IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

MELINDA MYERS, BARBARA STANERSON, JOHN EIVINS, LIV KELLY-SELLNAU, CHRISTOPHER TAYLOR, and SHUNA TOSA, on behalf of themselves and other similarly situated, Plaintiffs, v. IOWA BOARD OF REGENTS, Defendant.	)	Case No. 3:19-cv-00081-SMR-SBJ ORDER GRANTING PRELIMINARY APPROVAL OF CLASS SETTLEMENT

On October 14, 2022, Plaintiffs filed a Motion for Preliminary Settlement Approval. [ECF No. 91 at 1]. Defendants assent to the Motion. *Id*. at 3. For the reasons discussed in detail below, the Motion for Preliminary Approval of the Settlement is GRANTED.

I. BACKGROUND

A. Procedural History

Plaintiffs filed a petition on August 19, 2019 in the Iowa District Court for Johnson County, alleging that they and similarly situated individuals were untimely paid portions of their wages, known as shift adjustments, by the University of Iowa Board of Regents ("the Board"), which was in violation of the Iowa Wage Payment Collection Law ("IWPCL"). The petition was amended to add a claim for individuals who had received termination pay in an untimely manner. The amendment also added a claim for individuals who were eligible to receive overtime pay under the Fair Labor Standards Act ("FLSA") but did not receive them in a timely manner. The amended complaint was removed to the United States District Court for the Southern District of Iowa on October 5, 2019.

i. History of the FLSA Class

On January 8, 2020, Plaintiff filed a motion for conditional certification of the FLSA collective action and approval of the opt-in notice for the collective class. [ECF No. 14]. On February 12, 2020, the Board filed a motion to dismiss on sovereign immunity grounds. [ECF No. 20]. On May 5, 2020, the Court denied the motion to dismiss and granted the motion for conditional class certification.[1] [ECF No. 31]. The Board filed an interlocutory appeal of the denial of the sovereign immunity defense. [ECF No. 32]. On April 5, 2022, the United States Court of Appeals for the Eighth Circuit affirmed in part and reversed in part. [ECF No. 74-1]. The panel remanded with instructions for the Court to enter findings of fact on whether the legal consequences of the policies of the University of Iowa Hospitals and Clinics ("UIHC") could be imputed to the Board. *Id.* at 6.

ii. History of the Termination and Wages Classes

On November 9, 2020, Plaintiffs filed a motion to certify classes on the remaining counts under Federal Rule of Civil Procedure 23. [ECF No. 55]. The Court granted Plaintiffs' motion on May 17, 2021. [ECF No. 62]. It certified the Wages Class.[2] [ECF No. 62 at 8]. The Court also

[1] The Court defined the "Overtime Class" as "[a]ll individuals who worked for the University of Iowa Hospitals and Clinics from January 8, 2017, to the present and were classified as merit, merit-exempt, or non-exempt P&S for purposes of overtime pay." *Id.* at 17–18.

[2] The Wages Class includes "[a]ll individuals who have worked for UIHC since August 19, 2017 as members of the SEIU bargaining unit ('health care professional bargaining unit') or October 7, 2017 as a 'Merit, Merit Exempt, and Non-Exempt P&S' employee ('blue collar workers'), respectively, who have not received their earned wages until more than twelve days, excluding Sundays and legal holidays, after the end of the period in which the wages were earned." [ECF No. 62 at 8].

defined the Termination Class.[3] *Id.* On June 18, 2021, Plaintiffs mailed court approved notices to approximately 11,265 class members and received 102 exclusion requests. *Id.*

On August 26, 2021, Plaintiffs filed a motion for partial summary judgment. [ECF No. 66]. The Board filed a resistance on October 7, 2021. [ECF No. 69]. The Court granted the motion as related to the Wages Class but denied the motion as to the Termination Class on March 29, 2022. [ECF No. 73]. After entry of the order, the Board filed a motion for reconsideration or, in the alternative, a motion to certify questions to the Iowa Supreme Court. [ECF No. 75]. The parties filed a joint motion to stay the proceedings to allow the parties to mediate the dispute.

B. Proposed Settlement Agreement

i. Settlement Process

Prior to the mediation, the Board provided Plaintiffs with data on when shift adjustments were earned by class members and when individuals were paid. [ECF No. 91-3 at 5]. Plaintiffs employed Dr. Liesl Fox to review the data and "construct a damages model for the plaintiff class." *Id.* Dr. Fox's damages model presented a wide variety of outcomes depending on future potential rulings by this Court. [ECF No. 91-1 at 17–18]. The model also calculated the rough distribution of benefits among class members. This information was used in the formal settlement negotiations on August 15, 2022 before retired United States District Judge Mark Bennett. The parties reached an agreement to resolve "all of the claims in th[e] lawsuit" on the same day. *Id.* at 1.

