IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

SHAKEERA MYERS, on behalf of herself and all others similarly situated, *Plaintiff,* v. LOOMIS ARMORED US, LLC, *Defendant.*	)	CA No. 3:18-cv-00532-FDW-DSC

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR APPROVAL OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

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I. INTRODUCTION

In connection with Plaintiff's Unopposed Motion for Preliminary Approval of Class and Collective Action Settlement; Approval of Settlement Administrator; and Approval of Plaintiff's Notice of Settlement ("Motion for Preliminary Approval"), filed simultaneously with this motion,[1] and consistent with the terms of the Parties' Stipulation and Settlement Agreement, Plaintiff and Class Counsel, The Law Offices of Gilda A. Hernandez, PLLC ("GAH"), and Sommers Schwartz, P.C. ("SS") (collectively, "Class Counsel"), respectfully move this Court for an award of attorneys' fees in the amount of $500,000.00, one-third of the Gross Settlement Fund (the "Fund"), and reimbursement of the litigation costs, not to exceed **$35,000.00** incurred in prosecuting this action, should the Court grant final approval to the parties' proposed settlement.[2] Defendant does not oppose this Motion.

Over the past year, Class Counsel have spent over **1,100** attorney, paralegal, and support staff hours prosecuting this case.[3] *See* Dkt. 68, Decl. of Gilda A.

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[1] For a detailed account of the factual and procedural background of this case, Plaintiff's Counsel refer the Court to the Memorandum of Law in Support of Plaintiff's Motion for Preliminary Approval, and the Hernandez Decl. ¶¶ 12-28.

[2] While Plaintiff is moving the Court for an award of attorneys' fees and costs now, so that the amount of such awards will be fully known to class members in advance of any final fairness hearing concerning the proposed settlement, the payment of any such awards should be contingent on the final approval of the proposed settlement.

[3] Pursuant to the parties' Stipulation and Settlement Agreement, Defendants have agreed not to oppose Plaintiff's requests for an award of attorneys' fees not to exceed one-third of the Gross Settlement Amount provided for in that agreement (*i.e.*,

Hernandez in Support of Plaintiff's Unopposed Motions for Preliminary Approval of Class and Collective Action Settlement; Approval of Settlement Administrator; Approval of Plaintiff's Notice of Settlement; Approval of Attorneys' Fees and Reimbursement of Expenses, and Approval of Service Awards ("Hernandez Decl.") ¶¶ 42-46. Class Counsel have also incurred at least approximately **$32,733.95** in litigation costs throughout the course of litigation, which were incidental and necessary to the prosecution of this lawsuit. *See* Dkt. 68, Hernandez Decl. ¶ 47.

Class Counsel's efforts to date have been without compensation, and their entitlement to payment has been wholly contingent upon procuring an award for their clients and the proposed settlement classes. *See* Dkt. 68, Hernandez Decl. ¶ 46. Class Counsel has also covered all expenses and costs associated with the litigation and settlement efforts and assumed the risk that they may not recover for these hours worked, expenses, and costs. For the reasons set forth below, Class Counsel respectfully submit that the attorneys' fees and expense reimbursement they seek are fair and reasonable under the applicable legal standards and should be awarded following final approval of the parties' proposed settlement, in light of the contingency risk undertaken and the result achieved in this case. *See id.* ¶¶ 39-41.

II. Class Counsel Are Entitled to a Reasonable Fee.

$500,000), and for an award of litigation costs and expenses, incurred by Plaintiffs' Counsel in connection with the litigation, not to exceed **$35,000**.

Pursuant to the Parties' Settlement Agreement, Class Counsel are entitled to attorneys' fees to compensate them for their work in recovering unpaid overtime wages on behalf of the class. *See* Dkt. 63-1, Ex. A (Settlement Agreement), § IV(5). The agreement, for which Plaintiff simultaneously seeks preliminary approval of by the Court, likewise provides that "Plaintiffs' Attorneys or Class Counsel may seek an award of up to one-third of the Fund, plus reimbursement of expenses not to exceed $35,000.00. *See id.* The proposed Notice of Settlement informs the class of the fees that will be sought. *See* Dkt. 63-1, Ex. A-1 (Settlement Notice).

Plaintiffs in FLSA actions are generally entitled to an award of a reasonable fee. *Burnley v. Short*, 730 F.2d 136, 141 (4th Cir. 1984). If no objections are made to the fee request, that indicates the award is reasonable. *See Berry v. Schulman*, 807 F.3d 600, 618-19 (4th Cir. 2015) (stating that few objections provides support for a showing of reasonableness of the fee request) (citing *Flinn v. FMC Corp.*, 528 F.2d 1169, 1174 (4th Cir. 1975)). Though Defendant has agreed to not oppose up to 40% of the fund being designated to Attorneys' Fees, Class Counsel only seeks one-third of the Fund. § IV(4). Class Counsel therefore believes their request for 33.33% of the Fund, plus expenses, is reasonable and well within the range approved by courts in similar cases.

III. The Percentage Method is Preferred for Awarding Attorneys' Fees in Common Fund Cases in the Fourth Circuit.

The Supreme Court has long recognized that "a litigant or a lawyer who

recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (citations omitted). "The common fund doctrine is grounded in the belief that to deny attorneys a recovery of their fees from the funds they helped create would unjustly enrich the class members at the expense of their attorneys and representatives." *In re Microstrategy, Inc.*, 172 F. Supp. 2d 778, 784 n.16 (E.D. Va. 2001) (citing *Boeing*, 444 U.S. at 478). Where relatively small claims can only be prosecuted through aggregate litigation, and the law relies on prosecution by "private attorneys general," attorneys who fill that role must be adequately compensated for their efforts. *See Latham v. Branch Banking & Tr. Co.*, 2014 U.S. Dist. LEXIS 16490, at *7 (M.D.N.C. Jan. 14, 2014) ("[f]ee awards in wage and hour cases are meant to encourage members of the bar to provide legal services to those whose wage claims might otherwise be too small to justify the retention of able, legal counsel," and awarding $450,000 in attorney's fees, from a total settlement of $1,800,000, although the lodestar amount was only $246,485).

Although the lodestar method and the percentage of the fund method are both available, the trend in this Circuit is to use the percentage of the fund method in common fund cases like this one. *See Phillips v. Triad Guar., Inc.*, 2016 U.S. Dist. LEXIS 60950, at *5 (M.D.N.C. May 9, 2016); *Jones v. Dominion Res. Servs.*, 601 F. Supp. 2d 756, 758 (S.D. W. Va. 2009); *see also Hess v. Sprint Communs. Co. L.P.*,

2012 U.S. Dist. LEXIS 168963, at *6 (N.D.W. Va. Nov. 26, 2012) (collecting cases within the Fourth Circuit using the percentage method); *Federal Judicial Center, Manual for Complex Litigation* (Fourth) § 14.121 at 187 ("After a period of experimentation with the lodestar method . . . the vast majority of courts of appeals now permit or direct district courts to use the percentage-fee method in common-fund cases.").

