

BAE Systems' Norfolk facility. The proposed class satisfies the numerosity, commonality, typicality, and adequacy prerequisites of Rule 23(a). The claims for declaratory and injunctive relief being settled on behalf of proposed Subclass A (encompassing all members of the proposed settlement class) satisfy the requirements of Rule 23(b)(2), and the claims for monetary relief being settled on behalf of proposed Subclass B (encompassing those proposed settlement class members who held Bargaining Unit Positions² during the Settlement Class Period) satisfy the requirements of Rule 23(b)(3).

The terms of the proposed settlement are fair to members of the proposed Settlement Class and the product of serious, arms' length negotiation. The proposed Settlement will require BAE to undertake substantial changes to certain policies, procedures, and practices relating to job posting, promotions, and training for bargaining unit positions, and the operation of its apprenticeship program. The Settlement also provides for increased training and accountability mechanisms to ensure adequate, timely, non-retaliatory responses to and investigations of discrimination and harassment complaints that will benefit the entire proposed class, as well as future female Non-Management employees at BAE's Norfolk shipyard. Additionally, approximately 177 members of Sub-Class B/the Monetary Relief Class ("Sub-Class B") will be eligible to share in the \$3 million of class monetary relief provided by the Settlement. The \$3 million settlement fund is intended to cover Sub-Class B members' claims for lost pay arising from their claims of gender discrimination with respect to assignments and promotion. Sub-Class B members' individual settlement shares will be calculated based on each participating Sub-Class B member's dates of employment and time employed in a Bargaining Unit Position at BAE Systems Norfolk Ship Repair, Inc. during the Settlement Class Period. The settlement fund also will cover settlement administration fees and service payments to the five former named plaintiffs in this action, Ann Marie Cutrell, Alfreda Dupree, Sheila Fields, Kimberly Davis, and

² "Bargaining Unit Position" means any Non-Management Position at the Company covered by the terms of any Collective Bargaining Agreement between BAE Systems Norfolk Ship Repair, Inc. and Local 684 of the International Brotherhood of Boilermakers, AFL-CIO (the "Union") that is in effect at any time during the term of the Parties' Agreement. See Declaration of Joshua Friedman ("Friedman Decl."), Ex. A. ¶¶ II.3, II.7, II.8.

Rita Hobbs (who are also members of Sub-Class B). In addition to the \$3 million settlement fund, the proposed Settlement also provides for service payments to each of the named plaintiffs in the amount of \$120,000 per named plaintiff in compensation for their services as Class Representatives and in exchange for their execution of a general release of claims, as approved by the Court. Last, the proposed Settlement will require BAE to pay up to \$1 million to Class Counsel for their attorneys' fees, and up to \$125,000 to reimburse Class Counsel for costs and expenses they have incurred in prosecuting this action, as approved by the Court.

The Settlement is well within the range of what courts have found to be fair, reasonable, and adequate. Because the requirements for preliminary approval are met, Plaintiffs respectfully request that the Court certify a class for settlement purposes, appoint Plaintiffs' Counsel as Class Counsel, preliminarily approve the Settlement Agreement and the class action settlement it embodies, approve the Parties' notice plan and forms of notice, and schedule a final approval hearing by entering the proposed Order filed concurrently herewith.

II. SUMMARY OF THE LITIGATION

Named Plaintiffs Aviles, Brown, Jackson and Sharpe,³ female bargaining unit employees at BAE Systems Norfolk Ship Repair, Inc. (the "Company"), filed this action against BAE Systems on July 29, 2013, alleging that BAE Systems discriminated against them and a class of female employees at the Company in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.* See Dkt. 1. Plaintiffs filed a First Amended Complaint ("FAC") on December 17, 2013. Dkt. 10. In their FAC, Plaintiffs alleged that the "Company" engaged in a pattern or practice of discrimination based on gender in promotions and assignments against female bargaining unit employees, and a pattern or practice of hostile work environment sexual harassment and retaliation against non-management female employees. *Id.*, ¶ 3.

Defendants BAE Systems answered the FAC by denying Plaintiffs' material allegations and raising a number of defenses, including that BAE Systems did not harass, discriminate or

³ The initial Complaint included 5 additional named plaintiffs who were not named as plaintiffs in the FAC and will participate in the settlement as members of the class and "Former Named Plaintiffs." See *infra*, §§ III.B and III.D.

retaliate against the Named Plaintiffs or the proposed class members; that they were not owed additional compensation or entitled to injunctive, declaratory, or monetary relief; that Plaintiffs' claims are barred in part by the statute of limitations and for failure to exhaust administrative remedies; and that class certification would be inappropriate given the highly individualized nature of Plaintiffs' claims. *See* Dkt. 21.

In the course of the litigation, the parties have engaged in extensive discovery and investigation of Plaintiffs' claims, the claims of the proposed Settlement Class, and BAE Systems' defenses. BAE Systems took the depositions of each of the Named Plaintiffs, obtained written discovery responses from the Named Plaintiffs, and reviewed thousands of pages of documents produced by Plaintiffs in response to requests for production. *See* Friedman Decl., ¶¶ 11-12. Plaintiffs served five sets of document requests and interrogatories on BAE Systems, took depositions of corporate witnesses pursuant to Rule 30(b)(6), and obtained over 20,000 pages of data and documents from BAE Systems. *Id.* ¶¶ 11, 13. Plaintiffs' Counsel reviewed and analyzed the documents BAE Systems produced to gain a better understanding of, *inter alia*, (1) BAE Systems' organizational structure; (2) the policies, practices, and procedures related to classification, assignment, compensation, evaluation, and promotion of bargaining unit employees; (3) BAE Systems' practices and protocols concerning its response to and its investigation of gender harassment and discrimination complaints, and other equal employment opportunity (EEO) and human resources policies that applied to women employed at the Norfolk shipyard; (4) communications among managers with supervisory or oversight authority with respect to employees relevant to the discrimination and retaliation allegations in the Complaint; and (5) personnel files, grievance-related documents, and e-mail communications related to each of the Named Plaintiffs. To further investigate the promotion and assignment-related pay claims of the proposed Class members in Bargaining Unit Positions (proposed Sub-Class B), the parties also each retained expert witnesses to analyze and prepare reports regarding alleged gender differences in compensation and initial placement at hire, promotion and other issues relevant to potential liability and damages. *Id.* ¶ 16.

Plaintiffs' Counsel also interviewed many potential class members and witnesses as part of their investigation. In addition to the nine former and current named plaintiffs, Plaintiffs' Counsel received inquiries from and/or interviewed numerous potential class members and witnesses, and obtained documents directly from putative class members and others with knowledge of the allegations in the FAC. Friedman Decl. ¶ 15. Plaintiffs' counsel represented the current and former named Plaintiffs, and several class members, at the EEOC level, and engaged in negotiations with the EEOC and BAE about these claims prior to and during the course of this litigation. *Id.*, ¶¶ 1, 3; Declaration of Jennifer A. Reisch in Support of Preliminary Approval of Class Settlement ("Reisch Decl."), ¶¶ 17, 32. In addition, counsel traveled to Norfolk, Newport News, Virginia Beach, Hampton and Portsmouth, Virginia, to meet with and interview potential class members and witnesses. Friedman Decl., ¶ 15; Reisch Decl. ¶ 18.

