UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

MICHAEL SOUTHARD, on behalf of himself and all others similarly situated, Plaintiff,

v. Civil Action No. 3:21-cv-607-DJH-CHL

NEWCOMB OIL CO., LLC, Defendant.

* * * * *

**MEMORANDUM AND ORDER**

Plaintiff Michael Southard, on behalf of himself and all others similarly situated, and with the consent of Defendant Newcomb Oil Co., LLC, moves for conditional class certification and preliminary approval of the parties' class-action settlement. (Docket No. 70) After careful consideration of the motion and supporting documents, the Court will grant preliminary approval and conditional class certification for the reasons explained below.

**I.**

Newcomb Oil operates convenience stores throughout Kentucky called "Five Star Food Marts." (D.N. 70-2, PageID.640 ¶ 9) Southard brought this class action on behalf of current and former Five Star employees alleging that Newcomb Oil violated their rights under the Kentucky Wages and Hours Act and Kentucky common law. (D.N. 1-2) Specifically, Southard asserts claims for (1) failure to pay for all hours worked, including overtime under Ky. Rev. Stat. § 337.285; (2) failure to provide meal and rest periods under Ky. Rev. Stat. §§ 337.355, 337.365, and 446.070; (3) untimely payment of wages and unlawful withholding of wages under Ky. Rev. Stat. §§ 337.055 and 337.060; (4) failure to furnish accurate statements of wage deductions under Ky. Rev. Stat. § 337.070; and (5) unjust enrichment. (D.N. 1-2)

The parties seek to conditionally certify a settlement class defined as follows:

> [A]ll current and former hourly non-exempt Five Star convenience store employees, including but not limited to customer service representatives, store attendants, clerks, cashiers, GO Team employees, money counters, inventory team members, or other employees with similar job duties, employed by Defendant in Kentucky at any time from November 9, 2013 until December 16, 2023.

(D.N. 70-3, PageID.653) The putative class includes approximately 13,198 individuals. (D.N. 70-2, PageID.640–41 ¶ 10) Newcomb Oil "has agreed to pay a non-reversionary Gross Settlement Amount of $1,500,000.00 to settle all aspects of this case." (*Id.*, PageID.643 ¶ 21) The "Net Settlement Fund" is the Gross Settlement Amount less the service payment to the class representative, class counsel's fee award and litigation expenses, and the settlement administrator's fees and costs. (*Id.*, PageID.643–44 ¶ 21) "The Net Settlement Fund to be paid to Class Members is approximately $865,000.00." (*Id.*, PageID.645 ¶ 26)

Upon preliminary approval and conditional certification, a notice will be sent to all putative class members that describes the action and that is individualized to advise each class member of his or her expected payment. (*See* D.N. 70-3, PageID.670–75) The notice also explains how class members can object to or opt out of the settlement. (*Id.*) "Class Members will receive a Settlement Award check without the need to submit a claim form." (D.N. 70-2, PageID.645 ¶ 26) Class Members who do not opt out of the settlement will "be eligible to receive a share of the Net Settlement Fund based on the number of hours" they "worked for Defendant in eligible positions between November 9, 2013 and December 16, 2023." (*Id.*) Additionally, class members "who do not timely request exclusion will release Defendant . . . from any and all claims that Plaintiff or the Class Members have, or could have, made against Defendant in this action." (D.N. 70-1, PageID.616 (citing D.N. 70-3, PageID.657)) If all class members participate in the settlement, "[t]he average gross recovery is approximately $114 per Class Member." (D.N. 70-2, PageID.644

¶ 24) Checks that would have gone to non-participating class members "will instead be paid to a charity." (D.N. 70-1, PageID.616 (citing D.N. 70-3, PageID.657)) Checks to participating class members that are "uncashed and cancelled after the void date" will "likewise be paid to charity." (D.N. 70-3, PageID.657)