[3] The Termination Class is defined to include, "[a]ll individual members of the SEIU bargaining unit . . . or 'Merit, Merit Exempt, and Non Exempt P&S' employees . . . who have worked for UIHC since October 7, 2017 and have since terminated their employment who have not been paid accrued vacation pay, or unused accumulated sick leave not to exceed $2,000 where the employee retired at age 55 or older, by the next regular payday after their employment was terminated." *Id.* at 9.

ii. Settlement's Financial Terms

The proposed settlement agreement ("the Agreement") awards $15,000,000 to cover three types of costs. First, it provides compensation to members of the Wages Class, the Termination Class, and the FLSA Class. Second, it awards attorneys' fees to class counsel. Third, it provides incentive payments to the six named plaintiffs. Each component is previewed below.

a. Wages Class Compensation

Compensation in the amount of $10,900,000 will be distributed to Wages Class members on a pro rata basis under the Agreement. [ECF No. 91-1 at 8]. More specifically, an individual's share is based on adjustments and overtime pay they untimely received and how much the member could hypothetically recover in liquidated damages under Iowa Code § 91A.3. [ECF No. 91-3 at 6]. Based on the data from the Board, roughly half of the settlement class will receive shares at or below $500 per person, while half will receive shares in excess. *Id.* Within the top half of pro rata shares, roughly one-third of all class members will obtain more than $1,000 each. *Id.* Just under three percent of class members will receive payouts of more than $5,000. *Id.* Any wages that are unclaimed by class members, *i.e.*, the settlement checks are not cashed, will go to the University of Iowa Tuition Assistance Program and the UIHC and University of Iowa Reimbursement and Reward program, which are *cy pres* beneficiaries. [ECF No. 91-1 at 10]. In essence, the Agreement provides "the largest amounts to UIHC employees who earned the most adjustments." [ECF No. 91-1 at 2].

b. FLSA Class Compensation

The agreement awards compensation to members in the FLSA Class, *i.e.*, UIHC employees who worked over forty hours in a week and were eligible to receive overtime pay under the FLSA. [ECF No. 91-1 at 7]. Under the terms of the Agreement, $100 will be paid to individuals who opt-

in to the settlement.[4] *Id.* Approximately 3,590 individuals are in the FLSA class and thus eligible for payout of their claim. *Id.* If each class member opted to receive payment, $359,000 would be distributed. *Id.* Any unclaimed shares will revert to the Board. *Id.*

c. Termination Class Compensation

The Agreement provides a financial benefit to each member of the Termination Class, *i.e.*, individuals who were not paid their accrued annual or sick leave by the next regular payday upon retirement or termination. [ECF No. 91-1 at 8]. Under the terms of the Agreement, $50 will be awarded to each member of the Class, which contains approximately 5,578 individuals. *Id.* The parties selected this small amount because the Court held "class members had no claim for late payment of termination pay because they were paid exactly as prescribed in the Board's policy" in its ruling on Plaintiffs' motion for partial summary judgment. [ECF No. 93 at 8]. In short, the money provides "qualifying individuals with some compensation in exchange for a release of claim that likely has no value." *Id.*

d. Attorneys' Fees

Attorneys' fees in class actions are calculated either by the lodestar method, which reviews the hours expended by an attorney multiplied by the reasonable hourly rate, or by a percent of the common benefit method, which awards a certain percentage of the "common settlement fund." *Swinton v. SquareTrade, Inc.*, 454 F. Supp. 3d 848, 883–84 (S.D. Iowa 2020) (citing *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 244–45 (8th Cir. 1996)). The Agreement is structured to

[4] Unlike a Rule 23 class action, where individuals are bound by the judgment unless they opt out, individuals who wish to receive an FLSA settlement and release their claim must opt in. *Carden v. Scholastic Book Clubs, Inc*., No. 2:10–cv–01112–NKL, 2011 WL 2680769, at *1 (W.D. Mo. July 8, 2011) (citing 29 U.S.C. § 216(b)). FLSA settlements often "require[] a court to manage the differences between section 216(b) opt-in and Rule 23 opt-out provisions." *See Donatti v. Charter Commc'ns, L.L.C.*, No. 11–4166–CV–C–MJW, 2012 WL 5207585, at *3 (W.D. Mo. Oct. 12, 2012).

award counsel up to twenty-two and one-half percent of the settlement or $3,375,000. [ECF No. 91-1 at 24]. This common fund award covers the attorneys' fees and expenses incurred during litigation. [ECF Nos. 91-1 at 7; 91-6 at 3]. To the extent that the attorneys' fees are not approved by the Court, the Agreement provides the remaining funds "will be redistributed to the participating class members [of the Wages Class] on a pro-rata basis." [ECF No. 91-1 at 8].

e. Incentive Payments

The last component of the Agreement is incentive payments to the named class members. Incentive awards are common in class actions and "serve to compensate named plaintiffs for work done on behalf of the class, to make up for financial and reputational risk undertaken in bringing the action, and to recognize a willingness to act as a private attorney general." *Sauby v. City of Fargo*, No. 3:07–cv–10, 2009 WL 2168942, at *2 (D. N.D. July 16, 2009) (citing *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009)). The Agreement would provide $10,000 each to "Plaintiffs Melinda Myers, Barbara Stanerson, Liv Kelly-Sellnau, John Eivins, Christopher Taylor, and Shuna Tosa." [ECF No. 91-1 at 7]. To the extent that the Court does not approve the proposed incentive payments, the amount not approved "will be redistributed to the participating [Wage Class] members on a pro-rata basis." *Id.* at 8 n.7.

iii. Notice Provisions in the Settlement

The Agreement contains information on a settlement administrator, the process by which notices will be provided, and the content of the notices. The Court reviews these items.

a. Background on Settlement Administrator

The parties "agreed to retain Simpluris as a class action administrator to ensure that notices of the settlement are distributed" and that "payments [are] promptly distributed to class members." [ECF Nos. 91-1 at 8–9; 91-3 at 5 (Lichten Decl.)]. According to the Director of Client Services at

