UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JACOB SOLIZ-ARRIAGA, Individually and on behalf of all others similarly situated, ***Plaintiff*,** **v.** **KIEWIT OFFSHORE SERVICES, LTD.,** ***Defendant*.**	**Case No. 2:26-CV-00011-NGR**

PLAINTIFF'S UNOPPOSED MOTION TO CERTIFY THE COLLECTIVE AND FOR APPROVAL OF FLSA SETTLEMENT AGREEMENT

TO THE HONORABLE NELVA GONZALES-RAMOS:

Plaintiff Jacob Soliz-Arriaga, individually and on behalf of all Opt-In Plaintiffs and Settlement Collective Members (collectively, "Plaintiff" or "Plaintiff and the Settlement Collective Members"), files this Motion ("Motion") to Certify the Collective and for Approval of FLSA Settlement Agreement ("Settlement Agreement").[1] Defendant Kiewit Offshore Services, Ltd. ("Kiewit" or "Defendant") does not oppose the relief requested in this Motion. Accordingly, for the reasons set forth below, Plaintiff requests that the Court enter the Proposed Order and dismiss this case with prejudice. The Settlement Agreement executed by the Parties calls for and conditions the settlement of this matter on this agreed upon order and judgment.

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[1] The Settlement Agreement contains confidential information and is attached to the Joint Motion for Leave to File Under Seal, as Exhibit A.

I.
FACTUAL BACKGROUND

Plaintiff Soliz-Arriaga filed this collective action lawsuit on January 8, 2026, alleging that Defendant Kiewit violated the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("FLSA") by failing to pay him and all other similarly situated hourly, non-exempt employees the correct amount of overtime for all hours worked in excess of 40 hours per week. (ECF No. 1 (the "Lawsuit").) Specifically, Plaintiff alleged that Kiewit paid certain non-discretionary, quarterly retention bonuses to its hourly, non-exempt employees—Plaintiff and the Settlement Collective Members—that were not properly included in the regular rate of pay which led to the underpayment of overtime compensation. To the extent Plaintiff or the Settlement Collective Members were not paid the correct amount of overtime, which Kiewit does not concede, Kiewit maintains that these underpayments (a) were *de minimis* or otherwise not compensable, (b) did not occur every week, (c) did not occur in weeks where Plaintiff and the Settlement Collective Members worked 40 hours or more, and (d) did not affect Plaintiff and Settlement Collective Members on a collective or class-wide basis.

On March 26, 2026, the Parties filed a Joint Motion to Stay the Case and Stipulation Regarding Tolling of the Statute of Limitations to allow for the Parties to attempt to reach a settlement. *See* ECF No. 27. As part of this process, the Parties exchanged a significant amount of information over the course of several months which led to the settlement of this Lawsuit.

The Parties have reached an agreement in principle, subject to the Court approving the settlement. This Settlement Agreement, if approved by the Court, will result in the resolution of the Lawsuit in its entirety, and such resolution shall be with prejudice for all Settlement Collective Members (as defined in the Settlement Agreement), and the waiver and release of all Released Claims (as defined in the Settlement Agreement, including without limitation any state law claims alleged initially or that could have been alleged in the Litigation or otherwise) shall apply to all Settlement

Collective Members as defined in the Settlement Agreement.[2] The settlement is expected to benefit approximately 2,528 individuals who worked for Kiewit as hourly, non-exempt employees and received retention bonuses that were allegedly not included in the regular rate of pay for overtime purposes during the relevant time period – that is, January 8, 2023 through July 6, 2026.

