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

TYHEE HICKMAN, SHANAY BOLDEN, and O'DONALD HENRY, individually and on behalf of all persons similarly situated,	:	**Civil Action No.: 2:17-cv-01038-GAM**
Plaintiffs,	:	
v.	:	
TL TRANSPORTATION, LLC, SCOTT FOREMAN, HERSCHEL LOWE, AMAZON.COM, LLC, and AMAZON LOGISTICS, INC.,	:	
Defendants.	:	

PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT

Plaintiffs Tyhee Hickman, Shanay Bolden, and O'Donald Henry, through their undersigned counsel, respectfully move this Court for an Order:

1. Granting preliminary approval of the Parties' Settlement Agreement, a true and correct copy of which is attached as Exhibit 1 to this Motion;

2. Granting approval to the terms and conditions contained in the Settlement Agreement as a fair and reasonable resolution of a *bona fide* dispute under the Fair Labor Standards Act;

3. For settlement purposes, confirming the Court's July 13, 2018 Order conditionally certifying the Settlement Class as a collective pursuant to 29 U.S.C. § 216(b), pending final approval of the settlement:

> All current and former Delivery Associates who were employed by TL Transportation, LLC to deliver packages to Amazon customers in the United States between March 8, 2014 and April 15, 2017;

4. For settlement purposes, the preliminarily certifying the Settlement Class pursuant to Fed. R. Civ. P. 23, pending final approval of the settlement as follows:

> all current and former Delivery Associates who were employed by TL Transportation, LLC to deliver packages to Amazon customers in Pennsylvania, Maryland and New Jersey between March 8, 2014 and April 15, 2017;

5. Preliminarily approving Plaintiffs Tyhee Hickman, Shanay Bolden, and O'Donald Henry as the Representatives of the Settlement Class;

6. Preliminarily approving Berger Montague PC and Willig, Williams, & Davidson as Class Counsel for the Settlement Class;

7. Preliminarily approving Angeion Group as Settlement Administrator preliminarily approving the costs of settlement administration;

8. Approving the Notice of Settlement, attached as Exhibit A to the Settlement Agreement, and authorizing dissemination of the Notice to members of the Settlement Class; and

9. Approving the proposed schedule and procedure for completing the final approval process as set forth in the Parties' Settlement Agreement and setting a date and time for the final approval hearing.

This Motion is based on the accompanying Memorandum of Law, the Declaration of Sarah Schalman-Bergen in Support of the Plaintiffs' Unopposed Motion for Preliminary Approval of the Settlement Agreement, the attached Exhibits, and all other records, pleadings and papers on file in this action. Defendants do not oppose this Motion. A proposed Order is submitted for the Court's consideration.

Dated: September 18, 2019

Respectfully Submitted,

BERGER MONTAGUE PC

/s/ Sarah R. Schalman-Bergen

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been filed on the ECF docket and is available for viewing and download on this 18th day of September, 2019.

s/ Sarah R. Schalman-Bergen
Sarah R. Schalman-Bergen

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MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY
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I. INTRODUCTION

This class and collective action wage and hour lawsuit against Defendants TL Transportation, LLC ("TLT"), Scott Foreman ("Foreman"), and Herschel Lowe's ("Lowe") (collectively, the "TL Defendants") and Amazon.com, LLC, Amazon Logistics, Inc. (together, "Amazon")[1]; has been settled, and Plaintiffs Tyhee Hickman, Shanay Bolden, and O'Donald Henry[2] ("Plaintiffs") respectfully submit this memorandum of law in support of Plaintiffs' Unopposed Motion for Preliminary Approval of the Settlement Agreement. As discussed herein, the proposed settlement is fair and reasonable and warrants this Court's preliminary approval.

This lawsuit concerns the TL Defendants' alleged unlawful policy and practice of failing to pay overtime compensation to Delivery Associates who, until April 15, 2017, were paid pursuant to a day rate compensation system in violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. ("FLSA"), Pennsylvania, Maryland and New Jersey state laws, and whether Amazon bears legal responsibility for those violations. On August 16, 2018, the District Court ruled that the pay scheme at issue constituted a violation of the FLSA and related state laws. *See Hickman v. TL Transp., LLC*, 318 F. Supp. 3d 718 (E.D. Pa. August 16, 2018) (granting summary judgment to plaintiffs in holding that the day rate scheme by TLT violated the FLSA).[3]

The Parties subsequently agreed to engage in an Alternative Dispute Resolution ("ADR") process. Following the exchange of informal discovery, extensive arm's-length settlement negotiations, and three (3) in-person mediations at JAMS in Philadelphia, PA, the Parties were able to reach a class and collective settlement of this matter. *See* Declaration of Sarah R. Schalman-

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[1] All Defendants are collectively referred to herein as "Defendants."
[2] On September 16, 2019, Plaintiffs filed a stipulated Third Amended Complaint, substituting Named Plaintiff Michael Easterday, who previously accepted an offer of judgment with O'Donald Henry as the New Jersey class representative. *See* Dkt. Nos. 112-114, 123.
[3] The TL Defendants would have the right to appeal this decision at the conclusion of the case.

Bergen ("Schalman-Bergen Decl.") ¶ 8. The terms of the Parties' settlement are set forth in a Settlement Agreement (the "Settlement Agreement" or "Agreement") (attached as Exhibit 1).

The Settlement includes a gross cash payment by TLT of One Million Eight Hundred Thousand Dollars ($1,800,000.00) (the "Gross Settlement Amount"), inclusive of attorneys' fees and costs, settlement administration costs, and any service awards to the Named Plaintiffs that are approved by the Court. *See* Settlement Agreement ¶ 23(o). Every Eligible Class Member[4] will receive a Settlement Award, based on the number of weeks when he or she worked more than four days per week between March 8, 2014 through April 15, 2017 (the date when TLT changed its pay policies and practices), and none of the funds from the Gross Settlement Amount will revert to Defendants. *Id.* at ¶ 44.

In exchange, the Settlement Agreement contains a release of all FLSA and state wage and hour claims for unpaid overtime wages and liquidated or other damages from March 8, 2014 through April 15, 2017. *Id.* at ¶ 26. No Eligible Class Member shall be deemed to release an FLSA claim unless he/she cashes his/her Settlement Award check. *Id.* at ¶ 25.

Class Counsel believes that the negotiated Settlement Agreement provides an excellent settlement for the Plaintiffs and the Settlement Class, with respect to their claims for unpaid overtime wages resulting from the TL Defendants' alleged violations of the FLSA and related state law. *See* Schalman-Bergen Decl. ¶ 6; Declaration of Ryan Hancock ("Hancock Decl.") ¶ 9. Because of the lack of timekeeping records maintained by the TL Defendants, the parties each

[4]Eligible Class Member means all Settlement Class Members who do not file timely and valid exclusion requests from the Settlement. *Id.* at ¶ 23(aa). Settlement Class or Settlement Class Members means the Named Plaintiffs, all Opt-In Plaintiffs, and all current or former Delivery Associates who were employed by TL Transportation, LLC to deliver packages to Amazon customers in the United States between March 8, 2014 and April 15, 2017. *Id.* at ¶ 23(z). There are approximately 757 Settlement Class Members, including Plaintiffs. *Id.*

modeled various damage and claim scenarios utilizing various legal and factual assumptions, as well as payroll data from the TL Defendants and delivery data from Amazon, and presented them to each other under the supervision of the mediator. Schalman-Bergen Decl. ¶ 15. The **Net Settlement Amount** of approximately $1,102,500 (*i.e.* the amount that will actually be paid out to Settlement Class Members after deductions are made for fees, costs, service awards, and administration costs) represents approximately 157% percent of Class Counsel's calculations of unpaid wages owed using the most favorable assumptions on time worked at a half time rate. *Id.* at ¶ 10.

Plaintiffs respectfully submit that this Motion should be granted because the proposed Settlement Agreement satisfies all of the criteria for preliminary approval under federal law and falls well within the range of reasonableness. Accordingly, Plaintiffs request that the Court issue an Order: 1) granting preliminary approval of the proposed Settlement Agreement as a fair, reasonable and adequate under Rule 23(e); 2) granting approval to the terms and conditions contained in the Settlement as a fair and reasonable resolution of a *bona fide* dispute under the Fair Labor Standards Act; 3) confirming its July 13, 2018 Order conditionally certifying the Settlement class as a collective pursuant to 29 U.S.C. § 216(b), pending final approval of the settlement; 4) preliminarily certifying the Settlement Class with respect to the state law claims under Rule 23; 5) preliminarily appointing Plaintiffs Tyhee Hickman, Shanay Bolden, and O'Donald Henry as Representatives of the Settlement Class; 6) preliminarily appointing Berger Montague PC and Willig, Williams & Davidson as Class Counsel for the Settlement Class; 7) approving the Angeion Group as Settlement Administrator and preliminarily approving the costs of administration; 8) approving the plan of notice to the Settlement Class Members, including approving the Notice attached to the Settlement Agreement as Exhibit A; and 9) approving the proposed schedule and

procedure for the final approval of this Settlement. Defendant does not oppose this Motion.

II. PROCEDURAL HISTORY

On March 8, 2017, Plaintiffs Tyhee Hickman and Shanay Bolden, former non-exempt hourly employees of TLT, filed a Class and Collective Action Complaint against Defendant TLT alleging violations of the Fair Labor Standards Act, 29 U.S.C. § 201*, et seq.* ("FLSA"), the Pennsylvania Minimum Wage act ("PMWA"), 43 P.S. §§ 333.101, *et seq.*, the Maryland Wage and Hour Law ("MWHL"), Maryland Code Annotated, Labor and Employment Article §§ 3-401, *et seq.* and Pennsylvania common law (Dkt. No. 1.; Settlement Agreement ¶ 2.)

On June 8, 2017, the Court issued an order staying the case pending mediation. (Dkt. No. 12.) TLT thereafter produced data and information to facilitate informed settlement discussions, including an electronic database containing payroll data for a sample of Delivery Associates who worked for TLT between February 27, 2016, and April 15, 2017, at three of its locations (King of Prussia, Swedesboro, and Baltimore). Settlement Agreement ¶ 3.

Plaintiffs and TLT participated in mediation before the Hon. James R. Melinson, Chief U.S. Magistrate Judge for the Eastern District of Pennsylvania (Ret.) at JAMS in Philadelphia, PA on October 17, 2017. A settlement was not reached. Settlement Agreement ¶ 4.

On November 28, 2017, Plaintiffs filed their First Amended Complaint to include Amazon.com, LLC, Amazon Logistics, Inc., and Scott Foreman and Herschel Lowe (the two sole members of TLT) as additional Defendants and joint employers. (Dkt. No. 20; Settlement Agreement ¶ 5.) TLT filed its Answer on February 5, 2018, denying liability. (Dkt. No. 34.) The Amazon defendants filed their Answer on March 2, 2018 denying liability and denying that they jointly employed TLT employees. (Dkt. No. 38; Settlement Agreement at ¶ 6.) On February 5, 2018, Defendants Foreman and Lowe filed a Motion to Dismiss based on lack of personal jurisdiction and venue in Pennsylvania. (Dkt. No. 35.) The Court denied the motion in all grounds

except with respect to Plaintiffs' Maryland state law claims (which proceeded in the litigation against TLT and Amazon). (Dkt. No. 72; Settlement Agreement ¶ 7.)

The Parties participated in a second mediation session before the Hon. James R. Melinson (Ret.), at JAMS in Philadelphia, PA on March 15, 2018. A settlement was not reached. Settlement Agreement ¶ 8.

On March 23, 2018, Plaintiffs filed their motion for partial judgment on the pleadings on TLT's admission, in its Answer, regarding its day rate payment scheme. (Dkt. No. 43.) The Court held oral argument and then converted the motion to a partial summary judgment motion. (Dkt. Nos. 67, 69; Settlement Agreement ¶ 9.)

The Parties stipulated to notice after the Plaintiffs filed their motion for conditional certification and to facilitate notice pursuant to 29 U.S.C. § 216(b) ("Notice Motion). *See* Dkt. Nos. 46 & 64. Notice was distributed on August 10, 2018 to 757 individuals. As of this date, 297 individuals filed their consent forms to participate in this lawsuit, including Plaintiffs. (Dkt. Nos. 13, 83, 85, 87-90, 94, 96-101, 107- 110, 115; Settlement Agreement ¶ 10.)

On August 16, 2018, the Court granted Plaintiffs' Motion for Summary Judgment, holding that TLT compensated Plaintiffs using a day rate that did not lawfully compensate its employees for overtime, in violation of the Fair Labor Standards Act ("FLSA") and applicable state law. (Dkt. No. 81; Settlement Agreement ¶ 11.)

On November 1, 2018, Plaintiffs filed their Second Amended Complaint ("SAC") adding violations of the New Jersey State Wage and Hour Law and adding Michael Easterday as a Plaintiff and representative of the New Jersey class. (Dkt. No. 102; Settlement Agreement ¶ 12.)

On October 26, 2018, Defendant TLT served Offers of Judgment pursuant to Fed. R. Civ. P. 68 on 185 of the Opt-In Plaintiffs. The 185 Offers of Judgment totaled $101,579.50, plus

"reasonable attorney's fees, expenses, and costs accrued and attributed to the prosecution of [the Opt-In Plaintiff's] specific claims … to the date of th[e] Offer of Judgment in an amount to be determined by the Court." Sixteen (16) Opt-In Plaintiffs filed their acceptance of offers of judgment from TLT, including Named Plaintiff Easterday, totaling $16,065.50. (Dkt. Nos. 31, 106-1, 106-2, 106-3, 106-4, 106-5, 106-6, 106-7, 106-8, 106-9, 106-10, 106-11, 106-12, 106-13, 106-14, 112; Settlement Agreement ¶ 13.) The Court entered the judgments and released their claims against TLT. (Dkt. Nos. 31, 50, 106, 111, 113, 114.) No attorneys' fees were paid on these amounts.

Plaintiffs served a Rule 30(b)(6) deposition notice regarding Defendant TLT's payroll systems, and took the deposition of Shirley Washington on December 14, 2018. The parties thereafter agreed to postpone the depositions of the remaining Rule 30(b)(6) witnesses, and TLT serving offers of judgment, so that that the parties could participate in mediation. Settlement Agreement ¶ 14.

In advance of mediation, TLT produced supplemental payroll data, and Amazon produced delivery data, which Class Counsel reviewed and analyzed. *Id.* ¶ 15. On July 29, 2019, the Parties participated in mediation before an experienced mediator, Stephen Sonnenberg, Esq. *Id.* ¶ 16. As a result of the mediation, and subsequent arms' length negotiations, the Parties have agreed to settle the Action according to the terms of this Settlement Agreement.

On September 16, 2019, pursuant to the terms of the Settlement Agreement and with consent of Defendants, Plaintiffs filed their Third Amended Complaint, substituting Michael Easterday for O'Donald Henry as the representative Named Plaintiff for the New Jersey class, in light of Mr. Easterday's acceptance of an offer of judgment. (Dkt. Nos. 112-114, 123, E. A)

As a result of the mediation and arm's-length negotiations between the Parties, the Parties

have agreed to settle the Action in accord with the terms of the Settlement Agreement. Accordingly, the Parties now present the Settlement Agreement to the Court for its approval. The Settlement offers significant advantages over the continued prosecution of this case, as the Plaintiffs and the Settlement Class will receive significant financial compensation and will avoid the risks inherent in the continued prosecution of this case in which Defendants would assert various defenses to liability. *See* Schalman-Bergen Decl. ¶ 11. The Parties have spent considerable time negotiating and drafting the Settlement Agreement, which ensures that all members of the Settlement Class are provided with notice of the Settlement Agreement and its terms. *See id* ¶ 23.

III. THE TERMS OF THE SETTLEMENT AGREEMENT

A. The Settlement Class

The Settlement Agreement provides that the Settlement Class includes "the Named Plaintiffs, all Opt-in Plaintiffs, and all current or former Delivery Associates who were employed by TL Transportation, LLC to deliver packages to Amazon customers in the United States between March 8, 2014 and April 15, 2017." Settlement Agreement ¶ 23(z).

The Parties have agreed that, for settlement purposes only, the requisites for establishing collective action certification pursuant to 29 U.S.C. § 216(b) have been satisfied, and the Settlement Class may be certified pursuant to Fed. R. Civ. P. 23. *Id.* at ¶ 29(a). Notice of the settlement will be provided to the above-defined Settlement Class in the form of the proposed Settlement Notice ("Notice") attached to the Settlement Agreement as Exhibit A by first class mail and email (where available). *Id*. at ¶ 23(cc); Ex. A. Every Eligible Class Member (*i.e.*, Settlement Class Members who do not exclude themselves from the Settlement) will be paid a Settlement Award. *Id.* at ¶ 38.

B. Distribution Of The Gross Settlement Amount And Release Of Claims

Pursuant to the Settlement Agreement, Defendant TLT shall electronically transfer one-third of the Gross Settlement Amount (*i.e.*, $1,800,000.00) to the Settlement Administrator within 10 business days after the Court grants preliminary approval to the Settlement. *Id.* at ¶ 34(a). No later than ten (10) business days after the Effective Date, Defendant TLT shall electronically transfer the balance of the Gross Settlement Amount to the Settlement Administrator. *Id.* Upon receipt by the Settlement Administrator, these funds shall be transferred immediately into a Qualified Settlement Fund. *Id*. The Qualified Settlement Fund will be administered by a Court-appointed Settlement Administrator, the Angeion Group, an independent and highly experienced third-party claims administration company. *Id.* at ¶¶ 23(x), 34(a), 34(b).

The Gross Settlement Amount includes amounts to cover: (1) service awards for their efforts in bringing and prosecuting this matter to Named Plaintiff Tyhee Hickman in the amount of $15,000, Named Plaintiff Shanay Bolden in the amount $15,000, and Named Plaintiff O'Donald Henry in the amount of $2,500; (2) the payment of attorneys' fees in the amount of up to one-third (1/3) of the Gross Settlement Amount ($600,000.00), which will compensate Class Counsel for all work performed in the litigation as of the date of the Settlement Agreement, plus all work remaining to be performed, including but not limited to documenting the Settlement, securing Court approval of the Settlement, making sure that the Settlement is fairly administered and implemented, and obtaining final dismissal of the Action, plus the payment of out-of-pocket costs incurred by Class Counsel, not to exceed Forty Thousand Dollars ($40,000); and (4) a maximum of Twenty-Five Thousand Dollars $25,000 for the Settlement Administrator's costs of the settlement administration. *Id.* at ¶¶ 23(0); 23(r). Class Counsel will file a Motion for Approval of Attorneys' Fees and Costs and for Final Approval of the Settlement prior to the Court's final fairness hearing.

Pursuant to the Settlement Agreement, if the Court approves the amounts set forth above, the Net Settlement Amount would be approximately One Million, One Hundred and Two Thousand, and Five Hundred Dollars ($1,102,500). Awards to Eligible Class Members will be made from the Net Settlement Amount. Specifically, all Eligible Class Members will receive a *pro rata* share of the Net Settlement Amount based on the total number of work weeks during which the Eligible Class Member worked four or more days and was employed by Defendant TLT to deliver packages to Amazon customers in the United States between March 8, 2014 and April 15, 2017. *Id.* at ¶ 37(b).

In addition, the amount of $100.00 per Eligible Class Member will be deducted from the Net Settlement Amount prior to the determination of *pro rata* individual settlement shares and allocated to each Eligible Class Members so that each Eligible Class Member receives at least $100.00 in exchange for his/her release of claims pursuant to the Settlement Agreement. *Id.* at ¶ 37(a). All Settlement Award determinations shall be based on Defendant's previously produced payroll and timekeeping data for Settlement Class Members. *Id.* at ¶ 28.

Fifty percent (50%) of each Settlement Award to Eligible Class Members shall be treated as back wages and, accordingly, on each Settlement Award, the Settlement Administrator shall effectuate federal and applicable state income and employment tax withholding as required by law with respect to 50% of each Settlement Award distributed, and Defendant TLT shall pay the employer's share of all required FICA and FUTA taxes on such amounts, in addition to the Gross Settlement Amount. *Id.* at ¶ 39. Defendant TLT shall pay these taxes, which amounts shall be deposited into the Qualified Settlement Fund after the Settlement Awards are mailed to Eligible Class Members, in addition to the Gross Settlement Amount. *Id.* Amounts withheld as the employee's share of FICA and FUTA taxes, as well as amounts paid into the Qualified Settlement

Fund by Defendant as representing the employer's share of FICA and FUCA taxes, will be remitted by the Settlement Administrator from the Qualified Settlement Fund to the appropriate governmental authorities. The remaining 50% of each Settlement Award shall be treated as non-wage penalties and liquidated damages, to be reported on an IRS Form 1099, and shall not be subject to FICA and FUTA withholding taxes. *Id.*

Settlement Awards for each Eligible Class Member will be mailed to them within thirty (30) days after the Final Approval Order, or as soon as reasonably practicable. *Id.* at ¶ 42. Checks issued by the third-party Settlement Administrator shall remain valid and negotiable for 180 days from the date of their issuance. *Id.* at ¶ 43. If, at the conclusion of the 180-day check void period, there are any monies remaining in the Qualified Settlement Fund, those monies shall be paid to the Parties' agreed upon *cy pres* recipient, Philadelphia Legal Assistance, subject to the Court's approval in the Final Approval Order. *Id.* at ¶ 44. There will be no reversion of any portion of the Gross Settlement Amount to Defendant at any time. *Id.*

In exchange for the Settlement benefits, Named Plaintiffs and all Eligible Class Members who worked in Pennsylvania, Maryland, or New Jersey shall release "finally, forever and with prejudice . . . any and all state law claims for unpaid overtime, state wage and hour, and related common law claims against Defendants that accrued during their work with Defendants during the Class Period, without limitations, all state claims for unpaid overtime wages, and related claims for penalties, interest, liquidated damages, attorneys' fees, costs, and expenses." *Id.* at ¶ 26. Eligible Class Members who cash or deposit their Settlement Award check will be deemed to have released their FLSA claims. *Id.* Defendants agree that participation in the settlement and release of the Eligible Class Members' Released Claims may not be used to assert collateral estoppel, *res judicata*, waiver or any other claim preclusion of FLSA claims not included in the Eligible Class

Members' Released Claims with respect to individuals who did not specifically release those FLSA claims in this Agreement. *Id.* No releases shall be effective until the Effective Date of the Settlement Agreement. *Id.* at ¶ 20.

C. Notice To Potential Settlement Class Members

The Settlement Agreement provides what Plaintiffs believe is the fairest and most practicable procedure for notifying Settlement Class Members of the terms of the Settlement Agreement and their respective rights and obligations under the Agreement – direct mail and electronic mail ("email"). *Id.* at ¶ 29(f). Under the terms of the Settlement Agreement, within five (5) business days after the Court's Preliminary Approval Order, Defendant TLT and Class Counsel shall jointly provide the Settlement Administrator with an electronic database containing the names, last known addresses, last known telephone numbers, last known email addresses (if any) for Settlement Class Members. *Id.* at *¶* 28(c). In order to provide the best notice practicable, the Settlement Administrator will take reasonable efforts to identify current addresses via public and proprietary systems. *Id. at ¶* 28(e).

