IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MERINO, *et al.*, individually and on behalf of all others similarly situated, Plaintiffs, v. WELLS FARGO & COMPANY and WELLS FARGO BANK, N.A., Defendants.	Case No.: 2:16-cv-07840-ES-MAH

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF SETTLEMENT AGREEMENT

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I. INTRODUCTION

This class and collective action wage and hour lawsuit against Defendants Wells Fargo Bank, N.A. (the "Bank") and Wells Fargo & Company (together with the Bank, "Defendants" or "Wells Fargo"), has been settled, and Plaintiffs respectfully submit this memorandum of law in support of their Unopposed Motion for Final Approval of the Settlement Agreement.

Plaintiffs are non-exempt hourly paid former and current Wells Fargo personal and business bankers who worked for the Bank during the relevant time periods ("Hourly Bankers"),[1] whose duties included selling Wells Fargo's financial products and services to consumers. Plaintiffs allege that they were not paid all overtime owed under the federal Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq*. ("FLSA"), as well as under the wage and hour laws of the following seven states: (1) New Jersey, (2) Nevada, (3) New York, (4) Pennsylvania, (5) North Carolina, (6) Minnesota, and (7) Connecticut.

[1] As defined in the Settlement Agreement, the Settlement Collective and Applicable State Subclasses within the Settlement Class include Wells Fargo's hourly, non-exempt bankers holding the following positions: Customer Sales and Service Representatives ("CSSRs"), Personal Banker 1s ("PB1s"), Personal Banker 2s ("PB2s"), Private/Premier Bankers ("PPBs"), Business Banking Specialists ("BBSs"), and Senior Business Banking Specialists ("SBBSs") (collectively defined in the Settlement Agreement as the "Covered Positions"). Settlement Agreement ¶¶ 1.13, 1.47, 1.49.

The terms of the Parties' settlement are set forth in a Settlement Agreement (the "Settlement Agreement," "Agreement," or "S.A."), that was filed with the Court with Plaintiffs' Motion for Preliminary Approval. ECF No. 132-1. The Agreement includes a maximum cash payment of $35,000,000.00 (the "Maximum Settlement Amount"). S.A. ¶¶ 5.1., 16.2(xxi).

The Court granted preliminary approval of the Settlement Agreement on July 9, 2019. (ECF 135.) Thereafter, notice was sent to all Settlement Class and Settlement Collective Members pursuant to the plan of notice set forth in the Agreement and preliminarily approved by the Court. On September 9, 2019, consistent with the Court's Preliminary Approval Order, the Settlement Administrator mailed the Court-approved Notice to 38,149 individuals on the Collective/Class List provided by the Bank. *See* Decl. of Jessica Jenkins on behalf of Rust Consulting, Inc. ("Rust Decl.") at ¶ 8. As of today, 7,073 Settlement Class and Settlement Collective Members (approximately 18.54%) have submitted Claim Forms that the Parties agree are valid. *Id.* at ¶ 15. Additionally, the Parties have received ***zero objections*** and ***only nine requests for exclusion***. *Id.* ¶¶ 8, 18-20.

As set forth in detail below, the Settlement Agreement satisfies the criteria for final approval and is a fair, reasonable, and adequate resolution of this lawsuit. Accordingly, the Parties respectfully request that the Court enter the accompanying proposed Final Approval Order:

(1) granting final approval of the proposed Settlement Agreement;

(2) granting final approval of the Settlement Class for the state law claims pursuant to Fed. R. Civ. P. 23(a) and (b)(3);

(3) finally approving Plaintiffs Juan Carlos Merino, Jonathan Almonte, Joshua Thomson, Keenan Johnson, Abdullahi Hajisomo, Claudia Cervantes Chouza, and Richard Sklenka as class representatives for the seven Applicable State Subclasses within the Settlement Class, and approving service awards to the Plaintiffs for their service to the Settlement Class and in exchange for their additional released claims, in the amounts forth in the Settlement Agreement;

(4) finally approving Shanon J. Carson, Sarah R. Schalman-Bergen, and Alexandra K. Piazza of Berger Montague PC, Roosevelt N. Nesmith of the Law Office of Roosevelt N. Nesmith, LLC, Catherine Anderson of Giskan Solotaroff & Anderson LLP, David Markham of The Markham Law Firm, Peggi Reali of Reali Law APC, Richard Quintilone of Quintilone & Associates, and Russel S. Warren Jr. as Class Counsel;

(5) finally approving Rust Consulting, Inc. as the Settlement Administrator and approving its fees and costs of settlement administration;

(6) granting Class Counsel's request to comply with the consent filing requirement of 29 U.S.C. § 216(b) (*i.e.*, filing the Check Opt-In Forms and redacted Claim Forms with the Court), by instead filing with the Court, and serving on Defendants' Counsel proof of filing, a declaration from the Administrator attaching a complete list of the names, with a unique identification number generated by the Administrator, for all Settlement Participants, which may be filed under seal with the Court's permission, after the Second Check Cashing Period expires, that ensures that a record is maintained of those who have consented to join the Settlement of this Lawsuit; and

(7) dismissing this settlement class and settlement collective action with prejudice.

Defendants have reviewed and do not oppose this Motion.

II. PROCEDURAL HISTORY

Plaintiffs incorporate by reference as if fully set forth herein, the Procedural Background and Terms of Settlement Sections set forth in the Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of the Settlement Agreement (ECF 132-2), which the Court granted on July 9, 2019. ECF 135.

A. The Notice Provisions In The Settlement Agreement Were Satisfied

The Court granted preliminary approval of the Settlement Agreement on July 9, 2019. Thereafter, the Parties complied with the notice provisions in the Agreement. S.A. ¶¶ 16.1, 16.2.

Specifically, the Administrator obtained a website address of www.WFOvertimeSettlement.com and set up a website for the Settlement (the "Settlement Website"). The Settlement Website includes the Notices, Preliminary Approval Order, and Settlement Agreement for viewing, downloading, and/or printing, along with additional information about the Settlement, and the option to submit a Claim Form online. The website address for the Settlement Website was included in the Mailing Packets and emailed Notices. Notice of the Final Approval Order and Judgment, if entered by the Court, will also be provided to Settlement Class and Settlement Collective Members via the Settlement Website. Rust Decl. ¶ 3; Agreement ¶¶ 1.53, 16.2(vi).

The Administrator also obtained the email address of info@WFOvertimeSettlement.com for receiving communications about the Settlement. This email address was included in the Mailing Packets and was used to send the emailed Notices. Settlement Class Members were able to submit Claim Forms, Requests for Exclusion, objections, and disputes via email, and Settlement Collective Members were able to submit Claim Forms and disputes via email. Rust Decl. ¶ 4.

The Settlement Administrator also obtained a toll-free telephone number of (877) 690-7098 for Settlement Class and Settlement Collective Members to call with questions regarding the Settlement. The toll-free telephone number was included in the Mailing Packets, emailed Notices, and posted on the Settlement Website. Rust Decl. ¶ 5; S.A. ¶¶ 1.53, 16.2(v).

The Administrator also obtained a facsimile number of (877) 877-4521 for Settlement Class Members to submit Claim Forms, Requests for Exclusion, objections, and disputes and for Settlement Collective Members to submit Claim Forms and disputes. The facsimile number was included in the Mailing Packets, emailed Notices, and posted on the Settlement Website. Rust Decl. ¶ 6; S.A. ¶¶ 1.53, 16.2(vi).

On July 30, 2019, Counsel for Defendants provided the Administrator with an electronic mailing list containing data for the Settlement Class and Settlement

Collective Members (the "Collective/Class List"). Rust Decl. ¶ 8; S.A. ¶ 16.1. The Collective/Class List contained the names, last known addresses, last known personal email addresses, dates of employment in Covered Positions during the Collective or Applicable Class Period(s) (as those terms are defined in the Settlement), number of Qualifying Workweeks (as defined in the Settlement), and Social Security numbers of all Settlement Collective and Settlement Class Members. Rust Decl. ¶ 8; S.A. ¶ 16.1. A copy of the Court-approved Notice and Claim Form was previously sent to the Administrator on July 12, 2019, and the Administrator prepared formatted "Mailing Packets" (*i.e.*, the Court-approved Notice of Settlement and Claim Form) for Settlement Class and Settlement Collective Members, respectively, which the Parties then reviewed and approved. Rust Decl. ¶ 7; S.A. ¶¶ 1.22, 16.2(i). On August 14, 2019, Counsel for Defendants provided Rust with corrected start dates, related to the Applicable Class Period(s), for 36 Settlement Class Members. Rust Decl. ¶ 9.

In order to provide the best notice practicable, prior to mailing the Mailing Packets the Administrator undertook additional efforts to identify current addresses by running the mailing addresses contained in the Collective/Class List through the National Change of Address Database ("NCOA") maintained by the U.S. Postal Service. Rust Decl. ¶ 10. The NCOA contains requested changes of address filed with the U.S. Postal Service. *Id*. In the event that any individual filed a U.S. Postal

Service change of address request, the address listed with the NCOA was utilized in connection with the mailing of the Mailing Packets. Rust Decl. ¶ 10; S.A. ¶ 16.2(ii).

On September 9, 2019, the Administrator mailed the Court-approved Notice and Claims Form via U.S. first class mail to all 38,149 Settlement Class and Settlement Collective Members contained in the Collective/Class List. Rust Decl. ¶¶ 8, 11-12; S.A. ¶ 16.2(i). The Settlement Notice sent to Settlement Collective Members advised them that they could submit a Claim Form and/or dispute postmarked by November 8, 2019, and the Settlement Notice sent to Settlement Class Members advised them that they could submit a Claim Form, Request for Exclusion, objection, and/or dispute, postmarked by November 8, 2019. Rust Decl. ¶ 11. Both Settlement Notices advised Settlement Class and Settlement Collective Members that they did not have to take any further action in order to receive a settlement check for $300 (the "Minimum Payment"). S.A. ¶¶ 1.5, 6.1; Rust Decl. ¶ 11.

