UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

CRISTINE LYONS, on behalf of herself and all other similarly situated individuals,

Plaintiff,

v.

AMERIPRISE FINANCIAL, INC.,

Defendant.

Case No. 10-CV-00503-RHK-JJK

MEMORANDUM IN SUPPORT OF JOINT MOTION FOR APPROVAL OF FLSA SETTLEMENT AND DISMISSAL OF CLAIMS, WITH PREJUDICE

INTRODUCTION

Plaintiff Cristine Lyons and the other individuals who have joined this case ("Plaintiffs"), together with Ameriprise Financial, Inc. ("Ameriprise"), bring this motion requesting that the Court (1) approve their settlement of this collective action overtime case brought under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 et seq., including the plaintiff releases associated therewith, and (2) dismiss the action with prejudice in its entirety. The proposed settlement resolves a *bona fide* dispute over wages, and was reached in good faith. All parties believe that it is fair and reasonable. For all of the reasons set forth herein, the parties jointly request that their motion for settlement approval and dismissal, with prejudice, be granted as set forth in the Proposed Order.

BACKGROUND

I. History and Procedural Posture

On February 22, 2010, named Plaintiff Cristine Lyons filed this collective action lawsuit under the FLSA seeking overtime compensation for alleged unpaid work performed by herself and other similarly situated Ameriprise Minnesota call center employees, in connection with time spent booting up and shutting down their computers each day and logging into and out of various computer programs and telephone systems. (ECF No. 1 (Compl.)) On average, Plaintiffs estimated that they spent approximately 20 minutes per day performing these tasks. (See ECF No. 36.) Ameriprise filed its Answer on April 15, 2010, denying the allegations and requests for relief in the Complaint. (ECF No. 13 (Answer).)

On July 28, 2010, Plaintiffs filed their motion for conditional certification under 29 U.S.C. § 216(b). (ECF No. 36.) Ameriprise opposed the motion. (ECF No. 44.) The Court conditionally certified the case as a collective action on September 20, 2010. (ECF No. 90.) There are currently 65 Plaintiffs included in the lawsuit.

The parties engaged in considerable discovery both before and after the case was conditionally certified. Plaintiffs served 15 interrogatories and 29 document requests on Ameriprise, and also took the depositions of two of Ameriprise's corporate representatives pursuant to Fed. R. Civ. P. 30(b)(6). (Schug Decl. ¶ 3.) Ameriprise served 17 interrogatories, 37 document requests, and 25 requests for admissions on each of the Plaintiffs who joined the case prior to conditional certification. (Id.) Ameriprise also deposed seven of the Plaintiffs for up to a day each. (Id.) After conditional

certification, Ameriprise served 17 interrogatories, 36 document requests, and 25 requests for admissions on each of the Plaintiffs who joined the case during the judicial notice period. (Id.) The parties also litigated one discovery motion. (ECF No. 86.)

Ameriprise also developed facts that the Company believes show that it took many significant steps both before and during 2010 to enhance enforcement of its policy prohibiting off-the-clock work, and to strengthen protections against the possibility of unreported work, and, further, that at least as of the summer of 2010, many plaintiffs acknowledged that Ameriprise's policy and expectation was that call center employees should record and be paid for log-in and log-out time – and, in fact, that they reported and were paid for such time. Plaintiffs' counsel acknowledge that they are unaware of any minimum wage or overtime violations by Ameriprise occurring on or after June 1, 2010.

The parties reached an agreement to resolve the case, described below, prior to the completion of discovery.

II. The Settlement

The parties engaged in good faith negotiations to resolve the Plaintiffs' claims. On May 16, 2011, the parties held a mediation session at the offices of Plaintiffs' counsel. (Schug Decl. ¶ 4.) After a productive initial meeting, the parties' settlement discussions continued during the next few weeks, and an agreement was reached to resolve the claims of all 65 Plaintiffs on June 17, 2011. (Id.) The parties subsequently informed the Court of the settlement and their intent to file a joint motion for approval. (ECF No. 134.)

A. Notice Procedure and Participation

On August 9, 2011, Plaintiffs' counsel sent the Settlement Approval and Release of Claims Form to each of the 65 Plaintiffs, along with an explanation of the terms of the settlement from Plaintiffs' counsel. (Schug Decl. ¶ 6.) Plaintiffs' counsel were available to answer any questions from Plaintiffs regarding the potential settlement. (Id.) Plaintiffs were given until September 12, 2011 to sign and return the release forms. (Schug Decl., Ex. A, p 22.) All Plaintiffs approved the settlement and Plaintiffs' counsel timely received executed releases from all 65 Plaintiffs. (Schug Decl. ¶ 6.)