This significant discovery and exchange of information, along with motion practice, focused the Parties' settlement discussions, which began in late summer of 2014. Friedman Decl. ¶¶ 17, 19; Reisch Decl. ¶ 32. The parties held many telephonic conferences and four in-person negotiation sessions in Norfolk and New York, with and without clients, to discuss the potential for resolving Plaintiffs' claims. Friedman Decl. ¶ 19. As part of these discussions, the parties exchanged statistical analyses prepared by their experts. *Id.* ¶¶ 16, 35; Reisch Decl. ¶ 29. The parties engaged in good-faith, arms' length bargaining and realistically assessed the strengths and weaknesses of their positions, as well as the costs of continued litigation, in first reaching an agreement on injunctive relief, followed by monetary relief for the Sub-Class B/Monetary Relief Class, then discussing service payments to the Named Plaintiffs and Former Named Plaintiffs and finally attorneys' fees and costs,⁴ the collective product of which is now presented to the Court for preliminary approval. *See* Friedman Decl. ¶¶ 18-21, 34, 44, 49.

III. SUMMARY OF THE SETTLEMENT TERMS

⁴ Injunctive relief, monetary relief, service payments and attorneys' fees and costs were negotiated in that order to ensure that class interests were negotiated ahead of negotiation of the current or former plaintiffs' interests, and the current and former plaintiffs' interests were negotiated ahead of their counsel. Friedman Decl. ¶¶ 18-21, 34, 44, 49.

The proposed Settlement provides comprehensive class-wide injunctive relief tailored to Plaintiffs' allegations in their FAC in exchange for Class Members' release of claims for declaratory and injunctive relief. The Settlement Agreement also provides substantial monetary relief, including establishing a \$3 million Settlement Fund, the majority of which is designated for individual monetary awards to eligible Sub-Class B Members, in exchange for their release of claims as described in the Settlement (Sub-Class B/Monetary Relief Class Members will release all claims that could have been brought in this action, including all claims for declaratory, injunctive, and monetary relief, settlement administration, and attorneys' fees and costs). The Settlement Classes to be certified are defined as:

Sub-Class A/Injunctive Relief Class:

All women who currently held a Non-Management Position at BAE Systems Norfolk Ship Repair, Inc. at any time during the period October 5, 2007 through December 31, 2014 (the "Settlement Class Period"), excluding those individuals who previously entered into releases of claims as part of individual agreements with BAE Systems that did not carve out an exception for this action.

Sub-Class B/Monetary Relief Class:

All women who currently hold, or how have held a Bargaining Unit Position at BAE Systems Norfolk Ship Repair, Inc. at any time during the period October 5, 2007 through December 31, 2014, excluding those individuals who previously entered into releases of claims as part of individual agreements with BAE Systems that did not carve out an exception for this action.

Friedman Decl., Ex. A, §§ 4, 36, 38. There are approximately 383 women in the proposed Settlement Class. Reisch Decl. ¶ 34. The following is a summary of the material terms of the Settlement.

A. Class-Wide Injunctive Relief

During the two-year period of the Settlement Agreement, the Company will implement comprehensive affirmative relief addressing the Company's promotion, hiring, job posting, training, and complaint investigation and resolution procedures for complaints of harassment and discrimination that are the subject of the claims in this action, including the following:

1. Promotions and Hiring

The Company will develop written, job-related criteria for promotion for bargaining unit employees in each shop, position and level, which will be shared with a panel of employees (which shall include bargaining unit employees) for review and input. *See* Friedman Decl., Ex. A, § 41(b). The criteria will include written examinations to the extent practicable. Candidates will not be required to obtain a written recommendation from a supervisor as a prerequisite for promotion. Supervisors will not be allowed to impose additional subjective requirements for promotion beyond the established criteria and the provisions of the applicable collective bargaining agreement. *Id.*, Ex. A § 41(d). The Company will publish these promotion criteria on its internal intranet. *Id.* § 41(c). BAE Systems will educate bargaining unit supervisors and managers on the use of these criteria. Ex. A § 44.

The Company will continue its practice of internally posting openings for all non-bargaining supervisory and management positions overseeing employees in Bargaining Unit Positions, and also will post such openings with external tradeswomen's organizations. *Id.* § 42(b), (c). The Company will provide information regarding the skills and experience required for non-bargaining Craft Supervisor and Craft Manager positions and will establish a mentorship program for female employees interested in these positions. *Id.*, § 42(e), (f) The Company also will continue its practice of posting open Bargaining Unit Positions, including promotional opportunities, and also will provide job announcements via email to women's trade organizations. *Id.*, §§40, 41.

Counsel for Plaintiffs negotiated this injunctive relief based on their experience and review of a study of 502 consent decrees in discrimination cases from 2000 to 2008,⁵ and believe these changes will eliminate the gender discrimination in pay and promotion which Plaintiffs allege in the FAC.

2. Training and Apprenticeship

⁵ *Ending Sex and Race Discrimination in the Workplace: Legal Interventions That Push the Envelope*, Institute for Women's Policy Research (Hegewisch, Deitch, Murphy) available at www.iwpr.org/publications/pubs/ending-sex-and-race-discrimination-in-the-workplace-legal-interventions-that-push-the-envelope.

The Company will provide informational sessions and will post written notice of openings in and requirements for entry into the Apprentice program on its intranet and in each shop at least 14 days before the application deadline. Friedman Decl., Ex. A, § 43(a). The Company will hold semi-annual educational sessions intended to educate female employees in the Labor Shop about the opportunities to apply to transfer to other shops and/or to apply for the Apprentice Program and available trainee programs. *Id.*, § 43(c).

The Company will continue to train employees on its policies prohibiting discrimination, harassment and retaliation annually. The Company will educate all supervisors and managers about its policies and procedures in promotion, hiring, assignments, and handling complaints, including the procedures and criteria required by the Settlement. *Id.*, § 44(a), (c).

3. Internal Complaint Procedures

The Company's procedures for receiving and resolving employee complaints of harassment, discrimination, and retaliation will require documentation of findings and any remedial measures. Human resources personnel will receive specialized training in how to investigate and remedy such complaints. *See Ex. A § 44(e), (f)*.

4. Monitoring and Enforcement

Under the Settlement, the Company will be required to make two reports to Class Counsel containing and/or summarizing data relating to: the number of gender discrimination and harassment complaints made by bargaining unit and other non-management employees; the numbers of women and men transferred out of the Labor Shop; the numbers and genders of Apprentice program graduates who are placed in bargaining unit jobs; and data concerning the hiring and promotion of workers in bargaining unit positions, broken down by gender and other relevant fields. *See Friedman Decl., Ex. A § 45 (a)-(e)*.

The Court will retain jurisdiction for 2 years over implementation of the Agreement.

B. Monetary Relief

BAE Systems will pay a total of \$3,000,000 (the "Class Monetary Relief") to settle the class claims for monetary relief in this action, including service payments to the Former Named

Plaintiffs and Settlement Administrator Fees. Friedman Decl., Ex. A, § 47. From the Class Monetary Relief the Company will pay: Settlement Administrator Fees, which are estimated at \$15,000; service payments to the five Former Named Plaintiffs of either \$10,000 or \$20,000, for a total of up to \$70,000, as approved by the Court; and out of the remaining settlement fund, individual Settlement Shares distributed based on amount of time and time period in relevant Bargaining Unit Positions to all eligible Participating Sub-Class B Members (defined as all Sub-Class B Members who do not request exclusion from the monetary portion of the Settlement and who timely complete the verification process), including the employer's share of payroll taxes applicable to Settlement Shares.

Individual Settlement Shares will be calculated based on a weighted formula accounting for each eligible Sub-Class B Member's length of service during both: (a) the period beginning October 1, 2010 (2 years before Plaintiff Janet Aviles filed an EEOC Charge) through December 31, 2014, and (b) the 20-year period from October 1, 1990 through September 30, 2010. Members of Sub-Class B who complete the verification process set forth in the Settlement (*see* Ex. A §§ 49-61) and do not elect to opt out of the Settlement will be eligible to receive individual Settlement Shares, which shall be distributed after final approval of the Settlement. *Id.*, § 78.

