UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Jane Doe and John Does 1 and 2, on behalf of themselves and all others similarly situated, Plaintiffs, -against- MasterCorp, Inc., Defendant.	INDEX NO. 1:24-cv-678 **UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT AND DIRECTION OF NOTICE UNDER FED. R. CIV. P. 23(e) AND 29 U.S.C. § 216(b)**

Pursuant to Rule 23 of the Federal Rule of Civil Procedure and 29 U.S.C. § 216(b), Named Plaintiffs Jane Doe, John Doe 1, and John Doe 2 respectfully move for entry of the proposed Order submitted herewith which provides:

1. That the Court will likely be able to certify the Settlement Class;
2. Provisional certification of the Settlement Collective;
3. Appointment of Jane Doe and John Does 1 and 2 as Interim Class and Collective Representatives;
4. Preliminary approval of the proposed Settlement Agreement between Named Plaintiffs, the proposed Settlement Class and Collective, and Defendant MasterCorp, Inc. under Rule 23(e)(1) and 29 U.S.C. § 216(b);
5. Approval of the proposed form and manner of notice to the proposed Settlement Class and Collective;
6. Appointment of Mark Hanna of Murphy Anderson, PLLC and Rachel Geman of Lieff, Cabraser, Heimann, & Bernstein as Interim Co-Lead Counsel for the proposed Settlement

Class and Collective for the purposes of conducting the necessary steps in the Settlement approval process; and

7. Appointment of the proposed schedule leading up to and including the Fairness Hearing, namely:

Date	**Event**
TBD	Entry of Preliminary Approval Order
21 days after entry of Preliminary Approval Order	Settlement Class Notice Program begins
51 days after entry of Preliminary Approval Order	Settlement Class Notice Program ends
75 days after entry of Preliminary Approval Order	Motion(s) for Final Approval and Attorneys' Fees and Expenses
90 days after entry of Preliminary Approval Order	Objection and Opt-Out Deadline
90 days after entry of Preliminary Order	Settlement Claims Deadline
97 days after entry of Preliminary Approval Order	Reply Memoranda in Support of Final Approval and Fee/Expense Motion(s) Parties file any responses to Objections
125 days after entry of Preliminary Approval Order	Fairness hearing

In support of this motion, Plaintiffs and the proposed Settlement Class and Collective rely upon the accompanying memorandum in support and exhibits thereto, and the Joint Declaration of Mark Hanna and Rachel Geman in Support of this Motion dated April 25, 2024, and the exhibits thereto.

Dated: April 25, 2024

Respectfully submitted,

/s/ *Mark Hanna*

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Proposed Co-Lead Class and Collective Action Counsel

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2024, a copy of the foregoing Unopposed Motion and all attachments are being served by U.S. mail and e-mail to Defendant MasterCorp Inc.'s counsel at the following addresses:

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Dated: April 25, 2024

/s/ Mark Hanna
Mark Hanna

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Jane Doe and John Does 1 and 2, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

MasterCorp, Inc.,

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INDEX NO. 1:24-cv-678

MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT AND DIRECTION OF NOTICE UNDER FED. R. CIV. P. 23(e) AND 29 U.S.C. § 216(b)

TABLE OF CONTENTS

I. Introduction 1

II. Factual Background and Procedural History 2

- A. Factual Background: MasterCorp's Unlawful Employment and Treatment of Plaintiffs 2
- B. Procedural History 4

III. The Settlement Terms and Relief Provided to the Proposed Settlement Class 5

- A. The Settlement Class Definition 5
- B. Settlement Benefits to Settlement Class Members 6
- C. Notice and Claims Administration 6
- D. Attorneys' Fees and Expenses and Service Awards 7

IV. Legal Standard for Preliminary Settlement Approval Under Rule 23 and Approval of a Collective Under 29 U.S.C. § 216(b) 7

V. The Settlement Is Fair, Reasonable, and Adequate 9

- A. The Proposed Settlement Is Fair 9
- B. The Proposed Settlement Is Adequate 16

VI. The Court Will Be Likely to Certify the Class at Final Approval 19

- A. Rule 23(a) 20
- B. Rule 23(b) 23

VII. The Proposed Settlement Collective Should Be Certified for Settlement Purposes Pursuant to 29 U.S.C. § 216(b) 25

VIII. The Proposed Notice Program Provides the Best Notice Practicable to the Proposed Settlement Class 26

IX. The Court Should Schedule a Fairness Hearing and Related Dates 27

X. Conclusion 28

I. Introduction

After nearly a year of pre-filing investigation, analysis of confirmatory discovery, witness interviews, an arm's length mediation that ultimately succeeded despite initially ending in impasse, and months of further arms-length negotiations and confirmatory discovery, Plaintiffs are proud to present a proposed Settlement. Plaintiffs secured a non-reversionary, common fund Settlement that provides Four Million Nine Hundred Fifty Thousand U.S. Dollars and Zero Cents ($4,950,000.00) in cash benefits for a proposed Rule 23(e) Class and a 29 U.S.C. § 216(b) Collective of approximately 205 Colombian nationals or people of Colombian origin who provided housekeeping services at hotels and resorts where Defendant MasterCorp, Inc. was responsible for housekeeping.[1]

The proposed Settlement Agreement resolves Plaintiffs' claims resulting from MasterCorp's alleged recruitment and joint employment of the Settlement Class and Collective (hereinafter "the proposed Settlement Class," "the proposed Settlement Class and Collective," or "the Class") in violation of the Trafficking Victims Protection Reauthorization Act's (TVPRA) prohibitions on forced labor and human trafficking, 18 U.S.C. § 1581 *et seq.*, Section 216(b) of the Fair Labor Standards Act, Section 1981 of the Civil Rights Act, and state-law claims. A simple claims process (where all claimants will get the same amount) against the backdrop of a notice program designed to encourage claims, and blunt any potential apprehension workers may feel,

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[1] The proposed Settlement Agreement ("SA") is Exhibit 1 to the Joint Declaration of Mark Hanna and Rachel Geman in Support of Unopposed Motion for Preliminary Approval of Class and Collective Action Settlement and Direction of Notice Under Fed. R. Civ. P. 23(e) and 29 U.S.C. § 216(b) [hereinafter Joint Decl.]. Capitalized terms not defined herein are defined as in the Settlement. The proposed Settlement Class members are employees of Perennial Pete or its affiliated entities or companies who are Colombian nationals or of Colombian origin and who provided housekeeping services at resorts where MasterCorp was responsible for housekeeping between March 19, 2021 and the date of preliminary approval of the Settlement.

will cement the value of the Settlement to individuals. Thus, under a range of foreseeable scenarios, the proposed Settlement Class members will receive substantial compensation to resolve their claims.

This is an extraordinary result in light of the risks and delays of litigation. Based on Class Counsel's research, this Settlement provides an exceptional monetary recovery to the Class members. The Named Plaintiffs ("Named Plaintiffs", "Plaintiffs", or "Class and Collective Representatives") are proud to present this Settlement to the Court, and respectfully request approval to give notice to the proposed Settlement Class and Collective and set the matter for final approval. *See* 29 U.S.C. § 216(b); Fed. R. Civ. P. 23(e).

II. Factual Background and Procedural History

A. Factual Background: MasterCorp's Unlawful Employment and Treatment of Plaintiffs

1. The Parties

MasterCorp is a large hospitality-services staffing agency with over 7,500 employees. Compl. ¶ 16. Among other things, the company provides cleaning services to luxury hotels and chain resorts across the country. *Id.*

Plaintiffs are three Colombian nationals who were recruited by MasterCorp and came into the United States to work under strenuous, unprotected, and unlawful working conditions at MasterCorp client sites across the U.S. Compl. ¶ 10, 11, 12.

The proposed Settlement Class is composed of former employees nominally employed by MasterCorp subcontractor Perennial Pete (or its affiliated entities or companies) who are Colombian nationals or of Colombian origin. Compl. ¶ 13 The workers provided housekeeping services at resorts where MasterCorp was responsible for housekeeping at times on or after March 19, 2021. *Id*. The Settlement Class runs to the date of preliminary approval. *Id.*

2. MasterCorp's Solicitation of Plaintiffs and Plaintiffs' Entrance Into the U.S.

Plaintiffs—like the proposed Settlement Class and Collective—came to work for MasterCorp through the company's solicitation. Compl. ¶ 17-18. MasterCorp promised to pay Plaintiffs $13/hour in wages, to provide stable U.S. employment, to supply housing accommodations, and cover their travel expenses. Compl. ¶ 18. The Named Plaintiffs were recruited during the Class Period, specifically, the fall and winter of 2022. Compl. ¶ 17.

3. Unlawful Working Conditions

Once they arrived at their respective MasterCorp client sites, Plaintiffs—like other Class members— were paid $13/hour without any overtime, though they worked approximately 70-hour weeks (12-15 hours per day for at least six days per week), and were misclassified as independent contractors. Compl. ¶ 20, 39. MasterCorp also deducted $80 in rent per week (via unlawful deductions from their paychecks) for housing. Compl. ¶ 27. Further, Plaintiffs were told by Mastercorp they would be retaliated against if they complained or could not work. Compl. ¶ 2. MasterCorp routinely threatened to withhold, and often withheld, $1,500 or more in wages from Plaintiffs and the proposed Settlement Class. *Id*.

