IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JODDA MOORE, and TERRELL AIKEN, individually and on behalf of all similarly situated persons, Plaintiffs, v. INDEPENDENCE BLUE CROSS, LLC d/b/a INDEPENDENCE BLUE CROSS, Defendant.	No. 2:23-cv-00566 (Judge Scott)

PLAINTIFFS' BRIEF IN SUPPORT OF THEIR UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND COLLECTIVE SETTLEMENT AND PROVISIONAL CERTIFICATION OF SETTLEMENT CLASS AND COLLECTIVE

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Plaintiffs, Jodda Moore and Terrell Aiken ("Plaintiffs"), by and through their counsel, Mobilio Wood, and Cohn Lifland Pearlman Herrmann & Knopf LLP, file the instant Brief in Support of Their Unopposed Motion for Preliminary Approval of Class and Collective Settlement and Provisional Certification of Settlement Class and Collective, averring in support thereof as follows:

I. INTRODUCTION

Subject to this Court's approval, the Parties have reached a settlement in this putative class and collective action.[1] With the assistance of the Honorable Thomas J. Rueter (Ret.) at a full-day mediation, the Parties reached a settlement wherein Independence Blue Cross, LLC

[1] For purposes of this brief, Plaintiffs incorporate by reference the definitions contained in the Settlement Agreement and Release ("Settlement Agreement"), a copy of which is attached hereto as **Exhibit "1"**. Capitalized terms not otherwise defined herein are defined in the Settlement Agreement.

("Independence" or the "Company") will pay $667,000 to settle all claims in this action, while denying any and all liability and disputing the amount of alleged damages.

As set forth in Plaintiffs' Complaint, Plaintiffs assert claims for overtime violations under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.* ("FLSA") and the Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 260.1, *et seq.* ("PMWA"), as well as for unpaid straight-time wages under Pennsylvania common law. Plaintiffs' claims arise from Independence's alleged failure to pay hourly customer service representatives ("CSRs") for time spent booting up and logging-in to their computers at the start of each business day. Plaintiffs' Complaint seeks an award of alleged unpaid wages, as well as liquidated damages, attorneys' fees, and costs. The Parties' proposed $667,000 settlement will resolve all such claims.

Plaintiffs make this unopposed motion: (1) to preliminarily approve the Parties' Settlement Agreement; (2) to certify the Settlement Class under Federal Rule of Civil Procedure 23(b)(3) (on a provisional basis, for settlement purposes only); (3) to conditionally certify the Settlement Collective under 29 U.S.C. § 216(b) (also on a provisional basis, for settlement purposes only); (4) for preliminary approval of the settlement with respect to the Rule 23 class claims; (5) for preliminary approval of the settlement under the FLSA; (6) for preliminary approval of service awards to Plaintiffs; (7) for preliminary approval of Class Counsel's request for an award of attorneys' fees and costs; (8) for approval of the Notice of Settlement; (9) to appoint Plaintiffs as class representatives; (10) to appoint Mobilio Wood, and Cohn Lifland Pearlman Herrmann & Knopf LLP, as class counsel; (11) to appoint RG/2 Claims Administration LLC as the Administrator of the settlement; and (12) to set a date for the Final Approval Hearing.

In the event that litigation should continue, the Parties anticipate devoting substantial additional time and resources to this matter. Accordingly, in the interest of judicial economy, and

because the proposed settlement is fair, reasonable and adequate, Plaintiffs respectfully request that the Court order provisional certification of the Settlement Class under Rule 23(b)(3) for settlement purposes, conditional certification of the Settlement Collective under 29 U.S.C. § 216(b) for settlement purposes, appoint Class Counsel for settlement purposes, and grant preliminary approval of the Notice of Settlement, settlement procedure, and the Parties' Settlement Agreement.[2]

II. BRIEF STATEMENT OF FACTS

Plaintiffs are former employees of Independence who worked as CSRs in the Company's Member Help Team. Plaintiff, Ms. Moore also worked in Independence's Commercial department. Independence's CSRs are non-exempt employees under the FLSA and PMWA, and thus are entitled to be compensated at one-and-one half times their regular hourly rate for all hours worked in excess of forty (40) per workweek.

Independence's CSRs worked remotely or in person at IBX's Philadelphia, Pennsylvania headquarters prior to the COVID-19 pandemic, or remotely from their homes since the pandemic. The job duties and responsibilities of Independence's CSRs consist of, among other things, managing incoming calls and customer service inquiries, educating and assisting callers with respect to Independence's insurance products, and identifying and assessing customer needs to achieve satisfaction. Independence's CSRs utilize a computer provided by Independence in order to perform their job duties.

Plaintiffs allege that Independence requires CSRs to undertake a series of steps to setup their computers and necessary software applications prior to the start of their shifts (hereinafter

[2] Although Independence does not oppose this motion for provisional certification of a settlement collective and settlement class, it reserves the right to defend against any and all of the claims asserted by Plaintiffs in the event the Court denies the motion to approve the settlement.

referred to as "Computer Log-in Procedures"), but does not compensate them for this time. Independence denies Plaintiffs' claims.

III. PROCEDURAL HISTORY

On February 13, 2023, Plaintiffs initiated this action via Class and Collective Action Complaint ("Complaint"). (Doc. 1). Plaintiffs' Complaint asserts claims for unpaid overtime wages under the FLSA and PMWA, and unpaid straight-time wages pursuant to the Pennsylvania common law of unjust enrichment. Id. Soon after filing the Complaint, both Plaintiffs filed their written consent to join the FLSA collective action. (Doc. 3, 3-1, 3-2).

The Parties thereafter entered into a tolling agreement, and engaged in significant informal discovery prior to reaching settlement. Specifically, Independence produced: data reflecting the number of CSRs employed by month during the three-year period preceding the filing of the Complaint; data reflecting regular and overtime hours worked by CSRs during the three year period preceding the filing of the Complaint; Independence's instructions to CSRs for reporting time; Plaintiffs' pay stubs; Plaintiffs' time records; training documentation on time reporting; Independence's policies on overtime pay and attendance; records reflecting Plaintiffs' interactions with Independence's Business Technology Services employees; Independence's Code of Conduct; information regarding the computer hardware and software used by CSRs; information regarding the schedule for computer updates that could potentially impact computer login time; and, a video which purported to demonstrate that the computer login process for CSRs took less than two (2) minutes. See Declaration of Peter C. Wood, Jr., Esq. ("Wood Dec."), at ¶ 8 (attached hereto as **Exhibit "2"**). Plaintiffs provided Independence with information concerning their experiences performing uncompensated Computer Log-in Procedures. Id. Based on this exchange of information, the Parties' counsel investigated the facts relating to Plaintiffs' claims, and developed a model for calculating estimated class-wide damages. Id. at ¶ 9.

On November 16, 2023, the Parties participated in an in-person mediation before the Honorable Thomas J. Rueter (Ret.), wherein they successfully reached a settlement. The proposed settlement requires Independence to pay $667,000 in exchange for a release of the Released Claims. In summary, the Released Claims include any and all claims for the performance of Computer Log-in Procedures from February 13, 2019 through the Effective Date of the Agreement, including claims for the payment of back wages, associated damages, fees and costs, and any 401(k) or other retirement or employee benefit plan contributions in connection with such wages. Plaintiffs now seek preliminary approval of that settlement.

IV. PROPOSED SETTLEMENT TERMS

With the assistance of Judge Rueter, the Parties agreed to the following settlement terms:

1. Independence will pay the Maximum Settlement Amount of $667,000 into a Qualified Settlement Fund to be distributed to members of the Rule 23 class action and FLSA collective action (which should be provisionally certified for purposes of settlement only), subject to the formula described below. (Settlement Agreement, ¶ 53.) Independence will wire the Maximum Settlement Amount to the Qualified Settlement Fund within ten (10) business days following the Effective Date, which is thirty-five (35) calendar days after the last of the following occurs: (a) the Court's Final Approval Order and judgment approving the Settlement Agreement is entered on the docket, (b) the case is dismissed with prejudice and with all rights of appeal waived, or (c) any appeal of the Court's Final Approval Order and judgment is fully and finally resolved by affirming final approval of the Settlement Agreement in its entirety with no further right of appeal or review. See Settlement Agreement at ¶¶ 8, 69.

2. The Settlement Agreement defines the Settlement Class as including all current and former employees who have worked for Independence at any time from February 13, 2020 through February 13, 2023 (the "Relevant Period") in-person or remotely in one or more of the following

positions: customer service representatives, senior customer service representatives, lead customer service representatives, and/or team lead operations employed in Independence's Customer Service Department, regardless of the members/clients they serve (the "Covered Positions"). See id. at ¶¶ 6, 37.

3. The Settlement Agreement defines the Settlement Collective as including all current and former employees who have worked for Independence at any time during the Relevant Period in-person or remotely in one or more Covered Positions. See id. at ¶ 39.