There are several reasons that courts prefer the percentage method. First, the percentage method "better aligns the interests of class counsel and class members because it ties the attorneys' award to the overall result achieved rather than the hours expended by the attorneys." *Jones*, 601 F. Supp. 2d at 759; *see also Phillips*, 2016 U.S. Dist. 60950, at *6 (stating that the percentage method is preferred because it "closely associates the attorneys' fees with the overall result achieved."); *Hess*, 2012 U.S. Dist. LEXIS 168963, at *7; *In re Wachovia Corp. ERISA Litig.*, 2011 U.S. Dist. LEXIS 123109, at *16 (W.D.N.C. Oct. 24, 2011);

Second, the percentage of the fund method promotes early resolution and removes the incentive for plaintiffs' lawyers to engage in wasteful litigation in order to increase their billable hours. *See Jones*, 601 F. Supp. 2d at 759 ("[W]hen the lodestar method is applied, class counsel has an incentive to 'over-litigate' or draw out cases in an effort to increase the number of hours used to calculate their fees."); *In re Wachovia*, 2011 U.S. Dist. LEXIS 123109, at *16 (noting that the percentage

method promotes efficiency); *In re Microstrategy, Inc.*, 172 F. Supp. 2d at 787 (same).

Third, the percentage method preserves judicial resources because it "is more efficient and less burdensome than the traditional lodestar method." *See Fangman v. Genuine Title, LLC*, 2016 U.S. Dist. LEXIS 160434, at *14 (D. Md. Nov. 18, 2016); *Savani v. URS Prof'l Sols. LLC*, 121 F. Supp. 3d 564, 569 (D.S.C. 2015); *Strang v. JHM Mortg. Sec. Ltd. P'ship,* 890 F. Supp. 499, 503 (E.D. Va. 1995). The "primary source of dissatisfaction [with the lodestar method] was that it resurrected the ghost of Ebenezer Scrooge, compelling district courts to engage in a gimlet-eyed review of line-item fee audits." *Goldberger v. Integrated Res. Inc.*, 209 F.3d 43, 48-49 (2d Cir. 2000). While courts still use the lodestar method as a "cross check" when applying the percentage of the fund method, they are not required to scrutinize the fee records as rigorously. *See Hall v. Higher One Machs., Inc.*, 2016 U.S. Dist. LEXIS 131009, at *20 (E.D.N.C. Sep. 26, 2016); *Phillips*, 2016 U.S. Dist. LEXIS 60950, at *6-7; *In re Wachovia*, 2011 U.S. Dist. LEXIS 123109, at *16; *Smith v. Krispy Kreme Doughnut Corp.*, 2007 U.S. Dist. LEXIS 2392, at *9 (M.D.N.C. Jan. 10, 2007).

In applying the common fund method, the Supreme Court, courts within the Fourth Circuit, and other Circuit Courts, have held that it is appropriate to award attorneys' fees as a percentage of the entire maximum gross settlement fund, even where amounts to be paid to settlement class members who do not file claims will

revert to the Defendants.[4] *See Boeing*, 444 U.S. at 480-81 ("Although the full value of the benefit to each absentee member cannot be determined until he presents his claim, a fee awarded against the entire judgment fund will shift the costs of litigation to each absentee in the exact proportion that the value of his claim bears to the total recovery.") (citation omitted); *Land v. Sprint Communs. Co. L.P.*, 2013 U.S. Dist. LEXIS 196641, at *6 (D.S.C. Aug. 6, 2013) ("Under the percentage-of-the-fund method, it is appropriate to *base the percentage on the gross cash benefits available for class members to claim*, plus the additional benefits conferred on the class by the [s]ettling [d]efendants' separate payment of attorney's fees and expenses, and the expenses of administration.") (emphasis added); *Hess*, 2012 U.S. Dist. LEXIS 168963, at *7; *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 436-37 (2d Cir. 2007) ("The entire [f]und, and not some portion thereof, is created through the efforts of counsel at the instigation of the entire class."). Because the parties agreed that there would be no reversion for unclaimed funds, Plaintiffs and Rule 23 class members who have sent back the consent form and/or claim form will receive a higher percentage of the settlement proceeds. Thus, this is another reason why it is appropriate to award one-third of the maximum gross settlement fund.

IV. The *Barber* Factors Support an Award of 33% of the Fund.

[4] Any concerns related to whether funds will be claimed or revert are not at issue here; there is no such reversion in the preliminary agreement between the parties. § I(19); § IV(4).

Reasonableness is the touchstone for determining attorneys' fees. *See Robinson v. Harrison Transp. Servs., Inc.*, 2016 U.S. Dist. LEXIS 86294, at *13-14 (E.D.N.C. June 30, 2016); *Morris v. Cumberland Cty. Hosp. Sys.*, 2013 U.S. Dist. LEXIS 165063, at *12 (E.D.N.C. Nov. 13, 2013). The Supreme Court has opined that consensual resolution of attorney's fees, as was achieved by the parties in this action, is ideal. *See Hensley*, 461 U.S. at 437 ("A request for attorney's fees should not result in a second major litigation. Ideally of course, litigants will settle the amount of the fee."). Furthermore, the reasonableness of an award can be deduced by evidence of an arm's-length negotiation. *See Berry*, 807 F.3d at 618-19 (recognizing that the court may approve a fee request when there is "no reason to think that class counsel left money on the table in negotiation[s]" and there is a "lack of objection [from class members] to the fee request"). While some courts within the Fourth Circuit have noted that "the percentage method, in addition to the absence of any objection to the fee award, obviates the need for an exhaustive review" of factors showing the reasonableness of a fee award, *see Manuel v. Wells Fargo Bank, N.A.*, 2016 U.S. Dist. LEXIS 33708, at *14 (E.D. Va. Mar. 15, 2016), in *Barber*, the Fourth Circuit articulated twelve factors for courts to consider in determining the reasonableness of fee applications:

(1) the time and labor expended by counsel;

(2) the novelty and difficulty of the questions raised;

(3) the skill required to properly perform the legal services rendered;

(4) the attorney's opportunity costs in pressing the instant litigation;

(5) the customary fee for like work;

(6) the attorney's expectations at the outset of the litigation;

(7) the time limitations imposed by the client or circumstances;

(8) the amount in controversy and the results obtained;

(9) the experience, reputation and ability of the attorney;

(10) the undesirability of the case within the legal community in which the suit arose;

(11) the nature and length of the professional relationship between attorney and client; and

(12) attorney's fee awards in similar cases.

Barber v. Kimbrell's, 577 F.2d 216, 226 n.28 (4th Cir. 1978). All of the *Barber* factors weigh in favor of granting approval of Class Counsel's fee application.