MasterCorp paid Plaintiffs through various of its contractors' affiliated companies, including, but not limited to, Perennial Pete General Services LLC and Perennial Pete Landscaping LLC (collectively, "Perennial Pete"). Compl. ¶ 28. Plaintiffs never signed any written employment agreement with MasterCorp, Perennial Pete, or any other MasterCorp affiliated companies. Compl. ¶ 29.

Furthermore, because Plaintiffs had little-to-no savings upon beginning their employment with MasterCorp, they were reliant on their employer for food and shelter until their first paycheck. Compl. ¶ 25.

MasterCorp subjected Plaintiffs and other Colombian workers to worse working conditions than employees of other national origins. Plaintiffs were required to work harder, received less pay and benefits, did not receive overtime wages, and were misclassified as independent contractors. Compl. ¶¶ 85-88.

B. Procedural History

1. Initial Investigation and Early Discovery

Upon learning of the relevant facts, and after taking the time to corroborate them in detail, Plaintiffs' Counsel reached out to MasterCorp on March 23, 2023 laying out the allegations and stating that willingness to hold off filing a lawsuit was premised on a class tolling agreement to best protect the Class. Joint Decl. ¶ 11. After the parties negotiated and entered into that agreement, Plaintiffs' Counsel negotiated the information Plaintiffs would need to meaningfully decide if a settlement could be reached. *Id.* ¶ 12-13. Also of relevance to Plaintiffs' willingness to try a settlement was the evidence that MasterCorp had ended the unlawful program in early 2023, thus obviating the potential need for a preliminary injunction. *Id.* ¶ 14. After early exchanges, Plaintiffs made a Demand on May 2, 2023 based on then-current information. *Id*. ¶ 15.

2. Class Representative Interviews Conducted by a Retired Federal Judge

Once the parties decided to try mediation, they conferred and agreed on the Honorable Gerald Bruce Lee (Ret.) as mediator. *Id.* ¶ 16. Judge Lee is a former District Court Judge from the Eastern District of Virginia. *Id.* In addition to the more standard pre-mediation efforts undertaken by parties and required by mediators, this case involved the additional step of extensive class representative interviews over a two-day period on September 14 and 15, 2023, conducted by Judge Lee, with translators, and in the presence of Plaintiffs' Counsel as well as MasterCorp's

counsel, representatives, and agents. *Id.* ¶ 17. These interviews complemented the paper discovery exchanges.

3. **Mediation**

The mediation was conducted on October 23 and 24, 2023, following mediation briefing. *Id.* ¶ 18. While the parties remained at impasse at the close of the formal sessions, additional discussions continued that ultimately resulted in the parties' basic agreements on the Settlement amount and some related terms. *Id.* ¶ 19. That initial agreement launched several months of further confirmatory discovery and negotiations. *Id.* ¶ 20.

4. **Post-Mediation Negotiations**

After the mediation, the parties engaged in months-long arms-length negotiations to confirm the Class size. *Id.* ¶ 20. Defendant now believes, and is certifying under oath, that the Proposed Class size is comprised of roughly 205 workers. *Id.* Plaintiffs, likewise, engaged in additional diligence to confirm their agreement to this number. *Id.*

III. **The Settlement Terms and Relief Provided to the Proposed Settlement Class**

The Settlement provides Four Million Nine Hundred Fifty Thousand U.S. Dollars and Zero Cents ($4,950,000.00) in non-reversionary cash compensation, available to the proposed Settlement Class members through a streamlined, state-of-the-art notice and claims process. Joint Decl. ¶ 29-32.

A. **The Settlement Class Definition**

The proposed Settlement Class definition is: "Employees of Perennial Pete or its affiliated entities or companies who are Colombian nationals or of Colombian origin and who provided housekeeping services at resorts where MasterCorp was responsible for housekeeping between March 19, 2021 and the date of preliminary approval of the Settlement." Compl. ¶ 44.

B. Settlement Benefits to Settlement Class Members

Each worker who claims will get the same amount. If, for example (and for simplicity of illustration only), the 205 workers claim, and were sharing $2.05 million, each would receive $10,000. If 50% of the workers claimed, each would get approximately $20,000. While the simplicity of the approach (and predicted positive impact on claims rate) is perhaps self-evident, the additional basis for it is addressed further below. At a high level, the workers worked under the same basic conditions over the same basic time period.

If there are any funds remaining in the Settlement Cash Value after all valid, complete, and timely claims are paid, the parties will attempt a second distribution to Settlement Class members who submitted valid claims until individual settlement awards are equal to five times the amount of 1/205th (in which case the parties propose St. Jude Research Hospital as a cy pres beneficiary). This ensures that every dollar secured by the Settlement will inure to the benefit of the Settlement Class and their interests advanced in this litigation.

C. Notice and Claims Administration

The proposed Settlement Administrator—JND Legal Administration ("JND")—was selected through a competitive bidding process that involved multiple respected vendors. JND is a well-known firm that has successfully administrated numerous class settlements and judgments. The Settlement Fund will pay the fees and costs of the Settlement Administrator to implement the notice program, administer the claims process, mail checks as necessary, and perform the other administrative tasks described in the Settlement. JND estimates that these costs will range from approximately $92,000 to $102,000, with the total based on the final tally of claims administered. These estimates are reasonable and necessary given the size of the Class.

D. Attorneys' Fees and Expenses and Service Awards

Proposed Settlement Class Counsel will apply to the Court for an award of reasonable attorneys' fees and costs. As will be detailed in their forthcoming motion, counsel anticipate they will request up to one third (33.33%) of the Settlement amount in attorneys' fees and reasonable expenses incurred. Any attorneys' fees and expenses granted by the Court will be paid from the Settlement Fund.

Additionally, Class Counsel will apply for service awards to the Named Plaintiffs of $7,500 each for the benefit they conferred on the proposed Settlement Class. "Service awards are 'intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.'" *In re Peanut Farmers Antitrust Litigation*, No. 2:19-cv-00463, 2021 WL 9494033, at *8 (E.D. Va. August 10, 2021) (quoting *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 578 (E.D. Va. 2016)).

IV. Legal Standard for Preliminary Settlement Approval Under Rule 23 and Approval of a Collective Under 29 U.S.C. § 216(b)

As a formal matter, Rule 23(e) applies to all the claims in this case except the Fair Labor Standards Act, whose aggregate procedures are governed by 29 U.S.C. § 216(b) of the Fair Labor Standards Act. *Butler v. DirectSAT USA, LLC*, No. DKC 10–2747, 2015 WL 5177757, at *2 (D. Md. Sept. 3, 2015) (addressing the FLSA). In practice, the standards dovetail.

Federal Rule of Civil Procedure 23(e) governs a district court's analysis of a proposed class action settlement and creates a three-step process for approval. First, in a preliminary assessment, the court must determine that it is likely to: (i) approve the proposed settlement as fair, reasonable, and adequate, after considering the factors outlined in Rule 23(e)(2), and (ii) certify the settlement class after the final approval hearing. *See* Fed. R. Civ. P. 23(e)(1)(B); *see also* 2018 Advisory

Committee Notes to Rule 23. Second, upon a favorable preliminary assessment, the court must then direct notice to the proposed Settlement Class. *See* Fed. R. Civ. P. 23(c)(2)(B); Fed. R. Civ. P. 23(e)(1), (5). Third, after a hearing, the court may grant final approval on a finding that the settlement is fair, reasonable, and adequate, and certify the settlement class. Fed. R. Civ. P. 23(e)(2). Finally, "courts are to appraise the reasonableness of particular class-action settlements on a case-by-case basis, in light of the relevant circumstances." *In re Peanut Farmers Antitrust Litigation*, 2021 WL 9494033, at *2 (citations and quotations omitted).

With respect to the FLSA, district courts within the Circuit typically approve an FLSA settlement if it reflects "a fair and reasonable resolution of a bona fide dispute over FLSA provisions." *Graham v. Famous Dave's of America, Inc.*, No. DKC 19-0486, 2022 WL 1081948, at *4 (D. Md. April 11, 2022) (citing *Lynn's Food Stores v. United States*, 679 F.2d 1350, 1355 (11th Cir. 1982)). Here, a bona fide FLSA dispute exists between the parties. The Complaint articulates Plaintiffs' FLSA allegations in Paragraphs 66-82. The allegations include, among other things, unpaid wages, Compl. ¶ 74, and unpaid overtime, Compl. ¶ 75. The alleged conduct is squarely prohibited by the FLSA. *See* 29 U.S.C. §§ 201 *et seq*. And the parties disagree as to MasterCorp's liability, as demonstrated by the arms-length, adversarial negotiations each side engaged in to reach this Settlement and the Settlement Agreement itself. *Butler*, 2015 WL 5177757, at *3 ("In deciding whether a bona fide dispute exists… courts examine the pleadings in the case, along with the representations and recitals in the proposed settlement agreement."); Settlement Agreement § 5.

Notably, in determining the fairness and reasonableness of a resolution, "federal courts have analogized to the fairness factors generally considered for court approval of class action

settlements under Federal Rule of Civil Procedure 23(e)." *Lomascolo v. Parsons Brinkerhoff, Inc.*, No. 1:08-cv-1310, 2009 WL 3094955, at *11 (E.D. Va. Sept. 28, 2009).

