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**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

VLADIMIR AMARAUT, *et al*. on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

SPRINT/UNITED MANAGEMENT COMPANY,

Defendants.

Case No. 3:19-cv-00411-WQH-AHG

**DECLARATION OF CAROLYN HUNT COTTRELL IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT**

Hearing Date: February 16, 2021

NO ORAL ARGUMENT UNLESS REQUESTED BY THE COURT

Judge: Hon. William Q. Hayes

Date action filed: February 28, 2019

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Attorneys for Plaintiffs and the
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I, Carolyn Hunt Cottrell, hereby declare as follows:

1. I am an attorney at law duly licensed and in good standing to practice law in the courts of California (No. 166977) and am admitted to practice law before this Court, the United States District Court for the Southern District of California. I am also admitted to the United States District Courts for the Northern, Eastern, and Central Districts of California, the Ninth Circuit Court of Appeals, and I am a member of the Bar of the United States Supreme Court.

2. I am a partner at the law firm of Schneider Wallace Cottrell Konecky LLP ("SWCK"). SWCK specializes in class, collective, and PAGA litigation in state and federal court.

3. I am counsel of record for Vladimir Amaraut, Katherine Almonte, Kristopher Fox, Dylan McCollum, Quinn Myers, and Marissa Painter, on behalf of themselves and all others similarly situated ("Plaintiffs"), in the above-captioned case. SWCK has litigated this case together with co-counsel Shavitz Law Group, P.A.

4. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class and Collective Action Settlement. I am familiar with the file, the documents, and the history related to this case. The following statements are based on my personal knowledge and review of the files. If called to do so, I could and would testify competently thereto.

5. A true and correct copy of the fully-executed Class and Collective Action Settlement Agreement and Release (the "Settlement Agreement" or the "Settlement") is attached hereto as **Exhibit 1**. The Notice of Class Action Settlement and Hearing Date for Court Approval ("Class Notice"), the Notice of Collective Action Settlement ("Collective Notice"), and the Notice of Class and Collective Action Settlement and Hearing Date for Court Approval ("Class/Collective Notice") (collectively, the "Notices of Settlement") are attached to the Settlement as **Exhibits A-C**, respectively.

## QUALIFICATIONS, EXPERIENCE, AND EXPERTISE

6. SWCK is regarded as one of the leading private plaintiff's firms in wage and hour class actions and employment class actions. In November 2012, the Recorder listed the firm as one of the "top 10 go-to plaintiffs' employment firms in Northern California." The partners and attorneys have litigated major wage and hour class actions, have won several prestigious awards, and sit on important boards and committees in the legal community. SWCK was founded by Todd Schneider in 1993, and I have been a member of the firm since 1995.

7. SWCK has acted or is acting as class counsel in numerous cases. A partial list of cases which have been certified and/or settled as class actions includes: *Lowe v. Popcornopolis, LLC* (Case No. 2:19-cv-06984-PSG-RAO) (Central District of California, December 15, 2020) (final approval of a hybrid Fair Labor Standards Act and California Labor Code Rule 23 action); *Jones, et al. v. CertifiedSafety, Inc.* (Case No. 3:17-cv-02229-EMC) (Northern District of California, June 1, 2020) (final approval of a hybrid Fair Labor Standards Act and California, Washington, Illinois, Minnesota, Alaska, and Ohio law Rule 23 action with joint employer allegations); *El Pollo Loco Wage and Hour Cases* (Case No. JCCP 4957) (Orange County Superior Court, January 31, 2020) (final approval of a class action settlement for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements, under California law); *Soto, et al. v. O.C. Communications, Inc., et al.* (Case No. 3:17-cv-00251-VC) (Northern District of California, Oct. 23, 2019) (final approval of a hybrid Fair Labor Standards Act and California and Washington law Rule 23 action with joint employer allegations); *Manni v. Eugene N. Gordon, Inc. d/b/a La-Z-Boy Furniture Galleries* (Case No. 34-2017-00223592) (Sacramento Superior Court) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, waiting time penalties, and failure to provide itemized wage statements, under

California law); *Van Liew v. North Star Emergency Services, Inc., et al.* (Case No. RG17876878) (Alameda County Superior Court) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to reimburse for necessary business expenditures, waiting time penalties, and failure to provide itemized wage statements, under federal law); *Asalati v. Intel Corp.* (Case No. 16cv302615) (Santa Clara Superior Court) (final approval of a class and collective action settlement for failure to pay for all hours worked, failure to pay overtime, failure to provide meal and rest breaks, failure to reimburse for necessary business expenditures, failure to adhere to California record keeping requirements, waiting time penalties, and failure to provide itemized wage statements, under federal and California law); *Harmon, et al. v. Diamond Wireless, LLC*, (Case No. 34-2012-00118898) (Sacramento Superior Court) (final approval of a class action settlement for failure to pay wages free and clear, failure to pay overtime and minimum wages, failure to provide meal and rest breaks, failure to pay full wages when due, failure to adhere to California record keeping requirements, and failure to provide adequate seating, under California law); *Aguilar v. Hall AG Enterprises, Inc., et al.*, (Case No. BCV-16-10994-DRL) (Kern County Superior Court) (final approval of a class action settlement for failure to provide meal and rest periods, failure to compensate for all hours worked, failure to pay minimum and overtime wages, waiting time penalties, failure to provide itemized wage statements, and failure to pay undiscounted wages, under California law); *Viceral and Krueger v. Mistras Group, Inc.*, (Case No. 3:15-cv-02198-EMC) (Chen, J.) (Northern District of California) (final approval of a class and collective action settlement for failure to compensate for all hours worked, including overtime, under federal and California law); *Jeter-Polk, et al. v. Casual Male Store, LLC, et al.*, (Case No. 5:14-CV-00891) (Central District of California) (final approval of a class action settlement for failure to provide meal and rest periods, failure to compensate for all hours worked, failure to pay overtime wages, unpaid

wages and waiting time penalties, and failure to provide itemized wage statements); *Meza, et al. v. S.S. Skikos, Inc., et al.,* (Case No. 15-cv-01889-TEH) (Northern District of California) (final approval of class and collective action settlement for failure to compensate for all hours worked, including overtime, under federal and California law, failure to provide meal and rest breaks, failure to reimburse for necessary business uniforms, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Holmes, et al v. Xpress Global Systems, Inc.,* (Case No. 34-2015-00180822) (Sacramento Superior Court) (final approval of a class action settlement for failure to provide meal and rest breaks and failure to provide accurate itemized wage statements); *Guilbaud, et al. v. Sprint Nextel Corp. et al.,* (Case No. 3:13-cv-04357-VC) (Northern District of California) (final approval of a class and collective action settlement for failure to compensate for all hours worked, including overtime, failure to provide meal and rest breaks, failure to reimburse for necessary business uniforms, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Molina, et al. v. Railworks Track Systems, Inc.,* (Case No. BCV-15-10135) (Kern County Superior Court) (final approval of a class action settlement for failure to provide meal and rest breaks, unpaid wages, unpaid overtime, off-the-clocker work, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements); *Allen, et al. v. County of Monterey, et al.*, (Case No. 5:13-cv-01659) (Northern District of California) (settlement between FLSA Plaintiffs and Defendant to provide relief to affected employees); *Barrera v. Radix Cable Holdings, Inc., et al.*, (Case No. CIV 1100505) (Marin County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, off-the-clock work by, failure to provide overtime compensation to, failure to reimburse business expenditures to, failure to pay full wages upon termination to, and failure to provide accurate itemized wage statements to retention specialists working for cable companies); *Glass Dimensions, Inc., et al. v. State Street Corp. et al.*, (Case No. 1:10-cv-10588) (District of

