THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

CRYSTAL HOWARD, JOHN HUEBNER, PAUL GALLOWAY, ROBERT NEWSON AND ALVAN YOUNG, Individually, and on Behalf of All Others Similarly Situated,	)	
Plaintiffs,	)	**Hon. Gary Feinerman**
v.	)	**Magistrate Judge Young B. Kim**
SECURITAS SECURITY SERVICES USA, INC.,	)	**Case No. 08 C 2746**
Defendant.	)	
STEPHANIE HAWKINS and DARSEMIA JACKSON Individually, and on Behalf of All Others Similarly Situated,	)	
Plaintiffs,	)	**Hon. Gary Feinerman**
v.	)	**Case No. 09 C 3633**
SECURITAS SECURITY SERVICES USA, INC.	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF THE PARTIES' JOINT MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT

INTRODUCTION

Named Plaintiffs CRYSTAL HOWARD, JOHN HUEBNER, PAUL GALLOWAY, ROBERT NEWSON and ALVAN YOUNG ("*Howard* Plaintiffs") and STEPHANIE HAWKINS and DARSEMIA JACKSON ("*Hawkins* Plaintiffs") (collectively, "Named Plaintiffs" or "Class Representatives"), on behalf of themselves and all members of the

Settlement Class[1] ("Class Members"), and Defendant SECURITAS SECURITY SERVICES USA, INC. ("Securitas" or "Defendant") (collectively, the "Parties"), move this Court for final approval of the settlement (the "Settlement") preliminarily approved by this Court on January 16, 2014. (Dkt. No. 546). This Settlement involves two wage cases brought on behalf of security officers – a collective action under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.*, captioned *Howard et al. v. Securitas Security Services USA, Inc.*, Case No. 08 C 2746 (the *Howard* Lawsuit), and a class action under the Illinois Minimum Wage Law ("IMWL"), 820 ILCS § 105/1, *et seq.*,[2] captioned *Hawkins et al. v. Securitas Security Services USA, Inc.*, Case No. 09 CH 17579 (the *Hawkins* Lawsuit). As discussed below, the Settlement provides for significant monetary relief, in the aggregate amount of $1,275,000, plus an additional amount for Defendant's employer's share of payroll taxes associated with the wages portion of the payments to the Settlement Class.

This Settlement is fair, reasonable, and adequate under the governing legal standards. The Settlement Class has responded favorably. Notice of the class action settlement was sent to 9,861 Class Members. Notably, not a single Class Member objected to any aspect of the Settlement Agreement, including the requests for Service Payments to the Named Plaintiffs and for attorneys' fees and costs. Class Counsel has conducted sufficient discovery to enable them to evaluate the claims and defenses in this action. The settlement is in line with the strength and recoverability of Plaintiffs' claims given the risk, expense, complexity, and likely duration of further litigation. *See Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 652 (7th Cir. 2005). Accordingly, the Settlement satisfies the Seventh Circuit's criteria for class action

[1] Where applicable, capitalized terms not otherwise defined in this Memorandum are as they are defined in the Class Action Settlement Agreement submitted with the Parties' Joint Motion for Preliminary Approval of Class Settlement.

[2] The named Plaintiffs also brought individual claims for alleged violations of the FLSA.

settlement approval.

I. BACKGROUND

A. Procedural History

As set forth in the Parties' Joint Motion for Preliminary Approval of Class Settlement (Dkt. No. 540), the Named Plaintiffs and Class Members worked as security officers in the State of Illinois.

Named Plaintiffs, Crystal Howard, Paul Galloway, Robert Newson and Alvan Young commenced the *Howard* litigation by filing a complaint on May 12, 2008, against Securitas, asserting, *inter alia*, that members of the Settlement Class were required to work off-the-clock during their employment with Defendant in violation of the FLSA. On January 20, 2009, the Court granted Plaintiffs' motion for conditional certification. (Dkt. No. 104). Thereafter, 1,215 individuals submitted their signed opt-in consent forms. On or about March 13, 2012, this Court decertified all of Plaintiffs' claims except for their claim for unpaid introductory training and orientation. (Dkt. No. 451). As a result and by applying a three (3) year statute of limitations period, there are 703 remaining opt-in Plaintiffs with non-time barred claims for unpaid introductory training and orientation.