Within fifteen (15) business days after the Court's Preliminary Approval Order, the Settlement Administrator shall mail and email (if email addresses are available) an agreed upon and Court-approved Notice to Named Plaintiffs, Opt-in Plaintiffs, and Settlement Class Members. *Id.* at *¶* 29(e). Any Notices returned to the Settlement Administrator with a forwarding address shall be re-mailed by the Settlement Administrator within three (3) business days following receipt of the returned mail. *Id.* at *¶* 29(f). If any Notice is returned to the Settlement Administrator without a forwarding address, the Settlement Administrator shall undertake reasonable efforts to search for the correct address and shall promptly re-mail the Settlement Notice to any newly found addresses. *Id.* In no circumstance shall such re-mailing extend the Notice Deadline. *Id.*

Settlement Class Members who worked in the state of Pennsylvania, Maryland, or New

Jersey shall have sixty (60) calendar days from the time the Notice is initially mailed by the Settlement Administrator to object to or opt-out of the Settlement ("Notice Deadline"). *Id.* at ¶¶ 23(s), 30. Such Settlement Class Members who wish to object to the Settlement may do so by submitting a written statement objecting to Class Counsel and counsel for Defendant on or before the Notice Deadline. *Id.* at ¶ 30. Additionally, such Settlement Class Members who wish to exclude themselves from the Settlement ("opt out") must mail to Class Counsel or the Settlement Administrator a written statement indicating that they do not wish to participate on or before the Notice Deadline, or be bound by the Settlement. *Id.* at ¶ 31.

Defendants will not take any adverse action against any individual on the grounds that he/she is eligible to participate or does participate in the Settlement. *Id* at ¶ 29(g).

IV. DISCUSSION

Plaintiffs respectfully request that the Court enter the accompanying proposed order preliminarily approving the Settlement under Rule 23 and approving the terms as a fair and reasonable resolution of a *bona fide* dispute under the FLSA.

A. Applicable Legal Standards

1. Legal Standard for Approval of FLSA Settlements

The FLSA provides that employers who violate its provisions "shall be liable to the employee … affected in the amount of their unpaid minimum wages or their unpaid overtime compensation, as the case may be…." 29 U.S.C. § 216(b). While the FLSA's provisions are mandatory and, generally, are not subject to bargaining, waiver, or modification by contract or private settlement, *see, e.g., Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 706 (1945), FLSA claims may be settled or compromised where a district court approves the settlement pursuant to 29 U.S.C. § 216(b). *See, e.g., In re Chickie's & Pete's Wage & Hour Litig*., No. 12-6820, 2014 WL 911718, at *2 (E.D. Pa. Mar. 7, 2014) (citing *Cuttic v. Crozer-Chester Med. Ctr.,* 868 F. Supp. 2d 464, 466

(E.D. Pa. 2012)).[5]

A district court's approval of an FLSA collective action settlement requires only a determination that the compromise reached "'is a fair and reasonable resolution of a *bona fide* dispute over FLSA provisions.'" *Tompkins v. Farmers Ins. Exch.*, No. 5:14-cv-3737, 2017 WL 4284114, at *7 (E.D. Pa. Sept. 27, 2017) (citing *Cuttic*, 868 F. Supp. 2d at 466 (quoting *Lynn's Food Stores, Inc. v. U.S.,* 679 F.2d 1350, 1354 (11th Cir. 1982)).[6]

While the United States Court of Appeals for the Third Circuit has not yet specifically detailed the contours of this standard, "district courts in this Circuit have referred to the considerations set forth in *Lynn's Food Stores*." *Chickie's*, 2014 WL 911718 at *2 (citing *Brown v. True Blue, Inc.*, No. 10-514, 2013 WL 5408575, at *1 (M.D. Pa. Sept. 25, 2013)); *Kauffman v. U-Haul Int'l, Inc.,* 5:16-cv-04580, 2019 WL 1785453, at *2 (E.D. Pa. April 24, 2019) (citing *Farris v. JC Penny Co. Inc.,* 176 F. 3d 706, 711 (3d Cir. 1999).[7]

"Under *Lynn's Food Stores*, a district court may find that a proposed settlement resolves a *bona fide* dispute when it 'reflect[s] a reasonable compromise over issues, such as FLSA coverage or computation of back wages that are actually in dispute.'" *Chickie's*, 2014 WL 911718 at *2 (citing *Lynn's Food Stores,* 679 F.2d at 1354)). "Typically, Courts regard the adversarial nature of a litigated FLSA case to be an adequate guarantor of fairness." *Kauffman*, 2019 WL 1785453, at

[5] FLSA claims may also be compromised or settled where the Secretary of Labor supervises an employer's payment to employees under 29 U.S.C. § 216(c). *See, e.g., Chickie's*, 2014 WL 911718, at *2 (citing *Cuttic,* 868 F. Supp. 2d at 466).

[6] *See also Brumley v Camin Cargo Control, Inc.*, Nos. 08-1798, 10-2461 and 09-6128, 2012 WL 1019337, at *2 (D.N.J. Mar. 26, 2012) (quoting *Lynn's Food*, 679 F.2d at 1354) (collecting cases).

[7] While the Third Circuit has not definitively set out factors for evaluating the fairness of a settlement in an FLSA collective action, some district courts in this Circuit have utilized the factors used for assessing the fairness of class action settlements under Rule 23(e) that are set forth in *Girsh v. Jepson*, 521 F. 2d 153 (3d Cir. 1975). *See, e.g., Altnor v. Preferred Freezer Services Inc.*, 197 F. Supp. 3d at 746, 764 (E.D. Pa. July 18, 2016).

*2. "Additionally, a strong presumption of fairness attaches to proposed settlements that have been negotiated at arms-length." *Id.* (citation omitted).

As set forth below, the proposed Settlement in this case meets the standard for approval of an FLSA settlement because it is a fair and reasonable compromise of a *bona fide* dispute that furthers the purpose of the FLSA. Moreover, the proposed Settlement falls well within the range of possible approval, because it is both substantively and procedurally fair. As such, the Settlement should be approved.

2. Legal Standard for Approval of Rule 23 Class Action Settlements

Rule 23(e) requires judicial approval for any compromise of claims brought on a class-wide basis. Fed. R. Civ. P. 23(e) outlines a two-step process by which district courts must first determine whether a proposed class action settlement warrants preliminary approval and then, after notice of the settlement is given to class members, whether final approval is justified. *See, e.g.*, MANUAL FOR COMPLEX LITIGATION (THIRD) § 30.41.

Plaintiffs now seek preliminary approval of the settlement pursuant to Fed. R. Civ. P. 23(e). "The preliminary determination establishes an initial presumption of fairness." *In re Gen. Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig*., 55 F.3d 768, 784 (3d Cir. 1995). A class settlement is entitled to an "initial presumption of fairness" when "(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." *Id.* at 785 (citing 2 Newberg on Class Actions § 11.41 at 11–88 (3d ed.1992)); MANUAL FOR COMPLEX LITIGATION (THIRD) § 30.42, at 238 (1997); *see also Klingensmith v. BP Prods. N. Amer., Inc.*, No. 07-cv-1065, 2008 WL 4360965, at *5 (W.D. Pa. Sept. 24, 2008) (holding "the settlement merits preliminary approval [as the settlement was] reached as a result of arm's-length negotiation between experienced counsel aided by an experienced mediator."); *In re Linerboard Antitrust*

Litig., 292 F. Supp. 2d 631, 640 (E.D. Pa. 2003) ("A presumption of correctness is said to attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.").

The standard for final approval of a settlement is that the settlement is fair, adequate, and reasonable to the class. *Walsh v. Great Atl. & Pac. Tea Co., Inc*., 726 F.2d 956, 965 (3d Cir. 1983). When deciding preliminary approval, a court does not conduct a "definitive proceeding on fairness of the proposed settlement, and the judge must be careful to make clear that the determination permitting notice to members of the class is not a finding that the settlement is fair, reasonable and adequate." *In re Mid-Atl. Toyota Antitrust Litig*., 564 F. Supp. 1379, 1384 (D. Md. 1983); *see also In re Gen. Motors Corp.*, 55 F.3d at 785 (holding that the "preliminary determination establishes an initial presumption of fairness"). That determination must await the final hearing, at which the fairness, reasonableness, and adequacy of the settlement is assessed. *See, e.g.*, *In re Linerboard Antitrust Litig*., 292 F. Supp. 2d at 638.

As set forth below, the proposed Settlement in this case falls well within the range of possible approval because it meets each of the requirements of substantive and procedural fairness. In addition, the proposed Settlement meets the standard for approval of an FLSA settlement because it is a fair and reasonable compromise of a *bona fide* dispute that furthers the purpose of the FLSA. As such, there are no grounds to doubt the reasonableness of the Settlement.

B. The Terms of the Proposed Settlement Are Fair and Reasonable When Considering the Uncertainty of Continuing To Litigate This Matter

Here, the proposed Settlement meets both the standard for preliminary approval under Rule 23(e) as well as under the FLSA. The Gross Settlement Amount provides Settlement Class Members with certain payment of wages that would have been owed if the case had been taken to trial, and it was carefully negotiated based on a substantial investigation by Class Counsel, detailed

damages analyses, and the review and analysis of documents produced by Plaintiffs and Defendants in preparation for mediation. *See* Schalman-Bergen Decl. ¶ 9.

During the course of their extensive settlement negotiations, the Parties exchanged data regarding all Settlement Class Members, and performed and exchanged detailed exposure models and analyses, in addition to exchanging detailed mediation statements and engaging in numerous discussions regarding the various issues in the case. *See id.* at ¶ 14. While the Court had already ruled on liability – *i.e.* holding that unpaid wages were owed where a Settlement Class Member worked more than forty hours per week -- the Parties disagreed on numerous legal and factual issues that would have impacted the case moving forward, including, but not limited to the following:

1) the amount of time that Delivery Associates spent performing their work[8];

2) whether damages should be paid at a half-time rate or a time-and-a-half rate[9];

[8] Because the TL Defendants did not keep accurate time records of the time that Delivery Associates worked during the relevant time period, the Parties had to use various assumptions to estimate time worked for purposes of calculating damages. Both parties modeled these damages by analyzing Amazon's delivery data, which includes various times when the Delivery Associates scan and/or deliver packages to Amazon customers. The parties engaged in numerous meet and confer calls so that Class Counsel could understand the data and could engage in fully informed settlement negotiations. As part of their exposure analysis, Class Counsel's in house data analyst matched payroll records produced by TLT with the delivery data produced by Amazon, and built in various factual assumptions on time worked in addition to the time that was captured by Amazon's delivery data. Ultimately the Gross Settlement Amount that was negotiated and agreed upon represents a compromised resolution on this issue. Schalman-Bergen Decl. ¶ 16.

[9] Plaintiffs argued that, because Defendant TLT admitted that Delivery Associates were paid other forms of compensation for services, the exception to the general rule that overtime must be paid at a time-and-a-half rate as set forth in 29 C.F.R. § 778.112 would not apply. *See* 29 C.F.R. § 778.112 (permitting overtime to be paid at a half time rate where an employee is paid a flat sum for a day's work or for doing a particular job, without regard to the number of hours worked in the day or at the job, and if he receives no other form of compensation for services); *see also Rodriguez v. Republic Servs.*, No. SA–13–CV–20–XR, 2013 WL 5656129, at *2 (W.D. Tex. Oct. 15, 2013). Defendants raised various factual and legal arguments disputing that damages would be ordered to be paid at a time-and-a-half rate. *See, e.g., Lalli v. Gen. Nutrition Ctrs., Inc.*, 814 F.3d 1, 10 (1st Cir. 2016); *Powell v. Carey Int'l., Inc.*, 514 F. Supp. 2d 1302, 1313 (S.D. Fla. 2007); *Mumby v. Pure Energy Servs. (USA), Inc.*, 636 F.3d 1266, 1268 (10th Cir. 2011). Ultimately the Gross

3) whether Defendants would be able to meet their burden of demonstrating that the TL Defendants' unlawful pay system was taken in good faith with reasonable grounds for their belief that they were complying with the FLSA pursuant to 29 U.S.C. § 216(b) such that they would avoid the imposition of liquidated damages;

4) whether Amazon would be held liable for the alleged pay violations of TLT;

5) whether the Court would certify a class action under Rule 23 or grant final certification of a collective action under the FLSA; and

6) whether Plaintiffs and/or Defendants would appeal myriad legal or factual determinations, including class/collective action treatment, liability, and damages.

Ultimately, the Settlement that the Parties reached reflects what Class Counsel believes to be a fair and reasonable settlement of disputed claims that takes into account the risks that Plaintiffs would face if the case proceeded in litigation. *See id.* at ¶ 18. The **Net Settlement Amount** of approximately $1,102,500 (*i.e.* the amount that will actually be paid out to Settlement Class Members after deductions are made for fees, costs, service awards, and administration costs*)* represents approximately 157% percent of Class Counsel's calculations of unpaid wages owed using the most favorable assumptions on time worked at a half time rate. *Id.* at ¶ 10.

This is an excellent result for the Settlement Class Members, especially considering the risks of continued litigation. First, there was a risk that Plaintiffs would not succeed in maintaining a collective or class through trial. *See id.* at ¶ 18. Second, a trial on the merits would involve significant risks for Plaintiffs as to both liability on the issue of joint employment by Amazon and the appropriate rate and calculation of damages, and any verdict at trial could be delayed based on appeals by Defendants. *See id.* By contrast, Settlement Class Members will be entitled to receive significant and certain sums of money for their unpaid wages that the Court agreed were owed to them prior to TLT changing its pay system.

Settlement Amount that was negotiated and agreed upon represents a compromised resolution on this issue. Schalman-Bergen Decl. ¶ 17.

In addition, the proposed allocation formula is fair and reasonable and should be preliminarily approved. *See Chaverria v. New York Airport Serv., LLC*, 875 F. Supp. 2d. 164 (E.D.N.Y. 2012) ("As a general rule, the adequacy of an allocation plan turns on whether counsel has properly apprised itself of the merits of all claims, and whether the proposed apportionment is fair and reasonable in light of that information.") (citations omitted). Settlement Class Members do not need to take any action in order to receive a Settlement Award. Under the proposed allocation formula, each Eligible Class Member will receive a minimum amount of one hundred dollars in addition to settlement shares that bear a reasonable relationship to his/her potential damages (*i.e.*, a *pro* rata portion of the Net Settlement Amount that is calculated by identifying each week that an Eligible Class Member worked four or more days[10] during the applicable Class Period, for which he or she will be entitled to one (1) settlement share, subsequently dividing the Net Settlement Amount by the total number of settlement shares for all Eligible Class Members to reach a per-share dollar figure, and finally multiplying that per share dollar figure by each Eligible Class Member's number of settlement shares). Settlement Agreement ¶ 37. This allocation formula takes into account that Settlement Class Members had different schedules, worked different amounts of overtime hours on a weekly basis, and, if they prevailed, would be entitled to different amounts of damages. The Notice will also provide the minimum amount that each Settlement Class Member can expect to receive from the Settlement. *See* Settlement Agreement, Exhibit A.

Many of these Settlement Class Members (169) also had previously considered and turned down offers of judgment served on them by TLT, at the risk that costs would be taxed against

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[10] Delivery Associates were scheduled to work ten hours per day, so would not be expected to work more than forty hours in a week if they worked fewer than four days. *See* Dkt. No. 74, Declaration of Scott Foreman ("TLT scheduled and expected its delivery associates to work 10 hours a day and paid its employees eight hours at their regular rate and two hours at their overtime rate for each day worked.").

Plaintiffs if the amount finally obtained was not more favorable than the unaccepted offer. *See* Rule 68(d). The Settlement Agreement provides Settlement Class Members with more money than was offered by the TLT Defendants in their offers of judgment (Settlement Agreement ¶ 37(b)(iii)), and also provides that 16 Settlement Class Members who previously accepted their offers of judgment will be entitled to the difference between this proposed settlement and the amounts they accepted, in light of the fact that the Court's orders only dismissed their claims against TLT. *See* Dkt. Nos. 50, 111, 114 (Orders entering Partial Judgment pursuant to Rule 54(b) in favor of Opt-In Plaintiffs and against Defendant TL Transportation).[11]

Where, in comparison to the proposed Settlement, proceeding with litigation would require a substantial amount of time to yield a benefit to the class members, it is an indication that the proposed settlement is fair, reasonable, and adequate. *See Craig v. Rite Aid Corp.*, No. 4:08-cv-2317, 2013 WL 84928, at *9 (M.D. Pa. Jan. 7, 2013), *appeal dismissed* (3d Cir. Feb. 20, 2013) (finding preliminary approval of settlement appropriate where "[n]ot only would continued litigation of these cases result in a massive expenditure of Class Counsel's resources, it would likewise place a substantial drain on judicial resources.").[12] In the instant case, the complexity and expense of proceeding with litigation is clearly outweighed by the efficiency and financial relief presented by the Settlement Agreement.

[11] Class Counsel will provide a further analysis on this issue in connection with their Motion for Final Approval, once the minimum settlement shares have been calculated.

[12] *See also In re Certainteed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 216 (E.D. Pa. 2014) ("[I]f the parties were to continue to litigate this case, further proceedings would be complex, expensive and lengthy, with contested issues of law and fact. . . That a settlement would eliminate delay and expenses and provide immediate benefit to the class militates in favor of approval."); *Deitz v. Budget Renovations & Roofing, Inc.*, No. 4:12–cv–0718, 2013 WL 2338496, at *5 (M.D. Pa. May 29, 2013) ("The Court sees no reason to needlessly expend judicial resources on a matter that neither party has any interest in continuing to litigate.").

C. The Settlement Agreement Is The Product of Informed, Non-Collusive Negotiation And Does Not Present Any Grounds To Question Its Fairness

It is well-established that, in determining whether a proposed settlement should be preliminarily approved, courts may consider whether "the proposed settlement appears to be the product of serious, informed, non-collusive negotiations." *Schwartz v. Dallas Cowboys Football Club, Ltd.*, 157 F. Supp. 2d 561, 570 n.12 (E.D. Pa. 2001) (quoting MANUAL FOR COMPLEX LITIGATION (SECOND) §30.44). Courts are to give considerable weight to the experience of the attorneys who litigated the case and participated in settlement negotiations. *See, e.g.*, *Reed v. Gen. Motors Corp*., 703 F.2d 170, 175 (5th Cir. 1983) ("[T]he value of the assessment of able counsel negotiation at arm's-length cannot be gainsaid. Lawyers know their strengths and they know where the bones are buried"); *In re Rent-Way Sec. Litig*., 305 F. Supp. 2d 491, 509 (W.D. Pa. 2003) ("settlement negotiations took place at arm's-length between highly experience[d] and competent counsel. Their assessment of the settlement as fair and reasonable is entitled to considerable weight"); *UAW v. Gen. Motors Corp.*, No. 05-cv-73991, 2006 WL 891151, at *18 (E.D. Mich. Mar. 31, 2006) (holding in an FLSA case, that "the endorsement of the parties' counsel is entitled to significant weight.").

The Settlement was the result of contested litigation, factual discovery, and arm's-length negotiations. *See* Schalman-Bergen Decl. ¶ 7. The proposed Settlement was reached only after (1) the exchange of substantial documents and records; (2) multiple pre-settlement conference calls; (3) multiple depositions (4) extensive briefing and oral argument on a motion for summary judgment; (5) preparation and exchange of mediation statements; and (6) three (3) in-person mediations in Philadelphia, Pennsylvania before experienced mediators, which included additional extensive arm's-length negotiations between counsel for the Parties both before and after the mediation. *See id.* at ¶ 12. As described above, Class Counsel extensively investigated the

applicable law as applied to the relevant facts, and the potential defenses thereto. The Gross Settlement Amount is based on an intensive review of the facts and law. *See id.* at ¶ 13.

Class Counsel are experienced and respected class action litigators, who specialize in wage theft actions on behalf of workers brought under the Fair Labor Standards Act and related state wage laws. *See id.* at ¶¶ 2-5, Ex. A; Hancock Decl. ¶¶ 2, 4-6. Based on Class Counsel's knowledge and expertise in this area of law, Class Counsel believe this Settlement will provide a substantial benefit to each of the Settlement Class Members. *See* Schalman-Bergen Decl. at ¶ 19; Hancock Decl. at ¶ 10.

In summary, the proposed Settlement Agreement is the product of careful factual and legal research and arm's-length negotiations between the parties.

D. The Additional Service Awards To the Named Plaintiffs Are Justified And Should Be Approved

Pursuant to the Settlement Agreement, Plaintiffs Tyhee Hickman, Shanay Bolden, and O'Donald Henry request approval for service awards for their efforts in bringing and prosecuting this matter in the amount of Fifteen Thousand Dollars ($15,000.00) each to Named Plaintiffs Tyhee Hickman and Shanay Bolden, and Two Thousand, Five Hundred Dollars ($2,500) to Named Plaintiff O'Donald Henry. Settlement Agreement ¶¶ 23(r). Subject to Court approval, this amount will be paid to the Named Plaintiffs from the Gross Settlement Amount and shall be in addition to their recovery of unpaid overtime by their participation as Eligible Class Members who will receive a Settlement Award.

"[C]ourts routinely approve incentive awards to compensate named plaintiffs for services they provided and the risks they incurred during the course of the class action litigation." *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000) (internal citation omitted); *see also Martin v. Foster Wheeler Energy Corp.*, No. 3:06-cv-0878, 2008 WL 906472, at *8-*9 (M.D. Pa.

Mar. 31, 2008) (approving incentive award for named representatives at a total of $10,000.00). It is particularly appropriate to compensate named representative plaintiffs with service awards where they have actively assisted Class Counsel in their prosecution of the litigation for the benefit of a class. *Young v. Tri Cnty. Sec. Agency, Inc.*, 13-cv-5971, 2014 WL 1806881, at *1-8 (E.D. Pa. May 7, 2014) (approving incentive award for named representative in action alleging violations of the FLSA and PMWA, where named plaintiff released all waivable claims arising out of employment and made significant contributions to the litigation).