Massachusetts) (final approval of class action settlement for claims of breach of fiduciary duty and self-dealing in violation of ERISA); *Friend, et al. v. The Hertz Corporation*, (Case No. 3:07-052222) (Northern District of California) (settlement of claims that rental car company misclassified non-exempt employees, failed to pay wages, failed to pay premium pay, and failed to provide meal periods and rest periods); *Hollands v. Lincare, Inc., et al.*, (Case No. CGC-07-465052) (San Francisco County Superior Court) (final approval of class action settlement for overtime pay, off-the-clock work, unreimbursed expenses, and other wage and hour claims on behalf of a class of center managers); *Jantz, et al. v. Colvin*, (Case No. 531-2006-00276X) (In the Equal Employment Opportunity Commission Baltimore Field Office) (final approval of class action settlement for the denial of promotions based on targeted disabilities); *Shemaria v. County of Marin*, (Case No. CV 082718) (Marin County Superior Court) (final approval of class action settlement on behalf of a class of individuals with mobility disabilities denied access to various facilities owned, operated, and/or maintained by the County of Marin); *Perez, et al. v. First American Title Ins. Co.*, (Case No. 2:08-cv-01184) (District of Arizona) (final approval of class action settlement in action challenging unfair discrimination by title insurance company); *Perez v. Rue21, Inc., et al.*, (Case No. CISCV167815) (Santa Cruz County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of retail employees); *Sosa, et al. v. Dreyer's Grand Ice Cream, Inc., et al.*, (Case No. RG 08424366) (Alameda County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of ice cream manufacturing employees); *Villalpando v. Exel Direct Inc., et al.* (Case Nos. 3:12-cv-04137 and 4:13-cv-03091) (Northern District of California) (certified class action on behalf of delivery drivers allegedly misclassified as independent contractors); *Choul, et al. v. Nebraska Beef, Ltd.* (Case Nos. 8:08-cv-90, 8:08-cv-99) (District of Nebraska) (final approval of class action settlement for off-the-clock work by, and failure to

provide overtime compensation to, production-line employees of meat-packing plant); *Morales v. Farmland Foods, Inc.* (Case No. 8:08-cv-504) (District of Nebraska) (FLSA certification for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Barlow, et al. v. PRN Ambulance Inc.* (Case No. BC396728) (Los Angeles County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to and for off-the-clock work by certified emergency medical technicians); *Espinosa, et al. v. National Beef, et al.* (Case No. ECU0467) (Imperial Superior Court) (final approval of class action settlement for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Wolfe, et al. v. California Check Cashing Stores, LLC, et al.* (Case Nos. CGC-08-479518 and CGC-09-489635) (San Francisco Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work by, employees at check cashing stores); *Carlson v. eHarmony* (Case No. BC371958) (Los Angeles County Superior Court) (final approval of class action settlement on behalf of gays and lesbians who were denied use of eHarmony); *Salcido v. Cargill* (Case Nos. 1:07-CV-01347-LJO-GSA,1:08-CV-00605-LJO-GSA) (Eastern District of California) (final approval of class action settlement for off-the-clock work by production-line employees of meat-packing plant); *Elkin v. Six Flags* (Case No. BC342633) (Los Angeles County Superior Court) (final approval of class action settlement for missed meal and rest periods on behalf of hourly workers at Six Flags amusement parks); *Jimenez v. Perot Systems Corp.* (Case No. RG07335321) (Alameda County Superior Court) (final approval of class action settlement for misclassification of hospital clerical workers); *Chau v. CVS RX Services, Inc.* (Case No. BC349224) (Los Angeles County Superior Court) (final approval of class action settlement for failure to pay overtime to CVS pharmacists); *Reed v. CALSTAR* (Case No. RG04155105) (Alameda County Superior Court) (certified class action on behalf of flight nurses); *National Federation of the Blind v. Target* (Case No. C 06-01802

MHP) (N.D. Cal.) (certified class action on behalf of all legally blind individuals in the United States who have tried to access Target.com); *Bates v. United Parcel Service, Inc.* (2004 WL 2370633) (N.D. Cal.) (certified national class action on behalf of deaf employees of UPS); *Satchell v. FedEx Express, Inc.* (Case No. 03-02659 SI) (N.D. Cal.) (certified regional class action alleging widespread discrimination within FedEx); *Siddiqi v. Regents of the University of California* (Case No. C-99-0790 SI) (N.D. Cal.) (certified class action in favor of deaf plaintiffs alleging disability access violations at the University of California); *Lopez v. San Francisco Unified School District* (Case No. C-99-03260 SI) (N.D. Cal.) (certified class action in favor of plaintiffs in class action against school district for widespread disability access violations); *Campos v. San Francisco State University* (Case No. C-97-02326 MCC) (N.D. Cal.) (certified class action in favor of disabled plaintiffs for widespread disability access violations); *Singleton v. Regents of the University of California* (Case No. 807233-1) (Alameda County Superior Court) (class settlement for women alleging gender discrimination at Lawrence Livermore National Laboratory); *McMaster v. BCI Coca-Cola Bottling Co.* (Case No. RG04173735) (Alameda County Superior Court) (final approval of class action settlement for drive-time required of Coca-Cola account managers); *Portugal v. Macy's West, Inc.* (Case No. BC324247) (Los Angeles County Superior Court) (California statewide wage and hour "misclassification" class action resulting in a class-wide $3.25 million settlement); *Taormina v. Siebel Systems, Inc.* (Case No. RG05219031) (Alameda County Superior Court) (final approval of class action settlement for misclassification of Siebel's inside sales employees); *Joseph v. The Limited, Inc.* (Case No. CGC-04-437118) (San Francisco County Superior Court) (final approval of class action settlement for failure to provide meal and rest periods to employees of The Limited stores); *Rios v. Siemens Corp.* (Case No. C05-04697 PJH) (N.D. Cal.) (final approval of class action settlement for failure to pay accrued vacation pay upon end of employment); *DeSoto v. Sears, Roebuck & Co.* (Case No. RG0309669) (Alameda County Superior Court) and

*Lenahan v. Sears, Roebuck & Co.* (Case No. 3-02-CV-000045 (SRC) (TJB)) (final approval of class action settlement for failure to pay Sears drivers for all hours worked); among many others.

8. Nearly my entire legal career has been devoted to advocating for the rights of individuals who have been subjected to illegal pay policies, discrimination, harassment and retaliation and representing employees in wage and hour and discrimination class actions. I have litigated hundreds of wage and hour, employment discrimination and civil-rights actions, and I manage many of the firm's current cases in these areas. I am a member of the State Bar of California, and have had memberships with Public Justice, the National Employment Lawyers Association, the California Employment Lawyers Association, and the Consumer Attorneys of California. I served on the Board of Directors for the San Francisco Trial Lawyers Association and co-chaired its Women's Caucus. I was named one of the "Top Women Litigators for 2010" by the Daily Journal. In 2012, I was nominated for Woman Trial Lawyer of the Year by the Consumer Attorneys of California. I have been selected as a Super Lawyer every year since 2014. I earned my Bachelor's degree from the University of California, and I am a graduate of the University of the Pacific, McGeorge School of Law.