V. The Settlement Is Fair, Reasonable, and Adequate

As noted above, the Court must determine whether the Settlement is "fair, reasonable, and adequate." *In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 252 (E.D. Va. 2009) (quoting Fed. R. Civ. P. 23(e)(1) (B)); *see also* 2018 Advisory Committee Notes to Rule 23. Rule 23(e) provides that "a class action shall not be dismissed without the approval of the court." As explained below, the proposed Settlement is an outstanding result for the Settlement Class and easily satisfies the applicable requirements.

A. The Proposed Settlement Is Fair

The relevant factors in determining a settlement's fairness are "that the settlement was reached as a result of good-faith bargaining at arm's length, without collusion, on the basis of (1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the area of [the relevant area of] class action litigation." *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158-159 (4th Cir. 1991).

1. The Posture of the Case at the Time Settlement Was Proposed and the Extent of Discovery

Under the first factor, "the Court considers whether the case has progressed far enough to dispel any wariness of 'possible collusion among the settling parties.'" *In re NeuStar, Inc. Sec. Litig.*, No. 1:14-cv-885, 2015 WL 5674798, at *11 (E.D. Va. Sept. 13, 2015) (quoting *In re Mills*, 265 F.R.D. at 254). Similarly, with respect to the second factor, evaluating the extent to which discovery has been conducted "enables the Court to ensure that the case is well-enough developed

for Class Counsel and Lead Plaintiffs alike to appreciate the full landscape of their case when agreeing to enter into this Settlement." *In re Mills*, 265 F.R.D. at 254.

"District courts within the Fourth Circuit have found that even when cases settle early in the litigation after only informal discovery has been conducted, the settlement may nonetheless be deemed fair." *Temporary Services, Inc. v. Amer. Int. Group, Inc.*, No.: 3:08-cv-00271, 2012 WL 13008138, *10 (D.S.C. July 31, 2012) (citing cases); *see also Haney v. Genworth Life Ins. Co.*, No. 3:22-cv-00055, 2023 WL 2596845, at *1-2 (E.D. Va. Feb. 15, 2023) (finding first fairness factor met when the parties engaged in pre-filing informal discovery and negotiated a settlement pre-filing guided by a professional mediator); *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 159 (approving a Class Action Settlement "reached so early in the litigation that no formal discovery had occurred"). In such instances, the courts have relied on "documents filed by plaintiffs and evidence obtained through informal discovery" that "yielded sufficient undisputed facts to support" the strengths and weaknesses of each parties' claims. *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 159.[2]

Here, Counsel's extensive work to reach this Settlement speaks to the good-faith, arms-length nature of the Settlement. Plaintiffs' Counsel engaged in significant fact investigation before

[2] Courts outside the Fourth Circuit are in accord. *See, e.g., Preldakaj v. Monarch Condo.*, No. 1:20-cv-09433-VSB, 2021 WL 5306028, at *2 (S.D.N.Y. Nov. 15, 2021) (preliminarily approving settlement when plaintiffs' counsel conducted extensive investigation and the parties reached settlement in a three-day mediation before filing of complaint); *Rivas v. Dinex Grp.*, No. 20-cv-03117, 2021 WL 2850627, at *1 (S.D.N.Y. July 8, 2021) (approving Class and Collective settlement when informal discovery and settlement agreement occurred before filing of complaint); *Udeen v. Subaru of America, Inc.*, No. 18-17334, 2019 WL 4894568, at *3 (D.N.J. Oct. 4, 2019) (preliminarily approving Class settlement when minimal discovery occurred prior to negotiated deal); *McCulloch v. Baker Hughes Inteq Drilling Fluids, Inc.*, No. 1:16–cv–00157–DAD–JLT, 2017 WL 2257130, *3 (E.D. Cal. May 23, 2017) (preliminarily approving FLSA collective settlement when litigation had not progressed far but "significant discovery directed towards early resolution prior to mediation").

contacting Defendant, and in the period of the negotiations, investigation was made all the more efficient by Counsel's experience. Joint Decl. ¶ 10. Indeed, Class Counsel interviewed numerous proposed Class members and other witnesses, reviewed and analyzed anonymized time records, and reviewed the relevant corporate relationships. *Id.*

Once Plaintiffs' Counsel contacted Defendant, enough evidence existed to encourage both parties to seek a professional mediator to negotiate a settlement. *Id*. ¶¶ 11, 12. With mediation in sight, Plaintiffs demanded and received additional discovery such as insurance documents and relevant invoices. *Id*. ¶ 13. In addition, Class Counsel exchanged damages models with MasterCorp's Counsel. *Id*. ¶ 16. Through these different and reinforcing modes of informal discovery, Class Counsel developed and presented the facts set forth in paragraphs 16 through 42 of the Complaint. Compl. ¶¶ 16-42.

Over the course of two days, the parties negotiated and, after the mediation had ended, engaged in additional negotiations, ultimately arriving at the Settlement now presented before the Court. Joint Decl. ¶¶ 18, 19. While Defendant continues to contest its liability, it has agreed to this Settlement to avoid the cost and uncertainty of litigation. These considerations confirm that the proposed Settlement Agreement is the product of good faith, arms-length bargaining premised on sufficient information. *See In re MicroStrategy*, 148 F.Supp.2d 654, 664 (E.D. Va. 2001) (upholding fairness of settlement where settlement was reached prior to the completion of formal discovery, but plaintiffs had conducted sufficient informal discovery to evaluate the merits of Defendant's positions during settlement negotiations); *Strang v. JHM Mortg. Sec. Ltd. Partnership*, 890 F.Supp. 499, 501 (E.D. Va. 1995) (upholding fairness of settlement where the Plaintiffs "conducted sufficient informal discovery and investigation to fairly evaluate the merits of Defendants' positions during settlement negotiations").

2. The Circumstances Surrounding the Negotiations

This factor requires the Court to consider "the negotiation process by which the settlement was reached in order to ensure that the compromise [is] the result of arm's-length negotiations… necessary to effective representation of the class's interests." *Brown*, 318 F.R.D. at 572 (quoting *In re Mills*, 265 F.R.D. at 255). Here, the non-collusive nature of the mediation is reflected by the fact that it seemed it would not work: the parties did not, in fact, settle the case at mediation, although they did so in its aftermath.

As Judge Lee's declaration provides, the Parties engaged in substantial arms-length negotiations to reach this Settlement. Judge Lee Decl. ¶ 5-12. In July 2023, Judge Lee held a lengthy pre-mediation call with the Parties, during which each side discussed initial positions and Judge Lee articulated his plan for the mediation. *Id.* ¶ 6. Subsequently, the Parties submitted mediation briefing on August 25, 2023. *Id.* ¶ 7. Judge Lee then conducted interviews of the Named Plaintiffs with the assistance of a translator and in the presence of counsel for both Parties on September 14 and 15, 2023. *Id.* ¶ 8. Finally, Judge Lee had several ex parte sessions with counsel for each Party before the two-day mediation on October 23 and 24, 2024. *Id.* ¶¶ 9-10. Thus, based on the foregoing and as attested to by Judge Lee, the circumstances surrounding the negotiations were arms-length and non-collusive and resulted in a fair, adequate, and reasonable Settlement.

3. The Experience of Class Counsel in the Area of Labor and Employment, Discrimination, and Civil Rights Class Litigation

The final factor in analyzing the fairness of a settlement concerns the experience of Class Counsel in the particular field of law. *Id.* "Counsel may be evaluated by their affiliat[ion] with well-regarded law firms with strong experience in the relevant field." *In re Neustar*, 2015 WL 5674798, at *11 (internal citation and quotations omitted).

Proposed Co-Lead Class Counsel firms Murphy Anderson PLLC and Lieff Cabraser Heimann & Bernstein, LLP, and the proposed Co-Lead Lawyers at these firms Mark Hanna and Rachel Geman respectively, have a wealth of experience litigating civil rights cases and cases on behalf of vulnerable workers. *See* Joint Decl. § VI.

Murphy Anderson primarily litigates large-scale, complex class and collective actions on behalf of workers. Joint Decl. ¶ 40. With an office in Washington, DC, attorneys at Murphy Anderson also have a strong history of litigating in the Eastern District of Virginia. *Id.* Exemplar cases that demonstrate Murphy Anderson's successful outcomes in wage-and-hour collective and class action cases include *Sierra et al. v. Panel Systems Inc. et al.*, 22-cv-00580 (E.D. Va.); *Vigus v. BMT Designers & Planners*, Adv. Pro. No. 22-01015 (Bankr. S.D.N.Y.); *Baylor et al. v. Homefix Custom Remodeling Corp. et al.*, 19-cv-1195 (D. Md.); *Garcia et al. v. Aves Construction Corp. et al.*, 2018-CA-006791 (D.C. Sup. Ct.); *Castillo v. P&R Enterprises, Inc.*, 07-1195 (D.D.C.); *Ealy v. Pinkerton Government Services*, 10-0775 (D. Md.); *Blount v. US. Security Associates*, 12-809 (D.D.C.); *Ceballos v. WMS*, 12-3117 (D. Md.); *Flores et al. v. Unity Disposal and Recycling, LLC*, 15-cv-196 (D. Md.); and *Prince et al. v. Aramark Corp., et al.*, 16-1477 (D.D.C.). *Id.*

In addition, Mark Hanna successfully represents whistleblowers in False Claims Act cases, including *U.S. ex rel. Vantage Systems v. HX5*, 20-cv-3649 (N.D.Fla); *U.S. ex rel. Powers v. Northrop Grumman*, 17-6673 (N.D. Ca.); *U.S. ex rel. Bunk v. Gosselin*, 02-1468 (E.D. Va.); *U.S. ex rel. Wade v. EMC*, 04-1174 (E.D. Va.); *U.S. ex rel. DeMott v. Pfizer*, 05-12040 (D. Mass.); *U.S. ex rel. Root v. UCB*, 07-1056 (D.D.C.); *U.S. ex rel. Jones v. Corning*, 10-1692 (D.D.C.); *U.S. ex rel. Rudolph v. Tremco et al.*, 10-1192 (D.D.C.); *U.S. ex rel. Ferrara et al. v. Novo Nordisk*, 11-cv-74 (D.D.C.); *U.S. ex rel. Dupont v. Metropolitan Medical Partners*, *et al.*, 13-cv-3950 (D. Md.);

and *U.S. ex rel. Worthy, et al. v. Eastern Maine Healthcare Systems, et al.*, 14-184 (D. Me.). Joint Decl. ¶ 37.