4. Subject to the approval of the Court, each Settlement Collective Member and Settlement Class Member will be fully advised of the settlement pursuant to the Notice of Settlement attached as Exhibit "A" to the Settlement Agreement, which will be sent by the Administrator by U.S. First Class Mail. See id. at ¶¶ 20, 79. To provide the best notice practicable, before mailing the Notice of Settlement, the Administrator will take reasonable efforts to identify current addresses for Settlement Collective Members and Settlement Class Members through the U.S. Post Office's National Change of Address Database. See id. at ¶ 73(b). If any Mailing Packets are returned as undeliverable, the Administrator will conduct Skip Tracing to identify alternative mailing addresses and re-mail the returned Mailing Packets. See id. at ¶ 73(c). The Notice of Settlement will advise each Settlement Collective Member and Settlement Class Member of the number of Qualifying Workhours that will be used to calculate the pro rata portion of that individual's Settlement Payment. See id. at Exhibit "A", p. 3.

5. Settlement Class Members who do not opt out of the settlement by submitting a timely and valid Request for Exclusion will be deemed Participating Class Members. See id. at ¶¶ 22, 32, 95, and Exhibit "A" thereto, at p. 4.

6. Participating Class Members and Settlement Collective Members (defined as

members of the Settlement Collective who are also Participating Class Members) will receive a Settlement Payment. See id. at ¶¶ 22, 41-43, 91, and Exhibit "A" thereto, at p. 3.

7. Regardless of whether a Participating Class Member cashes his or her settlement check, each Participating Class Member will release all Released Claims, including those under the FLSA.[3] See id. at ¶ 92, and Exhibit "A" thereto, at p. 4.

8. The backs of the settlement checks issued to Settlement Collective Members will include Check Opt-In Form language. See id. at ¶¶ 2, 91, and Exhibit "A" thereto, at p. 3. If the settlement check is signed and cashed or otherwise negotiated, the Check Opt-In Form language will operate as a consent to join the lawsuit for settlement purposes only under 29 U.S.C. § 216(b) and a release of the Released Claims. See id. at ¶¶ 93, 94, and Exhibit "A" thereto, at p. 3. The Reverse Positive Pay Process described in the Agreement will be used to confirm that the Check Opt-In Form language has not been altered and has been signed and thus that the Settlement Payment should be honored.

9. A Settlement Participant's Settlement Payment will be a flat sum of $125 ("Minimum Payment") plus a pro rata share of the Residual Net Settlement Amount. See id. at ¶ 58. Each Settlement Participant's pro rata share will be calculated based on the number of hours he or she worked during the Relevant Period as an employee in a Covered Position as reflected in Independence's time records and human resources records. See id. at ¶ 59. Paid time

[3] Cf. Copley v. Evolution Well Servs. Operating, LLC, No. 2:20-CV-01442-CCW, 2023 WL 1878581, at *7 (W.D. Pa. Feb. 10, 2023) ("The proposed settlement would prevent Rule 23 class members who do not affirmatively opt-out from later bringing any FLSA claim—even if they did not opt-in to the FLSA collective. The Third Circuit has not spoken on this issue, but other Courts of Appeals have found that opt-in FLSA claims may properly be released through an opt-out Rule 23 class settlement. Because the Third Circuit has held that final judgments in class action cases have a preclusive effect on other claims, it would likely find that such releases of FLSA opt-in claims are acceptable.") (citations omitted).

off and leaves of absence do not count as worktime for purposes of counting hours worked. See id.

10. Fifty percent (50%) of the Settlement Payment to each Settlement Participant shall be considered wages subject to withholding of all applicable local, state, and federal taxes, and the other fifty percent (50%) shall be considered non-wages for the settlement of interest claims, liquidated and/or multiple damages, and any statutory or civil penalties available under any applicable local, state, and federal laws. See id. at ¶¶ 62, 63.

11. The Parties will engage a third-party settlement administrator to administer the notice, allocation, and distribution of the Qualified Settlement Fund, and who will report periodically to counsel for Plaintiff and Independence and whose fees will be paid from the Qualified Settlement Fund. See id. at ¶¶ 73, 75. The Parties propose in the Agreement using RG/2 Claims Administration LLC ("RG/2") as the Administrator. Filed herewith as **Exhibit "3"** is a Declaration of William W. Wickersham, Esq. on behalf of RG/2, which includes a detailed estimate of RG/2's fees and costs for performing all tasks and duties described in the Agreement.

12. All of the Administrator's fees and costs associated with the settlement, all of Class Counsel's fees and costs incurred in this lawsuit and its settlement, all payments to Settlement Participants, the service payments to Plaintiffs, and all Settlement Participants' and Plaintiffs' share of payroll taxes on their Settlement Payments and the service payments will be paid from the $667,000 Maximum Settlement Amount. See id. at ¶ 53. Only Independence's portion of payroll taxes owed on the W-2 back wage payments is excluded from the Maximum Settlement Amount. See id.

13. If any of the checks issued to Participating Class Members are not cashed or otherwise negotiated by the conclusion of the Second Check Cashing Period, the Administrator

will pay the amounts of those uncashed checks, as well as any unused portion of the Reserve Amount, to the charitable organization approved by the Court in its final approval order. See id. at ¶ 106.

14. The settlement provides for a full and final release and waiver of any and all claims for payment of wages or other compensation, damages, fees, and 401(k) or other retirement benefits for the performance of Computer Log-in Procedures from February 13, 2019 through the Effective Date.[4] See id. at ¶ 71.

V. LEGAL STANDARD

A. Standard for Preliminary Approval of a Rule 23 Settlement

There is a "strong presumption in favor of voluntary settlement agreements," which is "especially strong in 'class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.'" Ehrheart v. Verizon Wireless, 609 F.3d 590, 594-95 (3d Cir. 2010) (quoting In re General Motors Corp. Pick–Up Truck Fuel Tank Prods. Liability Litig., 55 F.3d 768, 784 (3d Cir.1995)); see, e.g., In re Warfarin Sodium Antitrust Litig., 391 F.3d 516, 535 (3d Cir. 2004) ("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged."); In re Sch. Asbestos Litig., 921 F.2d 1330, 1333 (3d Cir. 1990) (noting that the court encourages settlement of complex litigation "that otherwise could linger for years"); Wal-Mart Stores, Inc. v. Visa U.S.A. Inc., 396 F.3d 96, 116 (2d Cir. 2005) (noting the "strong judicial policy in favor of settlements, particularly in the class action context"); Officers for Justice v. Civil Serv. Comm'n, 688 F.2d 615, 625 (9th Cir. 1982) ("[V]oluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true

[4] The release does not release any other claim(s), including wage-and-hour claim(s) unrelated to Computer Log-in Procedures.

in complex class action litigation.").

"The decision of whether to approve a proposed settlement of a class action is left to the sound discretion of the district court." Girsh v. Jepson, 521 F.2d 153, 156 (3d Cir. 1975). In exercising this discretion, courts should give "proper deference to the private consensual decision of the parties." Hanlon v. Chrysler Corp., 150 F.3d 1011, 1027 (9th Cir. 1988).

Preliminary approval, which is sought here, "is not a commitment to approve the final settlement." Wood v. Saroj & Manju Invs. Philadelphia LLC, No. CV 19-2820-KSM, 2020 WL 7711409, at *10 (E.D. Pa. Dec. 28, 2020). Instead, at the preliminary approval stage, the court is "tasked only with determining whether 'the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval.'" Checchia v. Bank of Am., N.A., No. CV 21-3585, 2023 WL 2051147, at *3 (E.D. Pa. Feb. 16, 2023) (quoting In re Nat'l Football League Players' Concussion Injury Litigation, 301 F.R.D. 191, 198 (E.D. Pa. 2014)); see In re Traffic Exec. Ass'n-E. R.R.s, 627 F.2d 631, 634 (2d Cir. 1980) ("[Preliminary approval] is at most a determination that there is what might be termed 'probable cause' to submit the proposal to class members and hold a full-scale hearing as to its fairness."). In this regard, "[t]he settlement is entitled to 'an initial presumption of fairness' if 'the court finds that: (1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.'" Wood, 2020 WL 7711409, at *10

(quoting In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods., 55 F.3d 768, 785 (3d Cir. 1995)).[5]

B. Standard for Preliminary Class Certification Under Rule 23

"[W]here, as here, the Court has not already certified a class, the Court must also determine whether the proposed settlement class satisfies the requirements of Rule 23." In re Processed Egg Prods. Antitrust Litig., No. 08-MD-2002, 2014 WL 828083, at *2 (E.D. Pa. Feb. 28, 2014) (citing Amchem v. Windsor, 521 U.S. 591, 620, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997)). "At the preliminary approval stage, the Court may conditionally certify the class for purposes of providing notice." Id. (citing David F. Herr, Annotated Manual for Complex Litigation § 21.632 (West, 4th ed. 2013)). "[A] settlement class can be preliminarily certified based on a less rigorous analysis than that necessary for final certification." In re: Amtrak Train Derailment in Philadelphia, Pennsylvania, No. 15-MD-2654, 2016 WL 1359725, at *4 (E.D. Pa. Apr. 6, 2016); see In re Processed Egg Prods., 2014 WL 828083, at *2-3 (preliminarily approving settlement agreement and certifying class based on perfunctory review of the Rule 23 requirements); Sullivan v. DB Invs., Inc., 667 F.3d 273, 287-93 (3d Cir. 2011) (recounting process in lower court, wherein the district court entered an order approving conditional certification after a cursory review established Rule 23 requirements were met, and then later approved final class settlement and certification upon more robust review).