II.
THIS COURT SHOULD CERTIFY THE COLLECTIVE FOR PURPOSES OF SETTLEMENT AND APPROVE THE SETTLEMENT

This matter is brought pursuant to the FLSA. The Parties have thoroughly investigated Plaintiff's allegations and Defendant's defenses. The Parties are represented by counsel with significant experience in wage and hour litigation. After months of litigation and negotiations, the Parties have resolved this matter and contend the Settlement Agreement before this Court is a fair and reasonable resolution of the pending claims. The Parties' agreement is contained in the Settlement Agreement, which was fully executed by the Parties on July 28, 2026. The Settlement Agreement provides for payments to the Plaintiff and the Settlement Collective Members, a payment to Plaintiff's Counsel for attorneys' fees and costs, and the costs of administering the settlement. As part of the Settlement Agreement, Plaintiff and the Settlement Collective Members will release any and all federal and state

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[2] Settlement Collective Members will release all Released Claims, which means all claims, rights, demands, liabilities, and causes of action that are alleged, or reasonably could have been alleged, based on the facts and claims asserted in the operative Complaint in the Lawsuit, known or unknown, suspected or unsuspected, including but not limited to claims under the Fair Labor Standards Act ("FLSA"), claims under the theories of *quantum meruit*, unjust enrichment, conversion, breach of contract, theft of labor, and any other state, federal, or local law related to employment with Defendant or the separation thereof, including but not limited to the payment of wages, overtime, minimum wage, Title VII, the American with Disabilities Act ("ADA"), the Age Discrimination in Employment Act ("ADEA"), 42 U.S.C. § 1981, the Family Medical Leave Act ("FMLA"), Chapter 21 of the Texas Labor Code, and all claims for costs, attorneys' fees and/or interest, or any other benefits against Defendant, and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers (the "Released Parties") arising from the beginning of time through the Effective Date.

law claims related to their employment with Kiewit (including overtime or premium wages pursuant to the FLSA) against the Released Parties (as defined in the Settlement Agreement) relating to events occurring prior to and through the date the Court approves the settlement and dismisses this case. It is important to note that the Parties negotiated a broader release in exchange for a larger settlement amount – specifically, Plaintiff and the Settlement Collective Members are eligible to receive their maximum available recovery under the FLSA if successful during the relevant time period.

A. Relevant Legal Standards

The FLSA does not expressly authorize or expressly require district courts to review settlement agreements reached by litigants in pending FLSA cases. *Stuntz v. Lion Elastomers, L.L.C.*, 826 F. App'x 391, 397 (5th Cir. 2020) (recognizing that private settlement agreements that resolve "a *bona fide* dispute as to the amount of hours worked or compensation due" are enforceable) (citing *Martin v. Spring Break '83 Prods., L.L.C.*, 688 F.3d 247, 255 (5th Cir. 2012)). Indeed, the Fifth Circuit has repeatedly clarified that neither court nor Department of Labor ("DOL") approval is required in a case pending before the court where the private compromise of FLSA claims involves "a bona fide dispute as to the number of hours worked or compensation due." *Stuntz*, 2020 WL 5666543, at *5; *see also Martin*, 688 F.3d at 255. However, out of an abundance of caution, the Parties hereby submit the Settlement Agreement for approval by this Court.

When a court scrutinizes an FLSA settlement agreement, it must "evaluate whether (1) 'the settlement resolves a *bona fide* dispute over an [FLSA] provision and (2) that the resolution is fair and reasonable.'" *Plunkett v. FirstKey Homes LLC*, No. 3:23-CV-2684-L-BN, 2024 WL 5315330, at *2 (N.D. Tex. Nov. 21, 2024), *report and recommendation adopted sub nom. Plunkett v. First Key Homes LLC*, No. 3:23-CV-2684-L-BN, 2024 WL 5075065 (N.D. Tex. Dec. 11, 2024) (quoting *Lee v. Metrocare Servs.*, No. 3:13-CV-2349-O, 2015 WL 13729679, at *1 (N.D. Tex. July 1, 2015)) If the settlement meets the above criteria the court may approve the settlement agreement and enter final judgment. *See Moody v. AMW*

Constr., LLC, No. 2:19-CV-119, 2020 WL 13430058, at *2 (S.D. Tex. Mar. 18, 2020) (If the settlement reflects a reasonable compromise over the issues, the court may approve it).