Simpluris, Simpluris has been a class action administrator for more than fifteen years. [ECF Nos. 93 at 1; 93-1 at 3 (Eric Springer Decl.)]. Simpluris has provided class administration or notification services in more than eight thousand cases. [ECF No. 93-1 at 3]. Simpluris has also been retained to distribute settlements to more than ten thousand individuals on seventy occasions in the past two years. *Id.* In addition, Simpluris submitted its Security Certification to show its "adherence to policies and procedures surrounding information security" like the "processing and storage of [] consumer data." *Id.* at 10 (Simpluris Security White Paper). The Court concludes that Simpluris is a qualified class action administrator for the purposes of this settlement.

b. Notice Plan

Simpluris provided the step-by-step process it will use to contact the class members. [ECF No. 93-1 at 4]. First, Simpluris will review the information provided by the Board and compare it with the mailing addresses listed in the National Change of Address Database ("NCOA"). *Id.* If Simpluris discovers that mailing information has changed, it will update the address. *Id.* Next, it will mail the notices and opt-in forms "as soon as practicable." [ECF No. 91-2 at 6]. If a notice of settlement is returned as not delivered, it will resend the notice to the given forwarding address. *Id.* When a notice is returned as undeliverable, Simpluris will perform "an advanced address search (*i.e.*, a skip trace) on the Class Member . . . to locate a current mailing address." *Id.* at 5. It will then promptly remail any undeliverable mail. *Id.* Simpluris explains that it will perform "any other tasks necessary to carry out its responsibilities," including those ordered by the Court. *Id.*

c. Proposed Class Action Notice

The Motion for Preliminary Settlement Approval also includes a "Notice of Proposed Class Settlement" to explain the rights and protections of the members of the Termination and Wages Classes. [ECF No. 91-2 at 16 (Class Notice)]. The Notice identifies the recipient as being among

those who fall in the approved definition of the class. *Id.* It explains the individual is "entitled to receive a portion of the settlement" and provides an "estimated share." *Id.* at 16–17. The Notice describes the basic history of the case and provides an overview of the Agreement. *Id.* at 17–18. It contains a lengthy explanation of how a class member can opt to do nothing and collect their payments or file an objection. *Id.* at 19.

d. Proposed FLSA Notice and Opt-In Form

The Motion for Preliminary Settlement Approval contains a secondary FLSA Notice and opt-in form. [ECF No. 91-2 at 21]. It identifies the recipient was a UIHC worker who received pay overtime adjustments for overtime between January 2017 and November 2020. *Id.* It explains "[t]he parties have set aside additional funds to provide each individual . . . with an additional $100 each in settlement of their FLSA claims." *Id.* To receive the payout, the form explains that the recipient must "complete the enclosed opt-in form and return it to the third-party administrator by either regular mail, fax, or email." *Id.*[5] If a signed form is not enclosed, the class member will receive their "share of the larger settlement, but [] will not receive an additional $100." *Id.* The FLSA Notice and opt-in form also provide the process by which an individual can mail, fax, or email the completed documents to Plaintiffs' counsel to address. *Id.* at 22.

II. GOVERNING LAW

A. Overview of Class Approval Process

A class action may be "settled, voluntarily dismissed, or compromised only with a court's approval." *See Guy v. DMG Installations, Inc.*, Civil No. 4:20-cv-00331-SBJ, 2021 WL 4973251,

[5] The detailed written procedures are required by the FLSA. *Shepardson v. Midway Indus., Inc.*, CASE NO. 3:18-CV-3105, 2019 WL 2743435, at *2 (W.D. Ark. July 1, 2019). Specifically, the FLSA requires that "[n]o employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent in filed in the court in which such action is brought." 29 U.S.C. § 216(b).

at *3 (S.D. Iowa. Oct. 22, 2021) (emphasis omitted) (quoting Fed. R. Civ. P. 23(e)). A proposed settlement may only be approved after a hearing and upon a finding that the proposed agreement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Factors to consider in the fairness evaluation include whether: (A) "the class representatives and class counsel have adequately represented the class;" (B) "the proposal was negotiated at arm's length;" (C) "the relief provided for the class is adequate;" (D) "the proposal treats class members equitably relative to each other." *Swinton*, 454 F. Supp. 3d at 860 (citing Fed. R. Civ. P. 23(e)(2)). District courts evaluate four additional factors, which are: (1) "the merits of the plaintiff's case, weighed against the terms of the settlement"; (2) "the defendant's financial condition"; (3) "the complexity and expense of further litigation"; and (4) "the amount of opposition to the settlement." *Id.* (citation omitted). "The approval of a settlement . . . as fair, reasonable, and adequate 'is committed to the sound discretion of the trial judge.'" *In re Flight Transp. Corp. Secs. Litig.*, 730 F.2d 1128, 1135 (8th Cir. 1984) (quoting *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975)).

"As a practical matter, evaluation of a settlement . . . proceeds in two stages." *Schoenbaum v. E.I. Dupont De Nemours and Co.*, No. 4:05CV01108 ERW, 2009 WL 4782082, at *2 (E.D. Mo. Dec. 8, 2009). Relevant for the purposes of this motion is the first step, where a reviewing court "makes preliminary determinations with respect to the fairness of the settlement terms, approves the means of notice to class members, and sets the date for [a] final hearing." *In re Centurylink Sales Pracs. and Secs. Litig.*, Civil File No. 18-296, 2021 WL 3080960, at *5 (D. Minn. July 21, 2021) (citation omitted). "At the preliminary-approval stage, the fair, reasonable, and adequate standard is lowered." *Martin v. Cargill, Inc.*, 295 F.R.D. 380, 383 (D. Minn. 2013). Approval is appropriate "if the proposed settlement falls within the range of possible judicial approval." *Cleveland v. Whirlpool Corp.*, Case No. 20-cv-1906 (WMW/KMM), 2021 WL 5937403, at *6 (D.