If all eligible Sub-Class B Members participate in the Settlement, each will receive an average individual settlement share payment of approximately \$16,000. Friedman Decl., ¶ 35. The estimated payout exceeds Plaintiffs' expert's projections about the average backpay owed. *Id.* If any potential Sub-Class B members exclude themselves from the Settlement, then the amounts of their estimated individual Settlement Shares will be redistributed among Participating Sub-Class B members on a pro rata basis, so that the entire Settlement Fund is distributed, thereby increasing the average size of participating Sub-Class B members' settlement shares. Friedman Decl., Ex. A § 76(b)(iv). In either case, the estimated average payout to Sub-Class B Members under the proposed Settlement is substantial.

The parties intend to distribute the entire Settlement Fund to Participating Sub-Class B Members to the maximum extent feasible; however, if any amount remains in the Settlement

Fund following final distribution of the Settlement Shares, it will be donated to two charitable organizations, one which serves the interests of the Class Members' community (the Southside Boys and Girls Club of Norfolk) and one that seeks to expand employment opportunities for women in non-traditional occupations (the National Center for Women's Employment Equity, part of Wider Opportunities for Women). *Id.*, § 80. Each organization will receive half of the remaining funds as *cy pres* designees. *Id.*

In addition to, and separate from, the \$3 million Class Monetary Relief, the Settlement also provides for service payments to the Named Plaintiffs in the amount of \$120,000 per plaintiff for the substantial time, effort, and risks that each of these women undertook to enable the proposed class to receive the monetary and injunctive relief embodied in the proposed Settlement. Friedman Decl. ¶¶ 44 -48; Ex. A, § 82(a). In the event that the Court approves Service Payments to the Named Plaintiffs in amounts less than the amounts set forth above, BAE Systems shall only be required to pay the approved Service Payment amounts. *Id.*

C. Attorneys' Fees and Costs

BAE Systems has agreed not to oppose an application to the Court for an award to Class Counsel for attorneys' fees up to \$1 million (\$1,000,000) and to reimburse Class Counsel for the costs and expenses they have incurred in this action up to \$125,000. Class Counsel will file a separate motion for approval of an attorneys' fees award not to exceed \$1,000,000 and costs not to exceed \$125,000, including fees and costs associated with future monitoring of the Settlement Agreement. Friedman Decl., ¶ 49; Ex. A, §§ 83-84; Reisch Decl., ¶¶ 39, 40. In the event that the Court approves an award of fees and costs for an amount less than the amounts set forth above, then BAE Systems shall only be required to pay the approved award of fees and costs. Friedman Decl., Ex. A, § 86.

D. Release of Claims and Dismissal

As to the Injunctive Relief Class (Sub-Class A), the provisions of the Settlement resolve fully and finally any claim made with respect to class-wide injury arising from alleged sexual harassment or retaliation by Defendants, as alleged in the FAC. However, notwithstanding any

other provision of the Settlement, or any application of the doctrines of res judicata or collateral estoppel, each individual member of Sub-Class A who is not also a member of Sub-Class B shall retain any rights that she may otherwise have had in the absence of the proposed Settlement to bring an action alleging that she was the victim of discrimination, and to obtain whatever individualized economic or non-economic relief for such alleged injury as the evidence may support. Such rights shall be unaffected by this Agreement. Friedman Decl., Ex. A, § 37.

Participating Sub-Class B Members will release all claims and forms of relief sought for gender discrimination, harassment, and retaliation against BAE Systems and related entities arising from or related to the allegations that are asserted or that could have been asserted in this action, as set forth in the Agreement (“Released Claims”). *Id.*, Ex. A, §104(c).

In addition to the Released Claims, and in consideration of the Service Payments provided to them under the proposed Settlement, the Named Plaintiffs and Former Named Plaintiffs will release all claims against BAE Systems and related entities through the date on which the agreement was signed by the Named Plaintiffs. *Id.*, Ex. A, § 104(d).

Upon Final Approval, judgment will be entered and the action also will be dismissed with prejudice. *Id.*, Ex. A, § 102. However, the Court will retain jurisdiction over this matter for the two-year term of the Settlement Agreement for the purpose of enforcing its provisions and addressing any settlement administration or other issues that may arise relating to its implementation. *Id.*, § 103.

IV. THE SETTLEMENT MERITS PRELIMINARY APPROVAL

Pursuant to Rule 23(e), the Court may approve a class action settlement after finding that the proposed settlement is “fair, reasonable, and adequate.” *Id.* This process involves two stages: preliminary and final approval. At the preliminary approval stage, the Court is not required to make a *final* determination that the settlement is fair, reasonable, and adequate. *See In re Titanium Dioxide Antitrust Litig.*, 2013 U.S. Dist. LEXIS 130288 (D. Md. Sept. 12, 2013). Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to voice their views about the

settlement or to exclude themselves from it. Preliminary approval is merely the prerequisite to giving notice so that “the proposed settlement ... may be submitted to members of the prospective class for their acceptance or rejection.” *Philadelphia Hous. Auth. v. Am. Radiator & Standard Sanitary Corp.* 323 F. Supp. 364, 372 (E.D. Pa. 1970); *see also In re Titanium Dioxide*, 2013 U.S. Dist. LEXIS at 12-13 (“[T]he court’s goal at the preliminary fairness hearing is to assess whether there is ‘probable cause’ to submit the proposal to members of the class and to hold a full-scale hearing on its fairness.”) *quoting In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379 (D. Md. 1983).

Courts recognize that settlement is “the offspring of compromise,” and that courts should become involved only “to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Thus, a settlement generally is presumed to be fair and adequate where the settlement was reached after arms-length negotiations, investigation and discovery were sufficient to allow an informed decision as to settlement, counsel is experienced and qualified to handle the litigation, the relative strength of the parties’ claims and defenses supports settlement, and the degree of opposition to the settlement is low.⁶

A. The Settlement Is the Result of Good-Faith Negotiations By Informed Counsel and Is Fair.

⁶ *See, e.g., Grant v. Bethlehem Steel Corp.*, 823 F.2d 20, 22 (2d Cir. 1987) (affirming approval of settlement where district judge considered “risks of establishing liability, the complexity, expense and likely duration of the litigation, and the likely recovery after a full trial”); *Williams v. Vukovich*, 720 F.2d 909, 922-923 (6th Cir. 1983) (“The court should defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs”); *In re Excess Value Ins. Coverage Litig.*, No. M-21-84 (RMB) 2004 U.S. Dist. LEXIS 14822, at *34 (S.D.N.Y. July 30, 2004) (“Where ‘the Court finds that the settlement is the product of arm’s length negotiations conducted by experienced counsel knowledgeable in complex class litigation, the Settlement will enjoy a presumption of fairness’”); *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 359, 380 (N.D. Ohio 2001) (granting preliminary settlement approval) (“when a settlement is the result of extensive negotiations by experienced counsel, the Court should presume it is fair”); *Mauro v. Mitchell Rubenstein & Assoc., P.C.*, No. 3:11-cv-78, 2011 U.S. Dist. LEXIS 127173 (E.D. Va. Nov. 3, 2011); *see also* 2 Herbert Newberg & Alba Conte, *Newberg on Class Actions* §11.41 at p. 90 (4th ed. 2002); *Manual For Complex Litig.* (4th Ed. 2004) § 21.612.