B. A *Bona Fide* Dispute is Present in This Case.

Plaintiff asserts that he and the Settlement Collective Members were denied the proper amount of overtime wages required under the FLSA. Kiewit disputes these claims and asserts that Plaintiff and the Settlement Collective Members have always been properly paid for all hours worked at the rates required under the FLSA, and all other laws at all times. Plaintiff contends that he and the Settlement Collective Members received certain non-discretionary, quarterly retention bonuses that were not included in the regular rate of pay which led to an underpayment of overtime compensation. *See* 29 C.F.R. § 778.209. Kiewit maintains that it properly compensated employees for all time worked, including the payment of quarterly retention bonuses. Consequently, there is a *bona fide* dispute between the Parties as to the number of hours worked or compensation due. *See Moody*, 2020 WL 13430058, at *2.

C. The Settlement Agreement is Fair and Reasonable.

A court presiding over an FLSA action may approve a proposed settlement of the action under Section 216(b) after scrutinizing the settlement for fairness. *See Jones v. Flowers Foods, Inc.*, No. CV 21-1858, 2024 WL 4665260, at *3 (E.D. La. Nov. 4, 2024). Although the class action provision of Federal Rule of Civil Procedure 23 does not apply to collective actions brought pursuant to the FLSA, Rule 23 is similar in that it requires court approval to finalize a class action settlement. *See Plunkett,* 2024 WL 5315330, at *3. Therefore, the Rule 23(e) fair and reasonable settlement standard encompasses a fair and reasonable standard under the FLSA. *Id.*

In the Fifth Circuit, district courts are instructed to consider six factors when evaluating the proposed settlement agreement for collective / class actions:

> (1) Whether the settlement was a product of fraud or collusion; (2) the complexity, expense, and likely duration of the litigation; (3) the state of the proceedings and the amount of discovery completed; (4) the factual and legal obstacles [to] prevailing on the merits; (5) the possible range of recovery and the certainty of damages; and (6) the respective opinions of the participants, including class counsel, class representative, and the absent class members.

Id. (quoting *Parker v. Anderson*, 667 F.2d 1204, 1209 (5th Cir. 1982)). "Significant weight is given to the opinion of class counsel concerning whether the settlement is in the best interests of the class and the court is not to substitute its own judgement for that of counsel." *Marcus v. J.C. Penney Co., Inc.*, No. 6:13-cv-736, 2017 WL 6590976, at *3 (E.D. Tex. Dec. 18, 2017) (citing *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)). Further, when considering these factors "courts should keep in mind the strong presumption in favor of finding a settlement fair." *Jones*, 2024 WL 4665260, at *3.

Here, the six-factor standard supports approval of the settlement agreement. Plaintiff's Counsel has extensive experience litigating FLSA claims and there is no fraud or collusion. Wage and hour cases are expensive and time-consuming, and therefore the expense and likely duration of continued litigation favor approval. The Parties engaged in legal research, document review, and data analysis and performed due diligence before beginning to negotiate a settlement in good faith. The issues pertinent to Plaintiff's claims and Kiewit's defenses were well understood and the Parties recognized that the outcome of litigating the case would be uncertain while the risks of continued litigation would be high. Finally, counsel on both sides support the settlement.

1. *The Absence of Fraud or Collusion in the Settlement Favors Approval*

An initial presumption exists that a settlement is fair where counsel for the parties negotiate the settlement at arm's length. *Jones*, 2024 WL 4665260, at *3. Settlement of this litigation was achieved through formal negotiations between counsel for the Parties, and involved multiple offers and counter offers before the Parties agreed on the settlement terms currently before this Court. The Parties took appropriate steps in negotiating the comprehensive Settlement Agreement, which includes payment to Plaintiff and the participating Settlement Collective Members and payment for Plaintiff's attorneys' fees and expenses. As such, there is no indicia of fraud or collusion.