Here, the proposed additional payment is justified by the benefits that Plaintiffs' diligent efforts have brought to the Settlement Class Members. Plaintiffs took the significant risk of coming forward to represent the interests of their fellow employees. *See* Schalman-Bergen Decl. ¶ 21; Hancock Decl. ¶ 11. They worked with Class Counsel, providing background information about their employment, about Defendant's policies and practices, and about the allegations in this lawsuit. Schalman-Bergen Decl. ¶ 21; Hancock Decl. ¶ 11. Plaintiff Hickman attended two of the mediation sessions. Schalman-Bergen Decl. ¶ 21; Hancock Decl. ¶ 11. These individuals work in an industry in which workers are largely fungible, and they bravely took the risk to step forward on behalf of their fellow workers, knowing that their name would be a on a public docket available through an internet search, and knowing that prospective employers might take their participation in such a lawsuit into consideration when making hiring decisions. *See* Schalman-Bergen Decl. ¶ 21; Hancock Decl. ¶ 11. They risked their reputation in the community and in their field of employment in order to participate in this case on behalf of the Class. *See* Schalman-Bergen Decl. ¶ 21; Hancock Decl. ¶ 11. The lesser service award allotted to Plaintiff Henry simply reflects the shorter length of time that he has served as a Named Plaintiff in this case, which began with Plaintiffs' filing of the Third Amended Complaint on September 16, 2019. Schalman-Bergen Decl.

¶ 21; Hancock Decl. ¶ 11.

The additional payment requested in this case is also in line with those approved in wage and hour collective and class actions throughout the Third Circuit and around the country. *See, e.g.*, *Bredbenner v. Liberty Travel, Inc.*, No. 09-cv-905, 2011 WL 1344745, at *22-24 (D.N.J. Apr. 8, 2011) (citing 2006 empirical study that found average award per class representative to be $16,000); *In re Janney*, No. 06-cv-3202, 2009 WL 2137224 at *12 (E.D. Pa. July 16, 2009) (approving $20,000.00 enhancement awards for each of three named plaintiffs in wage and hour settlement).[13]

For these reasons, the service award payments of $15,000 each to Named Plaintiffs Tyhee Hickman and Shanay Bolden, and $2,500 to Named Plaintiff O'Donald Henry should be preliminarily approved as fair and reasonable.

E. The Proposed Settlement Furthers the Purpose of the FLSA

Finally, the Settlement Agreement contains no provisions that would be contrary to the purposes of the FLSA or frustrate the implementation of the FLSA in the workplace. *See Brown*, 2013 WL 5408575, at *3 (finding settlement agreement frustrated the implementation of the FLSA when it required the plaintiffs to keep the terms of the settlement confidential or risk forfeiting their awards); *Cheeks v. Freeport Pancake House*, 796 F.3d 199 (2d Cir. 2915) (outlining

[13] *See also, e.g.*, *Tavares v. S-L Distrib. Co., Inc.*, No. 1:13-cv-1313, 2016 WL 1743268, at *9 (M.D. Pa. May 2, 2016) ($15,000 service award each to both named plaintiffs); *Badia v. HomeDeliveryLink, Inc.*, Nos. 2:12–6920 (WJM), 2:12–cv–07097, 2015 WL 5666077, at *9 (D.N.J. Sept. 25, 2015) (service awards of $15,000 each to 6 named plaintiffs); *Creed v. Benco Dental Supply, Co.*, No. 3:12–CV–01571, 2013 WL 5276109, at *7 (M.D. Pa. Sept. 17, 2013) ($15,000 service award to named plaintiff); *Foster v. Kraft Foods Grp. Inc.*, Nos. 2:09-cv-00453-CB and 2:12-cv-00205-CB, 2013 WL 440992, at *2 (W.D. Pa. Jan. 15 2013) (approved service awards of $15,000); *Godshall v. Franklin Mint Co.*, No. No. 01-cv-6539, 2004 WL 2745890, *4 (E.D. Pa. Dec.1, 2004) ($20,000 incentive approved each to 2 named plaintiffs). *Reyes v. Altamarea Grp., LLC*, No. 10-6451, 2011 WL 4599822, at *9 (S.D.N.Y. Aug. 16, 2011) (approving $15,000 service award to each of three representative plaintiffs where wage settlement fund was $300,000).

provisions that frustrate the purpose of the FLSA).

Indeed, the settlement furthers the purposes of the FLSA by providing Eligible Class Members with substantial recovery towards their alleged unpaid overtime that, because of the lack of bargaining power inherent in employer-employee relationships, they may have otherwise been unable to recover. *See* 29 U.S.C. § 202 (congressional finding and declaration of policy); *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 706 (1945) ("The statute was a recognition of the fact that due to the unequal bargaining power as between employer and employee, certain segments of the population required federal compulsory legislation to prevent private contracts on their part which endangered national health and efficiency....").

Specifically, the Settlement's release provisions are limited to wage and hour claims that occurred prior to April 15, 2017, and Settlement Class Members will not release FLSA claims unless they cash or deposit their Settlement Check. Settlement Agreement ¶ 26. The Settlement contains no confidentiality or indemnification provisions, nor any prohibitions on future employment. *See generally* Settlement Agreement. The Settlement is non-reversionary, and all Class Members will automatically receive a check for wages without the need to submit a Claim Form. *Id.* Because the settlement facilitates the FLSA and is a fair and reasonable resolution of a *bona fide* dispute, it should be approved as reasonable.

F. The Court Should Preliminarily Certify the Proposed Settlement Class Under Fed. R. Civ. P. 23[14]

In order to obtain class certification, a party must show that all four prerequisites of Rule

[14] For a collective action to proceed under section 216(b) of FLSA, two requirements must be met: (1) all members of the collective action must affirmatively consent to join; and (2) all members of the collective action must be "similarly situated." *See Young*, 2014 WL 1806881, at *2. Because the requirements of Rule 23 are more stringent than Section 216(b) of the FLSA, Plaintiffs contend that they have also met the criterion for confirmation of the Court's July 13, 2018 Order conditionally certifying the Settlement Class as a collective pursuant to 29 U.S.C. § 216(b),

23(a) are met and that the case qualifies as at least one of the matters identified in Rule 23(b). *See Baby Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 55 (3d Cir. 1994) (citing *Wetzel v. Liberty Mut. Ins. Co*., 508 F.2d 239 (3d Cir. 1975), *cert. denied*, 421 U.S. 1011 (1975)). A case may be certified as a class action under Rule 23 when:

> (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.

FED. R. CIV. P. 23(a); *Weiss v. York Hosp*., 745 F.2d 786, 807 (3d Cir. 1984), *cert. denied*, 470 U.S. 1060 (1985). These four threshold requirements are commonly referred to as "numerosity," "commonality," "typicality," and "adequacy of representation," respectively. *See, e.g.*, *In re Warfarin Sodium Antitrust Litig*., 391 F.3d 516, 527 (3d Cir. 2004).

Federal Rule of Civil Procedure 23(b)(3) permits the court to certify a class in cases where "questions of law or fact common to class members predominate over any questions affecting only individual members," and "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). These dual requirements are commonly referred to as "predominance" and "superiority," respectively. *See, e.g.*, *In re Constar Int'l, Inc. Sec. Litig*., 585 F.3d 774, 780 (3d Cir. 2009).

A party that seeks to certify a settlement class must satisfy the same requirements necessary to maintain a litigation class. *In re Gen. Motors Corp.*, 55 F.3d at 778 (discussing and approving use of settlement-only classes). The substantive terms of the settlement agreement may factor into certain aspects of the certification calculus. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591,

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pending final approval of the settlement. Plaintiffs will seek final certification of the Settlement Class in their Motion for Final Approval.

619 (1997). Pursuant to Fed. R. Civ. P. 23(c)(1), the Court may "make a conditional determination of whether an action should be maintained as a class action, subject to final approval at a later date." *Fry v. Hayt & Landau*, 198 F.R.D. 461, 466 (E.D. Pa. 2000) (*citing Collier v. Montgomery Cnty. Hous. Auth.*, 192 F.R.D. 176, 181 (E.D. Pa. 2000)).

Plaintiffs move for preliminary certification of proposed Settlement Class under Pennsylvania, Maryland and New Jersey state law under Fed. R. Civ. P. 23(b)(3), and request that the Court preliminarily find that all of the requirements for class certification are satisfied for settlement purposes only. Pursuant to the terms of the Settlement Agreement, Defendants have stipulated that, for settlement purposes only, the requisites for establishing class certification pursuant to Fed. R. Civ. P. 23 have been and are met. *See* Settlement Agreement ¶ 21.

1. The Settlement Class is Sufficiently Numerous

To meet the numerosity requirement of Fed. R. Civ. P. 23(a)(1), "the class size only need be large enough that it makes joinder impracticable." *Fry*, 198 F.R.D. at 467. The proposed Settlement Class here easily meet the numerosity requirement because, through Defendants' payroll records, approximately 229 members have been identified who worked in Pennsylvania, approximately 253 members have been identified who worked in Maryland, and approximately 94 members have been identified who worked in New Jersey. *See* Schalman-Bergen Decl. ¶ 22.; S*tewart v. Abraham*, 275 F.3d 220, 226–27 (3d Cir. 2001) (although "[n]o minimum number of plaintiffs is required to maintain a suit as a class action," a plaintiff in this circuit can generally satisfy Rule 23(a)(1)'s numerosity requirement by establishing "that the potential number of plaintiffs exceeds 40."). Numerosity is satisfied.

2. The Settlement Class Seeks Resolution of Common Questions

The commonality requirement of Fed. R. Civ. P. 23(a)(2) is satisfied if the Named Plaintiff shares at least one question of fact or law with the grievances of the prospective class. *See Stewart*

v. Abraham, 275 F.3d 220, 227 (3d Cir. 2001). Here, the claims of Named Plaintiffs and the members of the Settlement Class arise from their common work as Delivery Associates, working under Defendant TLT's common pay policies and alleged failure to pay them the proper amount of overtime premiums. This pay plan applied to all Members of the Settlement Class, who all performed similar work on similar schedules. Amazon also raised the same joint employer defense to all Delivery Associates. These sample common questions of law and fact, which Plaintiffs contends apply uniformly to all members of the Settlement Class, is sufficient to satisfy the commonality requirement.

3. The Claims Of The Named Plaintiffs Are Typical Of the Settlement Class

The typicality requirement of Fed. R. Civ. P. 23(a)(3) is satisfied for purposes of preliminarily approving the settlement, because Plaintiffs' claims are reasonably coextensive with those of absent class members, and because Plaintiffs possess the same interest and suffered the same injury as the absent class members. *See Fry*, 198 F.R.D. at 468; *Gen. Tel. Co. of S.W. v. Falcon*, 457 U.S. 147, 156 (1982). Plaintiffs' claims for unpaid overtime compensation during weeks when they worked as delivery drivers are typical of the claims of the proposed Settlement Class. In an abundance of caution, Named Plaintiff Michael Easterday, who previously accepted an offer of judgment has been substituted with Opt-In Plaintiff O'Donald Henry, who also performed work in New Jersey. *See* Dkt. No. 123. The typicality requirement is satisfied here.

4. Class Counsel and Plaintiffs Meet The Adequacy Requirements Of The Settlement Class

To meet the adequacy of representation requirement of Fed. R. Civ. P. 23(a)(4), a named plaintiff must show: 1) that the potential named plaintiff has the ability and the incentive to represent the claims of the class vigorously; 2) that he or she has obtained adequate counsel; and 3) that there is no conflict between the individual's claims and those asserted on behalf of the class.

Fry, 198 F.R.D. at 469.

The adequacy of representation requirement is met here because Plaintiffs have the same interests as the members of the proposed Settlement Class. There is no conflict between the Plaintiffs and the Settlement Class in this case, and Plaintiffs' claims are in line with the claims of members of the Settlement Class. Plaintiffs have and will continue to aggressively and competently assert the interests of the proposed Settlement Class. Further Class Counsel are skilled and experienced in wage and hour class action litigation and have significant experience in representing workers in wage theft actions. *See* Schalman-Bergen Decl. ¶¶ 2-5; Hancock Decl. ¶¶ 2, 4-6. The adequacy requirement is satisfied.

5. The Settlement Class Satisfies The Predominance And Superiority Requirements of Fed. R. Civ. P. 23(b)(3)

Under Fed. R. Civ. P. 23(b)(3), class certification is appropriate if "the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

For the reasons discussed above, the Settlement Class satisfies the predominance requirement. In addition, allowing the members of the Settlement Class the opportunity to participate in class settlements that yield an immediate and substantial benefit is highly superior to having a multiplicity of individual and duplicative proceedings in this Court. It is also superior to the alternative of leaving these important labor rights unaddressed due to the difficulty of finding legal representation and filing claims on an individual basis. Moreover, the Third Circuit has ruled that there is no reason to preclude federal jurisdiction over class actions asserting claims under state statutory wage and overtime laws paralleling the FLSA. *See Knepper v. Rite Aid Corp.*, 675 F.3d 249 (3d Cir. 2012). Accordingly, Plaintiffs respectfully request that the Court provisionally

certify the Settlement Class for settlement purposes only.

G. The Proposed Notice Provides Adequate Notice To The Eligible Class Members And Satisfies Due Process

The United States Supreme Court has held that notice of a class action settlement must 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." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *see also Wade v. Werner Trucking Co.*, No. 10 Civ. 270, 2014 WL 2535226, at *1 (S.D. Ohio June 5, 2014) (approving "Settlement Notice and Opt-in Form proposed by the Parties" as "fully and accurately inform[ing] the FLSA Collective Class Members of all material elements of the Litigation and the Agreement"); *Bozak v. FedEx Ground Package Sys., Inc.*, No. 11 Civ. 738, 2014 WL 3778211, at *3 (D. Conn. July 31, 2014) (approving FLSA notice that provides "notice to the Eligible Settlement Class Members of the terms of the Settlement and the options facing the Settlement Class").

Here, the proposed Notice and manner of distribution negotiated and agreed upon by the Parties is "the best notice practicable," as required under Fed. R. Civ. P. 23(c)(2)(B), and related FLSA case law. All Settlement Class Members have been identified in a class list, and the Notice will be mailed directly to the last known address of each member (and those addresses that the Settlement Administrator is able to find using reasonable investigatory methods). The Notice will also be emailed to Settlement Class Members whose email addresses are known.

The proposed Notice, which is attached to the Settlement Agreement as Exhibit A, is clear and straightforward, and provides information on the meaning and nature of the terms and provisions of the Settlement Agreement, the monetary awards that the Settlement will provide to Settlement Class Members, including the minimum amount each will be entitled to receive, the allocation formula, the scope of the release, the request for attorneys' fees and costs, and the

procedures and deadlines for making a claim for a settlement award, opting out of the Settlement or submitting objections. *See* Settlement Agreement, Ex. A.

Accordingly, the Notice complies with the standards of fairness, completeness, and neutrality required of a settlement class or collective notice disseminated under authority of the Court, and should be approved.

H. The Proposed Implementation Schedule

The Settlement Agreement contains a proposed schedule for notice and final approval of the Settlement Agreement. The proposed schedule, which Plaintiffs respectfully request that this Court approve, is as follows:

Defendant TLT to send CAFA Notice	Within ten (10) business days after submission of the Settlement Agreement to the Court
Defendant TLT and Class Counsel Provide Settlement Class Contact Information	Within ten (5) business days after the Court's Preliminary Approval Order
Notice Sent	Within (15) business days after the Court's Preliminary Approval Order
Plaintiffs' Motion for Approval of Attorneys' Fees and Costs	Forty-Five (45) days after the Settlement Notice is initially mailed.
Deadline to Postmark Objections or Requests for Exclusion ("Objection and Exclusion Deadline")	Sixty (60) days after the Settlement Notice is initially mailed.
Plaintiffs' Motion for Final Approval	Five (5) business days prior to Final Approval Hearing.
Final Approval Hearing	At the Court's convenience, approximately one hundred (100) days after the Court's Preliminary Approval Order.

V. CONCLUSION

Based upon the foregoing reasons, Plaintiffs respectfully request that the Court grant this Unopposed Motion for Preliminary Approval, and sign the accompanying proposed preliminary approval order.

Dated: September 18, 2019

Respectfully Submitted,

BERGER MONTAGUE PC

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Attorneys for Plaintiffs and the Settlement Class

EXHIBIT 1

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

HICKMAN, et al., individually and on behalf of all persons similarly situated, **Plaintiffs,** **v.** **TL TRANSPORTATION, LLC, SCOTT FOREMAN, HERSCHEL LOWE, AMAZON.COM, LLC, and AMAZON LOGISTICS, INC.** **Defendants.**	:	**Civil Action No. 2:17-cv-01038-GAM**

SETTLEMENT AGREEMENT AND RELEASE

1. This Settlement Agreement and Release (the "Settlement Agreement," "Settlement" or "Agreement") is entered into between Plaintiffs Tyhee Hickman and Shanay Bolden, and O'Donald Henry ("Plaintiffs"), individually and on behalf of all other similarly-situated persons, and Defendants TL Transportation, LLC ("TLT"), Scott Foreman ("Foreman"), and Herschel Lowe ("Lowe") (collectively, the "TL Defendants") for their benefit and for the benefit of Defendants Amazon.com, LLC, Amazon Logistics, Inc. (together, "Amazon"), subject to the approval of the Court. The TL Defendants and Amazon may be collectively referred to as "Defendants." Named Plaintiffs and Defendants may be referred to collectively as the "Parties."

RECITALS

2. On March 8, 2017, Plaintiffs Tyhee Hickman and Shanay Bolden, former non-exempt hourly employees of TLT, filed a Class and Collective Action Complaint against Defendant TLT alleging violations of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("FLSA"), the Pennsylvania Minimum Wage act ("PMWA"), 43 P.S. §§ 333.101, *et seq.*, the Maryland Wage and Hour Law ("MWHL"), Maryland Code Annotated, Labor and Employment Article §§ 3-401, *et seq.* and Pennsylvania common law (Dkt. No. 1.)

3. On June 8, 2017, the Court issued an order staying the case pending mediation. (Dkt. No. 12.) TLT thereafter produced data and information to facilitate informed settlement discussions, including an electronic database containing payroll data for a sample of Delivery Associates who worked for TLT between February 27, 2016, and April 15, 2017, at three of its locations (King of Prussia, Swedesboro, and Baltimore).

4. Plaintiffs and TLT participated in mediation before the Hon. James R. Melinson,

Chief U.S. Magistrate Judge for the Eastern District of Pennsylvania (Ret.) at JAMS in Philadelphia, PA on October 17, 2017. A settlement was not reached.

5. On November 28, 2017, Plaintiffs filed their First Amended Complaint to include Amazon.com, LLC, Amazon Logistics, Inc., and Scott Foreman and Herschel Lowe (the two sole members of TLT) as additional Defendants and joint employers. (Dkt. No. 20.)

6. TLT filed its Answer on February 5, 2018, denying liability. (Dkt. No. 34.) The Amazon defendants filed their Answer on March 2, 2018 denying liability and denying that they jointly employed TLT employees. (Dkt. No. 38.)

7. On February 5, 2018, Defendants Foreman and Lowe filed a Motion to Dismiss based on lack of personal jurisdiction and venue in Pennsylvania. (Dkt. No. 35.) The Court denied the motion in all grounds except with respect to Plaintiffs' Maryland state law claims (which proceeded in the litigation against TLT and Amazon). (Dkt. No. 72).

8. The Parties participated in a second mediation session before the Hon. James R. Melinson (Ret.), at JAMS in Philadelphia, PA on March 15, 2018. A settlement was not reached.

9. On March 23, 2018, Plaintiffs filed their motion for partial judgment on the pleadings on TLT's admission, in its Answer, regarding its day rate payment scheme. (Dkt. No. 43.) The Court held oral argument and then converted the motion to a partial summary judgment motion. (Dkt. Nos. 67, 69.)

10. The Parties stipulated to notice after the Plaintiffs filed their motion for conditional certification and to facilitate notice pursuant to 29 U.S.C. § 216(b) ("Notice Motion). *See* Dkt. Nos. 46 & 64. Notice was distributed on August 10, 2018 to 757 individuals. As of this date, 297 individuals filed their consent forms to participate in this lawsuit, including Plaintiffs. (Dkt. Nos. 13, 83, 85, 87-90, 94, 96-101, 107- 110, 115.)

11. On August 16, 2018, the Court granted Plaintiffs' Motion for Summary Judgment, holding that TLT compensated Plaintiffs using a day rate that did not lawfully compensate its employees for overtime, in violation of the Fair Labor Standards Act ("FLSA") and applicable state law. (Dkt. No. 81.)

12. On November 1, 2018, Plaintiffs filed their Second Amended Complaint ("SAC") adding violations of the New Jersey State Wage and Hour Law and adding Michael Easterday as a Plaintiff and representative of the New Jersey class. (Dkt. No. 102.)

13. As of this date, sixteen (16) individuals filed their acceptance of offers of judgment from TLT, including Plaintiff Easterday. (Dkt. Nos. 31, 106-1, 106-2, 106-3, 106-4, 106-5, 106-6, 106-7, 106-8, 106-9, 106-10, 106-11, 106-12, 106-13, 106-14, 112.)

14. Plaintiffs served a Rule 30(b)(6) deposition notice regarding Defendant TLT's payroll systems, and took the deposition of Shirley Washington on December 14, 2018. The parties thereafter agreed to postpone the depositions of the remaining Rule 30(b)(6) witnesses, and TLT serving offers of judgment, so that that the parties could participate in mediation.

15. In advance of mediation, TLT produced supplemental payroll data, and Amazon produced delivery data, which Plaintiffs' Counsel reviewed and analyzed.

16. On July 29, 2019, the Parties participated in mediation before an experienced mediator, Stephen Sonnenberg, Esq.

17. As a result of the mediation, and subsequent arms' length negotiations, the Parties have agreed to settle the Action according to the terms of this Settlement Agreement.

18. Class Counsel has made a thorough and independent investigation of the facts and law relating to the allegations in the Action. In agreeing to this Settlement Agreement, Named Plaintiffs have considered: (a) the facts developed during discovery and the Parties' mediation process and the law applicable thereto; (b) the attendant risks of continued litigation and the uncertainty of the outcome of the claims alleged against Defendant; and (c) the desirability of consummating this Settlement according to the terms of this Settlement Agreement. Named Plaintiffs have concluded that the terms of this Settlement are fair, reasonable and adequate, and that it is in the best interests of Named Plaintiffs, Opt-in Plaintiffs, and the Settlement Class (as defined below) to settle their claims against Defendants pursuant to the terms set forth herein.

19. Defendants deny the allegations in the Action and deny any liability for alleged failure to pay overtime compensation or any alleged wage payment, wage and hour or similar violation. This Settlement Agreement and all related documents are not and shall not be construed as an admission by Defendants or any of the Releasees (as defined below) of any fault, liability or wrongdoing, which Defendants expressly deny.

20. The Parties recognize that notice to the Settlement Class of the material terms of this Settlement, as well as Court approval of this Settlement, are required to effectuate the Settlement, and that the Settlement will not become operative until the Court grants final approval of it, the Settlement becomes Final, and the Settlement Effective Date occurs.

21. The Parties stipulate and agree that, for settlement purposes only, the requisites for establishing collective action certification under the FLSA pursuant to 29 U.S.C. § 216(b), and class certification pursuant to FED. R. CIV. P. 23(a) and (b)(3) are met. Should this Settlement not become Final, such stipulation to conditional certification or class certification shall become null and void and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not conditional certification or class certification would be appropriate in a non-settlement context.