## FACTUAL BACKGROUND

9. Defendant Sprint/United Management Company was a cellular-phone service provider and retailer of phones, plans, and related accessories. Prior to its acquisition by T-Mobile, Sprint was the fourth-largest mobile-network operator in the United States.

10. Sprint's non-exempt employees, who held various positions including Retail Consultant, Lead Retail Consultant, Sales Representative, Keyholder, Assistant Manager, and other such positions outlined more fully in the Settlement Agreement,

carried out the core sales and support roles at its retail stores.[1] Though variously titled, the primary duties of each of these positions was to sell and set up cellular phones, devices, accessories, and related service plans, assist customers with phone and service issues, troubleshoot equipment issues, making repairs to broken phones and devices, process insurance claims, monitor customer traffic within the store, and sell related products and services to Sprint's customers..

11. Plaintiffs allege that Class Members—who worked difficult hours in a demanding retail setting—experienced wage and hour violations in their work with Sprint. In particular, Plaintiffs allege that the Class Members experienced significant amounts of off-the-clock work, including:

- Unlocking the store and disengaging Sprint's alarm system (opening shifts);
- Logging into Sprint's computer system and timekeeping system;
- Waiting for all employees to clock out to leave together, locking doors, and setting Sprint's alarm system (closing shifts);
- Taking phone calls from managers, employees and customers;
- Communicating with managers and employees via mobile messaging applications (e.g., "GroupMe");
- Submitting expense reports and job-related paperwork;
- Attending mandatory conference calls; and
- Working during meal breaks

12. Plaintiffs further allege that the Class Members could not take timely, full, off-duty meal and rest periods, due to a lack of break relief and the demands of the customer-focused retail environment.

13. As a result of these alleged violations, Plaintiffs allege that Defendant systematically violated the Fair Labor Standards Act, as well as the state laws of Arizona, Colorado, New York, Ohio, and Washington.[2]

[1] Plaintiffs and members of the proposed Classes and Collective are referred to hereafter as "Class Members" or "retail employees" for ease of reading.

[2] Plaintiff McCollum represents the Arizona Class, Plaintiff Quinn Myers represents the Colorado Class, Plaintiff Katherine Almonte represents the New York Class, Plaintiff Kristopher Fox represents the Ohio Class, and Plaintiff Marissa Painter as represents the Washington Class. Plaintiff Amaraut represents the nationwide Fair Labor Standards Act Collective.

## PROCEDURAL HISTORY

14. Plaintiff Vladimir Amaraut filed this Lawsuit on February 28, 2019.

15. In mid-2019, the Shavitz Law Group, P.A. was separately investigating an FLSA case against Sprint and identified that Plaintiff Amaraut and his counsel were also pursuing the nationwide FLSA claim. The Plaintiffs and firms agreed to jointly prosecute the claims. Plaintiffs filed their First Amended Complaint ("FAC") on November 1, 2019.

16. Going back to the Rule 26(f) conference on April 24, 2019 and the Early Neutral Evaluation on May 14, 2019, the Parties discussed the possibility of early mediation.

17. The Parties agreed to use renowned mediator Mark Rudy on August 20, 2019 and obtained a March 2020 mediation date. The Parties lodged their joint mediation plan with Magistrate Judge Allison H. Goddard, setting forth the mediation date and outlining agreed-upon mediation discovery, on October 23, 2019.[3]

18. The Parties also agreed to stipulate to FLSA conditional certification to shape the scope of the representative FLSA claim prior to mediation. Given the nationwide scope of the Collective, the FLSA notice and opt-in form were ultimately sent to over 34,000 individuals, via U.S. Mail, email, and/or text message.

19. The FLSA notice process was vigorously disputed with significant motion practice. On November 20, 2019, Defendant's counsel advised that Defendant was experiencing difficulty in assembling the personal email addresses for the potential Collective members.

20. Ahead of the December 13, 2019 deadline for notice dissemination, Defendant provided the notice administrator, Heffler Claims Group ("Heffler") with name and mailing addresses for approximately 33,000 workers but provided personal email addresses for 7,983 of these persons. Plaintiffs' counsel insisted that Defendant

[3] Judge Goddard assisted the Parties in negotiating the specific contours of the mediation discovery, including at the Status Conference on February 24, 2020.

provide personal email addresses for the remaining individuals, citing the joint motion and Court's order granting conditional certification, and negotiations leading thereto.

21. In the interest of disseminating notice while the limitations period continued to run, Plaintiffs permitted the notice process to proceed to the extent possible. Heffler then disseminated the notice and opt-in form to 32,995 recipients via U.S. Mail and to 7,983 recipients via email on December 13, 2019.

22. After a status conference with Judge Goddard on December 18, 2020, Defendant offered to provide the sprint.com work email addresses to the notice administrator as a means to provide further electronic notice. Plaintiffs agreed to this but maintained that electronic notice to personal email addresses or via text message was still required. In the second round of notice, the FLSA notice and opt-in form were sent to the sprint.com work email addresses on December 27, 2019.

23. As a result of the Court's order on Plaintiffs' motion for corrective sanctions regarding the FLSA notice process and subsequent negotiations between the Parties, Heffler issued the additional round of corrective notice on April 23, 2020. Heffler issued email notice to all personal email addresses that Sprint provided and text message notice where necessary. Additionally, Heffler issued U.S. Mail and electronic notice to approximately 1,379 individuals that the Parties identified were improperly excluded from the first and second rounds of notice on the basis of other wage and hour actions.

24. Across the three rounds of notice, Heffler sent over 34,000 notices via U.S. Mail, over 82,000 email notices, and over 4,700 text message notices. The 82,000 email notices include notices to both personal email addresses and sprint.com work email addresses, and reflect that thousands of potential Collective members were sent email notice on more than one occasion across the three rounds of notice.

25. The Parties have engaged in extensive discovery, including voluminous formal discovery and informal mediation discovery.

26. Plaintiff Amaraut served his first set of formal discovery requests on June 25, 2019, which sought documents and information pertaining to the putative California Class and putative FLSA Collective. These requests included 101 document requests and 17 special interrogatories. Defendant served initial responses on August 16, 2019. Following detailed meet and confer, the Parties agreed to continue the motion to compel deadlines until after the planned March 24, 2020 mediation.

27. Plaintiffs moved to compel Defendant's responses to Plaintiff Amaraut's Requests for Production of Documents Nos. 1 and 2 and Special Interrogatories Nos. 1 and 2, which sought name, contact information, and other basic information for all members of the putative California Class and all potential members of the FLSA Collective. After the Court's ruling on the motion to compel, Defendant thereafter produced full responses to these requests on January 21, 2020.

28. Defendant served formal requests on all six Plaintiffs on February 10, 2020, numbering approximately 100 document requests and 20 special interrogatories for each Plaintiff.

29. Plaintiffs served additional requests on February 12, 2020, which sought documents and information pertaining to the putative Arizona, Colorado, New York, Ohio, and Washington Classes. Five Plaintiffs each served approximately 60 document requests and 15 special interrogatories pertaining to their respective putative Classes.

30. Plaintiffs responded to Defendant's discovery requests on March 27, 2020.

31. Defendant responded to Plaintiffs' requests on March 30, 2020.

32. The Parties then engaged in extensive further meet and confer, including telephonic communications and written correspondence, as to all of the outstanding discovery. As the Parties were unable to resolve various issues in dispute, the Court conducted numerous discovery proceedings.