B. The Settlement Amount, Allocation, and Distribution

Under the parties' agreement, subject to approval by the Court, Ameriprise will pay a total of $185,000 to resolve the claims of the 65 Plaintiffs, inclusive of fees and costs. (Schug Decl., Ex. A (Settlement Agreement) ¶ 3.1.) In addition, Ameriprise will also pay its share of any employment tax withholding obligations. (Id.)

Plaintiffs' counsel allocated the settlement amount as follows. Plaintiffs' counsel's fees in the amount of $61,666.67, and costs in the amount of $17,786.42, were first removed from the total settlement amount of $185,000 prior to allocation. (Schug Decl. ¶ 5.) This was done pursuant to counsel's fee agreement. (Id.) A total of $3,000 ($500 each) was then allocated to the six Plaintiffs who were deposed, in recognition of their time and effort serving the class. (Id.) The remainder of the settlement was allocated by awarding each Plaintiff their pro rata share of the settlement based on their

actual payroll data and their individual overtime estimates[1] (capped at 20 minutes of unpaid work per day). (Id.) The minimum amount allocated to any Plaintiff was set at $200. (Id.)

Under the agreement, Ameriprise will deliver the settlement proceeds to Plaintiffs' counsel for distribution within 30 days after the Final Settlement Date, as defined in the settlement agreement. (Schug Decl., Ex. A ¶ 3.3.) Half of each Plaintiff's settlement will be treated as wages for tax purposes, with each Plaintiff receiving an IRS form W-2 from Ameriprise. (Id. ¶ 3.7.) The other half of each Plaintiff's settlement will be treated as non-wage income, with each Plaintiff receiving an IRS form 1099 from Ameriprise. (Id.) Checks not cashed by the Plaintiffs will become void after 90 days. (Id. ¶ 3.8.)

C. The Release of Claims

In consideration for the settlement payment from Ameriprise, each of the 65 Plaintiffs was required to return a Settlement Approval and Release of Claims Form. (See Schug Decl., Ex. A, pp. 19-22 (form).) The form releases Ameriprise and the other released parties[2] from:

---

[1] Seven Plaintiffs could not be timely reached to provide overtime estimates for purposes of calculating the settlement allocation. (Schug Decl. ¶ 5.) Plaintiffs' counsel calculated damages for them using the average of the other Plaintiffs' estimates. (Id.)

[2] Under the agreement, the "Released Parties" includes: "Ameriprise as well as its past, present and future officers, directors, administrators, shareholders, employees, agents, attorneys, insurers, heirs, legatees and representatives, any past, present or future successors, subsidiaries, parents, affiliated or related corporations, insurers of those entities, and all benefit plans sponsored by Ameriprise, and each of their respective present and former agents, employees, or representatives, insurers, partners,

> [A]ny and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, liquidated damages, penalties, actions, or causes of action, known or unknown, alleged in the Action, or that could have been alleged under the FLSA or any other state or federal statute, regulation or rule, or under any contract or equitable theory, based on the facts or conduct alleged in the Action, including but not limited to the alleged failure of Ameriprise to pay wages, including but not limited to overtime pay, minimum wages, or any compensation alleged to be owed under any contract, failure to provide meal periods and/or rest breaks, failure to accurately calculate regular or overtime wages, failure to provide accurate wage statements, failure to keep records, or failure to timely pay any compensation earned, as well as any and all claims of retaliation or reprisal against Ameriprise related to any claims alleged in the Action, or that could have been alleged in the Action, or any other claims or complaints regarding payment of wages or hours worked, up to and including the date of Final Approval[.]

(Id. ¶ 5.) The release form also contains confidentiality and non-disparagement provisions. (Id. ¶ 4.)

LEGAL ANALYSIS

I. JURISDICTION AND VENUE

This Court has subject matter jurisdiction over this action and personal jurisdiction over Ameriprise, and venue is proper. An FLSA action shall be brought in a federal or state court of competent jurisdiction. 29 U.S.C. § 216(b). This action was filed in the United States District Court for the District of Minnesota pursuant to the Court's federal question jurisdiction, 28 U.S.C. § 1331, for claims arising under the FLSA, 29 U.S.C. § 201 *et seq.* (See ECF No.1 (Compl.) ¶ 1; ECF No. 13 (Answer) ¶ 1.) Ameriprise

---

associates, successors, and assigns, in any and all capacities (including but not limited to the fiduciary, representative, or individual capacity of any released person or entity), and any entity owned by or affiliated with any of the above[.]"

conducts business in this District. (See ECF No. 1 (Compl.) ¶¶ 2-3; ECF No. 13 (Answer ¶¶ 2-3.)