[5] "At the final approval stage, a more demanding test applies, requiring the Court to examine the so-called Girsh factors: (1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation." Torres v. BrandSafway Indus. LLC, No. 2:21-CV-01771-CCW, 2023 WL 346667, at *2 (W.D. Pa. Jan. 20, 2023) (citing In re General Motors Corp., 55 F.3d at 785).

To preliminarily certify a settlement class, a district court "must find pursuant to Federal Rule of Civil Procedure 23(a) that the class is suitably numerous, there are questions of law and fact common to the class, [the named plaintiffs'] claims are typical of the class, and [the named plaintiffs] will adequately represent the entire class." Checchia, 2023 WL 2051147, at *4. "Additionally, Rule 23(b)(3) requires that common issues predominate over any individual claims, that a class action is the superior method of adjudication, and that the proposed class is ascertainable." Id.

C. Standard for Conditional Certification of an FLSA Collective

The purpose of the FLSA is to provide protection to employees in an effort to ensure that all workers covered by the act receive a "fair day's pay for a fair day's work." Barrentine v. Arkansas-Best Freight Sys. Inc., 450 U.S. 728, 739 (1981). The FLSA "generally requires an employer to pay its employees a minimum of one and a half times their rate of pay for all hours worked in excess of forty hours during a week." Higgins v. Bayada Home Health Care Inc., 62 F.4th 755, 759 (3d Cir. 2023) (citing 29 U.S.C. § 207(a)(1)).

Section 216(b) of the FLSA authorizes employees to bring an action on behalf of themselves and others "similarly situated," and provides that "[n]o employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought." 29 U.S.C. § 216(b). Thus, the FLSA "collective action" "is a form of group litigation in which a named employee plaintiff or plaintiffs file a complaint '[o]n behalf of' a group of other, initially unnamed employees who purport to be 'similarly situated' to the named plaintiff." Halle v. W. Penn Allegheny Health Sys. Inc., 842 F.3d 215, 223 (3d Cir. 2016).

In an FLSA collective action, an employee must affirmatively opt-in to an action by filing a written consent with the Court. 29 U.S.C. § 216(b); Halle, 842 F.3d at 223-24. Therefore, unlike in Rule 23 class actions, there are only two requirements to proceed as a representative action under § 216(b): (1) all plaintiffs must be "similarly situated" and (2) a plaintiff must consent in writing to take part in the suit. See Halle, 842 F.3d at 224.

The Third Circuit has embraced two different standards for certification of a collective action: (1) a "fairly lenient standard" applied to conditional certification – which is sought here; and (2) a stricter standard applied to final certification, whereby the court must actually determine whether the plaintiffs are similarly situated. See Zavala v. Wal Mart Stores, Inc., 691 F.3d 527, 535-36 (3rd Cir. 2012). To succeed on a motion for conditional certification, "a plaintiff must produce some evidence, 'beyond pure speculation,' of a factual nexus between the manner in which the employer's alleged policy affected her and the manner in which it affected other employees." Id. at 536 n.4 (quoting Symczyk v. Genesis HealthCare Corp., 656 F.3d 189 (3d Cir.2011)). In other words, a plaintiff "must show three things: (1) an employer policy, (2) that affected the Plaintiffs in a particular way, and (3) that also affected other employees in a similar way." Dunkel v. Warrior Energy Servs., Inc., 304 F.R.D. 193, 200 (W.D. Pa. 2014). As the Third Circuit has explained, "'conditional certification' is not really a certification. It is actually the district court's exercise of [its] discretionary power . . . to facilitate the sending of notice to potential class members . . . ." Zavala, 691 F.3d at 536 (some internal quotations marks omitted) (alteration in original).

Accordingly, at the conditional certification stage, "the court does not weigh the evidence, resolve factual disputes, or reach the merits of plaintiff's claims." Neal v. Air Drilling Assocs., No. 3:14-CV-1104, 2015 WL 225432, at *3 (M.D. Pa. Jan. 16, 2015). Nor do courts consider

whether a named plaintiff is, in fact, similarly situated enough to opt-in plaintiffs to maintain a collective action until final certification. Halle, 842 F.3d at 226. Instead, the "sole consequence" of conditional certification is the dissemination of a court-approved notice to a potential collective member. Id. at 224.

D. Standard for Approval of an FLSA Settlement

The Third Circuit "has not addressed whether FLSA actions claiming unpaid wages may be settled privately prior to obtaining judicial approval." Haley v. Bell-Mark Techs. Corp., No. 1:17-CV-1775, 2019 WL 1925116, at *2 (M.D. Pa. Apr. 30, 2019). "Absent such guidance, district courts within the Third Circuit have routinely adopted the majority position and have required judicial approval as a precondition to amicable resolution of [FLSA] claims." Id.

Under the standard employed by district courts within the Third Circuit, "a proposed compromise may satisfy judicial review if it is a 'fair and reasonable resolution of a *bona fide* dispute over FLSA provisions.'" Id. (quoting Lynn's Food Stores, Inc. v. United States, 679 F.2d 1350, 1355 (11th Cir. 1982)); see also Kutz v. Cargill Cocoa & Chocolate, Inc., No. 3:19-CV-0176, 2019 WL 5457776, at *5 (M.D. Pa. Oct. 23, 2019). Further, the resolution should "reflect a reasonable compromise over issues, such as FLSA coverage or computation of back wages." Bellan v Capital Blue Cross, 2022 WL 736441, at *2 (M.D. Pa. 2022) (quoting Lynn's Food Stores, Inc., 679 F.2d at 1354-55). "[C]ourts in the Third Circuit also analyze 'whether the settlement furthers or impermissibly frustrates the implementation of the FLSA in the workplace.'" Id. (quoting Bettger v. Crossmark, Inc., No. 13-cv-2030, 2015 WL 279754, at *4 (M.D. Pa. Jan. 22, 2015)). Finally, "[o]nce a court has approved the substantive terms of a settlement, it must then address the reasonableness of any attorneys' fees stipulated to by the parties as part of the

settlement agreement." Id. (citing In re Chickie's & Pete's Wage and Hour Litig., No. 12-cv-6820, 2014 WL 911718, at *4 (E.D. Pa. Mar. 7, 2014)).

VI. ARGUMENT

A. The Court Should Preliminarily Approve the Proposed Settlement and Provisionally Certify a Settlement Class

1. Preliminary Approval of the Proposed Settlement is Appropriate

As noted above, a settlement is entitled to an initial presumption of fairness, and thus warrants preliminary approval, if: (1) the negotiations occurred at arm's length; (2) sufficient discovery has occurred; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected. See Wood, 2020 WL 7711409, at *10 (quoting In re Gen. Motors Corp., 55 F.3d at 785). Here, all four of these factors greatly weigh in favor of preliminary approval.

First, there should be no question that settlement negotiations occurred at arm's length. Not only did the Parties engage in months of settlement discussions prior to ultimately reaching an agreement, but the parties enlisted the assistance of a qualified mediator, Judge Rueter, to aid them in resolving this matter. See Checchia, 2023 WL 2051147, at *3 ("In addition, settlement in this case was aided by a mediator, which is compelling evidence that vigorous and arms-length negotiations occurred.") (citing In re Nat'l Football League, 301 F.R.D. at 198-99).

Indeed, as further evidence of the Parties' vigorous negotiations, the $667,000 proposed settlement payment is substantially larger than a recent settlement approved by this Court in a computer boot-up case involving a similar putative class size and similar facts, which was litigated for several years prior to resolution. See Garcia v. Vertical Screen, Inc., No. 2:18-cv-04718-AB (E.D. Pa.), Order Granting Joint Motion for Approval of the Parties' FLSA Settlement Including Attorneys' Fees, Costs and Service Award (approving settlement consisting of payment of $80,000

in damages to 68 FLSA opt-in plaintiffs following the court's denial of the named plaintiff's motion for class certification, in action alleging that the defendant failed to compensate approximately 900 hourly paid researchers for time spent logging-in to their computers) (attached hereto as **Exhibit "4"**). The settlement also compares favorably to settlements approved in other similar wage and hour class and collective actions. See, e.g., Turner v. Concentrix Servs. US, Inc., No. 1:18-cv-1072, 2023 WL 2002091 (W.D. Ark. Jan. 11, 2023) (approving FLSA collective action settlement involving allegations by customer service representatives of logging into computer software off-the-clock, in which $603,500 was to be distributed to a maximum of 2,710 opt-ins); Kress v. Fulton Bank, N.A., No. 19-18985 (CDJ) (MJS), 2021 WL 9031639 (D.N.J. Sept. 17, 2021) (report and recommendation recommending preliminary approval of class and collective action settlement involving similar allegations encompassing 2,044 employees and a payment to the class and collective of approximately $557,000, after deducting counsel fees and costs of administration), report and recommendation adopted, No. 119CV18985CDJMJS, 2022 WL 2357296 (D.N.J. June 30, 2022).

