IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ANTHONY HARMS AND MICHAEL TUTTLE, on behalf of themselves and others similarly situated,	)	
Plaintiffs,	)	**CIVIL ACTION**
v.	)	**No. 24-2452-KHV**
SYSCO KANSAS CITY, INC.,	)	
Defendant.	)	

MEMORANDUM AND ORDER

On July 1, 2025, Anthony Harms and Michael Tuttle, individually and on behalf of others similarly situated, filed an amended complaint against Sysco Kansas City, Inc., alleging that defendant failed to pay them for work hours and overtime. First Amended Complaint For Damages (Doc. #54). Plaintiffs sue under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, et seq., and the Kansas Wage Payment Act ("KWPA"), K.S.A. § 44-313, et seq. This matter is before the Court on Plaintiffs' [ ] Unopposed Motion For Order Certifying Class And Collective Action For Purposes Of Settlement, Preliminarily Approving Class And Collective Action Settlement, Directing Notice To The Class, And Appointing Class Counsel (Doc. #76) and Plaintiffs' Motion For Approval Of Attorneys' Fees Award And Litigation Costs (Doc. #77), both filed April 3, 2026. For reasons stated below, the Court sustains plaintiffs' request for conditional certification, preliminarily approves the proposed settlement, directs notice to the settlement class members, appoints class counsel and sustains plaintiffs' motion for preliminary approval of attorney fees and costs.

Factual and Procedural Background

Highly summarized, plaintiffs' First Amended Complaint For Damages (Doc. #54) alleges the following:

Defendant is a foodservice distributor. It employed Anthony Harms at its warehouse in Olathe, Kansas from December 2, 2022 through January 23, 2024. Defendant employed Michael Tuttle at its warehouse in Olathe from October 31, 2022 through October 14, 2024. Plaintiffs worked as Order Selectors on the "outbound" or "overnight" shift and earned $22.33 per hour of work.[1] During these periods of time, defendant did not properly compensate plaintiffs for all work they performed, and they did not receive overtime compensation at the rate of one and one-half times their regular rate of pay for all hours worked in excess of 40 hours each workweek. Defendant maintained a system which recorded, to the minute, the time an employee clocks in and clocks out. Defendant accessed the system and changed the clock-in and clock-out times to reflect less time than plaintiffs worked. In addition, defendant required plaintiffs to work off the clock before and after their shifts. Defendant also failed to include non-discretionary bonuses in plaintiffs' regular rate of pay when calculating overtime premium pay, resulting in plaintiffs being compensated at a rate below their proper overtime rate of pay.

Plaintiffs allege that defendant violated the FLSA by (1) failing to pay plaintiffs and other similarly situated employees an overtime premium equivalent of one and one-half their regular rate of pay for all hours they worked in excess of 40 each workweek and (2) failing to include non-discretionary bonuses in plaintiffs' and similarly situated employees' regular rates of pay when calculating overtime premium pay. Plaintiffs define the class as all persons currently and formerly

[1] Michael Shouse, James Monaco and Jacob Reynolds consented to join the case as plaintiffs.

employed by defendant or contracted on behalf of defendant in the position of "Order Selector" or in a position with similar job duties, who worked at the same location as plaintiffs and who worked the night or "outbound" shift during the three years from the date of the tolling agreement entered February 1, 2024, through the present.

Plaintiffs also allege that defendant violated the KWPA and Kansas common law because it failed to pay plaintiffs and putative class members straight time wages at their agreed hourly rate for all hours they worked during non-overtime weeks. Plaintiffs further allege that management instructed them to perform work before clocking in and after clocking out for which they were not paid their agreed upon hourly straight time rate. Plaintiffs define the class as all persons currently and formerly employed or contracted by defendant as hourly "Order Selectors" or in a position with similar job duties, who performed work at the same location as plaintiffs and who worked the night or "outbound" shift during the last five years.

Defendant denies all liability. Among other defenses, defendant asserts that it paid employees for all compensable work under the FLSA and state law and that employees are not entitled to compensation for hours they worked without defendant's actual or constructive knowledge.

In January of 2026, the parties engaged in settlement negotiations and reached a settlement in principle. Plaintiffs ask the Court to (1) conditionally certify the proposed settlement class for settlement purposes only; (2) grant preliminary approval of the proposed settlement; (3) direct notice to be disseminated to settlement class members; (4) appoint class counsel; and (5) approve attorney fees and costs.

Plaintiffs seek to conditionally certify a collective action consisting of "all persons employed as hourly, non-exempt employees who were employed by Defendant at the Olathe, Kansas, facility as outbound Order Selectors, from July 1, 2020, through January 26, 2026 and who are included in the class list as determined by Defendant's business records." Class And Collective Action Settlement Agreement (Doc. #76-1), § I.F. Under the proposed agreement, defendant agrees to pay a maximum gross settlement of $900,000, which includes attorney fees and costs not to exceed $300,000, service awards of $16,000 for the five named plaintiffs, and settlement administration costs and a reserve fund of $30,000. Id., §§ I.W, III.C, D. The parties estimate the net settlement fund to be $519,000. Id., § I.Y. Pursuant to the designated schedule, the parties plan to use a third-party administrator to send notices to putative class members. According to a specific allocation formula, the final members of each class would receive various payment amounts. Approximately 84 per cent of the net settlement fund is allocated for payments to class employees of overtime damages under the FLSA, and approximately 16 per cent of the net settlement fund is allocated for payments of straight time damages under the KWPA. Id., § III.A.1. Class employees will be assigned to one of four payment tiers based on their individual average hourly straight time rates of pay during the class period. Id., § III.A.2. Plaintiffs estimate the FLSA collective action includes 847 class members and the KWPA class includes 576 class members.