Minn. Dec. 16, 2021) (quotation omitted). Preliminary approval should not be a "judicial rubber stamp" because this approval creates a "presumption of fairness." *Milam v. Ark. Util. Prot. Servs., Inc.*, CASE NO. 4:18-CV-00312 BSM, 2019 WL 13318360, at *2 (E.D. Ark. Feb. 15, 2019).

B. Certifiability of Class

"On a motion for preliminary approval, the parties must also show that the Court 'will likely be able to . . . certify the class for purposes of judgment on the proposal.'" *Phillips v. Caliber Home Loans, Inc.*, Case No. 19-cv-2711 (WMW/LIB), 2021 WL 3030648, at *7 (D. Minn. July 19, 2021) (citing Fed. R. Civ. P. 23(e)(1)(B)(ii)). This requires a district court to evaluate the four elements of Fed. R. Civ. P. 23(a) once again. *Schoenbaum*, 2009 WL 4782082, at *5. Under the rule, the four requirements are "(1) that the class be so numerous that joinder of all members is impracticable; (2) that there are questions of law or fact common to the class; (3) that the claims or defenses of the representative parties are typical . . . and (4) that the representative parties will fairly and adequately protect the interests of the class." *See Martin*, 295 F.R.D. at 383 n.3 (citing *Bennett v. Nucor Corp.*, 656 F.3d 802, 914 (8th Cir. 2011)).

III. ANALYSIS

A. Certifiability of Classes

At the preliminary approval stage, the Court must consider if it could certify the classes for the purpose of entering a final judgment. Fed. R. Civ. P. 23(e)(1)(B)(ii). For the reasons discussed below, the Court concludes the three classes – the FLSA Class, the Overtime Class, and the Wages Class – each satisfy the requirements to be certified under Federal Rule of Civil Procedure 23(a).

i. Numerosity

The numerosity element restricts actions to those where "the class is sufficiently numerous to make joinder impracticable." *Frazier v. PJ Iowa, L.C.*, 337 F. Supp. 3d 848, 869 (S.D. Iowa

2018) (holding that a class numbering in the hundreds is sufficient). The FLSA Class is composed of 3,590 members. [ECF No. 91-1 at 7]. The Termination Class contains approximately 5,578 individuals. *Id.* The Wages Class does not have a specific number, but data suggests the number is in the thousands. *Id.* These numbers are sufficient to establish numerosity. *J.S.X. Through Next Friend D.S.X. v. Foxhoven*, 330 F.R.D. 197, 207 (S.D. Iowa 2019) (finding the numerosity element satisfied with a class no larger than fifty-five members). This element is thus met.

ii. Common Questions of Fact or Law

Commonality "requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'" *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (quoting *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 157 (1982)). "The common contention . . . must be of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Sandusky Wellness Ctr., LLC v. Medtox Sci., Inc.*, 821 F.3d 992, 998 (8th Cir. 2016) (internal citations and quotations omitted). In essence, the court must examine "the capacity of a class-wide proceeding to generate common answers apt to drive the resolution of the litigation." *Postawko v. Mo. Dep't of Corrs.*, 910 F.3d 1030, 1038 (8th Cir. 2018) (citation omitted).

Commonality of both fact and law are present. With respect to the common facts, Plaintiffs alleged and have shown the same UIHC policies on the payment of wages and termination caused their injuries. On the questions of law, addressing a handful of issues on the legality of the polices would resolve the dispute. For example, addressing whether UIHC employees agreed to shift their pay schedule on summary judgment resolved many of the underlying issues. [ECF No. 91-1 at 18 Given the common questions of fact and law, this element is met.

iii. Typicality

Under Federal Rule of Civil Procedure 23(a)(3), plaintiffs must show that "there are other members of the class who have the same or similar grievances as the plaintiff." *Howe v. Johnny's Italian Steakhouse, L.L.C.*, Case No. 4:16-CV-00086-SMR-HCA, 2018 WL 6521496, at *12 (S.D. Iowa Sept. 11, 2018) (quoting *Paxton v. Union Nat'l Bank*, 688 F.2d 552, 562 (8th Cir. 1982)). "Factual variations in the individual claims will not normally preclude class certification if the claim arises from the same event or course of conduct as the class claims, and gives rise to the same legal or remedial theory." *Id.* (quoting *Alpern v. UtiliCorp United, Inc.*, 84 F.3d 1525, 1540 (8th Cir. 1996)). Class members injured by a defendant's conduct involving the payment of wages under a company's payment system can meet this burden with relative ease. *Jones v. Casey's Gen. Stores, Inc.*, 266 F.R.D. 222, 228 (S.D. Iowa 2009).

