

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MARGERITA NOLAND-MOORE,

*On behalf of herself and all others
similarly situated,*

Plaintiff,

v.

CITY OF CLEVELAND,

Defendant.

) CASE NO. 1:18-cv-02730

) JUDGE JOHN R. ADAMS

) **JOINT MOTION FOR**
) **PRELIMINARY APPROVAL OF**
) **CLASS ACTION SETTLEMENT**

Plaintiff Margerita Noland-Moore and Defendant City of Cleveland respectfully and jointly move the Court to (1) preliminarily approve the proposed settlement of Settlement Class Members' claims pursuant to Rule 23(e), (2) approve a proposed notice to Potential Settlement Class Members, (3) appoint Scott & Winters as interim Class Counsel; and (4) schedule a Final Fairness Hearing. A proposed Preliminary Approval Order is attached as Exhibit 2.

The Joint Stipulation of Class Action Settlement and Release ("Settlement" or "Settlement Agreement"), attached as Exhibit 1, calls for an opt-out Settlement pursuant to Fed. R. Civ. P. 23 for allegations pertaining to overtime wage law claims. The Settlement will apply to Representative Plaintiff Margerita Noland-Moore ("Plaintiff") and to all other members of the proposed Settlement Class (collectively referred to as "Settlement Class" or "Class Members").

The Settlement Class consists of:

All present and former hourly employees of Defendant who received longevity pay and/or shift differential pay that was not rolled into their overtime pay during the period November 26, 2015 to November 26, 2019.

See Settlement Agreement (Exhibit 1 at ¶ 3).

The Settlement, achieved with the assistance of Mediator Jerome Weiss, resolves *bona fide* disputes involving overtime compensation under the FLSA and corresponding provisions of

Ohio wage-and-hour law, O.R.C. § 4111.03. Plaintiff alleged that she and other hourly employees of the City of Cleveland are owed overtime compensation and liquidated damages. (*See* Complaint, ECF #1; First Amended Complaint, ECF #10.) Defendant denied Plaintiff's claims and asserted affirmative defenses. (*See* Answer to Complaint, ECF #6, Answer to Amended Complaint, ECF #11.)

The 4,248 total potential Class Members will receive notice of their right to participate in the settlement, the total number of potential settlement class members and the total amount of the settlement proceeds on a global basis. The settlement results in an average gross Rule 23 class recovery of over \$99.50 per Member of the Settlement Class. Each Potential Class Member will receive notice so that all Potential Class Members will be given the choice to participate or not to participate, including the right to preserve any individual claims or rights they may have against Defendant.

Plaintiff's claims were contested and settlement was achieved only through prolonged and difficult negotiations, including approximately seven months of negotiations, data production, and mediation. The Settlement is fair, reasonable, and adequate and satisfies the criteria for approval under the FLSA, 29 U.S.C. § 216(b), R.C. § 4111.01 *et seq.*, and Federal Rule 23(e). If approved by the Court, the Settlement will provide individual settlement payments to Class Members representing a substantial percentage of their claimed damages.

The following settlement documents and proposed order are submitted for approval or entry by the Court:

- Exhibit 1: Joint Stipulation of Class Action Settlement and Release
("Settlement Agreement");
- Exhibit 2: Proposed Order Granting Preliminary Approval of Settlement
("Preliminary Approval Order", providing for notice and hearing);

Exhibit 3: Proposed Notice of Class Action Settlement and Fairness Hearing;

Exhibit 4: Declaration of Proposed Class Counsel (hereinafter “Class Counsel”);

Exhibit 5: Class Member List; and

Exhibit 6: General Settlement and Release Agreement of Named Plaintiff.

The sections below explain the litigation, the negotiations, the Settlement terms, the proposed settlement payments and distributions, and the propriety of approval.

I. THE LITIGATION

A. The Claims and Issues

Plaintiff Margerita Noland-Moore filed a Class and Collective Action Complaint in this Action (ECF #1) on November 26, 2018, and a First Amended Complaint on February 3, 2019 (ECF #10). Plaintiff alleged that she and other hourly employees’ longevity pay and shift differential pay was not properly factored into their overtime pay, and are owed overtime compensation, liquidated damages, attorneys’ fees, and costs pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 207, and Ohio Revised Code § 4111.03. (*Id.*) Defendant denied Plaintiff’s claims and asserted affirmative defenses. (*See Answer to Amended Complaint*, ECF #11.)

B. Investigation, Discovery, Document Analysis, and Research

Between March and May of 2019, the Parties engaged in informal yet comprehensive discovery regarding the Plaintiffs’ claims and the Defendant’s defenses to such claims. Class Counsel also conducted extensive investigations into the facts before and during the prosecution of the Action. This discovery and investigation has included, among other things (a) meetings and conferences with the Plaintiff and other putative class members; (b) inspection and analysis of class-wide documents produced by the Defendant, including analysis of wage-and-hour

information and other data and documents comprising of over 2,000,000 data points from the records produced by Defendant; (c) analysis of the legal positions taken by Defendant; (d) investigation into the viability of class treatment; (e) analysis of potential class-wide damages; and (f) research of the applicable law with respect to the claims and potential defenses thereto.

Plaintiff has vigorously prosecuted this case, and Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and discovery to assess the relative merits of the claims and of Defendant's defenses to them.

II. SETTLEMENT NEGOTIATIONS

Settlement negotiations were protracted and difficult. After participating in a full-day mediation with Mediator Jerome Weiss, a very seasoned and experienced mediator, on July 24, 2019 the parties were unable to reach a final resolution. Subsequent to the mediation, the Parties engaged in approximately three additional months of negotiations and ongoing mediation/settlement efforts through telephonic and electronic communications through Mr. Weiss. In advance of the mediation, the parties prepared and submitted mediation memoranda demands and responses addressing merits and damages issues. Subsequent to the mediation, the Parties exchanged settlement proposals in an effort to narrow their positions, and after prolonged and difficult negotiations the settlement was achieved in principal on October 22, 2019.

III. THE TERMS OF THE SETTLEMENT AND RELEASE OF CLAIMS

A. The Scope of Settlement

If approved by the Court, the proposed Settlement will resolve disputed claims between the Parties. The Settlement will resolve federal and state wage-and-hour claims of the named Plaintiff and all other members of the proposed Settlement Class pursuant to Fed. R. Civ. P. 23(e). As highlighted below, Defense Counsel and Class Counsel believe that certification and

Settlement are appropriate because the Released Claims are being compromised without need to establish the elements of those claims on which liability turns, in addition to providing a substantial recovery to Class Members in light of the procedural and substantive encumbrances underscored by Defendant. Named Plaintiff and Class Counsel believe the claims asserted in the matter have merit and that the evidence developed to-date supports the claims asserted. Defendants believe that they have valid defenses to Plaintiff's Claims. Plaintiff and Class Counsel recognize the risk and expense of trying and, if necessary, appealing this action, and believe that the Settlement confers substantial benefits upon the Class Members.

B. The Proposed Settlement Payments and Distributions

Total Settlement Amount. Defendant has agreed to pay the Gross Settlement Amount of \$619,322.13 as set forth in the Settlement Agreement (Exhibit 1 ¶¶ 15, 19a.). That sum will be used to make settlement payments to the Plaintiff and other members of the proposed Settlement Class (i.e., "all present and former hourly employees of Defendant who received longevity pay and/or shift differential pay that was not rolled into their overtime pay during the period November 26, 2015 to November 26, 2019"), which shall constitute adequate consideration for the Settlement and will be made in full and final settlement of: (1) the claims released by Plaintiff and other Class Members; (2) Attorneys' Fees and Reimbursed Litigation Expenses; (3) Costs of Administration; (4) Service Award; and (5) any other obligations of Defendant under this Settlement Agreement.

Payments to Settlement Class Members. From the Gross Settlement Amount, the total sum of \$422,655.46 shall be allocated to the 4,248 Potential Class Members whose names are listed in the Class Member List attached as Exhibit 5, resulting in an approximate average gross recovery of \$99.50 per Class Member. Payments to Class Members are based proportionally on

each Class Member's overtime damages based on the calculations Defendant's Counsel provided to Class Counsel on May 7, 2019 and updated calculations provided on December 9, 2019, and February 4, 2020. Based on the settlement amount for the Class, Class Members will receive approximately 89% of the calculated damages. Inherent in the proposed distribution method in which Class Members are distributed settlement payments based on their actual damages during the relevant period, the settlement proposal treats Class Members equitably relative to each other. *See* Fed. R. Civ. P. 23(e)(2)(D). Plaintiff, as a member of the Settlement Class, will participate in this recovery under the same procedure applicable to other Class Members. Importantly, this is not a "claims-made" settlement. All potential Class Members who do not exclude themselves from the settlement will receive a settlement check.

Service Award. The proposed Settlement provides for a service award to Plaintiff Margerita Noland-Moore in the amount of \$5,000 in recognition of her assistance to Class Counsel and her contribution to achieving the Settlement on behalf of all Class Members. The proposed service award is well-earned. Among other things, Plaintiff Margerita Noland-Moore consulted with Class Counsel at critical stages, attended court hearings and meetings, and provided important documents and information throughout the course of the litigation. Her contributions were instrumental in enabling Class Counsel to negotiate the proposed Settlement.