Between September 9, 2019 and September 12, 2019, Notices were also emailed to 19,856 Settlement Class and Settlement Collective Members for whom Defendants had email addresses and provided them to the Administrator. The emailed Notices contained the same substantive content as the Mailing Packets, but also offered a link to the Claim Form page on the Settlement Website, where Settlement Class and Settlement Collective Members could submit a Claim Form

online using a unique identification number assigned to him or her. Rust Decl. ¶ 12; S.A. ¶¶ 1.53, 16.2(i).

The Administrator performed 3,718 address traces on Mailing Packets returned as undeliverable for the first time on or before October 9, 2019. The address trace utilizes the individual's name, previous address, and Social Security number for locating a current address. Of the 3,718 traces performed, 3,177 more current addresses were obtained, and Mailing Packets were promptly re-mailed to those Settlement Class and Settlement Collective Members via U.S. first class mail. Of the 3,718 traces performed, the Administrator did not obtain updated addresses for 541 undeliverable Mailing Packets. Of the 3,177 Mailing Packets mailed to a more current address identified from trace, 446 have been returned to the Administrator as undeliverable a second time. Thus, as of December 23, 2019, 987 out of the total of 38,149 (approximately 2.59%) of these Mailing Packets remain undeliverable. Rust Decl. ¶ 13; Agreement ¶ 16.2(iii).

The Administrator promptly resent 106 Mailing Packets returned by the Post Office on or before November 8, 2019, with forwarding addresses attached, to those Settlement Class and Settlement Collective Members via U.S. first class mail. Rust Decl. ¶ 14; S.A. ¶¶ 1.5, 16.2 (iii).

As of December 23, 2019, the Administrator has received 7,073 unique Claim Forms that the Parties have agreed to deem timely and valid, resulting in a Claim

Form filing rate of approximately 18.54% of the 38,149 Settlement Class Members and Settlement Collective Members that were sent a Mailing Packet. Rust Decl. ¶ 15.[2]

If the Court grants final approval and judgment, notice of the Final Judgment will be given to Settlement Class and Settlement Collective Members via the Settlement Website. S.A. ¶ 1.53; Rust Decl. ¶ 3.

B. Response From Settlement Class Members

As of November 8, 2019, the deadline for exclusion from or objection to the Settlement (and the same remains true as of today), the Parties have received ***zero objections*** and ***only nine timely and valid Requests for Exclusion.***[3] Rust Decl. ¶¶ 19-20.

[2] The Administrator has provided counsel for the Parties with weekly status reports concerning the number of Mailing Packets Mailed, returned as undeliverable and re-mailed, any disputes asserted by Claimants, and the number of Claim Forms, Requests for Exclusion and objections received, and whether they were timely and valid, or untimely or invalid. Rust Decl. ¶ 18; S.A. ¶ 16.2(viii). The Parties have met and conferred and have agreed to accept Claim Forms belatedly submitted so long as they are received by Rust before the Final Approval Hearing and otherwise meet the requirements for a valid Claim Form under the Agreement (*i.e.*, are completed, are signed by the Claimant, and have no alterations of the consent to join and release language). *See* S.A. ¶ 19.4.

[3] Redacted copies of the nine timely and valid Requests for Exclusion are attached as Exhibit C to the Rust Declaration.

C. Distribution Of The Maximum Settlement Amount

The Maximum Settlement Amount is $35 million. S.A. ¶ 5.1. Defendants will also pay the employer's portion of any payroll taxes related to Settlement Payments that are cashed *in addition to* the Maximum Settlement Amount. *Id.* Subject to the Court's approval, the Maximum Settlement Amount includes amounts to cover:

(1) proposed service awards of $20,000.00 each to the original named Plaintiffs Juan Carlos Merino and Agustin Morel, Jr.; $10,000.00 each to the other seven Plaintiffs (Joshua Thomson, Jonathan Almonte, Keenan Johnson, Abdullahi Hajisomo, Claudia Cervantes Chouza, Richard Sklenka, and Wilson Blount); and $5,000.00 each to the six Opt-In Plaintiffs for their efforts in bringing and prosecuting this matter, and assisting Class Counsel throughout the ADR process;

(2) attorneys' fees of 30% of the Maximum Settlement Amount ($10,500,000.00), to compensate Class Counsel for all work performed in the Lawsuit to date plus all work remaining to be performed;

(3) the reimbursement of out-of-pocket costs incurred by Class Counsel not to exceed $60,000.00;

(4) the Administrator's fees and costs not to exceed $220,000; and

(5) a Reserve Amount of $100,000.00 to cover any correctible errors or omissions in determining the settlement amounts to be paid to Claimants or to individuals who were not, but later correctly assert that they should have been included in the Settlement Collective or Settlement Class.

S.A. ¶¶ 9.1, 10.1, 5.2, 16.2(xxi).

After subtracting these amounts from the Maximum Settlement Amount, the balance of the funds (the "Net Settlement Amount") (S.A. ¶ 5.3) shall be apportioned among all Settlement Collective Members and all "Participating Class Members"

(defined as all Settlement Class Members except those who return a timely and valid Request for Exclusion) (*Id*. ¶ 1.30) using an objective formula that was negotiated by the Parties as set forth in the Agreement and that, in summary, guarantees a meaningful minimum cash payment of at least $300.00 for every Settlement Collective Member and for every Participating Class Member, plus the opportunity to receive an additional "Per Workweek Amount" by submitting a valid and timely Claim Form. S.A. ¶ 6.1.

The average payment under the Settlement Agreement is estimated by the Administrator to be $628.77, with the maximum payment estimated to be approximately $8,843.92. Rust Decl. ¶ 19. Payment determinations and inclusion in the Settlement Collective and/or Settlement Class are based on the Bank's personnel and payroll records. S.A. ¶ 7.1.

The Administrator shall mail all payments to Plaintiffs, Opt-In Plaintiffs, Settlement Collective Members, Participating Class Members, and Class Counsel as soon as practicable after the Effective Date and no later than 45 days after the Effective Date. *Id.* ¶ 11.2. Settlement Payment checks issued by the Administrator will be negotiable for 180 days from the date they are issued. *Id.* ¶ 24.1. The amounts of any Settlement Payment checks that become void due to failure by an intended payee to negotiate them properly will remain in the Qualified Settlement Fund ("QSF") (*Id*. ¶ 1.38) for an additional 180 days ("Second Check Cashing Period")

during which time the Administrator shall notify the intended payees by letter and email (if an email address is available) of how the payee can claim the Settlement Payment in compliance with the Agreement. *Id.* ¶ 24.2.

D. Remaining Monies And Cy Pres Award

This is a non-reversionary Settlement in that a minimum of $30 million (the "Minimum Settlement Amount") will be paid out and under no circumstances will revert to Defendants. After expiration of the Second Check Cashing Period, if the Gross Settlement Amount is greater than or equal to Thirty Million Dollars ($30,000,000.00) (the "Minimum Settlement Amount"), then the Administrator shall remit to Wells Fargo the difference between the Maximum Settlement Amount and the Gross Settlement Amount resulting only from uncashed checks and tax refunds on the uncashed checks. *Id.* ¶ 24.5. If the Gross Settlement Amount is less than the Minimum Settlement Amount, then the Administrator will pay the difference between the two amounts to Legal Services of New Jersey and Legal Aid of North Carolina,[4] the charitable non-profit organizations agreed to by the Parties, subject to the Court's Final Approval Order. The Administrator will then remit to

[4] Legal Services of New Jersey (www.lsnj.org) is the state-wide umbrella program for five regional legal aid corporations in New Jersey and has a Workers Legal Rights and Farmworker Project. Legal Aid of North Carolina handles employment law matters statewide (www.legalaidnc.org/get-helpt/our-services). Both of these entities thus have a connection to the subject-matter of this employment-related lawsuit.

Wells Fargo the difference between the Maximum Settlement Amount and the Minimum Settlement Amount resulting from uncashed checks and tax refunds on the uncashed checks. *Id*.

All Settlement Payments are subject to taxation and will be reported to the IRS and state tax authorities. One half (1/2) of each Settlement Payment will be considered wages, and the other one half (1/2) will be considered interest, liquidated damages, and any statutory or civil penalties available under applicable laws, with tax withholding to apply only to the portion allocated to wages. *Id.* at ¶ 8.

E. Attorneys' Fees And Costs

Subject to the Court's approval, the Settlement Agreement provides that Class Counsel will be paid a fee up to 30% of the Maximum Settlement Amount, plus reimbursement of their out-of-pocket costs in an amount not to exceed $60,000. S.A. ¶¶ 10.1, 11.2. Class Counsel filed an Unopposed Motion for Approval of Attorneys' Fees and Costs on October 25, 2019, which is also scheduled to be heard at the Final Approval Hearing. *See* ECF 137.

III. DISCUSSION

A. Applicable Legal Standards

1. Legal Standard for Approval of FLSA Settlements

Settlements are favored in law, including those resolving wage claims under the FLSA. *D.A. Schulte, Inc. v. Gangi*, 328 U.S. 108, 116 (1946). The standard for approval of an FLSA collective action requires only a determination that the

compromise reached is a "fair and reasonable resolution of a *bona fide* dispute over FLSA provisions." *See Brumley v. Camin Cargo Control, Inc*., No. 08-cv-1798, 2012 WL 1019337, at *2 (D.N.J. Mar. 26, 2012) (citing *Lynn's Food Stores, Inc*. *v. U.S*., 679 F. 2d 1350, 1354 (11th Cir. 1982)).