Lieff, Cabraser, Heimann & Bernstein, LLP ("LCHB") is an international law firm of approximately 125 attorneys with offices in San Francisco, New York, Nashville, and Munich. *Id.* ¶ 44. LCHB's practice focuses on complex and class action litigation involving civil rights, employment, sexual abuse and gender violence, whistleblower, consumer, digital privacy, financial and securities fraud, antitrust, mass tort, and product liability matters. *Id.* LCHB's Employment Practice Group has received multiple national accolades for its work prosecuting discrimination and other civil rights litigation. *Id.* For example, in 2022, Chambers Research ranked LCHB's Employment Practice Group as a "Band 1" (top tier) of plaintiff-side employment departments in California. *Id.* In 2015, the Recorder named LCHB's Employment Practice Group as a Litigation Department of the Year in the category of California Labor and Employment Law. *Id.* Benchmark Plaintiff, a guide to the nation's leading plaintiffs' firms, has given LCHB's Employment Practice Group a Tier 1 national ranking, its highest rating. *Id.* The Legal 500 guide to the U.S. legal profession has also recognized LCHB as having one of the leading plaintiffs' employment practices in the nation. *Id.*

LCHB partner Rachel Geman's past relevant cases include *Chen-Oster v. Goldman Sachs*, No. 10- cv-6950 (S.D.N.Y.) ($215 million settlement finally approved in 2023 after 13-year-litigation); *City of Philadelphia v. Wells Fargo*, (E.D. Pa. 2019) (racial justice Title VIII case resulting in $10 million funded toward housing programs); *Calibuso v. Bank of America Corp.*, 299 F.R.D. 359 (E.D.N.Y. 2014) ($39 million settlement of Rule 23 class claims based on federal Title VII discrimination and state laws as well as 29 U.S.C. § 216(b) collective claims based on

the Equal Pay Act); and numerous cases where she navigates retaliation challenges and fears faced by vulnerable workers. Joint Decl. ¶ 43.

The breadth of Geman's class action experience in complex matters is also underscored by her recent appointments as co-lead class counsel in matters such as *Cottle v. Plaid Inc.*, No. 4:20-cv-03056-DMR, ECF No. 184 (N.D. Cal., July 20, 2022) ($58 million settlement of a fintech privacy and anti-spoofing class action), *In re: Valsartan, Losartan, and Irbersartan Products Liab. Litig.,* No. 19-2875 (RBK/SAK) (ongoing medical monitoring litigation class involving contaminated drugs); *see also Authors Guild et al. v. OpenAI Inc. & Microsoft Corp. et al.*, 1:23-08292-SHS (S.D.N.Y.) (ongoing consolidated matter on behalf of fiction and non-fiction authors against OpenAI and Microsoft in connection with alleged copyright infringement; Geman and LCHB appointed interim co-lead class counsel). Joint Decl. ¶ 42.

Other relevant LCHB cases include *Vedachalam v. Tata Consultancy Servs.*, No. C 06-0963 CW, 2013 U.S. Dist. LEXIS 100796 (N.D. Cal.) ($29.75 million settlement in 20213 for certified class of Indian employees alleging that the defendant paid less than what was promised) and *Cruz v. U.S., Estados Unidos Mexicanos, Wells Fargo Bank, et al*., No. 01-0892-CRB (N.D. Cal.) (hotly-litigated case resulting in a settlement on behalf of Mexican workers whose wages were withheld). Joint Decl. ¶ 45.

Class counsel entered into this settlement and moves for this Court to approve it. "Lead Counsel's decision to settle the case is the product of thorough exploration and deliberation and as such, their representations to the court that the settlement provides class relief which is fair, reasonable and adequate should be given significant weight." *In re Mills*, 265 F.R.D. at 255. For the foregoing reasons, this Settlement is fair.

B. <u>The Proposed Settlement Is Adequate</u>

The Fourth Circuit has laid out the relevant factors for adequacy as follows: "(1) the relative strength of the plaintiffs' case on the merits; (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial; (3) the anticipated duration and expenses of additional litigation; (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment; and (5) the degree of opposition to the settlement." *In re Jiffy Lube Sec. Litig.*, 927 F.2d at 158-159; *see also In re Am. Capital S'holders Derivative Litig.*, Nos. 11–2424, 11–2428, 11–2459, 11–2459, 2013 WL 3322294, at *3 (D. Md. June 28, 2013) (the adequacy analysis "weigh[s] the likelihood of the plaintiff's recovery on the merits against the amount offered in settlement.").

1. <u>The Relative Strength of the Plaintiffs' Case on the Merits and the Existence of Any Difficulties of Proof or Strong Defenses the Plaintiffs Are Likely to Encounter if the Case Goes to Trial</u>

"The first and second *Jiffy Lube* factors addressing the 'adequacy' of a settlement compel the Court to examine how much the class sacrifices in settling a potentially strong case in light of how much the class gains in avoiding the uncertainty of a potentially difficult case." *In re Mills*, 265 F.R.D. at 256. Thus, courts generally analyze these factors in tandem. *See, e.g., In re Zetia (Ezetimibe) Antitrust Litigation*, No. 2:18-md-2836, 2023 WL 6871635, at *4 (E.D. Va. October 18, 2023); *Brown*, 318 F.R.D. at 573; *In re Mills*, 265 F.R.D. at 255-56. While the proposed Settlement Class and Collective Representatives and Class Counsel are confident in the merits of the claims and believe they could secure a significant judgment through the litigation process, the outcome of any litigation is never certain and the Plaintiffs faced significant obstacles.

The parties disagreed about whether the Settlement Class could establish on the merits, among other things: (1) whether MasterCorp—and not its contractor Perennial Pete—was primarily responsible for the program that brought Class members to the U.S. and forced them to

work under undesirable conditions, (2) whether wages were withheld from all Class members, and (3) whether the actions of MasterCorp employees "cause[ed] the [Class] to believe that, if [they] did not perform [their] labor or services, [they] would suffer serious harm" under 18 U.S.C. § 1589(a) (TVPRA).

As to class and collective action certification, MasterCorp would surely claim that there were individual differences between and among the different workers, including as to degree of fear. Because the TVPRA uses an objective standard, this argument presents a substantial obstacle to Plaintiffs' claim. *Cf. Prompt Nursing Emp. Agency LLC*, No. 17-CV-1302 (NG) (JO), 2018 WL 4347799, at *8 (E.D.N.Y. Sept. 12, 2018) ("The TVPA's explicit statutory language makes clear that a 'reasonable person' standard applies in determining whether a particular harm (or threat of harm) is sufficiently serious to compel an individual to continue performing labor or services."); *Tanedo v. East Baton Rouge Parish School Board*, No. LA CV10-01172 JAK, 2011 WL 7095434, at *8 (C.D. Cal. Dec. 12, 2011) ("To determine if the harms threatened were serious, the statute employs a reasonable person test: Was the threat sufficiently serious that a reasonable person of the same background and circumstances would feel compelled to continue working?");

Despite these difficulties of proof, the per-Class member Settlement award falls comfortably within the range of awards in other, similarly-serious TVPRA cases (especially when the award will result in actual payment). Under similar factual allegations, the per Class member Settlement award here is comparable *or better* than the same in other TVPRA cases. *See, e.g., Arreguin v. Sanchez*, 398 F. Supp. 3d 1314, 1327 (S.D. Ga. 2019) (average TVPRA damages award of $3,867.84 for Mexican farm workers when employer recruited workers to U.S. to work below minimum wage with no overtime pay, provided deplorable living conditions, and made threats of deportation); *Herrera Lopez v. Walker*, No. 3:18-cv-170-HSM-HBG, 2019 WL 1466892, *10 (E.D.

Tenn. Feb. 5, 2019) (awarding 6 plaintiffs $2,000 each for the mental anguish of working for employer when employer threatened plaintiffs with deportation; forced plaintiffs to work with no running water, heat, or air conditioning; and failed to pay workers); *Nunag-Tanedo v. East Baton Rouge Parish School District*, No. 8:10-cv-01172 (C.D. Cal.) (jury award of $4,481,505 apportioned among 350 plaintiffs for damages in TVPRA, FLSA, and related claims when defendant recruited class of workers to U.S., required the payment of various fees that put workers in debt, and deportation when workers resisted). The per-Class member recovery here falls well within the wide range of comparator TVPRA awards, demonstrating the high quality of the arms-length, adversarial settlement negotiations that took place to reach this deal.[3]

Thus, the Settlement reflects a proper balancing of the strength of Plaintiffs' claims with the difficulties of proof and defenses that Plaintiffs are likely to encounter if this case were to go to trial.

