively valid, the settlement meets the Eighth Circuit's additional fairness criteria. These criteria include: (1) the merits of the plaintiff's case, weighed against the terms of the settlement; (2) the defendant's financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement.[11] Under the Eighth Circuit's test, "[t]he most important

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[11] *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 932-33 (8th Cir. 2005) (citing *Grunin,* 513 F.2d at 124). The factors parallel the nine-factor balancing test described by the Third Circuit, which is embraced by both the annotations to Rule 23(e) and the *Manual for Complex Litigation*. *See Prudential*, 148 F.3d at 317. While not controlling in this Circuit, those factors include:

> 1) the complexity, expense, and likely duration of the litigation; 2) the reaction of the class to the settlement; 3) the stage of the proceedings and the amount of discovery completed; 4) the risks of establishing liability; 5) the risks of establishing damages; 6) the risks of maintaining the class action through trial; 7) the ability of the defendants to withstand a greater judgment; 8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] 9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

consideration in deciding whether a settlement is fair, reasonable, and adequate is 'the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.'"[12] While a weighing of the merits is required, the Court is not to "go beyond the amalgam of delicate balancing, gross approximations, and rough justice."[13]

Applying these factors to the proposed settlement, the Court can easily find that the settlement meets the requisites of Rule 23(e) and the FLSA. ***First***, while Plaintiffs and Settlement Class Counsel believe their donning and doffing case is meritorious and supported by recent Supreme Court and appellate precedent, they face several untested defenses that, if successful, might defeat part or all of Plaintiffs' claims even prior to trial.[14] For example, Gold'n Plump has maintained that the gear Plaintiffs don and doff is "non-unique," and so the time spent donning and doffing "non-unique" gear is noncompensable. Similarly, Gold'n Plump has asserted that even if donning and doffing is work, the time Plaintiffs spend donning and doffing is *de minimis*, and therefore not compensable. As this Court noted, analysis of this defense is neither

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Id.

[12] *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d at 933 (citing *Petrovic* 200 F.3d at 1150 (internal quotations omitted)).

[13] *White*, 836 F. Supp. at 1477 (internal citations omitted).

[14] *See* Sept. 24, 2007 Order at 7.

obvious nor simple.[15]

However these defenses would be resolved, their legal and factual complexity make them expensive to litigate on a class-wide basis. Evaluation of all claims and defenses would require expert analysis and testimony concerning Gold'n Plump's processing plants, as well as industry practices. Both defenses are hot-button issues in donning and doffing cases, and their application to the Class presents substantial risks to both parties. If fully litigated, they could take years to resolve through verdict and judgment, and, inevitably, appeal.

Accordingly, while Settlement Class Counsel believe that the Plaintiff Class' claims are strong, Settlement Class Counsel are also experienced and realistic enough to know that the guaranteed recovery and certainty achieved through settlement—as opposed to the uncertainty inherent in the jury trial and appellate process—weighs heavily in favor of the settlement result here. In addition to monetary relief, all members of the Plaintiff Class will receive equitable relief consistent with Plaintiffs' position in this litigation. Thus, aside from the obvious risk that Plaintiffs bear—that they would achieve no recovery for anyone at trial—it is also possible, due to the subclass structure of the Plaintiff Class, that only some Plaintiffs would prevail.

[15] Sept. 24, 2007 Order at 7.

Through the settlement, everyone has a chance to receive compensation.

Second, Gold'n Plump will pay the settlement amount. This weighs heavily in favor of approval.

Third, continued litigation in this case would involve a set of trials that would clearly increase the expense to both parties, add to the complexity of this litigation, and tax already limited judicial resources. Aside from the extensive nondispositive and dispositive motions in the record, as this Court knows, it took multiple rounds of briefing and two hearings for both sides just to propose their trial plan. Trial for only one subclass of approximately 70 people was scheduled to last almost three weeks, and would have involved thousands of pages of documentation, testimony from opt-in Plaintiffs, Gold'n Plump corporate officials, and experts. Furthermore, this Court had not guaranteed that the remaining members of the FLSA Class would be able to proceed to trial on a class-wide basis, and so it was possible that some Plaintiffs would have to proceed with their cases individually. Any subclasses or individual that advanced to a verdict would inevitably have been subject to additional process consisting of lengthy post-trial motions, and, given the high stakes nature of the case, appeals. This would only result in more delay in recovery, if Plaintiffs ultimately prevailed.

As this Court noted in another context, "[l]engthy litigation is hard on any party," but for certain classes of people it is even harder.[16] Members of the Plaintiff Class are not highly paid, and so the certainty of a monetary recovery, nearly four years after this suit was first filed, means a lot. In addition, none of the FLSA opt-in Plaintiffs have to take days off of work, and use valuable vacation or leave time that would otherwise be spent with their families, to prepare for and appear at trial. And, given the high turnover at Gold'n Plump plants and the transient nature of the Plaintiff Class, if this case proceeds through trial and appeal, it will become more difficult to locate absent Plaintiff Class members who might participate in any eventual recovery.

The proposed settlement therefore eliminates the need for lengthy, uncertain, and expensive trials. It also reflects economies of time, effort, and expense, by eliminating the need for individual litigation on what are, on average, small back wage claims. Even with fee-shifting statutes in place, it would be uneconomical for individual plaintiffs to proceed to trial with their claims. The settlement thus affords Plaintiffs with prompt, efficient relief, while avoiding the expenses and burdens of trial.

Fourth, based upon the lack of true objection to the settlement terms from class

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[16] *Rexam Inc. v. United Steel Workers of Amer.*, No. 03-2998, 2005 WL 1260914, *5 (D. Minn. May 25, 2005) (Ex. 7).

members, the Class Representative approval, and the strong participation rate thus far, the settlement has been favorably received. Each of the Class Representatives has given his approval to the settlement. And, as discussed in section II, nearly one thousand claim forms have been sent since Notice of the settlement was mailed and published. As addressed above, no true objections have been filed with the Court or sent to counsel, weighing in favor of approval.

The Court should construe the lack of true objections, and the favorable response already received, as a strong indication of Class member support of the settlement. Accordingly, the settlement should be finally approved.

CONCLUSION

Under all relevant law and standards, the proposed settlement is fair, adequate, and reasonable, and satisfies all requirements for final approval. The settlement provides hard-fought and substantial relief to the Plaintiff Class, without the attendant risks of additional litigation. Settlement Class Counsel and the Class Representatives respectfully request that the Court grant final approval to the proposed settlement and enter judgment in this action.

Dated: April 4, 2008

Respectfully Submitted,

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DISTRICT OF MINNESOTA

Jason Frank, Erich Peasley, William Waters and Robert Wilhelm Plaintiffs, -v- Gold'n Plump Poultry, Inc., Defendant.	Civil No. 04-CV-1018 PJS/RLE **LR 7.1(c) WORD COUNT COMPLIANCE CERTIFICATE**

I certify that this brief complies with the type-volume limitation set forth in L.R. 7.1(c). This brief contains 5,207 words, counted through Microsoft Word's word-counting function. The Brief was prepared using Microsoft Word 2003 in 13 point Sylfaen type style.

Dated: April 4, 2008

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