Plaintiffs' counsel created settlement damages modeling for the putative settlement classes based on pay and timekeeping information produced by defendant in advance of mediation. Plaintiffs' counsel initially calculated the "best day in court" damages using the amount of per-shift uncompensated time alleged by the plaintiffs, as applied to the number of overtime and non-overtime workweeks worked by these five individuals during the respective collective class and KWPA class periods. The plaintiffs alleged that they worked an average of 38.5 minutes of uncompensated time each shift, including compensable activities they allege they performed before clocking in and after clocking out. Assuming an average of four shifts per workweek, plaintiffs calculate 154 minutes of uncompensated time per workweek per class member, which results in a total of approximately $1,400,000 in overtime damages for the FLSA collective class (or approximately $2,800,000 million including liquidated damages) and a total of $300,000 in straight time damages for members of the KWPA class (or $400,000 including liquidated damages).

Based on negotiations and review of discovery, plaintiffs' counsel believes that a more realistic damages calculation is based on the average difference in minutes between the badge swipes for the plaintiffs and when they clocked in for each shift. Using this metric, each member of the collective class action performed 15 to 20 minutes of uncompensated work per shift, or 60 to 100 minutes of uncompensated work per workweek. This results in overtime damages for the collective class members between approximately $500,000 and $900,000 (or $1 million to $1.8 million including liquidated damages). The straight time damages for the members of the KWPA class range between approximately $150,000 and $250,000 (or $200,000 to $325,000 including liquidated damages).

Pursuant to the proposed settlement agreement, putative FLSA collective class members must submit a claim form to receive payment under the settlement. Each participating FLSA collective class member fully releases and discharges defendant from any and all federal wage and hour claims asserted in the litigation. Id., § III.E.2. Any putative KWPA class member may request exclusion from the KWPA class by submitting an opt-out statement to the settlement administrator. Each putative KWPA class member who does not validly opt out releases defendant from all state law wage and hour related claims. Id., § III.E.1. The releases are tailored to the claims asserted in the amended complaint and only apply to ERISA claims that are "related to or derivative of" the other released claims. Id., § III.E.1, 2. Putative class members may dispute their estimated settlement amount by contacting the settlement administrator before the claims form deadline. Id., § III.A.5.

Any unclaimed FLSA settlement funds will be redistributed and reallocated on a pro rata basis to increase the individual settlement payments to participating settlement members, not to exceed the equivalent of one hour of overtime per overtime workweek during the class period. Id., § III.A.6(a). Any amounts of unclaimed KWPA settlement funds will first be recalculated and distributed on a pro rata basis to the KWPA portion of the individual settlement awards for all participating settlement members who are also state law class members, but such distributions will be capped at 33 per cent of the original estimated KWPA portion of their damages. Id., § III.A.6(b). After any such distributions, any remaining unclaimed settlement funds will be reallocated and distributed to increase the FLSA overtime damages portion of the potential settlement awards to participating settlement members up to the equivalent of one hour of overtime with liquidated damages per overtime workweek during the class period. Id. After the reallocation and distribution of unclaimed settlement funds and unused reserve funds, any remaining unclaimed settlement funds and/or reserve funds will revert to defendant. Id., § III.A.6(d). Any uncashed settlement checks will be distributed to the Kansas State Treasurer's Unclaimed Property Fund in the name of the participating settlement member. Id., § IV.B.5(c).

Plaintiffs' counsel requests $300,000 in attorney fees, i.e., 33 per cent of the total settlement. Id., § III.D. Defendant may oppose the request. Id. The settlement agreement is not contingent upon the Court's approval of the requested attorney fees or costs and will be modified to reflect the amounts approved by the Court. Any amounts allocated as attorney fees or costs under the settlement agreement but not approved by the Court will be added to the net settlement fund. Id., § III.D.

Plaintiffs' counsel has recorded a combined total of 529.2 hours of work on this matter since late 2023. Declaration of Ryan Paulus (Doc. #78-1) filed April 3, 2026, ¶ 13. Ryan Paulus, the founder and managing partner of Cornerstone Law Firm, has worked a total of 372.6 hours and billed at a rate of $600 per hour until February of 2026, when he increased his billable rate to $800 per hour. Id., ¶¶ 6, 10. Mr. Paulus has devoted most of his practice to employment litigation and wage and hour collective and class actions. Id., ¶ 7. He has been appointed class counsel in several class and collective action matters. Id., ¶ 8. Partner M. Katherine Paulus has worked a total of 136.9 hours on this matter and billed at a rate of $600 per hour. Declaration of M. Katherine Paulus (Doc. #78-4) filed April 3, 2026, ¶¶ 3, 5. Ms. Paulus has litigated class and collective action matters for more than a decade. Id., ¶ 2. Associate attorney Drew Russell has worked a total of 19.7 hours and billed at a rate of $300 per hour. Declaration of Ryan Paulus (Doc. #78-1), ¶ 13. Plaintiffs' counsel did not bill for paralegal or law clerk time. Id. The number of hours worked by counsel multiplied by their standard hourly rates results in a lodestar calculation of $321,290.00. Id. Plaintiffs' counsel anticipates at least another 50 hours of billable time to finalize this matter. Id. Plaintiffs incurred $1,385.95 in case costs. Id., ¶ 14.

Analysis

Plaintiffs ask the Court to (1) conditionally certify the proposed settlement classes under the FLSA and KWPA for settlement purposes only; (2) grant preliminary approval of the proposed settlement; (3) direct notice to be disseminated to settlement class members; (4) appoint class counsel; and (5) preliminarily approve of attorney fees and costs. The Court separately addresses the proposed settlement agreement as to each putative class.