22. In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, IT IS HEREBY AGREED, by and between the undersigned, subject to the final approval of the Court and the other conditions set forth herein, that Named Plaintiffs', Opt-in Plaintiffs' and the Settlement Class Members' (as defined below) claims as described herein against Defendants shall be settled, compromised and dismissed, on the merits and with prejudice, and that the Eligible Class Members' Released Claims (as defined below) shall be finally and fully compromised, settled and dismissed as to Defendants and Releasees, in the manner and upon the terms and conditions set forth below.

DEFINITIONS

23. The following terms used in this Settlement Agreement shall have the meanings ascribed to them below:

a. "Action" means the above captioned Action.

b. "CAFA Notice" means the notice to be sent by Defendants to appropriate federal and state officials pursuant to the requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b) ("CAFA"), within ten (10) business days after the submission of this Settlement Agreement to the Court. A copy of any CAFA Notice shall be provided to Class Counsel.

c. "Class Counsel" means Berger Montague PC and Willig, Williams & Davidson.

d. "Class Period" means the period from March 8, 2014 through April 15, 2017.

e. "Court" means the United States District Court for the Eastern District of Pennsylvania.

f. "Defendants" means Amazon.com, LLC, Amazon Logistics, Inc., TL Transportation LLC, Scott Foreman, and Herschel Lowe.

g. "Defendants' Counsel" means Cozen O'Connor and Morgan, Lewis & Bockius LLP.

h. "Defendant TLT" means TL Transportation LLC.

i. "Eligible Class Member" means (i) Named Plaintiffs; (ii) Opt-In Plaintiffs, and (iii) all Settlement Class Members who do not timely and validly exclude themselves from the Settlement.

j. "Effective Date" means the first business day after the Court's Final Approval Order if there are no objectors, and if there are any objectors, means the first business day after the Court's Final Approval Order becomes Final.

k. "Final" shall mean, with respect to a judgment or order, that the judgment or order is final and appealable and either (a) no appeal, motion, or petition to review or intervene has been taken with respect to the judgment or order as of the date on which all times to appeal, move, or petition to review or intervene therefrom have expired, or (b) if an appeal, motion or petition to intervene or other review proceeding of the judgment or order has been commenced, such appeal, motion or petition to intervene or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for rehearing *en banc*, petitions for writ of certiorari or otherwise, and such appeal or other review has been finally resolved in such manner that affirms the judgment or order in its entirety.

l. "Fee Award" means the award of attorneys' fees that the Court authorizes to be paid to Class Counsel for the services they rendered to Named Plaintiffs and the Settlement Class in the Action.

m. "Final Approval" or "Final Approval Order" means the Court's Final Approval Order approving the Settlement and entering judgment.

n. "Final Approval Hearing" means the hearing to be held by the Court to consider the final approval of the Settlement.

o. "Gross Settlement Amount" means the non-reversionary maximum amount that Defendant TLT shall pay in connection with this Settlement, in exchange for the release of the Eligible Class Members' Released Claims, and shall include, subject to Court approval, the Fee Award, an award of litigation costs to Class Counsel, Service Awards, and settlement administration costs. The Gross Settlement Amount is the gross sum of One Million Eight Hundred Thousand Dollars and Zero Cents ($1,800,000.00). In no event shall (i) the Gross Settlement Amount exceed this sum; or (ii) shall Defendant TLT be required to pay more than the Gross Settlement Amount in connection with the Settlement, except that Defendants shall be responsible for their respective attorneys' fees and costs, and Defendant TLT shall be responsible for the employer's share of payroll taxes attributable to the wage portions of the Settlement Awards.

p. "Initial Mailing" is defined in Section 20 below.

q. "Named Plaintiffs" means Tyhee Hickman, Shanay Bolden, and O'Donald Henry.

r. "Net Settlement Amount" means the Gross Settlement Amount less: (i) Fifteen Thousand Dollars ($15,000.00) to each of Named Plaintiffs Tyhee Hickman, Shanay Bolden, and $2,500 to Named Plaintiff O'Donald Henry, for their efforts in bringing and prosecuting this matter ("Service Award"); (ii) the payment of the Fee Award, not to exceed one-third (1/3) of the Gross Settlement Amount, plus the payment of out-of-pocket costs incurred by Class Counsel, not to exceed Forty Thousand Dollars ($40,000.00); and (iii) the costs related to administering this Settlement, not to exceed Twenty-Five Thousand Dollars ($25,000.00). The Parties acknowledge that all of these amounts are subject to the Court's approval.

s. "Notice Deadline" means the date sixty (60) days after the Settlement Notice is initially mailed by the Settlement Administrator to the Settlement Class. Settlement Class Members shall have until the Notice Deadline to object to or opt out of the Settlement.

t. "Opt-In Plaintiffs" means individuals, who at the time of Preliminary Approval, already submitted an Opt-In Consent Form to join this Action.

u. "Parties" means the parties to this Agreement, Named Plaintiffs and Defendants.

v. "Preliminary Approval" or "Preliminary Approval Order" means the Court's Preliminary Approval Order preliminarily approving the terms and conditions of this Agreement.

w. "Releasees" means Defendants and their present and former parent companies, subsidiaries, affiliates, divisions, and joint ventures, and all of its and their past and present shareholders, officers, directors, employees, agents, servants, owners, members, investors, executors, administrators, general partners, limited partners, real or alleged alter egos, predecessors, successors, transferees, assigns, registered representatives, attorneys, insurers, partners, profit sharing, savings, health and other employee benefit plans of any nature, the successors of such plans and those plans' respective trustees, administrators, agents, employees, attorneys, fiduciaries, and other persons acting on its or their behalf, and each of them, and the predecessors and successors, assigns and legal representatives of all such entities and individuals.

x. "Settlement Administrator" means the Angeion Group.

y. "Settlement Award" means the payment that each Eligible Class Member shall be entitled to receive pursuant to the terms of this Agreement.

z. "Settlement Class" or "Settlement Class Member" means the Named Plaintiffs, all Opt-in Plaintiffs, and all current or former Delivery Associates who were employed by TL Transportation, LLC to deliver packages to Amazon customers in the United States between March 8, 2014 and April 15, 2017. There are approximately 757 members of the Settlement Class including Plaintiffs. Plaintiffs have relied on this number in agreeing to the Settlement.

aa. "Eligible Class Members" means all Settlement Class Members who do not file timely and valid exclusion requests from the Settlement. Plaintiffs are included within the term Settling Class Members.

bb. "Eligible Class Members' Released Claims" is defined below in Paragraph 26.

cc. "Settlement Notice" means the Notice of Class Action Settlement to the Settlement Class Members substantially in the form as Exhibit A, as approved by the Court.

RELEASES

24. In exchange for the consideration set forth in this Settlement Agreement, Named Plaintiffs and Eligible Class Members agree to release all claims as set forth herein as applicable.

25. The Parties acknowledge and agree that, with the exception of the Named Plaintiffs, only Eligible Class Members who cash or deposit their Settlement Award check shall release their FLSA claims against Defendants and Releasees. Named Plaintiffs shall be deemed to have released their FLSA and state law claims upon Final Approval by virtue of having executed this Agreement.

26. **Eligible Class Members' Released Claims:** Upon Final Approval of the Settlement Agreement, Named Plaintiffs and Eligible Class Members who worked in Pennsylvania, Maryland, or New Jersey shall and hereby do release and discharge, Defendants and all Releasees, finally, forever and with prejudice of any and all state law claims for unpaid overtime, state wage and hour, and related common law claims against Defendants that accrued during their work with Defendants during the Class Period, without limitations, all state claims for unpaid overtime wages, and related claims for penalties, interest, liquidated damages, attorneys'

fees, costs, and expenses. Eligible Class Members who cash or deposit their Settlement Award check will be deemed to have released their FLSA claims. Defendants agree that participation in the settlement and release of the Eligible Class Members' Released Claims may not be used to assert collateral estoppel, *res judicata*, waiver or any other claim preclusion of FLSA claims not included in the Eligible Class Members' Released Claims with respect to individuals who did not specifically release those FLSA claims in this Agreement.

27. **Release Language on Settlement Checks.** The Settlement Administrator shall include the following release language on the back of each Settlement Award check:

> By signing or cashing this check, I affirm my release of Amazon.com, LLC, Amazon Logistics, Inc., TL Transportation LLC, Scott Foreman, and Herschel Lowe and all Releasees of all Eligible Class Members' Released Claims as defined in the Settlement Agreement approved by the Court in *Hickman v. TL Transp. LLC*, No 2:17-cv-01038-GAM (E.D. Pa.). I affirm that I will not sue or assert any of the Eligible Class Members' Released Claims, including FLSA claims, against any Releasee.

28. Named Plaintiffs and Eligible Class Members, to the fullest extent allowed by law, are prohibited from asserting any claims released by them in this Settlement, and from commencing, joining in, prosecuting, or voluntarily assisting in a lawsuit or adversarial proceeding against the Releasees, based on claims released by them in this Settlement. Excluded from this prohibition are any instances where any individual is legally compelled to testify through service of a subpoena or other process.

CERTIFICATION, NOTICE, AND SETTLEMENT IMPLEMENTATION

29. The Parties agree to the following procedures for obtaining Preliminary Approval of the Settlement, certifying the Settlement Class, and notifying the Settlement Class of this Settlement:

a. **Request for Class Certification and Preliminary Approval Order**. Named Plaintiffs shall file an Unopposed Motion for Preliminary Approval of Settlement Agreement, requesting that the Court certify the Settlement Class pursuant to 29 U.S.C. § 216(b) and FED. R. CIV. P. 23(a) and (b)(3) for the sole purpose of settlement; preliminarily approve the Settlement Agreement and its terms; approve the proposed form of the Settlement Notice and find that the proposed method of disseminating the Settlement Notice meets the requirements of due process and is the best notice practicable under the circumstances; set a date for Named Plaintiffs' motion for Final Approval of the Settlement, and approval of the requested Service Award, Fee Award; and set a date for the Final Approval Hearing. Prior to filing the Unopposed Motion for Preliminary Approval of Settlement, Class Counsel shall file a stipulation and Third Amended Complaint, substituting O'Donald Henry for Michael Easterday as the representative Named Plaintiff for the New Jersey class, in light of Mr. Easterday's acceptance of an offer of judgment. The stipulation shall provide that Defendants' Answers and Affirmative Defenses to the Second Amended Complaint shall be treated as their Answers and Affirmative Defenses to the Third Amended Complaint without the need for Defendants to re-file their answers pursuant to Rule 15 of the Federal Rules of Civil Procedure.

b. **Notice**. The Settlement Administrator shall be responsible for preparing, printing and mailing the Settlement Notice to all Settlement Class Members.

c. Within five (5) business days after the Court's Preliminary Approval of the Settlement, Defendant TLT and Class Counsel shall jointly provide to the Settlement Administrator an electronic database containing the names, employee ID number, last known addresses, last known telephone numbers (if any), last known email addresses (if any), social security numbers or tax ID numbers of each Settlement Class Member, along with locations of work, total number of workweeks that each Settlement Class Member worked during the Class Period where the Settlement Class Member worked four or more days in the workweek. Class Counsel shall also provide to the Settlement Administrator a list of the Settlement Class Members who previously accepted an offer of judgment, with the total amount paid as the offer of judgment, as reflected on the docket (See Dkt. Nos. 31, 106, 112.).

d. In order to provide the best notice practicable, prior to mailing the Settlement Notice, the Settlement Administrator will take reasonable efforts to identify current addresses via public and proprietary systems.

e. Within fifteen (15) business days after the Court's Preliminary Approval Order, the Settlement Administrator shall mail and email (if email addresses are available) the agreed upon and Court approved Settlement Notice to Named Plaintiffs, Opt-in Plaintiffs, and Settlement Class Members ("Initial Mailing"). The Settlement Administrator shall provide notice to Class Counsel and Defendants' Counsel that the Settlement Notices have been mailed.

f. Any Settlement Notice returned to the Settlement Administrator with a forwarding address shall be re-mailed within three (3) business days following receipt of the returned mail. If any Settlement Notice is returned to the Settlement Administrator without a forwarding address, the Settlement Administrator shall undertake reasonable efforts to search for the correct address, and shall promptly re-mail the Settlement Notice to any newly found addresses. In no circumstance shall such re-mailing extend the Notice Deadline.

g. Defendants will not take any adverse action against any current TLT employee on the grounds that he/she is eligible to participate or does participate in the Settlement. Defendants also will not discourage participation in this Settlement Agreement or encourage objections or opt-outs. If requested, Defendant TLT shall state that Defendant TLT and Class Counsel encourage Settlement Class Members to participate in the Settlement.

30. **Objections.** The Settlement Notice shall provide that Settlement Class Members who worked in the state of Pennsylvania, Maryland, or New Jersey who wish to object to the Settlement must, on or before the Notice Deadline, mail to Class Counsel and Defendant's Counsel a written statement objecting to the Settlement. Such objection shall not be valid unless it includes the information specified in the Settlement Notice. The statement must be signed personally by the objector, and must include the objector's name, address, telephone number, email address (if applicable), the factual and legal grounds for the objection, and whether the objector intends to appear at the Final Approval Hearing. The Settlement Notice shall advise Settlement Class Members that objections shall only be considered if the Settlement Class Member has not opted out of the Settlement. No Settlement Class Member shall be entitled to be heard at the Final

Approval Hearing (whether individually or through counsel), unless written notice of the Settlement Class Member's intention to appear at the Final Approval Hearing has been filed with the Court and served upon Class Counsel and Defendant's Counsel on or before the Notice Deadline, and the Settlement Class Member has not opted out of the Settlement. The postmark date of mailing to Class Counsel and Defendants' Counsel shall be the exclusive means for determining that an objection is timely mailed to counsel. If postmark dates differ, the later of the two postmark dates will control. Persons who fail to return timely written objections in the manner specified above shall be deemed to have waived any objections and oppositions to the Settlement's fairness, reasonableness and adequacy, and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. None of the Parties, their counsel, nor any person on their behalf, shall seek to solicit or otherwise encourage anyone to object to the settlement, or appeal from any order of the Court that is consistent with the terms of this Settlement, or discourage participation in the Settlement process.

31. **Requests for Exclusion**. The Settlement Notice shall provide that Settlement Class Members who worked in the states of Pennsylvania, Maryland, or New Jersey, other than Named Plaintiffs, who wish to exclude themselves from the Settlement ("opt out") must mail to the Settlement Administrator a written statement indicating that they do not wish to participate or be bound by the Settlement. The written request for exclusion must contain the Settlement Class Member's full name, address, telephone number, email address (if applicable), and last four digits of their social security number, and must be signed individually by the Class Member. No opt-out request may be made on behalf of a group. Such written statement must be postmarked by the Notice Deadline.

32. **Final Report**. Within five (5) business days after the Notice Deadline, the Settlement Administrator shall provide to Class Counsel and Defendants' Counsel notice of (a) the total number of Settlement Class Members who filed timely and valid requests for exclusion from the Settlement, along with the complete copies of all requests for exclusion, including their postmark dates, and (b) information regarding the total number of Notices returned as undeliverable along with remailing information. The Settlement Administrator shall work with Class Counsel to prepare a formal report for submission at the Final Approval Hearing.

33. **Final Approval Hearing**. After review and approval by Defendants, Named Plaintiffs shall request that the Court schedule the Final Approval Hearing no earlier than thirty (30) days after the Notice Deadline to determine final approval of the settlement and to enter a Final Approval Order:

a. certifying this Action and Settlement Class as an FLSA collective action under 29 U.S.C. § 216(b) and as a class action under FED. R. CIV. P. 23(a) and (b)(3) for purposes of settlement only;

b. finding dissemination of the Settlement Notice was accomplished as directed and met the requirements of due process;

c. finally approving the Settlement and its terms as a fair, reasonable and adequate;

d. directing that the Settlement funds be distributed in accordance with the terms

of this Settlement Agreement;

e. directing that the Action be dismissed finally, fully, forever and with prejudice and in full and final discharge of any and all Settling Class Members' Released Claims; and

f. retaining continuing jurisdiction over this Action for purposes only of overseeing all settlement administration matters.

SETTLEMENT FUNDS AND AWARD CALCULATION

34. **Gross Settlement Amount.**

a. Within ten (10) business days after Preliminary Approval is granted, Defendant TLT shall electronically transfer one-third of the amount of the Gross Settlement Amount to the Settlement Administrator. No later than ten (10) business days after the Effective Date, Defendant TLT shall electronically transfer the balance of the Gross Settlement Amount to the Settlement Administrator. Upon receipt by the Settlement Administrator, these funds shall be transferred immediately to a Qualified Settlement Fund satisfying the requirements of Treasury Regulation Section 1.468B-1. The Settlement Administrator shall provide Defendant TLT's Counsel with an escrow agreement in advance of any such transfer. The Settlement Administrator shall provide Defendant TLT with a Section 1.468B-1 Relation Back Election that meets the requirements of Regulation Section 1.468B-1(j)(2) within five (5) business days after receipt of the funds. Defendant TLT shall execute and return this document to the Settlement Administrator, to the extent necessary, which shall be affixed to the initial tax return of the Qualified Settlement Fund in order to establish the start date of the Qualified Settlement Fund. Except for any costs associated with distribution of Settlement Notice, the entire Gross Settlement Amount, plus any interest earned on the Gross Settlement Amount, shall be refunded to Defendant TLT if the Settlement does not obtain Final Approval or otherwise does not become Final, or the Effective Date does not occur. There shall be no reversion of any portion of the Gross Settlement Amount to Defendant TLT at any time after the Effective Date.

b. **Disbursement by Settlement Administrator**. All disbursements shall be made from the Qualified Settlement Fund. The Settlement Administrator shall be the only entity authorized to make withdrawals or payments from the Qualified Settlement Fund.

35. **Payments**. Subject to the Court's Final Approval Order, the following amounts shall be paid by the Settlement Administrator from the Gross Settlement Amount:

a. **Service Awards to Named Plaintiff**. Subject to the Court's approval, Named Plaintiffs shall each receive their respective Service Award for their efforts in bringing and

prosecuting this matter. The Qualified Settlement Fund shall issue a Form 1099 for these payments. This payment shall be made within five (5) business days after the Effective Date.

b. **Fee Awards and Costs**.

(i) Subject to the Court's approval, Class Counsel shall receive a Fee Award in an amount up to one-third (1/3) of the Gross Settlement Amount, which will compensate Class Counsel for all work performed in the Action as of the date of this Settlement Agreement as well as all of the work remaining to be performed, including but not limited to documenting the Settlement, securing Court approval of the Settlement, making sure that the Settlement is fairly administered and implemented, and obtaining final dismissal of the Action. In addition, Class Counsel shall, subject to Court approval, receive reimbursement of their out-of-pocket costs approved by the Court. These payments of attorneys' fees and costs shall be made within five (5) business days after the Effective Date.

(ii) The attorneys' fees and costs paid by Defendant TLT pursuant to this Agreement, out of the Gross Settlement Amount, shall constitute full satisfaction of Defendants' obligations to pay amounts to any person, attorney or law firm for attorneys' fees or costs in this Action on behalf of Named Plaintiffs, Opt-In Plaintiffs and/or any Settlement Class Member, and shall relieve Defendants from any other claims or liability to any other attorney or law firm for any attorneys' fees or costs to which any of them may claim to be entitled on behalf of Named Plaintiffs, Opt-In Plaintiffs or any Settlement Class Member.

(iii) A Form 1099 shall be provided to Class Counsel for the payments made to Class Counsel. Class Counsel shall be solely and legally responsible to pay any and all applicable taxes on the payment made to them.

c. **Settlement Administration Costs**. Settlement Administration costs shall be paid from the Gross Settlement Amount. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs incurred in the administration of the Settlement.

d. **Settlement Awards to Eligible Class Members**. Settlement Awards shall be made to Eligible Class Members as set forth below.

36. **No Claim Based Upon Distributions or Payments in Accordance with this Settlement Agreement**. No person shall have any claim against Defendants, Class Counsel, or Defendants' Counsel based on distributions or payments made in accordance with this Settlement Agreement.

CALCULATION AND DISTRIBUTION OF SETTLEMENT AWARDS

37. **Settlement Award Eligibility**. All Eligible Class Members shall be paid a Settlement Award from the Net Settlement Amount. The Settlement Administrator shall be responsible for determining eligibility for, and the amount of, the Settlement Awards to be paid to Eligible Class Members based on the following formula:

a. The amount of $100 per Eligible Class Member will be deducted from the Net Settlement Amount prior to the determination of *pro rata* individual settlement shares and allocated to each Eligible Class Member so that each Eligible Class Member receives at least $100 in exchange for their release in this Settlement Agreement.

b. In addition to the $100 payment set out in (a) above, Eligible Class Members shall receive *a pro rata* portion of the Net Settlement Amount as follows;

i. For each week during which the Eligible Class Member worked four or more days during the applicable Class Periods, he or she shall be eligible to receive a *pro rata* portion of the Net Settlement Amount ("Qualifying Workweek"). Each Qualifying Workweek will be equal to one (1) settlement share.

ii. The total number of settlement shares for all Eligible Class Members will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Eligible Class Member's number of settlement shares to determine the Eligible Class Member's Settlement Award.

iii. Eligible Class Members who previously accepted offers of judgment will have the amount paid pursuant to the accepted offers of judgment subtracted from their Settlement Award, and the balance shall be redistributed to the Eligible Class Members who did not accept offers of judgment on a *pro rata* basis and added to their Settlement Awards. In no event shall an Eligible Class Member's Settlement Award be reduced to less than the $100 base payment.

38. All Settlement Award determinations shall be based on Defendant TLT's payroll and timekeeping records provided to the Settlement Administrator in accordance with Paragraph 29(c).

39. Fifty percent (50%) of each Settlement Award to Eligible Class Members shall be treated as back wages, and accordingly, on each Settlement Award, the Settlement Administrator shall effectuate federal and applicable state income and employment tax withholding as required by law with respect to 50% of each Settlement Award distributed, and Defendant TLT shall pay the employer's share of all required FICA and FUTA taxes on such amounts Defendant TLT shall pay these taxes, which amounts shall be deposited into the Qualified Settlement Fund prior to the Settlement Awards being mailed to Eligible Class Members, in addition to the Gross Settlement Amount. Amounts withheld will be remitted by the Settlement Administrator from the Qualified Settlement Fund to the appropriate governmental authorities. The remaining 50% of each Settlement Award shall be treated as non-wage penalties and liquidated damages, to be reported on an IRS Form 1099, and shall not be subject to FICA and FUTA withholding taxes. Defendant TLT shall cooperate with the Settlement Administrator to provide payroll tax information as necessary to accomplish the income and employment tax withholding on the wage portion of each Settlement Award, and the Form 1099 reporting for the non-wage portion of each Settlement

Award.