**II.**

Although the motion for preliminary approval is unopposed, the Court must still examine the proposed settlement before notice of the proposal is sent to the class. *See* Fed. R. Civ. P. 23(e)(1)(B); *Tenn. Ass'n of Health Maint. Orgs., Inc. v. Grier*, 262 F.3d 559, 565–66 (6th Cir. 2001) (citing *Williams v. Vukovich*, 720 F.2d 909, 920–21 (6th Cir. 1983)). The Court may approve a settlement only after determining that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The standard for preliminary approval was codified in 2018, with Rule 23 now providing for notice to the class upon "the parties' showing that the court will likely be able to" (1) approve the proposed settlement under the final-approval standard contained in Rule 23(e)(2) and (2) "certify the class for [settlement] purposes." Fed. R. Civ. P. 23(e)(1)(B); *see* 4 William B. Rubenstein, *Newberg & Rubenstein on Class Actions* § 13:10 (6th ed. 2023).

**A. Approval of Settlement**

The preliminary and final-approval processes both require the Court to consider 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, 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 the 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); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2); *see* Fed. R. Civ. P. 23(e)(1)(B).

Paragraphs (A) and (B) of Rule 23(e)(2) "identify matters that might be described as 'procedural' concerns, looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement," while paragraphs (C) and (D) "focus on what might be called a 'substantive' review of the terms of the proposed settlement." Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment. These factors, which are also part of the 2018 amendments to Rule 23, are not meant "to displace any factor" previously relied on by the courts, "but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." *Id.* The rule largely encompasses the factors that have been employed by the Sixth Circuit:

> (1) the risk of fraud or collusion, (2) the complexity, expense and likely duration of the litigation, (3) the amount of discovery engaged in by the parties, (4) the likelihood of success on the merits, (5) the opinions of class counsel and class representatives, (6) the reaction of absent class members, and (7) the public interest.

*Does 1-2 v. Deja Vu Servs., Inc.*, 925 F.3d 886, 894–95 (6th Cir. 2019), 894–95 (6th Cir. 2019) (internal quotation marks omitted) (quoting *Int'l Union, United Auto., Aerospace, & Agr. Implement Workers of Am. (UAW) v. Gen. Motors Corp.*, 497 F.3d 615, 631 (6th Cir. 2007)). In addition to the seven factors listed above, the Sixth Circuit "ha[s] also looked to whether the settlement 'gives preferential treatment to the named plaintiffs while only perfunctory relief to unnamed class members.'" *Vassalle v. Midland Funding LLC*, 708 F.3d 747, 755 (6th Cir. 2013) (quoting *Williams*, 720 F.2d at 925).

The Sixth Circuit does not appear to have considered the new version of Rule 23(e)(2). Since the amendment, courts within the Sixth Circuit have been applying both sets of factors. *See, e.g.*, *In re Papa John's Emp. & Franchisee Emp. Antitrust Litig.*, No. 3:18-CV-825-BJB, 2023 WL 5997294, at *2 (W.D. Ky. Sept. 15, 2023) (citing *Does 1-2*, 925 F.3d at 894–95); *Elliott v. LVNV Funding, LLC*, No. 3:16-CV-675-RGJ, 2019 WL 4007219, at *7 (W.D. Ky. Aug. 23, 2019) (citing *Peck v. Air Evac EMS, Inc.*, No. CV 5:18-615-DCR, 2019 WL 3219150, at *5 (E.D. Ky. July 17, 2019)). Given their substantial overlap, the two sets can be considered together.

**1. Adequate Representation/Amount of Discovery/Counsel and Representatives' Opinions**

More than five years passed between the filing of the complaint in this case and the parties' proposed settlement. (*See* D.N. 70-2, PageID.642–43 ¶¶ 15–20) During that time, "the parties . . . engaged in significant informal discovery relating to Plaintiff's claims on behalf of the Class." (*Id.*, PageID.647 ¶ 33) Through discovery,

> Defendant produced, and Plaintiff reviewed, hundreds of pages of documents, including employee handbooks containing Defendant's meal and rest break policies, off-the-clock work policies, and timekeeping policies; Class Members' time punches, produced in a Microsoft Excel spreadsheet containing over 229,000 rows; Defendant's payroll records and Class Members' paystubs; and Class Members' work schedules.