I. Collective Action – FLSA Claims

Plaintiffs assert that the Court should approve the proposed settlement of the FLSA collective action claims. Under the FLSA, on behalf of themselves and other "similarly situated" employees, plaintiffs can bring a collection action against their employer for unpaid wages or unpaid overtime. Genesis Healthcare Corp. v. Symczyk, 569 U.S. 66, 69 (2013) (quoting 29 U.S.C. § 216(b)). An FLSA lawsuit does not become a collective action unless other plaintiffs opt in by giving written consent. Christeson v. Amazon.com.ksdc, LLC, No. 18-2043-KHV, 2019 WL 354956, at *3 (D. Kan. Jan. 29, 2019). Accordingly, a named plaintiff cannot settle claims on behalf of putative class members who have not yet opted in. Id. at *4. Therefore, when putative class members have not received notice of the lawsuit and an opportunity to opt in, the named plaintiffs cannot seek final settlement approval. Id. Instead, they may ask the Court to (1) conditionally certify the proposed class settlement, (2) preliminarily approve the proposed settlement and (3) approve the proposed notice to putative class members. Id. at *5. If the Court does so, it will order the parties to send the approved notice to the putative class members, and it will establish a period during which putative class members may opt in. Id. When the opt-in period expires, the named plaintiffs may file a motion for final collective action certification and final settlement approval. Id.

Here, members of the putative collective action class have not received notice of the lawsuit and an opportunity to opt in. Accordingly, plaintiffs ask the Court to (1) conditionally certify the proposed class settlement, (2) preliminarily approve the proposed settlement, (3) approve the proposed notice to putative class members and (4) appoint class counsel.

A. Conditional FLSA Collective Action Certification

The FLSA provides that an employee may bring a collective action on behalf of other employees who are "similarly situated." 29 U.S.C. § 216(b). The Court uses a two-step approach when determining whether plaintiffs are "similarly situated" under Section 216(b) of the FLSA. Thiessen v. GE Capital Corp., 267 F.3d 1095, 1105 (10th Cir. 2001). The Court typically makes an initial "notice stage" determination whether plaintiffs are "similarly situated." Id. at 1102. That is, the Court makes a conditional determination whether a collective action should be certified for purposes of sending notice of the action to potential class members. See Brown v. Money Tree Mortg., Inc., 222 F.R.D. 676, 679 (D. Kan. Aug. 23, 2004). For conditional notification at the notice stage, the Court requires "nothing more than substantial allegations that the putative class members were together the victims of a single decision, policy, or plan." Thiessen, 267 F.3d at 1102 (quotations omitted). The standard for notification at the notice stage is a lenient one that typically results in class certification. See id. At the conclusion of discovery, the Court revisits the certification issue and makes a second determination using a stricter standard of "similarly situated." Id.

In the proposed settlement agreement, the putative collective class members are defined as "all persons employed as hourly, non-exempt employees who were employed by Defendant at the Olathe, Kansas, facility as outbound Order Selectors, from July 1, 2020, through January 26, 2026 and who are included in the class list as determined by Defendant's business records." Class And Collective Action Settlement Agreement (Doc. #76-1), § I.F. Plaintiffs sufficiently allege that the members were together the victims of a policy, plan or practice by defendant to deprive them of overtime compensation for all hours they worked in excess of 40 each work week. Thiessen, 267 F.3d at 1102. The Court therefore conditionally certifies the class.

B. Preliminary Approval Of The Proposed Settlement

Under the FLSA, parties must present a proposed settlement to the Court, which determines whether the settlement is fair and reasonable. Elston v. Horizon Global Americas, Inc., No. 19-2070-KHV, 2020 WL 6318660, at *4 (D. Kan. Oct. 28, 2020). To approve the settlement, the Court must find that (1) the litigation involves a bona fide dispute, (2) the proposed settlement is fair and equitable to all parties and (3) the proposed settlement contains an award of reasonable attorney fees. Id. The Court must also determine whether plaintiffs' service award is fair and reasonable. Id. If the settlement agreement satisfies these requirements, the Court may approve it to promote the policy of encouraging settlement. Id.

1. Bona Fide Dispute

Plaintiffs assert that the parties have a bona fide dispute about whether defendant owes them and putative class members wages and overtime for work which they performed before clocking-in and after clocking-out. When parties request approval of an FLSA settlement, they must provide sufficient information to determine whether a bona fide dispute exists. Id. To satisfy this burden, the parties must provide the following information: (1) a description of the nature of the dispute; (2) a description of the employer's business and the type of work that the employees perform; (3) the employer's reasons for disputing the employees' right to the wages or overtime; (4) the employees' justification for the disputed wages; and (5) if the parties dispute the computation of wages owed, each party's estimate of the number of hours worked and the applicable wage. Id.

Plaintiffs have established a bona fide dispute between the parties. A dispute exists as to whether defendant forced the collective class members to work overtime hours without compensation. Defendant is a wholesale foodservice distributor. The collective class members are Order Selectors on the "outbound" or "overnight" shift at defendant's warehouse and are responsible for picking orders for delivery to foodservice venues. Plaintiffs allege that they and other similarly situated outbound Order Selectors were required to perform "off-the-clock" work in that defendant's managers regularly instructed them to perform compensable work, including attending meetings, performing inspections and retrieving equipment, before clocking in and after clocking out.

Plaintiffs' best day in court damages calculation is based on 15 to 20 minutes of uncompensated time per shift worked, or 60 to 100 minutes of uncompensated time per workweek. Based on approximately 847 employees who worked as outbound Order Selectors at defendant's Olathe warehouse, this results in overtime damages for the class of between $500,000 and $900,000, or $1 million to $1.8 million including liquidated damages. The straight time damages for the members of the KWPA class would range between approximately $150,000 and $250,000, or $200,000 to $325,000 including liquidated damages.

Defendant denies plaintiffs' allegations and argues that it has at all times compensated plaintiffs and other outbound Order Selectors for all compensable work. Defendant denies that plaintiffs performed compensable work before clocking in or after clocking out. Defendant also disputes that the difference in time between when an employee badges into the facility and clocks in for his shift could serve as evidence that the employee performed compensable pre-shift work because that employee could have been performing activities that are not compensable, such as walking to the timeclock, or personal tasks, such as using the restroom or visiting the breakroom.

Based on this record, the Court finds that the parties have a bona fide dispute.