The *Hawkins* class action was filed in the Circuit Court of Cook County, Illinois on May 29, 2009, by the Named Plaintiffs Stephanie Hawkins, Darsemia Jackson and Merija Wallace.[3] Shortly thereafter, Defendant removed Plaintiffs' complaint to the U.S. District Court for the Northern District of Illinois and the case was assigned number 09 C 3633. The *Hawkins* Plaintiffs alleged that they and others whom they sought to represent were required to work off-

[3] Merija Wallace was dismissed with prejudice from the case on July 18, 2011. (Dkt. No. 139).

the-clock during their employment with Defendant in violation of Illinois law, and the named Plaintiffs also brought individual claims for alleged violations of the FLSA.

On October 26, 2009, the *Hawkins* and *Howard* lawsuits were reassigned to the same district judge's calendar. (Dkt. No. 259). On November 16, 2011, this Court granted class certification in *Hawkins* under Federal Rule of Civil Procedure 23 for a class of individuals who attended introductory training and orientation without pay under the IMWL, but did not certify Plaintiffs' other claims as a class action. *Hawkins v. Securitas Sec. Servs. USA, Inc.*, 280 F.R.D. 388, 401 (N.D. Ill. 2011). On April 15, 2013, this Court denied Defendant's motion for summary judgment on Plaintiffs' training claims. (Dkt. No. 273).

The Parties have conducted extensive discovery during the pendency of the *Howard* and *Hawkins* actions, including: (a) the exchange of tens of thousands of pages of written discovery, including voluminous production of electronically stored information; (b) over 30 depositions; (c) review of payroll and training records, policies and procedures; and (d) the investigation by counsel regarding the applicable law as applied to the facts discovered regarding the alleged claims in the actions.

Throughout the course of this litigation, there have been several settlement conferences. Most recently, with the assistance of District Court Magistrate Judge Young B. Kim, the Parties were able to settle their claims on June 28, 2013. This settlement includes the Named Plaintiffs and 9,861 Class Members up to June 30, 2011.[4]

[4] In June 2011, Defendant implemented a dispute resolution program ("DRA") nationwide. Among other things, the DRA provides that Securitas' security officers are required to arbitrate any claims, including claims for unpaid wages, on an individual basis. In light of the DRA, the Parties excluded all class members who completed introductory training and orientation after June 30, 2011 from the terms of the Settlement Agreement.

Defendant has denied and continues to deny any liability, wrongdoing, or legal violations of any kind related to the claims and contentions asserted in the *Howard* and *Hawkins* lawsuits, has asserted a multitude of defenses to the lawsuits, has denied that any injuries or damages exist, and has denied that these matters can be decided on a class-wide basis. Defendant submits that it has complied with all applicable laws at all times. Nonetheless, without admitting or conceding any liability, damages, or the propriety of class treatment whatsoever, Defendant has agreed to settle the litigation on the terms and conditions set forth in the Settlement Agreement to avoid the burden, expense and uncertainty of continuing the litigation.

B. The Court's Preliminary Approval Order

On January 14, 2014, the Parties filed their Joint Motion for Preliminary Approval of Class Settlement. (Dkt. No. 540). On January 16, 2014, the Court certified the Class for settlement purposes only and granted preliminary approval of the Parties' proposed Class Action Settlement ("Preliminary Approval Order"). (Dkt. No. 546).

After entry of the Preliminary Approval Order, pursuant to the terms of the Settlement Agreement, the Parties directed the settlement claims administrator, Kurtzman Carson Consultants LLC, (the "Settlement Administrator") to issue notice to the members of the Class by the means approved by the Court and agreed to by the Parties in the Settlement. (*See* Exhibit 1, Declaration of Lacey Racines Re: Notice Procedures (hereinafter, "Kurtzman Decl.")).