Information provided in support of preliminary approval of the Agreement shows the typicality of the claims. For the Termination Class, Plaintiffs maintained that they were untimely paid sick leave upon retirement or termination. [ECF No. 62 at 8]. Data from the Board shows several thousand individuals were in the same situation, which is sufficient. *DaSila v. Border Transfer of MA, Inc.*, 296 F. Supp. 3d 389, 406 (D. Mass. 2017) (typicality was met when individuals presented the "same legal theory of [wage] misclassification."). For the Wages Class, Plaintiffs asserted the untimely receipt of shift adjustments. [ECF Nos. 14 at 1; 31 at 3]. Data shows that eleven thousand individuals were in the exact same situation, demonstrating typicality. [ECF No. 91-3 at 6 (Fox Discussion of Wages Class)]. On the FLSA class, Plaintiffs claimed they, as blue collar workers, were untimely paid for overtime. [ECF No. 14 at 2]. Information provided by the Board showed 3,590 individuals were in the same situation, which is sufficient for typicality at this time. [ECF No. 91-1 at 7]. In short, typicality is present for all three classes.

iv. Adequacy of Class Representatives

Class representatives must "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The focus "is whether '(1) the class representatives have common interests with the members of the class, and (2) whether the class representatives will vigorously prosecute the interests of the class . . .'" *In re Aquila ERISA Litig.*, 237 F.R.D. 202, 209 (W.D. Mo. 2006) (quoting *Paxton*, 688 F.2d at 562–63). On the common interest requirement, the Court already concluded the representatives suffered the exact same injuries as class members. On the second element, the extensive and zealous motions practice is clear evidence that the class representatives have "vigorously prosecute[d] the interests of the class." [ECF Nos. 14; 20; 33; 34; 55; 66; 75]. The Court concludes the class representatives meet this element.

B. Fairness of Settlement Terms

The Court must now analyze whether the Agreement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). For the reasons discussed below, the Court finds the proposed agreement is fair, reasonable, and adequate and falls within the range of judicial approval.

i. Negotiated at Arm's Length

The Court must consider if the Agreement "was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). This requires the court to decide whether the agreement is a product of fraud or collusion. *Marshall v. Nat'l Football League*, 787 F.3d 502, 509 (8th Cir. 2015) (citation omitted). Relevant factors include the exchange of extensive discovery and zealous tactics during the course of litigation. *Cleveland*, 2022 WL 2256353, at *5. The court should examine the length of time over which the parties negotiated, whether they used a formal mediation process before a neutral third-party, and preparations for negotiation. *In re Resideo Techs., Inc., Secs. Litig.*, Case No. 19-cv-2863 (WMW/BRT), 2022 WL 872909, at *2 (D. Minn. Mar. 24, 2022).

The record provides extensive support for the conclusion that the parties negotiated at arm's length. The parties engaged in extensive litigation and motions practice. [ECF Nos. 14; 20; 33; 34; 55; 66; 75]. They exchanged voluminous wage data on the class members. [ECF Nos. 84; 86 (Protective Order on Class Wage Data)]. Although the precise timeline was not provided, the parties prepared for, negotiated, and drafted a settlement over the course of several months. [ECF Nos. 82 (May 20, 2022 Joint Motion for Stay of Proceedings); 91 (Instant Motion)]. They mediated their dispute before a retired federal district judge. [ECF No. 91-1 at 1]. Based on this, the Court concludes this settlement was negotiated at arm's length.

ii. Merits of Claims

a. Law on Evaluating Merits

The weightiest factor when evaluating a proposed settlement is "the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1150 (8th Cir. 1999) (quoting *Grunin*, 513 F.2d at 124) (internal quotations omitted). A court must review but "not decide the merits of the case or resolve unsettled legal questions." *In re Charter Comm'cns, Inc., Secs. Litig.*, 4:02-CV-1186 CAS, 2005 WL 4045741, at *4 (E.D. Mo. June 30, 2005) (quoting *Carson v. Am. Brands, Inc*., 450 U.S. 79, 88 n.14 (1981)). Comparing the maximum potential recovery with the size of the settlement provides insight into the merits. *Zilhaver v. UnitedHealth Grp., Inc.*, 646 F. Supp. 2d 1075, 1080 (D. Minn. 2009) (comparing the maximum potential recovery of $105 million to a settlement of $17 million). It is relevant how much of the actual loss is recovered. *Khoday*, 2016 WL 1637039, at *5.

b. Wages Class

The parties assert that the Agreement is fair and reasonable for the Wages Class in light of the merits of the claim under the IWPCL. For the reasons below, the Courts agrees with the parties.

The IWPCL is meant to "facilitate collection of wages by employees." *Condon Auto Sales & Servs., Inc. v. Crick*, 604 N.W.2d 587, 596 (Iowa 1999) (citing *Phipps v. IASD Health Servs. Corp.*, 558 N.W.2d 198, 201 (Iowa 1997)). Under the IWPCL, "[a]n employer shall pay all wages due its employees . . ." not "more than twelve days . . . after the end of the period in which the wages were earned." Iowa Code § 91A.3(1). "An employer who fails to pay wages to an employee as required under the law is liable to the employee for the unpaid wages, court costs, and attorney fees incurred in the recovery of the unpaid wages." *Condon*, 604 N.W.2d at 596 (citing Iowa Code § 91A.8). An employer who intentionally fails to pay employees' wages is liable for liquidated damages. *Audus v. Sabre Comm'cns Corp.*, 554 N.W.2d 868, 874–75 (Iowa 1996).