A. Class Counsels' Time and Labor Expended (*Barber* Factor 1).

According to the Supreme Court, "[t]he most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation," provided that there is a "good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary." *Hensley*, 461 U.S. at 433-34.

1. Initial Investigation of Named Plaintiff/Class Representative and Initial Briefing

From the initial stages of case evaluation and discovery, Class Counsel spent significant effort to achieve the $1.5 million settlement. Before the initiation of this action, Class Counsel conducted a thorough investigation into the merits of the potential claims and defenses. Dkt. 68, Hernandez Decl. ¶¶ 15-17. This effort included investigation and legal research on the underlying merits of the class claims, the likelihood of obtaining liquidated damages and an extended FLSA statute of limitations, the proper measure of damages, the likelihood of class certification, and relevant history of litigation of the parties involved. *Id*. Plaintiffs' Counsel also conducted in-depth interviews with the named and opt-in Plaintiffs, for a total of about nine (9) Plaintiffs, to determine the hours that they individually worked, the number of hours that they worked for which they were not paid, their rate of pay, approximately how many hours they worked per day and/or per week, and other information relevant to their claims. *Id.* ¶ 16. Plaintiff's Counsel also obtained and reviewed numerous documents from named and opt-in Plaintiffs related to their employment with Defendant, including pay records and other related documents. *Id.* On May 16, 2019 Plaintiff's Counsel, pursuant to a Notice of Deposition under Fed. R. Civ. P. 30(b)(6), deposed Defendant Loomis.

2. Substantial Briefing on Plaintiffs' Motion for Conditional Certification and Class Certification and Subsequent Notice Period

There was also extended briefing and argument concerning Plaintiffs' Motion for Conditional and Class Certification pursuant to both the FLSA and Rule 23 of the Federal Rules of Civil Procedure, which Plaintiff filed on May 23, 2019. *See* Dkt. 68, Dkt. 68, Hernandez Decl. ¶¶ 21-23; *see also* Dkts. 24-28, 31, 33. This involved an extensive series of responses, replies, deposition testimony,[5] declarations, and discovery response documentation from defendant and plaintiffs. *Id*. Eventually, Plaintiffs prevailed on the motion, and conditional collective and class certification was granted on July 25, 2019. *See* Dkt. 37.

On August 5, 2019, following the parties' required meet and confer to address outstanding disputes regarding the appropriate notice, the parties filed competing proposals regarding notice to the FLSA and Rule 23 classes. On August 9, 2019, the Court granted Plaintiff's proposed notice with modifications, including, but not limited to a thirty (30) day notice period for FLSA putative Plaintiffs to file Consents to File Suit as Plaintiffs and Rule 23 Class Members to opt-out of the lawsuit. As of September 20, 2019, approximately 217[6] FLSA putative Plaintiffs have filed Consents to File Suit, and approximately six (6) Rule 23 Class Members have filed opt-out forms.

3. The Parties' Settlement Negotiations

[5] Class Counsel deposed Defendant's 30(b)(6) witness in Houston, Texas on May 16, 2019. Class Counsel also defended the deposition of Named Plaintiff and six opt-in Plaintiffs.
[6] Including Named Plaintiff

On September 16, 2019, the Parties participated in mandatory mediation whereby Plaintiff engaged in a damages analysis pursuant to data produced by Defendant as part of the Parties' discovery obligations. Defendant produced weekly pay records, start and end dates, and other compensation data for every Rule 23 Settlement Class Member and FLSA Collective Member, at that time. Plaintiffs and Defendant submitted a mediation statement to the mediator. The Parties attended mediation on September 16, 2019, before mediator Hunter Hughes III, a nationally recognized class- and collective-action wage and hour mediator, at his offices in Atlanta, Georgia. The mediation resulted in the Parties' Settlement Agreement, which has been submitted for Court approval.

On September 18, 2019, the parties filed a joint notice to advise the Court that the parties had reached an agreement to resolve named and opt-in Plaintiffs' and R.23 class members' claims, under the FLSA and pursuant to the NCWHA and Rule 23 of the Federal Rules of Civil Procedure. Dkt.55.

4. Post-Mediation Work

After the mediation, Plaintiffs' counsel had considerable work to complete, including drafting and negotiating with Defendant over the text of the 50-page settlement agreement and accompanying notices, drafting the motions for preliminary approval of the settlement, approval of the service awards, this motion for approval of fees, and related documents.

In performing these tasks, Class Counsel expended over **1,100** hours of attorney, paralegal, and staff member time – resulting in an aggregate lodestar of approximately **$445,000.00**. Dkt. 68, Hernandez Decl.¶¶ 35-46. Class Counsel believe these hours are reasonable for a case like this one and compiled them from contemporaneous time records maintained by each attorney, paralegal, and support staff participating in the case. Dkt. 68, Hernandez Decl. ¶ 43. Class Counsel used a small team of attorneys in order to minimize duplication of efforts and maximize billing judgment. Dkt. 68, Hernandez Decl. ¶ 36.

Moreover, the requested fee is not based solely on time and effort already expended, rather, it is also meant to compensate Plaintiffs' Counsel for time that will be spent administering the settlement in the future. Dkt. 68, Hernandez Decl. ¶¶ 45-46; *see ECOS, Inc. v. Brinegar*, 671 F. Supp. 381, 400-01 (M.D.N.C. 1987) ("[T]he court recognizes that . . . attorneys reasonably expended additional time seeking fees, in this action, for which an award is not requested. It is proper that the fee award compensate all of the time reasonably spent in this litigation . . . ."); *In re Montgomery Cty. Real Estate Antitrust Litig.*, 83 F.R.D. 305, 323 (D. Md. 1979) (designating a fund to be "set aside from the settlement fund against which attorneys may apply for fees for time expended in administering the settlement."); *see also Reyes v. Altamarea Grp.*, 2011 U.S. Dist. LEXIS 115984, at *23 (S.D.N.Y. Aug. 16, 2011) ("The fact that [c]lass [c]ounsel's fee award will not only compensate them for time and effort

already expended, but for time that they will be required to spend administering the settlement going forward also supports their fee request" of 33% of the fund.).