(*Id.*) Further, Southard "conducted extensive Class Member outreach and other factual investigation." (*Id.*) "Based on this discovery and investigation, Plaintiff developed a comprehensive damages analysis, which informed settlement negotiations and the terms of the Settlement Agreement." (*Id.*)

The parties are represented by counsel who have experience litigating similar cases. (D.N. 70-2, PageID.635–40 ¶¶ 6–8; *see* D.N. 70-3, PageID.666) In addition, "[c]ounsel for both sides fully support the Settlement," and "[n]either Plaintiff nor Class Counsel ha[s] any interests

antagonistic to the Class." (D.N. 70-2, PageID.646 ¶ 32, PageID.647 ¶ 35; *see* D.N. 70-4, PageID.680 ¶ 4) These factors all support preliminary approval. *See Elliott*, 2019 WL 4007219, at *8 (granting preliminary approval of settlement that had been "negotiated at arm's length for more than five months"); *Arledge v. Domino's Pizza, Inc.*, No. 3:16-CV-386-WHR, 2018 WL 5023950, at *2 (S.D. Ohio Oct. 17, 2018) (approving final settlement where parties favored settlement and had "exchanged the most relevant pieces of information").

**2. Arm's-Length Negotiations/Risk of Fraud or Collusion**

The parties attended a settlement conference conducted by Magistrate Judge Colin H. Lindsay, where they "negotiated in good faith and reached an agreement for the resolution of all claims in this action." (D.N. 70-2, PageID.643 ¶ 19; *see also* D.N. 62) "The participation of an independent mediator in the settlement negotiations virtually [e]nsures that the negotiations were conducted at arm's length and without collusion between the parties." *Hainey v. Parrott*, 617 F. Supp. 2d 668, 673 (S.D. Ohio 2007) (citing *Granada Invs., Inc. v. DWG Corp.*, 962 F.2d 1203, 1205 (6th Cir. 1992); *Williams v. Vukovich*, 720 F.2d 909, 922–23 (6th Cir. 1983)); *see Williams v. Alimar Sec., Inc.*, No. CV 13-12732, 2017 WL 427727, at *3 (E.D. Mich. Feb. 1, 2017); *Newberg & Rubenstein on Class Actions* § 13:14. The second factor thus also weighs in favor of preliminary approval.

**3. Adequacy of Relief**

**a. Costs, Risks, and Delay of Trial and Appeal/Complexity, Expense, and Likely Duration of the Litigation/Likelihood of Success on the Merits**

The parties have already invested significant time and money litigating this case (*see* D.N. 70-2, PageID.642–43 ¶¶ 15–20), and prolonging litigation would increase that investment. Moreover, "wage and hour class and collective actions . . . are inherently complex and time-

consuming." *Arledge*, 2018 WL 5023950, at *2 (citing *Swigart v. Fifth Third Bank*, No. 1:11-CV-88, 2014 WL 3447947, at *7 (S.D. Ohio July 11, 2014)) (granting final approval of settlement and finding that the complexity of the litigation weighed in favor of settlement).

Additionally, Southard "believes his claims are strong but recognizes that success [on the merits] is not guaranteed." (D.N. 70-2, PageID.646 ¶ 30) Southard also acknowledges "the risk that locating, producing, reviewing, and managing evidence relating to a Class period dating back to 2013 would be challenging." (*Id.* ¶ 31) Furthermore, Newcomb Oil "contends that it fully complied with all applicable wage requirements and believes that numerous factors could preclude class treatment." (*Id.*) "Thus, in considering the likelihood of success on the merits against the broad relief offered by the settlement, this factor weighs in favor of settlement." *Walls v. JPMorgan Chase Bank, N.A.*, No. 3:11-CV-673-DJH, 2016 WL 6078297, at *3–4 (W.D. Ky. Oct. 14, 2016).