2. *The Complexity, Expense, and Likely Duration of this Case, Were it Not to Settle, Favors Settlement*

The complexity, expense, and duration of this case (were it not to settle at this time) are significant factors that all favor settlement. If the Parties had not been able to resolve the claims at issue through compromise, this litigation would continue because the Parties continue to disagree regarding the merits of Plaintiff's claims and the amount of damages. The Parties would have engaged in significant substantive discovery and the issue of certification would be briefed. The Parties would have likewise filed competing dispositive motions on the claims and defenses at issue in this Lawsuit. Indeed, absent settlement, the Parties will litigate this matter through trial and appeal. Thus, the Parties will incur substantial additional legal fees and expenses if this Lawsuit is not settled. Given the complexities of the claims at issue and the expense and extended duration of continuing litigation, settlement is in the interests of Plaintiff, Defendant, and judicial economy. *See Plunkett*, 2024 WL 5315330, at *4.

3. *The Discovery Taken by the Parties Favors Approval of the Settlement*

The Parties engaged in an informal document production wherein Kiewit provided relevant pay information to Plaintiff's Counsel for the purpose of settlement negotiations. The Parties undertook independent factual investigation of Plaintiff's claims and analyzed the legal issues at hand. The relevant documents favor approval of the settlement because they highlight the complex issues related to Plaintiff's disputed claims regarding payment (and alleged non-payment) of overtime compensation. *See id.*

4. *The Uncertainty of this Litigation Favors Settlement*

Plaintiff and Kiewit are well aware of the uncertainty associated with litigation. While Plaintiff is confident in his claims, he also understands that the claims in this case may prove to be unsuccessful, and that collection of any future judgment or award may itself prove problematic. Accordingly, Plaintiff strongly prefers the certainty of the proposed settlement, which are payable shortly after Court approval according to the settlement documents, to the risks and costs associated with continued litigation. Likewise, Kiewit understands the risk of litigating the claims at issue and, although it is confident in its defenses, prefers the certainty of the proposed settlement to the risks and costs associated with continued litigation. *See Jones*, 2024 WL 4665260, at *4.

5. *The Available Range of Recovery and the Uncertainty of Damages Favor Settlement*

Counsel for the Parties both created detailed (and multiple) damage models that they used to meaningfully participate in the negotiation process. The Parties not only disputed whether the quarterly retention bonuses were properly excluded from the regular rate of pay (i.e., liability), but also how the damages were to be calculated and thus how much in allegedly unpaid wages was at stake. To assess the range of recovery possible, the Parties reviewed and analyzed the number of retention bonuses that were paid to all hourly, non-exempt employees who worked for Kiewit during the relevant time period, and then compared those numbers to the number of weeks worked during the relevant time period, along with the respective hourly rates and overtime rates of pay for each non-exempt employee who worked for Kiewit during the relevant time period. Indeed, the ultimate settlement formula provides Plaintiff and each Settlement Collective Member who elects to join the settlement with a payment based on (a) the number of weeks worked and (b) the amount of retention bonuses received, if any, within the relevant time period while working for Kiewit as a non-exempt employee. Counsel for Plaintiff and Defendant prepared different damage models, and they submit that the settlement provides a meaningful percentage of the unpaid wages that could have been claimed, subject to appropriate discounts for the potential loss.

The risk that Kiewit would prevail on its defenses also favors settlement. Kiewit's main defense – that is, the quarterly retention bonuses are discretionary and therefore not required to be included in the regular rate of pay, is a substantial defense that, if successful, would result in zero damages being owed to the Plaintiff and the Settlement Collective Members. Kiewit also had substantial defenses to the claim for liquidated damages as the statute and relevant regulations expressly permit exclusion of discretionary bonuses from the regular rate of pay.