In Class Counsel's experience, administering class settlements of this nature and size requires a substantial and ongoing commitment. Dkt. 68, Hernandez Decl. ¶ 46. For example, Class Counsel anticipate that as soon as Notice is mailed, Class Counsel and staff will be required to respond to dozens of inquiries from class members about the terms of the settlement and the amount of their settlement award. *Id.* at ¶ 45. As is common in wage and hour class actions, Class Counsel expects to respond to more Class Member inquiries after final approval, especially after checks are issued. *Id.* Class Counsel also expects to spend additional time working on this case, including preparing for and attending the final fairness hearing, answering class member questions, and directing and answering questions from the Settlement Administrator. *Id.*

B. The Novelty and Difficulty of the Questions Raised (*Barber* Factor 2).

Cases raising novel and complex issues warrant a higher fee award. *See Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169, 180 (4th Cir. 1994); *Stocks v. Bowen*, 717 F. Supp. 397, 403 (E.D.N.C. 1989). Courts have recognized that wage and hour cases involve complex legal issues. *See, e.g., Barrentine v. Ark.-Best Freight Sys.*, 450 U.S. 728, 743 (1981) ("FLSA claims typically involve complex mixed questions of fact and law -- e. g., what constitutes the 'regular rate,' the 'work-week,' or

'principal' rather than 'preliminary or postliminary' activities. These statutory questions must be resolved in light of volumes of legislative history and over four decades of legal interpretation and administrative rulings."); *DeWitt*, 2013 U.S. Dist. LEXIS 172624, at *31 ("In the [c]ourt's experience, overtime cases under the Fair Labor Standards Act can be very complex and difficult, involving the interaction among various statutes, regulations, and evolving case-law."); *Kirkpatrick v. Cardinal Innovations Healthcare Sols.*, No. 1:16-CV-01088, 2018 WL 6718948, at *4 (M.D.N.C. Dec. 18, 2018) ("the novelty and difficulty of the questions raised weighs in favor of approving the fee because collective counsel had to address procedurally and substantively complex FLSA issues."); *Faile v. Lancaster Cty.*, 2012 U.S. Dist. LEXIS 189610, at *33 (D.S.C. Mar. 8, 2012) (same). Hybrid actions, such as this one, where state wage and hour violations are brought as an "opt out" class action pursuant to Rule 23 combined with an FLSA "opt in" collective action pursuant to 29 U.S.C. § 216(b), are more complex than the typical FLSA case. *See Faile*, 2012 U.S. Dist. LEXIS 189610, at *26.

In this case, the requested fee amount is reasonable in consideration of the nature and difficulty of the responsibility assumed by Class Counsel, as well as the questions of law. The parties litigated and submitted various statements, documents, and arguments relating to discovery disputes, and in support of Plaintiff's motion for conditional and class certification, statutory and administrative interpretations, and

appropriate overtime rates. Additionally, Class Counsel researched and drafted numerous submissions to Defendant and the mediator regarding a number of complex disputes, on topics including, but not limited to, Defendants' payroll policies and practices, deductions, promised overtime, liquidated damages, willfulness, and the Motor Carrier Act Exemption ("MCA"). Class Counsel also had to assess and analyze over two gigabytes of voluminous electronic financial and payroll records, a significant amount of which raised additional novel and difficult questions. *See* Dkt. 68, Hernandez Decl. ¶ 25.

Moreover, the magnitude of this case—involving over 750 class members—is significant and adds to the complexity.

C. The Skill Required to Properly Perform the Legal Services Rendered (*Barber* Factor 3).

Attorneys' fees may be increased based on the particular skills and experience required to litigate a claim. *See Vincent v. Lucent Techs., Inc.*, 2011 U.S. Dist. LEXIS 123780, at *12 (W.D.N.C. Oct. 25, 2011) (finding that attorneys' fees were reasonable in light of the complexity of the relevant federal laws). "Employment law is a very dynamic area of the law, requiring counsel to stay abreast of developments in both state and federal law. Moreover, as with any litigation in federal court, attorneys in overtime cases must be thoroughly familiar with developments and changes in the Federal Rules of Civil Procedure . . . ." *DeWitt*, 2013 U.S. Dist. LEXIS 172624, at *31. In particular, "the skill required to properly perform the legal services

rendered weighs in favor of approving the fee because FLSA collective actions involve law which changes regularly due to growing jurisprudence across the country." *Kirkpatrick*, 2018 WL 6718948, at *4. The claims alleged here required sophisticated class action experience by Class Counsel. Having counsel well-versed in complex collective and class action practice was critical to the successful prosecution of this case. Additionally, the interplay between the FLSA and the NCWHA is a complex area of statutory and administrative law that requires particular skill and experience to properly perform the legal services rendered in such cases. Class Counsel has experience litigating hybrid wage and hour cases such as this, including several cases involving hundreds or thousands of class members, employees misclassified as exempt, and employees subject to improper overtime rates. *See* Dkt. 68, Hernandez Decl. ¶¶ 3-9. Class Counsel in this action brought a wealth of knowledge and expertise to this case, as outlined below, and such knowledge and experience was necessary to litigate and settle this matter.

D. Class Counsels' Opportunity Costs in Pursuing the Litigation *(Barber* Factor 4).

Courts consider the contingency of the litigation to determine the "opportunity costs or preclusion from other employment." *Lewis v. J.P. Stevens & Co.*, 1988 U.S. App. LEXIS 19610, at *10 (4th Cir. June 9, 1988); *see also Gilbert LLP v. Tire Eng'g & Distrib., LLC,*, 2017 U.S. App. LEXIS 8530, at *12 (4th Cir. May 15, 2017) ("Contingency agreements transfer a significant portion of the risk of loss to the

attorneys."); *Goodman v. Phillip R. Curtis Enters., Inc.*, 809 F.2d 228, 235 (4th Cir. 1987) (same). Class Counsel undertook to prosecute this action without any assurance of payment for their services, litigating this case on a wholly contingent basis in the face of significant risk. Dkt. 68, Hernandez Decl. ¶ 46. Class and collective wage and hour cases of this type are, by their very nature, complicated and time-consuming. *Id.* Any lawyer undertaking representation of large numbers of affected employees in such actions inevitably must be prepared to make a tremendous investment of time, energy, and resources. *Id.* Due also to the contingent nature of the customary fee arrangement, lawyers are asked to be prepared to make this investment with the very real possibility of an unsuccessful outcome and no fee of any kind. *Id.* Plaintiff's Counsel stood to gain nothing in the event the case was unsuccessful. *Id.* Accordingly, the opportunity costs in this action, requiring a large investment of time, energy, and resources, with no guarantee of success, were significant.

Moreover, the size of Class Counsel's practice, and the time demands of the litigation, may support this *Barber* factor and/or increase attorneys' fees for a prevailing plaintiff. *See DeWitt*, 2013 U.S. Dist. LEXIS 172624, at *32 (stating that where counsel documented over 187 hours, "represent[ing] a significant opportunity cost for an attorney . . . in terms of other cases that could have been handled during the same period," and where counsel "advanced all of the costs of this litigation," the

opportunity costs factor was satisfied); *Vincent*, 2011 U.S. Dist. LEXIS 123780, at *13 ("[D]ue to . . . the small size of the firm of Plaintiff's attorneys, and the finite resources of such firm, acceptance of this Plaintiff's case resulted in the inability to accept other paying work," constituting significant opportunity costs); *Johannssen v. Dist. No. 1 - Pac. Coast Dist., MEBA Pension Plan*, 2001 U.S. Dist. LEXIS 10556, at *13 (D. Md. July 10, 2001) ("The extensive time spent on this case could certainly have been spent handling other cases; thus, involvement in this litigation carried with it significant opportunity costs."). In this matter, Class Counsel is composed of attorneys between two firms, and they spent over **1100** hours litigating and settling this action with many more hours which shall be spent with further briefing, attending the fairness hearing and responding to calls after the distribution of notice, and later the checks, take place. *See* Dkt. 68, Hernandez Decl. ¶¶ 36, 42-46. The opportunity costs in this litigation, accordingly, are certainly significant.