On February 6, 2014, the Settlement Administrator mailed the Notice of Settlement of Collective and Class Action Lawsuit ("Class Notice"), the Request for Exclusion Form (the "Opt-Out Form"), and the Change of Name and/or Address Information Form (the "Address Change Form") (collectively, "Notice Materials") to 9,861 names and addresses from the Class Member List received from Defendant. (Exhibit 1, Kurtzman Decl. ¶¶ 3-8). The Class Notice

described the nature of the litigation, the terms of the Settlement, as well as the Class Members' options with regard to participating in the Settlement, objecting to the Settlement, or opting out.

The deadline to opt out of the settlement was March 27, 2014. This deadline has now passed. As of April 8, 2014, less than 1% of the Class (90 of the 9,861 Class Members who were mailed Notice Materials) timely requested exclusion from the Settlement. (Exhibit 1, Kurtzman Decl. ¶¶ 6, 13).[5] No Class Members objected to the Settlement. (Exhibit 1, Kurtzman Decl. ¶ 14).

II. <u>THE PARTIES HAVE SATISFIED THE NOTICE REQUIREMENTS OF RULE 23, THE FLSA AND THE COURT</u>

Rule 23(c)(2)(B) requires the Court to direct to Class Members the "best notice that is practicable" under the circumstances, including "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). In *Eisen*, the Supreme Court held that notice by mail provides such "individual notice to all members" in accordance with Rule 23(c)(2). *Id.* Where the names and addresses of the Class Members are easily ascertainable, individual notice through the mail is "clearly the 'best notice practicable.'" *Id.* at 175.

On February 6, 2014, the Settlement Administrator mailed 9,861 packets of Notice Materials to Class Members. (Exhibit 1, Kurtzman Decl. ¶ 8). Before mailing the materials, the Settlement Administrator updated the addresses on a list of 9,892 Class Members received from the Defendant using the National Change of Address System, and new addresses were found for

[5] Of the 90 Opt-Out Forms received, five (5) individuals did not sign the form, and 62 individuals did not check the confirmation box on the Opt-Out Form. Nevertheless, the Settlement Administrator believes these Opt-Out Forms are valid and is in the process of sending these individuals a confirmation letter asking that they confirm their intention to exclude themselves from the Class. (Exhibit 1, Kurtzman Decl. ¶ 13).

1,911 Class Members. (Exhibit 1, Kurtzman Decl. ¶¶ 4-5).[6] 1,857 Notice Materials were returned as undeliverable. (Exhibit 1, Kurtzman Decl. ¶ 10). The Settlement Administrator performed advanced searches using credit and other public source databases in its attempt to locate current addresses. *Id.* If a new address was found, the Settlement Administrator re-mailed the Notice Materials. *Id.* The Settlement Administrator successfully re-mailed 1,677 Notice Materials to a new-found address. *Id.* After performing this "skip trace," 442 Notice Materials ultimately remained undeliverable. (Exhibit 1, Kurtzman Decl. ¶ 12). The Parties' and the Settlement Administrator's extensive efforts to effectuate notice to the Class meet the requirements of Rule 23(c)(2)(B) and this Court's notice requirements.

In addition, appropriate notice was provided to the requisite federal and state officials in the states in which a member of the Class resides in compliance with the Class Action Fairness Act of 2005. None of these federal or state officials filed an objection to the Settlement.

III. THE PROPOSED SETTLEMENT SHOULD BE FINALLY APPROVED BECAUSE IT IS FAIR, REASONABLE, AND ADEQUATE

A. The Rule 23(e) Standard for Final Approval of Class Action Settlement

Settlement of class action litigation is favored by federal courts. *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996); *see also, Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist.*, 921 F.2d 1371, 1383 (8th Cir. 1990) ("the law strongly favors settlements…(and) (c)ourts should hospitably receive them"). The dismissal or compromise of any class action requires the court's approval. Fed. R. Civ. P. 23(e). The approval of any proposed class action settlement is typically exercised in the two-step process of "preliminary" and "final" approval. MANUAL FOR COMPLEX LITIGATION (THIRD) § 30.41, at 236 (1995). In the first step, the court makes a