"Although the Third Circuit has not yet specifically addressed what factors district courts should consider in evaluating settlements under the FLSA, district courts in this Circuit have referred to the considerations set forth in *Lynn's Food Stores*." *In re Chickie's & Pete's Wage and Hour Litig.,* No. 12-6820, 2014 WL 911718, at *2 (E.D. Pa. Mar. 7, 2014) (citations omitted). Under *Lynn's Food Stores,* a district court may find that a proposed settlement resolves a *bona fide* dispute when it "reflect[s] a reasonable compromise over issues, such as FLSA coverage or computation of back wages, that are actually in dispute." *Chickie's,* 2014 WL 911718, at *2 (citing *Lynn's Food Stores*, 679 F. 2d at 1354). "Typically, courts regard the adversarial nature of a litigated FLSA case to be an adequate guarantor of fairness." *Kauffman v. U-Haul Int'l Inc.,* No. 5:16-cv-04580, 2019 WL 1785453, at *2 (E.D. Pa. April 24, 2019). "Additionally, a strong presumption of fairness attaches to proposed settlements that have been negotiated at arms-length." *Id.* (citation omitted).

In scrutinizing an FLSA settlement agreement for reasonableness and fairness, courts generally proceed in a "two step" analysis. First, the court considers

whether the agreement is "fair and reasonable" to the plaintiffs-employees and, if it is, then the court next considers whether the agreement furthers or "impermissibly frustrates" the implementation of the FLSA in the workplace. *Chickie's*, 2014 WL 911718, at *2 (citations omitted).

With respect to the "fair and reasonable" consideration, because the Third Circuit has not yet definitively set out FLSA-specific criteria to apply to assess the fairness and reasonableness of a proposed FLSA settlement agreement, district courts have looked to the *Girsh* factors (described below) used in evaluating the fairness of class action settlements under Fed. R. Civ. P. 23(e). *See Chickie's*, 2014 WL 911718, at *2 (citing *Girsh v. Jepson*, 521 F. 2d 153, 157 (3d Cir. 1975)) ("*Girsh* factors") (*see* Rule 23(e) standard discussed below).[5] Once the FLSA settlement is found to be fair and reasonable, the Court also determines whether the agreement furthers the purpose of the FLSA. *See Singleton v. First Student Mgmt., LLC*, No. 13-cv-1744, 2014 WL 3865853, at *8 (D.N.J. Aug. 6, 2014).

[5] In other words, where the settlement involves a "hybrid" case, like this one, involving both a Settlement Collective and a Settlement Class, courts utilize the *Girsh* factors to assess the fairness of the Settlement Agreement, as they would in a case involving solely Rule 23 settlement class claims. *See, e.g., Maddy v. Gen. Elect. Co.*, No. 14-490-JBS-KMW, 2017 WL 2780741, at *3 (D.N.J. June 26, 2017).

2. Legal Standard for Final Approval of Rule 23 Class Action Settlements

Rule 23(e) requires a determination by the district court that the proposed settlement is "fair, reasonable and adequate." Fed. R. Civ. P. 23(e); *In re Warfarin Sodium Antitrust Litig*., 391 F.3d 516, 534 (3d Cir. 2004). There is a strong judicial policy in favor of resolution of litigation before trial, particularly in "class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *In re CertainTeed Corp. Roofing Shingle Prods. Liab. Litig.*, 269 F.R.D. 468, 484 (E.D. Pa. 2010) (quoting *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010)); *see also In re General Motors Corp. PickUp Truck Fuel Tank Prod. Liability Litig.*, 55 F.3d 768, 784 (3d Cir. 1995). Rule 23(e) outlines a two-step process by which district courts must first determine whether a proposed class action settlement warrants preliminary approval and then, after notice is given to class members, whether final approval is justified. *See, e.g.,* Annotated Manual for Complex Litigation (Fourth) § 21.61 (2016). Final approval is warranted where the settlement is fair, adequate, and reasonable to the class. *Walsh v. Great Atl. & Pac. Tea Co., Inc.*, 726 F. 2d 956, 965 (3d Cir. 1983).

As the Third Circuit recently explained, when reviewing motions for settlement-only class certification and approval of the settlement, the district court must, in effect, weigh "two opposing interests." *In re Google Inc. Cookie Placement Consumer Privacy Litig.*, 934 F. 3d 316, 326 (3d Cir. 2019). First, the court "favor[s]

the parties reaching an amicable settlement and avoiding protracted litigation" and "do[es] not wish to intrude overly on the parties' hard-fought bargain." *Id.* "A district court thus is to presume a settlement is fair if (1) the negotiations occurred at arms' length;[6] (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected." *Id.* (citing *Nat'l Football League Players Concussion Injury Litig.*, 821 F. 3d 410, 436 (3d Cir. 2016)). At the same time, the court serves as a "fiduciary for absent class members to examine the proposed settlement with care." *Google*, 934 F. 3d at 326. A fair, reasonable, and adequate settlement is not necessarily an "ideal settlement," but instead is "a compromise, a yielding of the highest hopes in exchange for certainty and resolution." *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 317 (3d Cir. 1998) (citations omitted). Significant weight should be given to the opinion of experienced class counsel that the settlement is in the best interest of the class. *In re Am. Family Enters.*, 256 B.R. 377, 421 (D.N.J. 2000).[7]

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[6] It is well-established that settlements enjoy a presumption that they are fair and reasonable when they are the product of arm's-length negotiations conducted by experienced counsel who are fully familiar with all aspects of class action litigation. *See, e.g.*, *GMC Trucks*, 55 F.3d at 785; *Sullivan v. DB Invs.*, 667 F.3d 273, 320 (3d Cir. 2011) (*en banc*); *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 439, 444 (E.D. Pa. 2008) (stressing the importance of arm's length negotiations and highlighting the fact that the negotiations included "two full days of mediation").

[7] *See also Maddy v. General Elec. Co.*, No. 14-190-JBS-KMW, 2017 WL 2780741, at *5 (D.N.J. June 26, 2017) (approving settlement of Rule 23 class and FLSA

The Third Circuit has adopted a nine-factor test to determine whether a settlement is "fair, reasonable, and adequate." The elements of this test – known as the "*Girsh* factors" – are:

> (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation.

GMC Trucks, 55 F.3d at 785 (citing *Girsh*, *supra*, 521 F.2d at 157); *Google.*, 934 F. 3d at 322 & n.2 (noting that the court must apply the *Girsh* factors in determining whether to approve a class action settlement).[8]

Here, the Settlement Agreement meets all of the Third Circuit principles and requirements of substantive and procedural fairness for final approval under Rule 23(e) as well as under the FLSA. In addition, the Agreement meets the standard for

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collective action, noting that, in evaluating risk of establishing liability and damages against immediate benefits offered by settlement, court's "duty is not to 'press into the merits of the case' but instead to rely, to an extent, on counsel's estimate of the risks…. as they are most familiar with the intricacies of the case.")

[8] The *Girsh* factors are a guide and the absence of one or more factors does not automatically render the settlement unfair. Rather, the Court must look at all the circumstances of the case and determine whether the settlement is within the range of reasonableness. In addition, a district court should consider whether the settlement is proposed by experienced counsel who reached the agreed-upon terms through arms'-length bargaining. *See Mulroy v. National Water Main Cleaning Co. of N.J.*, No. 12-3669 (WJM)(MF), 2014 WL 7051778, at *2 (D.N.J. Dec. 12, 2014).

approval of an FLSA settlement because it is a fair and reasonable compromise of a *bona fide* dispute that furthers the purpose of the FLSA.

B. The Application Of The *Girsh* Factors Supports Final Approval

1. The complexity, expense, and duration of continued litigation weighs in favor of final approval

This factor "captures the probable costs, in both time and money, of continued litigation." *In re Cendant Corp. Litig.*, 264 F.3d 201, 233-34 (3d Cir. 2001) (internal quotation marks omitted). "Where the complexity, expense, and duration of litigation are significant, the Court will view this factor as favoring settlement." *Bredbenner v. Liberty Travel, Inc.*, No. 09-1248 MF, 2011 WL 1344745, at *11 (D.N.J. Apr. 8, 2011). Here, this factor weighs heavily in favor of granting final approval of the Parties' Settlement Agreement. Defendants vigorously dispute Plaintiffs' claims and deny liability, asserting that they have strong defenses, that they would prevail at trial if the litigation continued, and that the case is not appropriate for class or collective action treatment. *See* S.A. at pp. 1-2. Because the legal and factual complexities of this case are substantial, continued litigation would be risky, expensive, and time-consuming.