**b. Method of Distribution**

The parties have selected a Settlement Administrator to mail each class member an individualized notice that describes "the pendency of the action and explains [his or her] options, including how to object or opt-out of the settlement." (D.N. 70-1, PageID.631 (citing D.N. 70-3, PageID.670–75)) "The Settlement Administrator will . . . create a website for the Settlement," where the class can view a generic notice, the settlement agreement, "and all papers filed by Class Counsel to obtain preliminary and final approval of the Settlement Agreement." (D.N. 70-3, PageID.659) The Settlement Administrator will also "provide contact information for Class Counsel and the Settlement Administrator" and will "create a toll-free telephone number to field telephone inquiries from Settlement Class Members during the notice and settlement administration periods." (*Id.*) Any class member who does not opt out of the settlement will

receive a check in the amount of that class member's settlement award. (D.N. 70-2, PageID.645 ¶ 26) The proposed settlement agreement provides that Newcomb Oil "will not discourage participation in this Settlement or encourage objections or opt-outs." (D.N. 70-3, PageID.659) In sum, the distribution method does not appear designed to prevent class members from receiving payment.

**c. Attorney Fees**

Class counsel's attorney-fee award will not exceed 35% of the gross settlement amount. (D.N. 70-2, PageID.650 ¶ 46) "At final approval, Class Counsel will provide detailed lodestar information to show the requested fees and expenses are reasonable under the percentage method with a lodestar 'crosscheck.'" (*Id.*) In determining whether a fee request is proper, the Court may employ the suggested percentage-of-the-fund method. *Gascho v. Glob. Fitness Holdings, LLC*, 822 F.3d 269, 278–80 (6th Cir. 2016); *see also O'Bryant v. ABC Phones of N. Carolina, Inc.*, No. 2:19-CV-02378, 2020 WL 4493157, at *15 (W.D. Tenn. Aug. 4, 2020) (stating that courts may also employ the lodestar method to determine the reasonableness of a fee request). The Sixth Circuit has permitted fee awards ranging from 10 to 50 percent. *See Bowling v. Pfizer*, 102 F.3d 777, 780 (6th Cir. 1996) (affirming fee award of 10 percent); *Clevenger v. Dillards, Inc.*, No. C-1-02-558, 2007 WL 764291, at *10–11 (S.D. Ohio Mar. 9, 2007) (finding 29 percent fee to be "modest and . . . below what is often awarded by district courts in th[e Sixth] Circuit" and citing various cases in support of that conclusion). The fees requested in this case fall within the acceptable range (*see* D.N. 70-2, PageID.643–44 ¶ 21); therefore, the Court finds that the proposed attorney-fee award appears reasonable and does not prevent preliminary approval.

**d. Other Agreements**

Pursuant to Rule 23(e)(3), "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal." This provision refers to side agreements that, "although seemingly separate, may have influenced the terms of the settlement by trading away possible advantages for the class in return for advantages for others." Fed. R. Civ. P. 23 advisory committee's note to 2003 amendment. The parties have not filed a statement identifying any such agreements. Moreover, the proposed settlement agreement includes a provision stating, "This Agreement constitutes the entire agreement and understanding of the Parties and supersedes all prior negotiations and/or agreements proposed or otherwise, written or oral, concerning the subject matter hereof." (D.N. 70-3, PageID.663–64) Accordingly, this factor favors preliminary approval.

**4. Equitable Treatment of Class Members/Preferential Treatment of Named Plaintiff**

The proposed settlement agreement provides for a $10,000 service award to be paid to Southard. (*Id.*, PageID.672) Such service payments are "common in class action settlement[s]" and are "routinely approved" by courts to compensate class representatives "for the services they provided" to the class and the risks they assumed in doing so. *Kritzer v. Safelite Sols., LLC*, No. 2:10-CV-729, 2012 WL 1945144, at *8 (S.D. Ohio May 30, 2012) (citation omitted). "Although the Sixth Circuit has not defined the outer limits for service awards, a survey of the precedent suggests service awards are appropriate if, absent proof of the lead plaintiff's extraordinary involvement, they are at most 10 times the amount that the unnamed class members would receive." *Strano v. Kiplinger Washington Eds., Inc.*, 646 F. Supp. 3d 909, 913 (E.D. Mich. 2022) (collecting cases).