40. Class Counsel and Defendants' Counsel do not intend for this Settlement Agreement to constitute legal advice relating to the tax liability of any Eligible Class Member. To the extent that this Settlement Agreement, or any of its attachments, is interpreted to contain or constitute advice regarding any federal, state or local tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any tax liability or penalties.

41. The Settlement Administrator shall provide Class Counsel and Defendants' Counsel with a final report of all Settlement Awards, at least ten (10) calendar days before the Settlement Awards to Eligible Class Members are mailed.

42. The Settlement Administrator shall mail all Settlement Awards to Eligible Class Members within thirty (30) days after the Effective Date or as soon as reasonably practicable. The Settlement Administrator shall then provide written certification of mailing to Class Counsel and Defendants' Counsel.

43. All Settlement Award checks shall remain valid and negotiable for one hundred eighty (180) days from the date of their issuance and may thereafter automatically be canceled if not cashed within that time, at which time the right to recover any Settlement Award will be deemed void and of no further force and effect. With ninety (90) days remaining, a reminder letter will be sent via U.S. mail and email to those who have not yet cashed their settlement check, and during the last sixty (60) days of the check cashing period, a telephone call will be placed to those that have still not cashed their check to remind them to do so. At the conclusion of the 180 day check cashing deadline, any Eligible Class Members who have not cashed their Settlement Award checks shall nevertheless be deemed to have finally and forever released the Eligible Class Members' Released Claims, as applicable, except that the Eligible Class Member shall not release any FLSA claims against Defendant.

44. **Remaining Monies**. If at the conclusion of the 180-day check void period set forth above, there are any monies remaining, no amount of Settlement Awards attributable to Eligible Class Members shall revert to Defendant TLT, and any amount of uncashed checks from Eligible Class Members as well as any interest earned by the Gross Settlement Amount shall be paid to the Parties' agreed upon *cy pres* recipient, Philadelphia Legal Assistance, subject to the Court's approval.

MISCELLANEOUS

45. **No Admission of Liability.** This Settlement Agreement and all related documents are not and shall not be construed as an admission by Defendants or any of the Releasees of any fault or liability or wrongdoing.

46. **Defendant's Legal Fees.** Defendants' respective legal fees and expenses in this Action shall be borne by Defendants as applicable.

47. **Nullification of the Settlement Agreement**. In the event: (a) the Court does not preliminarily or finally approve the Settlement as provided herein; or (b) the Settlement does not

become Final for any other reason; or (c) the Effective Date does not occur, the Parties agree to engage in follow up negotiations with the intent of resolving the Court's concerns that precluded approval, and if feasible, to resubmit the settlement for approval within thirty (30) days. If the Settlement is not approved as resubmitted or if the Parties are not able to reach another agreement, then either Party may void this Agreement; at that point, the Parties agree that each shall return to their respective positions on the day before this Agreement and that this Agreement shall not be used in evidence or argument in any other aspect of their litigation. In addition, upon voiding of the Agreement, the Gross Settlement Amount will be returned to Defendant TLT consistent with Paragraph 34(a).

48. **TLT Option to Revoke**. If fifteen percent (15%) or more of all Settlement Class Members exclude themselves from the Settlement, the Parties agree that the TLT Defendants may revoke the Settlement Agreement by providing written notice to Class Counsel and Amazon counsel within five business days after TLT's receipt of the Final Report from the Settlement Administrator required by Paragraph 32 of this Agreement. If TLT Defendants exercise their option to revoke the Settlement under this paragraph, then the Parties agree that (a) each shall return to their respective positions on the day before this Agreement; (b) this Agreement shall not be used in evidence or argument in any other aspect of their litigation; (c) the Gross Settlement Amount will be returned to Defendant TLT consistent with Paragraph 34(a) but TLT Defendants shall be responsible for the Settlement Administrator's costs and/or expenses incurred up to the date of such revocation.

49. **Inadmissibility of Settlement Agreement.** Except for purposes of settling this Action, or enforcing its terms (including that claims were settled and released), resolving an alleged breach, or for resolution of other tax or legal issues arising from a payment under this Settlement Agreement, neither this Agreement, nor its terms, nor any document, statement, proceeding or conduct related to this Agreement, nor any reports or accounts thereof, shall be construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to the Parties, including, without limitation, evidence of a presumption, concession, indication or admission by any of the Parties of any liability, fault, wrongdoing, omission, concession or damage.

50. **Computation of Time.** For purposes of this Agreement, if the prescribed time period in which to complete any required or permitted action expires on a Saturday, Sunday, or legal holiday (as defined by FED. R. CIV. P. 6(a)(6)), such time period shall be continued to the following business day. The term "days" shall mean calendar days unless otherwise noted.

51. **Interim Stay of Proceedings.** The Parties agree to hold in abeyance all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement. Further, without further order of the Court, the Parties hereto may agree in writing to reasonable extensions of time to carry out any of the provisions of the Settlement.

52. **Amendment or Modification.** This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors in interest. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

53. **Entire Settlement Agreement.** This Agreement with exhibits constitutes the entire Agreement among the Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement other than the representations, warranties, and covenants contained and memorialized in such documents. All prior or contemporaneous negotiations, memoranda, agreements, understandings, and representations, whether written or oral, including the Parties' Memorandum of Understanding executed on July 29, 2019 as well as the Tolling Agreement between Plaintiffs Tyhee Hickman and Shanay Bolden (on the one hand) and Scott Foreman and Herschel Lowe (on the other hand), executed through counsel on July 27, 2018 and July 26, 2018, respectively, are expressly superseded hereby and are of no further force and effect. Each of the Parties acknowledges that they have not relied on any promise, representation or warranty, express or implied, not contained in this Agreement. No rights hereunder may be waived except in writing.

54. **Authorization to Enter Into Settlement Agreement.** The Parties warrant and represent that they are authorized to enter into this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel shall cooperate with each other and use their best efforts to effect the implementation of the Agreement. In the event that the Parties are unable to reach resolution on the form or content of any document needed to implement this Agreement, or on any supplemental provisions or actions that may become necessary to effectuate the terms of this Agreement, the Parties shall seek the assistance of the mediator, Stephen Sonnenberg, Esq., to resolve such disagreement.

55. **Binding on Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of Named Plaintiffs, Defendants, Opt-In Plaintiffs, the Settlement Class Members and their heirs, beneficiaries, executors, administrators, successors, transferees, successors, assigns, or any corporation or any entity with which any party may merge, consolidate or reorganize. The Parties hereto represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

56. **Counterparts.** This Agreement may be executed in one or more counterparts, including by facsimile or email. All executed counterparts and each of them shall be deemed to be one and the same instrument. All executed copies of this Agreement, and photocopies thereof (including facsimile and/or emailed copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.

57. **No Signature Required by Eligible Class Members.** Only the Named Plaintiffs will be required to execute this Settlement Agreement. The Settlement Notice will advise all Settlement Class Members of the binding nature of the release and such shall have the same force and effect as if this Settlement Agreement were executed by each Settling Class Member.

58. **Cooperation and Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement; hence the drafting of this Agreement shall not be construed against any of the Parties. The Parties agree that the terms and conditions of this Agreement were

negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

59. **Governing Law.** All terms of this Settlement Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the Commonwealth of Pennsylvania.

60. **Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement and all orders and judgments entered in connection therewith, and the Parties and their Counsel submit to the jurisdiction of the Court for this purpose.

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IN WITNESS WHEREOF, the Parties and their Counsel have executed this Settlement Agreement as follows:

PLAINTIFF:

DocuSigned by:
F6C07EC1B684442...
Tyhee Hickman

Date: 9/15/2019

DocuSigned by:
19CB11B6F6E6456...
Shanay Bolden

Date: 9/16/2019

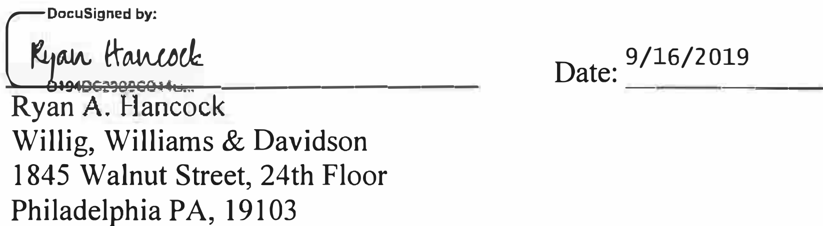
DocuSigned by:
9D89E6D298B1412...
O'Donald Henry

Date: 9/13/2019

APPROVED AS TO FORM BY CLASS COUNSEL:

Date: 9/16/19

Sarah R. Schalman-Bergen
Camille Fundora Rodriguez
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103

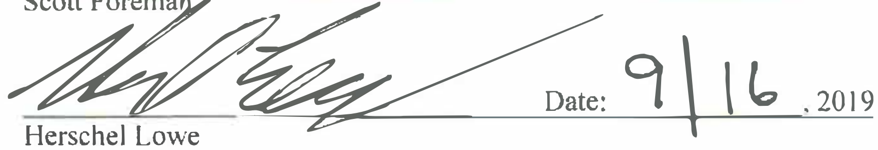


DocuSigned by:
Ryan Hancock

Date: 9/16/2019

Ryan A. Hancock
Willig, Williams & Davidson
1845 Walnut Street, 24th Floor
Philadelphia PA, 19103

DEFENDANTS: ______________________________ Date: 9/16, 2019
TL Transportation LLC



______________________________ Date: Sept 16th, 2019
Scott Foreman

______________________________ Date: 9/16, 2019
Herschel Lowe

APPROVED AS TO FORM BY COUNSEL FOR THE TLT DEFENDANTS:

______________________________ Date: 9/16, 2019
Jeffrey I. Pasek
Jason Cabrera
Cozen O'Connor
One Liberty Place
1650 Market Street
Philadelphia, PA 19103

DEFENDANTS: ______________________________ Date: ____________, 2019
Amazon.com LLC

______________________________ Date: ____________, 2019
Amazon Logistics, Inc.

APPROVED AS TO FORM BY COUNSEL FOR THE AMAZON DEFENDANTS:

______________________________ Date: ____________, 2019
Richard G. Rosenblatt
James P. Walsh, Jr.
Morgan, Lewis & Bockius
502 Carnegie Center
Princeton, NJ 08540-6241

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DEFENDANTS: ______________________________ Date: ____________, 2019
TL Transportation LLC

______________________________ Date: ____________, 2019
Scott Foreman

______________________________ Date: ____________, 2019
Herschel Lowe

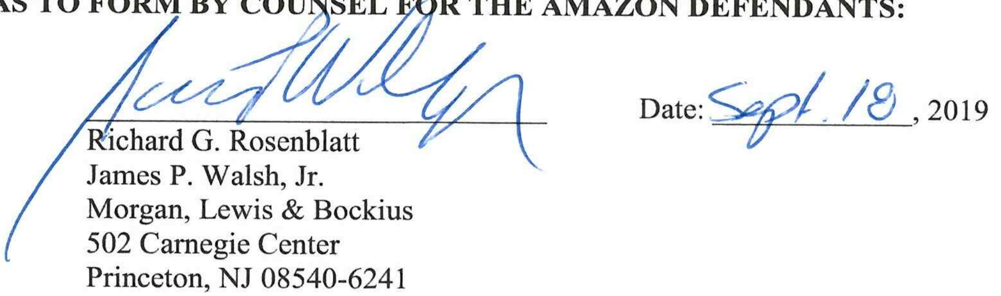
APPROVED AS TO FORM BY COUNSEL FOR THE TLT DEFENDANTS:

______________________________ Date: ____________, 2019
Jeffrey I. Pasek
Jason Cabrera
Cozen O'Connor
One Liberty Place
1650 Market Street
Philadelphia, PA 19103

DEFENDANTS: DocuSigned by: Zane Brown ______________________________ Date: September 17, 2019
Amazon.com LLC

DocuSigned by: Zane Brown ______________________________ Date: September 17, 2019
Amazon Logistics, Inc.

APPROVED AS TO FORM BY COUNSEL FOR THE AMAZON DEFENDANTS:



______________________________ Date: Sept. 18, 2019
Richard G. Rosenblatt
James P. Walsh, Jr.
Morgan, Lewis & Bockius
502 Carnegie Center
Princeton, NJ 08540-6241

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

TYHEE HICKMAN, SHANAY BOLDEN, and O'DONALD HENRY, on behalf of themselves and others similarly situated,	:	**Civil Action No.: 2:17-CV-01038-GAM**
Plaintiffs,	:	
v.	:	
TL TRANSPORTATION, LLC, SCOTT FOREMAN, HERSCHEL LOWE, AMAZON.COM LLC, and AMAZON LOGISTICS, INC.,	:	
Defendants.	:	

NOTICE OF SETTLEMENT

PLEASE READ THIS NOTICE CAREFULLY.

You received this Notice of Settlement ("Notice") either because you 1) previously completed an Opt-In Consent Form to join this case; or 2) you did not previously join this case but the records of Amazon.com, LLC, Amazon Logistics, Inc., TL Transportation LLC, Scott Foreman, and Herschel Lowe ("Defendants") show you performed work as a Delivery Associate who was employed by Defendant TL Transportation LLC ("Defendant TLT") to deliver packages to Amazon customers in the United States at any time between March 8, 2014, and April 15, 2017.

1. Why Should You Read This Notice?

This Notice explains your right to share in the monetary proceeds of this Settlement, exclude yourself ("opt out") of the Settlement, or object to the Settlement. The United States District Court for the Eastern District of Pennsylvania has preliminarily approved the Settlement as fair and reasonable. The Court will hold a Final Approval Hearing on __________, 2019 at __________, before the Honorable Gerald A. McHugh in Courtroom ____ of the James A Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106.

2. What Is This Case About?

This lawsuit alleges that individuals who performed work as delivery associates, employed by Defendant TLT to deliver packages to Amazon customers, were not paid overtime compensation to which they were entitled under the law when they worked more than forty (40) hours per week. Defendants deny that these individuals were entitled to any overtime compensation or other

compensation beyond the compensation they received and deny any wrongdoing and any and all liability and damages to anyone with respect to the alleged facts or causes of action asserted in the lawsuit. The Parties have concluded that it is in their best interest to resolve and settle the lawsuit by entering into a Settlement Agreement.

3. What Are the Terms of the Settlement?

Defendant TLT has agreed to pay One Million Eight Hundred Thousand Dollars and Zero Cents ($1,800,000.00) to settle this lawsuit ("Gross Settlement Amount"). Deductions from this amount will be made for attorneys' fees and costs for Class Counsel (see below), settlement administration costs (up to $25,000), and service awards in the amounts of Fifteen Thousand Dollars ($15,000) to Plaintiffs Tyhee Hickman and Shanay Bolden, and Two Thousand Five Hundred Dollars ($2,500) to O'Donald Henry, in recognition of their service to the Settlement Class. After deductions of these amounts, what remains of the Gross Settlement Amount (the "Net Settlement Amount") will be available to pay monetary Settlement Awards to (i) Named Plaintiffs; (ii) Opt-In Plaintiffs, and (iii) all Settlement Class Members who do not timely and validly exclude themselves from the Settlement (collectively, "Eligible Class Members").

Named Plaintiffs and all Eligible Class Members will be eligible to receive a monetary award from the Net Settlement Amount.

4. How Much Can I Expect to Receive?

All Eligible Class Members will receive a *pro rata* share of the Net Settlement Amount based on the total number of workweeks that the Eligible Class Member were employed by Defendant TLT to deliver packages to Amazon customers in the United States at any time between March 8, 2014, and April 15, 2017 (the "Class Period").

Your total estimated settlement payment will be at least $[minimum amount] (less applicable taxes and withholding. This amount is an estimated amount, and your final settlement payment is expected to differ from this amount and will be calculated by the formula set forth below:

First, the amount of $100 per Eligible Class Member will be deducted from the Net Settlement Amount prior to the determination of *pro rata* individual settlement shares and allocated to each Eligible Class Member so that each Eligible Class Member receives at least $100 in exchange for their release in this Settlement Agreement.

Second, in addition to the $100 payment set out above, Eligible Class Members shall receive *a pro rata* portion of the Net Settlement Amount as follows:

1. For each week during which the Eligible Class Member worked four or more days during the applicable Class Periods, he or she shall be eligible to receive a *pro rata* portion of the Net Settlement Amount ("Qualifying Workweek"). Each Qualifying Workweek will be equal to one (1) settlement share.

2. The total number of settlement shares for all Eligible Class Members will be added

together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Eligible Class Member's number of settlement shares to determine the Eligible Class Member's Settlement Award.

3. Eligible Class Members who previously accepted offers of judgment will have the amount paid pursuant to the accepted offers of judgment subtracted from their Settlement Award, and the balance shall be redistributed to the Eligible Class Members who did not accept offers of judgment on a *pro rata* basis and added to their Settlement Awards. In no event shall an Eligible Class Member's Settlement Award be reduced to less than the $100 base payment.

All Settlement Award determinations and Qualifying Workweeks will be based on Defendants' data that was produced in this litigation. If you have questions about your Qualifying Workweeks, you may contact the Settlement Administrator. The Settlement Administrator's contact information can be found in Section 10 of this Notice.

Fifty percent (50%) of each Eligible Class Members' Settlement Award shall be treated as back wages, and fifty percent (50%) shall be treated as non-wage penalties and/or liquidated damages. The portion allocated to claims for unpaid overtime and other wage-related damages will be subject to all required employee payroll taxes and deductions, and Defendant TLT will pay the employer side of the FICA and FUTA taxes separate from the Settlement Award payment. The portion allocated to liquidated damages shall be characterized as non-wage income and will be reported on an IRS Form 1099.

If you receive a Settlement Award, you will have 180 days to cash the check that will be sent to you. If at the conclusion of the 180-day check void period set forth above, there are any monies remaining, no amount of Settlement Awards attributable to Eligible Class Members who worked in Pennsylvania, Maryland, or New Jersey shall revert to Defendant TLT, and any amount of uncashed checks from Eligible Class Members in Pennsylvania, Maryland, and New Jersey shall be paid to the Parties' agreed upon *cy pres* recipient, Philadelphia Legal Assistance, subject to the Court's approval. Uncashed checks from Eligible Class Members who worked outside of Pennsylvania, Maryland, and New Jersey shall be returned to Defendant TLT, and those Eligible Class Members shall not release any claims against Defendants.

It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your monetary Settlement Award. If you fail to keep your address current, you may not receive your Settlement Award.

5. What Are The Releases?

If the Court grants final approval of the Settlement, the lawsuit will be dismissed with prejudice against Defendants and, upon final approval of the Settlement Agreement, Named Plaintiffs and Eligible Class Members shall and hereby do release and discharge Defendants and all Releasees finally, forever and with prejudice of any and all state law claims for unpaid overtime, state wage and hour, and related common law claims based on the facts alleged in the Complaint against Defendants that accrued during their work with Defendants during the Class Period, and related

claims for penalties, interest, liquidated damages, attorneys' fees, costs, and expenses. However, only Eligible Class Members who cash or deposit their Settlement Award check will be deemed to have released their FLSA claim. Defendants agree that participation in the settlement and release of the Eligible Class Members' Released Claims may not be used to assert collateral estoppel, *res judicata*, waiver or any other claim preclusion of FLSA claims not included in the Eligible Class Members' Released Claims with respect to individuals who did not specifically release those FLSA claims in this Agreement.

6. What Are My Rights?

- **Do Nothing**: If you are a Settlement Class Member, and you do nothing, you will receive a Settlement Award, and you will be bound by the Settlement including its release provisions, except that you will not release your FLSA claims unless you cash or deposit the Settlement Award check.

- **Opt-Out of State Law Claims**: If you are a member of the Settlement Class who worked in Pennsylvania, Maryland, or New Jersey and you do not wish to be bound by the Settlement of your state law claims, you must submit a written exclusion from the Settlement ("opt-out"), postmarked by [INSERT]. The written request for exclusion must contain your full name, address, telephone number, email address (if applicable), last four digits of your social security number, and must be signed individually by you. No opt-out request may be made on behalf of a group. The opt-out request must be sent by mail to the Settlement Administrator. **Any person who worked in Pennsylvania, Maryland, or New Jersey and requests exclusion (opts out) of the settlement will not be entitled to any Settlement Award and will not be bound by the Settlement Agreement or have any right to object, appeal or comment thereon**.

- **Object to Settlement of State Law Claims**: If you are a member of the Settlement Class who worked in Pennsylvania, Maryland, or New Jersey and wish to object to the Settlement of your state law claims, you must submit a written statement objecting to the Settlement. The statement must state the factual and legal grounds for your objection to the settlement. Your objection must state your full name, address, telephone number, and email address (if applicable), and must be signed by you. Any objection must be mailed to:

Sarah R. Schalman-Bergen
BERGER MONTAGUE PC
1818 Market St., Suite 3600
Philadelphia, Pennsylvania 19103

Ryan A. Hancock
WILLIG, WILLIAMS & DAVIDSON
1845 Walnut Street, 24th Floor
Philadelphia PA, 19103

Jeffrey I. Pasek
COZEN O'CONNOR
One Liberty Place
1650 Market Street
Philadelphia, PA 19103

Richard G. Rosenblatt
MORGAN, LEWIS & BOCKIUS
502 Carnegie Center
Princeton, NJ 08540-6241

If you are a member of the Settlement Class who worked in Pennsylvania, Maryland, or New Jersey and submit a written objection to the state law claims, you may also, if you wish, appear at the Final Approval Hearing to discuss your objection with the Court and the parties to the Lawsuit. Your written objection must state whether you will attend the Final Approval Hearing, and your written notice of your intention to appear at the Final Approval Hearing must be filed with the Court and served upon Class Counsel and Defendant's Counsel on or before the Notice Deadline, [INSERT]. To be heard at the Final Approval Hearing you must also not have opted out of the Settlement. If you wish to object to the Settlement but fail to return your timely written objection in the manner specified above, you shall be deemed to have waived any objection and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. The postmark date of mailing to Class Counsel and Defendant's Counsel shall be the exclusive means for determining that an objection is timely mailed to counsel. Objections shall only be considered if the Settlement Class Member has not opted out of the Settlement.

7. Can Defendants Retaliate Against Me for Participating in this Lawsuit?

No. Your decision as to whether or not to participate in this Lawsuit will in no way affect your employment with Defendant TLT or future work for or employment with Defendants. It is unlawful for Defendants to take any adverse action against you as a result of your participation in this Lawsuit. In fact, Defendant TLT encourages you to participate in this Settlement.