[6] The Class Administrator also identified thirty-one (31) duplicative records on the Class List and two (2) individuals with two different mailing addresses. (Exhibit 1, Kurtzman Decl. ¶ 6). After removing the duplicate records, the mailing list resulted in 9,861 names and addresses. (*Id.*)

preliminary determination as to whether the settlement falls "within the range of possible approval." *Cook v. McCarron*, Nos. 92 C 7042, 95 C 0828, 1997 WL 47448, *7 (N.D. Ill. Jan. 30, 1997) (citation omitted); Herbert Newberg & Alba Conte, NEWBERG ON CLASS ACTIONS § 11.25 (3d ed. 1993) ("NEWBERG").

The second step of the approval process is the final determination, following a hearing at which time any objections by class members may be considered. The court then determines whether the settlement is fair, reasonable and adequate from the standpoint of the class. *Isby*, 75 F.3d at 1196; NEWBERG, § 11.41. "There is usually an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for court approval." NEWBERG, § 11.41 at 11-88; *see also Hispanics United of DuPage County v. Village of Addison, Ill.*, 988 F. Supp. 1130, 1149 n.6 (N.D. Ill. 1997); *Little Rock Sch. Dist.*, 921 F.2d at 1391 (same). Indeed, when experienced counsel supports the settlement, as they do here, their opinions are entitled to considerable weight. *Reed v. General Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983). In contrast, "judges should not substitute their own judgment as to optimal settlement terms for the judgment of the litigants and their counsel." *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1148-49 (8th Cir. 1999) (citation omitted); *Grove v. Principal Mutual Life Ins. Co.*, 200 F.R.D. 434, 445 (S.D. Iowa 2001).

To approve a proposed settlement of a class action under Rule 23, the Court must find that the proposed settlement is "fair, adequate, and reasonable." Fed. R. Civ. P. 23(e)(1)(C); *Synfuel*, 463 F.3d at 652. In making such a determination, courts in the Seventh Circuit consider the following factors: (1) the strength of plaintiffs' case, compared with the terms of the proposed settlement; (2) the likely complexity, length, and expense of continued litigation; (3) the amount of opposition to settlement; (4) the opinion of competent counsel; and (5) the stage of

proceedings and the amount of discovery completed. *Synfuel*, 463 F.3d at 653; *Isby*, 75 F.3d at 1199. Further, a court must view the settlement in its entirety, rather than focus on an individual component. *Isby*, 75 F.3d at 1199. Finally, a strong presumption of fairness exists when the settlement is the result of extensive arm's-length negotiations. *Hispanics United of DuPage County v. Village of Addison, Illinois*, 988 F. Supp. 1130, 1149 n.6 (N.D. Ill. 1997). When evaluated under these factors, the Parties' Settlement is fair, adequate, and reasonable.

B. The FLSA Standard for Final Approval of Collective Action Settlement

An employee may compromise a claim under the FLSA pursuant to a court-authorized settlement of an action alleging a violation of the FLSA. *E.g. Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1355 (11th Cir. 1982). With respect to a court-authorized settlement, the court must determine that the settlement is a "fair and reasonable resolution of a bona fide dispute over FLSA provisions." *Id.* If a settlement in an employee FLSA suit reflects "a reasonable compromise over issues," such as FLSA coverage or computation of back wages that are "actually in dispute," the court may approve the settlement "in order to promote the policy of encouraging settlement of litigation." *Id.* at 1354.

In determining whether a settlement is fair and reasonable, courts have considered factors such as: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, risk, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the strength of the plaintiff's case and the probability of plaintiff's success on the merits; (5) the range of possible recovery; and (6) the opinions of the counsel. *See King v. My Online Neighborhood*, No. 6:06-cv-435-Orl-22JGG, 2007 WL 737575, *3 (M.D. Fla. Mar. 7, 2007) (citing *Leverso v. South Trust Bank of Ala., Nat. Assoc.*, 18 F.3d 1527, 1531 n.6 (11th Cir. 1994)); *see also Trinh v. JPMorgan Chase & Co.*, No. 07-CV-01666 W(WMC), 2009 WL 532556, *1 (S.D. Cal. Mar. 3, 2009). "When considering these factors, the Court

should keep in mind the 'strong presumption' in favor of finding a settlement fair." *King*, 2007 WL 737575 at *3 (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)). Moreover, "a 'settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution.'" *King*, 2007 WL 737575 at *3 (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 806 (3d Cir. 1995) (other internal citations omitted)).