The parties' proposed Settlement satisfies the standard for preliminary approval. The proposed Settlement is the product of extensive good-faith, non-collusive negotiations that included the exchange of expert analyses and damage estimates. Friedman Decl., ¶¶ 16-21. Counsel for Plaintiffs, who are experienced in labor and employment discrimination and class action law, have conducted significant investigation during the prosecution of this action. *Id.*, ¶¶ 3, 10-17; *see also* Reisch Decl. ¶¶ 25-29. Such investigation has included, *inter alia*:

- The exchange of more than 31,000 pages of documents and data relevant to the claims and defenses in this action;
- The statistical analysis of a significant amount of historical employment data;
- Interviews of numerous putative class members by both Parties;
- Retention of and consultation with statistical and economic experts for the purpose of analyzing employee data and calculating potential damages;
- Numerous in-person and telephonic conferences between representatives of the parties;
- Deposition testimony by the Named Plaintiffs; and
- Deposition testimony by BAE Systems' designated corporate witnesses.

Friedman Decl., ¶¶ 10-17; Reisch Decl. ¶¶ 17-18, 25-29.

Counsel for Plaintiffs and the proposed Settlement Class also have investigated the applicable law as applied to the facts regarding Plaintiffs' allegations and BAE Systems' potential defenses thereto, as well as Plaintiffs' claimed and potential damages. Reisch Decl., ¶¶ 17, 30. The Settlement comes more than 18 months into litigation and after substantial discovery, numerous motions, and at a time when counsel for both parties have a clear view of the strength and weaknesses of the claims and defenses in this action. Friedman Decl., ¶ 17. In particular, Plaintiffs claim that Defendants have engaged in a pattern or practice of gender discrimination, sexual harassment, and retaliation against female employees, and allege that the discrimination is systematic in nature and has been carried out, reinforced and/or uncorrected by upper senior management. *See* Dkt. 10 (FAC). BAE Systems vigorously disputes these claims and contested the action's amenability to class certification given the Supreme Court's decision in *Dukes v. Wal-Mart Stores, Inc.*, 131 S. Ct. 2541 (2011) and pre-existing case law.⁷ *See* Dkt.

⁷ Plaintiffs believe that *Brown v. Nucor Corp.*, 785 F.3d 895 (4th Cir. 2015) and other post-*Dukes* case law supports Plaintiffs' claims for classwide relief and certification of the injunctive relief class for Plaintiffs' harassment claims.

22 (Motion to Strike All Class Allegations). BAE Systems' defenses have also included that Plaintiffs cannot pursue any class claims based on Plaintiff Aviles' 2008 EEOC charge; that Plaintiffs failed to exhaust administrative remedies as to any claims of discrimination in hiring or initial placement upon hire (*see* Dkt. 24 ([Partial Motion to Dismiss])); and that the evidence, including Plaintiffs' experiences and historical personnel data, does not support Plaintiffs' claims of systemic differential disparate treatment as to female bargaining unit employees; the Company's organizational structure and hierarchy, including numerous departments (shops) with different managers and supervisors, precludes a finding that the alleged differential treatment was uniform or shared the same cause; and furthermore, although Defendants do not concede the argument, even if Plaintiffs were able to establish liability, the overall damages due to Plaintiffs and the Class would be lower than what Plaintiffs assert, and less than the amounts BAE Systems is required to pay under the proposed Settlement. The negotiated Settlement reflects both parties' recognition of the strengths and weaknesses of the claims and defenses in the action, including the possibility that a class would not be certified. Reisch Decl. ¶¶ 30, 38.

The Parties also have taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. The Settlement provides for immediate injunctive relief to all Class Members, and monetary payments to Participating Sub-Class B Members now, rather than a speculative payment many years down the road. If the litigation were to continue, and even if Plaintiffs were to prevail, it is uncertain what would occur at some indeterminate time in the future. Even if the case were to be certified as a class action and went to trial, there is a possibility that Defendants or Plaintiffs could appeal after all issues were finally resolved in the trial court. An appeal, of course, might extend final resolution for another one or two years. The risk and expense associated with this delay and the risks inherent in continued litigation led Plaintiffs and their counsel to conclude that prosecuting the lawsuit to the bitter end was not the best course. If the litigation continues, Class Members may receive nothing at all, or they may receive much less relief (monetary or injunctive) and at some distant time in the future. Thus, the risk that BAE Systems would prevail on their defenses

and/or opposition to class certification and defeat any and all recovery to Class Members warrants compromise. Moreover, if Settlement were not achieved, continued litigation of class claims in this action would require substantial additional preparation and discovery, and if this case were to go to trial, fees and costs would be much higher. Reisch Decl., ¶ 38. The single most important factor to plaintiffs and their counsel was that even if they did prevail before a jury, they had no guarantee that they would be able to obtain the injunctive relief to which BAE has agreed. Those changes are of considerable value to the Class.

B. The Value of the Settlement Demonstrates the Settlement Is Adequate.

The injunctive and monetary relief provided by the Settlement also supports preliminary approval. *See Mauro*, 2011 U.S. Dist. LEXIS 127173 at *13 (the adequacy of a settlement requires the court to balance the value of the settlement with the merits of plaintiffs' claims and the defendant's defenses, and the anticipated obstacles and expenses in continued litigation); *In re Titanium Antitrust Litig.*, 2013 U.S. Dist. LEXIS 130288 at *14-15 ("As to the 'adequacy' prong, the court 'weigh[s] the likelihood of the plaintiff's recovery on the merits against the amount offered in settlement.'") (internal citation omitted). As explained above, the Settlement was reached after non-collusive negotiations between the parties and after thorough consideration of the strengths and weaknesses of each side's position and the advantages and disadvantages of continued litigation. *See supra*, Sections II and III.A. Counsel for Plaintiffs have extensive experience with complex issues in employment law, and have determined that this is a reasonable and fair settlement. ERA is a recognized leader in the prosecution of gender class actions, particularly concerning non-traditional employment for women. Reisch Decl. ¶ 5. Since 2004, the practice of the Law Offices of Joshua Friedman has been limited to hostile work environment claims. Several of their larger cases were litigated or are being litigated in this Division and the Newport News Division of the Eastern District. Friedman Decl., ¶ 50. The view of the attorneys actively conducting the litigation "is entitled to significant weight" in deciding whether to approve the Settlement." *Fisher Bros. v. Cambridge Lee Indus., Inc.*, 630 F. Supp. 482, 488 (E.D. Pa. 1985). Plaintiffs' Counsel have carefully evaluated the merits of the

case and the Settlement and conclude that the injunctive and monetary relief are a very good result for the Class. Friedman Decl., ¶ 48; Reisch Decl. ¶¶ 34, 38.

Plaintiffs challenged specific policies and practices of BAE on behalf female bargaining unit employees, alleging that BAE systematically discriminated against these employees on the basis of gender with respect to assignment, (pay rate) classification, and promotion. Plaintiffs further alleged that BAE had a policy or practice of fostering and failing to adequately address or correct sex-based harassment of female employees both within and outside of the bargaining unit. The proposed Settlement will address these allegations. The Company will implement comprehensive injunctive relief, including changes to its promotion, job posting, evaluation, assignment, training, and complaint investigations policies and procedures, and strengthen its existing training for supervisors, managers, and human resources personnel on issues related to gender harassment and discrimination. *See Ex. A §§ 40- 46.* Plaintiffs' Counsel believes the value of this relief is substantial and will benefit all current and future female bargaining unit employees at the Company. Friedman Decl., ¶ 34; Reisch Decl. ¶ 38.