Attorneys' Fees and Cost Reimbursements. From the Gross Settlement Amount, Class Counsel will receive attorneys' fees and costs in the total amount of \$191,666.67. After reductions for litigation and settlement administration expenses, the attorney fee recovery will equal approximately 27.9% of the \$619,322.13 settlement fund. (*See* Declaration of Class Counsel at ¶ 37.) The attorneys' fees, and the settlement as a whole, are supported by Declarations of Class Counsel. (*Id.*) As provided in the Settlement Agreement, attorneys' fees

and costs to Class Counsel will not be paid by Defendant until after the final approval order is issued by the Court, contemporaneously along with the settlement payments to Plaintiff and other Class Members. (*See* Exhibit 1, ¶¶ 25, 27.).

IV. THE PROPRIETY OF APPROVAL

A. The Proposed Settlement Qualifies for Court Approval under the FLSA, 29 U.S.C. § 216(b)

This settlement qualifies for Court approval under the FLSA, 29 U.S.C. § 216(b), as to the Plaintiff and other members of the Settlement Class. Most courts approve FLSA settlements in a single step. In an FLSA settlement, the Court must ensure “there is a bona fide dispute between the parties as to the employer’s liability under the FLSA” and that the proposed settlement “is fair, reasonable, and adequate.” *Jackson v. Trubridge, Inc.*, N.D.Ohio No. 5:16-cv-00223, 2017 U.S. Dist. LEXIS 193782, at *4 (N.D.Ohio Jan. 26, 2017)(quoting *Kritzer v. Safelite Solutions, LLC*, 2012 U.S. Dist. LEXIS 74994, at *19 (S.D.Ohio May 30, 2012)); *Osman v. Grube, Inc.*, N.D.Ohio No. 3:16-cv-00802-JJH, 2018 U.S. Dist. LEXIS 78222, at *2 (N.D.Ohio May 4, 2018). *Accord, Landsberg v. Acton Enterprises, Inc.*, 2008 WL 2468868 at *1 n.1 (S.D.Ohio June 16, 2008)(quoting *Lynn’s Food Stores, Inc. v. United States*, 679 F.2d 1350, 1353-55 (11th Cir. 1982)).

The Sixth Circuit uses seven factors to evaluate class action settlements, and the *Crawford* court applied those factors in assessing the fairness of an FLSA settlement:

(1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest.

UAW v. General Motors Corp., 497 F.3d 615, 626 (6th Cir. 2007) (citing *Granada Invs., Inc. v. DWG Corp.*, 962 F.2d 1203, 1205 (6th Cir.1992); *Williams v. Vukovich*, 720 F.2d 909, 922-23

(6th Cir.1983)), *quoted in Crawford*, 2008 WL 4724499 at *3. “The Court may choose to consider only those factors that are relevant to the settlement at hand and may weigh particular factors according to the demands of the case.” *Cooper*, 2017 U.S. Dist. LEXIS 169237, at *5 (quoting *Gentrup v. Renovo Servs., LLC*, S.D.Ohio No. 1:07CV430, 2011 U.S. Dist. LEXIS 67887, at *3 (June 24, 2011)); *Crawford*, 2008 U.S. Dist. LEXIS 90070, at * 13 (quoting *Redington v. Goodyear Tire & Rubber Co.*, 2008 U.S. Dist. LEXIS 64639, 2008 WL 3981461, at *11 (N.D.Ohio August 22, 2008); citing *Granada Invs., Inc. v. DWG Corp.*, 962 F.2d 1203, 1205-06 (6th Cir. 1992)).

One factor in particular here – the likelihood of success on the merits balanced against the amount and form of the settlement – strongly supports approval. Litigating FLSA claims is always risky and uncertain, and Plaintiffs would have to establish not only Defendant’s liability, which Defendant vehemently denies, but also the Plaintiffs’ damages. Indeed, wage-and-hour cases for groups of employees are always expensive and time-consuming and the expense and likely duration of continued litigation favor approval. The outcome of litigating the case would be uncertain, and the risks of continued litigation would be high. In contrast, the Settlement assures that the Plaintiffs will receive significant compensation. Given the uncertainties surrounding a possible trial in this matter, the certainty and finality of a settlement that will substantially benefit the Plaintiffs and Opt-Ins is in the public interest. *See Kritzer*, 2012 U.S. Dist. LEXIS 74994, at *24-25 (the public interest is served when a settlement “ends potentially long and protracted litigation”)(citing *In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 369 (S.D.Ohio 2006); *Hainey v. Parrott*, 617 F. Supp. 2d 668, 679 (S.D.Ohio 2007)). The proposed Settlement will eliminate the risk and delay of litigation and make substantial payments available to the Plaintiff and all other Settlement Class Members.

The other six factors are satisfied as well. There is no indicia of fraud or collusion here. Moreover, given the factual and legal complexity of the issues in this case, there is no guarantee that Plaintiffs will prevail at trial and the litigation could be long and protracted. In contrast, the Settlement assures that the Plaintiffs will receive significant compensation. Given the uncertainties surrounding a possible trial in this matter and potential appeals, the certainty and finality of a settlement that will substantially benefit the Plaintiffs is in the public interest. *See Kritzer*, 2012 U.S. Dist. LEXIS 74994, at *24 (the public interest is served when a settlement “ends potentially long and protracted litigation”). Class Counsel have extensive experience litigating FLSA claims, and there is no fraud or collusion. The Parties engaged in substantial document review, interviews with current and former employees, comprehensive data analysis, and due diligence prior to arduous negotiations, and the issues were well understood. The settlement was reached as a result of arms-length negotiation between Parties represented by competent counsel.

B. The Proposed Settlement Qualifies for Preliminary Approval under Rule 23

“Class actions are meant to serve the public interest by providing an incentive for lawyers and class representatives to litigate on behalf of a group of people whose injury is legitimate and meaningful, but whose individual damages are not substantial enough to make litigation on an individual basis worthwhile.” *Lonardo v. Travelers Indemnity Co.*, 706 F. Supp. 2d 766, 782 (N.D. Ohio 2010). Amended Fed. R. Civ. P. 23 requires a two-fold determination for preliminary approval of the class action. Rule 23 authorizes the Court to certify the Settlement Class if it satisfies “the four prerequisites of Rule 23(a)” — numerosity, commonality, typicality, and adequate representation — and “meet[s] at least one of the three requirements listed in Rule 23(b).” Recently amended Rule 23(e) provides that the Court may approve the class settlement

“only after a hearing and only on finding that it is fair, reasonable, and adequate...” *See, e.g., Jackson v. Trubridge*, 2017 U.S. Dist. LEXIS 193782, at *6 (scheduling a fairness hearing and granting preliminary approval of a class settlement upon the ground that it was “‘fair, reasonable and adequate’ to all participants”).

Rule 23(e), modified on December 1, 2018, explicitly addresses preliminary approval.

The Rule now provides:

(e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court’s approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) *Notice to the Class.*

(A) *Information That Parties Must Provide to the Court.* The parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.

(B) *Grounds for a Decision to Give Notice.* The court must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties’ showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.

As above, the Court must address two questions at the preliminary approval stage: (i) whether it “will likely be able to . . . approve the proposal under Rule 23(e)(2)”; and (ii) whether it “will likely be able to . . . certify the class for purposes of judgment on the proposal.” *Id.* Courts have treated the amended standard as superseding the varying “preliminary approval” standards that courts had developed based on decisional law. *See Padovano v. FedEx Ground Package Systems*, 2019 U.S. Dist. LEXIS 107092, *6-7 (W.D.N.Y. June 10, 2019); *In re MyFord Touch Consumer Litig.*, 2019 U.S. Dist. LEXIS 53356, *14-16 (N.D. Cal. Mar. 29, 2019); *Swinton v. SquareTrade, Inc.*, 2019 U.S. Dist. LEXIS 25458, *13-15 (S.D. Iowa Feb. 14,

2019); *Alward v. Marriott Internatl., Inc.*, N.D.Ohio No. 1:18-cv-02337-PAG, 2019 U.S. Dist. LEXIS 115794, at *2 (July 8, 2019).

The proposed Settlement satisfies the above prerequisites and standards, as shown below.

1. Approval of the proposal under Civil Rule 23(e)(2).

When evaluating whether the Court *will likely be able to* “approve the proposal under Rule 23(e)(2),” the court applies amended Rule 23(e)(2)’s approval factors. 23(e) states:

(2) *Approval of the Proposal.* If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm’s length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney’s fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

These factors are addressed in turn.

a. Adequacy of Representation by Class Counsel and Class Representative – Rule 23(e)(2)(A)

Plaintiff Margerita Noland-Moore has aggressively pursued the interests of Class Members in this case, and her counsel have extensive experience in class action litigation including wage-and-hour cases. *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 543 (6th Cir. 2012)(class representatives “must have common interests with unnamed members” and “it must appear that [they] will vigorously prosecute the interests of the class through qualified

counsel”)(quoting *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1083 (6th Cir. 1996)(citation omitted)). As explained above, the class representative and Class Counsel have adequately represented the class, including but not limited to engaging in substantial document review, interviews with current and former employees, comprehensive data analysis, and due diligence prior to arduous negotiations, and achieved an exceptional result for Class Members.

b. Arm’s Length Negotiation – Rule 23(e)(2)(B)

Advisory Committee Notes provide that this factor considers whether negotiations “were conducted in a manner that would protect and further the class interests.” “The participation of an independent mediator in the settlement negotiations virtually assures that the negotiations were conducted at arm’s length and without collusion between the parties.” *Hainey v. Parrott*, 617 F. Supp. 2d 668, 673 (S.D.Ohio 2007); accord *Barnes*, 2019 U.S. Dist. LEXIS 65657, at *6.