II. THE PROPOSED SETTLEMENT APPROPRIATELY RESOLVES THE PARTIES' CLAIMS AND DEFENSES

A. Standard for Approval of Settlement of FLSA Collective Actions

Court approval of FLSA settlements is necessary to effectuate a valid and enforceable release of the FLSA claims asserted by the named Plaintiffs and the opt-in class. See Walton v. United Consumers Club, Inc., 786 F.2d 303, 306 (7th Cir. 1986). "Under the FLSA, employees can only bargain, waive, or modify their recovery and rights in narrow circumstances." Brask v. Heartland Auto. Servs., Inc., 2006 WL 2524212, at *2 (D. Minn. Aug. 15, 2006) (citing Lynn's Food Stores, Inc. v. United States, 679 F.2d 1350, 1353 (11th Cir. 1982)). "In a private action between the employer and employee, a settlement falls within those narrow circumstances only if the parties agree on the terms, the court approves the settlement as 'a fair and reasonable resolution of a bona fide dispute over FLSA provisions,' and the settlement is entered as stipulated judgment." Id.

In approving a settlement, the primary consideration in determining whether a settlement is fair and reasonable is the strength and nature of the claims in light of the possible defenses. Id. Other factors include: (1) the absence of fraud or collusion in the settlement; (2) the complexity, expense and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery complete; (4) the risks of establishing liability and/or damages; (5) the reaction of the class to the settlement; and (6) the range

of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. See id.; Collins v. Sanderson Farms, Inc., 568 F. Supp. 2d 714, 719 (E.D. La. 2008). As a general rule, "[w]hen a settlement agreement has been the subject of arm's-length bargaining, with class counsel in a position to evaluate accurately the chances of the class prevailing if the case went to trial and where no objections are raised by any of the affected parties, there is a strong presumption in favor of the settlement." Houston v. URS Corp., 2009 WL 2474055, at *5 (E.D. Va. Aug. 7, 2009).

B. The Proposed Settlement Is Fair and Reasonable

1. A *Bona Fide* Dispute Exists Between the Parties

A *bona fide* dispute exists "when an employee makes a claim that he or she is entitled to overtime payment," and when settlement requires resolution of the overtime payment due. *Id.* at *9. In determining whether a *bona fide* dispute exists, a court must "ensure that the parties are not, via settlement of the plaintiffs' claims, negotiating around the clear FLSA requirements of compensation for all hours worked, minimum wages, maximum hours, and overtime." See Collins, 568 F. Supp. 2d at 719. A court's settlement approval, however, "must not be turned into a trial or a rehearsal of the trial." Brask, 2006 WL 2524212, at *2 (citing City of Detroit v. Grinnell Corp., 495 F.2d 448, 462 (2d Cir. 1974)).

A *bona fide* dispute clearly exists in this case. Conditional certification was heavily contested after several months of preliminary discovery. Both before and after conditional certification, the parties devoted significant time and resources preparing for and attending depositions, serving and responding to numerous discovery requests, and

producing thousands of pages of documents. Defense counsel was in the early stages of preparing its motion for decertification, and both parties were conducting formal discovery in order to prepare, if necessary, for dispositive motions and a potential trial. Although the parties have agreed to a negotiated resolution of this case, Ameriprise denies that Plaintiffs worked unpaid overtime or otherwise worked off the clock; denies that it suffered or permitted any unpaid work; denies that this case is suitable for litigation as a collective action; and otherwise denies any and all wrongdoing alleged by Plaintiffs. (See Schug Decl., Ex. A, Recital C.) Plaintiffs maintain the validity of their claims. (See id., Recital B.)

Although both parties continue to firmly believe in the merits of their respective claims and defenses, given the uncertainty of motion practice and trial, the parties agree that a compromise is appropriate at this time. They desire to resolve this case by way of a negotiated settlement payment by Ameriprise to Plaintiffs, in exchange for releases of claims by Plaintiffs, in order to avoid the expense and risks inherent in continued litigation. See Lynn's Food Stores, Inc., 679 F.2d at 1354 ("Thus, when the parties [to litigation] submit a settlement to the court for approval, the settlement is more likely to reflect a reasonable compromise of disputed issues than a mere waiver of statutory rights brought about by an employer's overreaching.").