Here, if no class member opts out of the settlement, "[t]he average gross recovery is approximately $114 per Class Member." (D.N. 70-2, PageID.644 ¶ 24) The $10,000 payment to Southard therefore exceeds the threshold suggested by Sixth Circuit caselaw. *See Strano*, 646 F. Supp. 3d at 913. But throughout the pendency of his action, Southard has "been in regular communication with [his] attorneys to keep apprised of the status of the litigation and answer questions as needed to pursue the case." (D.N. 70-4, PageID.681 ¶ 8) Moreover, he "worked with his attorneys to prepare the complaints, provided documents and information regarding [his] experience working for [Newcomb Oil], stayed up to date on settlement decisions, and otherwise remained in regular contact with [his] attorneys." (*Id.*) Overall, Southard "contributed approximately 75 hours of [his] own time to the litigation of these claims." (*Id.*)

In light of Southard's "extraordinary involvement," a service award of $10,000 is not per se inappropriate at the preliminary-approval stage. *See Strano*, 646 F. Supp. 3d at 913; *Moeller v. Week Pub'ns, Inc.*, 646 F. Supp. 3d 923, 927 (E.D. Mich. 2022) (suggesting that "considerable time" spent by a plaintiff in protecting the class's interests can justify a heightened service award if such efforts are "supported by . . . [documentation that] quantif[ies the plaintiff's] invested time").

Moreover, the relief to unnamed class members will not be "perfunctory," *Vassalle*, 708 F.3d at 745, but "based on the number of hours each Participating Class Member worked for [Newcomb Oil] in eligible positions between November 3, 2023 until December 16, 2023." (D.N. 70-2, PageID.645 ¶ 26) Thus, the service award appears appropriate, although at the final-approval stage Southard must submit thorough documentation of his time spent on the litigation. *See Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 311 (6th Cir. 2016)

("[C]ounsel must provide the district court with specific documentation—in the manner of attorney time sheets—of the time actually spent on the case by each recipient of an award.").

**5. Public Interest**

"There is a strong public interest in encouraging settlement of complex litigation and class action suits because they are 'notoriously difficult and unpredictable' and settlement conserves judicial resources." *Walls*, 2016 WL 6078297, at *4 (quoting *In re Skechers Toning Shoe Prods. Liab. Litig.*, No. 3:11-MD-2308-TBR, 2013 WL 2010702, at *7 (W.D. Ky. May 13, 2013)). This final factor therefore supports preliminary approval.

**B. Certification for Settlement Purposes**

The settlement class must meet the requirements of Rule 23(a) and (b). *Elliott*, 2019 WL 4007219, at *3. Under Rule 23(a), a class action may be maintained if

> (1) the class is so numerous that joinder of all members is impracticable;
> (2) there are questions of law or fact common to the class;
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
> (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). The Court must also find that the action satisfies subsection (b)(1), (2), or (3). Fed. R. Civ. P. 23(b). Here, Southard relies on subsection (b)(3) (*see* D.N. 70-1, PageID.625), which provides that a class action is appropriate if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). As explained below, each requirement appears to be satisfied here.

**1. Numerosity**

The parties estimate that the settlement class consists of more than 13,000 individuals. (D.N. 70-2, PageID.647 ¶ 36) "[I]t generally is accepted that a class of 40 or more members is sufficient to satisfy the numerosity requirement." *Lott v. Louisville Metro Gov't*, No. 3:19-CV-271-RGJ, 2021 WL 1031008, at *10 (W.D. Ky. Mar. 17, 2021) (alteration in original) (quoting *Garner Props. & Mgmt., LLC v. City of Inkster*, 333 F.R.D. 614, 622 (E.D. Mich. 2020)). The numerosity requirement is thus satisfied here. *See id.*

**2. Commonality**

"Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury . . . the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation." *Id.* at *11 (internal citations omitted). The class members here "were subjected to the same alleged illegal policies and practices to which Plaintiff was subjected." (D.N. 70-2, PageID.648 ¶ 38) The commonality requirement is therefore satisfied. *See Lott*, 2021 WL 1031008, at *11.