Plaintiffs pleaded this lawsuit as a putative collective and class action on behalf of thousands of current and former employees located across the country involving, in addition to the FLSA, state wage and hour laws. Expert testimony from both Parties would be required. *Hall v. AT&T Mobility LLC*, No. 07-5325 JLL, 2010

WL 4053547, at *7 (D.N.J. Oct. 13, 2010) (fact that trial would have required substantial expert testimony weighed in favor of approving settlement). Moreover, Defendants would argue that a collective and class could not be certified for litigation purposes for many reasons, including that a putative collective and class trial on behalf of thousands of individuals would not be manageable, which is a concern that need not be taken into account with respect to evaluating a settlement. Then, even if the Court were to certify an FLSA collective or Rule 23 class for litigation purposes, Wells Fargo would move for decertification, given that Rule 23(c)(1)(C) of the Federal Rules of Civil Procedure and the two-stage FLSA certification process allow the district court to retain jurisdiction until final judgment to modify a certification order. And even if Plaintiffs prevailed at the decertification stage *and* at trial, the resulting judgment, including the certification order, would be subject to appeal and possible reversal. Despite Plaintiffs' confidence in their ability to obtain certification and prove their claims at trial on a collective- and class-wide basis, any finding in favor of Plaintiffs and a collective or class could be reduced or even eliminated following trial. In light of these substantial risks of continued litigation, this factor weighs in favor of granting final approval. *See Mulroy v. National Water Main Cleaning Co. of N.J.*, No. 12-3669 (WJM)(MF), 2014 WL 7051778, at *3 (D.N.J. Dec. 12, 2014) (application of *Girsh* factors weighed in favor

of approving settlement in wage and hour case as "[s]ince continued litigation would be time-consuming and expensive, settlement makes eminent sense").

Further, the proposed formula to distribute the funds to Settlement Collective and Settlement Class Members is fair and reasonable. The Settlement was carefully negotiated based on a substantial investigation by Class Counsel and the review and analysis of documents exchanged in the course of litigation and in preparation for mediation. The Net Settlement Amount will be fairly allocated according to a negotiated objective formula set forth in the Agreement. All Settlement Collective Members and all Participating Class Members (defined as all Settlement Class Members except those who return a timely and valid Request for Exclusion) will automatically receive a Minimum Payment of $300.00 without having to submit a Claim Form. Further, Settlement Collective Members and Participating Class Members who submit a valid and timely Claim Form (as described at S.A. ¶ 19.4) as well as Plaintiffs and Opt-In Plaintiffs who previously filed a consent to join the Lawsuit, will be issued the Minimum Payment *plus an additional amount* based upon the number of that Claimant's "Qualifying Workweeks" as long they have more than 12 "Qualifying Workweeks." S.A. ¶ 6.1-6.5 ("Settlement Formula and Allocation"). The number of Qualifying Workweeks for each Claimant will be determined by reference to the Bank's payroll and personnel records. *Id.* ¶ 7.1.

The Court should now confirm its preliminary finding that the Settlement's proposed formula to distribute the monies to Settlement Collective Members and Participating Class Members is fair and reasonable. The Court's "[a]pproval of a plan of allocation of a settlement fund … is governed by the same standards of review applicable to approval of the settlement as a whole; the distribution plan must be fair, reasonable and adequate." *Mehling v. New York Life Ins. Co*., 248 F.R.D. 455, 463 (E.D. Pa. 2008) (citation omitted). "Generally, where a plan of allocation 'reimburses class members based on the type and extent of their injuries' it will be found reasonable." *Mulroy,* 2014 WL 7051778, at *5-6 (citation omitted). Notably, "[i]n determining the fairness, reasonableness, and adequacy of a plan of allocation, courts give great weight to the opinion of qualified counsel." *In re Royal Dutch/Shell Transport Secs. Litig*, No. 04-374 (JAP), 2008 WL 9447623, at *23 (D.N.J. Dec. 9, 2008) (citations omitted).

The formula for distributing the Net Settlement Amount is similar to formulae found to be fair and reasonable in similar cases, and accordingly warrants approval.[9]

[9] *See, e.g., Bozak v. FedEx Ground Package Sys, Inc*., 3:11-cv-00738-RNC, 2014 WL 377821, at *3, 9 (D. Conn. July 31, 2014) (approving collective action settlement in case brought by current and former FedEx Group Package line haul services managers, in which allocation formula took into account number of full workweeks each class member worked).

2. The Reaction of the Settlement Class to the Notice

The second *Girsh* factor "attempts to gauge whether members of the class support the Settlement." *In re Prudential*, *supra*, 148 F.3d at 318. To evaluate this factor, "the number and vociferousness of the objectors" must be examined. *GMC Trucks*, 55 F.3d at 812. Given the overall effectiveness of the notice program, which sent a total of 38,149 Notices that ultimately reached over 97% of the Settlement Class (Rust Decl. ¶ 13), the fact that there have been **zero** objections and nine (9) Requests for Exclusion is a very strong indicator that the Settlement is fair, reasonable, and adequate. *See, e.g.*, *In re Cendant*, 264 F.3d at 234-35 (affirming trial court decision that class reaction was "extremely favorable," where 478,000 notices were sent, four objections were made, and 234 class members opted out).

The absence of any objections to the Settlement Agreement raises a strong presumption that its terms are favorable to the Settlement Class and Settlement Collective. *See Bell Atlantic Corp. v. Bolger*, 2 F.3d 1304, 1314 n.15 (3d Cir. 1993) (silence is "tacit consent" to settlement); *Maddy v. General Elec. Co.*, No. 14-190-JBS-KMW, 2017 WL 2780741, at *4 (D.N.J. June 26, 2017) (approval was supported by fact that there were no objections to the settlement and only five opt-outs out of 1,456 class members, particularly where class notice "was written in a manner to apprise Class Members of the right to object to the settlement.").

Further, the Claim Form participation rate in the Settlement is substantial, as approximately 18.54% of the Settlement Class and Settlement Collective Members have submitted Claim Forms. Rust Decl. ¶ 15. This also suggests that the Settlement is fair and reasonable and shows that that the notice program was effective. *See Stoner v. CBA Info. Servs.*, 352 F.Supp.2d 549, 552 (E.D. Pa. 2005) (class reaction deemed "more than favorable" where 16% of class members submitted a claim form and 18 opted out). Thus, this factor strongly warrants final approval.

3. The Stage of the Proceedings

The stage-of-the-proceedings factor captures "the degree of case development that Class Counsel have accomplished prior to settlement. Through this lens, courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating." *GMC Trucks*, 55 F.3d at 813. The amount of discovery completed is one of the factors courts consider in determining the fairness, reasonableness, and adequacy of a settlement. *Id.* at 785; *Girsh*, 521 F.2d at 157. A partial completion of discovery is helpful, but not mandatory, to determine if settlement should receive final approval. *In re TD Ameritrade Account Holder Litig.*, No. C 07-2852 SBA, 2011 WL 4079226, at *6 (N.D. Cal. Sept. 13, 2011). The bottom line is that "the parties have sufficient information to make an informed decision about settlement." *Durham v. Cont'l Cent. Credit, Inc.*, No. 07-CV-1763-

BTM-WMC, 2011 WL 90253, at *3 (S.D. Cal. Jan. 10, 2011) (citing *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1239 (9th Cir. 1998)).[10]

Here, before settling, the Parties had a thorough understanding of their respective claims and defenses. This litigation had been pending for over two years prior to settlement. Plaintiffs briefed their motion for conditional certification and fleshed out potential issues in opposing and prevailing upon Defendants' motion to strike the Rule 23 class allegations. Plaintiffs and Defendants exchanged comprehensive written discovery. Plaintiffs' counsel interviewed numerous Settlement Class Members. In addition, prior to mediation, Plaintiffs obtained, reviewed and analyzed ADR-related discovery and data obtained from Defendants that allowed Class Counsel to calculate damages for purposes of mediation. *See P. Van Hove BVBA v. Universal Travel Grp., Inc.*, No. 11-2164, 2017 WL 2734714, at *7 (D.N.J. June 26, 2017) (Vasquez, J.) ("[i]ndeed, courts in this district have approved settlements while the case was in the pre-trial stage and formal discovery had not yet commenced") (quoting *Johnson & Johnson Derivative Litig.*, 900 F.Supp.2d 467, 482 (D.N.J. 2012)).

[10] *See Chemi v. Champion Mortg.*, No.2:05-cv-1238 (WHW), 2009 WL 1470429, at *4 (D.N.J. May 26, 2009) (finding "stage of proceedings" factor satisfied in light of parties' "considerable investigation and negotiation" prior to settlement which gave them an "adequate appreciation of the merits of the case").

Defendants also vigorously defended their position and obtained information and documents sufficient for them to evaluate the case. Defendants engaged in substantial motion practice, propounded discovery, and took the depositions of Plaintiffs Merino and Morel.

In light of the substantial motion practice and formal and substantial ADR-related discovery exchanged by the parties, they possess sufficient information to properly evaluate settlement. Moreover, the case settled only after two full-day, arm's-length mediation sessions before an experienced third-party mediator and many rounds of subsequent additional negotiations under the mediator's supervision.

In addition to the assistance of an experienced mediator, Class Counsel's deep understanding of the relevant law and facts stem from the fact that counsel for both sides are highly experienced in wage and hour class and FLSA collective action litigation, which further supports the reasonableness and fairness of the Settlement Agreement. Class Counsel's assessment that the terms of the Agreement, which among other things, guarantees a substantial immediate monetary payment of *at least $300* for each of the 38,149 Hourly Bankers - when weighed against the risks and expense of continued protracted litigation, is entitled to "considerable weight." *See In re Rent-Way Secs. Litig.*, 305 F. Supp. 491, 509 (W.D. Pa. Dec. 22, 2003); *see also Bredbenner v. Liberty Travel, Inc.*, No. 09-cv-905, 2011 WL 1344745, at

*16 (D.N.J. Apr. 8, 2011) (fact that class counsel are "highly qualified and experienced in wage and hour class action litigation and consider the terms of the settlement to be fair, reasonable, and adequate" counsels in favor of approval).

4. The Risks of Establishing Liability

This factor should be considered to "examine what potential rewards (or downside) of litigation might have been had class counsel decided to litigate the claims rather than settle them." *In re Cendant*, 264 F.3d at 237 (quoting *GMC Trucks*, 55 F.3d at 814). "The inquiry requires a balancing of the likelihood of success if the case were taken to trial against the benefits of immediate settlement." *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 89 (D.N.J. 2001).