E. The Customary Fee for Like Work (*Barber* Factor 5).

To satisfy its burden under the *Barber* factors, the plaintiff must "present the Court with adequate evidence of the prevailing rates in the relevant market." *Plyer v. Evantt*, 902 F.2d 273, 277 (4th Cir. 1990). "While evidence of fees paid to attorneys of comparable skill in similar circumstances is relevant, so too is the rate actually charged by the petitioning attorneys when it is shown that they have collected those rates in the past from the client." *Caperton*, 31 F.3d at 175. In a recent decision

displaying customary fees charged, reached on June 30, 2017, this Court approved attorneys' fees and expenses of $3.8 million, for an FLSA/NCWHA hybrid collective/class action, that settled for a total of $9 million. *See Rehberg v. Flowers Baking Co. of Jamestown, LLC*, No. 3:12-cv-00596, Dkt. 250 (W.D.N.C. June 30, 2017). In doing so, the court approved all of the following hourly rates for all attorneys who participated in that matter: $975 per hour (partner); $850 per hour (partner); $850 per hour (partner); $795 per hour (partner); $795 per hour (partner); $780 per hour (partner); $700 per hour (associate); $695 per hour (partner); $590 per hour (partner); $550 per hour (partner); $550 per hour (partner); $525 per hour (associate); $525 per hour (partner); $500 per hour (associate); $475 per hour (associate practicing since 2015); $450 per hour (associate practicing since 2014); $450 per hour (associate practicing since 2014); $450 per hour (associate practicing since 2014); $400 per hour (associate practicing since 2013); and $375 per hour (associate). *See id.* Dkts. 245-1, 245-2, 245-3, 245-4, 245-5, 250.

Here, as described above, and assessed below for the ninth *Barber* factor (experience, reputation, and ability of the attorney), Class Counsel have extensive North Carolina and national wage and hour experience, including in complex collective and class action lawsuits. *See infra.* Class Counsel's current rates, $650 per hour, fall to the lower end of customary rates for an experienced partner's participation in FLSA/NCWHA hybrid actions. *Id.* Since 2013, when the GAH law

practice was launched, Class Counsel Hernandez's hourly rate has increased by only 10%, from $595 to $650, which is a proportionate increase as compared to the firm's growth, demand, and increased experience. Dkt. 68, Hernandez Decl. ¶ 40. To that end, Class Counsel's customary rates have been previously approved by other courts. *See, e.g., In re Gentiva Health Services Inc*., No: 1:14-cv-01892-WBH, Dkt. 113 (N.D. Ga. June 22, 2017) (approving GAH's then $595 rate as the basis of a lodestar crosscheck for a common fund award that was approved by the court in nationwide action); *Tomkins v. Amedisys*, No. 3:12-cv-1082 (D. Conn. 2016) (approving GAH's then $595 rate as the basis of a lodestar crosscheck for a common fund award that was approved by the court in nationwide action); *McLaurin v. Prestage Foods*, 2012 U.S. Dist. LEXIS 13086 (E.D.N.C. Feb. 3, 2012) (same, at the then-charged lower rate of $385 per hour, charged while counsel was a firm associate, not owner, and before attaining an additional seven years of collective/class action experience both locally and in nationwide actions, and stating, "[T]he court [allows] the motion for attorneys' fees and awards attorneys' fees . . . . [t]he court finds this amount to be reasonable in light of the complexity of the case, the history of the litigation, and the results obtained."). As such, Class Counsel's fees are consistent with the customary fee for like work and satisfy the fifth factor of *Barber*.

F. Class Counsel's Expectations at the Outset of Litigation (*Barber* Factor 6).

According to the Supreme Court, "[t]he fee quoted to the client or the

percentage of the recovery agreed to is helpful in demonstrating the attorney's fee expectations when he accepted the case." *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711, 723 (1987) (citations omitted). "Courts have generally recognized that a contingent fee lawyer may have the right to expect a fee greater than if his fee were guaranteed." *Va. Acad. of Clinical Psychologists v. Blue Shield of Va.*, 543 F. Supp. 126, 148 (E.D. Va. 1982). Because Class Counsel represented Plaintiff on a contingency basis, Class Counsel took on significant risk of non-payment, the burden of advancing litigation expenses, and the substantial opportunity cost of having to turn down other potentially lucrative work. These large risks strongly motivated Class Counsel to perform work of the highest quality and in appropriate quantity, in order to fulfill their fiduciary commitment to the class. Defendant's counsel also litigated this case vigorously, which in turn, increased the time and energy required by Class Counsel to prosecute the case to a successful conclusion. This case, because of its contingent nature and the challenges it posed to counsel on both sides, presented a high-stakes proposition justifying the attorney's fee request, consistent with Class Counsel's expectations.

G. The Time Limitations Imposed by the Client or Circumstances (*Barber* Factor 7).

Priority work that takes time away from the lawyer's other legal work is entitled to some premium. *See In re Steel Network, Inc.*, 2011 Bankr. LEXIS 3418, at *34

(U.S. Bankr. M.D.N.C. June 27, 2011); *Va. Acad. of Clinical Psychologists*, 543 F. Supp. at 148-49; *see also Hyatt v. Heckler*, 586 F. Supp. 1154, 1158 (W.D.N.C. 1984). This case involved discovery, declarations, depositions, and filings which necessarily involved strict time limitations, as well as extensive pre-mediation research and review of documents within a short period of time. *See supra*. These time limitations frequently required Class Counsel to take time away from other matters and devote substantial resources to particular deadlines. *See O'Bryhim v. Reliance Standard Life Ins. Co.*, 997 F. Supp. 728, 734 (E.D. Va. 1998), *aff'd*, 188 F.3d 502 (4th Cir. 1999) ("Due to the numerous motions and court appearances, there were frequent time limitations in this case."). This factor thus supports a premium on counsel's fee.

H. The Amount in Controversy and the Results Obtained (*Barber* Factor 8).

In the Fourth Circuit, "the most critical factor in calculating a reasonable fee award is the degree of success obtained." *Randle v. H&P Capital, Inc.*, 513 F. App'x 282, 284 (4th Cir. 2013) (citing *Farrar v. Hobby*, 506 U.S. 103, 114 (1992)); *Lilly v. Harris-Teeter Supermarket*, 842 F.2d 1496, 1511 (4th Cir. 1988) (citing *Hensley*, 461 U.S. at 434-37). Success warranting attorneys' fees occurs when the moving party "achieves some of the benefit the parties sought in bringing the suit." *Arvinger v. Mayor and City Council of Baltimore*, 31 F.3d 196, 200 (4th Cir. 1994).