The Settlement also addresses the allegations of discrimination in assignment, classification and promotion brought on behalf of current and former bargaining unit employees by requiring BAE to pay up to \$3 million to provide monetary relief (in the form of lost wages) to Participating Sub-Class B members. Friedman Decl., Ex. A § 47; Reisch Decl. ¶ 36.

After subtracting Settlement Administrator fees and costs, and the service payments to the five Former Named Plaintiffs (totaling \$70,000) from the Class Monetary Relief, the estimated net monetary relief that will be allocated for individual settlement shares (and the payroll taxes on those shares) for Participating Sub-Class B/Monetary Relief Members is approximately \$2,915,000. Friedman Decl., ¶¶ 35, , 43; Ex. A, § 76. Participating Class B Members who were employed in a Bargaining Unit Position at the Company *only* during the portion of the Settlement Class Period from October 5, 2007 through September 30, 2010 (i.e., who were not employed at any time during the period beginning two years before the Named Plaintiffs filed their 2012 EEOC charges) will be allocated payments of five thousand dollars

(\$5,000.00). Ex. A § 76(a). The Parties agree that these individuals likely could not assert timely claims for relief in this Action in the absence of this Settlement.

After subtracting the \$5,000 payments to the Class Members described in the prior paragraph, each of the remaining Participating Sub-Class B Members will receive a pro rata share of the amount remaining in the Settlement Fund, based on a weighted formula which takes account of each employee's length of service during (a) the period beginning October 1, 2010 through December 31, 2014, and (b) the twenty year period from October 1, 1990 to September 30, 2010. The average payment to these class members will be approximately \$16,000. Friedman Decl., ¶ 35. Plaintiffs' Counsel believe that the monetary awards will fairly compensate Sub-Class B Members for their alleged economic damages. *Id.*, ¶ 36; *see also* Reisch Decl., ¶¶ 36, 38.

The proposed Settlement also has no obvious deficiencies. Settlement Shares will be calculated and disputes resolved by a neutral Settlement Administrator which has significant experience in administering settlements of this type and size. Reisch Decl., ¶ 41. The Settlement does not provide for "unduly preferential treatment of class representatives, or of segments of the class." Manual for Complex Litig. § 30.41. The Service Payments to the Named Plaintiffs and Former Named Plaintiffs are subject to court approval and Plaintiffs contend that they adequately compensate them for the substantial time, effort and risk they have put forth in pursuing this action to the benefit of the Class, as well as their additional general release of claims. Friedman Decl., ¶¶ 42, 44- 48. BAE Systems does not contest these awards. The Settlement also does not provide for excessive compensation for attorneys. Class Counsel will apply for an award of up to \$1,000,000 in fees and \$125,000 in expenses to compensate them for all work performed and expenses incurred to date in investigating, litigating, and settling this action, as well as all work to be performed in securing preliminary and final court approval of the Settlement, monitoring Defendants' compliance with the Settlement, and obtaining final dismissal. Friedman Decl., Ex. A, § 84. The Settlement also provides that Class Counsel's application be posted and available

to the proposed Class so that any objections can be timely filed with the Court. *Id.* § 85; *see also* Ex. 1 to the Settlement, at § 8(b).

In sum, in light of the inherent difficulties in proving class damages, the uncertainties of litigation, and the defenses raised by BAE Systems to class certification and liability (discussed herein), it cannot reasonably be disputed that this is an excellent result for Class Members.

V. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

Pursuant to the Settlement and Rules 23(a) and (e), Plaintiffs seek provisional certification of the following Settlement Classes solely for the purpose of effectuating the Settlement:

1. Pursuant to Rule 23(b)(2), a Sub-Class A/Injunctive Relief Class consisting of:
All women who held a Non-Management Position at BAE Systems Norfolk Ship Repair, Inc. at any time during the period October 5, 2007 through December 31, 2014, excluding those individuals who previously entered into releases of claims as part of individual agreements with BAE that did not carve out an exception for this Action at any time prior to the Preliminary Approval Date; and
2. Pursuant to Rule 23(b)(3), a Sub-Class B/ Monetary Relief Class consisting of:
All women who held a Bargaining Unit Position at BAE Systems Norfolk Ship Repair, Inc. at any time during the period October 5, 2007 through December 31, 2014, excluding those individuals who previously entered into releases of claims as part of individual agreements with BAE that did not carve out an exception for this Action at any time prior to the Preliminary Approval Date.

Friedman Decl., Ex. A, § 4, 36-38. BAE Systems does not oppose the certification of this class for settlement purposes only. *Id.*, Ex. A, § 39 (stating that, “Defendants do not waive, but rather expressly retain and reserve all rights to challenge any and all claims and allegations asserted by the Class Representatives in the Amended Complaint on procedural and substantive grounds, including, without limitation, the ability to challenge or oppose class action treatment on any grounds and to assert any and all potential defenses or privileges”). Sub-Class A seeks injunctive relief for claims of hostile work environment sexual harassment, and retaliation under Title VII. Sub-Class A seeks injunctive relief on behalf of all non-management female employees to address claims arising from BAE’s alleged policies or practices of (1) systematically engaging in and failing to address hostile work environment sexual harassment;

and (2) retaliating or failing to prevent retaliation against women who complain about gender discrimination under Title VII. Sub-Class B seeks monetary relief (in the form of lost compensation or back pay) on behalf of female employees in Bargaining Unit Positions for claims of gender discrimination in promotion, pay, and assignments under Title VII.

District courts have wide discretion in certifying a class. *E.g.*, *Cent. Wesleyan College v. W.R. Grace & Co.*, 6 F3d. 177, 185 (4th Cir. 1992). In order to be certified as a class action, the class must satisfy Rule 23(a) prerequisites and meet the requirements of at least one of the Rule 23(b) class action types. *See* Fed. R. Civ. Proc 23(a), (b); *see also, e.g.*, *Wal-Mart*, 131 S. Ct. 2541; *Brown*, 785 F.3d 895; *Scott v. Family Dollar Stores, Inc.*, 733 F.3d 105 (4th Cir. 2013). Here, Plaintiffs seek to certify the proposed Sub-Class A pursuant to Rule 23(b)(2), and the proposed Sub-Class B pursuant to Rule 23(b)(3).

B. The Settlement Class Meets the Numerosity Requirement.

Rule 23(a)(1) is satisfied where “the class is so numerous that joinder of all members is impracticable.” Fed. R. Civ. Proc. 23(a)(1). The Fourth Circuit has said that “[N]o specified number is needed to maintain a class action.” *Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984). Even a class containing 74 members is “well within the range appropriate for class certification.” *Id.* (*citing* 7 Wright and Miller, Federal Practice & Procedure § 1762 at 596-600 (1972 & 1982 Supp.)). BAE Systems’ employee and payroll files show that the Settlement Class has approximately 383 members, including 177 members of Sub-Class B/Monetary Relief Class. *See* Friedman Decl., ¶ 37, Reisch Decl., ¶ 34. This is sufficiently numerous to make joinder impracticable and falls within the range of appropriated certified classes. The numerosity requirement therefore is satisfied.