There were at least two major issues remaining in this case, one of fact and one of law. [ECF No. 91-1 at 15]. On the fact issue, the parties disputed when shift adjustments accrued.[6] *Id.* at 18. On the legal issue, parties contested whether Iowa Code § 91A.2 provides a seven-day grace period for it to pay employees in addition to the twelve-day limitation in the express language of the statute.[7] *Id.* at 17. The damages Wages Class members would receive under the Agreement, *i.e.*, eleven million dollars, is in the range of acceptable outcomes because it represents the amount the class members would receive if they won the legal issue and lost the factual dispute. *Grove*, 200 F.R.D. at 446 (citing Manual for Complex Litigation (3d ed.1995) § 30.42) ("In cases seeking

[6] Plaintiffs intended to argue "UIHC workers were paid on the first of each month for the work performed the prior month." [ECF No. 91-1 at 18]. The Board asserted "the adjustments for SEIU workers were tallied from mid-month to mid-month." *Id.* If the Board had been successful, "the bulk of adjustments at issue in the case [] would have been paid timely." *Id.* Success by the Board would "have reduced Plaintiffs' damages from $64 million to $11,000,000." *Id.*

[7] Plaintiffs assert the statute does not provide this extension, while the Board would have argued the opposite. [ECF No. 91-1 at 17]. The parties do not provide specific numbers on the impact of a ruling on this issue, but state success by the Board "would reduce Plaintiffs' potential liquidated damages significantly." *Id.*

primarily monetary relief, [the fairness review] entails a comparison of the amount of the proposed settlement with the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing."). A review of the merits of the case support approval of the settlement for the Wages Class.

The Agreement provides benefits beyond compensation for the Wages Class. Specifically, this lawsuit led to the termination of the payment practices in August 2020. [ECF No. 91-1 at 1 n.1]. This policy change is permanent. *Id.* The change is a significant benefit to the class. *Serrano v. Sterling Testing Sys., Inc.*, 711 F. Supp. 2d 402, 416 (E.D. Pa. 2010) ("In addition to the monetary relief, Sterling has agreed to cease the practice complained of, and forever refrain from such practice – a great benefit to the Class."). This secondary change supports a finding the proposed settlement for the Wages Class is fair and reasonable.

c. FLSA Class

The parties assert the proposed FLSA settlement is fair and reasonable in light of the merits of the FLSA claim. For the reasons discussed below, this settlement is fair for the FLSA Class.

Under the FLSA, employers must "pay their employees overtime wages at 'a rate not less than one and one-half times the regular rate at which [they are] employed' for hours worked in excess of forty hours a week." *Guinan v. Boehringer Ingelheim Vetmedica, Inc.*, 803 F. Supp. 2d 984, 994 (N.D. Iowa 2011) (quoting 29 U.S.C. 207(a)(1)). The FLSA contains an exception where "[n]o employer shall be deemed to have violated subsection (a) by employing any employee . . . in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board." 29 U.S.C. § 207(b)(1). Employees covered by the FLSA may not obtain a "double recovery" under the FLSA and a state law claim. *Tapia v. Blch 3rd Ave. LLC*, 906 F.3d 58, 60–61 (2d Cir. 2018). Members of an FLSA

class must receive consideration to release their claims. *Haralson v. U.S. Aviation Servs. Corp*., 383 F. Supp. 3d 959, 968 (N.D. Cal. 2019) (holding that "[a] proposed settlement calling for a release of the FLSA claim in exchange for no consideration does not appear to be a fair and reasonable resolution of a bona fide dispute.").

There are three relevant legal arguments that influence whether the FLSA award is fair and reasonable. First, the issue of whether the Board has sovereign immunity against claims brought under the FLSA was unsettled and its resolution could have led Plaintiffs to receive nothing. [ECF No. 93 at 7]. Second, there is a possibility the FLSA preempted an IWPCL claim, which may have caused Plaintiffs to obtain no recovery.[8] *Zanders*, 55 F. Supp. 3d at 1175. Third, the limitation on double recovery for non-preempted claims could reduce any potential recovery to a miniscule amount. [ECF No. 93 at 7]. Upon balancing the merits of these legal arguments, the Court finds that the resolution is fair and reasonable. *See Grove*, 200 F.R.D. at 446.

d. Termination Class

The parties maintain the settlement for the Termination Class is reasonable considering the merits of the claim. As discussed in detail below, the settlement award for the Termination Class is fair and adequate.

An employee bringing a claim for failure to pay earnings under the IWPCL carries a burden to prove the benefits in question constitute wages. *Am. Fam. Mut. Ins. Co. v. Hollander*, 705 F.3d 339, 349 (8th Cir. 2013). This burden applies to employees seeking to prove that "unused accrued

[8] District courts in this Circuit have difficulty determining whether IWPCL claims are duplicative of FLSA parallel to FLSA claims. *Tegtmeier v. PJ Iowa, L.C.*, 189 F. Supp. 3d 811, 820 (S.D. Iowa 2016). If claims are duplicative, the state law claims may be preempted by the FLSA. *Zanders v. Wells Fargo Bank, N.A.*, 55 F. Supp. 3d 1163, 1175 (S.D. Iowa 2014) (holding IWPCL claims were preempted by the FLSA); *but see Bouaphakeo v. Tyson Foods, Inc*., 564 F. Supp. 2d 870, 886 (N.D. Iowa 2008) (holding the opposite). If they involve separate facts or are parallel, the state law claims are not preempted. *Tegtmeier*, 189 F. Supp. 3d at 822.