Next, although no formal written discovery requests were served, the Parties nonetheless voluntarily exchanged a substantial volume of information that enabled them to develop a class-wide damages model. See Fulton-Green v. Accolade, Inc., No. CV 18-274, 2019 WL 316722, at *3 (E.D. Pa. Jan. 24, 2019) ("Even though formal discovery has not started, reflecting a rational appreciation of the immediately verifiable matters giving rise to this claim, the parties exchanged a substantial amount of information regarding the discrete issues in this case."). Further, Independence provided a video that purported to reflect the Computer Prep Work steps taking less than two (2) minutes to complete, which enabled Plaintiffs to meaningfully assess certain difficulties in establishing damages.

In addition, Plaintiffs are represented by two (2) law firms, which have experience in prosecuting wage and hour claims, including Rule 23 class actions and FLSA collective actions. See Wood Dec. at ¶¶ 4, 7; Declaration of Alex A. Pisarevsky, Esq. ("Pisarevsky Dec."), at ¶¶ 6, 9-10 (attached hereto as **Exhibit "5"**). The recommendation of settlement by experienced counsel is entitled to significant weight. See, e.g., Rodriguez v. Pyramid Operating Grp., Inc., No. CV 20-1207, 2023 WL 2562978, at *3 (E.D. Pa. Mar. 17, 2023) ("The beliefs of experienced counsel as to the fairness of settlements should be granted significant weight.") (citing In re Gen. Instrument Sec. Litig., 209 F. Supp. 2d 423, 431 (E.D. Pa. 2001)).

Finally, to date, there have been no objections to the proposed settlement, and both Plaintiffs support the settlement. See Checchia, 2023 WL 2051147, at *4 ("As of the writing of this opinion, no class members have yet objected. Therefore, all the elements having been met, we will preliminarily approve this class settlement . . . .").

For all of the foregoing reasons, the Court should find that the proposed settlement is entitled to an initial presumption of fairness, and therefore preliminarily approve the settlement.

2. The Rule 23 Settlement Class Should Be Provisionally Certified for Purposes of Settlement.

As set forth above, Rule 23(a) requires a class representative to demonstrate 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 of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. See Fed. R. Civ. P. 23(a). A class representative must also satisfy the requirements of Rule 23(b)(3), which mandates that that common issues predominate over any individual claims, that a class action is the superior method of adjudication, and that the proposed class is ascertainable. See Fed. R. Civ. P. 23(b).

As further described below, the Settlement Class here meets the requirements of Rule 23(a) and (b)(3), and, accordingly, the Court should provisionally certify it for purposes of settlement.

a. The Proposed Settlement Class Meets the "Numerosity" Requirement of Rule 23(a)(1)

Rule 23(a)(1) requires the class to be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "While there is no minimum number of plaintiffs required to satisfy the numerosity requirement, it is generally understood that a potential number of plaintiffs greater than 40 is enough to maintain a class action." Checchia, 2023 WL 2051147, at *4 (citing Stewart v. Abraham, 275 F.3d 220, 226-27 (3d Cir. 2001)).

Here, Independence has identified 1,382 employees who meet the definitions of the proposed Settlement Class and/or Settlement Collective. Rule 23(a)(1)'s "numerosity" requirement is therefore easily satisfied.

b. The Proposed Settlement Class Meets the "Commonality" Requirement of Rule 23(a)(2)

Rule 23(a)(2)'s commonality element "requires that the proposed class members share at least one question of fact or law in common with each other." In re Warfarin, 391 F.3d at 528 (citing Baby Neal ex. rel. Kanter v. Casey, 43 F.3d 48, 56 (3d Cir. 1994)). "This question of fact or law must be 'of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.'" Checchia, 2023 WL 2051147, at *4 (quoting In re Nat'l Football League, 301 F.R.D. at 200).

In the matter at hand, there are several questions of law and fact that are common to the class, including whether Independence required its CSRs to perform uncompensated Computer Prep Work prior to the start of their shifts; whether Independence's alleged policy of requiring CSRs to perform uncompensated Computer Prep Work violated the FLSA, PMWA, and/or

Pennsylvania common law; and whether Independence's alleged conduct was willful. Importantly, the fact that Settlement Class Members may receive varying amounts of damages does not defeat the "commonality" requirement. See, e.g., Ripley v. Sunoco, Inc., 287 F.R.D. 300, 308 (E.D. Pa. 2012) ("[W]hile each Plaintiff's recovery might be different due to the number of hours that he or she worked without proper compensation, the wrong was from Defendant's alleged common timekeeping and payroll policies that precluded proper compensation for overtime work."). Plaintiffs therefore submit that Rule 23(a)(2)'s commonality requirement is met.

c. The Proposed Settlement Class Meets the "Typicality" Requirement of Rule 23(a)(3)

Rule 23(a)(3) requires that the class representatives' claims be "typical of the claims . . . of the class." Fed. R. Civ. P. 23(a)(3). "The typicality inquiry is intended to assess . . . whether the named plaintiffs have incentives that align with those of absent class members so as to assure that the absentees' interests will be fairly represented." In re Nat'l Football League, 301 F.R.D. at 200 (quoting Baby Neal, 43 F.3d at 57-58) (alteration in original). "The typicality criterion is intended to preclude certification of those cases where the legal theories of the named plaintiffs potentially conflict with those of the absentees by requiring that the common claims are comparably central to the claims of the named plaintiffs as to the claims of the absentees." Checchia, 2023 WL 2051147, at *5 (quoting Baby Neal, 43 F.3d at 57). "[C]ases challenging the same unlawful conduct which affects both the named plaintiffs and the putative class usually satisfy the typicality requirements irrespective of the varying fact patterns underlying the individual claims." Id. (quoting Baby Neal, 43 F.3d at 58).

Here, Plaintiffs' claims are typical of the claims of the Settlement Class, in that Plaintiffs' claims and the Settlement Class Members' claims are all based on the alleged failure of

Independence to compensate them for time spent performing Computer Prep Work prior to the start of their shifts. Accordingly, the "typicality" requirement is met.

d. The Proposed Settlement Class Meets the "Adequacy" Requirement of Rule 23(a)(4)

Rule 23(a)(4) requires the class representative to "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent." Amchem, 521 U.S. at 625 (citing General Telephone Co. of Southwest v. Falcon, 457 U.S. 147, 157–158, n. 13, 102 S.Ct. 2364, 2370–2371, n. 13, 72 L.Ed.2d 740 (1982)). "To assess the adequacy of the class representative, courts first inquire into the 'qualifications of counsel to represent the class,' and second, assess whether there are 'conflicts of interest between named parties and the class they seek to represent.'" Checchia, 2023 WL 2051147, at *5 (quoting In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions, 148 F.3d 283, 312 (3d Cir. 1998)).

As set forth above and as detailed in the attached declarations, Plaintiffs' co-counsel are qualified to represent the Settlement Class. In addition, Plaintiffs' claims are purely coextensive with those of the Settlement Class, who have equal interest in the relief offered by the Settlement Agreement. Further, Plaintiffs and their counsel have vigorously prosecuted the interests of the Settlement Class by obtaining a highly favorable settlement. The Court should therefore find that Rule 23(a)(4)'s adequacy requirement is satisfied.

e. The Proposed Settlement Class Meets the Predominance and Superiority Requirements of Rule 23(b)(3), and is Ascertainable

Once the requirements of Rule 23(a) are satisfied, a court may certify a class under Rule 23(b)(3) if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other

available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). "The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." Windsor, 521 U.S. at 623 (citing 7A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 1777, p. 518-19 (2d ed. 1986)). "The superiority requirement 'asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication.'" In re Warfarin, 391 F.3d at 533-34 (quoting In re Prudential, 148 F.3d at 316).

Plaintiffs here satisfy the predominance inquiry because questions of law and fact common to the Settlement Class substantially outweigh any individual issues. Indeed, Independence's alleged conduct challenged in the instant action is common to all Settlement Class Members and is alleged to have harmed all Settlement Class Members in the same way.

In addition, resolution of the claims at issue in a class action is superior to individual lawsuits because it promotes consistency and efficiency of litigation. It is also the only feasible way for the many Settlement Class Members to litigate their presumably relatively small claims. See Krimes v. JPMorgan Chase Bank, N.A., No. CV 15-5087, 2016 WL 6276440, at *5 (E.D. Pa. Oct. 26, 2016) ("Since the individual claims are relatively small, without the class, individuals might lack incentive to pursue their claims.").