In this case, Class Counsel obtained significant success on behalf of Plaintiffs.

In terms of recovery, the class is obtaining substantial benefits. A settlement of $1.5 million for alleged unpaid overtime and deductions is significant, especially when failure to claim such settlement proceeds will be redistributed to those individuals who timely claim their money. Significantly, under no circumstances will any unclaimed money revert back to Defendant. Indeed, $1.5 million is more than 50% of the estimated total lost wages Plaintiffs prepared. To recover more than 50% of that amount is a significant success. The certainty of receiving a high proportion of lost wages now is worth more to class members than the chance that they might – or might not – recover 100% of their losses at some point in the future. The relief obtained under the FLSA and the NCWHA is excellent in light of the defenses likely to be faced at trial and the risk of decertification. Accordingly, the results obtained have been excellent, particularly when viewed along with the risks and uncertainties of continuing to litigate this matter.

I. The Experience, Reputation, and Ability of the Attorneys (*Barber* Factor 9).

To determine the ninth *Barber* factor, courts review, among other things, attorneys' "expertise in complex litigation . . . [and] history of success in difficult, high-stakes litigation." *LandAmerica 1031 Exch. Servs. v. Chandler*, 2012 U.S. Dist. LEXIS 159630, at *17 (D.S.C. Nov. 7, 2012); *see also Braun v. Culp, Inc.*, 1985 U.S. Dist. LEXIS 20373, at *8 (M.D.N.C. Apr. 26, 1985). Class Counsel believe the recovery obtained was substantial. Defendant agrees to pay a total of $1.5 million to

settle this litigation. Weighing the benefits of the settlement against the risks associated with proceeding in the litigation, Class Counsel therefore assert the settlement is reasonable. The settlement amounts will be available to class members without the uncertainty and delay of trial or appeal.

Class Counsel has substantial experience prosecuting large-scale wage and hour class and collective actions. Dkt. 68, Hernandez Decl. ¶¶ 6-9 (listing GAH's substantial experience with wage and hour actions and listing cases). Class Counsel's skill and experience litigating wage and hour cases contributed to obtaining the settlement and weigh in favor of granting the requested fees. *Id.*; *see also Mackey v. Stetson*, 1981 U.S. Dist. LEXIS 16768, at *6 (W.D.N.C. Sep. 21, 1981) (holding that lead counsel's experience representing plaintiffs in class actions "justifies an upward adjustment in the award.").

J. The Undesirability of the Case Within the Legal Community in Which the Suit Arose (*Barber* Factor 10).

Courts in this Circuit may enhance attorneys' fees "when the prevailing party can establish that, absent an adjustment, [the plaintiffs] 'would have faced substantial difficulties in finding counsel in the local or other relevant market.'" *Lewis*, 1988 U.S. App. LEXIS 19610, at *11 (quoting *Delaware Valley*, 482 U.S. at 731 (1987)). Lawsuits that are undesirable, either because of novelty of the issue or difficulty of the litigation, are eligible for premium attorneys' fees. *See Alexander v. Hill*, 625 F. Supp. 567, 570 (W.D.N.C. 1985) (considering that the case in question was

"frustrating and thankless and require[d] great dedication" as the basis for an upward adjustment in attorneys' fees); *Mackey*, 1981 U.S. Dist. LEXIS 16768, at *6 (stating the fact that "not all lawyers are willing to handle" a certain type of case, warrants "[a]n upward adjustment . . . to reward plaintiffs' counsel's willingness to handle th[e] case, and to encourage others to do so in the future."); *see also Price v. City of Fayetteville*, 2015 U.S. Dist. LEXIS 32577, at *14 (E.D.N.C. Mar. 17, 2015) ("In light of the difficult . . . legal issues presented by this case, in addition to the challenges in development of the factual record, without guarantee of success or attorney fees, plaintiffs have demonstrated the undesirability of the case within the North Carolina, legal community in which the suit arose."). Relevant to this factor in this matter is that Class Counsel took this complex, expensive, and time-consuming case on a contingency basis, with no guarantee of payment, unless the litigation was successfully resolved by settlement or judgment. Class Counsel brought this case knowing they would face vigorous, hard-fought litigation from highly-motivated opponents and high-caliber defense attorneys. The GAH Class Counsel is also the only firm, not only in Mecklenburg County, but in the State of North Carolina, that practices *exclusively* wage and hour law, pursuant to the FLSA and NCWHA, giving Class Counsel a far greater degree of expertise and experience than other attorneys. These factors would render this case undesirable to many attorneys and, accordingly, this factor supports the fee request here.

K. The Nature and Length of the Professional Relationship Between Attorney and Client (*Barber* Factor 11).

A first-time, one-time, and/or contingency relationship may render this factor irrelevant from the attorneys' fee analysis, and therefore inconsequential. *See Price*, 2015 U.S. Dist. LEXIS 32577, at *14-15; *DeWitt*, 2013 U.S. Dist. LEXIS 172624, at *35; *Bunn v. Bowen*, 637 F. Supp. 464, 472 (E.D.N.C. 1986). In contrast, an on-going relationship with a client who brings repeat business to a firm tends to lead to lower hourly rates. *Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292, 1300, 1305 (11th Cir. 1988); *Duckworth v. Whisenant*, 97 F.3d 1393, 1396 (11th Cir. 1996). In situations such as this, with a one-time retention not likely to lead to repeat business from the same client, rates should be higher than what firms obtaining repeat business charge.

L. Attorneys' Fees Awards in Similar Cases (*Barber* Factor 12).

Courts also consider the size of the settlement to ensure that the percentage awarded does not constitute a "windfall." *See, e.g.*, *McAfee v. Boczar*, 738 F.3d 81, 92 (4th Cir. 2013); *Norwood v. Charlotte Mem'l Hosp. & Med. Ctr.*, 720 F. Supp. 543, 546 (W.D.N.C. 1989). The percentage used in calculating a given fee award may follow a sliding-scale and may bear an inverse relationship to the amount of the settlement. *See Goldenberg v. Marriott PLP Corp.*, 33 F. Supp. 2d 434, 438 (D. Md. 1998). Where the size of the fund is relatively small, courts typically find that requests for a greater percentage of the fund are reasonable. *See, e.g.*, *id.* (citing *In re First*

Fidelity Bancorporation Sec. Litig., 750 F. Supp. 160 (D.N.J. 1990), where the court awarded 30% of first $10 million, 20% of next $10 million, 10% of any recovery greater than $20 million).