**3. Typicality**

"A claim is typical if 'it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if [Southard's] claims are based on the same legal theory.'" *Id.* at *13 (quoting *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 561 (6th Cir. 2007)). Southard allegedly suffered the same injury as the other class members, and "the legal standards and requirements for proving his wage-and-hour claims are the same for Plaintiff and the Class Members." (D.N. 70-2, PageID.648 ¶ 38) The typicality requirement is therefore met. *See Lott*, 2021 WL 1031008, at *13.

**4. Adequacy of Representation**

The Sixth Circuit "looks to two criteria for determining adequacy of representation: '1) the representative must have common interests with unnamed members of the class, and 2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel.'" *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 543 (6th Cir. 2012) (quoting *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1083 (6th Cir. 1996)). This inquiry "tests 'the experience and ability of counsel for the plaintiff[] and whether there is any antagonism between the interests of the plaintiff[] and other members of the class [he] seek[s] to represent.'" *Carter v. Arkema, Inc.*, No. 3:13-CV-1241-JHM, 2018 WL 1613787, at *4 (W.D. Ky. Apr. 3, 2018) (quoting *In re Am. Med.*, 75 F.3d at 1083).

Here, as to the first criterion, Southard and the proposed class members "were all subject[ed] to the same alleged illegal policies and practices that form the basis of the claims asserted in this case." (D.N. 70-2, PageID.648 ¶ 38) Thus, there appear to be no conflicts of interest between Southard and the class. *See Kuchar v. Saber Healthcare Holdings LLC*, 340 F.R.D. 115, 122 (N.D. Ohio 2021) (finding that the plaintiff's interests were "aligned with the class" because the plaintiff alleged the same injury as the class and sought "the same relief that the class members would likely pursue"). Concerning the second criterion, proposed class counsel "has considerable experience as lead counsel in wage-and-hour class-action litigation," and "Plaintiff and Class Counsel have conducted a settlement conference and extensive negotiations, [and] engaged in significant discovery, including reviewing Defendant's time and pay records." (D.N. 70-2, PageID.646–47 ¶ 32) Because proposed class counsel is qualified and has "competently litigated the case up to this point," the second criterion is met. *Kuchar*, 340 F.R.D. at 122. In sum, the adequate-representation requirement is satisfied. *See Hyland v. Homeservices*

*of Am., Inc.*, No. 3:05-CV-612-R, 2008 WL 4858202, at *4 (W.D. Ky. Nov. 7, 2008) (finding adequate representation where "Plaintiffs suffered the same alleged injury as the class members" and the plaintiffs' experienced counsel had "diligently prosecuted th[e] action"); *see also Lott*, 2021 WL 1031008, at *14 (finding proposed class counsel to be "experienced and competent litigators" where counsel provided an uncontested and "detailed history of their relevant experience in litigating complex cases").

**5. Predominance and Superiority**

"[T]o qualify for certification under Rule 23(b)(3), the proposed class 'must satisfy a two-part test of commonality and superiority and should only be certified if doing so would achieve economies of time, effort, and expense.'" *Lott*, 2021 WL 1031008, at *15 (quoting *Cochran v. Oxy Vinyls LP*, No. CIV. A. 306CV-364-H, 2008 WL 4146383, at *11 (W.D. Ky. Sept. 2, 2008)). The commonality requirement tracks subdivision (a)(2) but "contains a more stringent requirement that common issues 'predominate' over individual issues," which is satisfied by showing "that the issues in the class action that are subject to generalized proof . . . predominate over those issues that are subject only to generalized proof." *Id.* (omission in original) (internal citations omitted). Here, the issue of whether Newcomb Oil's "policies and practices . . . resulted in Plaintiff and the Class Members working without pay and working without receiving legally required meal and rest breaks" (D.N. 70-2, PageID.649 ¶ 40) predominates over any individual issues. *See Lott*, 2021 WL 1031008, at *17 ("While the amount of damages incurred by each proposed class member may be individualized, the significant and common issue of Defendants' alleged violations outweighs any issues relating to each proposed class member's individual damages."). Superiority also appears to be satisfied because "individual claims might be abandoned given the relatively meager individual damages at stake for some potential class members"; deciding whether Newcomb Oil's policies

violated the relevant wage laws would "both reduce the range of issues and promote judicial economy"; and any "inherent difficulties in managing a class action . . . do not render class action inappropriate" here. *Id.* (collecting cases); *see Papa John's*, 2023 WL 5997294, at *5–6.