2. Fair And Equitable

To consider whether the proposed settlement is fair and equitable, the Court considers several factors, including the following: (1) whether the parties fairly and honestly negotiated the proposed settlement; (2) whether serious questions of law and fact exist which place the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable. See Rutter & Wilbanks Corp. v. Shell Oil Co., 314 F.3d 1180, 1188 (10th Cir. 2002); see also Rule 23(e), Fed. R. Civ. P. These factors, however, are not determinative; the Court must also consider factors that are relevant to the history and policy of the FLSA, such as whether the proposed agreement contains overly-broad releases or restrictive confidentiality provisions, or fails to provide recourse to opt-in members who object to the proposed settlement. Elston, 2020 WL 6318660, at *5. Courts typically apply a less stringent standard when deciding whether to grant preliminary approval of the proposed settlement. Freebird, Inc. v. Merit Energy Co., No. 10-1154-KHV, 2012 WL 6085135, at *5 (D. Kan. Dec. 6, 2012). The Court will ordinarily grant preliminary approval where the proposed settlement "appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval." Id. (quotations and citations omitted).

The parties in this matter are represented by experienced class action counsel and actively engaged in informal and formal discovery, as well as mediations. The record reveals no evidence of collusion. Under the proposed agreement, defendant agrees to pay a maximum gross settlement of $900,000, which includes attorney fees and costs not to exceed $300,000, a service award not to exceed $5,000 each for Harms and Tuttle, and a service award not to exceed $2,000 each for Shouse, Monaco and Reynolds. Approximately 84 per cent of the net settlement fund is allocated for payments of overtime damages under the FLSA to class employees. Class employees will be assigned to one of four payment tiers based on their individual average hourly straight time rates of pay during the class period. Each class employee will receive an amount equivalent to approximately one hour of overtime pay at a rate of one and one-half times the averaged straight time pay rate for that employee's payment tier for each overtime workweek they worked during the class period. Class employees may dispute the amount of their potential settlement by contacting the settlement administrator prior to the claims form deadline.

Any amounts of unclaimed settlement funds which were allocated FLSA funds resulting from class employees who do not submit a timely claim form, or reserve funds, will be redistributed and reallocated on a pro rata basis to increase the individual potential settlement payments to participating settlement members, not to exceed the equivalent of one hour of overtime per overtime workweek during the class period. Any amounts of unclaimed settlement funds which were allocated KWPA funds or reserve amounts will first be recalculated and distributed on a pro rata basis to the KWPA portion of the individual settlement awards for all participating settlement members who are also state law class members, but such distributions will be capped at 33 per cent of the original estimated KWPA portion of their damages. After any such distributions, any remaining unclaimed settlement funds will be reallocated and distributed to increase the FLSA overtime damages portion of the potential settlement awards to participating settlement members up to the equivalent of one hour of overtime with liquidated damages per overtime workweek during the class period. Only after the reallocation and distribution of unclaimed settlement funds and unused reserve funds will any remaining unclaimed settlement funds and/or reserve funds revert to defendant. Any uncashed settlement checks will be distributed to Kansas Unclaimed Property in the name of the class member.

The settlement agreement is not contingent upon the Court's approval of the requested attorney fees or costs and will be modified to reflect the amounts approved by the Court. Any attorney fees or costs under the settlement agreement which the Court does not approve will be added to the net settlement fund. The proposed agreement does not contain overly-broad releases or restrictive confidentiality provisions.

This case involves serious questions of law and fact that could place the ultimate outcome of this action in dispute, and would likely result in costs, risks and delay of trial and appeal. As noted above, defendant disputes that employees performed compensable work before or after clocking in and challenge plaintiffs' ability to accurately compute that time, even if it did occur. Further litigation could jeopardize the class members' ability to recover. At the very least, ongoing litigation will result in additional expenses for both plaintiffs and defendant. The Court preliminarily finds that the proposed settlement is fair and equitable.

3. Reasonable Attorney Fees

The FLSA requires that a settlement agreement include an award of a reasonable attorney fee and costs of the action. 29 U.S.C. § 216(b). Though the Court has discretion to determine the amount and reasonableness of the fee, the FLSA fee award is mandatory. Id. For percentage of the fund awards, the Court applies a hybrid approach, which combines the percentage of the fund method with the specific factors traditionally used to calculate the lodestar. Gottlieb v. Barry, 43 F.3d 474, 482–83 (10th Cir. 1994). This method calls on the Court to calculate a lodestar amount, which represents the number of hours reasonably spent multiplied by a reasonable hourly rate. Foster v. Robert Brogden's Olathe Buick GMC, Inc., 17-2095-DDC-JPO, 2019 WL 6715470, at *4 (D. Kan. Dec. 10, 2019).

The hybrid approach also requires the Court to consider the factors set out in Johnson v. Georgia Highway Exp., Inc., 488 F.2d 714 (5th Cir. 1974). See Gottlieb, 43 F.3d at 483. Those factors are (1) time and labor required; (2) novelty and difficulty of the questions presented in the case; (3) skill requisite to perform the legal service properly; (4) preclusion of other employment by the attorneys due to acceptance of the case; (5) customary fee; (6) whether the fee is fixed or contingent; (7) any time limitations imposed by the client or circumstances; (8) amount involved and results obtained; (9) experience, reputation and ability of the attorneys; (10) undesirability of the case; (11) nature and length of the professional relationship with the client; and (12) awards in similar cases. Johnson, 488 F.2d at 717–19.