2. The Settlement Was the Product of Good Faith, Arms-Length Negotiations by Experienced Counsel

This Court may presume no fraud or collusion occurred between counsel absent evidence to the contrary. See Collins, 568 F. Supp. 2d at 720, 725 (citing Cotton v.

Hinton, 559 F.2d 1326, 1331 (5th Cir. 1977)). No such evidence exists here. The settlement was reached as a result of extensive arm's-length negotiations between the parties through counsel, over several weeks. (See Schug Decl., Ex. A, Recital F.) Counsel participated in an in-person mediation session, followed by additional negotiations, which ultimately produced the resolution currently proposed by the parties.

Plaintiffs' counsel have the experience to assess the risks of continued litigation and benefits of settlement. See Moore, 2009 WL 2848858, at *3. Plaintiffs' counsel has a long-standing national practice representing employees with claims against employers similar to the claims asserted in this case. See generally http://www.nka.com/ (counsel's website); see also Houston, 2009 WL 2474055, at *7. Defense counsel is likewise experienced in defending similar claims. Counsel for both sides have advised their respective clients regarding the settlement, and they have recommended judicial approval thereof; this Court should afford that recommendation some weight. See Houston, 2009 WL 2474055, at *7.

3. This Case Advanced To a Stage At Which the Risks of Continued Litigation Could Be Evaluated

As set forth above, the parties conducted substantial discovery prior to settlement in this case, and Ameriprise demonstrated its intent to defend itself vigorously throughout discovery, motion practice, and at trial (if necessary), through its vigorous defense through collective certification. Without question the parties would have spent significant additional time and resources completing discovery, filing motions, and

preparing for trial in this matter, after which appellate litigation would have been likely. Brief summaries of the parties' contentions are set forth below.

Plaintiffs contend that they have developed numerous facts through discovery to support their alleged claims for overtime and the maintenance of a collective action. By way of example only, Plaintiffs have developed evidence which Plaintiffs believe will show that that prior to June 2010:

1. Numerous Plaintiffs worked unpaid time both before and after their scheduled shifts;
2. Numerous Plaintiffs were trained and/or instructed that they were not to record hours worked before and after their scheduled shifts;
3. Plaintiffs obtained testimony that Plaintiffs believe would support their allegations that the unpaid time sought by Plaintiffs was compensable;
4. Plaintiffs obtained documents that Plaintiffs believe would support their allegations that call center employees were required to work unpaid time before and after their scheduled shifts; and
5. Plaintiffs obtained time and attendance data from Ameriprise that Plaintiffs believe would support their claims for unpaid overtime.

Ameriprise likewise contends that it has developed numerous facts and defenses that the Company believes would have presented significant challenges to Plaintiffs' ability to preserve a collective action and/or prevail at trial and, thus, are relevant to the Court's analysis of the strength and nature of the Plaintiffs' claims in light of possible defenses. See Brask, 2006 WL 2524212, at *2. The existence of these alleged defenses

further confirms the reasonableness of the settlement. By way of example only, Ameriprise has developed evidence to be submitted in connection with a decertification motion and/or at trial which Ameriprise believes will show that:

1. Ameriprise's policy has always been that its non-exempt employees should accurately record, and be paid for, all hours worked. For example,

    a. Ameriprise's "Federal Minimum Wage and Overtime/FLSA" policy states: "Leaders should ensure that: *** Non-exempt employees enter their hours into HR Direct for every pay period reflecting all hours worked, including any work in excess of 40 hours per week."

    b. Ameriprise's "Employee Time Entry – Reminders and Tip Sheet" states: "Non-exempt employees must submit time entry for all hours worked and any exception time, such as PTO, sick time and overtime, to be paid."

    c. Ameriprise's "Attendance/Performance Guidelines Policy for [Service Delivery Organization]" states: "Time cards must reflect actual time worked …."

2. All Ameriprise call center employees have been trained that they must make themselves familiar with, and carefully comply with, these policies.