C. The Proposed Settlement Is Fair, Reasonable and Adequate Under Rule 23 and the FLSA

The Parties' Settlement is fair, reasonable and adequate because it meets all of the factors considered by courts.

1. Strength of Plaintiff's Case as Compared to the Amount of the Settlement and Allocation of the Settlement Payment

One of the key considerations in evaluating a proposed settlement is the strength of a plaintiff's case as compared to the amount of the defendant's offer. *Isby*, 75 F.3d at 1199. Courts, however, "have been admonished 'to refrain from resolving the merits of the controversy or making a precise determination of the parties' respective legal rights.'" *EEOC v. Hiram Walker & Sons, Inc.*, 768 F. 2d 884, 889 (7th Cir. 1985). Accordingly, when deciding whether to approve the Settlement, this Court must focus on the general principles of fairness and reasonableness, but not on the substantive law governing the plaintiff's claims. *Id.*

The outcome of this litigation is far from certain. When the Parties agreed to settle, Class Counsel generally believed that many aspects of this case were strong, but that there was a clear risk that, despite the strength of the Named Plaintiffs' and Class Members' claims, the class action is not guaranteed to prevail at trial. Even some of the stronger aspects of the case were subject to ultimate rejection. Bona fide disputes exist as to whether Named Plaintiffs and the Class Members were employees at the time of introductory training and whether Defendants were liable for wages related to introductory training. Thus, as in any complex action, the

Named Plaintiffs generally faced uncertainties. *Cf., West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970) ("(i)t is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced").

Determining a "reasonable" settlement amount is never simply a mathematical calculation that yields a particularized sum. Rather, "in any case there is a range of reasonableness with respect to a settlement . . ." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972). This case is no different in that there was a range of potential settlements that would have been reasonable.

The Settlement, though not providing a maximum value that might be awarded at trial at a later date, provides substantial monetary benefits now, without the time, difficulties, expense and uncertainty of further litigation and without the years of delay any appeal might cause. *See Mars Steel Corp. v. Continental Ill. Nat'l Bank & Trust*, 834 F.2d 677, 682 (7th Cir. 1987) (a settlement is fair "if it gives (plaintiffs) the expected value of their claim if it went to trial, net the costs of trial"); *Hiram Walker & Sons*, 768 F.2d at 891 (settlement approved where "there (was) no showing that the amounts received by the beneficiaries were totally inadequate").

The proposed Settlement thus ensures that the Class Members will receive significant monetary relief and, for practical purposes, means that those Class Members who have not opted-out will receive a settlement amount that is equal to or exceeds the total amount to which the members of the Settlement Class could reasonably believe to have received in litigation under any law or contract for the time spent in Introductory Training and Orientation.

"District courts enjoy broad supervisory powers over the administration of class-action settlements to allocate the proceeds among the claiming class members . . . equitably." *In re "Agent Orange" Product Liability Litigation*, 818 F.2d 179, 181 (2d Cir. 1987) (internal quotes

and citation omitted). The allocation of a settlement fund among competing claimants is one of the court's traditional equitable functions. *Curtiss-Wright Corporation v. Helfand*, 687 F.2d 171, 174 (7th Cir. 1982). In exercising its equitable power, a court has the discretion to favor those class members who have relatively stronger legal claims. *See Equity Funding Corp. of America Securities Litigation*, 603 F.2d 1353, 1366-67 (9th Cir. 1979) (upholding a plan of allocation in which those class members with stronger claims received more than those with weaker claims).