Further, "[t]he Third Circuit also requires that a class certified under Rule 23(b)(3) be ascertainable." Checchia, 2023 WL 2051147, at *6. "The ascertainability inquiry is two-fold, requiring a plaintiff to show that: (1) the class is 'defined with reference to objective criteria'; and (2) there is 'a reliable and administratively feasible mechanism for determining whether putative class members fall within the class definition.'" Byrd v. Aaron's Inc., 784 F.3d 154, 163 (3d Cir. 2015), as amended (Apr. 28, 2015) (quoting Hayes v. Wal-Mart Stores, Inc., 725 F.3d 349, 355

(3d Cir. 2013)). Notably, the analysis of whether a settlement class satisfies the predominance requirement need not be concerned with manageability of a trial, since the proposal is that there be no trial. Sullivan v. DB Invs., Inc., 667 F.3d 273, 303 (3d Cir. 2011).

Here, the Parties have utilized Independence's time and payroll records to identify all CSRs who performed work for Independence during the Class Period. This is a suitably objective, reliable, and feasible method of determining the Settlement Class Members. Wintjen v. Denny's, Inc., 2:19-CV-00069-CCW, 2021 WL 5370047, at *9 (E.D. Pa. Nov. 18, 2021) ("[B]ecause Denny's maintains records of its restaurant employees, reference to those records provides 'a reliable and administratively feasible mechanism' for determining class membership.")

B. The Court Should Approve the Proposed Settlement Under The FLSA, and Conditionally Certify a Settlement Collective

1. The Proposed Settlement is a Fair and Reasonable Resolution of a *Bona Fide* Dispute, and Furthers the Purpose of the FLSA

As noted above, in analyzing a proposed settlement under the FLSA, courts within the Third Circuit first examine whether the settlement reflects a fair and reasonable resolution of a *bona fide* dispute, and next ask whether the settlement furthers the implementation of the FLSA in the workplace. In the present case, all of these inquiries can be answered in the affirmative, rendering the proposed settlement appropriate.

a. The Parties Have a *Bona Fide* Dispute

"A *bona fide* dispute exists when parties genuinely disagree about the merits of an FLSA claim—when there is factual rather than legal doubt about whether the plaintiff would succeed at trial." Haley, 2019 WL 1925116, at *4. "Courts have found that a *bona fide* dispute exists where the parties disagree as to the plaintiff's key allegations, including . . . the number of overtime hours worked." Belan, 2022 WL 736441, at *3. "Thus, a 'proposed settlement resolves a *bona fide* dispute where the settlement's terms reflect a reasonable compromise over issues, such as . . . back

wages, that are actually in dispute and are not a mere waiver of statutory rights brought about by an employer's overreaching.'" Kutz, 2019 WL 5457776, at *5 (quoting Howard v. Phila. Hous. Auth., 197 F. Supp. 3d 773, 777 (E.D. Pa. 2016)) (alteration in original). "In essence, for a *bona fide* dispute to exist, the dispute must fall within the contours of the FLSA and there must be evidence of the defendant's intent to reject or actual rejection of that claim when it is presented." Kapolka v. Anchor Drilling Fluids USA, LLC, No. 2:18-CV-01007-NR, 2019 WL 5394751, at *3 (W.D. Pa. Oct. 22, 2019) (quoting Kraus v. PA Fit II, LLC, 155 F. Supp. 3d 516, 530 (E.D. Pa. 2016)).

Here, the proposed settlement resolves a *bona fide* dispute between the Parties. Plaintiffs allege that Independence maintained a policy and practice of failing to compensate CSRs for time spent performing Computer Log-in Procedures. Independence denies that it unlawfully failed to pay any wages to CSRs, and further asserts that it acted in good faith at all times, and did not willfully violate the FLSA. Under the terms of the Settlement Agreement, the Settlement Collective Members will release their wage and hour claims against Independence in exchange for monetary compensation. Thus, the parties respectfully submit that the proposed settlement resolves a *bona fide* dispute. See, e.g., Kapolka, 2019 WL 5394751, at *3 ("[T]he record establishes that resolution of many of the relevant legal issues would turn on the underlying, disputed facts surrounding, at a minimum, (i) Plaintiffs' employment; (ii) Defendants' pay practices; (iii) Defendants' state of mind, *i.e.*, Defendants' good or bad faith in establishing the challenged pay practices, and; (iv) industry custom. The Court therefore finds that the proposed settlement resolves a '*bona fide*' dispute of 'factual issues rather than legal issues.'") (citing Kraus, 155 F. Supp. 3d at 530).

b. The Proposed Settlement is Fair and Reasonable

After determining whether the proposed Agreement resolves a *bona fide* dispute between the parties, this Honorable Court must next decide whether the proposed settlement "represents a fair and reasonable compromise" of Plaintiffs' claims against Independence. See Haley, 2019 WL 1925116, at *4. "In undertaking this analysis, district courts within the Third Circuit have considered the factors set forth in Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975), which established evaluative criteria for measuring the fairness of proposed class action settlements." Id.

As noted above, supra n. 5, the Court will be required to examine the Girsh factors at the final Rule 23 settlement approval stage, and Plaintiffs therefore intend to thoroughly address the Girsh factors in their motion for final approval of class and collective settlement. Plaintiffs nonetheless briefly review these factors herein for purposes of demonstrating the propriety of preliminarily approving the proposed settlement under the FLSA.

i. Complexity, Expense and Likely Duration Of The Litigation

"[F]LSA collective actions are, by their nature, complex." Carts v. Wings Over Happy Valley MDF, LLC, No. 4:17-CV-00915, 2023 WL 4238490, at *6 (M.D. Pa. June 28, 2023) (citing Brumley v. Camin Cargo Control, Inc., No. 08-cv-01798, 2012 WL 1019337, at *11 (D.N.J. Mar. 26, 2012)) (noting that "FLSA claims and wage-and-hour law enforcement through litigation has been found to be complex by the Supreme Court and lower courts"). Plaintiffs herein have asserted not only collective action claims under the FLSA, but class action claims under Rule 23. Accordingly, if the proposed settlement is not approved, additional lengthy and complex litigation will be required, which will consist of, *inter alia*: Plaintiffs' motion to conditionally certify an FLSA collective action; Plaintiffs' motion for final certification of an FLSA collective action (assuming conditional certification is granted); Defendant's motion to

decertify the conditionally certified collective (assuming conditional certification is granted); Plaintiffs' motion for Rule 23 class certification; motions for summary judgment potentially filed by all parties; and significant additional pre-certification and post-certification discovery.

In fact, and as discussed further below, there is a very real possibility that if the litigation continues, Plaintiffs and the certified classes will recover far less than provided for by the Settlement Agreement. Additionally, all parties will unquestionably incur substantial additional expenses litigating this matter for the next several years. This factor therefore warrants granting preliminary approval of the proposed settlement. See, e.g., Slomovics v. All for a Dollar, Inc., 906 F. Supp. 146, 149 (E.D.N.Y. 1995) ("The potential for this litigation to result in great expense and to continue for a long time suggest that settlement is in the best interests of the Class.").

ii. Reaction of the Class to the Settlement

Notice has not yet been sent to the Settlement Class or Settlement Collective, and Settlement Class Members and Settlement Collective Members have therefore not yet had the opportunity to opine on the proposed settlement. Plaintiffs will therefore address this factor in their motion for final approval of settlement. At this time, however, both named Plaintiffs, Jodda Moore and Terrell Aiken, support the proposed settlement.

iii. Stage of the Proceedings and the Amount of Discovery Completed

Under the third Girsh factor, "courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating." In re Warfarin, 391 F.3d at 537 (citing In re Cendant Corp. Litig., 264 F.3d 201, 235 (3d Cir. 2001)). In addition, "the pretrial negotiations and discovery must be sufficiently adversarial that they are not designed to justify a settlement . . . [,but] an aggressive effort to ferret out facts helpful to the prosecution of the suit." In re Austrian & German Bank Holocaust Litig., 80 F. Supp. 2d 164, 176 (S.D.N.Y. 2000), aff'd sub

nom. D'Amato v. Deutsche Bank, 236 F.3d 78 (2d Cir. 2001) (quoting Martens v. Smith Barney, Inc., 181 F.R.D. 243, 263 (S.D.N.Y.1998)) (alterations in original).

Here, although preparing this case through collective and class certification, dispositive motion practice, and trial would require extensive formal discovery for both sides, the Parties have completed enough informal discovery to understand the strengths and weaknesses of the case and, accordingly, counsel were able to appropriately negotiate and recommend a settlement. As noted above, Independence produced the following documents and information to Class Counsel:

- Data reflecting the number of CSRs employed by month during the class period;
- Data reflecting regular and overtime hours worked by CSRs during the relevant period;
- Independence's instructions to CSRs for reporting time;
- Plaintiffs' pay stubs;
- Plaintiffs' time records;
- Training documentation on time reporting;
- Independence's policies on overtime pay and attendance;
- Records reflecting Plaintiffs' interactions with Independence's Business Technology Services employees;
- Independence's Code of Conduct;
- Information regarding the computer hardware and software used by CSRs;
- Information regarding the schedule for computer updates that may impact computer login time; and
- A video which purported to demonstrate that the computer login process for CSRs took less than two (2) minutes.