Here, the proposed settlement agreement provides for attorney fees in the amount of $300,000 paid from the gross settlement fund of $900,000. Defendant may oppose the request. The settlement agreement is not contingent upon the Court's approval of the requested attorney fees or costs and will be modified to reflect the amounts approved by the Court. Any amounts allocated as attorney fees or costs under the settlement agreement but not approved by the Court will be added to the net settlement fund.

a. Calculating The Lodestar

To calculate the lodestar, the Court first determines the number of hours that plaintiffs' counsel reasonably expended on the litigation. Case v. Unified Sch. Dist. No. 233, Johnson Cnty., Kan., 157 F.3d 1243, 1249 (10th Cir. 1998). Counsel's work is considered reasonable if it is useful and of a type ordinarily necessary to secure the result obtained. Johnson v. City of Tulsa, Okla., 489 F.3d 1089, 1106–07 (10th Cir. 2007). In reviewing whether counsels' hours were necessary, the Court considers the following factors: (1) whether the tasks being billed would normally be billed to a paying client, (2) the number of hours spent on each task, (3) the complexity of the case, (4) the number of reasonable strategies pursued, (5) the responses necessitated by the maneuvering of the other side and (6) potential duplication of services by multiple lawyers. Robinson v. City of Edmond, 160 F.3d 1275, 1281 (10th Cir. 1998). When the

Court uses the lodestar as a cross check of the reasonableness of the fee under the common fund approach, it need not exhaustively scrutinize the hours documented by counsel. Voulgaris v. Array Biopharma, Inc., 60 F.4th 1259, 1267 (10th Cir. 2023); Brown v. Phillips Petroleum Co., 838 F.2d 451, 456 (10th Cir. 1988) (in determining reasonable fees from common benefit fund, court need not use lodestar formulation when reasonable fee is derived by giving greater weight to other Johnson factors).

Plaintiffs request fees for a total of 529.2 hours of work by three attorneys spent investigating, prosecuting, mediating and settling this case. More specifically, since the inception of this matter in late 2023, Ryan Paulus, the managing partner of Cornerstone Law Firm, has worked a total of 372.6 hours, partner M. Katherine Paulus has worked a total of 136.9 hours, and associate attorney Drew Russell has worked a total of 19.7 hours. In support of their request, plaintiffs' counsel submitted the contemporaneous time records which are necessary for a "full lodestar analysis." See Case, 157 F.3d at 1250 (under lodestar, plaintiffs' counsel must submit "meticulous, contemporaneous time records that reveal, for each lawyer for whom fees are sought, all hours for which compensation is requested, and how those hours were allotted to specific tasks"). Plaintiffs' counsel did not include paralegal or law clerk time in the 529.2 hours. Plaintiffs' counsel explains that the hours expended were necessary to achieve the settlement of this matter given the complexity of the factual and legal issues, the size of the putative class and the review and analysis required by voluminous pay and timekeeping records. They further argue that the hours worked were also reasonably expended and necessary because defendant vigorously defended the claims in the lawsuit by opposing plaintiffs' initial motion for conditional certification,[2] opposing plaintiffs' motion for leave to file an amended complaint and serving individual discovery to the named plaintiffs.

This case is not legally complex, especially considering counsels' significant FLSA collective action and Rule 23 class action litigation experience. However, given two putative classes, the size of each group and the review of voluminous records and data required to calculate damages, the case presents factual complexities. Based on its review of the billing records provided by plaintiffs' counsel, the Court finds that the tasks being billed would normally be billed to a paying client, the number of hours spent on each task was reasonable and the record reveals little evidence of duplication of services by multiple attorneys. The total request of 529.2 hours appears reasonable, as does counsel's estimate that they will bill another 50 hours to administer the settlement. Solely for purposes of the lodestar as a cross check, the Court assumes that plaintiffs' counsel reasonably expended 529.2 hours on the litigation.

The second step in calculating the lodestar is to determine the reasonable hourly rates for counsel. Perry v. Kan. Star Casino, LLC, No. 24-1183-KHV, 2025 WL 3522109, at *6 (D. Kan. Dec. 9, 2025). In determining whether attorney billing rates are reasonable, the Court establishes a rate for each lawyer based upon the norm for comparable private firm lawyers in the area, which the Court calculates at the time of the fee award. Id. A reasonable hourly rate comports with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation and the District of Kansas and the Kansas City metropolitan area comprise the relevant community for determining reasonable market rates. Id.

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[2] On July 11, 2025, based on plaintiffs' filing of the First Amended Complaint For Damages (Doc. #54), the Court overruled Plaintiffs' Motion For FLSA Conditional Collective Action Certification And Notice (Doc. #23) filed April 3, 2025 as moot. See Text Order (Doc. #55).

Here, Mr. Paulus billed at a rate of $600 per hour from the onset of the litigation in early 2023 until February of 2026, at which time he increased his billable rate to $800 to adjust for inflation. Ms. Paulus billed at an hourly rate of $600, and associate Drew Russell billed at an hourly rate of $300. In their declarations, both Mr. Paulus and Ms. Paulus state that they bill clients in non-contingency matters at the same hourly rates. Declaration of Ryan Paulus (Doc. #78-1), ¶ 10; Declaration of M. Katherine Paulus (Doc. #78-4), ¶ 5.

The Court finds that billing rates of $600 per hour for Mr. and Ms. Paulus comport with hourly rates which this Court and other courts within the District of Kansas have considered or approved for attorneys of similar experience levels in FLSA collective action matters. See, e.g., Perry, 2025 WL 3522109, at *6 (considering "solely for purposes of the lodestar cross check" hourly rates of $750 for attorneys with extensive FLSA experience); Hoffman v. Poulsen Pizza LLC, No. 15-2640-DDC-KGG, 2017 WL 25386, at *7 (D. Kan. Jan. 3, 2017) (approving hourly rates of $600, $450 and $400 in an FLSA settlement even "though on the high end of the approvable range"); Florece v. Jose Pepper's Rests., LLC, No. 20-2339-ADM, 2021 WL 5042715, at *7 (D. Kan. Oct. 29, 2021) (approving $575 and $475 hourly rates in FLSA case). In 2022, another court within the District of Kansas found a $600 hourly rate for Ms. Paulus reasonable based on her "extensive experience litigating class and collective action wage and hour lawsuits." Marquez v. Midwest Div. MMC, LLC, No. 19-2362-DDC-ADM, 2022 WL 17093036, at *6 (D. Kan. Nov. 21, 2022). More than a decade ago, another court within the District of Kansas found an hourly rate of $500 reasonable for Mr. Paulus when conditionally approving an FLSA collective action settlement. See Order (Doc. #40) filed April 1, 2015 at 3, in Jones v. Wyandot, Inc., No. 14-cv-2112-TJJ (D. Kan. Apr. 1, 2015).