In determining the allocation, the parties considered the applicable minimum wages, class members' dates of employment, the information obtained via discovery and Defendant's decision to start paying class members for one hour of pay related to introductory training starting January 1, 2010. Consequently, the FLSA Participating Class Members will receive $57.20 each, which is the equivalent of four (4) hours of compensation at the average minimum wage in effect during the relevant time period, doubled to reflect FLSA liquidated damages. Illinois state law Participating Class Members who completed training before December 31, 2009 will receive $32.60, which is the equivalent of four (4) hours of compensation at the average minimum wage in effect, and those who completed training after December 31, 2009, will receive $24.45, which is the equivalent of three (3) hours of compensation.

The Settlement thus ensures that the Class Members will receive significant monetary relief that is equal to or exceeds the total amount to which the members of the Settlement Class could reasonably believe to have received in litigation. Consequently, this factor supports a finding that the Settlement is fair, adequate, and reasonable. *See Mars Steele Corp.*, 834 F.2d at 682 (citations omitted).

2. Complexity, Length and Expense of Further Litigation

Avoiding the delay and risk of protracted litigation is another reason why counsel frequently recommends, and the courts approve, settlements. *See, e.g., Protective Committee for*

Indep. Stockholders of TMT Trailer Ferry v. Anderson, 390 U.S. 414, 424 (1968) (judge must consider "the complexity, expense, and likely duration" of the litigation); *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977). This consideration applies with full force to this case.

Further litigation would require further motion practice and the risk, time and expense associated with trial. These costs of further litigation are considerable in terms of both time and money with uncertain results.

Under these circumstances, the benefits of a guaranteed recovery today as opposed to an uncertain result years in the future, are readily apparent. As one court noted, "(t)he bird in the hand is to be preferred to the flock in the bush and a poor settlement to a good litigation." *Rubenstein v. Republic Nat'l Life Ins. Co.*, 74 F.R.D. 337, 347 (N.D. Tex. 1976).

3. There Is No Opposition to Settlement

The Named Plaintiffs support the Settlement, as do Plaintiffs' counsel and Defendant and its counsel. No Class Members filed objections to the Settlement. (*See* Exhibit 1, Kurtzman Decl. ¶ 14). Neither did any government entity that was given notice of the Settlement. This indicates support for the Settlement and strongly favors its approval. *Mangone v. First USA Bank*, 206 F.R.D. 222, 226-27 (S.D. Ill. 2001); *see also Wal-Mart Stores, Inc. v. Visa USA, Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) ("(i)f only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement."); *Strougo v. Brazilian Equity Fund, Inc.*, 258 F. Supp. 2d 254, 258 (S.D.N.Y. 2003) ("(i)t has repeatedly been held that 'one indication of the fairness of a settlement is the lack of or small number of objections.'").

In addition to the fact that no member of the Class objected, only 90 members of the Class opted out of the Settlement – less than 1% of the total Settlement Class. (*See* Exhibit 1, Kurtzman Decl. ¶ 13). This, too, is a factor in favor of the final approval of the Settlement.

4. Opinion of Counsel

The proposed Settlement is the product of arm's-length, non-collusive negotiations conducted by counsel experienced in class actions, and who are intimately familiar with the strengths and weaknesses of the claims and defenses. Using that litigation experience, counsel were capable of making, and did make, well informed judgments about the adequacy of the Settlements reached.

Class Counsel exercised their experience and their intimate knowledge of the facts of the case and the legal issues facing the Named Plaintiffs and Class Members to conduct an independent analysis of the strengths, weaknesses and value of the claims, and the time, costs and expense of protracted litigation, discovery and appeals. In Class Counsel's opinion, the Settlement is fair, reasonable and adequate.

5. The Stage of Proceedings and Discovery Completed

As explained above, this complex class action was resolved approximately 5½ years after it was initiated. That 5½ year period involved extensive research, analysis, protracted written discovery, approximately 30 depositions, class certification motions, summary judgment motions and other extensive motion practice, among other things. At the time of the settlement conference and resulting Settlement, the litigation had progressed to a stage where the Court and the Parties could evaluate the merits of the case and potential damages, and Plaintiffs' counsel could fairly and fully evaluate the value of the settlement. As a result, the Parties negotiated the Settlement with complete knowledge regarding the strengths and weaknesses of the case and the benefits of settlement.