8. Who Are the Attorneys Representing Plaintiffs and the Settlement Class?

Plaintiffs and the Settlement Class are represented by the following attorneys acting as Class Counsel:

Sarah R. Schalman-Bergen
Camille Fundora Rodriguez
BERGER MONTAGUE PC
1818 Market St., Suite 3600
Philadelphia, Philadelphia 19103
Telephone: (215) 875-3033
Facsimile: (215) 875-4604
Email: [INSERT]

Ryan A. Hancock
WILLIG, WILLIAMS & DAVIDSON
1845 Walnut Street, 24th Floor
Philadelphia PA, 19103
Telephone: [INSERT]
Facsimile: [INSERT]
Email: [INSERT]

9. How Will the Attorneys for the Settlement Class Be Paid?

Class Counsel will be paid from the Gross Settlement Amount of $1,800,000.00. You do not have to pay the attorneys who represent the Settlement Class. The Settlement Agreement provides that Class Counsel will receive attorneys' fees of up to one-third (1/3) of the Gross Settlement Amount ($600,000) plus their out-of-pocket costs, not to exceed Forty Thousand dollars ($40,000). Class Counsel will file a Motion for Attorneys' Fees and Costs with the Court. The amount of attorneys' fees and costs awarded will be determined by the Court at the Final Approval Hearing.

10. Where can I get more information?

If you have questions about this Notice or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Settlement, you should contact the Settlement Administrator at

[INSERT].

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is available through the Settlement Administrator and publicly accessible and on file with the Court.

PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR TO DEFENDANTS FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

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

TYHEE HICKMAN, SHANAY BOLDEN, and MICHAEL EASTERDAY, on behalf of themselves and others similarly situated,	**: Civil Action No.: 2:17-CV-01038-GAM**
Plaintiffs,	
v.	
TL TRANSPORTATION, LLC, SCOTT FOREMAN, HERSCHEL LOWE, AMAZON.COM LLC, and AMAZON LOGISTICS, INC.,	
Defendants.	

REMINDER: 90 DAYS UNTIL CHECK CASHING DEADLINE

You were sent a Settlement Award check for the settlement of this case on February 15, 2018. The Settlement Administrator's records indicate that you have not cashed or deposited your Settlement Award check. Your check will automatically expire on ______________.

Both defendants TL Transportation LLC, Scott Foreman, and Herschel Lowe and the named plaintiffs want you to cash your check and to do that as soon as possible. You will not be able to cash or deposit your check after the ___________ deadline.

If you have any questions, please contact either Plaintiffs' counsel Berger & Montague, P.C. at [number] or [email] or the Settlement Administrator:

[Name
Address
Telephone Number:
Email Address:]

PS: If you have lost your check, please call: a new check can be issued to you.

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

TYHEE HICKMAN, SHANAY BOLDEN, and O'DONALD HENRY, individually and on behalf of all persons similarly situated,	:	**Civil Action No.: 2:17-cv-01038-GAM**
Plaintiffs,	:	
v.	:	
TL TRANSPORTATION, LLC, SCOTT FOREMAN, HERSCHEL LOWE, AMAZON.COM, LLC, and AMAZON LOGISTICS, INC.,	:	
Defendants.	:	

DECLARATION OF SARAH SCHALMAN-BERGEN IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

I, Sarah R. Schalman-Bergen, hereby declare that the following is true and correct:

A. INTRODUCTION

1. I am a member in good standing of the bar of the Commonwealth of Pennsylvania, and I am admitted in this Court. I respectfully submit this declaration in support of Plaintiffs' Unopposed Motion for Preliminary Approval. The following is based on my personal knowledge and, if called upon to do so, I could and would competently testify thereto.

2. I am a Shareholder of Berger Montague PC ("Berger Montague") and co-lead counsel for Plaintiffs and the proposed collective and classes of Settlement Class Members[1] as defined in the Parties' Settlement Agreement.

3. Berger Montague specializes in class action litigation in federal and state courts

[1] All capitalized terms used in this Declaration have the meanings ascribed to them as set forth in the Parties' Settlement Agreement.

and is one of the preeminent plaintiffs' law firms in the United States. Berger Montague currently consists of over 65 attorneys who represent plaintiffs in complex civil litigation, class action, and collective action litigation, with offices in Philadelphia, Minneapolis, San Diego, and Washington D.C. The firm's Employment Law Department has extensive experience representing employees in class action and collective action litigation. Berger Montague has played lead roles in major cases for over 49 years, resulting in recoveries collectively totaling well over $30 billion for our clients and the classes they have represented. I have attached a copy of our firm's resume hereto as Exhibit A.

4. I am the Co-Chair of the Employment Law Department at Berger Montague, and I have an extensive background in litigation on behalf of employees. I have served and currently serve as lead or co-lead counsel in many employment class and collective action cases in federal courts across the country, brought under the Fair Labor Standards Act and related state wage laws, including unpaid wages and unpaid overtime compensation cases similar to this Lawsuit. Berger Montague has successfully resolved numerous unpaid overtime cases in district courts across the United States, including in the Eastern District of Pennsylvania and the other district courts in the Third Circuit. This level of experience enabled our firm to undertake this matter and to efficiently and successfully prosecute, negotiate, and resolve the claims on behalf of Plaintiffs and the Settlement Class Members.

5. Practice in the area of wage and hour class and collective action litigation requires skills, knowledge, and experience in two distinct subsets of the law: (a) the substantive employment law applicable to such cases; and (b) the substantive and procedural aspects of prosecuting class and collective actions. Expertise in one of these areas does not necessarily translate into expertise in the other. Plaintiffs' Counsel in such cases – in order to be successful –

must have deep expertise in both. The issues presented in this case required more than just a general appreciation of wage and hour law and/or class action/collective action procedures, as these areas of practice are often changing. Here, Class Counsel's knowledge and expertise was utilized to drill down on and narrow the key issues and ultimately, was leveraged to reach a fair and reasonable $1.8 million settlement in an efficient manner.

6. Class Counsel believes that the negotiated Settlement Agreement of this class and collective action wage and hour lawsuit, against Defendants TL Transportation, LLC ("TLT"), Scott Foreman ("Foreman"), and Herschel Lowe's ("Lowe") (collectively, the "TL Defendants") and Amazon.com, LLC, Amazon Logistics, Inc. (together, "Amazon"), provides an excellent settlement for the Plaintiffs and the Settlement Class, with respect to their claims for unpaid overtime wages resulting from the TL Defendants' violations of the FLSA and related state law.

7. The Settlement was the result of contested litigation, factual discovery, and arm's-length negotiations.

8. Following the exchange of informal discovery, extensive arm's-length settlement negotiations, and three (3) in-person mediations at JAMS in Philadelphia, PA, the Parties were able to reach a class and collective settlement of this matter.

9. The Gross Settlement Amount of $1,800,000 provides Settlement Class Members with certain payment of wages that would have been owed if the case had been taken to trial, and it was carefully negotiated based on a substantial investigation by Class Counsel, detailed damages analyses, and the review and analysis of documents produced by Plaintiffs and Defendants in preparation for mediation.

10. The Net Settlement Amount of approximately $1,102,500 (*i.e* the amount that will actually be paid out to Settlement Class Members after deductions are made for fees, costs, service

awards, and administration costs*)* represents approximately 157% percent of Class Counsel's calculations of unpaid wages owed using the most favorable assumptions on time worked at a half time rate.

11. The Settlement offers significant advantages over the continued prosecution of this case, as the Plaintiffs and the Settlement Class will receive significant financial compensation and will avoid the risks inherent in the continued prosecution of this case in which Defendant would assert various defenses to its liability.

12. The proposed Settlement was reached only after (1) the exchange of substantial documents and records; (2) multiple pre-settlement conference calls; (3) multiple depositions (4) extensive briefing and oral argument on a motion for summary judgment; (5) preparation and exchange of mediation statements; and (6) three (3) in-person mediations in Philadelphia, Pennsylvania before experienced mediators, which included additional extensive arm's-length negotiations between counsel for the Parties both before and after the mediation.

13. Class Counsel extensively investigated the applicable law as applied to the relevant facts discovered in this action, and the potential defenses thereto. The Gross Settlement Amount is based on an intensive review of the facts and law.

14. During the course of their extensive settlement negotiations, the Parties exchanged data regarding all Settlement Class Members, and performed and exchanged detailed exposure models and analyses, in addition to exchanging detailed mediation statements and engaging in numerous discussions regarding the various issues in the case.

15. Because of the lack of timekeeping records maintained by the TL Defendants, the parties each modeled various damage and claim scenarios utilizing various legal and factual assumptions, as well as payroll data from the TL Defendants and delivery data from Amazon, and

presented them to each other under the supervision of the mediator.

16. Both parties modeled these damages by analyzing Amazon's delivery data, which includes various times when the Delivery Associates scan and/or deliver packages to Amazon customers. The parties engaged in numerous meet and confer calls so that Class Counsel could understand the data and could engage in fully informed settlement negotiations. As part of their exposure analysis, Class Counsel's in house data analyst matched payroll records produced by TLT with the delivery data produced by Amazon, and built in various factual assumptions on time worked in addition to the time that was captured by Amazon's delivery data. Ultimately the Gross Settlement Amount that was negotiated and agreed upon ($1,800,000) represents a compromised resolution on this issue.

17. Plaintiffs argued that, because Defendant TLT admitted that Delivery Associates were paid other forms of compensation for services, the exception to the general rule that overtime must be paid at a time-and-a-half rate as set forth in 29 C.F.R. § 778.112 would not apply. *See* 29 C.F.R. § 778.112 (permitting overtime to be paid at a half time rate where an employee is is paid a flat sum for a day's work or for doing a particular job, without regard to the number of hours worked in the day or at the job, and if he receives no other form of compensation for services); *see also Rodriguez v. Republic Servs.*, No. SA–13–CV–20–XR, 2013 WL 5656129, at *2 (W.D. Tex. Oct. 15, 2013). Defendants raised various factual and legal arguments disputing that damages would be ordered to be paid at a time-and-a-half rate. Ultimately the Gross Settlement Amount that was negotiated and agreed upon represents a compromised resolution on this issue.

18. Ultimately, the Settlement that the Parties reached reflects what Class Counsel believes to be a fair and reasonable settlement of disputed claims that takes into account the risks that Plaintiffs would face if the case proceeded in litigation. First, there was a risk that Plaintiffs

would not succeed in maintaining a collective or class through trial. Second, a trial on the merits would involve significant risks for Plaintiffs as to both liability on the issue of joint employment by Amazon and the appropriate rate and calculation of damages, and any verdict at trial could be delayed based on appeals by Defendants.

19. Based on Class Counsel's knowledge and expertise in this area of law, Class Counsel believe this Settlement will provide a substantial benefit to each of the Settlement Class Members.

20. In addition, the proposed service awards to Plaintiffs Tyhee Hickman, Shanay Bolden, and O'Donald Henry are justified by the benefits that Plaintiffs' diligent efforts have brought to the Settlement Class Members.

21. Plaintiffs took the significant risk of coming forward to represent the interests of their fellow employees. They worked with Class Counsel, providing background information about their employment, about Defendant's policies and practices, and about the allegations in this lawsuit. Plaintiff Hickman attended two of the mediation sessions. These individuals work in an industry in which workers are largely fungible, and they bravely took the risk to step forward on behalf of their fellow workers, knowing that their name would be a on a public docket available through an internet search, and knowing that prospective employers might take their participation in such a lawsuit in consideration when making hiring decisions. They risked their reputation in the community and in her field of employment in order to participate in this case on behalf of the Class. The lesser service award allotted to Plaintiff Henry simply reflects the shorter length of time that he has served as a Named Plaintiff in this case, which began with Plaintiffs' filing of the Third Amended Complaint on September 16, 2019.

22. The proposed Settlement Class here easily meet the numerosity requirement

because, through Defendants' payroll records, approximately 229 members have been identified who worked in Pennsylvania, approximately 253 members have been identified who worked in Maryland, and approximately 94 members have been identified who worked in New Jersey.

23. Finally, the Parties have spent considerable time negotiating and drafting the Settlement Agreement, which ensures that all members of the Settlement Class are provided with notice of the Settlement Agreement and its terms.

Executed this 17th day of September, 2019, in Philadelphia, Pennsylvania.

/s Sarah R. Schalman-Bergen
Sarah Schalman-Bergen

EXHIBIT A

1818 Market Street | Suite 3600 | Philadelphia, PA 19103
info@bm.net
bergermontague.com
800-424-6690

About Berger Montague

Berger Montague is a full-spectrum class action and complex civil litigation firm, with nationally known attorneys highly sought after for their legal skills. The firm has been recognized by courts throughout the country for its ability and experience in handling major complex litigation, particularly in the fields of antitrust, securities, mass torts, civil and human rights, whistleblower cases, employment, and consumer litigation. In numerous precedent-setting cases, the firm has played a principal or lead role.

The *National Law Journal,* which recognizes a select group of law firms each year that have done "exemplary, cutting-edge work on the plaintiffs' side," has selected Berger Montague in 12 out of 14 years (2003-05, 2007-13, 2015-16) for its "Hot List" of top plaintiffs' oriented litigation firms in the United States. In 2018 and 2019, the *National Law Journal* recognized Berger Montague as "Elite Trial Lawyers" after reviewing more than 300 submissions for this award. The firm has also achieved the highest possible rating by its peers and opponents as reported in *Martindale-Hubbell* and was ranked as a 2019 "Best Law Firm" by *U.S. News - Best Lawyers*.

Currently, the firm consists of 68 lawyers; 23 paralegals; and an experienced support staff. Few firms in the United States have our breadth of practice and match our successful track record in such a broad array of complex litigation.

History of the Firm

Berger Montague was founded in 1970 by the late David Berger to concentrate on the representation of plaintiffs in a series of antitrust class actions. David Berger helped pioneer the use of class actions in antitrust litigation and was instrumental in extending the use of the class action procedure to other litigation areas, including securities, employment discrimination, civil and human rights, and mass torts. The firm's complement of nationally recognized lawyers has represented both plaintiffs and defendants in these and other areas and has recovered billions of dollars for its clients. In complex litigation, particularly in areas of class action litigation, Berger Montague has established new law and forged the path for recovery.

The firm has been involved in a series of notable cases, some of them among the most important in the last 50 years of civil litigation. For example, the firm was one of the principal counsel for

plaintiffs in the *Drexel Burnham Lambert/Michael Milken* securities and bankruptcy litigation. Claimants in these cases recovered approximately $2 billion in the aftermath of the collapse of the junk bond market and the bankruptcy of *Drexel* in the late 1980's. The firm was also among the principal trial counsel in the *Exxon Valdez Oil Spill* litigation in Anchorage, Alaska, a trial resulting in a record jury award of $5 billion against Exxon, later reduced by the U.S. Supreme Court to $507.5 million. Berger Montague was lead counsel in the *School Asbestos Litigation*, in which a national class of secondary and elementary schools recovered in excess of $200 million to defray the costs of asbestos abatement. The case was the first mass tort property damage class action certified on a national basis. Berger Montague was also lead/liaison counsel in the *Three Mile Island Litigation* arising out of a serious nuclear incident.

Additionally, in the human rights area, the firm, through its membership on the executive committee in the *Holocaust Victim Assets Litigation*, helped to achieve a $1.25 billion settlement with the largest Swiss banks on behalf of victims of Nazi aggression whose deposits were not returned after the Second World War. The firm also played an instrumental role in bringing about a $4.37 billion settlement with German industry and government for the use of slave and forced labor during the Holocaust.

Judicial Praise for Berger Montague Attorneys

Berger Montague's record of successful prosecution of class actions and other complex litigation has been recognized and commended by judges and arbitrators across the country. Some remarks on the skill, efficiency, and expertise of the firm's attorneys are excerpted below.

Antitrust

From **Judge Brian M. Cogan**, of the U.S. District Court of the Eastern District of New York:

> "This is a substantial recovery that has the deterrent effect that class actions are supposed to have, and I think it was done because we had really good Plaintiffs' lawyers in this case who were running it."

Transcript of June 24, 2019 Fairness Hearing, *In re Dental Supplies Antitrust Litigation*, No. 16-cv-696 (E.D.N.Y.).

From **Judge Michael M. Baylson**, of the U.S. District Court of the Eastern District of Pennsylvania:

> "[C]ounsel…for direct action plaintiffs have done an outstanding job here with representing the class, and I thought your briefing was always very on point. I thought the presentation of the very contentious issues on the class action motion was very well done, it was very well briefed, it was well argued."

Transcript of the June 28, 2018 Hearing in ***In re Domestic Drywall Antitrust Litigation***, No. MD-13-2437 at 11:6-11.

From **Judge Madeline Cox Arleo,** of the U.S. District Court for the District of New Jersey praising the efforts of all counsel:

> "I just want to thank you for an outstanding presentation. I don't say that lightly . . . it's not lost on me at all when lawyers come very, very prepared. And really, your clients should be very proud to have such fine lawyering. I don't see lawyering like this every day in the federal courts, and I am very grateful. And I appreciate the time and the effort you put in, not only to the merits, but the respect you've shown for each other, the respect you've shown for the Court, the staff, and the time constraints. And as I tell my law clerks all the time, good lawyers don't fight, good lawyers advocate. And I really appreciate that more than I can express."

Transcript of the September 9 to 11, 2015 Daubert Hearing in ***Castro v. Sanofi Pasteur***, No. 11-cv-07178 (D.N.J.) at 658:14-659:4.

From **Judge William H. Pauley, III**, of the U.S. District Court of the Southern District of New York:

> "Class Counsel did their work on their own with enormous attention to detail and unflagging devotion to the cause. Many of the issues in this litigation . . . were unique and issues of first impression."
>
> * * *
>
> "Class Counsel provided extraordinarily high-quality representation. This case raised a number of unique and complex legal issues …. The law firms of Berger Montague and Coughlin Stoia were indefatigable. They represented the Class with a high degree of professionalism, and vigorously litigated every issue against some of the ablest lawyers in the antitrust defense bar."

In re Currency Conversion Fee Antitrust Litigation, 263 F.R.D. 110, 129 (2009).

From **Judge Faith S. Hochberg,** of the United States District court for the District of New Jersey:

> "[W]e sitting here don't always get to see such fine lawyering, and it's really wonderful for me both to have tough issues and smart lawyers … I want to congratulate all of you for the really hard work you put into this, the way you presented the issues, … On behalf of

the entire federal judiciary I want to thank you for the kind of lawyering we wish everybody would do."

In re Remeron Antitrust Litig., Civ. No. 02-2007 (Nov. 2, 2005).

From U.S. District **Judge Jan DuBois**, of the U.S. District Court of the Eastern District of Pennsylvania:

"[T]he size of the settlements in absolute terms and expressed as a percentage of total damages evidence a high level of skill by petitioners … The Court has repeatedly stated that the lawyering in the case at every stage was superb, and does so again."

In Re Linerboard Antitrust Litig., 2004 WL 1221350, at *5-*6 (E.D. Pa. 2004).

From **Judge Nancy G. Edmunds**, of the U.S. District Court of the Eastern District of Michigan:

"[T]his represents an excellent settlement for the Class and reflects the outstanding effort on the part of highly experienced, skilled, and hard working Class Counsel….[T]heir efforts were not only successful, but were highly organized and efficient in addressing numerous complex issues raised in this litigation[.]"

In re Cardizem CD Antitrust Litig., MDL No. 1278 (E.D. Mich., Nov. 26, 2002).

From **Judge Charles P. Kocoras,** of the U.S. District Court for the Northern District of Illinois:

"The stakes were high here, with the result that most matters of consequence were contested. There were numerous trips to the courthouse, and the path to the trial court and the Court of Appeals frequently traveled. The efforts of counsel for the class has [sic] produced a substantial recovery, and it is represented that the cash settlement alone is the second largest in the history of class action litigation. . . . There is no question that the results achieved by class counsel were extraordinary [.]"

Regarding the work of Berger Montague in achieving more than $700 million in settlements with some of the defendants in ***In Re Brand Name Prescription Drugs Antitrust Litigation***, 2000 U.S. Dist. LEXIS 1734, at *3-*6 (N.D. Ill. Feb. 9, 2000).

From **Judge Peter J. Messitte,** of the U.S. District Court for the District of Maryland:

> "The experience and ability of the attorneys I have mentioned earlier, in my view in reviewing the documents, which I have no reason to doubt, the plaintiffs' counsel are at the top of the profession in this regard and certainly have used their expertise to craft an extremely favorable settlement for their clients, and to that extent they deserve to be rewarded."

Settlement Approval Hearing, Oct. 28, 1994, in ***Spawd, Inc. and General Generics v. Bolar Pharmaceutical Co., Inc.***, CA No. PJM-92-3624 (D. Md.).

From **Judge Donald W. Van Artsdalen,** of the U.S. District Court for the Eastern District of Pennsylvania:

> "As to the quality of the work performed, although that would normally be reflected in the not immodest hourly rates of all attorneys, for which one would expect to obtain excellent quality work at all times, the results of the settlements speak for themselves. Despite the extreme uncertainties of trial, plaintiffs' counsel were able to negotiate a cash settlement of a not insubstantial sum, and in addition, by way of equitable relief, substantial concessions by the defendants which, subject to various condition, will afford the right, at least, to lessee-dealers to obtain gasoline supply product from major oil companies and suppliers other than from their respective lessors. The additional benefits obtained for the classes by way of equitable relief would, in and of itself, justify some upward adjustment of the lodestar figure."

Bogosian v. Gulf Oil Corp., 621 F. Supp. 27, 31 (E.D. Pa. 1985).

From **Judge Krupansky**, who had been elevated to the Sixth Circuit Court of Appeals:

> Finally, the court unhesitatingly concludes that the quality of the representation rendered by counsel was uniformly high. The attorneys involved in this litigation are extremely experienced and skilled in their prosecution of antitrust litigation and other complex actions. Their services have been rendered in an efficient and expeditious manner, but have nevertheless been productive of highly favorable result.

In re Art Materials Antitrust Litigation, 1984 CCH Trade Cases ¶65,815 (N.D. Ohio 1983).

From **Judge Joseph Blumenfeld,** of the U.S. District Court for the District of Connecticut:

> "The work of the Berger firm showed a high degree of efficiency and imagination, particularly in the maintenance and management of the national class actions."

In re Master Key Antitrust Litigation, 1977 U.S. Dist. LEXIS 12948, at *35 (Nov. 4, 1977).

Securities & Investor Protection

From **Judge Jed Rakoff** of the U.S. District Court for the Southern District of New York:

> Court stated that lead counsel had made "very full and well-crafted" and "excellent submissions"; that there was a "very fine job done by plaintiffs' counsel in this case"; and that this was "surely a very good result under all the facts and circumstances."

In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation, Master File No. 07-cv-9633(JSR)(DFE) (S.D.N.Y., July 27, 2009).

From **Judge Michael M. Baylson** of the U.S. District Court for the Eastern District of Pennsylvania:

> "The Court is aware of and attests to the skill and efficiency of class counsel: they have been diligent in every respect, and their briefs and arguments before the Court were of the highest quality. The firm of Berger Montague took the lead in the Court proceedings; its attorneys were well prepared, articulate and persuasive."

In re CIGNA Corp. Sec. Litig., 2007 U.S. Dist. LEXIS 51089, at *17-*18 (E.D. Pa. July 13, 2007).