The Court finds that a billing rate of $800 per hour for Mr. Paulus is excessive. Mr. Paulus increased his billing rate to $800 per hour in February of 2026 primarily due to inflation, but he concedes that the U.S. Bureau of Labor Statistics online inflation calculator yields a rate closer to $750, when comparing the buying power of $600 in March of 2020 to the same buying power in February of 2026. Declaration of Ryan Paulus (Doc. #78-1), ¶ 10 n.1. If Mr. Paulus had used March of 2022 instead, the buying power of $600 in February of 2026 would be $680. See https://www.bls.gov/data/inflation_calculator.htm. Accordingly, solely for purposes of the lodestar cross check, the Court uses an hourly rate of $700 for Mr. Paulus for the hours he worked after he increased his billing rate.

Mr. Russell graduated from law school in 2023 and joined Cornerstone Law Firm directly out of law school. Most of the work he performed on this matter took place in December of 2024 and January of 2025, when he was less than two years out of law school. See Exhibit 2 (Doc. #80) filed April 21, 2026 at 38–45. An hourly rate of $300 is excessive for Mr. Rusell's work on this case, which appears to be mostly related to discovery. Instead, for purposes of the lodestar cross check only, the Court uses an hourly rate of $200 for Mr. Russell.

The number of hours worked by counsel multiplied by their hourly rates, as revised by the Court, results in a lodestar calculation of $314,480. Plaintiff also had $1,385.95 in case costs. Plaintiffs' counsel anticipates that at least another 50 hours of billable time will be required to finalize this matter. The fee request of $300,000 means that plaintiffs' counsel is seeking less than the lodestar, resulting in a blended rate of approximately $566.89 per hour ($300,000/529.2 estimated hours) and a negative lodestar multiplier of 0.95 ($300,000/$314,480). Under the percentage method, the award of $300,000 accounts for 33 per cent of the maximum gross settlement fund of $900,000. The lodestar and percentage methods weigh in favor of finding that the requested attorney fees are reasonable.

b. The *Johnson* Factors

The Johnson factors also support the attorney fee sought. As to time and labor required, counsel spent 529.2 hours investigating, prosecuting, mediating and settling this case. They did not include paralegal or law clerk time in the 529.2 hours, and they expect to spend an additional 50 hours finalizing the settlement. The legal issues presented in this matter were not novel or particularly difficult, but the complexity of the facts and the damages calculations required a high level of skill. Plaintiffs' counsel have considerable experience handling wage and hour matters and creating dynamic damage models, and their requested attorney fee of 33 per cent of the maximum gross settlement fund is appropriate and customary. Foster, 2019 WL 6715470, at *6 (finding a fee of 33 per cent of common fund typical); see also Enegren v. KC Lodge Ventures LLC, No. 17-2285-DDC-GEB, 2019 WL 5102177, at *10 (D. Kan. Oct. 11, 2019) (skill required to litigate case supported approval of requested fee where counsel created damage model spreadsheet using multiple factors specific to each plaintiff to assess potential damages and allocate settlement monies fairly and reasonably).

Plaintiffs' counsel assert that due to the size and complexity of this type of wage and hour class action and the time and resources required to litigate them, counsel is only able to pursue a handful of these matters at any given time. Declaration of Ryan Paulus (Doc. #78-1), ¶ 6. Plaintiffs' counsel dedicated 529.2 hours of attorney work to this case over more than three years. This factor favors approval of the requested fee award. See Enegren, 2019 WL 5102177, at *11 (factor favored approval of fee award where counsel spent 318 attorney hours and 180 paralegal hours on a matter for more than two years and was precluded from working on other matters).

Courts also ask whether plaintiffs agreed to a fixed or contingent fee because the percentage of the recovery agreed to helps illuminate the attorney fee expectations when counsel accepted the case, even though such arrangements should not determine the Court's decision. Johnson, 488 F.2d at 718. Plaintiffs' counsel customarily enters into 40 per cent contingency fee agreements with named and representative plaintiffs in putative class and collective actions. Declaration of M. Katherine Paulus (Doc. #78-4), ¶ 6. Here, the named plaintiffs each entered into fee agreements with counsel calling for a 40 per cent contingency fee. Id., ¶ 7. Plaintiffs' counsel undertook this litigation with the understanding and expectation that it would require the expenditure of significant amounts of time and resources and under the risk that they may ultimately recover nothing. Id., ¶ 8. Although named plaintiffs signed contingency fee agreements which permit counsel to seek a contingency fee of up to 40 per cent of any recovery, plaintiffs' counsel is only seeking an award of fees equal to 33 per cent of the total settlement amount. This requested percentage is consistent with what this Court and other courts within this District have approved in FLSA common fund class settlements. See, e.g., Elston, 2020 WL 6318660, at *7 (FLSA award of 38.6 per cent within range of one-third of settlement fund); Foster, 2019 WL 6715470, at *6 (33 per cent of common fund typical); Hoffman, 2017 WL 25386, at *8 (approving 33 per cent of common fund settlement). This factor favors approval of plaintiffs' fee request.

As for results obtained, each participating member will receive approximately one hour of overtime for each work week they worked 39 hours or more in any week during the five-year period and, depending on the rate of class participation, an equal amount in liquidated damages. In weeks that they worked less than 39 hours, they will still receive one hour of straight time pay. By entering into a tolling agreement, the class period extended the usual two-year statute of limitations to a five-year period, which benefits the class members. This factor weighs in favor of the fee request.

Both Mr. and Ms. Paulus have extensive experience litigating collective and class action matters in federal court.

Based on the Court's analysis of the lodestar and the Johnson factors, the Court concludes that the attorney fees requested—$300,000, or 33 per cent of $900,000—are fair and reasonable. The Court thus sustains plaintiffs' request for preliminary approval of the proposed attorney fees award.