C. The Settlement Class Satisfies the Commonality Requirement.

A class meets the commonality prerequisite where there are questions of law or fact common to the class, capable of class-wide resolution. Fed. R. Civ. P. 23(a)(2); *see also Brown v. Nucor, supra*, 785 F.3d 895. The Settlement Class satisfies Rule 23(a) commonality requirements because there are common questions of law and fact. Here, the overriding issue is

whether female employees at the Norfolk shipyard were subject on a classwide basis to gender discrimination, hostile work environment sexual harassment, and retaliation for raising claims of discrimination or harassment. Plaintiffs allege that BAE had a company-wide policy and practice of discriminating against non-management female employees by fostering or failing to address sex-based hostile work environment harassment and retaliating or failing to prevent retaliation against women who made complaints about that harassment or other forms of gender discrimination. FAC, Dkt. 10, ¶¶ 3, 63-73, 80-99. Plaintiffs also allege that BAE systematically discriminated against women in bargaining unit positions with respect to assignments, training, and promotions, resulting in lost pay. *Id.*, ¶¶ 3, 35-62, 74-79. As a result, class members share common questions of law and fact, such as: (a) for members of Sub-Class A, (1) whether female employees in Non-Management positions at BAE Systems Norfolk Ship Repair, Inc. were subjected to hostile work environment sexual harassment that was not adequately addressed or remedied by senior managers and supervisors, and (2) whether managers or supervisors retaliated against female employees in Non-Management positions for complaining about gender discrimination or harassment in violation of the Company's anti-retaliation policy; (b) and for members of Sub-Class B, (1) whether BAE Systems' policies and practices with respect to shop or department assignments and hours discriminated against female bargaining unit employees, and (2) whether BAE Systems' policies and practices with respect to promotion during the relevant period discriminated against female bargaining unit employees. *Id.* ¶¶ 104-105. In these circumstances, the commonality requirement of Rule 23(a)(2) is satisfied.

D. Named Plaintiffs' Claims Are Typical of the Class Claims.

The proposed Settlement Class also satisfies typicality requirements. Rule 23(a)(3) is satisfied where the "claims or defenses of the representative parties are typical of the claims or defenses of the class." *Id.* Like commonality, the typicality standard requires only that the Named Plaintiffs' claims be "reasonably coextensive with those of absent class members; they need not be substantially identical." *Staton v. Boeing*, 327 F.3d 938, 957 (9th Cir. 2003). Here, each of the proposed class representatives asserts that she was subject to gender discrimination in

promotions and assignments, and was subject to a hostile work environment on the basis of her sex, and that members of the proposed Settlement Class were subject to the same treatment. Dkt. 10 at ¶¶ 112-117. Their claims are therefore reasonably coextensive with those of the absent class members they seek to represent. More specifically, the Named Plaintiffs each allege that BAE had a policy and a practice of gender discrimination and retaliation against women for complaining about or reporting discrimination. Pursuant to that policy, each woman claims to have been subject to a hostile work environment and discriminated against in assignments and promotions based on her sex, and to have faced retaliation for making complaints of gender harassment and discrimination. *See* Dkt. 10, ¶¶ 126-282. Thus their claims are typical of those of absent class members because they arise out of the same policies, practices, and causes of concern alleged on behalf of all class members. Because each of the Named Plaintiffs allege that she was injured by the same policies, practices and causes of concern as alleged on behalf of all class members, their claims are typical of the claims of the class, and the typicality requirement of Rule 23(a)(3) is therefore satisfied.

E. Named Plaintiffs Are Adequate Class Representatives.

Rule 23(a)(4) requires that class representatives “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Adequate representation is usually presumed in the absence of contrary evidence. 3 Newberg on Class Actions § 7.24 (4th ed. 2002). Here, each of the Named Plaintiffs has been employed at the Company in a bargaining unit position during much, if not all, of the Settlement Class Period. Each alleges that she was subject to discrimination, denied equal opportunity in pay, promotions and/or assignments because of gender, and that she was subject to a hostile work environment, and retaliation as a result of BAE Systems’ policies and practices. Each Named Plaintiff has a clear interest in remedying these alleged injuries on behalf of herself and the class and therefore will protect the class’ interests. Named Plaintiffs also have chosen experienced counsel who have litigated, and continue to litigate, numerous employment discrimination cases, to represent the class. Friedman Decl., ¶¶

50-58; Reisch Decl., ¶¶ 9-12. Plaintiffs assert that the adequate representation requirement is therefore satisfied, and the Court should appoint the Named Plaintiffs as Class Representatives.

F. The Injunctive Relief Class Satisfies the Requirements of Rule 23(b)(2).

The proposed Sub-Class A/Injunctive Relief class also satisfies Rule 23(b)(2). Class certification under Rule 23(b)(2) requires a showing that, in addition to satisfying the elements of Rule 23(a), “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” *Id.*; *Zimmerman v Bell*, 800 F.2d 386, 389 (4th Cir. 1986). The (b)(2) class “serves most frequently as the vehicle for civil rights actions and other institutional reform cases that receive class action treatment.” *Baby Neal v. Casey*, 43 F.3d 48, 58-59 (3d Cir. 1994); *Brown*, 785 F.3d 895 ; *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998)(“As the Advisory Committee Notes explain, 23(b)(2) was adopted in order to permit the prosecution of civil rights actions.”)

Here, Plaintiffs allege that female non-management employees at the Company were subject on a classwide basis to systemic gender discrimination that violated Title VII in the form of hostile work environment sexual harassment that was carried out by, known to and/or tolerated by senior management; discriminatory policies, practices and procedures in initial classification and shop or department assignment and hours (including overtime) for women working in bargaining unit positions, resulting in less pay and fewer promotions for women employed in these positions; denial of equal opportunity in promotion and advancement and training opportunities for women in the bargaining unit; and retaliation for raising complaining about these and other forms of gender discrimination in the workplace. The injunctive relief in the proposed Settlement addresses the specific discriminatory practices and class-wide harms alleged by requiring the Company to undertake changes to its policies and procedures with respect to job posting, employee evaluation, and promotion in the bargaining unit; implement additional training and accountability measures for managers and supervisors; and classwide injunctive relief applies to the entire class to redress the alleged classwide harm, including

changes in Defendants' promotions and hiring practices, and additional training and accountability policies and practices to ensure that BAE Systems' procedures for responding to and resolving employee complaints is credible and effective. These changes apply to the entire proposed class and will further benefit future female employees at the Defendants' Norfolk facility. Plaintiffs' request for injunctive relief is specific and appropriate with respect to the class as a whole, and therefore satisfies the requirements of Rule 23(b)(2). *See Wal-Mart*, 131 S. Ct. at 2558 ("When a class seeks an indivisible injunction benefitting all its members at once, there is no reason to undertake a case-specific inquiry into whether class issues predominate or whether class action is a superior method of adjudicating the dispute. Predominance and superiority are self-evident.").

G. The Monetary Relief Class (Sub-Class B) Satisfies Rule 23(b)(3).

The proposed Sub-Class B/Monetary Relief Class also satisfies Rule 23(b)(3). Rule 23(b)(3) requires that "questions of law or fact common to class members predominate over any questions affecting only individual members," and that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *Id.* Both requirements are met here. "The predominance analysis under Rule 23(b)(3) focuses on 'the relationship between the common and individual issues' in the case and 'tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'" *Wang v. Chinese Daily News*, 709 F.3d 829, 835 (9th Cir. 2013) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998)); *see Gunnells v. Healthplan Servs.*, 348 F.3d 417, 440 (4th Cir. 2003) (the fact that a class is being certified for settlement purposes "is relevant to a class certification, [because] Rule 23(e) affects a court's evaluation of predominance") (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997)). Here, the central issues raised in Plaintiffs' Amended Complaint are susceptible to common proof. Plaintiffs allege that female bargaining unit employees at the Norfolk shipyard were subject on a classwide basis to gender discrimination in promotions, pay and assignments, and they present the common questions identified above. Although there is no question that these issues are hotly contested, there also is no question that these issues

predominate. Similarly, there is no doubt that resolving the bargaining unit employees' Class claims for backpay (for promotion and pay discrimination) through the proposed class action Settlement is superior and far more efficient than litigating each individual employee's claim. If female bargaining unit employees were to litigate their discrimination claims individually, Plaintiffs assert that they would rely on the same proof of centralized, corporate control over bargaining unit position pay rates (classification), assignment, evaluation, and promotion policies and practices to establish liability. They would also seek a common damages remedy for their lost wages. That some female bargaining unit employees may have suffered greater damages than others does not defeat class action treatment. *Gunnells*, 348 F.3d at 429; *Yokoyama v. Midland Nat'l Life Ins. Co.*, 594 F.3d 1087, 1089 (9th Cir. 2010). Because "[a] common nucleus of facts and potential legal remedies dominates this litigation," the predominance requirement of Rule 23(b)(3) is satisfied. *See Hanlon*, 150 F.3d at 1022; *Gong-Chun v. Aetna Inc.*, No. 09-cv-1995-SKO, 2012 WL 2872788, at *10 (E.D. Cal. July 12, 2012).