33. Judge Goddard held a lengthy discovery conference on May 1, 2020, after which she ordered the Parties to continue meet and confer and to file a joint status report setting forth all of the issues remaining in dispute. The Parties filed this status report, which was almost 1,000 pages long, on May 29, 2020

34. The Court held a further discovery conference on June 19, 2020, after it exhaustively reviewed the Parties' joint status report. At this conference, the Court provided detailed written input on the disputes and ordered the Parties to further confer and lodge an update joint status report. The Parties lodged the updated report on June 30, 2020, and the Court held further discovery conferences on July 1 and July 6, 2020.

35. The Court ordered the Parties to supplement their written responses by July 15, 2020, and to provide a summary of which responses were supplemented and which were still at issue on that date. The Parties served supplemental responses on July 15, 2020.

36. To date, Defendant has produced over 6,300 documents, including written policies and practices, handbooks, compensation plans, job descriptions, class and collective lists, trainings, timekeeping and payroll documents, and settlements from other cases, as well as dozens of interrogatory responses. Additionally, pursuant to the mediation plan lodged with the Court, Defendant commenced production of the mediation discovery data in February 2020. Defendant has informally produced dozens of spreadsheets containing the timekeeping and payroll data for Opt-In Plaintiffs and for a 10% sample of each putative Class. Defendant provided Class-wide summary figures, including the total number of Class members, number of workweeks, and additional data points.

37. Plaintiffs have also produced documents and extensive information in response to Defendant's special interrogatories

38. Plaintiffs' counsel have completed extensive outreach with Opt-In Plaintiffs and putative Class Members, including approximately 90 in-depth intakes. The intakes covered topics including dates and locations of work, hours of work,

alleged off-the-clock work, including time spent on work communications outside of shifts, meal and rest break issues, and timekeeping systems. *Id*. Through the outreach process, Plaintiffs garnered substantial factual background and data on alleged violation levels.

39. Together with the information from formal and informal discovery, Plaintiffs' counsel utilized the intake data to perform damages analyses to evaluate Defendant's exposure on a Class and Collective basis.

**MANDATORY SETTLEMENT CONFERENCE, MEDIATION, AND SETTLEMENT**

40. As the March 24, 2020 mediation date with Mark Rudy approached, the Covid-19 pandemic hit with full force. Mr. Rudy notified the Parties on March 12, 2020 that the mediation would take place by videoconference. Defendant declined to proceed with a videoconference mediation at that time, and the Parties were required to reschedule. The Parties later booked a mediation with Jeff Ross, another highly respected mediator of wage and hour actions, for July 27, 2020.

41. Judge Goddard ordered the Parties to complete a Mandatory Settlement Conference ("MSC") with the Court after the March 2020 mediation date was continued. In advance of the May 13, 2020 MSC, the Parties exchanged settlement demands and provided detailed briefing and analysis to the Court. The Parties were not able to negotiate a settlement at the MSC, but it was beneficial in helping the Parties to clarify their positions and focus the negotiations at the ensuing private mediation.

42. On July 27, 2020, the Parties participated in their long-awaited mediation session with Jeff Ross, a renowned and experienced wage and hour mediator. The session lasted some 11 hours; at the end of the night, Mr. Ross issued a mediator's proposal that contained the essential terms of the instant Settlement. All Parties accepted the proposal on July 31, 2020.

43. Ultimately, the Parties agreed to resolve the FLSA claims and the Arizona, Colorado, New York, Ohio, and Washington law claims in this Lawsuit, while the California claims are being resolved in *Navarrete v. Sprint/United Management Company, et al.*, Case No. 8:19-cv-00794-AG-ADS (C.D. Cal.) ("*Navarrete*"). Plaintiff Amaraut will opt out of the *Navarrete* settlement following its preliminary approval. Plaintiff Amaraut opted out of the certified class action *Caudle v. Sprint/United Mgmt. Co.*. Case No. 3:17-cv-06874-WHA (N.D. Cal.) on February 22, 2019.

44. Throughout the mediation process, the Parties engaged in serious and arm's-length negotiations, culminating in the mediator's proposal.

45. Counsel then engaged in a multi-month drafting process to finalize the proposed long-form Settlement and corresponding notice documents, subject to the Court's approval. The Settlement is complex—involving hybrid Rule 23 and FLSA claims, numerous classes, and an interplay with the *Navarrete* settlement—and the drafting process was lengthy. As with all facets of the Lawsuit, the Settlement language was vigorously disputed, and the Parties reached impasse on several issues that were resolved with the involvement of Mr. Ross. After an initial draft was completed, 11 sets of subsequent edits were required to arrive at an agreement that was acceptable to all Parties and counsel, along with a separate drafting and revision process for the Class, Collective, and Class/Collective Notices

46. The Settlement Agreement was fully executed on December 10, 2020.

47. The Parties have agreed that Plaintiffs will amend the Operative Complaint to substitute Opt-In Plaintiff Marissa Painter as the Class Representative for the putative Washington class, and file the accompanying stipulation and proposed Second Amended Complaint ("SAC") herewith. Ms. Painter agreed to serve as the Washington Class Representative on June 12, 2020, and the Parties agreed to her substitution in the settlement context.

## THE SETTLEMENT

### Basic Terms and Value of the Settlement

48. Sprint has agreed to pay a non-reversionary Maximum Gross Settlement Amount of $7,600,000.00 to settle the FLSA claims and the Arizona, Colorado, New York, Ohio, and Washington state law claims. The Net Settlement Amount, which is the amount available to pay settlement awards to the Collective and Class Members, is defined as the Maximum Gross Settlement Amount less: any enhancement payments awarded to the Class Representatives (up to $15,000.00 for Plaintiff Amaraut; and up to $10,000.00 each for Plaintiffs Almonte, Fox, McCollum, Myers, and Painter); the Settlement Administrator's fees and costs (estimated at $99,921.00); the Individual Amaraut Allocation[4] as approved by the Court (up to $3,999.00); and any attorneys' fees and costs awarded to Plaintiffs' counsel (fees of up to 33.33% of the Maximum Gross Settlement Amount, or $2,533,080.00, plus costs[5] not to exceed $120,000.00).

49. The Gross Settlement Amount is a negotiated amount that resulted from substantial arms' length negotiations and significant investigation and analysis by Plaintiffs' counsel. Plaintiffs' counsel based their damages analysis and settlement negotiations on formal and informal discovery, including the payroll and timekeeping data, documentary evidence, and approximately 90 interviews with retail employees.

50. Plaintiffs' counsel used workweek, rate of pay, and other data in conjunction with estimates of unpaid time to determine estimated damages for off-the-clock and overtime violations. Based on outreach analysis, Plaintiffs applied an aggressive damage assumption of 2 hours of provable off-the-clock time per week,

[4] The Individual Amaraut Allocation is for Plaintiff Amaraut's release of California Labor Code claims against Sprint that he pleaded in the Lawsuit and releases on an individual basis. Plaintiff Amaraut would have received compensation for those claims under the *Caudle* and *Navarrete* settlements. The Individual Amaraut Allocation was determined by analyzing Plaintiff Amaraut's individual California Labor Code damages and discounting that amount by the same factor as the total Class and Collective exposure; the resulting $3,999 amount is roughly comparable to the amount that Plaintiff Amaraut would have received from the *Caudle* and *Navarrete* settlements.