In sum, because (1) the litigation involves a bona fide dispute, (2) the proposed settlement is fair and equitable to all parties concerned and (3) the proposed settlement contains an award of reasonable attorney fees, the Court finds that the proposed settlement agreement is both fair and reasonable as to the collective action under the FLSA. The Court therefore sustains plaintiffs' motion for conditional certification of the collective action, preliminarily approves the settlement agreement as to the FLSA claims, directs notice to be disseminated to settlement class members and appoints Cornerstone Law Firm as class counsel.

II. Class Action – KWPA Claims

Plaintiffs ask this Court to (1) conditionally certify the putative KWPA class for settlement purposes only; (2) grant preliminary approval of the proposed settlement; (3) direct notice to the putative class members; and (4) appoint class counsel.

Under Rule 23(e), Fed. R. Civ. P., the Court must approve class action settlements. Approving the parties' proposed settlement is appropriate where (1) the proposed class is suitable for certification, (2) the settlement terms are "fair, reasonable, and adequate" and (3) the proposed class notice satisfies due process requirements. Fed. R. Civ. P. 23(e), (a)–(b), (g); see also Bailes v. Lineage Logistics, LLC, No. 15-2457-DDC-TJJ, 2016 WL 7242501, at *2 (D. Kan. Dec. 15, 2016). Additionally, the Court may grant plaintiffs' request to approve attorney fees and costs only if the requested amount is reasonable. Gottlieb, 43 F.3d at 482. The Court considers each requirement below.

A. Class Certification

Class certification is appropriate if, after rigorous analysis, the Court finds that the proposed class satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure. Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350–51 (2011). To certify a class seeking damages for a common injury—as this proposed class does—plaintiff must meet six requirements: numerosity, commonality, typicality, adequacy, predominance and superiority. Four are found in Rule 23(a), and two come from Rule 23(b)(3). Namely, the court must find that

> (1) the class is so numerous that joinder of all members is impracticable;
>
> (2) there are questions of law or fact common to the class;
>
> (3) the claims or defenses of the representative parties are typical to the claims or defenses of the class; and
>
> (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a)(1)–(4). To satisfy Rule 23(b)(3), the court also must find that (1) common questions of law or fact predominate over individualized questions and (2) a class action is the superior method for adjudicating the controversy.

Numerosity, commonality and typicality are easily established. Plaintiffs estimate that the KWPA putative class numbers 576 class members, making joinder impracticable. Elston, 2020 WL 6318660, at *8. The "commonality" requirement of Rule 23(a)(2) requires plaintiffs to show that "questions of law or fact are common to the class, that is, members of the putative class possess the same interest and suffer the same injury." Knight v. Mill-Tel, Inc., 11-1143-EFM, 2013 WL 3895341, at *2 (D. Kan. July 29, 2013). The putative class members all held hourly Order Selector positions at a single warehouse location in Olathe, Kansas and were all subject to the same alleged time and pay policies. See, e.g., Garcia v. Tyson Foods, Inc., 890 F. Supp. 2d 1273, 1283 (D. Kan. 2012) (commonality requirement met for KWPA class where employees were paid under same policies), aff'd, 770 F.3d 1300 (10th Cir. 2014). Numerous fact questions are common to all of the putative class members, including whether defendant had a practice or policy of requiring its Order Selectors to perform compensable work before clocking in and/or after clocking out, and whether defendant accurately paid putative class members all of their wages due for the hours they worked. These common questions of fact lead to the common question whether defendant's timekeeping practices violated the KWPA. Whether plaintiffs can show that defendant's practices violated the KWPA "will resolve an issue central to" all of the putative class members' claims. Wal-Mart Stores, 564 U.S. at 350 ("What matters to class certification . . . is not the raising of common 'questions'—even in droves—but, rather, the capacity of a class wide proceeding to generate common answers apt to drive the resolution of the litigation."). Plaintiffs' claims and interests are identical to the putative settlement class members' claims and interests. Bailes, 2016 WL 7242501, at *2.

To satisfy the adequacy requirement, plaintiffs must qualify as adequate class representatives. To meet this mark, they must show that they are members of the class, their interests do not conflict with those of other class members, and they can prosecute the action vigorously through competent counsel. Id. at *2. Here, plaintiffs are members of the class which they seek to represent, and no conflicts of interest between plaintiffs and potential class members are discernible. The record does not reveal any known impediments to prevent plaintiffs from prosecuting the litigation. Plaintiffs' counsel have represented numerous class action plaintiffs, leaving the Court with no concerns about counsel's competency. Adequacy is satisfied.

The predominance requirement is met when the proposed class is "sufficiently cohesive to warrant adjudication by representation." Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 623 (1997). In other words, if a common issue would lead the class to prevail or fail in unison, that one issue predominates and the predominance requirement is satisfied. Amgen Inc. v. Conn. Ret. Plans & Tr. Funds, 568 U.S. 455, 459–60 (2013). Here, if plaintiffs prove that defendant required Order Selectors to perform compensable tasks while off-the-clock without paying them for this work, all class members would be entitled to an award of damages. Predominance is satisfied.

Finally, when considering the requirement of superiority, the Court considers four things: (1) the class members' interests in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already begun by or against class members; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (4) the likely difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3)(A)–(D). Because the parties here ask to certify a settlement class, the Court need not consider the fourth consideration—ease of management. Amchem, 521 U.S. at 620. As for the other relevant considerations, this case presents what often is termed a negative-value suit: if class members pursued their claims individually, it would cost each one more to bring a lawsuit than they possibly could recover. Bailes, 2016 WL 7242501, at *3. This economic truth creates a disincentive for class members to bring and prosecute separate actions. The record contains no evidence that other class members have filed suit against defendant on this case's theory, and consolidating the class members' claims in one case before one court is preferable to duplicative litigation. Superiority is satisfied.

The Court conditionally certifies the KWPA class for settlement purposes only.