**C. Notice to Class Members**

Rule 23 requires that the Court "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." Fed. R. Civ. P. 23(c)(2)(B). Notice to class members must convey the following information "clearly and concisely . . . in plain, easily understood language":

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

*Id.* To satisfy due process, "notice to the class [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.'" *Vassalle*, 708 F.3d at 759 (quoting *UAW*, 497 F.3d at 629). The proposed notice in this case is sufficient: it contains the information required under Rule 23 and "fairly apprise[s] the prospective members of the class of the terms of the proposed settlement' so that class members may come to their own conclusions about whether the settlement serves their interests." *Id.* (quoting *UAW*, 497 F.3d at 629) (*See* D.N. 70-3, PageID.670–675)

**III.**

For the reasons set forth above, and the Court being otherwise sufficiently advised, it is hereby

**ORDERED** as follows:

(1) The unopposed motion for preliminary approval (D.N. 70) is **GRANTED**. The Court approves, as to form and content, the Notice of Class Action Settlement. (D.N. 70-3, PageID.670–75) The Court likewise approves the procedure for Class Members to participate in, to opt out of, and to object to the Settlement as set forth in the Notice.

(2) The following class is conditionally certified for settlement purposes:

> [A]ll current and former hourly non-exempt Five Star convenience store employees, including but not limited to customer service representatives, store attendants, clerks, cashiers, GO Team employees, money counters, inventory team members, or other employees with similar job duties, employed by Defendant in Kentucky at any time from November 9, 2013 until December 16, 2023.

(3) The Court directs the mailing of the Notice of Class Action Settlement by first-class mail or email to the Class Members in accordance with the Implementation Schedule set forth below. The Court finds that the dates selected for the mailing and distribution of the Notice, as set forth in the Implementation Schedule, meet the requirements of due process and provide the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

(4) The Court confirms Plaintiff Michael Southard as Class Representative.

(5) The Court confirms Schneider Wallace Cottrell Konecky, LLP, and its local counsel Kaplan Johnson Abate & Bird LLP as Class Counsel.

(6) The Court confirms CPT Group, Inc. as the Settlement Administrator.

(7) This matter is set for a final fairness hearing on **August 9, 2024, at 10:00 a.m.** at the U.S. Courthouse in Louisville, Kentucky.

(8) This matter shall proceed in accordance with the following Implementation Schedule:

| | | |
|---|---|---|
| a. | Deadline for Defendant to provide the Settlement Administrator with the Class Data | 10 calendar days after issuance of this Order |
| b. | Deadline for Settlement Administrator to mail the Notice to Class Members | 14 calendar days after receiving the Class Data |
| c. | Deadline for Class Members to submit objections to or requests for exclusions from the settlement to the Settlement Administrator | 30 calendar days after mailing of the Class Notice |
| e. | Deadline for Class Counsel to file motion for final approval of settlement; declaration of due diligence; and objections | July 26, 2024 |
| f. | Final Fairness Hearing | August 9, 2024 |
| g. | Deadline for Defendant to fund the Gross Settlement Amount | 10 calendar days after Effective Date |
| h. | Deadline for Settlement Administrator to issue settlement-award checks to Class Members; the service award to the Class Representative; and the attorney fees and costs to Class Counsel (if settlement is effective) | 14 calendar days after Defendant funds Gross Settlement Amount |
| i. | Deadline for Settlement Administrator to send reminder postcard to Participating Class Members with uncashed settlement-award checks | 90 calendar days after date of mailing settlement-award checks |
| j. | Deadline for Class Members to cash settlement-award checks | 180 calendar days after date of mailing settlement-award checks |

(9) Any motions to modify the above schedule shall be filed within **seven (7) days** of entry of this Order. Responses shall be filed within **seven (7) days** thereafter. There shall be **no replies**.

May 10, 2024

**David J. Hale, Judge**
**United States District Court**