Settlement is equally in Kiewit's best interest because the costs of proceeding through trial on the merits are excessive considering the amount of collective damages at issue. Further, should Plaintiff prevail on his claims, Kiewit would be liable not only for their own costs through trial, but also for the fees and costs of Plaintiff's Counsel. Accordingly, the Parties agree that the settlement is in their best interest. *See Roberts v. Baptist Healthcare Sys., LLC*, No. 1:20-CV-00092-MAC, 2023 WL 5163374, at *3 (E.D. Tex. June 29, 2023), *report and recommendation adopted*, No. 1:20-CV-92, 2023 WL 4678545 (E.D. Tex. July 21, 2023).

6. *The Opinions of All Parties and Counsel Favor Settlement*

The lawyers of Anderson Alexander, PLLC have collectively litigated more than 500 individual, collective, and class action wage and hour cases of all types and have recovered hundreds of millions of dollars in these cases on behalf of workers across the United States. *See* Declaration of Clif Alexander, attached as Exhibit 1, ¶ 8. Based on this experience, Plaintiff's Counsel can confidently report to the Court that this prong is met. After intense settlement negotiations, an arm's-length settlement was reached that, in the view of Plaintiff's Counsel, affords Plaintiff and the Settlement Collective Members with significant and meaningful financial benefits and provides a certainty for payment.

Further, Kiewit, upon the advice of its counsel, agrees that this settlement is in its best interest and seeks approval of the Settlement Agreement.

D. Certification of the Collective is Appropriate—for Settlement Purposes Only.

Because the Parties have negotiated a settlement that applies to the Collective, Plaintiff asks this Court to certify, for settlement purposes only, a collective action consisting of the following:

> all non-exempt employees who worked for Kiewit Offshore Services, Ltd., anywhere in the United States, and received a retention bonus at any time from January 8, 2023 through July 6, 2026.

In total, there are approximately 2,528 individuals who worked for Kiewit as hourly, non-exempt employees and received retention bonuses that were allegedly not included in the regular rate of pay for overtime purposes during the relevant time period – that is, January 8, 2023 through July 6, 2026. For settlement purposes, they are similarly situated in that they were each paid an hourly wage, received retention bonuses that allegedly were not included in the regular rate of pay, and worked at least one overtime week within the relevant time period.

III.
THIS COURT SHOULD APPROVE THE REQUESTED ATTORNEYS' FEES AND COSTS AND SERVICE AWARD

A. The Requested Attorneys' Fees and Costs Are Fair and Reasonable.

The attorneys' fees and costs are reasonable and fair as well. Plaintiff's contingency fee agreement, to which Plaintiff and all Settlement Collective Members are bound, provides for the payment of a 40% contingency fee plus costs. *See* Exhibit 1, ¶ 16. A contingency payment in this general range is well within the scope of what courts, including this Court, have approved as reasonable. *See, e.g., Plunkett*, 2024 WL 5315330, at *9 (recognizing that a 40% contingency fee in an FLSA case was typical); *Sarabia v. Spitzer Indus., Inc.*, No. 4:17-CV-2092, 2018 WL 6046327, at *4 (S.D. Tex. Nov. 19, 2018) (recognizing that a 40% contingency fee in an FLSA case was "in line with that approved in other FLSA cases") (citing *Matthews v. Priority Energy Servs., LLC*, No. 6:15-cv-448, 2018 WL 1939327, at *2 (E.D. Tex. Apr. 20, 2018); *Daniels v. Prod. Mgmt. Indus., LLC*, No. 6:15-cv-2567, 2018 WL 1954352, at *4 (W.D. La. Apr. 20, 2018); *Legros v. Mud Control Equip. Co.*, No. 15-1082, 2017