It is important to note that, "Rule 23(b)(3)'s superiority test requires the court to determine whether maintenance of this litigation as a class action is efficient and whether it is fair. This analysis is related to the commonality test. Underlying both tests is a concern for judicial economy." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175-76 (9th Cir. 2010). The superiority determination "necessarily involves a comparative evaluation of alternative mechanisms of dispute resolution." *Hanlon*, 150 F.3d at 1023. Here, resolving the common liability and damages issues in a single action would be far more efficient than litigating approximately 177 individual claims in separate actions. *See Vandervort v. Balboa Capital Corp.*, 287 F.R.D. 554, 562 (C.D. Cal. 2012). While the alleged individual damages for Sub-Class B Members here are not as modest as in some, nonetheless, "litigation costs would likely exceed potential recovery if each class member litigated individually." *Id.*; Friedman Decl., ¶ 35. Accordingly, "[f]rom either a judicial or litigant viewpoint, there is no advantage in individual members controlling the prosecution of separate actions." *Hanlon*, 150 F.3d at 1023.

Finally, because the Parties seek certification for Settlement only, concerns about the manageability of trying the case as a class action are alleviated. *See Amchem*, 521 U.S. at 620 (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems ... for the proposal is that there be no trial.”).

VI. PLAINTIFFS’ COUNSEL SHOULD BE APPOINTED AS CLASS COUNSEL

Plaintiffs also request that, pursuant to the terms of the Settlement and as agreed by the parties, the Court appoint the following law firm(s) as Class Counsel: Law Offices of Joshua Friedman PC; Equal Rights Advocates. Rule 23(g) provides that courts must consider the following four factors when appointing class counsel: (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g); *Temp. Servs. v. Am. Int’l Group, Inc.*, 2012 U.S. Dist. LEXIS 86474 at *14-15 (D.S.C. June 22, 2012); *Guido v. L’Oreal, USA, Inc.*, 284 F.R.D. 468, 484 (C.D. Cal. 2012). Plaintiffs’ Counsel satisfy Rule 23(g) because they have extensive experience in litigating employment discrimination and other complex class actions, are well-versed in the applicable law governing the claims asserted, and have done considerable work and committed substantial resources to investigate the claims in this action. Friedman Decl., ¶¶ 50-58; Reisch Decl., ¶¶ 9-12.

Plaintiffs’ Counsel conducted extensive investigation of the claims of the proposed class and conducted extensive discovery, particularly discovery of documents, statistical data, and gathering anecdotal evidence through interviews with putative class members and witnesses. Plaintiffs’ Counsel have committed substantial resources to representing the proposed class and have demonstrated the ability to handle and respond to the unique challenges associated with complex, class action civil rights litigation. Plaintiffs’ Counsel have incurred in excess of \$1

million in costs and expenses in this case and have devoted over 1,200 hours to investigation, preparation, litigation, and settlement of this action. Reisch Decl. ¶ 40.

VII. THE PROPOSED CLASS NOTICE MEETS THE REQUIREMENTS OF RULE 23 AND IS REASONABLE

The Settlement's proposed notice plan and forms of notice are reasonable and satisfy due process requirements. *See* Fed. R. Civ. Proc. 23(e)(1); Friedman Decl., Ex. A at §§ 48-73 and Exhibits 1-3 to Settlement. The notice informs Sub-Class B Members of the pendency of this action and the proposed Settlement, the manner in which to request exclusion from the monetary portion of the Settlement, complete the verification process, and the deadlines for doing so. The amount of each eligible Sub-Class B Member's estimated individual Settlement Share will be included within her notice packet. The notice also informs Sub-Class B Members of the procedures for objecting to the terms of Settlement or to the fees and/or costs of class counsel.

Courts have broad discretion in fashioning an appropriate notice program. *See In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 177 F.R.D. 216, 231 (D.N.J. 1997) ("The nature and extent of Rule 23(a) class notice of a proposed settlement are left to the discretion of the trial court judge."). The method and content of the notice to Class Members should be designed to apprise them of "the terms of the proposed settlement and the options available to them." *Philadelphia Hous. Auth.*, 323 F. Supp. at 378. An appropriate notice is one that is calculated to reach each member of a settlement class "who can be identified through reasonable effort," *see Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 176 (1974), and provides sufficient detail regarding the settlement to "alert those with adverse viewpoints to investigate and to come forward and be heard." *See Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). The proposed notice here satisfies this standard.

The proposed Notice of Class Settlement (Exhibit 1 to the Settlement) ("Notice"), which will be sent to each potential Sub-Class B Member along with an individualized Verification form and an Exclusion Statement form (Exhibits 2 and 3 to the Settlement, respectively; together these documents comprise the "Notice Packet"), will inform those class members of the

pendency of this action and describe the terms of the settlement addressing injunctive and monetary relief; explain how to complete the verification process or, alternatively, request exclusion from the monetary portion of the Settlement, including the deadlines for doing so; set forth the procedure for comments, objections and opting out (including how to rescind a decision to opt out); provide specifics on the date, time, and place of the final approval hearing; and explain how to obtain additional information regarding this litigation and the settlement (including providing the telephone numbers and websites of Plaintiffs' Counsel and the Settlement Administrator). Moreover, Verification Forms will be individualized for each potential Sub-Class B Member to review her estimated individual Settlement Share (if she does not opt out). The information provided will enable class members to exercise their rights and make informed decisions regarding their views of the fairness, adequacy and reasonableness of the proposed settlement.

In sum, the information to be provided in the Notice Packets gives members of the Monetary Relief Class a fair and full opportunity to consider the proposed settlement and the motion for attorneys' fees and costs that will be filed separately prior to the Final Approval Hearing, and to come forward and be heard if they desire. The proposed notice plan provides for individualized mailing of the notice to proposed Monetary Relief (Sub-Class B) Class members by first-class mail, which is the means best calculated to reach each class member who is affected by the monetary relief terms of the proposed settlement. *See Wright*, 259 F.R.D. at 475. The proposed notice, summarized here for the Court's convenience easily satisfies all of these requirements. Pursuant to the terms set forth in the proposed Settlement Agreement, within twenty (20) calendar days after the court enters an order granting preliminary approval of the Settlement, BAE Systems will provide to the Settlement Administrator, SSI, each Sub-Class B Member's name, last known mailing address and telephone number, Social Security number, and, based on company records, the employee's dates of hire and termination, and the current or last known job title, position or classification at the Company.