The settlement here was reached as a result of arm’s length negotiation through the assistance of independent mediator Jerome Weiss, an experienced mediator of complex wage and hour cases. The parties engaged in extensive document discovery, mediation and follow-up negotiation, and tedious analyses of damages-related documents and data. The Parties were represented by law firms with extensive experience in wage and hour litigation. Class Counsel certifies that the Settlement Agreement resulting from these negotiations was reached at arm’s length and is one that is fair and reasonable to Class Members. This factor is likely to be satisfied.

c. The Relief is Adequate, Taking into Account the Costs, Risks, and Delay of Trial and Appeal – Rule 23(e)(2)(C)(i)

Advisory Committee Notes note that “[a]nother central concern will relate to the cost and risk involved in pursuing a litigated outcome.” Here, the court may consider “the likely range of possible classwide recoveries and the likelihood of success in obtaining such results. That

forecast cannot be done with arithmetic accuracy, but it can provide a benchmark for comparison with the settlement figure.” *Id.*

This factor is likely to be satisfied. The proposed Settlement will eliminate the risk and delay of litigation and make substantial payments available to the Plaintiff and all other Class Members. There is no guarantee that Plaintiffs will prevail at trial and the litigation could be long, immensely costly, and protracted. The Parties will likely complete numerous depositions and engage economic and accounting experts in preparation for trial and testimony. In contrast, the Settlement assures that the Plaintiffs will receive significant compensation with little delay and without further costs.

d. The Relief is Adequate, Taking into Account the Effectiveness of the Proposed Method of Distribution– Rule 23(e)(2)(C)(ii)

Here, the Court “scrutinize[s] the method of claims processing to ensure that it facilitates filing legitimate claims” and “should be alert to whether the claims process is unduly demanding.” Advisory Committee Notes. This factor is likely to be satisfied. First, class members are required to do nothing to participate in the settlement – no claim forms or other documents are required to be completed and submitted to participate in the recovery – participation is automatic.

Second, the settlement achieves an excellent result for class members. The settlement results in an average payout of \$99.50 per hourly employee of the City who received longevity pay and/or shift differential pay that was not rolled into their overtime pay from November 26, 2015 to November 26, 2019. In addition, the anticipated \$422,655.46 distribution represents approximately 89% of the total estimated unpaid wages should Plaintiff and all other Class Members prevail at trial.

e. The Relief is Adequate, Taking into Account the Terms of the Proposed Award of Attorney's Fees – Rule 23(e)(2)(C)(iii)

As to this factor, Advisory Committee Notes provide that “[e]xamination of the attorney-fee provisions may also be valuable in assessing the fairness of the proposed settlement.” As provided in the Settlement Agreement, attorneys’ fees and costs to Class Counsel will not be paid by Defendant until after the final approval order is issued by the Court, contemporaneously along with the settlement payments to Plaintiff and other Class Members. (See Exhibit 1, ¶¶ 25, 27.). The total combined attorneys’ fees and litigation expenses of \$191,666.67 represent 30.9 % of the \$619,322.13 settlement fund and will be paid at the same time as the employee payments. After reductions for litigation and settlement administration expenses, however, the attorneys’ fee recovery will equal around 27.9% of the \$619,322.13 settlement fund. (See Declaration of Class Counsel at ¶ 37.)

Moreover, the FLSA provides that the Court “shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney’s fee to be paid by the defendants, and the costs of the action.” 29 U.S.C. § 216(b). Ohio wage-and-hour statutes also provide for “costs and reasonable attorney’s fees as may be allowed by the court.” O.R.C. § 4111.10.

The FLSA’s mandatory fee provision “insure[s] effective access to the judicial process by providing attorney fees for prevailing plaintiffs with wage and hour grievances,” and thus “encourage[s] the vindication of congressionally identified policies and rights.” *Fegley v. Higgins*, 19 F.3d 1126, 1134 (6th Cir. 1994), *cert. denied*, 513 U.S. 875 (1994)(quoting *United Slate, Tile & Composition Roofers, Damp and Waterproof Workers Ass’n, Local 307 v. G & M Roofing and Sheet Metal Co.*, 732 F.2d 495, 502 (6th Cir.1984)). *Accord*, *Kritzer*, 2012 U.S. Dist. LEXIS 74994, at *28 (the fee award must be “adequate to attract competent counsel but ...

not produce a windfall)(citing *Reed v. Rhodes*, 179 F.3d 453, 471 (6th Cir. 2008); quoting *Blum v. Stenson*, 465 U.S. 886, 897 (1984)).

In the present case, the efforts of Class Counsel resulted in proposed settlement payments to Class Members representing approximately 89% of the calculated damages. Such allocations are “well above the 7% to 11% average result achieved for class members.” *Dillworth v. Case Farms Processing, Inc.*, N.D.Ohio No. 5:08-cv-1694, 2010 U.S. Dist. LEXIS 20446, at *19-20 (Mar. 8, 2010) (citing *see* Frederick C. Dunbar, Todd S. Foster, Vinita M. Juenja, Denise N. Martin, Recent Trends III: What Explains Settlements in Shareholder Class Actions? (National Economic Research Assocs. (NERA) June 1995)). The attorneys’ fees, and the settlement as a whole, are supported by the Declaration of proposed Class Counsel, attached as Exhibit 4.

Moreover, prosecuting complex litigation on a class basis is always difficult and time-consuming. The tasks required of Class Counsel in this case included pre-litigation investigation of Plaintiff’s and other Class Members’ claims and the identities of potential defendants; preparation of the Complaint and First Amended Complaint; negotiation and submission of the Parties’ Rule 26(f) report; and investigation and interviewing of current and former employees of Defendant and putative Class Members.

Following the unsuccessful July 24, 2019 mediation prior to which Defendant produced, and Class Counsel analyzed, class-wide documents and data related to the Named Plaintiff and entire putative Rule 23 Class, including weekly payroll and wage & hour records and data, and other data and records. Class Counsel’s comprehensive investigation included an analysis of the wage-and-hour information and other data and documents comprising of over 2,000,000 data points from the records produced by Defendant which permitted the Parties to compute a precise calculation of the unpaid overtime for the Named Plaintiff and the entire putative Rule 23 Class.

The analyses were difficult and time-consuming, but proved instrumental to the negotiation of the proposed Settlement. Indeed, the complex issues in this matter required the Parties to break from mediation for several months to permit sufficient time in part given the complexity, diversity and volume of the records produced and issues requiring negotiation.

Applying *Fegley* and *Rawlings v. Prudential-Bache Properties*, 9 F.3d 513, 515 (6th Cir.1993), courts in the Sixth Circuit commonly approve one-third fee awards in wage-and-hour actions, including Rule 23 overtime cases. *See, e.g., Dillworth*, 2010 U.S. Dist. LEXIS 20446, at *18-22 (N.D.Ohio Mar. 8, 2010)(citing *Rawlings* as well as *Jackson v. Papa John's*, Case No. 1:08CV2791, 2008 U.S. Dist. LEXIS 107650 (N.D.Ohio 2008); *Fincham v. Nestle Prepared Foods Co.*, 1:08CV73 (N.D.Ohio 2008); *McGhee v. Allied Waste Indus.*, Case No. 1:07CV1110 (N.D.Ohio 2007)). *Accord, Feiertag v. DDP Holdings, LLC*, S.D.Ohio No. 14-CV-2643, 2016 U.S. Dist. LEXIS 122297 (Sep. 9, 2016)(approving 30% award).

Courts reference the NERA study, cited in 2000 as “[t]he most complete analysis of fee awards in class actions conducted to date.” *Shaw v. Toshiba America Information Systems, Inc.*, 91 F. Supp. 2d 942, 988 (E.D. Tex. 2000). *See Dillworth*, 2010 U.S. Dist. LEXIS 20446, at *19-20 (citing study conducted by the National Economic Research Associates). The study found that “regardless of size, attorneys’ fees average approximately 32% of the [class action] settlement,” although “the average result achieved for class members was only 7% to 11% of claimed damages.” *Shaw*, 91 F. Supp. 2d at 988 (citing NERA Study at 7 & Exh. 12). Measured by the NERA benchmarks, the proposed Settlement in the present case is exemplary. Class Counsel have actively and aggressively litigated this case against the formidable defense mounted by Defendant. Counsel’s efforts included extensive document discovery, mediation and follow-up negotiation, and tedious analyses of damages-related documents and data. The total combined

attorneys' fees and litigation expenses of \$191,666.67 represent 31% of the \$619,322.13 settlement fund and will be paid at the same time as the employee payments. After reductions for litigation and settlement administration expenses, however, the attorney's fee recovery will equal around 28% of the \$619,322.13 settlement fund. (*See* Declaration of Proposed Class Counsel at ¶ 37.)

The resulting settlement negotiated by Class Counsel ensures substantial payments to the Plaintiff and other Class Members. Based on all relevant factors, the proposed payment of attorneys' fees and cost reimbursements to Class Counsel is proper and reasonable, and fulfills the purpose and intent of the FLSA's fees provisions. Furthermore, as provided in the Settlement Agreement, attorneys' fees and costs to Class Counsel are not to be disbursed until after the final approval order is issued by the Court, contemporaneously along with the settlement payments disbursed to Plaintiff and other Class Members, and service award to Named Plaintiff. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii).