[5] The attorneys' costs include $93,658.00 in FLSA notice administration costs.

along with each retail employees experiencing meal and rest period violations in 50% of their shifts.

51. Using these assumptions and further assuming that Plaintiffs and the Class Members would certify all of their claims and prevail at trial, Plaintiffs' counsel calculated the total potential exposure if Plaintiffs fully prevailed on all of their claims—inclusive of derivative and penalties claims[6]—at approximately $46.6 million. The total amount of damages is broken down as follows

52. Plaintiffs calculated that unpaid wages owed, based on the assumption of 2 hours of off-the-clock work in each workweek and inclusive of overtime, would total approximately $29.9 million for all Opt-In Plaintiffs and Class Members covered by the Settlement. The bulk of these unpaid wages ($13.9 million) are owed to the approximately 4,753 FLSA Opt-In Plaintiffs.[7] Approximately $8.0 million in unpaid wages are owed to the approximately 2,650 New York Class Members.[8] Additionally, approximately $3.4 million is owed to the approximately 1,035 Ohio Class Members, approximately $1.7 million is owed to the approximately 640 Colorado Class Members, approximately $1.6 million is owed to the approximately 550 Washington Class Members, and approximately $1.0 million is owed to the approximately 460 Arizona Class Members.

53. Colorado, New York, and Washington Class Members are also able to recover for meal and rest break violations. Based on the aggressive assumption that Plaintiffs could establish that 50% of meal and rest periods are missed or otherwise non-compliant, New York Class Members are owed approximately $4.4 million, Colorado Class Members are owed approximately $980,000, and Washington Class

[6] In this analysis, Plaintiffs assess 1x further damages for jurisdictions with treble damages statutes, but do not otherwise liquidate damages.

[7] Plaintiffs apply a three-year limitations period for the FLSA claim, although this would be, and has been, vehemently disputed by Defendant.

[8] New York Law provides a lengthy six-year statute of limitations period for unpaid wage claims, resulting in a relatively high number of Class Members and higher average per-Class Member recoveries.

Members are owed approximately $925,000 for break violations. Additionally, Plaintiffs calculate further penalties under the New York Labor Law at approximately $6.6 million, under Washington law at approximately $2.6 million, and Arizona law at approximately $1.0 million.

54. Totaling the estimated damages for unpaid wages of $29.9 million, the meal and rest break damages of $6.4 million, and further penalties of $10.3 million yields the total estimated exposure of approximately $46.6 million.

55. The negotiated non-reversionary Maximum Gross Settlement Amount of $7,600,000.00 represents more than 25% of the approximately $29.9 million that Plaintiffs calculated for the core unpaid wages claims. When adding meal and rest period exposure and potential penalties, the $7,600,000 million settlement amount represents approximately 16.3% of Defendant's total potential exposure of $46.6 million. These figures are based on Plaintiffs' assessment of a best-case-scenario. To have obtained such a result at trial, Plaintiffs would have had to prove that all Class Members experienced the violations at the levels described above for every shift and every workweek

56. Plaintiffs and their counsel considered the significant risks of continued litigation, described hereinafter, when considering the proposed Settlement. These risks were front and center, particularly given the nature of the off-the-clock work and that the retail employees worked in hundreds of varying locations, under differing supervisors and managers, which would invariably complicate certification efforts and proving the claims on the merits. The types of off-the-clock work at issue also entail evidentiary issues as to the violation levels that could be established, particularly with respect to after-hours communications.

57. In contrast, the Settlement will result in immediate and certain payment to Opt-In Plaintiffs and Class Members of meaningful amounts. The average overall gross recovery is approximately $807.00 per participating retail employee, and the

average overall net recovery is approximately $507.00 per person.[9] *Id*. This amount provides significant compensation to the Collective and Class Members, and the Settlement provides an excellent recovery in the face of highly uncertain litigation. In light of all of the risks, the settlement amount is fair, reasonable, and adequate.

**Class and Collective Definitions**

58. An individual is eligible to share in the proposed Settlement if he or she belongs to any of the following:

- The Putative **Arizona** Class includes any current or former non-exempt employee of Defendant working in Sprint's retail establishments in the state of Arizona from February 28, 2018 through December 31, 2020.
- The Putative **Colorado, Ohio, and Washington** Classes includes any current or former non-exempt employee of Defendant working in Sprint's retail establishments in those respective states from February 28, 2016 through December 31, 2020.
- The Putative **New York** Class includes any current or former non-exempt employee of Defendant working in Sprint's retail establishments in the state of New York from February 28, 2013 through December 31, 2020.
- **Opt-In Plaintiffs** are all persons nationwide that were employed by Defendant as a retail non-exempt employee from February 28, 2016 through December 31, 2020, who have filed (and not withdrawn) a consent-to-join form as of the date of filing of this motion.

**Allocations and Awards**

59. The Net Settlement Amount to be paid to Class Members is approximately $4,778,000.00. The Parties allocated the Net Settlement Amount to the Collective and respective Classes based on Plaintiffs' exposure analysis, which reflects the differences in class sizes, number of workweeks, and wage and hour laws across the

[9] These amounts divide Maximum Gross Settlement Amount and the Net Settlement Amount, respectively, by the approximately 9,450 unique Opt-In Plaintiffs and Class Members. The recoveries under this Settlement compare favorably with the recoveries under the *Navarrete* settlement, where the gross settlement amount is $2,750,000.00 for approximately 5,700 California class members.

jurisdictions. 70% of the Net Settlement Amount is allocated to the state law Classes (the "Class Net Settlement Amount," approximately $3,344,600.00) and 30% is allocated to the Collective (the "FLSA Net Settlement Amount," approximately $1,433,400.00). Settlement Agreement, ¶ IV.E.

60. The Class Net Settlement Amount is further allocated as follows: 6.6% to the Putative Arizona Class (approximately $220,743), 8.4% to the Putative Colorado Class (approximately $280,946), 58.8% to the Putative New York Class (approximately $1,966,624), 10.3% to the Putative Ohio Class (approximately $344,493), and 15.9% to the Putative Washington Class (approximately $531,791). Settlement Agreement, ¶ IV.E.

61. Class Members will each receive a settlement award check without the need to submit a claim form. Settlement Agreement, ¶ VI.A. Each Collective and Class Member will receive a settlement share from the applicable Class Net Settlement Amount and/or FLSA Net Settlement Amount, based on the number of weeks that the individual worked for Defendant during the applicable Settlement Period(s) in comparison to the total number of workweeks for that jurisdiction.[10] Settlement Agreement, ¶ IV.E. Individuals that are both Opt-In Plaintiffs and Settlement Class Members will be eligible to receive a share from the FLSA Net Settlement Amount and additionally a share from their respective state law Class. Settlement Agreement, ¶ IV.E.

62. The average net recovery is approximately $477 for Putative Arizona Class Members, $438 for Putative Colorado Class Members, $740 for Putative New York Class Members, $332 for Putative Ohio Class Members, $972 for Putative Washington Class Members, and $301 for FLSA Opt-In Plaintiffs.

63. The Class, Collective, and Class/Collective Notices will provide the estimated Payout Calculation and number of workweeks for each Collective and Class

[10].

Member, assuming full participation in the Settlement. Settlement Agreement, Exhs. A-C. Settlement award and eligibility determinations will be based on employee workweek information, the data for which Sprint will provide to the Settlement Administrator; however, retail employees will be able to dispute their workweeks by submitting evidence that they worked more workweeks than shown by Sprint's records. Settlement Agreement, ¶ IV.C.