Within thirty (30) calendar days after receiving the class member information from the Company, or as soon thereafter as it is able to do so, SSI will mail the Class Notice Packets to all identified Sub-Class B Members via first-class regular U.S. Mail using the mailing address information provided by BAE Systems, unless modified by any updated address information that SSI obtains in the course of administration of the Settlement. In the event a Class Notice Packet is returned because of an incorrect address, SSI will perform reasonably diligent skip tracing to search for a more current address and re-send the packet. Ex. A § 48(f). Notice packets returned as undeliverable will be re-mailed to forwarding addresses, and those returned without forwarding address will be traced and re-mailed. *Id.* In order to object to the Settlement or to Class Counsel's application for fees and litigation expenses, a Class Member must file his or her objections with the Court, and serve a copy on counsel of record for the parties, not later than 50 days after the mailing of the Notice Packets. Ex. A § 93. Plaintiffs' Counsel will file with the Court their motion for attorneys' fees and litigation expenses no later than 40 days after the initial mailing of the Notice Packets, or at least ten days before the deadline for Class Members to file objections to the Settlement with the Court. *See id.* § 85. In order to claim her individual Settlement Share, a Participating Sub-Class B/Monetary Relief Class Member must complete the verification process under penalty of perjury no later than 60 days after the mailing of the Class Notice Packets. Each Verification Form will list the claimant's estimated Settlement Share. To the extent a Participating Sub-Class B/Monetary Relief Class Member disputes her dates of employment, she may produce evidence to SSI indicating the basis of her dispute. BAE Systems' records will be presumed to be correct, but that presumption may be rebutted by the Participating Sub-Class B Member's showing. SSI will resolve all such disputes, and SSI's resolution will be binding on all parties. Ex. A § 62-63. The Notice and related documents will also be posted on the website established by SSI for this case. Ex. A §§ 48(b), 58.

Under these circumstances, the proposed notice is reasonably calculated to provide notice of the Settlement and satisfies due process requirements.⁸ It therefore merits Court approval.

VIII. ATTORNEYS' FEES AND COSTS

The Settlement provides for Plaintiffs' counsel to apply to the Court for an award of their attorneys' fees in an amount up to \$1 million, plus reimbursement of Court approved costs and expenses incurred in the prosecution of this action and overseeing the notice and settlement administration process in an amount up to \$125,000, without opposition from Defendants. As set forth above and in the proposed Settlement, Plaintiffs' Counsel will submit a separate motion for an award of reasonable attorneys' fees and expenses by no later than (10) calendar days prior to the Final Fairness Hearing and at least ten (10) calendar days prior to the deadline for eligible Class Members to submit any written objections to the Settlement to the Court. Friedman Decl., Ex. A, ¶ 84. This motion, along with declarations submitted with this motion, will show that the proposed fee and costs award is commensurate with (1) the risk Plaintiffs' Counsel took in commencing this action, (2) the time, effort and expense dedicated to the case to date and the projected time and expenses they will incur in monitoring implementation of the settlement, (3) the skill and determination they have shown, (4) the results they have achieved throughout the litigation, (5) the value of the settlement they have achieved for class members, and (6) the other cases counsel have turned down in order to devote their time and efforts to this matter. *See* Reisch Decl. ¶¶ 39-40.

IX. THE COURT SHOULD SET A SCHEDULE FOR FINAL APPROVAL OF SETTLEMENT

The last step in the settlement approval process is the final approval hearing at which the Court will hear all evidence and argument necessary to evaluate the Settlement Agreement.

⁸ *See In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 177 F.R.D. at 234 (finding the parties' "efforts constituted the best notice practicable [where] the mode of dissemination of notice [] was reasonably calculated to provide notice to the identifiable class members. . . . That some class members may not have received notice evidences only that the extensive notice system was not perfect. Due process when viewed through the lens of objectivity does not require perfection."); *see also* Manual for Complex Litigation § 21.31.

Pursuant to the Settlement, Plaintiffs request, and Defendants do not oppose, that the court adopt the following schedule for administering the Settlement and holding a final approval hearing:

Event	Deadline
Last day for BAE Systems to provide Class Data to the Settlement Administrator	Within 20 days after entry of the Court's Order granting preliminary approval
Last day to mail Class Notice Packets (including Notice of Class Action Settlement, Verification Form, Exclusion Statement Form) to Monetary Relief (Sub-Class B) Members	Within 30 days after entry of the Court's Order granting preliminary approval
Last day for Class Counsel to file application for award of attorneys' fees and costs	Within 40 days of the initial mailing of the Class Notice Packets
Last day for Class Members to file objections to proposed Settlement or Class Counsel's application for award of attorneys' fees and costs	Within 50 days of date of initial mailing of the Class Notice Packets
Last Day for Monetary Relief Class Members to mail (postmark) Verification Forms	
Last day for Monetary Relief Class Members to complete verification process online or telephonically or to mail (postmark) Exclusion Statements to opt out of Monetary Relief Class	Within 60 days of the date of initial mailing of the Class Notice Packets
Last day for Settlement Administrator to provide declaration regarding administration of Notice, including a report of those Participating Sub-Class B Members to whom an individual settlement share payment is due and the amounts due	At least 15 calendar days before the Final Approval Hearing
Last day for Class Counsel to file motion for final approval of settlement	Ten (10) calendar days before Final Approval Hearing
Last day for Class Counsel to file a reply and/or supplemental memoranda in support of application for award of attorneys' fees and costs	Five (5) court days before Final Approval hearing
Final Approval Hearing	[at least 130 days after entry of order granting preliminary approval]

X. CONCLUSION

The Settlement is fair, reasonable, and adequate in all respects. Accordingly, Plaintiffs respectfully request that the Court grant their unopposed motion for preliminary approval of the Settlement in its entirety, and adopt the proposed order submitted with this motion.

[signature page follows]

Dated: August 31, 2015

Respectfully submitted

/s/ Joshua Friedman
Joshua Friedman
Giselle Brianceschi Schuetz
Rebecca Houlding
Law Offices of Joshua Friedman PC
1050 Seven Oaks Lane
Mamaroneck, NY 10543
Telephone: (888) 369-1119
josh@joshuafriedmanesq.com
giselle@joshuafriedmanesq.com
rebecca@joshuafriedmanesq.com

Counsel for Plaintiffs and the Proposed Class

/s/ Jennifer A. Reisch
Jennifer A. Reisch
Keasara M. Williams
Equal Rights Advocates
1170 Market Street
Suite 700
San Francisco, CA 94102
Telephone: (415) 621-0672
Fax: (415) 621-6744
jreisch@equalrights.org
kwilliams@equalrights.org

Counsel for Plaintiffs and the Proposed Class

/s/ James Harrell Shoemaker, Jr.
James Harrell Shoemaker, Jr.
Jason Eric Messersmith
Patricia Ann Melochick
Patten Wornom Hatten & Diamonstein LC
12350 Jefferson Ave.
Suite 300
Newport News, VA 23602
Telephone: (757) 223-4500
jshoemaker@pwhd.com
jmessersmith@pwhd.com
tmelochick@pwhd.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing (NEF) to the following:

Carson H. Sullivan
Barbara B. Brown (*Admitted pro hac vice*)
Paul Hastings, LLP
875 15th Street, N.W.
Washington, D.C. 20005
202-551-1700 (telephone)
202-551-1705 (facsimile)
carsonsullivan@paulhastings.com
barbarabrown@paulhastings.com

s/ James H. Shoemaker, Jr. _____
James H. Shoemaker, Jr., VSB No. 33148
Patten, Wornom, Hatten & Diamonstein, L.C.
12350 Jefferson Avenue, Suite 300
Newport News, Virginia 23602
Telephone: (757) 223-4500
Facsimile: (757) 223-4518
jshoemaker@pwhd.com
Counsel for the Plaintiffs