The data produced by Independence enabled the Parties to develop a class-wide damages model, and the remainder of the informal production allowed the parties to assess the strengths and weaknesses of their respective positions. For example, the computer log-in video produced by Independence provided backup for Defendant's argument that the average amount of time spent by CSRs performing Computer Prep Work was minimal. Thus, although Plaintiffs maintain that they often experienced longer log-in times, the discovery exchanged enabled the Parties to realistically assess the risks of further litigation. In sum, the Parties completed enough informal discovery to understand the strengths and weaknesses of the case and, accordingly, were able to appropriately negotiate and recommend a settlement. This factor therefore weighs in favor of granting preliminary approval of the proposed settlement. See, e.g., In re Austrian & German Bank Holocaust Litig., 80 F. Supp. at 176 ("[W]hile discovery in this case was not formal, the information exchanged was extensive. While cooperative, the relationship between counsel for plaintiffs and the [defendants] was by no means collusive.").

iv. Risks Of Establishing Liability and Damages

"These inquiries 'survey the possible risks of litigation in order to balance the likelihood of success and the potential damage award if the case were taken to trial against the benefits of an immediate settlement.'" In re Ikon Off. Sols., Inc. Sec. Litig., 209 F.R.D. 94, 105 (E.D. Pa. 2002) (quoting In re Prudential, 148 F.3d at 319). As a court in this district previously explained:

> [I]f it appears that further litigation would realistically risk dismissal of the case on summary judgment or an unsuccessful trial verdict, it is in the plaintiffs' interests to settle at a relatively early stage. In contrast, if it appears that liability is extraordinarily strong, and it is highly likely that plaintiffs would prevail at trial, settlement might be less prudent. On this issue, the court should avoid conducting a mini-trial and must "to a certain extent, give credence to the estimation of the probability of success proffered by class counsel, who are experienced with the underlying case, and the possible defenses which may be raised to their causes of action."

Id. at 105-06 (quoting Lachance v. Harrington, 965 F.Supp. 630, 636 (E.D. Pa. 1997)).

With respect to liability in the matter at hand, Independence intends to argue that its policy and practice is in fact to pay CSRs for Computer Prep Time, and that CSRs are instructed to track and submit all hours worked. Independence will therefore argue that liability cannot be established on a class or collective basis.

Independence also intends to argue that to the extent any work was compensable, the time spent performing same was legally *de minimis* and, accordingly, not compensable under the FLSA. "The FLSA does not require employers to compensate non-exempt employees for de minimis quantities of time spent working before and after shifts." Williams v. Securitas Sec. Servs. USA, Inc., No. CIV.A. 10-7181, 2011 WL 3629023, at *3 (E.D. Pa. Aug. 17, 2011). In determining whether a particular task is *de minimis*, courts analyze "(1) the practical administrative difficulty of recording the additional time; (2) the aggregate amount of compensable time; and (3) the regularity of the additional work." Id. (quoting De Asencio v. Tyson Foods, Inc., 342 F.3d 301, 306 (3d Cir.2003)). Thus, if litigation continued, Independence would attempt to defeat Plaintiffs' FLSA claims at the summary judgment stage, and it is far from certain how the Court would rule.

In addition, Independence intends to argue that even if the time worked was compensable and violations of law did occur, Independence did not violate the law willfully, and had a good faith basis for believing that its policies were in compliance with the FLSA. If Independence successfully demonstrates its good faith and absence of willfulness, the statute of limitations for the putative collective members' FLSA claims would be limited to two (2) years rather than three (3) years, and they would be precluded from recovering liquidated damages. See, e.g., Sec'y United States Dep't of Lab. v. Mosluoglu, Inc., No. 22-2749, 2023 WL 5972044, at *4 (3d Cir. Sept. 14, 2023) (noting that the 2-year FLSA statute of limitations is "extended to three years if

the violation was willful") (citing 29 U.S.C. § 255(a)); Su v. E. Penn Mfg. Co., No. CV 18-1194, 2023 WL 6849033, at *4 (E.D. Pa. Oct. 17, 2023) ("[I]f the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the [FLSA], the court may, in its sound discretion, award no liquidated damages or award any amount less than the equivalent of the unpaid overtime compensation.") (internal quotation marks omitted).

As a result of the foregoing risks, it is Class Counsel's opinion that the proposed settlement is the most sensible course for Plaintiffs and the Settlement Class to take.

v. Risks of Maintaining the Class Action Through Trial

The Third Circuit has explained:

> The value of a class action depends largely on the certification of the class because, not only does the aggregation of the claims enlarge the value of the suit, but often the combination of the individual cases also pools litigation resources and may facilitate proof on the merits. Thus, the prospects for obtaining certification have a great impact on the range of recovery one can expect to reap from the action.

In re Gen. Motors Corp., 55 F.3d at 817.

In the present matter, in agreeing to settle the claims at issue, Class Counsel was heavily influenced by the district court's recent denial of class certification in Garcia v. Vertical Screen, Inc., No. CV 18-4718, 2022 WL 282541 (E.D. Pa. Jan. 31, 2022). Class Counsel found Garcia to be instructive not only due to the factual similarities between the cases, but also because Garcia was pending before the Eastern District of Pennsylvania.

In Garcia, the plaintiff asserted class and collective action claims against his employer for failing to pay overtime in violation of the FLSA and PMWA. 2022 WL 282541, at *1. Specifically, the plaintiff alleged the defendant failed to pay him and similar hourly-paid non-

exempt researchers and/or team leaders for time spent logging into their computers and the company's timekeeping system at the start of their shifts. Id.

The defendant's business involved running pre-employment background checks in various databases for people applying for work with the defendant's clients. Id. It was the job of the named plaintiff and the opt-in plaintiffs to run these databases. Id.

To track employees' work hours, the defendant used an online timekeeping software called Workforce Now, also known as ADP. Id. The plaintiffs recorded their time through ADP by logging into the software at the beginning of their shifts. Id. The plaintiffs reported experiencing significant difficulty logging into the defendant's timekeeping software in two (2) respects: first, the plaintiffs dealt with delays logging into their computers; and, second, even after successfully logging into their computer, numerous plaintiffs reported additional delays logging into the ADP system itself, ranging from delays of three minutes to thirty minutes. Id.

The ADP timekeeping system rounded all employee time to the nearest quarter of the hour. Id. at *2. Therefore, employees who clocked in within seven minutes after the hour (*e.g.*, at 7:07a.m.) were paid as if they clocked in at the hour (at 7:00 a.m.). Id. Employees who clocked in eight minutes after the hour, on the other hand, were paid as if they clocked in fifteen minutes after the hour. Id.

In July 2019, the district court granted conditional certification of the plaintiff's claims, and approved dissemination of notice to the conditional FLSA collective. Id. at *1. Of the putative collective members, 66 opted in to the FLSA collective action. Id. The plaintiff thereafter moved for final FLSA certification and Rule 23 class certification, and the defendant simultaneously moved to decertify the conditionally certified collective. Id.

While the court granted final certification of the plaintiff's FLSA claims, the court denied the plaintiff's motion for Rule 23 class certification. Id. at *5-7. In particular, the court found that the plaintiff was unable to demonstrate the predominance requirement of Rule 23(b)(3). Id. at *6.

According to the court, establishing liability required the employees to prove that they worked over forty hours in a given week when they claimed to have been owed overtime, which would require individualized inquiries into their timesheets and hours scheduled. Id. In addition, establishing liability would require the plaintiffs to prove that they spent more than seven (7) minutes logging into the computer on a particular occasion, in light of the defendant's quarter-hour time rounding policy. Id. Further, the court anticipated that the defendant would likely argue that the time the plaintiffs spent was *de minimis*, which would depend on the varying amount of time the plaintiffs could prove they spent. Id. Finally, the court explained that damages questions would require individualized inquiries. Id.

Here, the discovery produced to date revealed that – just like the defendant in Garcia – Independence also utilizes a quarter-hour time rounding policy. Further, Independence's CSRs' usual schedule is 37.5 hours per week. Thus, for the same reasons articulated by the court in Garcia, Class Counsel believe that there is a significant possibility that after several years of hard-fought litigation, their motion for class certification may ultimately be denied. In light of these risks, Class Counsel believe that settlement is the most appropriate course. See, e.g., In re Glob. Crossing Sec. & ERISA Litig., 225 F.R.D. 436, 460 (S.D.N.Y. 2004) ("No class has been certified in the Actions except in the settlement context. Were these cases not to settle, defendants might contest class certification on various grounds, thereby creating appreciable risk to the class members' potential for recovery. And even if plaintiffs could obtain class certification, there could be a risk of decertification at a later stage.") (citation omitted).

vi. Ability of Defendant to Withstand a Greater Judgment

Although a defendant's ability to withstand a greater judgment can be a relevant consideration under certain circumstances (*e.g.*, when a defendant receives a significant discount in settling claims due to its precarious financial condition), the Third Circuit has upheld a district court's determination that this factor neither favored nor disfavored a settlement due to "lack of evidence in the record about [the defendant]'s ability to pay or whether such a consideration factored into the settlement negotiations." In re Warfarin, 391 F.3d at 538.