64. Defendant is to fund the Settlement within 30 business days after the occurrence of the "Effective Date," and Heffler is to distribute the payments within 10 business days thereafter. Settlement Agreement, ¶ VII.A-B. Settlement award checks will remain valid for 120 days from the date of their issuance. Settlement Agreement, ¶ IV.E. Uncashed check funds attributable to the Class Net Settlement Amount will be redistributed to those Settlement Class Members that negotiated their Settlement checks, and uncashed check funds attributable to the FLSA Net Settlement Amount will be redistributed to those Opt-In Plaintiffs that negotiated their Settlement checks. If the uncashed check funds are *de minimis*, or if there are remaining uncashed check funds after the redistribution, they will revert to the *cy pres* recipient. The Parties propose the State Bar of California's Justice Gap Fund as the *cy pres* recipient.

**Scope of Release**

65. The releases contemplated by the proposed Settlement are dependent upon whether the Participating Individual is an Opt-In Plaintiff and/or a Settlement Class Member, and are tethered to the factual allegations.

66. Opt-In Plaintiffs will release any and all claims under the FLSA relating to the allegations that were asserted, or could have been asserted, in the Lawsuit, through and including December 31, 2020, as detailed further in the Settlement Agreement. Settlement Agreement, ¶ II.19. The release of claims by each Opt-In Plaintiff extends to FLSA claims that are asserted or could have been asserted based on the same factual predicate alleged in the Complaint. Opt-In Plaintiffs do not release

any state law claims, except to the extent that they may also be Settlement Class Members.

67. Settlement Class Members will release any and all claims under the state laws of Arizona, Colorado, New York, Ohio, and Washington, relating to the allegations that were asserted, or could have been asserted, in the Lawsuit, through and including December 31, 2020. Settlement Agreement, ¶ II.30. The release includes any wage and hour claim that could have been asserted under the respective Arizona, Colorado, New York, Ohio, and Washington state wage and hour law, or any other equivalent federal law or local law, and thus encompasses the FLSA claim, as detailed further in the Settlement Agreement. The release of claims by each Settlement Class Member extends to claims that are asserted or could have been asserted based on the same factual predicate alleged in the Complaint.

68. The releases are effective upon the Effective Date of the Settlement. Settlement Agreement, ¶ VIII.A. The Settlement Agreement releases the "Released Parties," which encompasses Defendant and their related persons and entities. Settlement Agreement, ¶ II.24.

69. The Named Plaintiffs also agree to a general release. Settlement Agreement, ¶ II.14

**Settlement Administration**

70. The Parties have agreed to use Heffler Claims Group to administer the Settlement, for total fees and costs currently estimated at $99,921.00. The Settlement Administrator will distribute the Notice Packets via U.S. Mail and e-mail, calculate the total number of workweeks for each Settlement Class Member and Opt-In Plaintiff (if needed), calculate individual settlement payments, calculate all applicable payroll taxes, withholdings and deductions, and prepare and issue all disbursements to Class and Collective Members, Plaintiffs, Plaintiffs' counsel, and applicable state and federal tax authorities. Settlement Agreement, ¶¶ V.A-G.

71. The Settlement Administrator is also responsible for the timely preparation and filing of all tax returns and reporting, and will make timely and accurate payment of any and all necessary taxes and withholdings. The Settlement Administrator will establish a settlement website that will allow Class Members to view the Class, Collective, and Class/Collective Notices (in generic form), the Settlement Agreement, and all papers filed by Class Counsel to obtain preliminary and final approval of the Settlement. Settlement Agreement, ¶ V.E. The Settlement Administrator will also establish a toll-free call center for telephone inquiries from Class Members.

**PRELIMINARY APPROVAL OF THE SETTLEMENT AS TO THE CLASSES AND APPROVAL OF THE SETTLEMENT AS TO THE COLLECTIVE**

72. This class action settlement satisfies the requirements of Rule 23(a) and (b), and it is fair, reasonable, and adequate in accordance with Rule 23(e)(2). Accordingly, the Court should preliminary approve the settlement as to the Classes.

**73.** The Court has already conditionally certified a collective under § 216(b) for Plaintiffs' FLSA claims, and 4,753 retail employees have filed opt-in forms. Defendant has not moved for decertification of the FLSA claim. The proposed Settlement provides an excellent recovery to the Opt-In Plaintiffs in a reasonable compromise. Accordingly, the Court should approve the Settlement as to the Collective.

**Certification**

74. Plaintiffs contend that the approximately 460 Arizona Class Members, 640 Colorado Class Members, 2,650 New York Class Members, 1,035 Ohio Class Members, and 550 Washington Class Members render each Class so large as to make joinder impracticable. The Class Members may be readily identified from Sprint's payroll records.

75. Plaintiffs contend that common questions of law and fact predominate

here, satisfying paragraphs (a)(2) and (b)(3) of Rule 23, as alleged in the Operative Complaint.

76. Defendant has uniform policies applicable to all retail employees. Specifically, Plaintiffs allege that Class Members all perform essentially the same job duties—providing sales and support for cell phones, plans, and accessories. Plaintiffs allege that the wage and hour violations are in large measure borne of standardized policies, practices, and procedures, creating pervasive issues of fact and law that are amenable to resolution on a class-wide basis. In particular, Class Members are subject to the same: hiring and training process; timekeeping, payroll, and compensation policies; team communication policies; meal and rest period policies and practices; and reimbursement policies. Plaintiffs' other derivative claims will rise or fall with the primary claims. Because these questions can be resolved at the same juncture, Plaintiffs contend the commonality requirement is satisfied for the Classes..

77. Because Defendant maintains various common policies and practices as to what work it compensates and what work it does not compensate, and applies these policies and practices to the retail employees, Plaintiffs contend that there are no individual defenses available to Defendant.

78. Plaintiffs contend that their claims are typical of those of all other Class Members.

79. They were subject to the alleged illegal policies and practices that form the basis of the claims asserted in this case. Interviews with Class Members and review of timekeeping and payroll data confirm that the employees throughout the United States were subjected to the same alleged illegal policies and practices to which Plaintiffs were subjected. Thus, Plaintiffs contend that the typicality requirement is also satisfied.

80. Plaintiffs' claims are in line with the claims of the Classes, and Plaintiffs' claims are not antagonistic to the claims of Class Members. Plaintiffs have prosecuted this case with the interests of the Class Members in mind.

81. Moreover, Plaintiffs' counsel has extensive experience in class action and employment litigation, including wage and hour class actions, and do not have any conflict with the Classes.

82. Plaintiffs contend the common questions raised in this action predominate over any individualized questions concerning the Classes. The Classes are entirely cohesive because resolution of Plaintiffs' claims hinge on the uniform policies and practices of Defendant, rather than the treatment the Class Members experienced on an individual level. As a result, Plaintiffs contend that the resolution of these alleged class claims would be achieved through the use of common forms of proof, such as Defendant's uniform policies, and would not require inquiries specific to individual Class Members.

83. Further, Plaintiffs contend the class action mechanism is a superior method of adjudication compared to a multitude of individual suits.