**f. The Relief is Adequate, Taking into Account Agreements
Required to be Identified under Rule 23(e)(3) – Rule
23(e)(2)(C)(iv)**

Rule 23(e)(3) requires the parties to “file a statement identifying any agreement made in connection with the proposal.” Here, the Settlement Agreement attached as Exhibit 1 the only agreement connected to this class action settlement. This factor is likely to be satisfied.

**g. The Settlement Treats Class Members Equitably Relative to Each
Other – Rule 23(e)(2)(D)**

Advisory Committee Notes comment that the amended Rule prohibits “inequitable treatment of some class members vis-a-vis others.” Inherent in the proposed distribution method in which Class Members are distributed settlement payments based on their actual damages during the relevant period, the settlement proposal treats Class Members equitably relative to

each other. *See* Fed. R. Civ. P. 23(e)(2)(D). This distribution method, based on each Class Member's actual hours and potential damages, is eminently the most equitable proposed method of distributing relief to the class.

2. Approval of the proposal under Civil Rule 23(e)(1)(B)(ii).

Now that the parties have shown that that the Court “will likely be able to . . . approve the proposal under Rule 23(e)(2),” we turn to the second consideration under Rule 23(e)(1)(B): whether the court “will likely be able to . . . (ii) certify the class for purposes of judgment on the proposal.” Certification of the proposed Settlement Class will enable the Parties to resolve the claims of Plaintiff and all other Class Members. Rule 23 authorizes the Court to certify a class that satisfies “the four prerequisites of Rule 23(a)” – numerosity, commonality, typicality, and adequate representation—and “meet[s] at least one of the three requirements listed in Rule 23(b).” *Glazer v. Whirlpool Corp. (In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litigation)*, 722 F.3d 838, 850 (6th Cir.2013). Furthermore, “courts in this Circuit have recognized that ascertainability of class members is an implied prerequisite of Rule 23.” *Steigerwald v. BHH, LLC*, 2016 U.S. Dist. LEXIS 21116, *8 (N.D.Ohio Feb. 22, 2016) (citations omitted).

Numerosity. The proposed Settlement Class consists of approximately 4,248 hourly employees of Defendant who received longevity pay and/or shift differential pay that was not rolled into their overtime pay during the period November 26, 2015 to November 26, 2019 as contained within the Class Member List attached as Exhibit 5. Numerosity is met.

Commonality and typicality. By definition, the Settlement Class consists of all present and former hourly employees of Defendant who received longevity pay and/or shift differential pay that was not rolled into their overtime pay during the period November 26, 2015 to

November 26, 2019, as contained within the Class Member List attached as Exhibit 5. Plaintiff's First Amended Complaint alleged that Defendant owes additional compensation to those persons pursuant to the FLSA and Ohio wage-and-hour statutes, O.R.C. §§ 4111.01, *et seq.* All members of the Settlement Class, including Plaintiff Margerita Noland-Moore, have these claims, and adjudicating them on a classwide basis would "generate common answers that are likely to drive resolution of the lawsuit." *Arlington Video Prods. v. Fifth Third Bancorp*, 515 F.App'x 426, 441 (6th Cir.2013). Plaintiffs' claims as to Defendant's practices are the type of across-the-board practices that establish commonality.

Adequacy of Representation. As above, Plaintiff Margerita Noland-Moore has aggressively pursued the interests of Class Members in this case, and Class Counsel have extensive experience in class action litigation including wage-and-hour cases. *Young*, 693 F.3d at 543 (class representatives "must have common interests with unnamed members" and "it must appear that [they] will vigorously prosecute the interests of the class through qualified counsel")(quoting *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1083 (6th Cir. 1996)(citation omitted)). As explained above, the class representatives and Class Counsel have adequately represented the class, achieving an exceptional result for Class Members. Fed. R. Civ. P. 23(e)(2)(A). *See Dillworth*, 2010 U.S. Dist. LEXIS 20446, at *19-20.

Predominance. Civil Rule 23(b)(3) requires that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). Whether Plaintiff and other Class Members should have been paid additional overtime compensation was the common issue in this litigation, and this issue is the primary issue driving the proposed Settlement. Common issues clearly predominate "over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3).

Superiority. Civil Rule 23(b)(3) requires class litigation to be “superior to other available methods for fairly and efficiently adjudicating the controversy,” and describes four factors that are “pertinent” to this superiority requirement. The present case is precisely the type of case in which class litigation is the superior method of adjudication.

Rule 23(b)(3)(A) requires courts to consider class members’ “interests in individually controlling the prosecution or defense of separate actions.” This factor require the Court to consider whether “Settlement Class Members have any interest in maintaining this litigation as separate actions.” *Blasi v. United Debt Servs., LLC*, S.D.Ohio No. 2:14-cv-83, 2019 U.S. Dist. LEXIS 198201, at *15 (Nov. 15, 2019). Here, there is no evidence that this is the case. As here, “the majority of putative class members would not likely have their day in court on these claims if a class is not certified because of a lack of sophistication, lack of resources, lack of representation and similar barriers.” *Id.* (citing *Tedrow v. Cowles*, S.D.Ohio No. 2:06-cv-637, 2007 U.S. Dist. LEXIS 67391, at *26 (Sep. 12, 2007)).

Rule 23(b)(3)(B) also requires courts to consider “the extent and nature of any litigation concerning the controversy already begun by” class members. No related litigation exists here. The settlement relates specifically and narrowly to overtime claims involving Defendant’s practices related to longevity pay and/or shift differential pay that was not rolled into their overtime pay. While there is separate overtime litigation pending against Defendant, that litigation does not involve the narrow claims addressed in this litigation. Therefore, the Settlement proposed will not affect that separate litigation.

Rule 23(b)(3)(C) further requires courts to consider the desirability of “concentrating the litigation of the claims in a particular forum.” Here, concentration of claims is in fact desirable because the City of Cleveland is located in this district and division.

Finally, Rule 23(b)(3)(D) asks court to consider any “likely difficulties in managing the class action.” Fed. R. Civ. P. 23(b)(3)(D). As noted in *Amchem Prods. v. Windsor*, 521 U.S. 591, 620, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997), this requirement is satisfied automatically when a case is certified for settlement purposes.

Ascertainability: “Before a court may certify a class pursuant to Rule 23, the class definition must be sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member of the proposed class.” *Young*, 693 F.3d at 537-38 (internal citations omitted). Here, the ascertainability requirement is satisfied because Class Members are objectively identified through Defendant’s payroll and management software and systems.

C. The Service Award is Proper and Reasonable

A reasonable service award is “common in class action settlement and routinely approved for the simple reason ‘to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.’” *Kritzer*, 2012 U.S. Dist. LEXIS 74994, at *26 (citing *Rotuna*, 2010 U.S. Dist. LEXIS 58912, at *18). *Accord*, *In re Dun & Bradstreet Credit Services Customer Litigation*, 130 F.R.D. 366, 373-74 (S.D.Ohio 1990). *Dillworth*, 2010 U.S. Dist. LEXIS 20446, at *17 (Mar. 8, 2010)(approving \$6,000 and \$4,000 to representative Plaintiffs)(quoting *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000); *Osman*, 2018 U.S. Dist. LEXIS 78222, at *5 (approving \$7,500 service award to named plaintiff). *Accord*, *In re Southern Ohio Correctional Facility*, 175 F.R.D. 270, 273, 276 (S.D. Ohio 1997).

In the present case, the service award to Margerita Noland-Moore is amply justified by her assistance to Class Counsel and her contribution to achieving the Settlement on behalf of all

Class Members. Indeed, the Named Plaintiff incurred “substantial direct and indirect financial risks in attempting to vindicate the rights of others”, and “spent a good deal of time and effort in this case,” by, among other things, providing analysis to Counsel, and advising Counsel as to settlement and prosecution of the action. *See In re Dun & Bradstreet*, 130 F.R.D. at 373-74. Plaintiff attended multiple meetings, the case management conference before the Court, and was always readily available to counsel to provide documents, information, and answer key questions throughout the course of litigation. Her contributions were instrumental to achieving the proposed Settlement on behalf of all concerned. The proposed service award of \$5,000 is reasonable and well-earned.

D. The Proposed Notice Should Be Approved – Rule 23(c)(2)(B)

In order to protect the rights of absent members of a Settlement Class, the Court must provide the best notice practicable to all members. *Phillips v. Carlisle & Jacquelin*, 417 US 156, 174-5 (1985). Amended Fed. R. Civ. P. 23(c)(2)(B) specifically provides that “[f]or any class certified under Rule 23(b)(3)—or upon ordering notice under Rule 23(e)(1) to a class proposed to be certified for purposes of settlement under Rule 23(b)(3)—the court must direct to class members the best notice that is practicable under the circumstances...” Such a notice should define the class, describe clearly the options open to the Class Members and deadlines for taking action, describe the terms of the proposed settlement, disclose any special benefits provided to class representatives, provide information regarding attorney’s fees, indicate the time and place of the fairness hearing, explain the procedure for distributing settlement funds, provide information that will enable the Class Members to calculate individual recoveries, and prominently display the address and telephone number of Class Counsel and the procedure for

making inquiries. Manual for Complex Litigation at § 21.312. *See* Fed. R. Civ. P. 23(c)(2)(B)(i-vii).