In the present matter, Independence's ability to pay a greater judgment was not a factor in the Parties' settlement negotiations. Class Counsel therefore respectfully submits that this factor neither weighs for nor against the proposed settlement.

vii. Range Of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and All the Attendant Risks of Litigation

"This inquiry measures the value of the settlement itself to determine whether the decision to settle represents a good value for a relatively weak case or a sell-out of an otherwise strong case." In re Gen. Motors Corp., 55 F.3d at 806. In In re Gen. Motors Corp., the Third Circuit further explained:

> [I]n cases primarily seeking monetary relief, the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, should be compared with the amount of the proposed settlement. . . . The evaluating court must, of course, guard against demanding too large a settlement based on its view of the merits of the litigation; after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution.

Id. (internal quotation marks omitted).

Although Class Counsel intends to address this factor in greater detail in their motion for final approval of settlement, Class Counsel presently notes that pursuant to the Parties' class-wide

damages model, the $667,000 proposed settlement represents payment to the Settlement Class Members and Settlement Collective Members of more than five (5) minutes of uncompensated time per shift (excluding liquidated damages) for the 3-year period predating Plaintiffs' Complaint. See Wood Dec., at ¶ 9. In light of the risks referenced above, Class Counsel believes that the resolution reached is an excellent one. This factor therefore again weighs in favor of approving the proposed settlement.

c. The Proposed Settlement Does Not Frustrate the Purpose of the FLSA

The Court must also determine whether the proposed Agreement "furthers or frustrates the implementation of the FLSA in the workplace." See Haley, 2019 WL 1925116, at *5. "This inquiry requires consideration of three interrelated FLSA objectives: (1) combatting inequalities in bargaining power between employers and employees; (2) ensuring widespread employer compliance with the FLSA; and (3) honoring the private-public character of employee rights, whereby the public has a general interest in employee well-being and access to fair wages." Id. (citations omitted). "Courts assess a settlement's consonance with these FLSA objectives by considering, *inter alia*, the scope of any confidentiality provisions, and the breadth of any release of claims provisions." Id. (citations omitted).

While "[t]here is a strong presumption against confidentiality clauses in FLSA wage-settlement agreements," "[d]istrict courts within the Third Circuit have occasionally approved narrowly crafted confidentiality clauses." Id. at *5-6 (citing cases). In addition, "[d]istrict courts reviewing proposed FLSA settlements frequently require litigants to limit the scope of waiver and release provisions to 'claims related to the specific litigation.'" Id. at *6 (quoting Singleton v. First Student Mgmt. LLC, No. 13-1744, 2014 WL 3865853, at *8-9 (D.N.J. Aug. 6, 2014)).

In the matter at hand, the release contained in the Settlement Agreement is reasonable because the Settlement Collective Members have only released claims arising out of Computer Log-in Procedures that were or could have been asserted in this litigation, and further because there is no confidentiality provision. See Settlement Agreement, at ¶ 71.

2. The Settlement Collective Should Be Conditionally Certified for Settlement Purposes

"By meeting the more stringent requirements of Rule 23, the class likewise may be certified as a collective action." Hall v. Best Buy Co., 274 F.R.D. 154, 167 (E.D. Pa. 2011) (citing Clesceri v. Beach City Investigations & Protective Servs., Inc., No. 11–3873, 2011 WL 320998, at *4 (C.D. Cal. Jan. 27, 2011)). Further, and in any event, Plaintiffs have met their "relatively light" and "modest" burden of showing that the proposed collective of CSRs should be conditionally certified. See Waltz v. Aveda Transportation & Energy Servs. Inc, No. 4:16-CV-000469, 2016 WL 7440267, at *2 (M.D. Pa. Dec. 27, 2016). Indeed, courts typically rely on the pleadings and affidavits of the parties to determine whether this lenient standard has been met, and there is a "high rate of success at the conditional certification stage . . . because the district court bears an 'insignificant' risk of error by granting the motion." Id.

Here, Plaintiffs' Complaint alleges that unlawful conduct has occurred, and that all CSRs have been similarly impacted by the unlawful conduct. Specifically, Plaintiffs' Complaint alleges: (i) Independence's CSRs either worked in-person at Independence's Philadelphia, Pennsylvania headquarters, or remotely from their homes; (ii) Independence's CSRs are hourly-paid non-exempt employees under the FLSA; (iii) Independence's CSRs perform similar job duties, and utilize a computer provided by Independence to perform certain of those duties; (iv) Independence maintains common timekeeping and compensation policies and practices applicable to all CSRs, including requiring CSRs to perform Computer Prep Work before their scheduled punch-in time,

and without compensation; and (v) during Independence's "busy season," Independence's CSRs regularly work more than (40) hours per week, and also sometimes work more than forty (40) hours per week during other times of the year.

As noted above, at the conditional certification stage, the court does not resolve factual disputes or address the merits of a plaintiff's claims. Neal, 2015 WL 225432, at *3. Instead, the "sole consequence" of conditional certification is the dissemination of a court-approved notice to a potential collective member. Halle, 842 F.3d at 224. Accordingly, because Plaintiffs' Complaint sufficiently alleges the existence of an unlawful policy that is common to all of Independence's CSRs, the Court should conditionally certify the Settlement Collective.

C. The Proposed Service Payments are Reasonable and Appropriate

"Service payments are a common feature of collective action settlements." Brown v. Kadence Int'l, Inc., No. CV 22-1097-KSM, 2023 WL 2614587, at *10 (E.D. Pa. Mar. 23, 2023) (citing Sullivan v. DB Invs., Inc., 667 F.3d 273, 333 n.65 (3d Cir. 2011)). "These payments serve to compensate named plaintiffs for the services they provided and the risks they incurred during the course of [the] litigation and to reward the public service of contributing to the enforcement of mandatory laws." Id. (internal quotation omitted). Indeed, "[i]n employment litigation, the plaintiff is often a former or current employee of the defendant, and thus, by lending his name to the litigation, he has, for the benefit of the class as a whole, undertaken the risk of adverse actions by the employer or co-workers." Frank v. Eastman Kodak Co., 228 F.R.D. 174, 187 (W.D.N.Y. 2005).

In the present matter, Plaintiffs: (i) provided information and documents to Class Counsel and spoke with Class Counsel on multiple occasions to describe details about their work experience with Independence, such as their job duties and Independence's compensation policies; (ii) personally attended the Parties' November 16, 2023 mediation; and (iii) in undertaking this

case, assumed the risk of being associated with a class and collective action against a former employer.

At the final approval stage, Plaintiffs intend to seek Court approval for the payment of service awards in the amount of $5,000 to Plaintiff Moore and $5,000 to Plaintiff Aiken. Independence has agreed not to object to the request. These service payments are well within the accepted range in this circuit, and numerous courts have approved service awards equal to or higher than those proposed here. See, e.g., Kress, 2021 WL 9031639, at *14 (granting preliminary approval of $5,000 service payment to named plaintiff in class and collective action that settled prior to formal discovery); Acevedo v. BrightView Landscapes, LLC, No. 3:13-2529, 2017 WL 4354809, at *2-3 (M.D. Pa. Oct. 2, 2017) (approving $5,000 to named plaintiff and $1,000 each to five opt-in plaintiffs); Tompkins v. Farmers Ins. Exch., No. 5:14-cv- 3737, 2017 WL 4284114, at *8 (E.D. Pa. Sep. 27, 2017) (approving payment of $48,500 to 11 plaintiffs); Devlin v. Ferrandino & Son, Inc., No. 15-4976, 2016 WL 7178338, at *11 (E.D. Pa. Dec. 9, 2016) (approving payment of $7,500 to each named plaintiff and $1,000 to each opt-in plaintiff); Schaub v. Chesapeake & Del. Brewing Holdings, No. 16-756, 2016 WL 9776070, at *5 (E.D. Pa. Nov. 14, 2016) (approving service payment of $9,000 to named plaintiff). The Court should therefore approve the requested service payments.

D. The Court Should Preliminarily Approve Class Counsel's Fees and Costs Request

"The court is required to thoroughly review the reasonableness of attorneys' fees in all class action settlements." Bonett v. Educ. Debt Servs., No. 01-cv-6528, 2003 WL 2168267, at *8 (E.D. Pa. May 9, 2003). "In cases such as this, where class members recover from a single common fund, the Third Circuit favors the percentage-of-recovery method in evaluating the fairness of attorneys' fees." Checchia, 2023 WL 6164406, at *8 (quoting Graudins v. Kop Kilt,

LLC, 2017 WL 736684 (E.D. Pa. Feb. 24, 2017)); see also In re Prudential, 148 F.3d at 333 ("The percentage-of-recovery method is generally favored in cases involving a common fund, and is designed to allow courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure.") (citation and internal quotation marks omitted).[6]

Pursuant to the proposed Settlement Agreement, Class Counsel will seek a fee award in an amount equal to one-third (1/3) of the Maximum Settlement Amount, plus reimbursement of all reasonable litigation expenses incurred. "[C]ourts have approved attorneys' fees in FLSA settlement agreements 'from roughly 20-45%' of the settlement fund." Kraus v. PA Fit II, LLC, 155 F. Supp. 3d 516, 534 (E.D. Pa. 2016) (quoting Mabry v. Hildebrant, No. 14-5525, 2015 WL 5025810 (E.D. Pa. Aug. 24, 2014)). However, "[a]lthough courts have approved attorneys' fees in FLSA settlement agreements from roughly 20–45% of the settlement fund, a benchmark of one-third of the settlement fund is often appropriate to prevent a windfall to counsel[.]" Copley 2023 WL 1878581, at *5 (citation and internal quotation marks omitted).