Although Class Counsel believe that the claims asserted are meritorious, they are experienced counsel who understand that "the risks surrounding a trial on the merits are always considerable." *Weiss v. Mercedes-Benz of North America, Inc.*, 899 F. Supp. 1297, 1301 (D.N.J. 1995). Here, the risks of establishing liability against Wells Fargo are substantial. First, to the extent Settlement Class and Settlement Collective Members signed arbitration agreements—as Wells Fargo asserts they did—this may preclude them from proceeding on a class-wide basis, whether or not the agreements contain enforceable class action waivers. *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018) (holding that arbitration agreements with class action waivers are enforceable); *see also Lamps Plus, Inc. v. Varela*, 139

S. Ct. 1407 (2019) (holding that arbitration agreements that do not address class arbitration cannot provide the necessary contractual basis for compelling class-wide arbitration).

Further, in the absence of a settlement, Plaintiffs risk that the Court may accept Defendants' arguments and deny certification on various grounds. While Plaintiffs would argue and demonstrate otherwise, Wells Fargo would argue and attempt to demonstrate that there were variations in sales goals and other business practices over time, and that assessment of its outside sales exemption defense would require individualized determinations that would preclude a finding that common questions predominate. Further, even if the Court certified a class or collective, as set forth above, Wells Fargo would surely move for decertification and pursue its appeal options. Wells Fargo has zealously defended against Plaintiffs' claims here and in other wage and hour cases and would continue to do so if the case proceeded to trial. Even if Plaintiffs prevailed on liability, if Plaintiffs could not demonstrate that the violation was a "knowing violation," Plaintiffs' recovery would be limited to the shorter two-year FLSA statute of limitations. *See* 29 U.S.C. §255(a); *McLaughlin v. Richland Shoe Co*., 486 U.S. 128, 133 (1988).

Finally, even if Plaintiffs were to prevail at trial, the resulting judgment, including the certification order, would be subject to appeal and possible reversal. In contrast, the Settlement here presents the Settlement Class and Settlement

Collective with real relief, now. Thus, this factor weighs in favor of approving the Settlement. *See Mulroy*, 2014 WL 7051778, at *5 (approving settlement of wage and hour claims under New Jersey law, as "reasonable compromise" when weighed against risks of possible loss at summary judgment or trial or that class certification could be denied or any certified class may be decertified before trial: the settlement "represents certainty and resolution for Plaintiffs who otherwise would face an uncertain future regarding establishing liability and damages").

5. The Risks of Establishing Damages

"Like the fourth factor, 'this inquiry attempts to measure the expected value of litigating the action rather than settling it at the current time.'" *In re Cendant*, 264 F.3d at 238. A court compares the potential damage award if the case were taken to trial, against the benefits of immediate settlement. *Prudential*, 148 F.3d at 319. In *Warfarin Sodium*, the trial court found that the risk of establishing damages strongly favored settlement, observing that "[d]amages would likely be established at trial through 'a "battle of experts," with each side presenting its figures to the jury and with no guarantee whom the jury would believe.'" *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256 (D. Del. 2002), *aff'd* 391 F.3d 516, 537 (3d Cir. 2004).

Here, within forty-five (45) days or as soon as is reasonably possible after the Effective Date of the Settlement, each Participating Class Member and Settlement Collective Member will automatically receive a Settlement Payment check that

provides a gross amount of at least $300.00 (the "Minimum Payment"). In addition, each Claimant who submitted a timely and valid Claim Form will receive the lesser of (a) his or her *pro rata* share of the Residual Net Settlement Amount (defined in the Agreement) based on his or her percentage share of the Qualifying Workweeks of all Claimants, or (b) $57.21 per Qualifying Workweek. *See* Declaration of Shanon Carson in support of Plaintiffs' Unopposed Motion for Approval of Attorneys' Fees and Costs at ¶ 40 (ECF No. 137-3). The payment of $57.21 per Qualifying Workweek to Claimants is intended to represent approximately two (2) hours of unpaid overtime for each Qualifying Workweek. This is a fair and reasonable compromise result based on the information that Plaintiffs' Counsel obtained in discovery, including based on interviews with Plaintiffs, Opt-In Plaintiffs, Settlement Collective Members, and Settlement Class Members. *Id*. at ¶ 41. While some Settlement Class Members that Plaintiffs interviewed asserted that they worked more than two hours of off-the-clock time per week,[11] the number of unpaid overtime hours per week would vary from person to person and from week to week. For these reasons, the $35 million proposed Settlement is an excellent result under

[11] Wells Fargo alleges a typical Hourly Banker in many states was scheduled to work only 37.5 hours per week, and not 40. Thus, Settlement Collective and Settlement Class members in this case would have to work in excess of the scheduled hours by more than 2.5 hours per week to be paid overtime under FLSA. 29 U.S.C. § 207(a)(1); *see also Ford-Greene v. NHS, Inc*., 106 F.Supp.3d 590, 610 (E.D. Pa. 2015); *Davis v. Abington Mem'l Hosp*., 765 F.3d 236, 244 (3rd Cir. 2014). That would reduce Wells Fargo's maximum exposure in this case by a substantial amount.

the circumstances. Courts in this Circuit routinely approve class action settlements where the settlement amount is a lower percentage of the claimed amount of damages. *McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 646 (E.D. Pa. 2015) (approving a settlement where the settlement amount constituted 24% of the estimated loss to the class, and noting that courts in the Third Circuit consistently approve settlements that equal between 9% and 24% of the total potential liability to class). Thus, this factor warrants approval of the settlement. *See Mulroy*, 2014 WL 7051778, at *5 (approving settlement of wage and hour claims under New Jersey law, as "reasonable compromise" as it "represents certainty and resolution for Plaintiffs who otherwise would face an uncertain future regarding establishing liability and damages").

6. The Risks of Maintaining the Class Action through Trial

Because the prospects for obtaining class certification have a great impact on the range of recovery, *GMC Trucks*, 55 F.3d at 817, the Court should consider the likelihood of obtaining and maintaining a certified class if the action were to proceed to trial. *Girsh*, 521 F.2d at 157. Class Counsel believe that this case is appropriate for class certification in the litigation context. However, there is always a risk that the Court would accept Defendants' arguments and find that this action is not suitable for class or collective certification. Even if certification is granted, as set forth above, the district court retains jurisdiction until final judgment to modify a

certification order. *Gen. Tel. Co. of Sw. v. Falcon*, 102 S. Ct. 2364, 2372 (1982); Fed. R. Civ. P. 23(c)(1)(C). In contrast, by settling this action, Defendants effectively accede to certification for settlement purposes and "there is much less risk of anyone who may have actually been injured going away empty-handed." *In re Omnivision Techs*., 559 F. Supp. 2d 1036, 1041-42 (N.D. Cal. 2007); *Dewey v. Volkswagen of Am*., 728 F. Supp. 2d 546, 585 (D.N.J. 2010), *rev'd on other grounds, Dewey v. Volkswagen Aktiengesellscahft*, 681 F.3d 170 (3d Cir. 2012). Thus, this factor weighs in favor of final approval.

7. Defendants' Ability to Withstand a Greater Judgment

Although Plaintiffs presume that Defendants have ample resources, countless settlements have been approved where a settling defendant had the ability to pay greater amounts; the Third Circuit has noted that this fact alone does not weigh against settlement approval. *See Warfarin Sodium*, 391 F.3d at 538. This factor is generally neutral when the defendant's ability to pay exceeds the potential liability and was not a factor in settlement negotiations. *CertainTeed*, 269 F.R.D. at 489 ("because ability to pay was not an issue in the settlement negotiations, this factor is neutral"); *Bredbenner*, No. 09-1248 MF, 2011 WL 1344745, at *15 ("courts in this district regularly find a settlement to be fair even though the defendant has the practical ability to pay greater amounts"). Defendants' ample resources do not diminish the significance of the substantial monetary consideration provided under

the Settlement Agreement, and a court evaluating settlements must "guard against demanding too large a settlement based on its view of the merits of the litigation; after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution." *GMC Trucks*, 55 F.3d at 806 (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977). This factor is neutral and does not weigh against final approval.

8. Reasonableness of the Settlement in Light of the Best Possible Recovery and all Attendant Risks of Litigation

"[T]he very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice v. Civ. Serv. Com'n of City and County of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1982) (quoting *Cotton v. Hinton*, 559 F.2d at 1330)). Thus, when evaluating the amount offered in settlement, the Court should consider "the complete package taken as a whole," and the amount should "not be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id*. at 625-28. To assess the reasonableness of a proposed settlement seeking monetary relief, "the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, should be compared with the amount of the proposed settlement." *GMC Trucks*, 55 F.3d at 806.

This Settlement offers immediate and certain economic benefits to Settlement Class and Settlement Collective Members. The average payment is estimated to be

approximately $628.77 for Claimants, with the maximum payment estimated to be approximately $8,843.92. Rust Decl. ¶ 19. This is an excellent result. *See* Section 5, *supra*; *see also In re Cendant Corp. Sec. Litig*., 109 F.Supp.2d 235, 263 (D.N.J. 2000), *aff'd sub nom*. *In re Cendant Corp. Litig*., 264 F.3d 201 (3d Cir. 2001) (approving a settlement representing 36-37% recovery rate by plaintiff class); *Nichols v. Smithkline Beecham Corp*., No. 00-6222, 2005 WL 950616, at *16 (E.D. Pa. April 22, 2005) (approving settlement that represented between 9.3% and 13.9% of the claimed damages); *Mehling v. N.Y. Life Ins. Co.*, 248 F.R.D. 455, 462 (E.D. Pa. 2006) (approving settlement that represented 20% of best possible recovery and noting courts that have approved settlements with even lower ratios).[12]

Further, as Plaintiffs have pointed out, similar wage and hour lawsuits were settled and approved at comparable settlement amounts. *See, e.g., Wells Fargo Bank Settlement (CA Superior Court, Alameda County)*, No. JCCP4821 (gross settlement amount of $27.5 million for a putative class of approximately 28,463 employees). *See* Memo. of Law in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement Agreement, ECF 132-2, at p. 23. Thus, this factor warrants final approval.