The size of the proposed $1.5 million settlement weighs in favor of granting the requested fee award of 33.33% of the common fund. Numerous courts in this Circuit have granted requests for approximately one-third of the fund in cases with settlement funds similar to this one. *See, e.g.*, *Thomas v. FTS USA, LLC*, 2017 U.S. Dist. LEXIS 45217, at *15 (E.D. Va. Jan. 9, 2017) (approving a one-third fee of a $1.3 million settlement, plus $50,000 in costs, and finding that "a fee award of one-third of the settlement fund would be consistent with that awarded in other cases."); *Hackett v. ADF Rest. Invs.*, 2016 U.S. Dist. LEXIS 174775, at *14-17 (D. Md. Dec. 16, 2016) (approving class counsel one-third of settlement); *Phillips*, 2016 U.S. Dist. LEXIS 60950, at *29 (approving a 30% fee award on a $1.6 million settlement, plus over $100,000 in expenses); *McClaran v. Carolina Ale House Operating Co.*, LLC, 2015 U.S. Dist. LEXIS 112985, at *11 (D.S.C. Aug. 26, 2015) ("In a number of [wage and hour] cases, courts found that a fee award of one-third of the settlement fund was reasonable."); *Archbold v. Wells Fargo Bank, N.A.*, 2015 U.S. Dist. LEXIS 92855, at *13 (S.D. W. Va. July 13, 2015) (same); *Kirven v. Cent. States Health & Life Co.*, 2015 U.S. Dist. LEXIS 36393, at *34 (D.S.C. Mar. 23, 2015) (same); *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 482 (D. Md. 2014) (approving a one-third award

because of the contingency fee basis, complexity of the matter, and risk); *McDaniels v. Westlake Servs., LLC*, 2014 U.S. Dist. LEXIS 16081, at *38 (D. Md. Feb. 7, 2014) (same); *DeWitt*, 2013 U.S. Dist. LEXIS 172624, at *22 (same); *Faile*, 2012 U.S. Dist. LEXIS 189610, at *20 (same); *McLaurin*, 2012 U.S. Dist. LEXIS 13086, at *3 (approving one-third of a $1.8 million FLSA/NCWHA settlement for attorney's fees); *In re Red Hat, Inc. Sec. Litig.*, 2010 U.S. Dist. LEXIS 131249, at *3 (E.D.N.C. Dec. 10, 2010) (approving $6 million in attorney's fees from a $20 million settlement, equating to 30%); *Helmick v. Columbia Gas Transmission*, 2010 U.S. Dist. LEXIS 65808, at *15 (S.D. W. Va. July 1, 2010) ("[A] fee award in the amount of 33 1/3 % (one-third) is reasonable); *Hoffman v. First Student, Inc.*, 2010 U.S. Dist. LEXIS 27329, at *11 (D. Md. Mar. 23, 2010) (same); *Beaulieu v. EQ Indus. Servs.*, No. 5:06-CV-400-BR, Dkt. 427 (E.D.N.C. Dec. 23, 2009) (approving approximately $3 million in attorneys' fees, 38% of the settlement fund); *Smith*, 2007 U.S. Dist. LEXIS 2392, at *6 ("In this jurisdiction, contingent fees of one-third (33.3%) are common."); *see generally* Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. of Empirical Legal Studies, 27, 31-33 (2004) (finding that courts consistently award between 30% and 33% of the common fund in class action settlements); Newberg on Class Actions § 15:73 (5th ed.) (stating that most contingency agreements permit an attorney to receive one-third of his/her client's recovery).

V. Public Policy Considerations.

Plaintiffs also believe public policy considerations weigh in favor of granting Class Counsel's requested fees. In rendering awards of attorneys' fees, courts within the Fourth Circuit take into account the social and economic value of class actions, "and the need to encourage experienced and able counsel to undertake such litigation." *See Phillips*, 2016 U.S. Dist. LEXIS 60950, at *26-27; *Jones*, 601 F. Supp. 2d at 760; *In re Wachovia*, 2011 U.S. Dist. LEXIS 123109, at *23. The FLSA and NCWHA are remedial statutes designed to protect the wages of workers. *See A.H. Phillips, Inc. v. Walling*, 324 U.S. 490, 493 (1945) (referring to the FLSA's "remedial and humanitarian" purpose); *Salinas v. Commercial Interiors, Inc.*, 848 F.3d 125, 133 (4th Cir. 2017) (referring to the FLSA's "remedial and humanitarian" purpose) (citing *Tenn. C. v. Muscoda*, 321 U.S. 590, 597 (1944)). In order to achieve those remedial objectives and protect employees, courts recognize that adequate fee awards are essential for those who step forward to represent employees with wage and hour claims. *See Jackson v. Estelle's Place, LLC*, 391 F. App'x 239, 246 (4th Cir. 2010); *DeWitt*, 2013 U.S. Dist. LEXIS 172624, at *28.

VI. The Lodestar Cross Check Further Supports an Award to Plaintiffs' Counsel of One- Third of the Settlement Fund.

Although the percentage method is preferred within the Fourth Circuit, courts still use the lodestar method to "cross check" the reasonableness of the fee percentage requested, though rigorous scrutiny of the fee records is not necessary. *See Hall*, 2016

U.S. Dist. LEXIS 131009, at *20; *Phillips*, 2016 U.S. Dist. LEXIS 60950, at *6-7. As part of the cross check, the lodestar is determined by multiplying the hours reasonably expended on the case by a reasonable hourly rate. *See In re Dollar Gen. Stores FLSA Litig.*, 2011 U.S. Dist. LEXIS 98162, at *10 (E.D.N.C. Aug. 22, 2011). Courts then consider whether a multiplier is warranted and reasonable based on the factors set out in *Barber*, as detailed above. *See Berry*, 807 F.3d at 617; *see also Barber*, 577 F.2d at 226; *Anselmo v. W. Paces Hotel Grp., LLC*, 2012 U.S. Dist. LEXIS 164618, at *11 (D.S.C. Nov. 19, 2012).

Class Counsel's request for one-third of the proposed settlement Fund – $500,000.00 – is slightly more than their calculated "lodestar." Where supported by the relevant considerations, courts within the Fourth Circuit "have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorneys' fee." *See Jones*, 601 F. Supp. 2d at 766; *see, e.g., id.* (approving "a lodestar multiplier between 3.4 and 4.3 which is closer to the middle of the range considered reasonable by courts."); *Hatzey v. Divurgent, LLC,* 2018 U.S. Dist. LEXIS 187007, at *15-16 (E.D. Va. Oct. 9, 2018) (approving a multiplier of 6.4); *Fangman*, 2016 U.S. Dist. LEXIS 160434, at *36 (approving a multiplier of 5.6); *Nieman v. Duke Energy Corp.*, 2015 U.S. Dist. LEXIS 148260, at *5 (W.D.N.C. Nov. 2, 2015) (approving "an upward variance from a 4.5 multiplier"); *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 689 (D. Md. 2013) (approving a multiplier of 3); *Deloach*, 2003 U.S.