2. The Anticipated Duration and Expense of Additional Litigation

This factor considers the substantial time and expense litigation of this type would entail if a settlement were not reached. *In re Mills*, 265 F.R.D. at 256. Because the parties reached this Settlement prior to litigating the pleadings, the anticipated duration and expense of additional litigation is extensive.

Additional litigation would require the parties to engage in all phases of the litigation process: potential litigation on the pleadings, formal discovery (fact and expert), class certification, summary judgment proceedings (potentially), and trial and appeal, all at significant cost for all

[3] *Cf. David v. Signal*, No. 2:08-cv-01220 (E.D. La.) (jury award of $14,100,000 apportioned among five plaintiffs for damages in TVPRA, FLSA, and related claims when workers lived in a guarded labor camp, and were made false promises of permanent U.S. residency).

involved and years of effort. *See In re MicroStrategy*, 148 F.Supp.2d at 667 (quoting *In re Baldwin–United Corp.*, 607 F.Supp. 1312, 1320–21 (S.D.N.Y.1985) ("[T]he risk of appeal is not confined merely to expense and delay; an adverse ruling upon appeal could overturn whatever recovery plaintiffs might obtain at trial.")).

The expense and delay of the additional litigation arguably is a particular risk in this case, given Plaintiffs are a vulnerable group of Colombian nationals and/or persons of Colombian origin for whom case-related travel (whether from within the U.S., and without a doubt from without) would be costly and anxiety-provoking.

3. The Solvency of the Defendant and the Likelihood of Recovery on a Litigated Judgment

"The fourth factor considers the solvency of the Defendants and assesses whether the Settlement Agreement provides for a better outcome for the Class than if the Plaintiffs were to try to collect a litigated judgment from an insolvent defendant." *In re Zetia*, 2023 WL 6871635, at *5. Here, because the Settlement consideration is so strong, this factor supports Settlement (or is neutral). Stated differently, while Defendant (a private company) may be likely able to withstand a larger litigated judgment, assuming the albatross of litigation would not cause it to lose clients and therefore money, this should not weigh against the Settlement.

4. Degree of Opposition to Settlement

Class Counsel will address this factor at final approval. Thus, for the foregoing reasons, this settlement is fair and adequately compensates the proposed Settlement Class in light of the strength of their claims and the difficulty of litigation.

VI. The Court Will Be Likely to Certify the Class at Final Approval

"When a settlement is reached prior to Rule 23 certification, the law permits a class to be certified solely for the purposes of settlement." *Cerrato v. Durham Public Schools Board of*

Education, No. 1:16-cv-1431, 2017 WL 2983301, at *2 (M.D.N.C. March 17, 2017); *see also Binotti v. Duke University*, No. 1:20-CV-470, 2021 WL 5363299, at *1 (M.D.N.C. Aug. 30, 2021) (certifying Settlement Class of 15,000 Duke University employees under Rule 23(b)(3)). A party seeking class certification must still show that the class action satisfies the following four prerequisites set forth in Rule 23(a): (1) numerosity; (2) commonality of questions of law or fact; (3) typicality of the named plaintiff's claims and defenses; and (4) the adequacy of the named plaintiff. *See Cerrato*, 2017 WL 2983301, at *2; Fed. R. Civ. P. 23(a).

The party seeking class certification must also satisfy one of the categories set forth in Rule 23(b). Here, certification is sought pursuant to Rule 23(b)(3), requiring that:

> the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy…

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

"The Court must perform a 'rigorous analysis' to determine whether the plaintiff has met its required showing as to each class certification factor. *Branch v. Gov't. Emp. Ins. Co.*, 323 F.R.D. 539, 544 (E.D. Va. 2018) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011)). As explained below, the Court should determine the proposed Settlement Class is likely to be certified. *See Robinson v. Carolina First Bank NA*, No. 7:18-cv-02927-JDA, 2019 WL 719031, *6 (D.S.C. Feb. 14, 2019) (conditionally certifying Rule 23 Settlement Class when settlement was reached prior to filing of complaint).

A. Rule 23(a)

1. Rule 23(a)(1): Numerosity Is Satisfied

Rule 23 permits class certification if "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). A "class consisting of as few as 25 to 30 members raises

the presumption that joinder would be impractical." *See Fangman v. Genuine Title, LLC*, No. 14-cv-81, 2016 WL 6600509, at *8 (D. Md. Nov. 8, 2016) (citation and quotations omitted).

Here, the proposed Settlement Class includes approximately 205 members, which easily satisfies the numerosity threshold. *See Fangman*, 2016 WL 6600509, at *8. Furthermore, Class members are both in Colombia and dispersed throughout the U.S. This level of geographic dispersion contributes to the impracticability of joinder in this case. *See Am. Sales Co., LLC v. Pfizer, Inc.*, No. 2:14-cv-361, 2017 WL 3669604, at *10 (E.D. Va. July 28, 2017), report and recommendation adopted, No. 2:14-cv-361, 2017 WL 3669097 (E.D. Va. Aug. 24, 2017) [hereinafter *Am. Sales Co.*] (finding that a proposed class of thirty-two individuals spread across Puerto Rico and the U.S. was sufficiently dispersed to make joinder impracticable).

2. <u>Rule 23(a)(2): Commonality Is Satisfied</u>

Rule 23(a)(2) requires that questions of law or fact be common to the class. "A common question is one that can be resolved for each class member in a single hearing," and does not "turn[] on a consideration of the individual circumstances of each class member." *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 319 (4th Cir. 2006). Rule 23(a)(2) does not require that *every* question of fact and law be common to the class. Rather, a class's claims must involve "a common contention… of such a nature that it is capable of classwide resolution" and it should have the capacity to "generate common *answers* apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc.*, 564 U.S. at 350. Finally, "even a single common question will do." *Id.* at 358.

Here, there are several common questions of law and fact to satisfy this requirement. For example, the following questions are common to all proposed Class members: (1) what conduct MasterCorp employees were aware of and/or engaged in, (2) the extent to which MasterCorp—and not its contractor companies—was responsible for the alleged conduct, (3) whether MasterCorp's actions amount to forced labor or human trafficking as defined by the TVPRA, (4)

whether MasterCorp's actions amounted to violations of state wage-and-hour requirements, (5) whether MasterCorp engaged in discrimination based on National Origin, and (6) whether MasterCorp's actions were tortious under the common law and whether its scheme unjustly enriched the company. These questions are common among the proposed Settlement Class and key to resolving their claims. Thus, the commonality requirement is satisfied.

3. Rule 23(a)(3): Typicality Is Satisfied

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "The typicality requirement specifically ensures that named class representatives are appropriately part of the class and 'possess the same interest[s] and suffer the same injury as the class members.'" *Am. Sales Co.*, 2017 WL 3669604, at *11. "The essence of the typicality requirement is captured by the notion that 'as goes the claim of the named plaintiff, so goes the claims of the class.'" *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006) (citing *Broussard*, 155 F.3d at 340).

Here, the proposed Settlement Class Representatives' injuries are typical of the injuries of the proposed Settlement Class in that they are Colombian nationals or persons of Colombian origin who worked at MasterCorp sites for around 70 hours a week without legal protections and under circumstances adverse to those of other National Origins, were forced to pay their rent, did not have money for food at first, were at risk of or suffered retaliation, were misclassified, and were made to understand they were at risk of deportation. Compl. ¶¶ 1, 2.

4. Rule 23(a)(4): Adequacy Is Satisfied

The final requirement under Rule 23(a) is that the parties representing the proposed Settlement Class be able to "fairly and adequately ... protect the interests" of all members of the class. Fed. R. Civ. P. 23(a)(4). This inquiry "serves to uncover conflicts of interest between named parties and the class they seek to represent." *Amchem Prod., Inc., v. Windsor*, 521 U.S. 591, 625

(1997). In order for a conflict to defeat class certification, the conflict "must be more than merely speculative or hypothetical," but rather "go to the heart of the litigation." *Gunnells v. Healthplan Sers., Inc.*, 348 F.3d 417, 430-31 (4th Cir. 2003). Here, the proposed Settlement Class Representatives have common interests with all Settlement Class members and there are no conflicts.

B. <u>Rule 23(b)</u>

1. <u>Rule 23(b)(3): Predominance Is Satisfied</u>

The predominance requirement "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods. Inc.*, 521 U.S. at 623. The Supreme Court has explained that "Rule 23(b)(3)… does not require a plaintiff seeking class certification to prove that each element of [their] claim is susceptible to classwide proof" but rather that "common questions predominate over any questions affecting only individual class members." *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 469 (2013) (internal citations and quotations omitted).

Here, there are no predominating individual legal or factual questions. All Class Members are protected by the same federal statutes, some of which address prototypical group-based harms, and any differences in state laws are not material. Compl. ¶ 3. Similarly, there are no material factual differences: the unlawful program lasted during a condensed time period, and all workers performed the same job. Compl. ¶ 13.