[12] *See also Chemi v. Champion Mortg*., 2009 WL 1470429, at *5 (approving FLSA collective settlement as "reasonable, fair and adequate" given the magnitude of the risk of continued litigation. Court explained that a settlement can be "reasonable" even if "significantly less" than the "best recovery" the class might obtain by continuing to trial).

For all of the above reasons pursuant to the *Girsh* factors, the Settlement Agreement should be finally approved.

9. The Proposed *Cy Pres* Beneficiary should be Approved

The Third Circuit instructs that district courts are to assess the fairness, reasonableness, and adequacy of a *cy pres* award under Rule 23(e)(2) by applying the same *Girsh* factors used to assess other aspects of the class action settlement. *See Google* 934 F. 3d at 329. In addition, the Court should consider "the degree of direct benefit provided to the class, which may include the number of individual awards compared to both the number of claims and the estimated number of class members, the size of the individual awards compared to claimants' estimated damages, and the claims process used to determine individual awards." *Id*. (citing *In re Baby Products Antitrust Litig.*, 708 F.3d 163, 174 (3d Cir. 2013). Thus, *"[c]y pres* awards should generally represent a small percentage of total settlement funds, unless a district court finds sufficient justification." *Id.* (citation omitted).

Here, these conditions are met. Under the Settlement Agreement, only if the Gross Settlement Amount is less than the $30 million Minimum Settlement Amount, then the difference between the Gross and Minimum Settlement Amounts will be paid to a *cy pres* beneficiary. S.A. ¶ 24.5. The parties selected Legal Services of New Jersey and Legal Aid of North Carolina as *cy pres* beneficiaries, subject to the Court's approval. At least one purpose of both organizations is to provide

employment-related legal services to economically disadvantaged individuals.[13] *See Beneli v. BCA Fin. Servs., Inc.*, No. 3:16-cv-02737-FLW-LHG, 2018 WL 2221848, at *2 (D.N.J. Jan. 19, 2018) (approving Legal Services of New Jersey as a *cy pres* beneficiary in a class action settlement). The inclusion of a North Carolina organization is proper, as Wells Fargo employees in North Carolina make up the largest settlement subclass. S.A. ¶ 1.47(vi); Carson Decl., Doc. 132-3, ¶ 30. Thus, the proposed *cy pres* beneficiaries should be approved. *See Google*, 934 F. 3d at 327 (noting that "a district court does not abuse its discretion by approving a class action settlement agreement that includes a *cy pres* component directing distribution of excess settlement funds to a third party to be used for a purpose related to the class injury" and that "*cy pres* was appropriate where some class members were compensated directly and 'further individual distributions are economically infeasible.'") (citing *Baby Products*, 708 F. 3d at 172-73).[14]

C. The *Prudential* And *Baby Products* Factors Also Support Granting Final Approval

In *Prudential*, the Third Circuit held that expanding the *Girsh* factors, while not mandatory but "permissive and non-exhaustive," might be useful. *In re Nat'l*

[13] *See* https://www.lsnj.org/AboutUS.aspx (Legal Services of New Jersey); *see* http://www.legalaidnc.org/about-us/mission (Legal Aid of North Carolina).

[14] To the best of the Parties' knowledge, Legal Services of New Jersey and Legal Aid of North Carolina have no "significant prior affiliation with any party, counsel, or the court." *Google*, 934 F. 3d at 331.

Football League Players Concussion Injury Litig., 821 F.3d 410, 437 (3d Cir. 2016) citing to *Prudential*, 148 F.3d 283 at 323. The *Prudential* factors are:

> [1] [T]he maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; the existence and probable outcome of claims by other classes and subclasses; [2] the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved—or likely to be achieved—for other claimants; [3] whether class or subclass members are accorded the right to opt out of the settlement; [4] whether any provisions for attorneys' fees are reasonable; and [5] whether the procedure for processing individual claims under the settlement is fair and reasonable.

Prudential, 148 F.3d at 323. Although not all of the *Prudential* factors may be relevant to approval of the proposed Settlement, those that are weigh in favor of final approval here.

First, the underlying substantive issues in this case are mature. As discussed above and in the briefs filed in support of Plaintiffs' Motion for Preliminary Approval and Motion for Attorneys' Fees and Costs, significant formal and ADR-related discovery occurred in this action, and the case settled after two full day mediation sessions and months of additional negotiations overseen by the mediator. The underlying substantive issues were well-developed, supporting settlement approval. Second, the Settlement Class and Settlement Collective Members are being treated fairly: the Settlement guarantees a minimum payment of $300 for each

without the requirement to submit a Claim Form, and provides for additional compensation to those Claimants who worked more than 38 hours in at least 12 Qualifying Workweeks during the relevant time period. Third, as discussed in Section V above, Settlement Class and Settlement Collective Members were provided with robust notice (sent via U.S. mail to all, and also via email where available), and the Settlement Class Members were provided with the opportunity to opt-out or object via mail, email or online submission. S.A. ¶¶, 20, *et seq.* Fourth, as set forth in Plaintiffs' Motion for Attorneys' Fees and Costs, filed on October 25, 2019 (ECF 137), the requested attorneys' fees and expenses are reasonable. *See* ECF 137-1, at Section III(A)(6), pp. 17-19. Fifth, the claims process was simple, and Claimants were able to submit a claim online, or call Class Counsel or the Administrator if they had questions or needed assistance. *See* Rust Decl. ¶¶ 5, 11. Also, the Settlement Website was created and is maintained, which allows Settlement Class Members and Settlement Collective Members to obtain more information or access relevant case documents. *Id*. ¶¶ 3-4.

Finally, the Third Circuit added an additional factor in *In re Baby Prods. Antitrust Litig.*, in which it examined the degree to which a proposed settlement provided a "direct benefit" to the class. 708 F.3d 163, 174 (3d Cir. 2013); *see also McDonough*, 80 F. Supp. at 650-51 (discussing the *Baby Products* factor). Here, Settlement Class and Settlement Collective Members receive a direct benefit from

the Settlement without having to submit a Claim Form, and an additional benefit if they meet certain minimum qualifications (they allege that they worked more than 38 hours in at least 12 qualifying workweeks), and claim that they worked off-the-clock uncompensated hours.

In summary, evaluation of the Settlement Agreement in light of the factors set forth in *Girsh*, *Prudential*, and *Baby Products* confirm that it is an excellent outcome for the Settlement Class and Settlement Collective Members and deserves final approval.

D. The Settlement Agreement Furthers The Purposes Of The FLSA

The Agreement contains no provisions that would be contrary to the purposes of the FLSA or frustrate its implementation in the workplace.[15] It furthers the purposes of the FLSA because Settlement Collective Members will only release their FLSA claims if they endorse and cash their Settlement Payment check, or if they submit a valid Claim Form. *See* S.A. ¶ 22.3. Notably, Participating Class Members who are not Participating Collective Members will not release their claims under the FLSA. S.A. ¶ 12.1. Moreover, the Settlement furthers the purposes of the FLSA by

[15] *See, e.g., Brown v. TrueBlue, Inc.*, No. 10-514, 2013 WL 5408575, at *3 (M.D. Pa. Sept. 25, 2013) (finding that settlement agreement frustrated the implementation of the FLSA when it required the plaintiffs to keep the terms of the settlement confidential or risk forfeiting their awards); *Altnor v. Preferred Freezer Servs., Inc.*, 197 F. Supp. 3d 746, 764 (E.D. Pa. 2016) settlement did not impermissibly frustrate FLSA's implementation where it does not contain impermissibly broad release provisions).

providing Settlement Collective Members with a meaningful recovery for their alleged unpaid overtime, that because of the lack of bargaining power inherent in employer-employee relationships, they may have otherwise been unable to recover. *See* 29 U.S.C. § 202 (congressional finding and declaration of policy); *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 706 (1945) ("The statute was a recognition of the fact that to the unequal bargaining power as between employer and employee, certain segments of the population required federal compulsory legislation to prevent private contracts on their part which endangered national health and efficiency…."); *Symczyk v. Genesis Healthcare Corp*., 656 F. 3d 189, 199 (3d Cir. 2011) ("§216(b) affords plaintiffs the advantage of lower individual costs to vindicate rights by the pooling of resources.") (citation omitted).

Because the Agreement facilitates the FLSA and is a fair and reasonable resolution of a *bona fide* dispute, it should be approved as reasonable.

E. The Notice Program Satisfies Due Process

A notice of settlement must be the "best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). The best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co*., 339 U.S. 306,

314 (1950); *Bozak v. FedEx Ground Package Sys., Inc.*, No. 11, Civ. 738, 2014 WL 3778211, at *3 (D. Conn. July 31, 2014) (approving FLSA notice that provides "notice to the Eligible Settlement Class Members of the terms of the Settlement and the options facing the Settlement Class."). Both the content and the means of dissemination of the notice must satisfy the "best practicable notice" standard.