3. Ameriprise never had a corporate policy or mandate that call center employees should not report their log-in or log-out time, and Plaintiffs cannot identify any corporate policy that prohibited proper payment of overtime compensation, or prevented employees from reporting log-in or log-out time. For example,

    a. Plaintiffs do not allege that Ameriprise's time reporting system systematically excluded any work time.

    b. Plaintiffs make no common allegation that employees were disciplined or chastised for reporting overtime.

    c. Plaintiffs make no common allegation that Ameriprise instructed call center employees that they could not work overtime.

    d. Plaintiffs make no common allegation that Ameriprise's supervisors or managers deleted overtime from employees' time reports.

4. Plaintiffs self-reported their own payroll time, including overtime, and were paid for every minute of time they reported to Ameriprise, and that the alleged unpaid time in this case was not reported to Ameriprise, notwithstanding the Company's express policy requiring accurate time reporting. See, e.g., Von Friewalde v. Boeing Aerospace Operations, Inc., 2009 WL 2391400, at *8 (5th Cir. Aug. 4, 2009).

5. Ameriprise paid its Minnesota call center employees for all hours worked, including overtime, as it was self-reported by those employees, including more than $3.2 million in overtime compensation during the time period in question, for more than 107,000 hours of reported overtime. See, e.g., Wood v. Mid-America Mgmt. Corp., 2006 WL 2188706, at *1, 3 (6th Cir. Aug. 1, 2006).

6. Because Plaintiffs did not report all of their work time, notwithstanding their clear opportunity and obligation to do so, Ameriprise should not have known about the unreported time. See, e.g., Forrester v. Roth's I.G.A. Foodliner, Inc., 646 F.2d 413, 414-15 (9th Cir. 1981).

7. Plaintiffs' damages claims are based on their estimates, without accompanying contemporaneous documentation.

8. Ameriprise took many significant steps both before and during 2010 to enhance enforcement of its policy prohibiting off-the-clock work, and to strengthen protections against the possibility of unreported work. By way of example only, Ameriprise's human resources director e-mailed all managers, supervisors and human resources personnel on December 1, 2009 stating: "Please remind your employees that their timecards should include any time they spend logging in and out of system applications that are needed to perform the essential functions of their job. This includes any time spent prior to or at the conclusion of their scheduled start time."

9. Call center employees – including some Plaintiffs – did report, and were paid for, log-in and log-out time.

10. Most plaintiffs never complained to their supervisors, human resources personnel, or higher-level managers about alleged unpaid work, or otherwise gave Ameriprise an opportunity to correct the improper practices they attribute to their individual supervisors.

11. Many plaintiffs acknowledged in discovery that, at least as of the summer of 2010, Ameriprise's policy and expectation was that call center employees should record and be paid for log-in and log-out time – and, in fact, that they reported and were paid for such time. For example,

a. Plaintiff Kominski testified that "[a]s of approximately June 2010, I have been able to log into my computer at the start of my shift without any consequences."

b. Plaintiff Odegaard admitted that call center employees on her team have been instructed to record log-in time since March 2010.

c. Plaintiff Hansen admitted that she received an e-mail stating that she could record her log-in and log-out time around August 2010.

d. Plaintiff Johnson admitted that a manager told him that employees could record ten minutes per day for time spent logging-in and logging-out of their computer and telephone systems around August 2010.

e. Plaintiff Jones admitted that a supervisor told him her could record log-in and log-out time in 2010.

f. Plaintiff Kinney admitted that her supervisor told her that she could record log-in or log-out time in early 2010.

g. Plaintiff Krueger admitted that he heard that a supervisor said employees could record 15 minutes for time spent logging onto computer and phone systems in 2009 or 2010.

h. Plaintiff Kudebeh admitted that he received a memorandum in late 2010 saying he could record log-in and log-out time.

i. Plaintiff Poepke admitted that he was told by an Ameriprise director that he could record log-in and log out time in or around the spring of 2010.

12. Plaintiffs' counsel likewise acknowledge that they are unaware of any minimum wage or overtime violations by Ameriprise occurring on or after June 1, 2010. See Settlement Agreement, Recital E.

13. Regardless of other evidence, Ameriprise did not act willfully for purposes of liability under the FLSA.

The settlement also is reasonable given the nature of the claims and the possible scope of recovery. This case only involves claims for alleged unpaid work by the Plaintiffs logging-in and logging-out of computers and software programs before and

after their scheduled shifts. Given (1) the relatively small amounts of time at issue; (2) the small class size; and (3) the particular hurdles to proof of liability or damages after mid-2010, all parties believe that the total settlement of $185,000 is fair and reasonable. See In re BankAmerica Corp. Securities Litig., 210 F.R.D. 694, 702 (E.D. Mo. 2002).