From **Judge Stewart Dalzell** of the U.S. District Court for the Eastern District of Pennsylvania:

> "The quality of lawyering on both sides, but I am going to stress now on the plaintiffs' side, simply has not been exceeded in any case, and we have had some marvelous counsel appear before us and make superb arguments, but they really don't come any better than Mrs. Savett… [A]nd the arguments we had on the motion to dismiss [Mrs. Savett argued the motion], both sides were fabulous, but plaintiffs' counsel were as good as they come."

In re U.S. Bioscience Secs. Litig., No. 92-0678 (E.D. Pa. April 4, 1994).

From **Judge Wayne Andersen** of the U.S. District Court for the Northern District of Illinois:

> "[Y]ou have acted the way lawyers at their best ought to act. And I have had a lot of cases…in 15 years now as a judge and I cannot recall a significant case where I felt people were better represented than they are here…I would say this has been the best representation that I have seen."

In re: Waste Management, Inc. Secs. Litig., No. 97-C 7709 (N.D. Ill. 1999).

From **Chancellor William Chandler, III** of the Delaware Chancery Court:

> "All I can tell you, from someone who has only been doing this for roughly 22 years, is that I have yet to see a more fiercely and intensely litigated case than this case. Never in 22 years have I seen counsel going at it, hammer and tong, like they have gone at it in this case. And I think that's a testimony – Mr. Valihura correctly says that's what they are supposed to do. I recognize that; that is their job, and they were doing it professionally."

Ginsburg v. Philadelphia Stock Exchange, Inc., No. 2202 (Del. Ch., Oct. 22, 2007).

From **Judge Stewart Dalzell** of the U.S. District Court for the Eastern District of Pennsylvania:

> "Thanks to the nimble class counsel, this sum, which once included securities worth $149.5 million is now all cash. Seizing on an opportunity Rite Aid presented, class counsel first renegotiated what had been stock consideration into Rite Aid Notes and then this year monetized those Notes. Thus, on February 11, 2003, Rite Aid redeemed those Notes from the class, which then received $145,754,922.00. The class also received $14,435,104 in interest on the Notes."
>
> "Co-lead counsel ... here were extraordinarily deft and efficient in handling this most complex matter... they were at least eighteen months ahead of the United States Department of Justice in ferreting out the conduct that ultimately resulted in the write down of over $1.6 billion in previously reported Rite Aid earnings. In short, it would be hard to equal the skill class counsel demonstrated here."

In re Rite Aid Corp. Securities Litigation, 269 F. Supp. 2d 603, 605, n.1, 611 (E.D. Pa. 2003).

From **Judge Helen J. Frye**, United States District Judge for the U.S. District Court for the District of Oregon:

> "In order to bring about this result [partial settlements then totaling $54.25 million], Class Counsel were required to devote an unusual amount of time and effort over more than eight years of intense legal litigation which included a four-month long jury trial and full briefing and argument of an appeal before the Ninth Circuit Court of Appeals, and which produced one of the most voluminous case files in the history of this District."
>
> * * *
>
> "Throughout the course of their representation, the attorneys at Berger Montague and Stoll, Stoll, Berne, Lokting & Shlachter who have worked on this case have exhibited an

unusual degree of skill and diligence, and have had to contend with opposing counsel who also displayed unusual skill and diligence."

In Re Melridge, Inc. Securities Litigation, No. CV 87-1426-FR (D. Ore. April 15, 1996).

From **Judge Marvin Katz** of the U.S. District Court for the Eastern District of Pennsylvania:

> "[T]he co-lead attorneys have extensive experience in large class actions, experience that has enabled this case to proceed efficiently and professionally even under short deadlines and the pressure of handling thousands of documents in a large multi-district action... These counsel have also acted vigorously in their clients' interests...."
>
> * * *
>
> "The management of the case was also of extremely high quality.... [C]lass counsel is of high caliber and has extensive experience in similar class action litigation.... The submissions were of consistently high quality, and class counsel has been notably diligent in preparing filings in a timely manner even when under tight deadlines."

Commenting on class counsel, where the firm served as both co-lead and liaison counsel in ***In re Ikon Office Solutions, Inc. Securities Litigation***, 194 F.R.D. 166, 177, 195 (E.D. Pa. 2000).

From **Judge William K. Thomas,** Senior District Judge for the United States District Court for the Northern District of Ohio:

> "In the proceedings it has presided over, this court has become directly familiar with the specialized, highly competent, and effective quality of the legal services performed by Merrill G. Davidoff, Esq. and Martin I. Twersky, Esq. of Berger Montague...."
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> * * *
>
> "Examination of the experience-studded biographies of the attorneys primarily involved in this litigation and review of their pioneering prosecution of many class actions in antitrust, securities, toxic tort matters and some defense representation in antitrust and other litigation, this court has no difficulty in approving and adopting the hourly rates fixed by Judge Aldrich."

Commenting in ***In re Revco Securities Litigation***, Case No. 1:89CV0593, Order (N.D. Oh. September 14, 1993).

Civil/Human Rights Cases

From **Deputy Treasury Secretary Stuart E. Eizenstat**:

> "We must be frank. It was the American lawyers, through the lawsuits they brought in U.S. courts, who placed the long-forgotten wrongs by German companies during the Nazi era on the international agenda. It was their research and their work which highlighted these old injustices and forced us to confront them. Without question, we would not be here without them.... For this dedication and commitment to the victims, we should always be grateful to these lawyers."

In his remarks at the July 17, 2000, signing ceremony for the international agreements which established the German Foundation to act as a funding vehicle for the payment of claims to Holocaust survivors.

Insurance Litigation

From **Judge Janet C. Hall**, of the U.S. District Court of the District of Connecticut:

> Noting the "very significant risk in pursuing this action" given its uniqueness in that "there was no prior investigation to rely on in establishing the facts or a legal basis for the case….[and] no other prior or even now similar case involving parties like these plaintiffs and a party like these defendants." Further, "the quality of the representation provided to the plaintiffs ... in this case has been consistently excellent…. [T]he defendant[s] ... mounted throughout the course of the five years the case pended, an extremely vigorous defense…. [B]ut for counsel's outstanding work in this case and substantial effort over five years, no member of the class would have recovered a penny…. [I]t was an extremely complex and substantial class ... case ... [with an] outstanding result."

Regarding the work of Berger Montague attorneys Peter R. Kahana and Steven L. Bloch, among other co-class counsel, in *Spencer, et al. v. The Hartford Financial Services Group, Inc., et al.,* in the Order approving the $72.5 million final settlement of this action, dated September 21, 2010 (No. 3:05-cv-1681, D. Conn.).

Customer/Broker Arbitrations

From **Robert E. Conner**, Public Arbitrator with the National Association of Securities Dealers, Inc.:

> "[H]aving participated over the last 17 years in 400 arbitrations and trials in various settings, ... the professionalism and the detail and generally the civility of everyone involved has been not just a cause for commentary at the end of these proceedings but between ourselves [the arbitration panel] during the course of them, and ... the detail and the intellectual rigor that went into the documents was fully reflective of the effort that was

made in general. I wanted to make that known to everyone and to express my particular respect and admiration."

About the efforts of Berger Montague shareholders Merrill G. Davidoff and Eric L. Cramer, who achieved a $1.1 million award for their client, in ***Steinman v. LMP Hedge Fund, et al.***, NASD Case No. 98-04152, at Closing Argument, June 13, 2000.

Employment & Unpaid Wages

From **Judge Timothy R. Rice**, United States Magistrate Judge for the U.S. District Court for the Eastern District of Pennsylvania:

> Describing Berger Montague as "some of the finest legal representation in the nation," who are "ethical, talented, and motivated to help hard working men and women."

Regarding the work of Berger Montague attorneys Sarah R. Schalman-Bergen and Camille F. Rodriguez in ***Gonzalez v. Veritas Consultant Group, LLC, d/b/a Moravia Health Network***, No. 2:17-cv-1319-TR (E.D. Pa. March 13, 2019).

From **Judge Malachy E. Mannion**, United States District Judge for the U.S. District Court for the Middle District of Pennsylvania:

> "At the final approval hearing, class counsel reiterated in detail the arguments set forth in the named plaintiffs' briefing. … The court lauded the parties for their extensive work in reaching a settlement the court deemed fair and reasonable.
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> * * *
>
> "The court is confident that [class counsel] are highly skilled in FLSA collective and hybrid actions, as seen by their dealings with the court and the results achieved in both negotiating and handling the settlement to date."

Acevedo v. Brightview Landscapes, LLC, No. 3:13-cv-2529, 2017 WL 4354809 (M.D. Pa. Oct. 2, 2017).

From **Judge Joseph F. Bataillon**, United States District Judge for the U.S. District Court for the District of Nebraska:

> [P]laintiffs' counsel succeeded in vindicating important rights. … The court is familiar with "donning and doffing" cases and based on the court's experience, defendant meat packing companies' litigation conduct generally reflects "what can

> only be described as a deeply-entrenched resistance to changing their compensation practices to comply with the requirements of FLSA." (citation omitted). Plaintiffs' counsel perform a recognized public service in prosecuting these actions as a 'private Attorney General' to protect the rights of underrepresented workers.
>
> The plaintiffs have demonstrated that counsel's services have benefitted the class. … The fundamental policies of the FLSA were vindicated and the rights of the workers were protected.

Regarding the work of Berger Montague among other co-counsel in ***Morales v. Farmland Foods**, Inc.*, No. 8:08-cv-504, 2013 WL 1704722 (D. Neb. Apr. 18, 2013).

From **Judge Jonathan W. Feldman**, United States Magistrate Judge for the U.S. District Court for the Western District of New York:

> "The nature of the instant application obliges the Court to make this point clear: In my fifteen years on the bench, no case has been litigated with more skill, tenacity and legal professionalism than this case. The clients, corporate and individual, should be proud of the manner in which their legal interests were brought before and presented to the Court by their lawyers and law firms."
>
> and
>
> "…the Court would be remiss if it did not commend class counsel and all those who worked for firms representing the thousands of current and former employees of Kodak for the outstanding job they did in representing the interests of their clients. For the last several years, lead counsel responsibilities were shared by Shanon Carson …. Their legal work in an extraordinarily complex case was exemplary, their tireless commitment to seeking justice for their clients was unparalleled and their conduct as officers of the court was beyond reproach."

Employees Committed For Justice v. Eastman Kodak, (W.D.N.Y. 2010) ($21.4 million settlement).

Other

From **Stephen M. Feiler, Ph.D.,** Director of Judicial Education, Supreme Court of Pennsylvania, Administrative Office of Pennsylvania Courts, Mechanicsburg, PA *on behalf of the Common Pleas Court Judges (trial judges) of Pennsylvania*:

> "On behalf of the Supreme Court of Pennsylvania and AOPC's Judicial Education Department, thank you for your extraordinary commitment to the *Dealing with*

> *Complexities in Civil Litigation* symposia. We appreciate the considerable time you spent preparing and delivering this important course across the state. It is no surprise to me that the judges rated this among the best programs they have attended in recent years."

About the efforts of Berger Montague attorneys Merrill G. Davidoff, Peter Nordberg and David F. Sorensen in planning and presenting a CLE Program to trial judges in the Commonwealth of Pennsylvania.

Relevant Practice Areas and Case Profiles

Employment & Unpaid Wages

The Berger Montague Employment & Unpaid Wages Department works tirelessly to safeguard the rights of employees, and devotes all of their energies to helping the firm's clients achieve their goals. Our attorneys' understanding of federal and state wage and hour laws, federal and state civil rights and discrimination laws, ERISA, the WARN Act, laws protecting whistleblowers, such as federal and state False Claims Acts, and other employment laws, allows us to develop creative strategies to vindicate our clients' rights and help them secure the compensation to which they are entitled.

Berger Montague is at the forefront of class action litigation, seeking remedies for employees under the Fair Labor Standards Act, state wage and hour law, breach of contract, unjust enrichment, and other state common law causes of action.

Berger Montague's Employment & Unpaid Wages Group, which is co-chaired by Managing Shareholder Shanon Carson and Shareholder Sarah Schalman-Bergen, is repeatedly recognized for outstanding success in effectively representing its clients. In 2015, The National Law Journal selected Berger Montague as the top plaintiffs' law firm in the Employment Law category at the Elite Trial Lawyers awards ceremony. Portfolio Media, which publishes Law360, also recognized Berger Montague as one of the eight Top Employment Plaintiffs' Firms in 2009.

Representative cases include the following:

- ***Fenley v. Wood Group Mustang, Inc***: The firm served as lead counsel and obtained a settlement of $6.25 million on behalf of a class of oil and gas inspectors who allegedly did not receive overtime compensation for hours worked in excess of 40 per week. (Civil Action No. 2:15-cv-326 (S.D. Ohio)).

- ***Sanders v. The CJS Solutions Group, LLC***: The firm served as co-lead counsel and obtained a settlement of $3.24 million on behalf of a class of IT healthcare consultants who allegedly did not receive overtime premiums for hours worked in excess of 40 per week. (Civil Action No. 17-3809 (S.D.N.Y.)).

- ***Gundrum v.*** **Cleveland Integrity Services, Inc..:** The firm served as lead counsel and obtained a settlement of $4.5 million on behalf of a class of oil and gas inspectors who allegedly did not receive overtime compensation for hours worked in excess of 40 per week. (Civil Action No. 4:17-cv-55 (N.D. Okl.)).

- ***Fenley v.*** **Applied Consultants, Inc.:** The firm served as lead counsel and obtained a settlement of $9.25 million on behalf of a class of oil and gas inspectors who allegedly did not receive overtime compensation for hours worked in excess of 40 per week. (Civil Action No. 2:15-cv-259 (W.D. Pa.)).

- ***Acevedo v. Brightview Landscapes, LLC*****:** The firm served as co-lead counsel and obtained a settlement of $6.95 million on behalf of a class of landscaping crew members who allegedly did not receive proper overtime premiums for hours worked in excess of 40 per week. (Civil Action No. 3:13-cv-02529 (M.D. Pa.)).

- ***Jantz v. Social Security Administration:*** The firm served as co-lead counsel and obtained a settlement on behalf of employees with targeted disabilities ("TDEs") alleged that SSA discriminated against TDEs by denying them promotional and other career advancement opportunities. The settlement was reached after more than ten years of litigation, and the Class withstood challenges to class certification on four separate occasions. The settlement includes a monetary fund of $9.98 million and an unprecedented package of extensive programmatic changes valued at approximately $20 million. EEOC No. 531-2006-00276X (2015).

- ***Ciamillo v. Baker Hughes, Incorporated:*** The firm served as lead counsel and obtained a settlement of $5 million on behalf of a class of oil and gas workers who allegedly did not receive any overtime compensation for working hours in excess of 40 per week. (Civil Action No. 14-cv-81 (D. Alaska)).

- ***Employees Committed for Justice v. Eastman Kodak Company:*** The firm served as co-lead counsel and obtained a settlement of $21.4 million on behalf of a nationwide class of African American employees of Kodak alleging a pattern and practice of racial discrimination (pending final approval). A significant opinion issued in the case is *Employees Committed For Justice v. Eastman Kodak Co.*, 407 F. Supp. 2d 423 (W.D.N.Y. 2005) (denying Kodak's motion to dismiss). No. 6:04-cv-06098 (W.D.N.Y.)).

- ***Salcido v. Cargill Meat Solutions Corp.:*** The firm served as co-lead counsel and obtained a settlement of $7.5 million on behalf of a class of thousands of employees of Cargill Meat Solutions Corp. alleging that they were forced to work off-the-clock and during their breaks. This is one of the largest settlements of this type of case involving a single plant in U.S. history. (Civil Action Nos. 1:07-cv-01347-LJO-GSA and 1:08-cv-00605-LJO-GSA (E.D. Cal.)).

- ***Miller v. Hygrade Food Products, Inc.:*** The firm served as lead counsel and obtained a settlement of $3.5 million on behalf of a group of African American employees of Sara Lee Foods Corp. to resolve charges of racial discrimination and retaliation at its Ball Park Franks plant. (No. 99-1087 (E.D. Pa.)).

- ***Chabrier v. Wilmington Finance, Inc.:*** The firm served as co-lead counsel and obtained a settlement of $2,925,000 on behalf of loan officers who worked in four offices to resolve claims for unpaid overtime wages. A significant opinion issued in the case is *Chabrier v. Wilmington Finance, Inc.*, 2008 WL 938872 (E.D. Pa. April 04, 2008) (denying the defendant's motion to decertify the class). (No. 06-4176 (E.D. Pa.)).

- ***Bonnette v. Rochester Gas & Electric Co.:*** The firm served as co-lead counsel and obtained a settlement of $2 million on behalf of a class of African American employees of Rochester Gas & Electric Co. to resolve charges of racial discrimination in hiring, job assignments, compensation, promotions, discipline, terminations, retaliation, and a hostile work environment. (No. 07-6635 (W.D.N.Y.)).

- ***Confidential.*** The firm served as lead counsel and obtained a settlement of $6 million on behalf of a group of African American employees of a Fortune 100 company to resolve claims of racial discrimination, as well as injunctive relief which included significant changes to the Company's employment practices (settled out of court while charges of discrimination were pending with the U.S. Equal Employment Opportunity Commission).

Founding Partner

David Berger - *1912-2007*

David Berger was the founder and the Chairman of Berger Montague. He received his A.B. *cum laude* in 1932 and his LL.B. *cum laude* in 1936, both from the University of Pennsylvania. He was a member of The Order of the Coif and was an editor of the *University of Pennsylvania Law Review*. He had a distinguished scholastic career including being Assistant to Professor Francis H. Bohlen and Dr. William Draper Lewis, Director of the American Law Institute, participating in the drafting of the first Restatement of Torts. He also served as a Special Assistant Dean of the University of Pennsylvania Law School. He was a member of the Board of Overseers of the Law School and Associate Trustee of the University of Pennsylvania. In honor of his many contributions, the Law School established the David Berger Chair of Law for the Improvement of the Administration of Justice.

David Berger was a law clerk for the Pennsylvania Supreme Court. He served as a deputy assistant to Director of Enemy Alien Identification Program of the United States Justice Department during World War II.

Thereafter he was appointed Lt.j.g. in the U.S. Naval Reserve and he served in the South Pacific aboard three aircraft carriers during World War II. He was a survivor of the sinking of the U.S.S. Hornet in the Battle of Santa Cruz, October 26, 1942. After the sinking of the Hornet, Admiral

Halsey appointed him a member of his personal staff when the Admiral became Commander of the South Pacific. Mr. Berger was ultimately promoted to Commander. He was awarded the Silver Star and Presidential Unit Citation.

After World War II, he was a law clerk in the United States Court of Appeals. The United States Supreme Court appointed David Berger a member of the committee to draft the Federal Rules of Evidence, the basic evidentiary rules employed in federal courts throughout the United States. David Berger was a fellow of the American College of Trial Lawyers, the International Society of Barristers, and the International Academy of Trial Lawyers, of which he was a former Dean. He was a Life Member of the Judicial Conference of the Third Circuit and the American Law Institute.

A former Chancellor (President) of the Philadelphia Bar Association, he served on numerous committees of the American Bar Association and was a lecturer and author on various legal subjects, particularly in the areas of antitrust, securities litigation, and evidence.

David Berger served as a member of President John F. Kennedy's committee which designed high speed rail lines between Washington and Boston. He drafted and activated legislation in the Congress of the United States which resulted in the use of federal funds to assure the continuance of freight and passenger lines throughout the United States. When the merger of the Pennsylvania Railroad and the New York Central Railroad, which created the Penn Central Transportation Company, crashed into Chapter 11, David Berger was counsel for Penn Central and a proponent of its reorganization. Through this work, Mr. Berger ensured the survival of the major railroads in the Northeastern section of the United States including Penn Central, New Jersey Central, and others.

Mr. Berger's private practice included clients in London, Paris, Dusseldorf, as well as in Philadelphia, Washington, New York City, Florida, and other parts of the United States. David Berger instituted the first class action in the antitrust field, and for over 30 years he and the Berger firm were lead counsel and/or co-lead counsel in countless class actions brought to successful conclusions, including antitrust, securities, toxic tort and other cases. He served as one of the chief counsel in the litigation surrounding the demise of Drexel Burnham Lambert, in which over $2.6 billion was recovered for various violations of the securities laws during the 1980s. The recoveries benefitted such federal entities as the FDIC and RTC, as well as thousands of victimized investors.

In addition, Mr. Berger was principal counsel in a case regarding the Three Mile Island accident near Harrisburg, Pennsylvania, achieving the first legal recovery of millions of dollars for economic harm caused by the nation's most serious nuclear accident. As part of the award in the case, David Berger established a committee of internationally renowned scientists to determine the effects on human beings of emissions of low level radiation.

In addition, as lead counsel in *In re Asbestos School Litigation*, he brought about settlement of this long and vigorously fought action spanning over 13 years for an amount in excess of $200 million.

David Berger was active in Democratic politics. President Clinton appointed David Berger a member of the United States Holocaust Memorial Council, in which capacity he served from 1994-2004. In addition to his having served for seven years as the chief legal officer of Philadelphia, he was a candidate for District Attorney of Philadelphia, and was a Carter delegate in the Convention which nominated President Carter.

Over his lengthy career David Berger was prominent in a great many philanthropic and charitable enterprises some of which are as follows: He was the Chairman of the David Berger Foundation and a long time honorary member of the National Commission of the Anti-Defamation League. He was on the Board of the Jewish Federation of Philadelphia and, at his last place of residence, Palm Beach, as Honorary Chairman of the American Heart Association, Trustee of the American Cancer Society, a member of the Board of Directors of the American Red Cross, and active in the Jewish Federation of Palm Beach County.

David Berger's principal hobby was tennis, a sport in which he competed for over 60 years. He was a member of the Board of Directors of the International Tennis Hall of Fame and other related organizations for assisting young people in tennis on a world-wide basis.

Firm Chair

Eric L. Cramer – Chairman

Mr. Cramer is Firm Chairman and Co-Chair of the Firm's antitrust department. He has a national practice in the field of complex litigation, primarily in the area of antitrust class actions. He is currently co-lead counsel in multiple significant antitrust class actions across the country in a variety of industries and is responsible for winning numerous significant settlements for his clients totaling well over $2 billion. Most recently, he has focused on representing workers claiming that anticompetitive practices have suppressed their pay, including cases on behalf of mixed-martial-arts fighters and chicken growers.