84. Here, the Class Members do not have a strong interest in controlling their individual claims. The action involves thousands of workers with very similar, but relatively small, claims for monetary injury. If the Class Members proceeded on their claims as individuals, their many individual suits would require duplicative discovery and duplicative litigation, and each Class Member would have to personally participate in the litigation effort to an extent that would never be required in a class proceeding. Thus, Plaintiffs contend that the class action mechanism would efficiently resolve numerous substantially identical claims at the same time while avoiding a waste of judicial resources and eliminating the possibility of conflicting decisions from repetitious litigation.

85. The issues raised by the present case are much better handled collectively by way of a settlement.

86. The Settlement presented by the Parties provides finality, ensures that workers receive redress for their relatively modest claims, and avoids clogging the legal system with numerous cases. Accordingly, class treatment is efficient and

warranted, and the Court should conditionally certify the Arizona, Colorado, New York, Ohio, and Washington Classes for settlement purposes.

**The Proposed Settlement Is Fair, Reasonable, and Adequate**

87. The proposed settlement is fair, reasonable, and adequate under both Rule 23 and the FLSA approval standards.

88. A review of the Settlement Agreement reveals the fairness, reasonableness, and adequacy of its terms. The Gross Settlement Amount of $7,600,000, which represents more than 25% of the approximate $29.9 million that Plaintiffs calculated in unpaid wages that would have been owed to all Collective and Class Members if each had been able to prove that he or she worked 2 hours off-the-clock in every workweek during the relevant time period. When adding other substantive claims and potential penalties, the $7,600,000.00 settlement amount represents approximately 16.3% of Defendant's total potential exposure of $46.6 million.

89. Again, these figures are based on Plaintiffs' assessment of a best-case-scenario. To have obtained such a result at trial(s), Plaintiffs would have had to prove that each Class Member worked off-the-clock for 2 hours in each workweek. These figures would of course be disputed and hotly contested. The result is well within the reasonable standard when considering the difficulty and risks presented by pursuing further litigation.

90. The final settlement amount takes into account the substantial risks inherent in any class action wage-and hour case, as well as the procedural posture of the Lawsuit and the and the unique factual and legal issues in this case.

91. In an effort to ensure fairness, the Parties have agreed to allocate the settlement proceeds amongst Collective and Class Members in a manner that recognizes that amount of time that the particular retail employee worked for Defendant in the applicable limitations period. The allocation method, which is based on the number of workweeks, will ensure that longer-tenured workers receive a greater

recovery. Moreover, the broader allocation of the Net Settlement Amount tracks the differences in substantive law and penalty claims. The allocation was made based on Class Counsel's assessment to ensure that employees are compensated accordingly and in the most equitable manner.

92. The Parties engaged in extensive formal and informal discovery and class outreach that have enabled both sides to assess the claims and potential defenses in this action. The Parties were able to accurately assess the legal and factual issues that would arise if the cases proceeded to trial.

93. In addition, in reaching this Settlement, Plaintiffs' counsel relied on their substantial litigation experience in similar wage and hour class and collective actions.

94. Plaintiffs' counsel's liability and damages evaluation was premised on a careful and extensive analysis of the effects of Defendant's compensation policies and practices on Class Members' pay.

95. Ultimately, facilitated by mediator Jeff Ross, the Parties used this information and discovery to fairly resolve the litigation.

96. The monetary value of the proposed Settlement represents a fair compromise given the risks and uncertainties posed by continued litigation.

97. If the Lawsuit were to go to trial(s) as class and collective actions (which Defendans would vigorously oppose if this Settlement Agreement were not approved), Class Counsel estimates that fees and costs would exceed $6,000,000. Litigating the class and collective action claims would require substantial additional preparation and discovery. It would require depositions of experts, the presentation of percipient and expert witnesses at trial, as well as the consideration, preparation, and presentation of voluminous documentary evidence and the preparation and analysis of expert reports.

98. Recovery of the damages and penalties previously referenced would also require complete success and certification of all of Plaintiffs' claims, a questionable feat in light of developments in wage and hour and class and collective action law as well as the legal and factual grounds that Defendant has asserted to defend this action.

99. Off-the-clock claims are difficult to certify for class treatment, given that the nature, cause, and amount of the off-the-clock work may vary based on the individualized circumstances of the worker. While Plaintiffs are confident that they would establish that common policies and practices give rise to the off-the-clock work for retail employees, Plaintiffs acknowledged that the work was performed at hundreds of different locations around the country, under hundreds of differing supervisors and managers. With localized practices, the sales volume of the store, the physical layout, and the nature of the work varying by location, Plaintiffs recognized that obtaining class certification would present a significant obstacle, with the risk that the retail employees could only pursue individual actions in the event that certification was denied.

100. Certification of off-the-clock work claims is complicated by the lack of documentary evidence and heavy reliance on employee testimony, and Plaintiffs would likely face motions for decertification as the case progressed. Moreover, Defendant maintained facially compliant policies, and required workers to complete frequent acknowledgements that the hours that they entered in Sprint's timekeeping system were true and correct. Given that the substantive damages are largely driven by the alleged off-the-clock work, and that derivative and penalty claims are tethered to off-the-clock claims, Plaintiffs' counsel was required to significantly discount the hypothetical value of the claims when assessing the mediator's proposal for Settlement.

101. Assuming that Plaintiffs prevailed on class certification, they would still confront challenges in establishing liability and proving up damages amounts.

102. Plaintiffs acknowledged that their theory of off-the-clock work hinged significantly on after-hours communications by retail employees with supervisors and co-workers. Plaintiffs allege that these communications often took place via group messaging platforms like GroupMe, and also via traditional phone calls and text messages. However, through the outreach process and reviewing documentary

evidence, Plaintiffs' counsel saw indications that some of these communications were arguably focused on personal development (such as general teambuilding, morale-building, and growth as a salesperson), while others were arguably personal communications among friendly co-workers. Sprint would contend that this time is voluntary and/or geared towards "personal development" and is therefore not compensable under the FLSA.

103. Assuming Plaintiffs prevailed on the merits, they would still face fundamental issues of proving damages. Establishing the amounts of violations would be very dependent on employee testimony, as the amounts of alleged off-the-clock work, whether on-site or off-site, were not recorded.

104. With respect to after-hours communications, work-related communications via decentralized platforms such as text messages and GroupMe are scattered across varying systems and accounts. For example, each Sprint store could create a GroupMe group in the same way a group of friends can create a group communication structure on Facebook or Google. Involvement and/or coordination from the Sprint corporate level did not necessarily occur, and these communications may not have been archived in any central repository. Moreover, retail employees typically retain very few (if any) of these communications in their possession, due to acquiring new cellular devices, closing out accounts, and general attrition of data over time. As Plaintiffs may face difficulty obtaining evidence of these communications and other tasks performed, proving up amounts of alleged off-the-clock work poses significant risks.

105. In contrast to litigating this suit, resolving this case by means of the Settlement will yield a prompt, certain, and very substantial recovery for the Class Members. Such a result will benefit the Parties and the court system. It will bring finality to two years of arduous litigation, and will foreclose the possibility of expanding litigation.

106. The settlement was a product of non-collusive, arm's-length negotiations. The Parties participated in two mediations. The Parties participated in an MSC and a full mediation. The session with Jeff Ross, who is a highly skilled mediator with many years of experience mediating employment matters, was a lengthy session that lasted well into the night.

107. The Parties then spent several months negotiating the long-form settlement agreement, with numerous rounds of meet and confer and correspondence related to the terms and details of the Settlement.

108. Plaintiffs are represented by experienced and respected litigators of representative wage and hour actions, and these attorneys feel strongly that the proposed Settlement achieves an excellent result for the Class Members.