Here, as described above and in the accompanying Declaration of Jessica Jenkins on behalf of Rust Consulting, Inc., Class Counsel and the Administrator complied with the Court-approved Notice plan. The Notice and Claim Forms were mailed to all 38,149 Settlement Class and Settlement Collective Members on September 9, 2019, and also emailed to 19,856 Settlement Class and Settlement Collective Members for whom email addresses were known. Rust Decl. ¶¶ 11-12. Multiple appropriate searches were performed to ensure that addresses of Settlement Class and Settlement Collective Members were accurate and updated. *Id*. ¶¶ 13-14. Only 987 Notices out of 38,149 (or approximately 2.59%) have been returned as "undelivered." *Id*. ¶ 13. And under the Settlement Agreement, if those persons do not participate in the Settlement, they will not release any FLSA claims.

The Notice package was highly informative and set forth, in simple terms: (1) the factual and procedural background of this action, (2) the terms of the Settlement, including the opportunity to submit a Claim Form to receive more than a Minimum Amount of $300, (3) the method of allocation of the Net Settlement Amount among

participants, (4) Settlement Class Members' rights to exclude themselves from, or object to, the Settlement, or to dispute the number of workweeks, and (5) information about the Final Approval Hearing. The Notice also informed Settlement Class and Settlement Collective Members of the amounts that were being requested in attorneys' fees, costs, and service awards. The Administrator also established and maintained the Settlement Website, a toll-free telephone line, and an email address, all dedicated to this action, through which Settlement Class and Settlement Collective Members can contact case representatives with any questions. Rust Decl. ¶¶ 2-6. In sum, the Notice Plan was carefully tailored to apprise Settlement Class and Settlement Collective Members of their rights and this approval process. Thus, the Notice is reasonable and satisfies the requirements of due process.

F. The Settlement Class Should Be Finally Certified Under Rule 23[16]

A proposed class may be certified for settlement purposes if it satisfies the requirements of Rule 23(a) of the Federal Rules of Civil Procedure, which are: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 613 (1997); *Warfarin Sodium*,

[16] In its Order Granting Plaintiffs' Motion for Preliminary Approval of Settlement Agreement, the Court conditionally certified the Settlement Collective for settlement purposes only. ECF 135, p. 3, ¶ 5. Because the requirements of Rule 23 are more stringent than Section 216(b) of the FLSA, Plaintiffs have also met the criteria for final certification of the Settlement Collective under 29 U.S.C. §216(b), for settlement purposes only, for the same reasons as set forth in this section.

391 F.3d at 527.[17] In addition, a plaintiff must satisfy one of the prongs of Rule 23(b). *See Baby Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 55 (3d Cir. 1994) (citing *Wetzel v. Liberty Mut. Ins. Co*., 508 F.2d 239 (3d Cir. 1975)). Here, the parties request certification of the Settlement Class under Rule 23(b)(3) that allows certification where "questions of law or fact common to class members predominate over any questions affecting only individual members," and "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *In re Constar Int'l., Inc. Sec. Litig.*, 585 F.3d 774, 780 (3d Cir. 2009).

A lesser standard of scrutiny applies to certification of a settlement class, and although commonality must be shown at the settlement approval stage, manageability is not a factor. *Amchem*, 521 U.S. 591 at 613, 620. The Settlement Class[18] meets the standards for certification under Rule 23 for settlement purposes.

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[17] Under the Agreement, Defendants have stipulated, for settlement purposes only, that the requisites for establishing class certification pursuant to Fed. R. Civ. P. 23(a) and (b)(3) have been met. S.A. ¶¶ 15.1-15.3.

[18] The "Settlement Class" is defined as "all individuals in the Applicable State Subclasses." The "Applicable State Subclasses" is defined as "all individuals who, while working for the Bank in a Covered Position in one of the states set forth in (i) through (viii) [], recorded working more than 38 hours in at least one workweek during the following relevant time period for the Applicable State Subclass." Settlement Agreement ¶ 1.47. The Applicable State Subclasses cover individuals who worked in Connecticut, Minnesota, Nevada, New Jersey, New York, North Carolina, and Pennsylvania. *Id.* ¶ 1.47(i)-(vii). Each Applicable State Subclass has its own relevant time period, called the "Applicable Class Period." 1.47(i)-(vii).

1. The Settlement Class is Sufficiently Numerous

Rule 23(a) requires that "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "When dealing with a class that numbers in the hundreds, joinder will most often be impracticable." *Chemi*, 2009 WL 1470429, at *6 (citing Newberg on Class Actions 4th Ed. 2007) § 305 (class of 40 or more raises presumption that numerosity requirement met). Numerosity is easily met here. The Settlement Class includes approximately 8,946 members, including approximately 1,614 in Pennsylvania, 1,107 in New York, 1,769 in North Carolina, 1,500 in New Jersey, 1,038 in Nevada, 1,726 in Minnesota, and 261 in Connecticut.[19]

2. The Settlement Class Seeks to Resolve Common Questions

To certify a class, there must be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). This requirement is constructed permissibly, such that "for purposes of Rule 23(a)(2) 'even a single common question will do.'" *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2556 (2011). Here, Plaintiffs and the Settlement Class Members allege that their claims arise from Defendant's common employment policies and practices for the Covered Positions. The central issues posed by this litigation are whether the Settlement Class Members were properly paid overtime under applicable state wage and hour statutory and common law.

[19] The entire number of individuals subject to this Settlement, including Plaintiffs, Opt-In Plaintiffs, Settlement Collective Members and Settlement Class Members, is 38,149. Rust Decl. ¶ 8.

These common questions of law and fact, which Plaintiffs contend apply uniformly to all members of the proposed Settlement Class (and Applicable Subclasses), are sufficient to satisfy the commonality requirement. *Chemi*, 2009 WL 1470429, at *7 (commonality requirement met where "state claims asserted with respect to Defendants' overtime compensation policy present common operative facts and common questions of law.").

3. The Claims of the Named Plaintiffs are Typical of the Settlement Class

The typicality requirement of Rule 23(a)(3) is satisfied for purposes of approving the Agreement because Plaintiffs' claims are reasonably coextensive with those of the Settlement Class Members and Plaintiffs possess the same interest and allege they have suffered the same injury as the Settlement Class Members. *See Fry v. Hayt, Hayt & Landau*, 198 F.R.D. 461, 468 (E.D. Pa. 2000); *Gen. Tel. Co. of S.W. v. Falcon*, 102 S. Ct. 2364, 156 (1982). Plaintiffs' claims for unpaid overtime compensation during weeks when they worked in Covered Positions are typical of the claims of the Settlement Class. Plaintiffs' job positions cover all Covered Positions: CSSRs, PB1s, PB2s, PPBs, BBSs, and SBBSs. Plaintiffs assert that they each worked off-the-clock after working 40 hours in a week. Plaintiffs' claims are typical of the Settlement Class.

4. Class Counsel and Plaintiffs Meet the Adequacy Requirement

To meet the adequacy of representation requirement of Rule 23(a)(4), a plaintiff must show: (1) that the potential named Plaintiff has the ability and the incentive to represent the claims of the class vigorously; (2) that he or she has obtained adequate counsel; and (3) that there is no conflict between the individual's claims and those asserted on behalf of the class. *Fry*, 198 F.R.D. at 469.

Adequacy is met here for settlement purposes because Plaintiffs have the same interests in recovering unpaid overtime wages as the Settlement Class Members. There is no conflict between the Plaintiffs and the Settlement Class in this case, and Plaintiffs' claims are in line with the claims of the Settlement Class. Plaintiffs have and will continue to aggressively and competently assert the interests of the Settlement Class. Further, Plaintiffs' retained counsel (who were then provisionally appointed by the Court as Class Counsel (ECF 135 at ¶ 10)) are skilled and experienced in wage and hour class action litigation.[20]

[20] Class Counsel's efforts in this action and their experience in class actions and wage and hour litigation is set forth in detail in the Declarations of Class Counsel submitted in support of Plaintiffs' Unopposed Motion for Approval of Attorneys' Fees and Costs. ECF 137.

5. The Settlement Class Satisfies the Predominance and Superiority Requirements of FED. R. CIV. P. 23(b)(3)

Plaintiffs seek certification under Rule 23(b)(3), which calls for two separate inquiries: whether issues common to the class "predominate" over issues unique to individual class members, and whether the proposed class action is "superior" to other methods available for adjudicating the controversy.

"To evaluate predominance, the Court must determine whether the efficiencies gained by class resolution of the common issues are outweighed by individual issues presented for adjudication." *Chemi*, 2009 WL 1470429, at 7 (citing *In re Prudential Ins. Co. of America Sales Practices*, 962 F. Supp. 450, 510-511 (D.N.J. 1997)). Here, predominance is met because Plaintiffs assert that all Settlement Class Members were affected by Wells Fargo's policies that they assert allegedly denied all Settlement Class Members overtime wages. *Chemi*, 2009 WL 1470429, at *7 (predominance established where each class member shares a similar legal question: whether the alleged failure to pay them overtime violated applicable wage laws, a common question which predominates over any factual variations of individual worker's claims, such as number of hours worked or hourly wage).