2. <u>Rule 23(b)(3): Class Treatment Is Superior to Other Available Methods for the Resolution of This Case</u>

"The superiority requirement ensures that proceeding by class action will 'achieve economies of time, effort, and expense, and promote ... uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable

consequences.'" *Am. Sales Co.*, 20147 WL 3669604, at *17 (citing *Amchem*, 521 U.S. at 615). Rule 23(b)(3) provides the following factors for consideration when determining whether a class action is superior: "(a) the class members' interests in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already commenced by or against class members; [and] (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum[.]" Fed. R. Civ. P. 23(b)(3)(A)-(C).[4]

Here, each factor demonstrates the superiority of the class mechanism for adjudicating these Class members' claims.

First, the interest of Settlement Class members in asserting individual claims is limited. The maximum damages sought by each Settlement Class member (in the thousands of dollars), while significant to individuals, are relatively small in comparison to the substantial cost of prosecuting each one's individual claims, especially given that many Class Members are not in the United States and many or all may fear retaliation without the buttressing of the class structure.

Second, proposed Class Counsel are unaware of other litigation Class Members have initiated.

Third, and finally, class resolution is also superior from an efficiency and resource perspective. It will allow all members of the proposed Settlement Class to have their claims resolved while eliminating the risk of inconsistent adjudications and promoting the fair and efficient use of the judicial system. *See In re Serzone Products Liability Litig.*, 231 F.R.D. 221,

[4] Rule 23(b)(3)(D) presents a fourth factor to consider when determining the superiority of class resolution: "the likely difficulties in managing a class action." However, "[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems…for the proposal is that there be no trial." *Amchem*, 521 U.S. at 620.

240 (S.D.W. Va. 2005) ("[C]lass treatment limits the possibility of inconsistent rulings regarding liability or the appropriate measurement for damages").

For all the reasons set forth above, Plaintiffs respectfully submit that the Court will—after notice is issued and Class member input received—"likely be able to… certify the class for purposes of judgment on the proposal." *See* Fed. R. Civ. P. 23(e)(1)(B

VII. <u>The Proposed Settlement Collective Should Be Certified for Settlement Purposes Pursuant to 29 U.S.C. § 216(b)</u>

Plaintiffs' federal wage-and-hour claim is appropriate for certification under Section 216(b) of the FLSA. *See* 29 U.S.C. § 216(b). Under the FLSA, private plaintiffs may bring a collective action on their own behalf and on behalf of those similarly situated to them. 29 U.S.C. § 216(b). District courts have discretionary authority to facilitate notice to potential plaintiffs of a collective action. *Hernandez v. BKR Servs. LLC*, No. 3:22-cv-530–HEH, 2023 WL 5181595, at *5 (E.D. Va. August 11, 2023). Neither the Fourth Circuit nor the Supreme Court has prescribed a process for certification of an FLSA collective. *See id.* When deciding whether to certify FLSA collectives, this Court has followed the approach set forth in *Lusardi v. Xerox Corp.*, 118 F.R.D. 351 (D.N.J. 1987). *See Hernandez*, 2023 WL 5181595, at *5; *Thomas v. Maximus, Inc.*, No. 3:21-cv-498, 2022 WL 1482010, at *3-*4 (E.D. Va. May 10, 2022).

At the conditional class certification stage, or notice stage, "courts evaluate whether the plaintiffs have met their burden of satisfying the 'similarly situated' requirement under a somewhat lenient standard." *Thomas*, 2022 WL 1482010, at *3 (citation omitted). The primary focus of this inquiry is "whether the potential plaintiffs are 'similarly situated with respect to the legal and, to a lesser extent, the factual issues to be determined.'" *Thomas*, 2022 WL 1482010, at *3 (citing *Houston v. URS Corp.*, 591 F.Supp.2d 827, 831 (E.D. Va. 2008)). Stated differently, conditional collective certification requires "a modest factual showing sufficient to demonstrate that they and

potential plaintiffs were victims of a common policy or plan that violated the law." *Hernandez*, 2023 WL 5181595, at *5 (citing *Choimbol v. Fairfield Resorts, Inc.*, 475 F.Supp.2d 557, 564 (E.D. Va. 2006)).

Here, Plaintiffs easily clear the requirement for conditional collective certification. Plaintiffs' claims allege that MasterCorp unlawfully forced each of them and the proposed Collective to work hours that violated the FLSA for low wages that violated the same. Compl. ¶¶ 68-84. Named Plaintiffs and the proposed Collective worked equivalent positions in housekeeping at hotels across the U.S. that MasterCorp services. *Id.* ¶ 13. In sum, there are no differences—let alone any material differences—between the Plaintiffs and the proposed Collective. *See, e.g., Hernandez*, 2023 WL 5181595, at *7 (conditionally certifying class where Plaintiffs submitted six declarations attesting that they each performed similar duties, received an hourly rate from Defendants, and were consistently made to work more than 40 hours per week without overtime pay); *Hargrove v. Ryla Teleservs., Inc.*, No. 2:11-cv-344, 2012 WL 489216, at *8 (E.D. Va. Jan. 3, 2012) ("The submission of consistent employee declarations ... has consistently been held as sufficient and admissible evidence of a policy to be considered for conditional class certification.").

VIII. <u>The Proposed Notice Program Provides the Best Notice Practicable to the Proposed Settlement Class</u>

Plaintiffs respectfully request that the Court approve the form and content of the proposed Notice and Summary Notice.

Rule 23(c)(2)(B) requires a certified class to receive "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Similarly, Rule 23(e)(1) requires a court to "direct notice in a reasonable manner to all class members who would be bound by the proposal." The proposed notice plan here

readily meets these standards, and is typical of notice plans in similar actions. In addition, the simple claims form, where every Class Member who claims will receive the same amount, furthers the goals of simplicity. "The goal of any distribution method is to get as much of the available damages remedy to class members as possible an in as simple and expedient a manner as possible." William B.Rubenstein, *Newberg on Class Actions* § 12.15 (5th ed. 2017).

Here, the proposed notice includes direct mailings, a targeted digital notice campaign online across the United States and Colombia, a press release in English and Spanish, a settlement website, and two toll-free numbers, among other efforts. Declaration of JND Vice President Gina Intrepido-Bowden ("JND Decl.") ¶¶ 18, 30, 35, 37, 40. Altogether, these efforts are designed to target Settlement Class members through both traditional and contemporary means to maximize Class and Collective participation. For example, through its digital notice campaign, JND plans to serve more than 10 million impressions between the U.S. and Colombia. *Id.* ¶ 31, 32. Further, JND has researched the key demographics and geographical areas to which it can target this campaign to improve its impact. *Id.* This targeted and comprehensive approach is only one way that JND intends to reach Settlement Class members. More information about JND's notice program is included in the Declaration of JND Vice President Gina Intrepido-Bowden filed concurrently with this motion.

Accordingly, the notice program should be approved by the Court.

IX. <u>The Court Should Schedule a Fairness Hearing and Related Dates</u>

The next steps in the settlement approval process are to notify Settlement Class members of the proposed Settlement, then allow Settlement Class members to file comments or objections or to opt out, and finally to hold a Fairness Hearing. As set forth in the proposed Order and Section 1 of the Settlement Agreement, the parties respectfully propose the following schedule.

Date	Event
TBD	Entry of Preliminary Approval Order
21 days after entry of Preliminary Approval Order	Settlement Class Notice Program begins
51 days after entry of Preliminary Approval Order	Settlement Class Notice Program ends
75 days after entry of Preliminary Approval Order	Motion(s) for Final Approval and Attorneys' Fees and Expenses
90 days after entry of Preliminary Approval Order	Objection and Opt-Out Deadline
90 days after entry of Preliminary Order	Settlement Claims Deadline
97 days after entry of Preliminary Approval Order	Reply Memoranda in Support of Final Approval and Fee/Expense Motion(s) Parties file any responses to Objections
125 days after entry of Preliminary Approval Order	Fairness hearing

X. Conclusion

For the foregoing reasons, Plaintiffs respectfully request that the Court: (1) determine under Rule 23(e)(1) and 29 U.S.C. § 216(b) that it is likely to approve the proposed Settlement and certify the Settlement Class and Collective; (2) appoint Jane Doe and John Does 1 and 2, as interim Class and Collective Representatives; (3) appoint JND as Settlement Administrator and direct notice to the proposed Settlement Class through the proposed Notice Program; (4) appoint Rachel Geman of Lieff, Cabraser, Heimann, & Bernstein, LLP and Mark Hanna of Murphy Anderson PLLC as Interim Co-Lead Counsel for the proposed Settlement Class and Collective; and (5) schedule a final approval hearing under Rule 23(e)(2). A proposed Preliminary Approval Order is attached.

Dated: April 25, 2024

Respectfully submitted,

/s/ *Mark Hanna*
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Proposed Co-Lead Class and Collective Action Counsel

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Jane Doe and John Does 1 and 2, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

MasterCorp, Inc.,

Defendant.

INDEX NO. 1:24-cv-678

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT AND DIRECTING NOTICE UNDER FED. R. CIV. P. 23(e) AND 29 U.S.C. § 216(b)

Before the Court is Plaintiffs' Unopposed Motion for Preliminary Approval of the Class and Collective Action Settlement and Direction of Notice Under Fed. R. Civ. P. 23(e) and 29 U.S.C. § 216(b).