In 2018, he was named Philadelphia antitrust "Lawyer of the Year" by *Best Lawyers*, and in 2017, he won the American Antitrust Institute's Antitrust Enforcement Award for Outstanding Antitrust Litigation Achievement in Private Law Practice for his work in *Castro v. Sanofi Pasteur Inc.*, No. 11-cv-07178 (D.N.J.). He has also identified as a top tier antitrust lawyer by *Chambers & Partners* in Pennsylvania and nationally. *Chambers* observed that Mr. Cramer is "really a tremendous advocate in the courtroom, with a very good mind and presence." He has been highlighted annually since 2011 by *The Legal 500* as one of the country's top lawyers in the field of complex antitrust litigation, and repeatedly deemed one of the "Best Lawyers in America," including in 2018. In 2014 and 2018, Mr. Cramer was selected by *Philadelphia Magazine* as one of the top 100 lawyers in Philadelphia.

Mr. Cramer is also a frequent speaker at antitrust and litigation related conferences. He was the only Plaintiffs' lawyer selected to serve on the American Bar Association's Antitrust Section Transition Report Task Force delivered to the incoming Obama Administration in 2012. He is a

Senior Fellow and Vice President of the Board of Directors of the American Antitrust Institute; a past President of COSAL (Committee to Support the Antitrust Laws), a leading industry group; a member of the Advisory Board of the Institute of Consumer Antitrust Studies of the Loyola University Chicago School of Law; and a member of the Board of Directors of Public Justice, a national public interest law firm.

He has written widely in the fields of class certification and antitrust law. Among other writings, Mr. Cramer has co-authored *Antitrust, Class Certification, and the Politics of Procedure*, 17 George Mason Law Review 4 (2010), which was cited by both the First Circuit in *In re Nexium Antitrust Litig.*, 777 F.3d 9, 27 (1st Cir. 2015), *quoting* Davis & Cramer, 17 Geo. Mason L. Rev. 969, 984-85 (2010), and the Third Circuit in *Behrend v. Comcast Corp.*, 655 F.3d 182, 200, n.10 (3d Cir. 2011), *rev'd on other grounds*, 133 S. Ct. 1426 (2013). He has also co-written a number of other pieces, including: *Of Vulnerable Monopolists?: Questionable Innovation in the Standard for Class Certification in Antitrust Cases*, 41 Rutgers Law Journal 355 (2009-2010); *A Questionable New Standard for Class Certification in Antitrust Cases*, published in the ABA's Antitrust Magazine, Vol. 26, No. 1 (Fall 2011); a Chapter of American Antitrust Institute's Private International Enforcement Handbook (2010), entitled "*Who May Pursue a Private Claim*?"; and, a chapter of the American Bar Association's Pharmaceutical Industry Handbook (July 2009), entitled "Assessing Market Power in the Prescription Pharmaceutical Industry."

Mr. Cramer is a *summa cum laude* graduate of Princeton University (1989), where he was elected to *Phi Beta Kappa*. He graduated *cum laude* from Harvard Law School with a J.D. in 1993.

Attorneys in Berger Montague's Employment and Unpaid Wages Department

Shanon J. Carson – Managing Shareholder
Shanon J. Carson is a Managing Shareholder of the Firm. He Co-Chairs the Employment & Unpaid Wages, Consumer Protection, Defective Products, and Defective Drugs and Medical Devices Departments and is a member of the Firm's Commercial Litigation, Employee Benefits & ERISA, Environment & Public Health, Insurance Fraud, Predatory Lending and Borrowers' Rights, and Technology, Privacy & Data Breach Departments.

Mr. Carson has achieved the highest peer-review rating, "AV," in Martindale-Hubbell, and has received honors and awards from numerous publications. In 2009, Mr. Carson was selected as one of 30 "Lawyers on the Fast Track" in Pennsylvania under the age of 40. In both 2015 and 2016, Mr. Carson was selected as one of the top 100 lawyers in Pennsylvania, as reported by Thomson Reuters. In 2018, Mr. Carson was named to the *Philadelphia Business Journal*'s "2018 Best of the Bar: Philadelphia's Top Lawyers."

Mr. Carson is often retained to represent plaintiffs in employment cases, wage and hour cases for minimum wage violations and unpaid overtime, ERISA cases, consumer cases, insurance cases, construction cases, automobile defect cases, defective drug and medical device cases, product liability cases, breach of contract cases, invasion of privacy cases, false advertising cases, excessive fee cases, and cases involving the violation of state and federal statutes. Mr. Carson represents plaintiffs in all types of litigation including class actions, collective actions,

multiple plaintiff litigations, and single plaintiff litigation. Mr. Carson is regularly appointed by federal courts to serve as lead counsel and on executive committees in class actions and mass torts.

Mr. Carson is frequently asked to speak at continuing legal education seminars and other engagements and is active in nonprofit and professional organizations. Mr. Carson currently serves on the Board of Directors of the Philadelphia Trial Lawyers Association (PTLA) and as a Co-Chair of the PTLA Class Action/Mass Tort Committee. Mr. Carson is also a member of the American Association for Justice, the American Bar Foundation, Litigation Counsel of America, the National Trial Lawyers - Top 100, and the Pennsylvania Association for Justice.

While attending the Dickinson School of Law of the Pennsylvania State University, Mr. Carson was senior editor of the Dickinson Law Review and clerked for a U.S. District Court Judge. Mr. Carson currently serves on the Board of Trustees of the Dickinson School of Law of the Pennsylvania State University.

Sarah R. Schalman-Bergen – Shareholder

Sarah R. Schalman-Bergen is a Shareholder at the Firm. She Co-Chairs the Firm's Employment and Unpaid Wages Department and is a member of the Firm's Antitrust, Insurance Products & Financial Services, and Lending Practices & Borrowers' Rights Departments. She is also a member of the Firm's Hiring Committee, Associate Development Committee and Pro Bono Committee.

Ms. Schalman-Bergen represents employees who are not being paid properly in class and collective action wage and hour employment cases as well as in class action discrimination cases across the country. Specifically, Ms. Schalman-Bergen has served as lead counsel in dozens of wage theft lawsuits, representing employees in a variety of industries, including at meat and poultry plants, at fast food restaurants, in the oil and gas industry, in white collar jobs and in the government.

Ms. Schalman-Bergen also serves as counsel to employees, consumers and businesses in antitrust cases, including representing the employees of several high tech companies who alleged that the companies entered into "do not poach" agreements that illegally suppressed employees' wages. Ms. Schalman-Bergen has represented homeowners whose mortgage loan servicers have force-placed extraordinarily high-priced insurance on them. She currently represents several cities in lawsuits against major banks for allegedly discriminatory practices in violation of the Fair Housing Act.

Ms. Schalman-Bergen is frequently asked to speak on continuing legal education seminars that relate to employment issues. In 2015, Ms. Schalman-Bergen was honored as a “Lawyer on the Fast Track” by The Legal Intelligencer. Ms. Schalman-Bergen was 1 of 40 attorneys selected by a six-member judging panel composed of evaluators from all corners of the legal profession and

Pennsylvania. From 2010 through 2019, Ms. Schalman-Bergen was named as a Pennsylvania Super Lawyer- Rising Star. In 2010, Ms. Schalman-Bergen was honored as an "Unsung Hero" by the Legal Intelligencer, Pennsylvania's daily law journal, for her pro bono work with the AIDS Law Project of Pennsylvania. From 2007-2009 Ms. Schalman-Bergen served as the Jerome J. Shestack Public Interest Fellow at WolfBlock LLP.

Ms. Schalman-Bergen maintains an active pro bono practice. She serves as volunteer of counsel to the AIDS Law Project of Pennsylvania. Through her role there, Ms. Schalman-Bergen litigates HIV discrimination and confidentiality cases, as well as other cases impacting the rights of people living with HIV/AIDS.

Prior to joining the Firm, Ms. Schalman-Bergen practiced in the litigation department at a large Philadelphia firm where she represented clients in a variety of industries in complex commercial litigation.

Ms. Schalman-Bergen is a 2007 *cum laude* graduate of Harvard Law School and a 2001 *summa cum laude* graduate of Tufts University. During law school, Ms. Schalman-Bergen served as an executive editor for the Harvard Civil Rights-Civil Liberties Law Review.

Phyllis Maza Parker – Shareholder

Phyllis Maza Parker, a Shareholder, concentrates her practice primarily on complex securities class action litigation, representing both individual and institutional investors. Her practice also includes commercial litigation.

Ms. Parker served on the team as co-lead counsel for the Class in *In re Xcel Energy, Inc. Securities Litigation* (D. Minn.). The case, which settled for $80 million, was listed among the 100 largest securities class action settlements in the United States since the enactment of the 1933-1934 Securities Acts. Among other cases, she has also served as co-lead counsel in *In re Reliance Group Holdings, Inc. Securities Litigation* ($15 million settlement); *In re The Loewen Group, Inc. Securities Litigation* ($6 million settlement); as lead counsel in *In re Veeco Instruments Inc. Securities Litigation* ($5.5 million settlement on the eve of trial); as co-lead counsel in *In re Nuvelo, Inc. Securities Litigation* ($8.9 million settlement); and, most recently, as co-lead counsel in *Coady v. Perry, et al.* (IndyMac Bancorp, Inc.) ($6.5 million settlement).

While studying for her J.D. at Temple, Ms. Parker was a member of the Temple Law Review. She published a Note on the subject of the Federal Sentencing Guidelines in the Temple Law Review, Vol. 67, No. 4, 1994, which has been cited by a court and in a law review article. After her first year of law school, Ms. Parker interned with the Honorable Dolores K. Sloviter of the United States Court of Appeals for the Third Circuit.

Ms. Parker is fluent in Hebrew and French.

Camille Fundora Rodriguez – Associate
Ms. Rodriguez is an Associate in the Firm's Employment Law, Consumer Protection, and Lending Practices & Borrowers' Rights practice groups. Ms. Rodriguez primarily focuses on wage and hour class and collective actions arising under the Fair Labor Standards Act and state laws.

Prior to joining the Firm, Ms. Rodriguez practiced in the litigation department at a boutique Philadelphia law firm where she represented clients in a variety of personal injury, disability, and employment discrimination matters. Ms. Rodriguez is a graduate of Widener University School of Law.

Ms. Rodriguez is an active member of the Pennsylvania, Philadelphia, and Hispanic Bar Associations.

Krysten Connon – Associate
Ms. Connon is an Associate in the Firm's Employment & Unpaid Wages practice group. She represents employees who are not being paid properly in class and collective actions arising under the Fair Labor Standards Act and state laws.

Prior to joining the Firm, Ms. Connon practiced as a litigation associate at a large Philadelphia firm, where she represented corporate and individual clients in complex commercial litigation and arbitration matters. Ms. Connon also worked as a Staff Attorney at Women Against Abuse, where she litigated cases originating as domestic violence matters.

Ms. Connon graduated *summa cum laude* from the Drexel University School of Law, and is a Phi Beta Kappa graduate of the University of Maryland. Following law school, Ms. Connon served as a federal judicial law clerk in the United States District Court for the District of New Jersey and the United States District Court for the District of Columbia. She co-authored the 2015 Oxford University Press book, *Living in the Crosshairs: The Untold Stories of Anti-Abortion Terrorism*, which presents the results of extensive interviews with abortion providers around the intersections of law, policy, and anti-abortion violence. Ms. Connon currently serves on the Board of Directors of Planned Parenthood Southeastern Pennsylvania.

Alexandra Koropey Piazza – Associate
Alexandra Koropey Piazza, an Associate, is a member of the Firm's Employment Law, Consumer Protection and Lending Practices & Borrowers' Rights practice groups. In the Employment Law practice group, Ms. Piazza primarily focuses on wage and hour class and collective actions arising under state and federal law. Ms. Piazza's work in the Consumer Protection and Lending Practices & Borrowers' Rights practice groups involves consumer class actions concerning financial practices.

Ms. Piazza is a graduate of the University of Pennsylvania and Villanova University School of Law. During law school, Ms. Piazza served as a managing editor of the Villanova Sports and Entertainment Law Journal and as president of the Labor and Employment Law Society. Ms. Piazza also interned at the United States Attorney's Office and served as a summer law clerk for the Honorable Eduardo C. Robreno of the United States District Court for the Eastern District of Pennsylvania.

Michaela Wallin – Associate
Michaela Wallin is an Associate in the Antitrust and Employment Law practice groups. Ms. Wallin's work in the Antitrust group involves complex class actions, including those alleging that pharmaceutical manufacturers have wrongfully kept less expensive drugs off the market, in violation of the antitrust laws. In the Employment Law Group, Ms. Wallin focuses on wage and hour class and collective actions arising under federal and state law.

Prior to joining the Firm, Ms. Wallin served as a law clerk for the Honorable James L. Cott of the United States District Court of the Southern District of New York. She also completed an Equal Justice Works Fellowship at the ACLU Women's Rights Project, where she worked to challenge local laws that target domestic violence survivors for eviction and impede tenants' ability to call the police.

Ms. Wallin is a graduate of Columbia Law School, where she was a Harlan Fiske Stone Scholar. Ms. Wallin graduated *magna cum laude* from Bowdoin College, where she was Phi Beta Kappa and a Sarah and James Bowdoin Scholar.

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

TYHEE HICKMAN, SHANAY BOLDEN, and O'DONALD HENRY, individually and on behalf of all persons similarly situated,	:	**Civil Action No.: 2:17-cv-01038-GAM**
Plaintiffs,	:	
v.	:	
TL TRANSPORTATION, LLC, SCOTT FOREMAN, HERSCHEL LOWE, AMAZON.COM, LLC, and AMAZON LOGISTICS, INC.	:	
Defendants.	:	

DECLARATION OF RYAN ALLEN HANCOCK

I, Ryan Allen Hancock, declare that the following information is true and correct to the best of my knowledge, information, and belief:

1. I am Plaintiffs' counsel of record and putative class counsel in the above-captioned lawsuit.

2. For more than nine years, I was the Assistant Chief Counsel for the Pennsylvania Human Relations Commission, for the Commonwealth of Pennsylvania's Civil Rights Enforcement Agency. I am currently a partner and Chair of the Employment Law Department of Willig, Williams & Davidson located at 1845 Walnut Street, 24th Floor Philadelphia, PA 19103. Throughout my career, I have focused on representing individuals (or groups of individuals) in litigation related to their employment. I have represented employees in hundreds of administrative claims and lawsuits in state and federal district court, including wage-and-hour cases involving allegations of off-the-clock work and unpaid overtime compensation.

3. I am licensed in good standing to practice in all state courts in the Commonwealth of Pennsylvania, the State of New York, United States District Court for the Eastern District of Pennsylvania, the United States Court of Appeals for the Third Circuit and United States District Court for the Northern District of Illinois. I have never been sanctioned, disciplined, or otherwise admonished by any bar organization. I have never been denied *pro hac vice* admission in any court, nor has any court revoked my *pro hac vice* admission. No court has ever refused to certify (or conditionally certify) a class or collective action based on my inadequacy as class counsel.

4. The majority of my practice is devoted to employment law, which includes wage-and-hour litigation. I have litigated against companies in almost every industry, and I have litigated against many of the preeminent defense firms in the area of employment litigation. Further, I have served as class counsel in class-action wage-and-hour lawsuits, including *Dale Ramtour v. Brendan Stanton, Inc.*, Case No. 2:15-cv-04941 (E.D. of Pennsylvania); *Douglas Salomone, et al. v. Urge Productions, LLC and Aaron Kaufman*, Index No. 651220/2015 (N.Y. Sup. Ct.); *David Johnson, et al. v. Ronak Foods, LLC, et al.*, Case No. 001090 (Ct. of Com. Pl. of Philadelphia Cnty.); *Maria Devlin et al. v. Ferrandino & Son, Inc.*, Case No. 2:15-v-04976 (E.D. Pa.); *Hector Ayala Herrera et al. v. Rolling Green Landscape and Design, Inc. et al.*, Case No. 2:17-cv-03176 (E.D. Pa.); *Shasay Morgan et al. v. RCL Management, Inc., et al.*, Case No. 2:18-cv-00800 (E.D. Pa.); *Tyhee Hickman et al. v. TL Transportation, LLC et al.*, Case No. 2:17-cv-01038 (E.D. Pa.); *Frederich Green et al. v. Amazon.com, LLC, et al.*, Case No. 1:18-cv-1032 (M.D. S.C.); *Gaines v. Amazon.com, LLC, et al.*, Case No. 1:19-cv-00528 (N.D. Ga.); *Priestley Faucett v. Amazon.com, LLC, et al.*, Case No. 1:18-cv-08066 (N.D. Ill.); *Heather Gongaware v. Amazon.com, LLC, et al.* Case No. 1:18-cv-08358 (N.D. Ill.); *Andrea Thomas et al. v. JSTC, LLC,*

Case No. 6:19-cv-01528 (M.D. Fl.); and *Christopher Johnson, et al. v. Trinity Couriers, Inc., et al*. Case No. 1:19-cv-686 (S.D. Ohio).

5. Over my career, I have presented at Pennsylvania Bar Institute CLE seminars on wage-and-hour litigation, and violations of the Pennsylvania Minimum Wage Act, Fair Labor Standards Act, and Pennsylvania Wage Payment and Collection Law.

6. I have also been retained to author an expert report on federal and state wage and hour issues related to minimum wage and overtime in the matter of *Samuel Berg v. Canadian Hockey League, et al.*, Case No. CV-14-514423 (Ontario Superior Court of Justice) and *Lukas Walter v. Canadian Hockey League, et al.*, Case No. CV-1401-11912 (Court of Queen's Bench of Alberta).

7. I, with my co-counsel, have overseen this litigation against the Defendants since its inception.

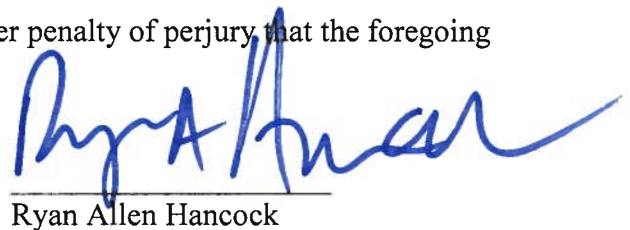
8. I have read the declaration of Sarah Schalman-Bergen, to be submitted in support of Plaintiffs' Unopposed Motion for Preliminary Approval of the Settlement Agreement in this action, and I confirm that Ms. Schalman-Bergen's description of the litigation and negotiation leading to the Settlement Agreement is true and correct.

9. I am firmly convinced that the negotiated Settlement Agreement provides an excellent settlement for the Plaintiffs and the Settlement Class, with respect to their claims for unpaid overtime wages resulting from the TL Defendants' violations of the FLSA and related state law, and is a fair and reasonable resolution of this litigation.

10. Based on my experience litigating this lawsuit and many similar cases, I believe that the negotiated settlement reached during the mediation is in the best interests of the Plaintiffs and members of the putative class, and I believe the Court should approve the Parties' agreement.

11. Moreover, the proposed incentive awards are justified by the benefits that Plaintiffs' diligent efforts have brought to the Settlement Class Members. Plaintiffs took the significant risk of coming forward to represent the interests of their fellow employees. They worked with Class Counsel, providing background information about their employment, about Defendant's policies and practices, and about the allegations in this lawsuit. Plaintiff Hickman attended two of the mediation sessions. These individuals work in an industry in which workers are largely fungible, and they bravely took the risk to step forward on behalf of their fellow workers, knowing that their name would be a on a public docket available through an internet search, and knowing that prospective employers might take their participation in such a lawsuit in consideration when making hiring decisions. They risked their reputation in the community and in her field of employment in order to participate in this case on behalf of the Class. The lesser service award allotted to Plaintiff Henry simply reflects the shorter length of time that he has served as a Named Plaintiff in this case, which began with Plaintiffs' filing of the Third Amended Complaint on September 16, 2019.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



Executed on September 16, 2019

Ryan Allen Hancock

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

TYHEE HICKMAN, SHANAY BOLDEN, and O'DONALD HENRY, individually and on behalf of all persons similarly situated,	:	**Civil Action No.: 2:17-cv-01038-GAM**
Plaintiffs,	:	
v.	:	
TL TRANSPORTATION, LLC, SCOTT FOREMAN, HERSCHEL LOWE, AMAZON.COM, LLC, and AMAZON LOGISTICS, INC.	:	
Defendants.	:	

[PROPOSED] ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT

AND NOW, this ____ day of _____, 2019, upon consideration of Plaintiffs' Unopposed Motion for Preliminary Approval of the Settlement Agreement, the Court grants Plaintiffs' Motion and ORDERS as follows:

1. The Parties' Settlement Agreement is preliminarily approved as fair, reasonable and adequate pursuant to Fed. R. Civ. P. 23(e);

2. The Court grants approval to the terms and conditions contained in the Settlement as a fair and reasonable resolution of a *bona fide* dispute under the Fair Labor Standards Act;

3. For settlement purposes, the Court confirms its July 13, 2018 Order conditionally certifying the Settlement Class as a collective pursuant to 29 U.S.C. § 216(b), pending final approval of the settlement:

> All current and former Delivery Associates who were employed by TL Transportation, LLC to deliver packages to Amazon customers in the United States between March 8, 2014 and April 15, 2017;

4. For settlement purposes, the Court preliminarily certifies the Settlement Class pursuant to Fed. R. Civ. P. 23, pending final approval of the settlement as follows:

> all current and former Delivery Associates who were employed by TL Transportation, LLC to deliver packages to Amazon customers in Pennsylvania, Maryland and New Jersey between March 8, 2014 and April 15, 2017;

5. Plaintiffs Tyhee Hickman, Shanay Bolden, and O'Donald Henry are preliminarily approved as the Representatives of the Settlement Class;

6. Berger Montague PC and Willig, Williams, & Davidson are preliminarily approved as Class Counsel for the Settlement Class;

7. Angeion Group is preliminarily approved as Settlement Administrator and the costs of settlement administration are preliminarily approved;

8. The Court approves the Notice of Settlement, attached as Exhibit A to the Settlement Agreement, and authorizes dissemination of the Notice to members of the Settlement Class;

9. The following schedule and procedures for completing the final approval process as set forth in the Parties' Settlement Agreement are hereby approved:

Defendant TLT to send CAFA Notice	Within ten (10) business days after submission of the Settlement Agreement to the Court
Defendant TLT and Class Counsel Provide Settlement Class Contact Information	Within ten (5) business days after the Court's Preliminary Approval Order
Notice Sent	Within (15) business days after the Court's Preliminary Approval Order
Plaintiffs' Motion for Approval of Attorneys' Fees and Costs	Forty-Five (45) days after the Settlement Notice is initially mailed.
Deadline to Postmark Objections or Requests for Exclusion ("Objection and Exclusion Deadline")	Sixty (60) days after the Settlement Notice is initially mailed.
Plaintiffs' Motion for Final Approval	Five (5) business days prior to Final Approval Hearing.

Final Approval Hearing	At the Court's convenience, approximately one hundred (100) days after the Court's Preliminary Approval Order.

9. The Final Approval hearing is hereby set for ______________ at ______ a.m./p.m. in James A. Byrne U.S. Courthouse, 601 Market Street Philadelphia, PA 19106, Courtroom _______.

BY THE COURT,

Dated:_______________

____

Honorable Gerald A. McHugh
United States District Judge