PTO was due as wages under chapter 91A at the time of . . . termination." *Viafield v. Engels*, 885 N.W.2d 830 (Table), 2016 WL 4054175, at *2 (Iowa Ct. App. July 27, 2016). An employee may prove these wages were due by demonstrating the existence of an agreement or employment policy to that effect. *Id.* Wages like sick leave are only payable upon the occurrence of a condition described in the agreement. *Willets v. City of Creston*, 433 N.W.2d 58, 63 (Iowa Ct. App. 1988).

The Court considered the claim that the Board untimely paid vacation and sick leave after class members were terminated for Plaintiffs' motion for partial summary judgment. [ECF No. 73 at 22–23]. In its opinion, the Court explained, "[w]ages such as sick leave are only payable upon the occurrence of a condition described in the agreement or policy." *Id.* Based on this reasoning, it held that the class members could not establish a claim for late payment of sick and termination pay because they were paid in the manner prescribed by the Board's policy. *Id.* The holding meant the claims of the Termination Class were "effectively worth nothing." [ECF No. 93 at 8]. Given the lack of value of the claim based on this conclusion, which parties do not suggest could or would be overturned on appeal, a settlement amount of $50 per person is appropriate.

iii. Equitable Treatment

Under the Federal Rules of Civil Procedure, the court may approve a settlement only after considering if "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). The relevant inquiry is whether "[t]he settlement provides relief commensurate to the value of their [] claims." *Swinton*, 2019 WL 617791, at *8 (citing *Marshall*, 787 F.3d at 519). The implementation of a pro rata structure for award payouts, which correlates recovery amount to the scope of the injury, supports a settlement being equitable. *In re Resideo Techs.*, 2022 WL 872909, at *3; *Phillips*, 2022 WL 832085, at *4.

A large share of the settlement fund, roughly ninety-four percent, will be paid to members of the Wages Class on a pro rata basis. [ECF No. 91-1 at 8]. Under this structure, members will receive a payment "correlated to the amounts of adjustments and overtime pay that were paid late and how much each individual could have recovered in liquidated damages." [ECF No. 91-3 at 6]. A pro rata distribution of payments to class members based on the scope of their injury results in fair treatment. *Valencia v. Greater Omaha Packing*, No. 8:08CV161, 2014 WL 284461, at *3 (D. Neb. Jan 23, 2014) (finding a pro rata distribution is fair and equitable); *In re Resideo Techs.*, 2022 WL 872909, at *3; *Phillips*, 2022 WL 832085, at *4.

The remainder of the settlement fund will provide members of the FLSA and Termination Classes with payments of $100 and $50. The money provides class members with this amount in exchange for forfeiting claims that would yield similar recovery to the IWPCL claim or is unlikely to succeed on the merits. A payment of $100 for each member of the FLSA Class is equitable because federal courts have uniformly prohibited individuals from recovering under both the FLSA and under state law regardless of merits. [ECF No. 93 at 5–6]. On the $50 per Termination Class claim, this structure treats class members equitably because they receive the same amount to resolve a claim that this Court "soundly rejected" in the earlier proceedings. [ECF No. 93 at 8]. In essence, both smaller amounts are equitable because they provide a small amount to release claims of little value to all class members. This element supports granting preliminary approval.

iv. Complexity and Expense of Further Litigation

This factor requires a court to consider the "burden of costs and expense[s]" if the litigation were continued. *Keil v. Lopez*, 862 F.3d 685, 698 (8th Cir. 2017) (quoting *Marshall*, 787 F.3d at 512). Relevant factors include complexity, expense, and risk involved in this litigation beyond the typical amount. *Grove.*, 200 F.R.D. at 446. Heavy focus should be given to the extensiveness

of remaining pre-trial motions, trial, post-trial motions, and appeals. *Zilhaver*, 646 F. Supp. 2d at 1080 (citing *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 933 (8th Cir. 2005)).

In the absence of the Agreement, the parties would continue to litigate complex, as well as uncertain, factual and legal questions. They would zealously litigate pre-trial motions, trial, post-trial motions, and appeals, much like they have in the past. *Khoday v. Symantec Corp.*, Case No. 11–cv–180 (JRT/TNL), 2016 WL 1637039, at *5–6 (D. Minn. Apr. 5, 2016) (discussing the role of timing). This process would have placed an enormous cost on the parties. Likewise, Plaintiffs would obtain no benefit while the matter continued to be litigated. *In re UnitedHealth Grp. Inc., PSLRA Litig.*, 643 F. Supp. 2d 1094, 1100 (D. Minn. 2009) (citing *Wireless*, 396 F.3d at 933). Given these factors, this element strongly supports approving the Agreement.

C. Money Beyond the Award Settlement Fund

i. Attorneys' Fees

The Agreement awards twenty-two and one-half percent of the settlement fund to counsel. [ECF No. 91-1 at 21–22]. This amount is appropriate for the reasons discussed below.