Here, Class Counsel's request for a fee award equal to one-third of the Maximum Settlement Amount is reasonable. Moreover, as the court noted in approving a 35% fee award

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[6] There are seven factors that a court may consider in assessing the reasonableness of a fee award:

> (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or the fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by counsel; and (7) awards in similar cases.

Checchia, 2023 WL 6164406, at *9 (quoting Graudins, 2017 WL 736684, at *10). "These fee award factors need not be applied in a formulaic way and in certain cases, one factor may outweigh the rest." Id. (quoting In re Rite Aid Corp. Sec. Litig., 396 F.3d 294, 301 (3d Cir. 2005)). Plaintiffs will address all seven of the factors in their motion for final approval of settlement.

in Kapolka – a case that also settled in its early stages, following the exchange of informal discovery – counsel "should not be penalized for settling the case early in the litigation." Kapolka, 2019 WL 5394751, at *6 (quoting Arrington v. Optimum Healthcare IT, LLC, No. CV 17-3950, 2018 WL 5631625, at *10 (E.D. Pa. Oct. 31, 2018)). "To the contrary, the early settlement of potentially costly litigation is commendable." Id.

Although a district court may cross-check the amount of the fee award requested against the amount of time devoted to the case by counsel, "the Third Circuit has recognized that such a 'lodestar' analysis is not necessary in cases such as this, where attorneys' fees are reasonably requested based on a percentage of a common fund." Checchia, 2023 WL 6164406, at *9 (citing In re Cendant Corp., 264 F.3d at 284-85). "Indeed, a lodestar check could discourage the very type of efficient resolution of complex class actions that occurred here." Id. (citing Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 198 (3d Cir. 2000)) ("[O]ne purpose of the percentage method of awarding fees—rather than the lodestar method, which arguably encourages lawyers to run up their billable hours—is to encourage early settlements by not penalizing efficient counsel . . . .") (citations and quotation marks omitted).

In any event, Class Counsel's lodestar through April 18, 2024 is approximately $118,655.00, and Class Counsel anticipates devoting additional time to this case prior to the final approval hearing. See Wood Dec., at ¶¶ 10, 11; Pisarevsky Dec., at ¶¶ 4, 5. Thus, the requested fee award of $222,333.33 reflects a multiplier of 1.87, which in and of itself is in line with fee awards in similar cases, and does not account for the additional time Class Counsel will have to expend going forward. See, e.g., Kress v. Fulton Bank, N.A., No. 19-cv-18985 (CDJ) (MJS) (Nov. 2, 2022) (granting final approval of settlement and awarding $333,333, plus expenses, to class counsel, representing one-third of the settlement fund, based upon a lodestar

of $123,395).

Finally, the Settlement Agreement seeks reimbursement of $7,065.41 in costs incurred by Class Counsel. "[C]ounsel in common fund cases is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the case." Kapolka, 2019 WL 5394751, at *12 (quoting In re CertainTeed Fiber Cement Siding Litig., 303 F.R.D. 199, 226 (E.D. Pa. 2014)); see, e.g. Yong Soon Oh v. AT & T Corp., 225 F.R.D. 142, 154 (D.N.J. 2004) (approving reimbursement of costs including (1) "travel and lodging," (2) "local meetings and transportation," (3) "depositions," (4) "photocopies," (5) "messengers and express services," (6) "telephone and fax," (7) "Lexis/Westlaw legal research," (8) "filing, court and witness fees," (9) "overtime and temp work," (10) "postage," and (11) "the cost of hiring a mediator").

Here, the $7,065.41 in costs incurred by Class Counsel consist of court filing fees, mediation costs, legal research, travel and lodging, and meals while traveling, and were necessary to Plaintiffs' successful prosecution of this case. See Wood Dec. at ¶ 12; Pisarevsky Dec. at ¶ 12, 13. Plaintiffs therefore request that the Court approve an award of $7,065.41 in costs to Class Counsel.

E. The Court Should Approve the Proposed Form of Notice and the Parties' Notice Plan

"Rule 23(e) requires that notice of a proposed settlement be sent to class members." Kress, 2021 WL 9031639, at *14 (citing Fed. R. Civ. P. 23(e)). "Due process requires that notice be 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Id. (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)). Accordingly, the notice must:

> clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Id. (quoting Fed. R. Civ. P. 23(c)(2)(B)).

In the present case, the Parties' proposed form of notice of the proposed settlement satisfies all due process considerations and meets the requirements of the Federal Rules of Civil Procedure. Specifically, the Notice of Settlement provides detailed information about the settlement terms, including the formula used to calculate each Settlement Collective Member's and Settlement Class Member's Settlement Payment. See Settlement Agreement, at Exhibit "A". The Notice of Settlement also sets forth Class Counsel's intent to request attorneys' fees, reimbursement of expenses, service payments for Plaintiffs, the amount that will be sought for these fees and service payments, and detailed information about the claims being released. See id. at Exhibit "A". Further, the Notice of Settlement provides information about the date of the Fairness Hearing, Settlement Class Members' right to object to the settlement, deadlines and procedures for objecting, and the procedure to receive additional information. See id. at Exhibit "A". Additionally, the Notice of Settlement provides contact information for the Administrator and Class Counsel. See id. at Exhibit "A".

Accordingly, the Notice of Settlement satisfies both due process and the requirements of Rule 23, and should be approved.

F. Plaintiffs Should be Appointed as Class Representatives, and Mobilio Wood, and Cohn Lifland Pearlman Herrmann & Knopf LLP, Should be Appointed as Class Counsel

As set forth above, supra VI.A.2.d, Plaintiffs satisfy the adequacy requirements of Rule 23(a)(4). For this reason, Plaintiffs should be appointed as class representatives. See, e.g., Katz v. DNC Servs. Corp., No. CV 16-5800, 2023 WL 2955887, at *4 (E.D. Pa. Apr. 14, 2023) (appointing the plaintiff as class representative after determining that she would "fairly and adequately protect the interests of the class" in accordance with Rule 23(a)(4)).

In addition, Rule 23(g) requires the Court to examine the capabilities and resources of counsel to determine whether they will provide adequate representation to the class. Fed R. Civ. P. 23(g). Mobilio Wood, and Cohn Lifland Pearlman Herrmann & Knopf LLP, satisfy the requirements of Rule 23(g). Class Counsel have devoted substantial time and resources to the case, including: (i) developing the factual basis of the claims; (ii) preparing a detailed and thorough Complaint; (iii) conducting substantial informal discovery; and (iv) participating in a mediation session and negotiating a successful resolution of Plaintiffs' claims. Further, Class Counsel are experienced in employment litigation, including wage and hour litigation, and have handled other class and collective action lawsuits. See Wood Dec., at ¶¶ 4, 7; Pisarevsky Dec., at ¶¶ 6, 9, 10. Class Counsel's efforts in prosecuting this case, together with their background and experience, satisfy the requirements of Rule 23(g). Additionally, Defendant does not dispute Class Counsel's qualifications. This Honorable Court should therefore appoint Mobilio Wood, and Cohn Lifland Pearlman Herrmann & Knopf LLP, as Class Counsel.

VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant their Unopposed Motion for Preliminary Approval of Class and Collective Settlement and Provisional Certification of Settlement Class and Collective, and enter an Order: (i) granting preliminary approval of the parties' Settlement Agreement; (ii) preliminarily approving the proposed settlement under Rule 23; (iii) preliminarily certifying a settlement class under Rule 23; (iv)

preliminarily approving the proposed settlement under the FLSA; (v) conditionally certifying a settlement collective under the FLSA; (vi) preliminarily approving the proposed service awards to Plaintiffs; (vii) preliminarily approving Plaintiffs' counsel's request for an award of attorneys' fees and costs; (viii) approving the proposed form of notice of settlement; (ix) appointing Plaintiffs as class representatives; (x) appointing Mobilio Wood, and Cohn Lifland Pearlman Herrmann & Knopf LLP, as class counsel; (xi) appointing RG/2 Claims Administration LLC as the Administrator of the settlement; and (xii) setting a date for the final approval hearing.

Respectfully submitted,

Date: 5/1/2024 BY: */s/ Peter C. Wood, Jr.*

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JODDA MOORE, and TERRELL AIKEN, individually and on behalf of all similarly situated persons, Plaintiffs, v. INDEPENDENCE BLUE CROSS, LLC d/b/a INDEPENDENCE BLUE CROSS, Defendant.	No. 2:23-cv-00566 (Judge Scott)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of May, 2024, the foregoing Brief in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class and Collective Settlement and Provisional Certification of Settlement Class and Collective was electronically filed and served on the following counsel of record via the Court's ECF system:

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