6. The Settlement Was the Result of Arm's Length Negotiations, Without Any Hint of Collusion

There is plainly no collusion or fraud with respect to this proposed Settlement, which was reached after several failed settlement conferences and after intense negotiation with the dedicated assistance of Magistrate Judge Kim. As a distinguished commentator on class actions has noted:

> There is usually an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for court approval.
>
> * * *
>
> The initial presumption of fairness of a class settlement may be established by showing:
>
> a. That the settlement has been arrived at by arm's-length bargaining;
>
> b. That sufficient discovery has been taken or investigation completed to enable counsel and the court to act intelligently; and,
>
> c. That the proponents of the settlement are counsel experienced in similar litigation.

NEWBERG, § 11.41 at 11-88, 11-91; *see also City P'ship Co. v. Atl. Acquisition Ltd. P'ship*, 100 F.3d 1041, 1043 (1st Cir. 1996). In this case, as explained above, the terms of the Settlement were reached during extensive arm's-length negotiations by experienced counsel after thorough investigation discovery, analysis and motion practice. Therefore, this Court should find that a presumption of fairness exists to support final approval of the Settlement.

In sum, the foregoing demonstrates that the proposed Settlement is fair, reasonable, and adequate.

IV. THE SETTLEMENT CLASS SATISFIES ALL RULE 23 REQUIREMENTS

The United States Supreme Court, federal Circuit Courts and district courts have recognized that the requirements for approving a settlement class are lower than those for a litigated class. *See, e.g. Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 610 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, *see* Fed. R. Civ. P. 23(b)(3)(D), for the proposal is that there be no trial."); *Little Rock Sch. Dist. v. Pulaski Co. Spec. Sch. Dist. No. 1*, 921 F.2d 1371, 1388 (8th Cir. 1990) ("Because settlement of a class action, like settlement of any litigation, is basically a bargained for exchange between litigants, the judiciary's role is properly limited to the minimum necessary to protect the interests of the class and the public.") (quoting *Armstrong v. Bd. of Sch. Dirs.*, 616 F.2d 305, 315 (7th Cir. 1980)). Here, the Settlement Class satisfies the requirements of Rule 23 for settlement purposes only.

A. The Settlement Class Satisfies the Requirements of Rule 23(a)

To establish a class for settlement purposes, the action must satisfy the four prerequisites of Rule 23(a). Under Rule 23(a), "(a) plaintiff seeking to certify a class must initially establish that: (1) the class is so numerous that joinder of all the members is impracticable; (2) there are questions of law and 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).

1. Rule 23(a)(1) – "Numerosity"

The Seventh Circuit has held that as few as forty (40) class members are presumed to be sufficiently numerous. *See Swanson v. Am. Consumer Indus.*, 415 F.2d 1326, 1333 n.9 (7th Cir. 1969). Here, there are over nine thousand Class Members and, therefore, the Class satisfies Rule 23's numerosity requirement.

2. Rule 23(a)(2) – "Commonality"

For a class to be certified under Rule 23, there must be questions of law and fact that are common to the Class. Fed. R. Civ. P. 23(a)(2). Commonality requires that the claims of the plaintiffs and class members "depend upon a common contention . . . 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." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). A common nucleus of operative fact is usually sufficient to satisfy the commonality requirement. *See Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992). Courts generally have found that the commonality requirement is satisfied when one issue is common to all class members. *Marison A. ex rel. Forbes v. Guiliana*, 126 F.3d 372, 376 (2d Cir. 1997). "Not all factual or legal questions raised in a lawsuit need to be common so long as a single issue is common to all class members." *Walker v. Bankers Life & Cas. Co.*, No. 06 C 6906, 2007 WL 2903180, *4 (N.D. Ill. Oct. 1, 2007) (quotation omitted).