First, Plaintiffs' counsel expended significant time on the case. They conducted numerous interviews, reviewed an untold number of documents, collected data from individuals, exchanged discovery, retained experts, and constructed damage models to develop a factual record. On legal matters, counsel engaged in considerable motions practice that included a motion to dismiss and subsequent interlocutory appeal, two motions to certify classes, a motion for partial summary judgment, and a motion to certify to the Iowa Supreme Court. [ECF Nos. 14; 20; 34; 55; 66; 75]. They litigated facing "a substantial risk . . . that the recovery would be nothing" because the "only case interpreting the IWPCL's liquidated damages provision held that liquidated damages were not available . . . when wages were paid in full, but paid late." [ECF No. 91-1 at 24] (citing

Bernstein v. Bribriesco, 797 N.W.2d 131, 2010 WL 5394318, at *5 (Iowa Ct. App. Dec. 22, 2010)). Spending this time given the lack of potential success of the claims supports approval of the requested attorneys' fees. *DeHoyos v. Allstate Corp*., 240 F.R.D. 269, 330 (W.D. Tex. 2007) ("Counsel's contingent fee risk is an important factor in determining the feed award.").

Second, the award provides enormous benefits to class members. The lawsuit changed the underlying practices at UIHC. [ECF No. 91-1 at 1–2 n.1]. It provides an eleven million dollar common settlement fund. *Id.* at 15. The large majority of the settlement fund will be paid out in a manner that directly correlates to the scope of the injuries that a plaintiff suffered because of the challenged policy. *Id.* at 17. This award is more impressive given the aforementioned fact that success appeared unlikely. This factor supports approval of the requested fees.

Third, the requested attorneys' fees award is lower than the standard award of its type. The typical award for large class action settlements falls between twenty-five and thirty-six percent of "a common fund under the percentage-of-the-fund method." *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1061 (D. Minn. 2010) (discussion of range of outcomes); *Huyer v. Wells Fargo & Co.*, 314 F.R.D. 621, 629 (S.D. Iowa 2016) (awarding one-third of the fund as attorneys' fees). The fact the award is lower despite the extensive motions practice and protracted litigation weighs in favor of its approval. *Huyer*, 314 F.R.D. at 629. The proposed award for attorneys' fees is appropriate given the extensive, but successful nature of this litigation.[9]

ii. Incentive Payments

The Agreement provides $10,000 to each named Plaintiff. [ECF No. 91-1 at 7]. Every named member of the class provided information helpful to the litigation, the most relevant of

[9] For final approval, counsel should be prepared to provide an estimation of hours spent to allow the Court to "cross-check" the award with the lodestar method. *Huyer*, 314 F.R.D at 629.

which was the pay information that served as "the genesis of the underlying claims." *See Swinton*, 454 F. Supp. 3d at 889. They aided with drafting the Complaint, reviewing documents, and helped attorneys prepare for mediation. [ECF No. 91-3 at 7]. Several attended the mediation in person. *Id.* They faced a "real threat" of retaliation by raising concerns about their employer's practices. [ECF No. 91-1 at 20] (collecting cases on how named Plaintiffs in employment litigation face both direct retaliation and indirect retaliation in the form of blacklisting). They had considerable media attention from the lawsuit, which opened them to criticism. *See Sauby*, 2009 WL 2168942, at *3 (discussing how public attention and criticism is relevant to the incentive award). Given the efforts by named Plaintiffs and the risks involved, $10,000 per individual is appropriate.

D. Sufficiency of Rule 23 and FLSA Notices

The parties have submitted the notices for the Agreement to the Court for approval. [ECF No. 91-2 at 16–24]. The notices provide due process, which means they will be approved.

A district court has authority under Federal Rule of Civil Procedure 23 to direct the form of the notice of the settlement. *Grunin*, 513 F.2d at 121. A notice "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.'" *Petrovic*, 200 F.3d at 1153 (quoting *Mullane v. Cent. Hanover Bank and Tr. Co.*, 339 U.S. 306, 314 (1950)). The notice must be written "in a manner that enables class members rationally to decide whether they should intervene in the settlement proceedings or otherwise make their views known." *Reynolds v. National Football League*, 584 F.2d 280, 285 (8th Cir. 1978). The notice need not be "extensive" or "remarkably thorough . . . to comply with the strictures of due process." *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1176 (8th Cir. 1995).

The Notices provide some background on the litigation and identify the recipient as a class member. [ECF No. 91-2 at 16–18]. Each notice explains that the individual is entitled to receive a portion of the settlement and how they can receive this share. *Id.* at 19, 22. For the FLSA claim, the Notices have attached the necessary opt-in forms and identify the address where the forms can be mailed for processing. *Id.* at 21. The forms identify the steps that class members can use to object to the settlement, *i.e.*, either by a written letter to Plaintiffs' counsel or by attending the scheduled hearing before this Court. *Id.* at 19. Finally, the Notices will be mailed to class members' addresses that were provided by the Board and validated by a third-party administrator. *Id.* These are reasonably calculated to provide notice to class members and satisfy due process. *Petrovic*, 200 F.3d at 1153.

IV. CONCLUSION

The Motion for Preliminary Settlement Approval is **GRANTED**. A final fairness hearing will occur at 3:00pm on August 23, 2023 at the United States Courthouse in Davenport, Iowa.[10]

IT IS SO ORDERED.

Dated this 22nd day of June, 2023

STEPHANIE M. ROSE, CHIEF JUDGE
UNITED STATES DISTRICT COURT

[10] The Notices explain individuals may attend a hearing at the United States Courthouse in Des Moines, Iowa. [ECF No. 91-2 at 19]. The case originated in the Eastern Division of the Southern District of Iowa and the Court typically conducts the business of the Eastern Division in the United States Courthouse in Davenport, Iowa. The parties may file a motion or request seeking to move the hearing to the United States Courthouse in Des Moines, Iowa, which the Court would consider given its power to manage its docket.