The court next considers whether a class action would be "superior" to individual suits under Rule 23(b)(3), weighing: (1) the class members' interests in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already begun by or against

class members; and (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum.[21] Here, "the class action is not only the superior method for adjudicating this controversy, it affords the vast majority of class members the only practical avenue of redress." *Chemi*, 2009 WL 1470429, at *8-9 (citing *Prudential*, 962 F. Supp. At 522). The Settlement Class Members' claimed damages are relatively small, which means that the cost of controlling the prosecution of separate actions outweighs the utility of doing so, resulting in little interest to bring separate actions. Further, this forum is appropriate, as Wells Fargo does a substantial amount of business in New Jersey, and the two original Plaintiffs, Juan Carlos Merino and Agustin Morel Jr., reside in this state. Also, the case presents a paradigmatic dispute resolution that effectuates the fundamental goals of Rule 23: (1) to promote judicial economy through the efficient resolution of multiple claims in a single action; and (2) to provide persons with smaller claims, who would otherwise be economically precluded from doing so, the opportunity to assert their rights. Wright, Miller & Kane, 5 Federal Practice and Procedure at § 1754, 49. At the same time, the Settlement Agreement preserves the due process rights of each individual plaintiff seeking damages. Allowing the Settlement Class Members the

[21] Finally, in the context of a settlement-only certification under Rule 23(b)(3), a district court is not concerned with the issue of manageability if the case went to trial, because the point of a settlement is that there will be no trial. *Chemi*, 2009 WL 1470429, at *9 (citing *Anchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997)).

opportunity to participate in a class settlement that yields an immediate and substantial benefit is highly superior to having a multiplicity of individual and duplicative proceedings in this Court. It is also superior to the alternative of leaving these important labor rights unaddressed due to the difficulty of finding legal representation and filing claims on an individual basis.

G. The Settlement Collective Should Be Finally Certified

In the context of an FLSA collective action settlement, the Court must complete the second stage of certification[22] and determine whether Plaintiffs are similarly situated under Section 216(b) of the FLSA for settlement purposes. *Singleton v. First Student Mgmt.*, No. 13-1744 JEI, 2014 WL 3865853, at *3 (D.N.J. Aug 6. 2014) (certifying collective action for settlement). Requirements for collective action certification are less stringent than those listed in Rule 23. *See Sloane v. Gulf Interstate Field Servs*., No. 4:16-cv-01571, 2017 WL 1105236, at *21 (M.D. Pa. Mar. 24, 2017). To determine whether members of the Settlement Collective are similarly situated, the Court must evaluate a number of factors, including, but not limited to: "whether the plaintiffs are employed in the same corporate department, division, and location; whether they advance similar claims; whether they seek substantially the same form of relief; and whether they have similar salaries

[22] The Court previously certified the Settlement Collective pursuant to 29 U.S.C. § 216(b) (as well as preliminarily certifying the Settlement Class) for settlement purposes in its Preliminary Approval Order. ECF 135 at ¶ 5.

and circumstances of employment." *Zavala v. Wal Mart Stores, Inc*., 691 F.3d 527, 536-7 (3d Cir. 2012); *Bredbenner, supra,* 2011 WL 1344745, at *17 (granting final certification of collective action for settlement purposes finding "factual circumstances" underlying the claims of travel agents who worked for Defendant were "very similar," where each held same job, worked overtime during relevant class period, received overtime pay pursuant to a common formula, and claimed same relief under FLSA).

Here, the Settlement Collective Members include current and former Wells Fargo Hourly Bankers who worked more than 38 hours in at least one workweek during the relevant time period. ECF 135, ¶ 5. For settlement purposes only, Defendants have agreed that the requisites for establishing collective action certification under the FLSA pursuant to 29 U.S.C. § 216(b) are met. *See* Settlement Agreement ¶ 15.1.

Because the requirements of Rule 23 are more stringent than Section 216(b) of the FLSA, Plaintiffs contend that based upon the above arguments regarding class certification under Rule 23, they have also met the criteria for certification of the FLSA class as "similarly situated" under 29 U.S.C. § 216(b). Accordingly, the Court should grant final certification to the Settlement Collective.

Finally, as provided in the Preliminary Approval Order, Plaintiffs request that the Court order the Administrator to continue to maintain the record of those who have

consented to join the Settlement of this Lawsuit, as provided in the Agreement. Preliminary Approval Order, ¶ 13; S.A. ¶ 16.2(iv), (viii); Rust Decl., ¶16. Plaintiffs further request that the Court issue an Order that Class Counsel may comply with the consent filing requirements of 29 U.S.C. §216(b) by filing with the Court, and serving on Defendants' Counsel proof of filing, a declaration from the Administrator attaching a complete list of the names, with a corresponding unique identification number generated by the Administrator, for all Settlement Participants and that such list of names may be filed under seal after the Second Check Cashing Period expires. S.A. ¶ 22.4.

H. The Proposed Service Awards To Plaintiffs And Opt-In Plaintiffs Are Justified And Should Be Approved

Pursuant to the Agreement, Plaintiffs and Opt-In Plaintiffs request approval of service awards for their efforts in bringing and prosecuting this matter, and in addition, for their broader releases against the Released Parties than the other Settlement Participants. The proposed service awards are in the following amounts: $20,000.00 each to the original named Plaintiffs Juan Carlos Merino and Agustin Morel, Jr.; $10,000.00 each to the other seven Plaintiffs (Joshua Thomson, Jonathan Almonte, Keenan Johnson, Abdullahi Hajisomo, Claudia Cervantes Chouza, Richard Sklenka, and Wilson Blount); and $5,000.00 each to Opt-In Plaintiffs Kayla Burget-Ruff, David Davis, Heather Davis, Aaron Diaz, Kathleen Jones, and Jeffrey

Trawinski. *See* S.A. ¶¶ 9.1, 1.34, 13. The service awards are to be paid in addition to their recovery of unpaid overtime under the Agreement.

"[C]ourts routinely approve incentive awards to compensate named plaintiffs for services they provided and the risks they incurred during the course of the class action litigation." *Chemi*, 2009 WL 1470429, at * 13 (citing *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000) (internal citation omitted); *see also Martin* v. *Foster Wheeler Energy Corp.*, No. 3:06-cv-0878, 2008 WL 906472, at *8-*9 (M.D. Pa. Mar. 31, 2008) (approving incentive award for named representatives a total of $10,000.00). It is particularly appropriate to compensate named representative plaintiffs with service awards where they have actively assisted plaintiffs' counsel in their prosecution of the litigation for the benefit of a class. *Young v. Tri Cnty. Sec. Agency, Inc.*, 13-cv-5971, 2014 WL 1806881, at *1, 8 (E.D. Pa. May 7, 2014) (approving incentive award for named representative in action alleging violations of the FLSA and PMWA, where named plaintiff released all waivable claims arising out of employment and made significant contributions to the litigation); *Mulroy*, 2014 WL 7051778, at *7 n. 7 (approving $10,0000 incentive award for named plaintiff who "brought this [wage and hour] litigation despite potential risk to his future employability in the field").

Here, the proposed additional payments are justified by the benefits that Plaintiffs and Opt-In Plaintiffs' diligent efforts have brought to the Settlement Class

and Settlement Collective Members. Plaintiffs took the significant risk of coming forward to represent the interests of their fellow employees. Each worked with Class Counsel, providing background information about his or her employment, about Defendant's policies and practices, and about the allegations in this lawsuit. Each risked his or her reputation in the community and in his or her field of employment in order to participate in this case on behalf of the Settlement Class. In addition, Plaintiffs Merino and Morel were deposed by Defendants in May 2017.

The payments requested are in line with those approved in wage and hour collective and class actions in the Third Circuit. *See, e.g., Sakalas* v. *Wilkes Barre Hosp. Co.*, No. 3:11-cv-0546, 2014 WL 1871919, at *5 (M.D. Pa. May 8, 2014) ("Court believes that the proposed total award of $7,500.00 (or 1.57%) of a $475,000.00 settlement fund is well-deserved and not out of proportion to the level of [named plaintiff's] cooperation. The awards would not significantly reduce compensation for the other class members, nor is it out of the mainstream for class action service awards in the Third Circuit."); *Bredbenner*, 2011 WL 1344745, at *22-24 (approving service payments of $10,000 to each of eight named plaintiffs in wage and hour case, and citing 2006 empirical study that found average award per class representative to be $16,000); *In re Janney*, 2009 WL 2137224 at *12 (approving $20,000.00 enhancement awards for each of three named plaintiffs in wage and hour settlement).

I. The All Writs Injunction Should Continue

As part of its Preliminary Approval Order, the Court issued an injunction pursuant to its authority under the All Writs Act, 28 U.S.C. § 1651, prohibiting the Settlement Collective Members and Settlement Class Members from initiating any separate lawsuits, actions, causes of action, claims, or demands in any federal, state, or local jurisdiction with respect to the Released Claims. The Court did so under well-established authority providing that the All Writs Act empowers federal courts to enjoin proceedings in other jurisdictions that may disrupt the settlement of the case before them. *Carlough v. Amchem Prods.*, 10 F.3d 189, 203 (3d Cir. 1993) ("impending and finalized settlements in federal actions [] justify[] 'necessary in aid of jurisdiction' injunctions of duplicative state actions").[23] Here, the Parties have negotiated a global Settlement with all Hourly Bankers outside of California, and they agreed that an All Writs Injunction needed to remain in effect while the Settlement is being administered, except as to any Settlement Class Members who have filed timely and valid Requests for Exclusion. S.A. ¶ 25.1. As set forth in this Motion, the Settlement will take some time to administer after the Court grants final approval of it. Accordingly, the Parties respectfully request that the All Writs

[23] *See* Preliminary Approval Motion, Doc. 132-2 at 43-44, for additional case law in support.

Injunction currently in effect in this case continue until 30 days after the Second Check Cashing Period (as defined in the Agreement).

IV. CONCLUSION

Based upon the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion for Final Approval of Settlement Agreement and enter the accompanying proposed Final Approval Order.

Dated: December 23, 2019

Respectfully submitted,

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