WHEREAS, a proposed Class and Collective Action Settlement Agreement (the "Settlement") has been reached between the Named Plaintiffs and MasterCorp, on behalf of a proposed Settlement Class and Collective, that resolves all claims against Defendant pertaining to its alleged unlawful hiring and employment of Plaintiffs and the proposed Settlement Class and Collective;

WHEREAS, the Court, for purposes of this Order, adopts all defined terms as set forth in the Settlement;

WHEREAS, this matter has come before the Court pursuant to Plaintiffs' Unopposed Motion for Preliminary Approval of Class and Collective Action Settlement and Direction of Notice Under Fed. R. Civ. P. 23(e) and 29 U.S.C. § 216(b) (the "Motion");

WHEREAS, Defendant does not oppose the Court's entry of this Preliminary Approval Order;

WHEREAS, the Court finds it has jurisdiction over the Action and each of the parties for purposes of this Settlement and asserts jurisdiction over the proposed Settlement Class and Collective for purposes of considering and effectuating this Settlement; and

WHEREAS, this Court has considered all of the submissions related to the Motion, and is otherwise fully advised of all relevant facts in connection therewith;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. That the Court **likely will be able to certify** the Settlement Class at Final Approval for settlement purposes only;

2. Provisional certification of the Settlement Collective is **granted** for settlement purposes only;

3. Appointment of Jane Doe and John Does 1 and 2 as Interim Class and Collective Representatives is **granted**;

4. Preliminary approval of the proposed Settlement Agreement between Named Plaintiffs, the proposed Settlement Class and Collective, and Defendant MasterCorp, Inc. under Rule 23(e)(1) and 29 U.S.C. § 216(b) is **granted**;

5. Approval of the proposed form and manner of notice to the proposed Settlement Class and Collective is **granted**;

6. Appointment of Mark Hanna of Murphy Anderson, PLLC and Rachel Geman of Lieff, Cabraser, Heimann, & Bernstein as Interim Co-Lead Counsel for the proposed Settlement Class and Collective for the purposes of conducting the necessary steps in the Settlement approval process is **granted**; and

7. Approval of the proposed schedule leading up to and including the Fairness Hearing is **granted**, namely:

Date	**Event**
TBD	Entry of Preliminary Approval Order
21 days after entry of Preliminary Approval Order	Settlement Class Notice Program begins
51 days after entry of Preliminary Approval Order	Settlement Class Notice Program ends
77 days after entry of Preliminary Approval Order	Motion(s) for Final Approval and Attorneys' Fees and Expenses
90 days after entry of Preliminary Approval Order	Objection and Opt-Out Deadline
90 days after entry of Preliminary Order	Settlement Claims Deadline
97 days after entry of Preliminary Approval Order	Reply Memoranda in Support of Final Approval and Fee/Expense Motion(s) Parties file any responses to Objections
125 days after entry of Preliminary Approval Order	Fairness hearing

8. The Parties and Class Counsel agree that certification of the Rule 23 Settlement Class and Collective is a certification for settlement purposes only.

9. If the Settlement does not receive final Court approval, the Parties shall be returned to their respective positions nunc pro tunc as those positions existed immediately prior to the execution of the Settlement; the proposed Settlement Class and Collective shall be decertified; this Order will become null and void, and shall not be considered in evidence or on the issue of class or collective certification; and MasterCorp retains its right to object to class and collective certification in this Action or in any other putative class or collective action.

IT IS SO ORDERED.

DATED: ______________________ ________________________________
UNITED STATES DISTRICT JUDGE

Exhibit 1

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Jane Doe and John Does 1 and 2, on behalf of themselves and all others similarly situated, Plaintiffs, -against- MasterCorp, Inc., Defendant.	INDEX NO. 1:24-cv-678 **JOINT DECLARATION OF MARK HANNA AND RACHEL GEMAN IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT AND DIRECTION OF NOTICE UNDER FED. R. CIV. P. 23(e) AND 29 U.S.C. § 216(b)**

Mark Hanna and Rachel Geman jointly declare and state as follows:

1. We are counsel for Jane Doe and John Does 1 and 2 (collectively, "Plaintiffs") in the above-captioned case (the "Action").

2. I, Mark Hanna, am a partner at Murphy Anderson, PLLC ("Murphy Anderson"). I am an attorney duly licensed to practice law in Washington, DC, Virginia, New Jersey, and Michigan. I submit this Declaration in support of Plaintiffs' Unopposed Motion for Preliminary Approval of the Class and Collective Action Settlement and Direction of Notice Under Fed. R. Civ. P. 23(e) and 29 U.S.C. § 216(b) (the "Motion for Preliminary Approval").

3. I, Rachel Geman, am a partner at the law firm of Lieff, Cabraser, Heimann & Bernstein, LLP ("Lieff Cabraser" or "LCHB"). I am an attorney duly licensed to practice law in the State of New York and *my pro hac vice motion* is forthcoming. I submit this Declaration in support of the Motion for Preliminary Approval.

4. Throughout this litigation, we and our respective law firms have been primarily responsible for the prosecution of Plaintiffs' claims on behalf of the proposed Settlement Class and Collective.

5. We make this Joint Declaration in support of the Motion for Preliminary Approval. Except where otherwise stated, we each have personal knowledge of the facts set forth in this Joint Declaration based on active participation in all aspects of the prosecution and resolution of the Action. If called upon to testify, we each could and would testify competently to the truth of the matters stated herein.

6. Filed concurrently herewith is a true and correct copy of the Class and Collective Action Settlement Agreement (the "Settlement")[1] entered into by Plaintiffs, on behalf of themselves and the proposed Settlement Class and Collective, and Defendant MasterCorp, Inc. ("MasterCorp," and together with Plaintiffs, the "parties").

I. **Summary of the Action**

7. Plaintiffs filed this case on behalf of themselves and other similarly situated Colombian nationals and individuals of Colombian origin on April 25, 2024, alleging claims for violations of the Trafficking Victims Protection Reauthorization Act, 18 U.S.C. §§ 1581 *et seq.* ("TVPRA"); the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et seq.*; § 1981 of the Civil Rights Act of 1866; various state wage and anti-discrimination laws; fraud; and negligence. Compl, Dkt. 1 ¶¶ 59-130.

8. As alleged in the Complaint, since approximately March2021, Defendant MasterCorp has unlawfully recruited and employed Plaintiffs Jane Doe, John Doe 1, John Doe 2, and a proposed Settlement Class and Collective of approximately 205 Colombian nationals or

[1] Unless otherwise indicated, capitalized terms herein refer to and have the same meaning as in the Settlement.

individuals of Colombian origin to work as hotel cleaners at the luxury hotel chains that MasterCorp services across the United States.

II. Plaintiffs' and Counsels' Role in Prosecuting and Settling the Action

9. Plaintiffs and their Counsel have zealously represented the interests of the proposed Settlement Class and Collective and committed substantial resources to the resolution of the proposed Settlement Class and Collective's claims

10. Before filing the Complaint, Counsel undertook a robust investigation into the factual issues raised in this litigation by interviewing numerous proposed Settlement Class members and other witnesses, reviewing and analyzing anonymized time records, and reviewing the relevant corporate relationships. Counsel also researched the applicable law to determine how the discrimination, labor trafficking, and employment claims applied to these facts and to address MasterCorp's potential defenses.

11. On March 23, 2023, Counsel transmitted a demand letter to MasterCorp's General Counsel detailing the factual allegations Plaintiffs assert against MasterCorp as well as the potential legal claims Plaintiffs' allegations amounted to. Included with the demand letter was a class tolling agreement that could suspend the statute of limitations on Plaintiffs' potential legal claims while the parties mutually worked to resolve the dispute.

12. Counsel for MasterCorp agreed to toll Plaintiffs' potential legal claims while the parties sought a resolution.

13. Soon thereafter, the parties discussed and negotiated the information Plaintiffs would need to meaningfully proceed to settlement and Counsel for MasterCorp began producing several rounds of document discovery, including insurance documents and relevant invoices, for purposes of settlement and mediation.

14. Plaintiffs' Counsel learned through MasterCorp's production that MasterCorp had ended the program at issue in early 2023.

15. On May 2, 2023, Plaintiffs made a Demand based on then-current information.

16. Thereafter, the parties exchanged damages models and agreed to mediate before the Honorable Gerald Bruce Lee, a retired District Court Judge from the Eastern District of Virginia. Judge Lee set a rigorous mediation process wherein each Party submitted a confidential mediation statement and had several one-on-one meetings with Judge Lee before the mediation.

17. In preparation for the mediation, Judge Lee interviewed Plaintiffs, with translators, and in the presence of Plaintiffs' Counsel as well as MasterCorp's Counsel, representatives, and agents over the course of two days on September 14 and 15.

18. The mediation was conducted on October 23 and 24, 2023. Throughout the first day of negotiations, the parties remained far apart with neither side making significant moves to reach a negotiated deal. On the second day, after several more hours of impasse, both parties made significant concessions to get closer to settlement. During the mediation, the parties informally shared additional information, including via direct communications between Counsel in the presence of the mediator, regarding MasterCorp's potential legal liability, the merits of Plaintiffs' claims, and the size and nature of the Class and Collective.

19. Although the parties were unable to reach an agreement on the second day of the mediation, they continued determined negotiations through Judge Lee, and on the following day, Defendant conveyed a final offer. Plaintiffs accepted the offer and the settlement was initially reached.

20. During the extensive post-mediation discussions, the Parties engaged in substantial arms-length negotiations and discovery through April 10, 2024. This ultimately confirmed a slightly smaller Class size of 205 Colombian workers.

21. On April 10, 2024, mindful of the updated Class size but also the passage of time, the parties finalized and executed the proposed Settlement.