**SERVICE AWARDS**

109. The enhancement payments of up to $15,000 for Plaintiff Amaraut and up to $10,000 for Plaintiffs Almonte, Fox, McCollum, Myers, and Painter are intended to compensate Plaintiffs for the critical role they played in this case, and the time, effort, and risks undertaken in helping secure the result obtained on behalf of the Class Members.

110. Moreover, Plaintiffs have agreed to a general release, unlike other Class Members. *See* Settlement Agreement, ¶ II.14.

111. In agreeing to serve as Class and Collective representatives, Plaintiffs formally agreed to accept the responsibilities of representing the interests of all Class Members.

112. Defendant does not oppose the requested payments to the Plaintiffs as reasonable service awards.

**ATTORNEYS' FEES AND COSTS**

113. In their fee motion to be submitted with the final approval papers, Plaintiffs' counsel will request up to 33.33% of the Maximum Gross Settlement Amount, or $2,533,080, plus reimbursement of costs up $120,000 (the costs include

$93,658.00 in FLSA notice administration costs). Plaintiffs' counsel will provide the lodestar information for Schneider Wallace Cottrell Konecky LLP and Shavitz Law Group, P.A. with their fee motion, and anticipate that the aggregate lodestar will be approximately on par with the requested fee award. On this basis, the requested attorneys' fees award is reasonable.

114. In this case, given the excellent results achieved, the effort expended litigating the Lawsuit, which was aggressively and bitterly contested at every phase, and the difficulties attendant to litigating this case, such an upward adjustment is warranted. There was no guarantee of compensation or reimbursement. Rather, counsel undertook all the risks of this litigation on a completely contingent fee basis. These risks were front and center. Defendant's vigorous and skillful defense further confronted Plaintiffs' counsel with the prospect of recovering nothing or close to nothing for their commitment to and investment in the case.

115. Nevertheless, Plaintiffs and their counsel committed themselves to developing and pressing Plaintiffs' legal claims to enforce the employees' rights and maximize the class and collective recovery. During the litigation, counsel had to turn away other less risky cases to remain sufficiently resourced for this one. The challenges that Class Counsel had to confront and the risks they had to fully absorb on behalf of the class and collective here are precisely the reasons for multipliers in contingency fee cases.

116. Attorneys who litigate on a wholly or partially contingent basis expect to receive significantly higher effective hourly rates in cases where compensation is contingent on success, particularly in hard-fought cases where, like in the case at bar, the result is uncertain. This does not result in any windfall or undue bonus. In the legal marketplace, a lawyer who assumes a significant financial risk on behalf of a client rightfully expects that his or her compensation will be significantly greater than if no risk was involved (*i.e.,* if the client paid the bill on a monthly basis), and that the greater the risk, the greater the "enhancement." Adjusting court-awarded fees upward

in contingent fee cases to reflect the risk of recovering no compensation whatsoever for hundreds of hours of labor simply makes those fee awards consistent with the legal marketplace, and in so doing, helps to ensure that meritorious cases will be brought to enforce important public interest policies and that clients who have meritorious claims will be better able to obtain qualified counsel.

117. For these reasons, Plaintiffs' counsel respectfully submits that a 117% recovery for fees is appropriate. Plaintiffs' counsel also requests reimbursement for their litigation costs. Plaintiffs' counsel's efforts resulted in an excellent settlement, and the fee and costs award should be preliminarily approved as fair and reasonable.

**THE NOTICES OF SETTLEMENT AND RELATED ADMINISTRATION**

118. The Notices of Settlement, attached as **Exhibit A-C** to the Settlement Agreement, and manner of distribution negotiated and agreed upon by the Parties are "the best notice practicable."

119. The Notices of Settlement will be mailed directly to each Class Member, and e-mailed to those for whom Sprint has a personal email address. The proposed Notices are clear and straightforward, and provide information on the nature of the Lawsuit and the proposed Classes and Collective, the terms and provisions of the Settlement Agreement, and the monetary awards.

120. In addition, the Parties will provide a settlement website that provides a generic form of the Notice, the Settlement Agreement, and other case related documents and contact information.

121. The proposed Notices fulfill the requirement of neutrality in class notices. They summarize the proceedings necessary to provide context for the Settlement Agreement and summarize the terms and conditions of the Settlement, including an explanation of how the settlement amount will be allocated between the Named Plaintiffs, Plaintiffs' counsel, the Settlement Administrator, and the Class Members, in an informative, coherent and easy-to-understand manner, all in compliance with the Manual for Complex Litigation's recommendation that "the notice contain a clear,

accurate description of the terms of the settlement."

122. The Class and Class/Collective Notices clearly explain the procedures and deadlines for requesting exclusion from the Settlement, objecting to the Settlement, the consequences of taking or foregoing the various options available to Class Members, and the date, time and place of the Final Approval Hearing. Pursuant to Rule 23(h), the proposed Notices of Settlement also sets forth the amount of attorneys' fees and costs sought by Plaintiffs, as well as an explanation of the procedure by which Class Counsel will apply for them. The Notices of Settlement clearly state that the Settlement does not constitute an admission of liability by Defendants.

123. The Notices makes clear that the final settlement approval decision has yet to be made.

124. Accordingly, the Notices of Settlement comply with the standards of fairness, completeness, and neutrality required of a settlement class notice disseminated under authority of the Court.

125. Furthermore, reasonable steps will be taken to ensure that all Class Members receive the Notice. Before mailing, and pursuant to the terms of the Settlement Agreement, Sprint will provide to the Settlement Administrator a database that contains the names, last known addresses, last known personal e-mail addresses, last known phone numbers, and social security numbers of each Putative Class Member, along with the start and end dates of employment for each Putative Class Member, and the agreed-upon information necessary to perform payout calculations, including applicable number(s) of workweeks for calculating the respective settlement shares. *Id.* The Notices of Settlement will be sent by United States Mail, and also via e-mail to the maximum extent possible. The Settlement Administrator will make reasonable efforts to update the contact information in the database using public and private skip tracing methods.

126. With respect to Class Notices returned as undeliverable, the Settlement Administrator will re-mail any Notices returned to the Settlement Administrator with

a forwarding address following receipt of the returned mail. If any Notice is returned to the Settlement Administrator without a forwarding address, the Settlement Administrator will undertake reasonable efforts to search for the correct address, including skip tracing, and will promptly re-mail the Notice of Settlement to any newly found address.

127. Putative Class Members will have 60 days from the mailing of the Notices of Settlement to opt-out or object to the Settlement. Any Putative Class Member who does not submit a timely request to exclude themselves from the Settlement will be deemed a Settlement Class Member whose rights and claims are determined by any order the Court enters granting final approval, and any judgment the Court ultimately enters in the case.

128. Administration of the Settlement will follow upon the occurrence of the Effective Date of the Settlement.

129. The Settlement Administrator will provide Class Counsel and Defendants' Counsel with a report of all Settlement payments within 10 business days after the opt out/objection deadline.

130. Because the proposed Notices of Settlement clearly and concisely describe the terms of the Settlement and the awards and obligations for Putative Class Members who participate, and because the Notices will be disseminated in a way calculated to provide notice to as many Class Members as possible, the Notices of Settlement should be preliminarily approved.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on this 8th day of January, 2021, in Emeryville, California.

/s/ *Carolyn Hunt Cottrell*
Carolyn Hunt Cottrell