Here, the claims of the *Hawkins* Named Plaintiffs and Class Members are premised on the fact that they were not compensated for introductory training and orientation purportedly in violation of state wage and hour law. Because the claims of the Class are based on the same conduct and common application of the same statutes, commonality is satisfied in this settlement context. *See Keele v. Wexler*, 149 F.3d 589, 592 (7th Cir. 1998).

3. Rule 23(a)(3) – "Typicality"

Typicality exists where the claims of the class representatives and class members arise from the same practice or course of conduct and are based on the same legal theory. *Keele*, 149 F.3d at 595. This purpose of this requirement is to ensure that the claims of the class representatives and the claims of the class members have the same essential characteristics. *Retired Police Ass'n v. City of Chicago*, 7 F.3d 584, 596 (7th Cir. 1993).

Here, the Named Plaintiffs' claims are typical of those of the class. Named Plaintiffs and Class Members were security officers employed by Securitas who were allegedly denied compensation for time worked during for introductory training and orientation. Accordingly, the Named Plaintiff's claims are typical of the claims of the Class within the meaning of Rule 23(a)(3) for purposes of settlement.

4. Rule 23(a)(4) – "Adequacy of Representation"

The adequacy of representation requirement is met when the representative parties fairly and adequately protect the interests of the class. *See* Fed. R. Civ. P. 23(a)(4). Plaintiffs' attorneys are qualified, experienced and able to conduct the litigation on behalf of the Class. Further, the Named Plaintiffs contend that they have no interests that are adverse to those of the other Class Members.

B. The Settlement Class Satisfies the Requirements of Rule 23(b)(3)

The Settlement Class meets the requirements of Rule 23(b)(3) in that common questions of law affecting proposed Class Members predominate over questions affecting individual members and that class resolution is superior to other available methods for fairly and efficiency adjudicating the controversy.

1. Predominance

Predominance "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods.*, 521 U.S. at 594. The Class meets the predominance standard because, in this settlement posture, common questions of fact and law predominate over individual damage issues. Class Members were allegedly subject to the same scheme of unpaid time spent in introductory training and orientation. In the settlement context, the class claims predominate over any individual claims or defenses members of the Class or Defendants may otherwise wish to bring forward.

2. Superiority

Superiority requires that the court "balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication." *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 316 (3d Cir. 1998) (internal quotations omitted). Only ninety (90) individuals have timely filed requests to opt-out of the Settlement. (Exhibit 1, Kurtzman Decl. ¶ 13). No Class Member has filed an objection to the Settlement. (Exhibit 1, Kurtzman Decl. ¶ 14). The low number – less than 1% – of Class Members who requested exclusion from the Settlement and the absence of objections to the Settlement demonstrate that there is significant interest in the collective resolution of these claims. Settlement rather than continuing class or individual litigation would thus preserve judicial resources.

V. ENHANCEMENT PAYMENTS ARE APPROPRIATE

In their Motion for Preliminary Approval, Named Plaintiffs informed the Court of their intention to seek Service Payments. Likewise, the Class Notice informed Class Members that Service Payments for the Named Plaintiffs would be requested and paid out of the Maximum Settlement Amount. No member of the Class objected to the enhancement payment. Named Plaintiffs spent a substantial amount of time and effort in prosecuting this action. They initiated the litigation, contributed to the complaint, answered written discovery, appeared for deposition, participated in settlement efforts, and communicated with class counsel on a regular basis. They also executed a full and complete release of all claims, in the form of a Named Plaintiff General Release. As such, the seven Named Plaintiffs request that the Court grant their request for Service Payments of $5,000 each, totaling $35,000, as the payments are fair and reasonable.

CONCLUSION

For the reasons set forth above, the Parties respectfully request that the Court: (1) grant final approval of the Settlement Agreement; (2) find the Settlement fair, reasonable, adequate, and in the best interests of the Class Members; (3) approve an award of attorneys' fees and costs as requested by separate motion by Class Counsel; (4) approve the Named Plaintiffs' application for Service Payments; (5) approve the payment of reasonable Settlement Administration Costs; and (6) dismiss the Action and release and bar any claims released by Class Members under the terms of the Settlement Agreement.

Dated: April 23, 2014

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and

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