B. Preliminary Approval of the Proposed Settlement

Before a class action may be settled, the Court must find that the settlement is fair, reasonable and adequate. Fed. R. Civ. P. 23(e)(2). If it is, the Court preliminarily approves the settlement and orders the parties to send notice of settlement to the class members. Bailes, 2016 WL 7242501, at *4. After class members have an opportunity to object to or opt out of the settlement, the Court considers any objections, determines again whether the proposed settlement is fair, reasonable and adequate and either approves or denies the settlement. Id.

To determine whether a proposed settlement is fair, reasonable and adequate, the Court considers whether: (1) the parties judge the settlement as fair and reasonable; (2) the parties fairly and honestly negotiated the proposed settlement; (3) serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; and (4) the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation. Id.; see also Harlow v. Sprint Nextel Corp., No. 08-2222-KHV, 2018 WL 2568044, at *5–6 (D. Kan. June 4, 2018).

1. Parties Deem The Settlement Fair And Reasonable

The first factor asks whether the parties deem the settlement fair and reasonable. Plaintiffs' motion and proposed settlement agreement provide detailed information about the settlement fund calculations and the damage model. The parties estimated that the actual damages in this case for the KWPA class are between approximately $150,000 and $250,000, so a net settlement of approximately $83,040 (16 per cent of the total net settlement fund of $519,000) is reasonable given these actual damage calculations. The fully liquidated damage outcomes are between approximately $200,000 to $325,000, so the $83,040 net settlement fund for the KWPA class represents between 26 per cent and 42 per cent of the potential fully liquidated damage outcomes in this case. As noted above, any amounts of unclaimed KWPA settlement funds will be recalculated and distributed on a pro rata basis to the KWPA portion of the individual settlement awards. Any remaining unclaimed KWPA settlement funds will then be reallocated and distributed to increase the FLSA overtime damages portion of the potential settlement awards. Only after these reallocations will unclaimed funds revert to defendant. The proposed agreement does not contain overly-broad releases or restrictive confidentiality provisions.

Considering that the alternative would be protracted and uncertain litigation that would cost both parties more in attorney fees and time, the parties agree that the settlement fund represents a fair and reasonable amount. Accordingly, the first factor weighs in favor of preliminary approval.

2. Fair And Honest Negotiation

As noted above, the parties in this matter are represented by experienced class action counsel and actively engaged in informal and formal discovery, as well as mediations. The record contains no evidence of collusion between the parties. This second factor weighs in favor of preliminary approval.

3. Question Of Law And Fact

Many questions of law and fact place the ultimate outcome of this litigation in doubt. As noted above, defendant disputes that employees performed compensable work before or after clocking in and challenges plaintiffs' ability to accurately compute that time, even if it did occur. If defendant were to prevail on the issue of preemption under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 141, et seq., the approximately 576 KWPA class members would be precluded from recovering straight time damages under the KWPA or Kansas common law. Further litigation could jeopardize the class members' ability to recover. At the very least, ongoing litigation will result in additional expenses for both plaintiffs and defendant. If this matter proceeded to trial, the parties still could file motions for summary judgment, and defendant still could dispute whether this case should be certified on a classwide basis and whether it was liable for liquidated damages. As shown, material questions of law and fact remained when the parties settled, so this factor supports preliminary approval.

4. Immediate Recovery Compared To Future Relief

Courts judge the fairness of a proposed compromise by weighing plaintiffs' likelihood of success on the merits against the amount and form of the relief offered in settlement. Carson v. Am. Brands, Inc., 450 U.S. 79, 88 n.14 (1981). Here, plaintiffs' best-case scenario is class certification and full recovery on the merits. Plaintiffs' worst-case scenarios are numerous, including (1) the class is not certified; (2) the class is decertified after preliminary certification; (3) summary judgment is granted to defendant; (4) plaintiffs lose at trial; or (5) the appellate court overturns the grant of certification or the award of damages at a later stage. Given the important questions of law and fact in this litigation, the result is not assured for either side and both sides face significant risk of an all-or-nothing victory or defeat. The value of immediate and certain recovery outweighs the value of protracted and costly litigation in which the settlement class may recover nothing. The fourth factor weighs in favor of preliminary approval.

All four factors support preliminary approval of the parties' proposed settlement agreement. The Court therefore preliminarily approves the parties' settlement agreement, approves the proposed notice and directs issuance of the notice to all identifiable settlement class members and appoints Cornerstone Law Firm as class counsel.

IT IS THEREFORE ORDERED that Plaintiffs' [ ] Unopposed Motion For Order Certifying Class And Collective Action For Purposes Of Settlement, Preliminarily Approving Class And Collective Action Settlement, Directing Notice To The Class, And Appointing Class Counsel (Doc. #76) filed April 3, 2026 is **SUSTAINED. The Court preliminarily certifies the**

proposed class and collective action, preliminarily approves the parties' settlement agreement, approves the form and the content of the notice attached to the settlement agreement as Exhibit A, Notice Of Proposed Settlement Of Class And Collective Action Lawsuit And Fairness Hearing (Doc. #76-2), and appoints Cornerstone Law Firm as class counsel. On Monday, October 25, 2026, at 1:30 p.m., the Court will hold a fairness hearing to consider final approval of the proposed settlement. The hearing may be reset or adjourned at any time by order of the Court without further notice other than publicly available notice through ECF.

IT IS FURTHER ORDERED that Plaintiffs' Motion For Approval Of Attorneys' Fees Award And Litigation Costs (Doc. #77) filed April 3, 2026 is **SUSTAINED**.

IT IS FURTHER ORDERED that a jury trial in this matter is set for **January 4, 2027 at 9:00 AM in Kansas City**. **On or before July 14, 2026, the parties shall submit to the magistrate judge a proposed scheduling order which ensures that this case will be ready for trial on January 4, 2027. Settlement negotiations, execution of final settlement paperwork and/or performance of a settlement agreement will not constitute grounds to continue trial. In addition, the parties are further advised that the necessity for plaintiffs to obtain final certification of a class and collective, and for the parties to obtain final judicial approval of a settlement, will not constitute grounds to continue trial. Absent final approval of a settlement, trial will proceed on January 4, 2027.**

Dated this 1st day of July, 2026 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge