UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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| KEVIN ESQUE, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | No. 1:23-cv-01791-CSW-JRS |
| | ) | |
| DWD COMPANY, LLC, et al., | ) | |
| | ) | |
| Defendants. | ) | |

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND DIRECTING CLASS NOTICE**

This matter is before the Court on the *Unopposed Motion for Preliminary Approval of Settlement and Approval of Notice Amended* (the "*Amended Motion*") by Plaintiff, Kevin Esque, and Defendants, DWD Company LLC ("DWD"), Daniel Ballard, Whitney Rawlings, and Danae Spangler. (Dkt. 132).[1] Esque also submitted the proposed Notice of (1) Proposed Class & Collective Action, and (2) Final Settlement Approval Hearing (the "Notice") (Dkt. 129-1) and signed Class and Collective Action Settlement Agreement and Release of Claims (the "Agreement") (Dkt. 131-1). The Parties have consented to the Magistrate Judge to conduct all proceedings and order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73. (Dkt. 128). For the reasons explained below, the Court **GRANTS** the *Amended Motion* and enters the **ORDERS** below. (Dkt. 132).

## I. BACKGROUND

Esque, a truck driver, alleges that he was not paid for all the work, like pre-trip and post-trip inspections, he did for DWD Company, a construction hauling business. He sues DWD and its owners, Ballard, Rawlings, and Spangler, alleging

[1] Originally, Plaintiff filed an *Unopposed Motion for Preliminary Approval of Settlement and Approval of Notice* (Dkt. 129). Subsequently, Plaintiff identified clerical issues in the Dkt. 129 and filed an *Amended Motion*. Therefore, the motion at (Dkt. 129) is **DENIED as moot**.

violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et seq.*, and Indiana's Wage Payment Statute ("IWPS"), Ind. Code § 22-2-5-1. Because Esque alleges DWD treated its other drivers similarly, he seeks to bring his FLSA claim as a "collective action," 29 U.S.C. § 216(b), and his IWPS claim as a class action, Fed. R. Civ. P. 23(a).

After the Court denied Defendants' Motions to Dismiss (Dkt. 80), the Parties engaged in negotiations within a judicial settlement conference with the undersigned and successfully reached a resolution on amicable terms. (Dkt. 131-1, ¶ 32); (*see also* Dkt. 121).

The Parties submitted this *Amended Motion* along with the Agreement and Notice. The Agreement would settle Esque's individual and class/collective claims under IWPS and FLSA.

In the Agreement, Defendants agree to pay $575,000 (the "Gross Settlement Amount") to resolve this lawsuit without admitting any liability or wrongdoing. (Dkt. 131-1, ¶¶ 35, 43). Class/collective counsel ("Class Counsel") will receive attorney fees in the amount of $191,666.66 and expenses in the amount of $644.01. (*Id.* ¶ 47). Additionally under the Agreement, Esque and Tyra Denton will each receive a $10,000 service award. (*Id.* ¶ 46). After these costs and the Settlement Administrator's costs are deducted, the remaining amount (the "Net Settlement Amount") will be split, with $62,500 attributed to the FLSA Collective and $300,000 to the Rule 23 Indiana Wage Payment Class. (*Id.* ¶ 43).

The Parties state that there are 41 Putative Class Members including Esque. (*See* Dkt. 132 at 4, 7). The Agreement contemplates that the Notice will be sent to all Putative Class Members: all truck drivers employed by DWD between October 4, 2021, and October 13, 2024. (Dkt. 131-1, ¶ 24). For the IWPS claims, Putative Class Members can choose to opt out of the class action portion of the settlement. (*See id.* ¶ 55). For the FLSA claims, by contrast, Putative Class Members would have to opt into the FLSA portion of the settlement. (*See id.* ¶ 20). For clarity, the FLSA Collective includes all truck drivers employed by DWD between October 4, 2021, and October 13, 2024, "who timely opted in to this collective action and have

viable claims within three years of the date that they opted in to this case." (Dkt. 129-1, § 2.a.); (*see also* Dkt. 131-1, ¶ 20). If these conditions are met, a Putative Class Member becomes a Participating Class Member. (Dkt. 131-1, ¶ 20).

Class Counsel will be responsible for determining the amounts owing to each "Putative Class Member"[2] based on a pro rata accounting for the number of workweeks that a member worked for DWD over thirty (30) hours in a workweek. (*Id.* ¶ 44). There is also a process by which class members can choose to dispute their individual settlement amounts. (*Id.* ¶ 45).

Under no circumstances will the Gross Settlement Amount revert to Defendants. (*E.g.*, *id.* ¶ 47). If any check (which is a portion of the Net Settlement Amount) is distributed to a Participating Class Member but is not cashed after about 180 days, the value of the uncashed check will be issued to the Indiana Bar Foundation. (*Id.* ¶ 62).

In exchange for payment, the Participating Class Members agree to release all claims including but not limited to those relating to their employment at DWD and/or wages owed arising out of employment with DWD from the beginning of time through the date of this Order—as well as all FLSA and IWPS claims. (*See id.* ¶¶ 26, 63).

## II. LEGAL STANDARD

Federal Rule of Civil Procedure 23(e) ("Rule 23") requires court approval of a class action settlement. This is not a mere "judicial rubber stamp." *Redman v. RadioShack Corp.*, 768 F.3d 622, 629 (7th Cir. 2014). Because most of the Rule 23 requirements are "designed to protect absentees by blocking unwarranted or overbroad class definitions," the Court must conduct an independent class certification analysis even when the parties have stipulated that a class should be certified. *See Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 619–22 (1997).

[2] Though paragraphs 44 and 45 of the Agreement refer to "Putative Class Members," only "Participating Class Members" will be paid; therefore, these paragraphs should be so amended.

Additionally, in order to preliminarily approve a settlement, the Court must determine that the settlement proposal is "within the range of possible approval." *Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998). At this stage, Plaintiff need show only that final approval is likely, not that it is certain. *See* Fed. R. Civ. P. 23(e)(1)(B). Nonetheless, a court considering a request for preliminary approval of a class settlement must be vigilant to ensure that the interests of the class are well served by the settlement. *See In re NCAA Student-Athlete Concussion Injury Litig.*, 314 F.R.D. 580, 588 (N.D. Ill. 2016) [hereinafter "*NCAA*"].

Once preliminary approval is granted, the court authorizes notice to be sent to class members—who are given the opportunity to object. *Burnett v. Conseco Life Ins. Co.*, No. 1:18-cv-00200-JPH-DML, 2020 WL 4207787, at *4 (S.D. Ind. July 22, 2020). Then, the court holds a fairness hearing to determine whether the proposed settlement is "fair, reasonable, and adequate." *Id.* (quoting Fed. R. Civ. P. 23(e)(2)).

## III. Discussion

### A. Class Certification

Class certification will be granted if Esque satisfies the requirements of Rule 23(a) (numerosity, commonality, typicality, and adequacy) and the requirements of one of the subsections of Rule 23(b) (here, predominance and superiority). *See, e.g.*, *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010).[3]

Here, "the Court is not deciding whether certification of a class under Rule 23(b)(3) and 23(c)(4) is proper for the purposes of litigation as a formal matter";

[3] The Court previously held that "Esque will need to move for class certification under Rule 23(c)," and "[c]ertification of the proposed [FLSA] collective can be evaluated under the same standard at the same time." (Dkt. 80). Indeed, if the class and claims are capable of being certified under Rule 23, then they are capable of being certified under FLSA. *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 452 (2016) (assuming, without deciding, that the standard for certifying an FLSA collective "is no more stringent than the standard for certifying a class").

rather, the Court evaluates whether the claims "are capable of being certified under Rule 23(b)(3) and 23(c)(4)—so that the value of those claims can be 'balanced against the extent of settlement offer.'" *NCAA*, 314 F.R.D. at 589 (citation omitted).

The Parties have stipulated to collective and class certification for purposes of settlement. (Dkt. 132 at 2). They ask the Court to certify for settlement purposes the following class: all truck drivers employed by DWD between October 4, 2021, and October 13, 2024. (*Id.*).

***1. Rule 23(a) Requirements***

Every class action must satisfy the four requirements of Rule 23(a), which are: numerosity, commonality, typicality, and adequacy. Fed. R. Civ. P. 23(a)(1)–(4).

*a. Numerosity*

Numerosity is satisfied where a class is so large that joinder of all members would be impracticable. Fed. R. Civ. P. 23(a)(1). "Although there is no 'bright line' test for numerosity," generally a class of at least 40 members will suffice. *Hinman v. M & M Rental Ctr., Inc.*, 545 F. Supp. 2d 802, 805 (N.D. Ill. 2008); *see also Gentry v. Floyd Cnty.*, 313 F.R.D. 72, 77 (S.D. Ind. 2016).

Because the proposed settlement class here includes 41 members, the numerosity requirement is met. Particularly when considering other factors underpinning the impracticality of joinder, the Court agrees numerosity is satisfied. *Gentry*, 313 F.R.D. at 77 (finding 25 subclass members satisfied numerosity requirement where resolving individual claims would strain the court's resources and members would have little incentive to file individual claims).

*b. Commonality*

Commonality requires questions of law or fact common to the class. *Gentry*, 313 F.R.D. at 77. In other words, the claims of the class must depend on a common contention capable of class-wide resolution. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). There need only be one such common question, but it must drive the resolution of the litigation. *E.g.*, *McFields v. Dart*, 982 F.3d 511 (7th Cir. 2020).

Here, commonality is satisfied. The Parties argue the operative facts are the same because DWD allegedly failed to pay for all time spent by the class members performing work tasks, and the questions of law are the same because the state law claim depends on whether underpayments of wages violate IWPS. The common question—whether DWD's practice of failing to compensate truck drivers for pre- and post-drive work violated IWPS—is "a significant aspect of the case and . . . can be resolved for all members of the class in a single adjudication." *Skevington v. Hopebridge, LLC*, No. 1:21-CV-03105-JPH-MG, 2024 WL 1175448, at *4 (S.D. Ind. Mar. 18, 2024) (citations omitted).

*c. Typicality*

The typicality analysis tests whether the claims of the class representative are typical of the class as a whole. *Gentry*, 313 F.R.D. at 79. A claim is typical of the class if it arises from the same event, practice, or course of conduct that gives rise to the class members' claims and is based on the same legal theory. *Id.*

Esque's claim—that the class members were not paid for the time spent performing pre-driving and post-driving inspections or for all the time spent driving to and from worksites in violation of IWPS—satisfies the typicality requirements as discovery has revealed that that his claim is typical of the claims other members would assert, and the defense to each claim would be the same. (Dkt. 46 at 3); (*see also* Dkt. 71); *Muro v. Target Corp.*, 580 F.3d 485, 492 (7th Cir. 2009) (explaining that typicality is satisfied when "the named representatives' claims have the same essential characteristics as the claims of the class at large").

*d. Adequacy*

The final requirement of Rule 23(a) is adequacy, which requires that the class representative will fairly and adequately protect the interests of the class. *Gentry*, 313 F.R.D. at 80. "To be an adequate representative of a class, a plaintiff (1) must have a sufficient stake in the outcome to ensure zealous advocacy; (2) must not have antagonistic or conflicting claims with other class members; and (3) must have counsel who are experienced, qualified, and generally able to conduct the litigation." *Id.*

The Parties argue Esque has no interests in conflict with the other settlement class members because he "was subject to the same pay practices as the other Settlement Class Members, and he has the same claim as the other Settlement Class Members." (Dkt. 132).

The Court agrees that Esque – as one of the impacted truck drivers – is a motivated, informed, and adequate representative. *See Adams v. Aztar Ind. Gaming Co., LLC*, No. 3:20-CV-00143-MPB-RLY (S.D. Ind. Feb. 25, 2022) (Entry Granting Plaintiff's Motion for Certification).

***2. Rule 23(b) Requirements***

In addition to the requirements of Rule 23(a), a plaintiff must satisfy the requirements of one of the subsections of Rule 23(b) before a court will certify a class. Here, Esque seeks to certify a Rule 23(b)(3) class. So, he must satisfy two requirements: predominance and superiority. Fed. R. Civ. P. 23(b)(3).

*a. Predominance*

Predominance requires that common questions of law or fact predominate over questions affecting only individual members. *Id.* Predominance is "not bean counting." *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013). It does not ask whether common questions outnumber individual questions. *Id.* It simply tests whether the proposed classes are cohesive enough to warrant adjudication by representation. *Amchem Prod.*, 521 U.S. at 623.

Here, Esque argues the predominant "question in the state law class claim, common to the Settlement Class Members, is whether the Company violated [IWPS] by alleged failing to pay wages due and owing." (Dkt. 132).

Similar to commonality, predominance is met here because a common question can be resolved for all members in a single adjudication. *Skevington*, 2024 WL 1175448, at *4.

*b. Superiority*

Superiority requires that a class action be the superior method of litigation for the fair and efficient adjudication of the controversy. *Gentry*, 313 F.R.D. at 81. Relevant considerations in determining superiority include:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
> (D) the likely difficulties in managing a class action

Fed. R. Civ. P. 23(b)(3).

Here, Esque argues "[a] class action would be more efficient than many different individual lawsuits"; particularly, it will "uniformly address up to 41 separate potential causes of action without the risk of inconsistent results and without burdening the court." (Dkt. 132 at 7).

The Court agrees. "[G]iven the relatively small amount to which each member would be entitled as well as 'the factual and legal uniformity of the Class/Collective Members' claims,' a class action is superior method for resolving these claims." *Skevington,* 2024 WL 1175448, at *4; *see also Amchem Prod.*, 521 U.S. at 617) ("The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights." (quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997)).

Therefore, the class satisfies Rule 23(e) and will be preliminarily approved for settlement purposes.

**B. Whether the Settlement Is Within the Range of Possible Approval**

Because the proposed settlement would be binding on class members, the Court may only approve the settlement after finding that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). In making this determination, Federal Rule of Civil Procedure 23(e)(2) requires the Court to consider whether (1) the class representative and class counsel have adequately represented the class, (2) the proposal was negotiated at arm's length, (3) the proposal treats class members equitably relative to each other, and (4) the relief provided by the settlement is adequate.

Courts also consider the following five factors: (1) the strength of the plaintiffs' case compared against the amount of the defendants' settlement offer; (2) the complexity, length, and expense of continued litigation; (3) the amount of opposition to the settlement; (4) the opinion of experienced counsel; and (5) the stage of the proceedings and the amount of discovery completed. *E.g.*, *Adams v. Aztar Indiana Gaming Co., LLC*, No. 3-20-CV-00143-MPB-RLY, 2023 WL 2197075, at *3 (S.D. Ind. Feb. 24, 2023), *amended,* No. 3-20-CV-00143-MPB-MJD, 2023 WL 6536777 (S.D. Ind. Apr. 4, 2023) [hereinafter "*Adams II*"].

***1. Adequacy of representation of the class***

Esque's attorney conducted extensive discovery and investigation both prior to filing suit and after. The attorney met with Esque and inspected his documents; analyzed the claims, defenses, and potential class-wide damages; researched applicable law; analyzed documents produced by Defendants; and concluded that the amount reached in settlement is fair and reasonable based on the uncertainty of the class members' prospects for success. (Dkt. 131-1, ¶ 34); (Dkt. 132 at 8–10). The Court is satisfied that Esque likely is able to demonstrate that he (the proposed class representative) and Class Counsel adequately and appropriately represented the class.

***2. The Agreement was negotiated at arm's length***

The Agreement was negotiated at arm's length. The Parties engaged in negotiations by way of a judicial settlement conference over which the undersigned presided. (Dkt. 131-1, ¶ 32); (*see also* Dkt. 121). All of the Defendants, including the individual owners, Class Counsel, Esque, and defense counsel were present in-person an actively participated for the duration of the negotiations. The parties conducted their negotiations over several hours in the course of the day before reaching a mutually agreeable resolution.

***3. The Agreement treats class members equitably***

The Agreement treats class members equitably relative to each other. Members will receive their pro rata portion of the allocation based on the number of

workweeks that they worked for DWD over thirty (30) hours in a workweek. (Dkt. 131-1, ¶ 44). *See Adams II*, 2023 WL 2197075, at *3.

Moreover, the Agreement evinces fairness because it does not contain either a "clear sailing" or a "reversion" clause. *Cf. Skevington*, 2024 WL 1175448, at *5–6 (citing cases and explaining those clauses give the court "pause").

***4. The relief provided by the Agreement is adequate***

The relief is adequate. Rule 23(e) charges the Court to consider whether "the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3). *See* Fed. R. Civ. P. 23(e)(2)(c)(i)–(iv).

The Parties structured the settlement payments to ensure each member of the class would be paid pro rata based on the number of weeks he or she worked without receiving payment for all work. There was a real risk that the members would recover nothing or receive less than what they will receive under the Agreement because bringing separate actions would be cost prohibitive. (*See* Dkt. 132 at 8–10).

The Agreement also calls for the Parties to act quickly. Within fourteen days of the settlement effective date, Defendants will remit payment to the settlement administrator, who, within fourteen days of that remittance, will issue payment to class members. (Dkt. 131-1, ¶¶ 59–60).

Moreover, the relief is adequate considering the terms of the proposed attorney fee award of $191,666.66. (*Id.* ¶ 47). It is likely that the amount of the proposed attorney's fee will support final approval because courts in this district and around the Seventh Circuit routinely award one-third of the recovery, which, in this case, would be $575,000. (*Id.* ¶ 43); *e.g.*, *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 WL 6606079, at *10 (S.D. Ill. Dec. 16, 2018) ("Courts within the Seventh Circuit, and elsewhere, regularly award percentages of 33.33% or

higher to counsel in class action litigation."). The fee here is discounted from a typical contingency fee, which affords a larger amount available for class members to share.

***5. The strength of Plaintiffs' case compared against the amount of Defendants' settlement offer***

The most important factor relevant to the fairness of a class action settlement is the strength of the plaintiff's case on the merits balanced against the amount offered in the settlement. *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006). Continued litigation presents significant risks and costs for Esque, as he concedes. (*See* Dkt. 132 at 8–9). The most obvious risk is if Esque is not successful on the merits. Even if successful on the merits at some future time, a future potential victory is not as valuable as a present tangible settlement. *In re AT & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 347 (N.D. Ill. 2010) (quoting *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 284 (7th Cir. 2002)).

***6. The likely complexity, length, and expense of continued litigation***

This case was settled after the filing of two amended complaints (Dkts. 29, 46), briefing of two motions to dismiss (Dkts. 31, 52), extensive discovery, briefing on conditional certification (Dkt. 56), and a Rule 16 judicial settlement conference. Continuing to litigate this case will require vast expense in complex motions practice and a great deal of time, in addition to that already expended.

***7. Opposition to the Agreement***

The Parties have not yet sent the notice, so it is premature to assess this factor. *Adams II*, 2023 WL 2197075, at *4.

***8. The opinion of experienced counsel***

The opinion of counsel weighs heavily in favor of the fairness, reasonableness, and adequacy of the Agreement. Courts are "entitled to rely heavily on the opinion of competent counsel." *Gautreaux v. Pierce*, 690 F.2d 616, 634 (7th Cir. 1982) (quoting *Armstrong*, 616 F.2d at 325). Here, both counsel agree settlement is in the best interests of the Parties. (Dkt. 132 at 9). There is no

indication that the Agreement is the victim of collusion. *See Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996). Moreover, both counsel are practitioners who have significant experience in complex and multi-party litigation including class and collective actions. They advised their clients throughout the negotiations before arriving upon the mutually satisfactory terms in the Agreement.

***9. The stage of the proceedings and the amount of discovery completed***

"The stage of the proceedings at which settlement is reached is important because it indicates how fully the district court and counsel are able to evaluate the merits of plaintiffs' claims." *Armstrong*, 616 F.2d at 325. As discussed, the claims presented and settlement demand have been developed over more than a year of litigation, with extensive discovery and briefing. There is no indication that the Agreement would have benefited from additional discovery. This factor weighs in favor of the fairness, reasonableness, and adequacy of the Agreement. *See Adams II*, 2023 WL 2197075, at *4.

Considering all of the above factors, the Court finds that the Agreement and settlement are within the range of possible approval, fair, and justify notice to the class members. *See Armstrong*, 616 F.2d at 314.

**C. Whether the Release of the FLSA Claims Should be Approved as a Fair and Reasonable Resolution of a *Bona Fide* Dispute**

For the same reasons that the settlement is fair, reasonable, and adequate under Rule 23(e)(1), the settlement likewise is a fair and reasonable resolution of a *bona fide* dispute such that the Court can approve the FLSA portion of the settlement.

To determine the fairness of an FLSA settlement, "[t]he Court must consider 'whether the agreement reflects a reasonable compromise of disputed issues rather than a mere waiver of statutory rights brought about by an employer's overreaching.'" *Schneider v. Union Hosp., Inc.*, No. 2:15-cv-00204-JMS-DKL, Docket No. 126 at *2 (S.D. Ind. May 9, 2017) (quoting *Burkholder v. City of Fort Wayne*, 750 F. Supp. 2d 990, 995 (N.D. Ind. 2010)).

The Parties vigorously disputed the FLSA claims at issue in this case, *i.e.*, whether Defendants Ballard, Rawlings, and Spangler were "employers" and whether the collective bargaining agreement that governed Esque's compensation violated FLSA. (Dkts. 80, 85). As stated, the settlement was the result of arm's length negotiations culminating in a judicial settlement conference. The release of FLSA claims under these circumstances is a fair and reasonable resolution of a *bona fide* dispute. *See Adams II*, 2023 WL 2197075, at *4.

**D. Class Notice**

For notice under Rule 23(e)(1) to a class proposed to be certified for the purposes of settlement under Rule 23(b)(3), the Federal Rules require 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. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means. The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B). And Rule 23(e)(1) requires the Court to "direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." As explained above, the Parties have shown that the Court will likely be able to approve the proposal under Rule 23(e)(2) and certify the class for purposes of judgment on the proposal.

The proposed Notice submitted by the Parties fulfills the requirements of Rule 23. (Dkt. 129-1). It states the nature of the action and the claims; defines

the class; explains how each class member may exclude him- or herself; and notifies the class that the effect of a class judgment is binding on class members.

Accordingly, the Court approves the proposed Notice.

**E. Class Counsel**

Federal Rule of Civil Procedure 23(g)(1) requires that the Court appoint Class Counsel after it certifies a class. Given Plaintiff's counsel's extensive experience with class and collective wage actions in Indiana, the resources that he brings to this action, and the work he has already done investigating these claims, Plaintiff's counsel meets all of the criteria outlined in Rule 23(g)(1)(A) and (B). Therefore, the Court finds that Mr. Weldy is an appropriate Class Counsel.

## IV. CONCLUSION

The motion at (Dkt. 129) is **DENIED as moot**. The *Amended Motion* (Dkt. 132) is **GRANTED** and the Court hereby finds and **ORDERS** as follows:

1. Unless otherwise defined herein, all terms used in this Order (the "Preliminary Approval Order") will have the same meaning as defined in the Agreement.
2. The Court finds on a preliminary basis that the settlement memorialized in the Agreement, and filed with the Court, falls within the range of reasonableness and, therefore, meets the requirements for preliminary approval as required by Federal Rule of Civil Procedure 23(e). (Dkt. 131-1).
3. The Court grants preliminary approval of the Parties' Agreement.
4. The Court certifies, for settlement purposes only, the following Rule 23 Indiana Wage Payment Class pursuant to the Agreement and Fed. R. Civ. P. 23:

> All truck drivers employed by DWD between October 4, 2021, and October 13, 2024.

5. The Court appoints, for settlement purposes only, Kevin Esque as the Class Representative of the Rule 23 Indiana Wage Payment Class.
6. The Court appoints, for settlement purposes only, Ronald E. Weldy as Class Counsel for purposes of settlement, including effectuating the releases and other obligations therein.
7. This Court approves CPT Group as the settlement administrator in this case.
8. The proposed Notice to be provided as set forth in the Agreement (Dkt. 129-1) is hereby found to be the best practicable means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed class settlement and the Final Approval Hearing to all persons and entities affected by and/or entitled to participate in the settlement, in full compliance with the notice requirements of Fed. R. Civ. P. 23, due process, the Constitution of the United States, the laws of the State of Indiana, and all other applicable laws. The Notice is accurate, objective, and informative, and provides Putative Class Members with all of the information necessary to make an informed decision regarding their participation in the settlement and its fairness.
9. The Notice of (1) Proposed Class & Collective Action, and (2) Final Settlement Approval Hearing (Dkt. 129-1) is approved. The Settlement Administrator is authorized to mail that document—with the added information about the Final Approval Hearing as set forth below—to the Putative Class Members as provided in the Agreement. The Parties shall ensure that the Settlement Administrator sends that document within twenty-one (21) days of the date of this Order, as provided in the Agreement.
10. Putative Class Members who wish to be excluded from the settlement must submit a timely request for exclusion from the settlement to the Settlement Administrator no later than thirty (30) days from the postmark date of the Notice.
11. Any written objection to the settlement must be submitted to the Court no later than thirty (30) days after the postmark date of the Notice.

12. The Court further preliminarily certifies, for settlement purposes only, the following FLSA Collective pursuant to the Agreement and 29 U.S.C. § 216(b):

> All truck drivers who worked for DWD between October 4, 2021, and October 13, 2024, and who timely opted in to this collective action and have viable claims within three years of the date that they opted in to this case.

13. For the same reasons that the Court preliminarily finds the Agreement is fair, reasonable, and adequate under Fed. R. Civ. P. 23(e)(2), the Court likewise finds on a preliminary basis that the resolution of the Fair Labor Standards Act claim represents a fair and reasonable resolution of a *bona fide* dispute.
14. Pending the Court's decision on final approval of the settlement, this matter is stayed other than as set out in this Order.
15. The Named Plaintiff and Defendants are ordered to carry out the settlement according to the terms of the Agreement.
16. The Court will conduct a **Final Approval Hearing on July 11, at 9:00 a.m. Indianapolis time (EST)**, in room #310, Birch Bayh Federal Building & United States Courthouse, 46 East Ohio Street, Indianapolis, Indiana before Magistrate Judge Crystal S. Wildeman.
17. **The Parties shall file their joint motion for final approval of settlement**, and Class Counsel shall file his motion for attorney's fees, costs and expenses, and the Named Plaintiff Service Payment **on or before June 13, 2025**.

**So ORDERED**.

Date: March 19, 2025

Crystal S. Wildeman
United States Magistrate Judge
Southern District of Indiana

Distributed electronically to all CM/ECF counsel of record.