Here, each Class Member will receive notice so that all putative Class Members will be given the choice to participate or not to participate, including the right to preserve any individual claims or rights they may have against the City of Cleveland.

The proposed Notice of Class Action Settlement and Fairness Hearing (the “Notice”), attached as Exhibit 3, should be approved. The proposed Notice gives Class Members a reasonable period of 30 days to opt out of the Settlement Class or object to the Settlement. The Notice defines the class, describes the background of the case and summarizes the terms of the settlement, including the method of allocating individual payments, clearly describes the options open to the Class Members and deadlines for taking action, describes the terms of the proposed settlement, discloses benefits provided to the class representative, provides information regarding attorney’s fees, indicates the time and place of the fairness hearing, explains the procedure for distributing settlement funds, informs Class Members how to object to the Settlement or request exclusion from the Class if they so choose, provides information that will enable the Class Members to calculate individual recoveries, and prominently displays the address and telephone number of Class Counsel and the procedure for making inquiries. The Notice is written in plain and understandable language. The Parties request approval of the Notice as drafted. If approved, the Notice will be sent to Potential Class Members by first class mail. The Notice will be effectuated through “United States mail.” Rule 23(c)(2)(B). In sum, the Notice constitutes the “best notice that is practicable under the circumstances,” and, therefore, should be approved.

E. The Court Should Appoint Scott & Winters as Interim Class Counsel.

Rule 23(g)(3) provides that the Court “may designate interim counsel to act on behalf of the putative class before determining whether to certify the action as a class action.” Following notice, at the final approval stage, interim Class Counsel may seek to be appointed class counsel. Rule 23(g)(1). Here, Scott & Winters respectfully requests the Court to appoint them as interim Class Counsel. As outlined in Counsel’s Declaration, proposed Class Counsel are highly experienced lawyers handling class actions, other complex litigation, and the types of wage and hour claims asserted in the action. (*See generally* Declaration of Class Counsel.)

V. CONCLUSION

For the reasons addressed above, the Parties respectfully request that the Court enter the proposed Preliminary Approval Order, attached as Exhibit 2.

Respectfully submitted,

s/ Ryan A. Winters

Joseph F. Scott (0029780)

Ryan A. Winters (0086917)

Kevin M. McDermott II (0090455)

SCOTT & WINTERS LAW FIRM, LLC

The Caxton Building

812 Huron Rd. E., Suite 490

Cleveland, OH 44115

P: (216) 912-2221 F: (216) 350-6313

jscott@ohiowagelawyers.com

rwinters@ohiowagelawyers.com

kmcdermott@ohiowagelawyers.com

Attorneys for Plaintiff and the Rule 23 Class

s/

Jon M. Dileo (0040836)

jmd@zrlaw.com

Ami J. Patel (0078201)

ajp@zrlaw.com

Lauren M. Drabic (0097448)

lmd@zrlaw.com
Zashin & Rich Co., LPA
950 Main Avenue, 4th Floor
Cleveland, OH 44113
T: 216/696-4441
F: 216/696-1618

Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was filed electronically.
Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

s/ Ryan A. Winters

Ryan A. Winters (0086917)

EXHIBIT 1

**JOINT STIPULATION OF
CLASS ACTION SETTLEMENT AND RELEASE**

Subject to approval by the United States District Court for the Northern District of Ohio, Eastern Division, Hon. John R. Adams presiding, in the civil action entitled *Margerita Noland-Moore v. City of Cleveland*, Civ. Action No. 18-cv-2730, Plaintiff Margerita Noland-Moore (“Representative Plaintiff” or “Class Representative”), on behalf of herself and on behalf of the Class as defined herein, and Defendant City of Cleveland (“Cleveland” or “Defendant”), agree as follows.

DEFINITIONS

1. The Representative Plaintiff, the Class, and Defendant are collectively referred to as “the Parties.”
2. “Plaintiffs’ Counsel” or “Class Counsel” are Ryan Winters, Joseph Scott, and Kevin McDermott of Scott & Winters Law Firm, LLC. “Defendant’s Counsel” are Jon M. Dileo, Lauren M. Drabic, and Ami J. Patel of Zashin & Rich Co., LPA.
3. The “Class” or “Settlement Class” means all present and former hourly employees of Defendant who received longevity pay and/or shift differential pay that was not rolled into their overtime pay during the period November 26, 2015 to November 26, 2019.
4. “Plaintiffs” shall mean the Representative Plaintiff and the Class collectively. “Class Members” means all of the Plaintiffs, including the Representative Plaintiff.
5. The “Released Period” for Representative Plaintiff and the Class shall mean the period between November 26, 2015 to November 26, 2019.
6. “Settlement” or “Agreement” shall mean this Class Action Settlement Agreement and Release.

RECITALS

7. On November 26, 2018, Plaintiff Margerita Noland-Moore commenced the Action on behalf of herself and all others similarly situated to her with respect to the claims she asserted. She filed a First Amended Complaint on February 3, 2019.
8. In the Action, Plaintiff alleged that Defendant failed to properly pay overtime compensation to its employees who received shift differential and/or longevity pay and worked in excess of 40 hours in any workweek in violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 207 and Ohio Revised Code § 4111.03.
9. Between March and May of 2019, the Parties engaged in informal yet comprehensive discovery regarding the Plaintiffs’ claims and the Defendant’s defenses to such claims.

10. On July 24, 2019, the parties engaged in private mediation in an effort to resolve the claims. The Parties did not reach a settlement on that date but continued their ongoing mediation/settlement efforts through telephonic and electronic communications, ultimately reaching agreement on October 22, 2019 to settle the Action on the terms set forth in this Agreement.

11. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all Released Claims for the Released Period.

12. It is the intention of the Parties that this Settlement Agreement shall constitute a full and complete settlement and release of the Released Claims, which release includes in its effect the City of Cleveland, all present and former related entities, Mayors, officers, directors, employees, agents, representatives, attorneys, insurers, affiliates, successors, and assigns of Defendant.

13. Plaintiffs' Counsel has conducted a thorough investigation into the facts of the Litigation and has diligently pursued an investigation of the Plaintiffs' claims against Defendant. Based on their own independent investigation and evaluation, Plaintiffs' Counsel is of the opinion that the settlement with Defendant is fair, reasonable, adequate, and is in the best interest of the Plaintiffs in light of all known facts and circumstances, including the risks of significant delay and defenses asserted by Defendant.

14. The Parties agree to cooperate and take all steps necessary and appropriate to obtain final approval of this Settlement Agreement, to effectuate all aspects of this Settlement Agreement, and to dismiss the Litigation with prejudice upon final approval. Specifically, the Parties will file with the Court a joint motion for preliminary approval of the Settlement Agreement. Provided the Court grants preliminary approval of the Settlement Agreement, the Parties agree to send notices to the Class Members regarding the settlement as provided herein.

15. The total payment under this Settlement Agreement, including but not limited to all payments to Class Members including the Representative Plaintiff, Plaintiffs' Counsels' attorneys' fees and costs, and a Service Award to Representative Plaintiff, in recognition of her services in this Action and in exchange for her execution of a general Settlement and Release Agreement, is Six Hundred Nineteen Thousand Three Hundred Twenty Two Dollars and Thirteen Cents (\$619,322.13) (the "Settlement Payment").

16. This Settlement represents a compromise of disputed claims. Nothing in this Settlement is intended or will be construed as an admission by Defendant that Plaintiff's claims in the action have merit or that Defendant has any liability to Plaintiff on those claims.

CERTIFICATION OF CLASS FOR SETTLEMENT PURPOSES ONLY

17. The Parties agree and consent to the certification of the Class for settlement purposes only. Any certification pursuant to this paragraph shall not constitute in this or any other proceeding an admission by Defendant of any kind or a determination that certification of a class for trial purposes is appropriate or proper. Defendant alleges that many issues outside the context

of this settlement could prevent certification of a Class for purposes of litigation. In the event the Court does not grant final approval of the Settlement Agreement, the Class shall be decertified and prior certification of the Class for settlement purposes shall not constitute evidence or a binding determination that the requirements for certification of a class for trial purposes in this or any other action are satisfied, and Defendant expressly reserves all rights to challenge certification of a class for trial purposes in this or any other action on all available grounds as if no Class had been certified in this action.

SETTLEMENT APPROVAL PROCEDURE

18. This Agreement will become final and effective upon occurrence of all of the following events:

- a.) Execution of this Settlement Agreement, and of the Settlement and Release Agreement attached as Exhibit 6 by the Representative Plaintiff, Defendant, and Defendant's Counsel.
- b.) Submission to the Court of a Motion for Preliminary Approval of the Settlement Agreement.
- c.) Entry of an Order by the Court, proposed by the Parties and attached as Exhibit 2, granting preliminary approval of the Settlement Agreement, and approving the form, content, and method of distribution of the proposed notice to Class Members, attached as Exhibit 3, of the pendency of this class action, the proposed settlement, and the date of the Fairness Hearing ("Class Notice") proposed by the Plaintiffs.
- d.) Distribution of the Class Notice in the form and manner approved by the Court.
- e.) Filing with the Court, prior to the Fairness Hearing, of a Declaration verifying that the Class Notice was distributed to the Class Members in the form and manner approved by the Court.
- f.) Convening a Fairness Hearing.
- g.) Entry of a Final Order and Judgment Entry, by the Court, proposed by the Parties and attached as Exhibit 5, granting final approval of the Settlement Agreement, approving the proposed distributions, and dismissing this Action with prejudice.
- h.) Occurrence of the "Effective Date," which is defined as the date on which the Court's Final Order and Judgment Entry, granting final approval of the Settlement Agreement, approving the proposed distributions, releasing claims of the Representative Plaintiff and all Class Members, and dismissing this Action with prejudice, is no longer appealable (that being the thirty-first day after service of notice of entry of judgment or, if an appeal has been filed, the date on which the Parties have received actual notice that the Settlement Agreement has received final approval after the completion of the appellate process).
- i.) The Court retaining jurisdiction over this Action for the purpose of enforcing the terms of the Settlement Agreement.

SETTLEMENT PAYMENTS

19. In consideration of the mutual covenants and promises set forth herein, the Parties agree, subject to the Court's approval, as follows:

- a.) **Total Settlement Amount:** The total payment under this Settlement Agreement, including but not limited to all payments to Class Members including the Representative Plaintiff, Plaintiffs' Counsels' attorneys' fees and costs, and a Service Award to Representative Plaintiff, in recognition of her services in this Action and in exchange for her execution of a general Settlement and Release Agreement, is Six Hundred Nineteen Thousand Three Hundred Twenty Two Dollars and Thirteen Cents (\$619,322.13) (the "Total Settlement Amount"). All Plaintiffs receiving settlement funds shall receive an IRS Form W-2 for all amounts paid as wages under this settlement, making all deductions and withholdings required under law including the employees' share of all applicable payroll taxes, and shall receive an IRS Form 1099 for all amounts paid as liquidated damages and Class Representative's Service Award.
- b.) **Calculation of Individual Payments:** \$422,655.46 of the Total Settlement Amount will be divided into Individual Payments to the Settlement Class. The Individual Payments, after deduction of the Class Representative Payments and Plaintiff's Counsel's attorneys' fees and expenses from the Total Settlement Amount, will be calculated by the Parties, and will be based proportionally on each Plaintiffs' overtime damages based on the calculations Defendant's Counsel provided to Plaintiff's Counsel on May 7, 2019, and updated calculations provided on December 9, 2019 and February 4, 2020.
- c.) **Treatment of Individual Payments:** One half of each Class Members Individual Payment will be treated as payment for wages, and one half will be treated as payment for statutory damages. Defendant will issue to each Class Member an IRS Form W-2 for all amounts paid as wages under this Settlement, and will issue an IRS Form 1099 for all amounts paid as statutory damages under this Settlement. Defendant will determine the proper tax withholding amounts on the W-2 payments in accordance with each Class Member's previously elected wage withholding instructions.
- d.) **Class Representative Payment:** \$5000 of the Total Settlement Amount will be paid to Representative Plaintiff as a Class Representative Payment, in addition to her Individual Payment as a Class Member, in exchange for signing a general release of all claims (proposed and attached as Exhibit 6) to the Parties' Joint Motion for Approval of Settlement, including all pending claims, against Defendant. Defendant will issue to Representative Plaintiff a Form 1099 with respect to the Class Representative Payment.

- e.) **Plaintiff's Counsel's Attorneys' Fees and Expenses** \$191,666.67 of the Total Settlement Amount will be paid to Plaintiff's Counsel for attorneys' fees and expenses (\$172,863.17 in attorneys' fees and \$18,803.50 in expenses) incurred in the Action. Defendant, will issue to Plaintiff's Counsel Forms 1099 with respect to the attorneys' fees.

APPOINTMENT OF SETTLEMENT ADMINISTRATOR

20. The Parties will appoint a mutually agreeable Settlement Administrator for the Purpose of issuing notice to Class Members and managing the receipt of opt-out requests for exclusion and objections. The Settlement Administrator will report, in summary or narrative form, the substance of its activities. All disputes relating to the Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all payments and obligations contemplated by the Settlement Agreement have been fully carried out. The Settlement Administrator's payment and all costs of administration will be divided evenly between the Parties.

NOTICE TO THE SETTLEMENT CLASS

21. Within seven (7) days after the entry of an order granting preliminary approval of the Settlement Agreement and approving the proposed form and method of distribution of the Class Notice, Defendant will provide to Plaintiffs' Counsel and the Settlement Administrator a spreadsheet containing the names and last known addresses of all Class Members, according to records maintained by Defendant. Plaintiffs' Counsel agrees that this personal information will only be used for responding to inquiries from putative class members. Defendant will also provide the Class Members' Social Security numbers to the Settlement Administrator to trace undeliverable notices that are returned to the Settlement Administrator. Plaintiff's Counsel and the Settlement Administrator shall keep all personal information of Class Members confidential and shall only use it for purposes consistent with this Settlement Agreement.

22. The Class Notice, in the form proposed by the parties and approved by the Court, shall be sent to the Settlement Administrator to the Class Members by first class mail within fourteen (14) days after Defendant provides Plaintiffs' Counsel and the Settlement Administrator a list of the names and last known addresses of all Class Members.

OPT-OUT AND OBJECTION PROCESS

23. Class Members may opt-out of the settlement by mailing a request for exclusion to the Settlement Administrator within 30 days after the Settlement Administrator mails the Class Notice or by the deadline established by the Court. Persons who are eligible to and do submit valid and timely requests for exclusion will not participate in the settlement, will not receive any settlement payment, and will not be bound by the terms of the Settlement Agreement, if it is approved, or by the Final Order and Judgment Entry in this Action.

24. Class Members may object to this settlement by submitting objections to this Settlement Agreement within 30 days after the Settlement Administrator mails the Class Notice or

by the deadline established by the Court. Objections must be in writing, and must include a description of the basis of the objection. The objection must set forth the full name, current address, and telephone number of the objecting Class Member. Any Class Member who does not serve timely written objections to the settlement shall not be permitted to present his or her objections to the settlement at the Final Approval Hearing and shall be foreclosed from seeking review of the settlement by appeal or otherwise.

SCHEDULE OF DISTRIBUTIONS

25. Defendant will mail all settlement payments directly to the individual Class Members within sixty (60) days after the Court's entry of an Order granting approval of the Settlement and dismissal of the Action with prejudice. Defendant will issue separate checks to each Plaintiff and Plaintiff's Counsel. Plaintiff's Counsel and the Settlement Administrator will provide Defendant with any updated addresses for Plaintiffs that Plaintiff's Counsel and the Settlement Administrator become aware of during the notice period. If any checks to Plaintiffs are returned as undeliverable to Defendant, the Settlement Administrator will make reasonable efforts to locate the Plaintiffs and redeliver the checks as provided in paragraph 28 of this agreement. Upon the expiration of six (6) months after the Effective Date, the amount representing Individual Payments that have not been cashed or were unable to be delivered will revert back to Defendant.

26. No later than sixty (60) days after the Court's entry of an Order granting approval of the Settlement and dismissal of the Action with prejudice, Defendant will mail to the Representative Plaintiff the Service Award approved by the Court in recognition of her service in this Action in the amount of \$5,000. Defendant will issue a Form 1099 to the Representative Plaintiff with respect to her Service Award. In addition, Representative Plaintiff shall be eligible to receive an Individual Payment under the same procedure applicable to other Class Members under this Settlement Agreement.

27. No later than sixty (60) days after the Court's entry of an Order granting approval of the Settlement and dismissal of the Action with prejudice, Defendant will distribute attorneys' fees to Plaintiff's Counsel, Scott & Winters Law Firm, LLC, 812 Huron Rd. E., Suite 490, Cleveland, OH 44115, in the amount of \$172,863.17, and reimbursement of litigation expenses in the amount of \$18,803.50 submitted to the Court and approved in the Court's Final Order and Judgment Entry. These sums will be deducted from, and will not be in addition to, the total Settlement Payment. Defendant will issue a Form 1099 to Plaintiff's Counsel with respect to attorneys' fees and expenses.

INDIVIDUAL PAYMENT PROCESS

28. All Individual Payments shall remain negotiable for a 90-day period after the date of the initial distribution. The face of each check sent to Class Members shall clearly state that the check must be cashed within ninety (90) days of its date of issuance. Individual Payments that have not been cashed within this time frame will become non-negotiable and void. For all Individual Payments that remain unpaid after the 90-day void period, the Settlement Administrator will perform a search of accessible databases, including but not limited to public retirement systems or other databases with which it has access, and one LexisNexis credit-header search to

obtain an updated address and phone number and will attempt to verify the updated address of the Class Member, if one is available. If the Settlement Administrator is able to verify the Class Member's updated address, an Individual Payment with a 90-day void period (from the date of mailing) will be reissued to the Class Member's current address.

29. Whenever the Defendant obtains a new address (from the Defendant's searches, Plaintiffs' Counsel, or otherwise), the Defendant shall re-mail the Individual Payment using the most current address information then available. Additional mailings shall terminate when the efforts required by this Settlement Agreement to find correct addresses have been exhausted, or upon the expiration of eight months after the Effective Date, whichever occurs earlier.

30. After the mailing of monetary payments to Class Members, at monthly intervals, Defendant shall provide Plaintiffs' Counsel a spreadsheet listing the names, addresses as originally provided, and most current contact information for all individuals whose Individual Payments have not been cashed.

31. Plaintiffs' Counsel and Defendant's Counsel shall have the right to review and audit the activities of the Defendant pertaining to the settlement distribution at reasonable times and upon reasonable notice to the opposing counsel.

RELEASES AND RELEASED CLAIMS

32. Upon the Effective Date, and except as to such rights or claims as may be created by this Settlement Agreement including but not limited to in paragraph 35 below, the Representative Plaintiff, and all Class Members who did not submit timely and effective requests for exclusion fully release and discharge Defendant and all its present and former parent companies, subsidiaries, related entities, shareholders, officers, directors, employees, agents, affiliates, representatives, attorneys, insurers, successors, and assigns, from any and all Released Claims as hereafter defined. The "Released Claims" shall consist of any and all federal and state wage-and-hour claims based on Defendant's overtime pay practices pertaining to shift differential and/or longevity pay, including but not limited to rights, demands, liabilities and causes of action asserted in Plaintiff's First Amended Complaint, filed on February 3, 2019, including but not limited to claims for unpaid wages, unpaid overtime compensation, liquidated damages, interest, and attorneys' fees and expenses, pursuant to the Fair Labor Standards Act and the Ohio Minimum Fair Wage Standards Act, pertaining to shift differential and/or longevity pay, for the Released Period. The "Released Claims" shall also consist of any and all statutory and common law claims, rights, demands, liabilities, and causes of action for unpaid wages, unpaid overtime compensation, liquidated damages, interest, attorneys' fees and expenses, and any other damages, amounts, or remedies based on Defendant's overtime pay practices pertaining to shift differential and/or longevity pay in all weeks worked during the Released Period, including but not limited to any potential related claims under the Ohio Prompt Pay Act (R.C. § 4113.15), implied contract, unjust enrichment, and estoppel.

33. The payment of attorneys' fees and expenses to Plaintiffs' Counsel in paragraphs 19e and 27 includes all of the attorneys' fees and expenses incurred to date and to be incurred in documenting the Settlement, securing Court approval of the Settlement, and obtaining a dismissal

of the Action. In consideration of these attorneys' fees and expenses, Plaintiffs' Counsel waives any and all claims to any further attorneys' fees and expenses in connection with the Action. If any Class Member chooses to be represented by his or her own lawyer in this Action, they must hire one at their own expense. The Parties agree that no other firms performed work on the case, or assumed responsibility for representation of Representative Plaintiff and the Class. The Parties further agree that no other firms will be proposed as Class Counsel, or share in the recovery of attorneys' fees provided in paragraphs 19e and 27.

34. The "Released Period" for Plaintiff and the Class shall mean the period between November 26, 2015 to November 26, 2019.

DUTIES OF THE PARTIES BEFORE COURT APPROVAL

35. The Parties shall promptly commence the following steps to seek court approval of this Settlement Agreement and the entry of a Final Order and Judgment Entry thereon:

- a. The Parties will submit to the Court a motion for approval of the Settlement Agreement. The motion will include requests for Court approval of reasonable attorneys' fees and expense reimbursements to and the Service Award to the Representative Plaintiff in recognition of her service in this Action. Defendant will not oppose the motion and those requests, provided that the motion and requests are consistent with the terms and conditions of this Settlement Agreement.
- b. The Parties' motion will be accompanied by a proposed order granting preliminary approval of the Settlement Agreement, approving the form, content, and method of distribution of the Class Notice, and scheduling the date of the Fairness Hearing ("Preliminary Approval Order").
- c. In the event that the Preliminary Approval Order is entered, the Parties will cause the Class Notice to be distributed to the Class Members in the manner described above and approved by the Court.
- d. Prior to the Fairness Hearing, the Settlement Administrator will file with the Court a Declaration verifying that the Class Notice was distributed to the Class Members in the manner described above and approved by the Court.
- e. Prior to the Fairness Hearing, the Parties will submit to the Court for approval the proposed Estimated Schedule of Individual Payments.
- f. Prior to the Fairness Hearing, the Parties will submit to the Court an updated version of the proposed Final Order and Judgment Entry granting final approval of the Settlement Agreement, approving the proposed distributions, releasing claims of the Representative Plaintiff and all Class Members, and dismissing this Action with prejudice.

VOIDING THE SETTLEMENT AGREEMENT

36. If the Court does not approve this Settlement Agreement, the entire Settlement Agreement will be void and unenforceable, the settlement Class will be decertified, and the litigation will proceed forward.

37. The Parties agree not to encourage Class Members to opt out of the settlement.

38. Defendant may withdraw from and void this Settlement Agreement if Twenty percent (20%) or more Class Members opt out of the settlement by submitting timely and valid requests for exclusion. Defendant must exercise this option by providing written notice to the Settlement Administrator, Plaintiffs' Counsel, and the Court within seven (7) days after the deadline established by the Court for Class Members to mail requests for exclusion to the Settlement Administrator.

39. The Parties reaffirm and agree to comply with all of the obligations set forth in paragraph 17 of this Settlement Agreement regarding certification of the Class for settlement purposes only. To the extent this Settlement Agreement is determined to be void by the Court, or the Effective Date does not occur for any reason, or Defendant exercises its limited right to withdraw from and void this Settlement Agreement pursuant to paragraph 38, Defendant does not waive, but rather expressly reserves, all rights to challenge any and all claims and allegations asserted by the Class Representative in the Action upon all procedural and substantive grounds, including without limitation the ability to challenge class action treatment on any grounds and to assert any and all other potential defenses or privileges. The Class Representative and Plaintiffs' Counsel agree that Defendant retains and reserves these rights. Specifically, the Class Representative and Plaintiffs' Counsel agree that, if the Action were to proceed, they will not argue or present any argument, and hereby waive any argument that, based on the settlement or this Settlement Agreement or any exhibit and attachment hereto, or any act performed or document executed pursuant to or in furtherance of the settlement or this Settlement Agreement, Defendant should be barred from contesting class action certification, or from asserting any and all other potential defenses and privileges. This Settlement Agreement shall not be deemed an admission by, or ground for estoppel against Defendant that class action treatment pursuant to Federal Rule of Civil Procedure 23 or on any other basis is proper or cannot be contested on any other grounds.

PARTIES' AUTHORITY

40. The signatories represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties to its terms and conditions. The Representative Plaintiff represents that she is authorized to enter into this Settlement Agreement in both her individual and representative capacity.

APPROVAL AND DISMISSAL OF THE ACTION

41. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this

Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the courts, or otherwise, to effectuate this Settlement Agreement. As soon as practicable after execution of this Settlement Agreement, Plaintiffs' Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the Court's final approval of this Settlement Agreement.

42. The Parties will agree that the Settlement is fair, adequate, and reasonable, and will so represent to the Court.

43. Upon entry of the Court's final approval order, the Action shall be dismissed with prejudice, and final judgment shall be entered.

SEVERABILITY

44. If, after the occurrence of the Effective Date, any non-material term of this Agreement is for any reason held to be invalid or unenforceable, such provision shall not affect any other provision hereof, but this Agreement shall be construed as if such invalid and/or unenforceable provision had never been contained herein.

NO ADMISSION OF LIABILITY

45. Each of the Parties has entered into this Settlement Agreement solely to resolve disputed claims based on disputed facts and allegations and to avoid the costs and risks of litigation. Neither the fact of this Settlement Agreement nor any of its parts, nor the consummation of this Settlement Agreement, shall be construed as an admission of wrongdoing, liability, culpability, and/or negligence on the part of Defendant or that any fact or allegation asserted by either Party was true.

46. The Parties agree that this Agreement does not constitute, shall not be construed to be, and shall not be cited in or be admissible in any proceeding as evidence of a determination or admission of violations of federal, state, or local law as to the payment by Defendant of overtime compensation, nor as evidence of a determination or admission that any group of similarly-situated employees exists to maintain a collective action under the FLSA or a class action under Rule 23 of the Federal Rules of Civil Procedure.

BREACH

47. If either Party breaches any of the terms and conditions of this Settlement, the non-breaching Party shall be entitled to reasonable attorneys' fees and expenses incurred to enforce the terms and conditions contained herein.

CONSTRUCTION AND INTERPRETATION

48. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, and arms-length negotiations between the Parties and that this

Settlement Agreement shall not be construed in favor of or against any of the Parties by reason of their participation in the drafting of this Settlement Agreement.

49. Paragraph titles are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Settlement Agreement or any of its provisions. Each term of this Settlement Agreement is contractual and not merely a recital.

50. This Settlement Agreement shall be subject to and governed by the laws of the State of Ohio.

JURISDICTION

51. The Parties will request that the District Court retain jurisdiction to enforce the terms of the Settlement Agreement.

52. If the Parties have disagreement over any of the term(s) of this Agreement, or compliance with or implementation of said terms, and cannot resolve such issues by themselves, they agree to promptly submit such issue(s) to mediation with Jerome Weiss, Esq. If the Parties cannot then reach an agreement, the Court will have jurisdiction to make a binding determination.

MODIFICATION

53. This Settlement Agreement may not be changed, altered or modified, except in writing, signed by counsel for the Parties, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by counsel for the Parties. Notwithstanding the foregoing sentences, without further Order of the Court, the Parties may agree in writing to extensions of time to carry out any of the provisions of this Settlement Agreement.

INTEGRATION CLAUSE

54. With the exception of the Settlement and Release Agreement between Defendant and Margerita Noland-Moore, this Settlement Agreement contains the entire agreement between the Parties relating to any and all matters addressed in the Settlement Agreement (including settlement of the Litigation), and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, with respect to such matters are extinguished.

BINDING ON ALL PARTIES

55. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

CLASS SIGNATORIES

56. It is agreed that it is impractical to have each Class Member execute this Settlement Agreement. The Class Notice will advise all Class Members of the binding nature of the release

and such shall have the same force and effect as if each Class Member executed this Settlement Agreement.

COUNTERPARTS

57. This Settlement Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties. This Settlement Agreement may be executed by signature or electronic signature of each of the Parties hereto, including copies transmitted by facsimile machine or e-mail.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date indicated below:

MARGERITA NOLAND-MOORE

Date: _____

PLAINTIFFS' COUNSEL
RYAN A. WINTERS

Date: _____

PLAINTIFFS' COUNSEL
JOSEPH SCOTT

Date: _____

CITY OF CLEVELAND
BARBARA LANGHENRY

Date: _____

DEFENDANT'S COUNSEL
JON M. DILENO

Date:

DEFENDANT'S COUNSEL
LAUREN M. DRABIC

Date: _____

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MARGERITA NOLAND-MOORE,

*On behalf of herself and all others
similarly situated,*

Plaintiff,

v.

CITY OF CLEVELAND,

Defendant.

) CASE NO. 1:18-cv-02730

) JUDGE JOHN R. ADAMS

) **EXHIBIT 2**

) **[PROPOSED] ORDER GRANTING**
) **PRELIMINARY APPROVAL OF**
) **SETTLEMENT**

Plaintiff Margerita Noland-Moore and Defendant City of Cleveland have jointly moved the Court to certify a proposed Settlement Class pursuant to Fed. R. Civ. P. 23, preliminarily approve the proposed settlement of Settlement Class Members' state-law and FLSA claims pursuant to Rule 23(e), approve notice to Potential Settlement Class Members, appoint interim class counsel and schedule a Fairness Hearing. Upon consideration of the Parties' "Joint Motion for Preliminary Approval of Class Action Settlement" ("Preliminary Approval Motion") and accompanying "Joint Stipulation of Class Action Settlement and Release" ("Settlement Agreement"), Declaration of Counsel, Class Member List, and General Settlement and Release Agreement of Named Plaintiff, and all other papers and proceedings herein, it is hereby **ORDERED** that:

1. The Preliminary Approval Motion is **GRANTED**, and the settlement of this action is **PRELIMINARILY APPROVED** because it appears that, at the final approval stage, the Court "will likely be able to" approve the settlement under the criteria described in Federal Rule of Civil Procedure ("Civil Rule") 23(e)(2) and certify the settlement class under the criteria described in Civil Rules 23(a) and 23(b)(3). *See* Fed. R. Civ. P. 23(e)(1)(B)(i)-(ii).

2. Plaintiff Margerita Noland-Moore filed a Class and Collective Action Complaint in this Action (ECF #1) on November 26, 2018, and a First Amended Complaint on February 3, 2019 (ECF #10). Plaintiff alleged that she and other hourly employees' longevity pay and shift differential pay was not properly factored into their overtime pay, and are owed overtime compensation, liquidated damages, attorneys' fees, and costs pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207, and Ohio Revised Code § 4111.03. (*Id.*) Defendant denied Plaintiff's claims and asserted affirmative defenses. (*See Answer to Amended Complaint*, ECF #11.)

3. Between March and May of 2019, the Parties engaged in informal yet comprehensive discovery regarding the Plaintiffs' claims and the Defendant's defenses to such claims. Class Counsel also conducted extensive investigations into the facts before and during the prosecution of the Action. This discovery and investigation included, among other things (a) meetings and conferences with the Plaintiff and other putative class members; (b) inspection and analysis of class-wide documents produced by the Defendant, including analysis of wage-and-hour information and other data and documents comprising of over 2,000,000 data points from the records produced by Defendant; (c) analysis of the legal positions taken by Defendant; (d) investigation into the viability of class treatment; (e) analysis of potential class-wide damages; and (f) research of the applicable law with respect to the claims and potential defenses thereto.

4. Settlement negotiations were protracted and difficult. A full day mediation with Mediator Jerome Weiss, a very seasoned and experienced mediator, on July 24, 2019 was unsuccessful in achieving a settlement. Subsequent to the mediation, the Parties engaged in approximately three additional months of negotiations and ongoing mediation/settlement efforts through telephonic and electronic communications. In advance of the mediation, the parties

prepared and submitted mediation memoranda demands and responses addressing merits and damages issues. Subsequent to the mediation, the Parties exchanged settlement proposals in an effort to narrow their positions, and after prolonged and difficult negotiations the settlement was achieved in principal on October 22, 2019.

5. On _____, the parties filed their Preliminary Approval Motion. (ECF #____.)

6. The Settlement will resolve disputed claims between the Parties. The Settlement will resolve federal and state wage-and-hour claims of the named Plaintiff and all other members of the Settlement Class pursuant to Fed. R. Civ. P. 23(e). Certification and Settlement are appropriate because the Released Claims are being compromised without need to establish the elements of those claims on which liability turns, in addition to providing a substantial recovery to Class Members in light of the procedural and substantive encumbrances in this case. Named Plaintiff and Class Counsel contend the claims asserted in the matter have merit and that the evidence developed to-date supports the claims asserted. Plaintiff and Class Counsel, however, also recognize the risk and expense of trying and, if necessary, appealing this action, and believe that the Settlement confers substantial benefits upon the Class Members.

The Court finds that the proposed Settlement satisfies the standard for approval of a class/collective action settlement under 29 U.S.C. § 216(b) and O.R.C. § 4111.01 *et seq.* There is “a bona fide dispute between the parties as to the employer’s liability under the FLSA” and the Settlement “is fair, reasonable, and adequate.” *Jackson v. Trubridge, Inc.*, N.D.Ohio No. 5:16-cv-00223, 2017 U.S. Dist. LEXIS 193782, at *4 (N.D.Ohio Jan. 26, 2017)(quoting *Kritzer v. Safelite Solutions, LLC*, 2012 U.S. Dist. LEXIS 74994, at *19 (S.D.Ohio May 30, 2012)); *Osman v. Grube, Inc.*, N.D.Ohio No. 3:16-cv-00802-JJH, 2018 U.S. Dist. LEXIS 78222, at *2 (N.D.Ohio May 4,

2018). *Accord, Landsberg v. Acton Enterprises, Inc.*, 2008 WL 2468868 at *1 n.1 (S.D. Ohio June 16, 2008)(quoting *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1353-55 (11th Cir. 1982)).

7. As to the proposed Settlement Class, the Court makes the following determination.

8. The Settlement Class consists of “All present and former hourly employees of Defendant who received longevity pay and/or shift differential pay that was not rolled into their overtime pay during the period November 26, 2015 to November 19, 2018.”

9. The settlement of this action under Rule 23 is **PRELIMINARILY APPROVED** because it appears that, at the final approval stage, the Court “will likely be able to” approve the settlement under the criteria described in Federal Rule of Civil Procedure (“Civil Rule”) 23(e)(2) and certify the settlement class under the criteria described in Civil Rules 23(a) and 23(b)(3). *See* Fed. R. Civ. P. 23(e)(1)(B)(i)-(ii).

10. The “Notice of Settlement” form attached to the Preliminary Approval Motion as Exhibit 3 and the notice protocols described in the Settlement Agreement are approved pursuant to Civil Rules 23(c)(2)(B) and 23(e)(1). The Notice Form shall be sent to the “Class Members” as defined in the Settlement Agreement, pursuant to such protocols.

11. Individuals who wish to exclude themselves from the settlement must do so within 30 calendar days after the Settlement Administrator mails the Class Notice and must follow the procedures described in the Settlement Agreement and Notice Form.

12. Individuals who wish to object to the settlement must do so within 30 calendar days after the Settlement Administrator mails the Class Notice and must follow the procedures described in the Settlement Agreement and Notice Form.

13. The law firm of Scott & Winters Law Firm, LLC is appointed interim class counsel

pursuant to Civil Rule 23(g)(3). The Court will make its final decision regarding the appointment of class counsel after the final approval and pursuant to the criteria described in Civil Rule 23(g)(1).

14. Pursuant to Civil Rule 23(e)(2), a Fairness Hearing addressing final approval of the settlement will be held on _____, 2020 at _____ in Courtroom ____ of the John F. Seiberling Federal Building and U.S. Courthouse, Two South Main Street, Akron, Ohio 44308-1813. During this hearing, the Court will hear from any objectors or other class members who wish to address the Court and will hear argument from counsel regarding, *inter alia*, the following issues: whether the settlement warrants final approval under Civil Rule 23(e)(2) , 29 U.S.C. § 216(b), and R.C. § 4111.01 *et seq.*; whether the settlement class should be certified under Civil Rules 23(a) and 23(b)(3); whether the service award described in the Settlement Agreement should be approved; and whether the attorney's fees and litigation costs sought by interim class counsel and described in the Settlement Agreement should be approved under Civil Rule 23(h).

15. Prior to the Fairness Hearing, interim class counsel shall file all papers in support of the final approval of the settlement and the associated issues described in paragraph 14 above.

IT IS SO ORDERED:

United States District Judge