WL 925730, at *3 (W.D. La. Mar. 6, 2017); *Heffernan Bryant v. United Furniture Indus., Inc.*, No. 1:13-cv-246-SA-DAS, 2017 WL 639320, at *5 (N.D. Miss. Feb. 16, 2017)); *Wolfe v. Anchor Drilling Fluids USA Inc.*, No. 4:15-CV-1344, 2015 WL 12778393, at *3 (S.D. Tex. Dec. 7, 2015) (approving a 40% contingency fee as reasonable); *Quintanilla v. A & R Demolition Inc.*, No. CIV.A. H-04-1965, 2008 WL 9410399, at *10 (S.D. Tex. May 7, 2008) (granting joint motion for approval of settlement and approving 40% contingency fee in an FLSA collective action); *Sandras v. Expeditors & Prod. Serv. Co.*, No. CV 16-0239, 2019 WL 658819, at *3 (W.D. La. Feb. 13, 2019), *report and recommendation adopted*, No. CV 16-0239, 2019 WL 1446481 (W.D. La. Mar. 29, 2019) (same); *Cormier v. Turnkey Cleaning Servs. LLC*, No. 6:15-CV-2076, 2018 WL 5288824, at *4 (W.D. La. Oct. 22, 2018), *report and recommendation adopted*, No. 6:15-CV-02076, 2018 WL 5623596 (W.D. La. Oct. 30, 2018) (same); *Barnard v. Intertek USA Inc.*, No. 4:11-cv-02198, ECF No. 184 (S.D. Tex. Jan. 8, 2014) (order granting joint motion for approval of settlement and approving 40% contingency fee in an FLSA collective action).

B. The Service Award is Reasonable.

The Settlement Agreement is also fair because it provides for a reasonable service award to Named Plaintiff Jacob Soliz-Arriaga, who participated in filing the Lawsuit and served as the Collective Representative. The Settlement Agreement calls for a service award in the amount of $15,000.00, which is consistent with sums typically awarded in collective action settlements. *See, e.g., Plunkett*, 2024 WL 5315330, at *6 (approving service awards of $15,000.00 for the named plaintiffs); *McClain v. Lufkin Indus. Inc.*, No. CIV.A. 9:97CV63, 2010 WL 455351, at *2 (E.D. Tex. Jan. 15, 2010), *aff'd*, 649 F.3d 374 (5th Cir. 2011) (granting service awards up to $18,000.00); *Purdie v. Ace Cash Express, Inc.*, No. 3:01-CV-1754, 2003 WL 22976611, at *7 (N.D. Tex. Dec. 11, 2003) (approving $16,665 incentive award to named plaintiffs for actively participating in the lawsuit). Indeed, the purpose of service awards is to compensate plaintiffs for specific expenses and sacrifices. *Silva v. Tegrity Pers. Servs., Inc.*, 986 F. Supp. 2d 826, 838 (S.D. Tex. 2013).

The Named Plaintiff has been part of the Lawsuit since the filing of the Original Complaint and was instrumental in identifying the alleged wage and hour violations and building the case. He spent substantial time communicating with Plaintiff's Counsel regarding case developments and assisted Plaintiff's Counsel in understanding Kiewit's business. The Named Plaintiff further gathered a substantial number of documents for Plaintiff's Counsel's review, and assisted Plaintiff's Counsel in reviewing the documents, answering questions regarding the documents, and assisting Plaintiff's Counsel with damage modeling. The Named Plaintiff also worked closely with Plaintiff's Counsel in managing the settlement process and in reviewing and approving the Settlement Agreement. Without the Named Plaintiff's active participation in the Lawsuit, the collective action and resulting settlement would have been far less likely – indeed, it was Named Plaintiff's production of pay stubs which identified the central issue in this matter. The total settlement fund here easily demonstrates the substantial benefits the Named Plaintiff has brought to the Settlement Collective Members as a whole and justifies his service award.

IV.
CONCLUSION

For these reasons, Plaintiff moves this Court for entry of the Proposed Order, which: (i) grants this Motion; (ii) approves the Parties' Settlement Agreement; (iii) approves the form and content of the Notices, (iv) approves the procedures for sending the Notice to the Settlement Collective Members; and (v) certifies the defined collective action, for settlement purposes only.

Date: September 15, 2026