Dist. LEXIS 23240, at *38 (approving a 4.45 multiplier to a lodestar of approximately $16 million, bringing the fee award to approximately $70 million); *Goldenberg*, 33 F. Supp. 2d at 439 n.6 (approving a 3.6 multiplier, and stating that it was "well within the average range of 3-4.5 for comparable cases."). Multipliers which – like here – are less than 2, have been described as "modest." *Smith v. Krispy Kreme Doughnut Corp.*, 2007 WL 119157, at *1–3 (M.D.N.C. Jan. 10, 2007) (approving a "modest" multiplier of 1.6); *Kirkpatrick*, 2018 WL 6718948, at *5 (finding a multiplier of 1.8 "well within the normal range of lodestar multipliers); *Kruger v. Novant Health, Inc.*, No. 1:14CV208, 2016 WL 6769066, at *4–5 (M.D.N.C. Sept. 29, 2016) (approving a one-third fee of 3.69 times the lodestar).

Class Counsel spent over 1,100 hours litigating and settling this matter. Dkt. 68, Hernandez Decl. ¶ 35. The time spent by Class Counsel is described in Class Counsel's Declaration. The hours Class Counsel worked, at the rates set forth in the accompanying declaration, yields a lodestar calculated at approximately **$440,000.00**. Dkt. 68, Hernandez Decl. ¶¶ 42-43. Moreover, Class Counsel have incurred a total of approximately **$35,000.00** in litigation expenses.[7] Class Counsel's lodestar and expenses will increase as the settlement progresses, including time required preparing for and attending the final fairness hearing, answering class member questions,

[7] The litigation costs include mediation costs, travel, hotel, deposition and court hearing transcripts, postage and courier fees, transportation, working meals long distance, electronic research, photocopies, and other similar costs.

answering questions from the Settlement Administrator, as well as, travel, meals, and miscellaneous expenses relating to any potential upcoming fairness hearing, meetings with client(s) to discuss the potential fairness hearing, including traveling to meet with them, ongoing long-distance communications with class members and opt-in plaintiffs to discuss settlement payments before and after distribution of such payments, and any other miscellaneous expenses not anticipated. Dkt. 68, Hernandez Decl. ¶ 45. In light of the fact that Class Counsel will likely perform additional work after the final approval hearing, Class Counsel's request is rendered even more reasonable and will approximate the lodestar amount. *See ECOS*, 671 F. Supp. at 400-01; *In re Montgomery Cty.*, 83 F.R.D. at 323; *Reyes*, 2011 U.S. Dist. LEXIS 115984, at *23.

VII. Plaintiffs' Counsel Are Entitled to Reimbursement of Litigation Costs Under the Settlement Agreement.

Class Counsel request reimbursement of $**35,000** in litigation costs to be paid from the Fund, in addition to fees. Attorneys may be compensated for litigation expenses "reasonably incurred by counsel in prosecuting a class action." *See In Re Wachovia Corp.*, 2011 U.S. Dist. LEXIS 123109, at *30; *see also Smith*, 2007 U.S. Dist. LEXIS 2392, at *12-13; *Braun v. Culp, Inc.*, 1985 U.S. Dist. LEXIS 20373, at *13 (M.D.N.C. Apr. 26, 1985). Here, Class Counsel's current expenses were incidental and necessary to the representation of the Class. Dkt. 68, Hernandez Decl. ¶ 41. These expenses include court fees, transcripts of depositions and hearings, the

costs of the court-appointed notice administrator, and copies and exemplification of necessary papers. *Id.*

VIII. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Court grant her Motion for Attorneys' Fees and Reimbursement of Expenses, and enter an Order: (i) awarding attorneys' fees in the amount of $500,000.00 which represents 33.33% of the Fund, should the parties' proposed settlement receive final approval and become effective; and (ii) reimbursing $35,000 in litigation expenses (to be paid from the Fund) that Class Counsel incurred and anticipate, should the parties' proposed settlement receive final approval and become effective.

Respectfully submitted on November 4, 2019

BY: /s/ *Gilda Adriana Hernandez*

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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2019, I electronically filed the foregoing true and accurate copy of **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR APPROVAL OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES** with the Court using the CM/ECF system, and I hereby certify that I have thereby electronically served the document to the following:

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EXHIBIT

A

Declaration of Counsel
Charles R. Ash

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CA No. 3:18-CV-00532

SHAKEERA MYERS, on behalf of herself and all others similarly situated,	)
v.	)
LOOMIS ARMORED US, LLC,	)
Defendant.	)

DECLARATION OF CHARLES R. ASH, IV IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTIONS FOR APPOINTMENT OF PLAINTIFF'S COUNSEL AS CLASS COUNSEL; APPROVAL OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES, AND APPROVAL OF SERVICE AWARD

I, Charles R. Ash, IV, declare as follows:

1. I am an Associate Attorney at Sommers Schwartz, P.C. and a member of the firm's Complex Litigation Group, participating in the firm's direct and class action litigation on behalf of those harmed as a result of wage and overtime violations. My primary focus is 90% in class action – mostly consisting of class/collective action wage and hour cases.

2. I am an attorney in good standing admitted to practice in the State of Michigan and have been admitted *pro hac vice* before this Court.

3. I make these statements based on personal knowledge and would so testify if called as a witness at trial.

4. I received a Juris Doctor degree from Western Michigan University-Cooley Law School in 2009. Since 2014, I have represented plaintiffs in wage and hour class and collective actions.

5. I have represented collectives of plaintiffs in FLSA collective and class actions including plaintiffs in *Colon v Loomis Armored US*, LLC (1:16-cv-07350-AKH); *Armstrong v Concentrix Corporation* (3:16-cv-05363-WHO); *Barrett v Northshore University Health System* (1:17-cv-09088); *Bell v Coworx Staffing Services, LLC.* (5:18-cv-02833-EGS); *Flynn v Los Tres Amigos, Inc.* (18-cv-12426); *Neibarger v The Auto Club Group* (1:16-cv-01196); *Kie v Ivox Solutions, LLC* (2:15-cv-14296-RLB); *Dudley v. TrueCoverage, LLC.* (2:18-cv-03760-PA-AGR); *Flores v TFI International, Inc.* (3:12-cv-05790-JST); *Matthews v. Hyatt Corporation* (3:17-cv-00413); *Lopez v Stamps.com* (2:18-cv-01101-DSF-KS); and many others.

6. I am skilled and experienced in representing employees in wage and hour class and collective actions. It makes up over 90% of my practice.

7. I am a member of the State Bar of Michigan Labor & Employment Law and Young Lawyers Section and the Michigan Association for Justice.

8. I have reviewed the billing entries for my firm in this matter and believe them all to be reasonable and necessary in the prosecution of this litigation. We have worked a total of 33.70 hours on this case. At our usual hourly rates, these hours result in a total lodestar fee of $10,927.00. The contemporaneous time records are available and can be produced for inspection by the court if necessary.

9. I hereby certify that this statement is true and accurate to the best of my knowledge and belief.

Dated: October 14, 2019

Charles R. Ash, IV