In sum, the proceedings have advanced to a stage sufficient to permit the parties and their counsel to collect, obtain, and review the evidence, evaluate their claims and defenses, assess their witnesses, understand the scope of potential damages, and engage in negotiations with the mutual understanding that continuing toward motion practice and trial, followed by potential appellate litigation, would be a difficult, costly and uncertain undertaking. Based on that analysis, the parties believe that settlement on the terms set forth in the Settlement Agreement is in their best interests.

4. 100% of the Plaintiffs Have Accepted the Settlement

Finally, the reaction of the Plaintiffs to the settlement also supports a finding that the settlement is fair and reasonable. Of the 65 Plaintiffs who joined the case, *all* have approved the settlement and executed and returned valid release forms. The Plaintiff approval rate of 100% further confirms the reasonableness of the settlement.

C. Plaintiffs' Counsel's Fees and Costs are Reasonable

Plaintiffs' counsel also believe that their request for $79,453.09 in fees and costs is reasonable. They have secured a favorable result for the Plaintiffs after more than a year of litigation. They worked to investigate the Plaintiffs' claims, gathered the necessary discovery to seek conditional certification, and gathered information relating to the merits of the Plaintiffs' claims and Ameriprise's defenses. (Schug Decl. ¶ 7.) Counsel have

also shouldered a significant risk of nonpayment in this case if Ameriprise were to prevail. (Id.)

Based on a preliminary analysis, Plaintiffs' counsel estimate that their request of $61,666.67 in fees is approximately $209,285.58 less than their lodestar fee amount of approximately $270,952.25.[3] (Id.) Plaintiffs' Counsel seek a total of $17,786.42 in litigation costs. (Schug Decl. ¶ 8 & Ex. B.) Class members in this case are being represented by Plaintiffs' counsel on a contingency basis, and the requested fees and costs reflect the terms of that agreement.(Id. ¶ 5.) Ameriprise is not contesting Plaintiffs' fee and cost petition.

D. The Court Should Approve Recognition Payments to the Six Plaintiffs Who Were Deposed

Courts have approved recognition payments if they are fair and reasonable. See Wineland v. Casey's Gen. Stores, Inc., 267 F.R.D. 669, 677-78 (S.D. Iowa 2009) (approving $10,000 recognition payments to two named Plaintiffs, and $1,000 to each deponent, in an FLSA and Rule 23 settlement because such payments were fair and reasonable under the circumstances). Here, the other Plaintiffs benefitted significantly from the contributionsof the Plaintiffs who were deposed, and the modest recognition payment of $500 to each such Plaintiff is fair and reasonable. The recognition payments are reasonable and appropriate given their modest size, and did not significantly reduce

[3] If the Court deems it necessary as a condition to final approval, Plaintiffs' counsel will submit an itemized description of fees for the Court's review.

the amount of settlement funds available to other Plaintiffs. Ameriprise does not oppose the award of recognition payments.

CONCLUSION

This FLSA collective action settlement is a product of an arms-length negotiation between counsel that has resolved a *bona fide* dispute over wages. The settlement is fair, reasonable, and adequate, and provides all Plaintiffs with monetary relief. For these reasons, and those set forth above, the Court should approve the parties' Settlement Agreement and the Plaintiff releases and dismiss this action, with prejudice, consistent with the Proposed Order submitted herewith.

Dated: September 23, 2011

NICHOLS KASTER, PLLP

/s/Robert L. Schug

Robert L. Schug (MN Bar No. 0387013)
NICHOLS KASTER, LLP
One Embarcadero Center, Suite 720
San Francisco, CA 94111
Telephone (415) 277-7235
Fax (415) 277-7238

Michele R. Fisher (MN Bar No. 303069)
Rachhana T. Srey (MN Bar No. 340133)
NICHOLS KASTER, PLLP
4600 IDS Center, 80 South 8th Street
Minneapolis, MN 55402
Telephone (612) 256-3200
Fax (612) 215-6870

ATTORNEYS FOR PLAINTIFFS

Dated: September 23, 2011

DORSEY & WHITNEY LLP

/s/Ryan E. Mick
Ryan E. Mick (MN Bar No. 182795)
Melissa Raphan (MN Bar No. 311960)
Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498
Telephone (612) 340-2600
Fax: (612) 340-2868

ATTORNEYS FOR DEFENDANT
AMERIPRISE FINANCIAL, INC..