22. In sum, the parties agreed to the terms of the Settlement through experienced Counsel who possessed all the information necessary to evaluate the case, determine the contours of the proposed Settlement Class and Collective, and reach a fair and reasonable compromise after negotiating the terms of the Settlement at arm's length and with the assistance of a neutral mediator.

23. Further, Plaintiff's Counsel have vigorously represented the Class in this Action and will continue to do so after preliminary and final approval of the Settlement (if approved). Our efforts on behalf of the proposed Settlement Class include (as noted in part above): (i) conducting a thorough pre-suit investigation that resulted in the preparation of a detailed pre-filing demand to MasterCorp; (ii) analyzing MasterCorp's legal position and potential legal defenses; (iii) gathering Plaintiff's documents and relevant information; (iv) preparing mediation statements that handily addressed MasterCorp's legal arguments and potential defenses; (v) requesting and reviewing relevant informal discovery; (vi) participating in mediation and extensive subsequent settlement discussions; and (vii) achieving a very favorable Settlement on behalf of the proposed Settlement Class.

24. Plaintiffs, meanwhile, have been actively engaged in this matter since its inception. They provided pertinent information to Counsel regarding the specific factual allegations raised in the Complaint. They stayed informed about the case; communicated

regularly with Counsel throughout the mediation process, including by evaluating and approving the proposed Settlement; and worked with Counsel to prepare and review the Complaint.

III. Recommendation of Counsel

25. Based on thorough examination and investigation of the facts and law relating to Plaintiffs' claims on behalf of the proposed Settlement Class and Collective, including the information exchanged before and during mediation, we believe the proposed Settlement is in the best interest of the proposed Settlement Class. Our investigation informed us about the strengths and weaknesses of Plaintiffs' claims, as well as MasterCorp's defenses, and allowed us to conduct an informed, fair, and objective evaluation of the value and risks of continued litigation.

26. We recognize that despite our belief in the strength of Plaintiffs' claims, and Plaintiffs' and the proposed Settlement Class and Collective's ability to secure a judgment and award under the TVPRA, FLSA, Section 1981, and other state and common law causes of actions, the expense, duration, and complexity of protracted litigation would be substantial and the outcome uncertain.

27. We also are mindful that absent the proposed Settlement, MasterCorp's defenses could deprive the Plaintiffs and the proposed Settlement Class of any potential relief whatsoever. MasterCorp would continue to challenge liability, would oppose class certification vigorously, and would prepare a competent defense at trial. MasterCorp also could appeal any adverse decision on the merits, or challenge the award of damages on due process grounds.

28. In our professional opinion, the relief provided by the proposed Settlement is fair, adequate, reasonable, and in the best interests of Plaintiffs and the proposed Settlement Class, and we respectfully recommend it to the Court for preliminary (and, ultimately final) approval. Plaintiffs' Counsel have conferred with Plaintiffs, Jane Doe and John Does 1 and 2, who also support the proposed Settlement.

IV. Settlement Benefits and Anticipated Recovery

29. Attached as **Exhibit 4** to the Proposed Settlement Motion is a true and correct copy of the Settlement Agreement between Jane Doe, John Doe 1, John Doe 2, and members of the proposed Settlement Class and Collective and MasterCorp.

30. The Settlement benefits are discussed at length in the accompanying memorandum of law in support of the Proposed Settlement Motion, and in the Proposed Notice (Exhibit B to the JND Declaration), among other places.

31. In short, MasterCorp has agreed to pay $4.95 million in non-reversionary cash compensation.

32. The Proposed Notices are set forth as a exhibits to the declaration of the selected notice provider and settlement administrator, JND Legal Administration. That declaration is set forth in **Exhibit 5** to the Proposed Settlement Motion.

V. Selection of Notice Provider and Settlement Claims Administrator

33. To select a notice provider and settlement administrator, we solicited bids from three well-known and experienced administrators. Specifically, we required that any proposal employ contemporary methods of notice to ensure the broadest and most effective reach possible.

34. After considering the bids we selected JND Legal Administration ("JND") as the notice provider and settlement administrator. JND is a well-known firm that has successfully administrated numerous class settlements and judgments.

35. The cost of administering the Settlement will depend on a variety of facts, including the number of claims submitted by members of the proposed Settlement Class and Collective as well as the method of delivering the settlement awards to the proposed Settlement Class and Collective. JND estimates the cost of administration will range from approximately

$92,000 to $102,000, with the total based on the final tally of claims administered. These estimates are reasonable and necessary given the size of the Class.

VI. Roles and Qualifications of Counsel

36. During the course of this litigation, Lieff Cabraser and Murphy Anderson served as Counsel of Record Plaintiffs in this Action. Specifically, as the attorneys with primary responsibility for prosecuting this case, we represented the Plaintiffs' interests and that of the proposed Settlement Class and Collective. Under the terms of the Settlement, attorneys from these law firms are designated Class and Collective Counsel. *See* Settlement Agreement ¶ 1.4, pp. 2-3.

A. Murphy Anderson, PLLC

37. Mr. Hanna attests to the facts set forth in this Section VI. A. I am a partner at Murphy Anderson and primarily represent whistleblowers in False Claims Act cases, including *U.S. ex rel. Vantage Systems v. HX5*, 20-cv-3649 (N.D.Fla); *U.S. ex rel. Powers v. Northrop Grumman*, 17-6673 (N.D. Ca.); *U.S. ex rel. Bunk v. Gosselin*, 02-1468 (E.D. Va.); *U.S. ex rel. Wade v. EMC*, 04-1174 (E.D. Va.); *U.S. ex rel. DeMott v. Pfizer*, 05-12040 (D. Mass.); *U.S. ex rel. Root v. UCB*, 07-1056 (D.D.C.); *U.S. ex rel. Jones v. Corning*, 10-1692 (D.D.C.); *U.S. ex rel. Rudolph v. Tremco et al.*, 10-1192 (D.D.C.); *U.S. ex rel. Ferrara et al. v. Novo Nordisk*, 11-cv-74 (D.D.C.); *U.S. ex rel. Dupont v. Metropolitan Medical Partners*, *et al.*, 13-cv-3950 (D. Md.); and *U.S. ex rel. Worthy, et al. v. Eastern Maine Healthcare Systems, et al.*, 14-184 (D. Me.).

38. Nicolas Mendoza also served as an attorney on this case. He is a Senior Associate at Murphy Anderson and primarily represents whistleblowers in False Claims Act cases, including *U.S. ex rel. Vantage Systems v. HX5*, 20-cv-3649 (N.D.Fla); *U.S. ex rel. Powers v. Northrop Grumman*, 17-6673 (N.D. Ca.); and *U.S. ex rel. Ferrara et al. v. Novo Nordisk*, 11-cv-74 (D.D.C.). Mr. Mendoza is a Class of 2018 graduate of Harvard Law School.

39. Nicole Rubin also served as an attorney on this case. Ms. Rubin is a Class of 2022 graduate of Harvard Law School and served as a law clerk for the United States District Court for the District of Maryland.

40. Murphy Anderson primarily litigates large-scale, complex class and collective actions on behalf of workers. With an office in Washington, DC, attorneys at Murphy Anderson also have a strong history of litigating in the Eastern District of Virginia. Exemplar cases that demonstrate Murphy Anderson's successful outcomes in wage-and-hour collective and class action cases include *Sierra et al. v. Panel Systems Inc. et al.*, 22-cv-00580 (E.D. Va.); *Vigus v. BMT Designers & Planners*, Adv. Pro. No. 22-01015 (Bankr. S.D.N.Y.); *Baylor et al. v. Homefix Custom Remodeling Corp. et al.*, 19-cv-1195 (D. Md.); *Garcia et al. v. Aves Construction Corp. et al.*, 2018-CA-006791 (D.C. Sup. Ct.); *Castillo v. P&R Enterprises, Inc.*, 07-1195 (D.D.C.); *Ealy v. Pinkerton Government Services*, 10-0775 (D. Md.); *Blount v. US. Security Associates*, 12-809 (D.D.C.); *Ceballos v. WMS*, 12-3117 (D. Md.); *Flores et al. v. Unity Disposal and Recycling, LLC*, 15-cv-196 (D. Md.); and *Prince et al. v. Aramark Corp., et al.*, 16-1477 (D.D.C.).

B. Lieff Cabraser Heimann & Bernstein

41. Ms. Geman attests to the facts set forth in this Section VI. B. I am a partner in Lieff Cabraser's Employment Law Practice Group and the head of Lieff Cabraser's Whistleblower/False Claims Act Practice Group. I have over 20 years of experience representing plaintiffs in complex plaintiff side litigation. I am an AV-Preeminent rated attorney and presently serve as the Co-Chair of the Workplace and Occupational Health & Safety Committee of the ABA's Labor and Employment Section. I am a former Board Member of the New York Chapter of the National Employment Lawyers' Association and chaired its Amicus Committee from approximately 2019 to 2022. I have been named as one of Lawdragon's Leading 500 Plaintiffs'

lawyers since 2018, in the categories of consumer (2022–2023), financial (2021–2023), and employment/civil rights (2018–2022). I was selected for inclusion by peers in The Best Lawyers in America in field of "Employment Law – Individuals," from 2012 through 2023. In addition to other, earlier law honors listed at https://www.lieffcabraser.com/attorneys/rachel-geman/, I was awarded the Distinguished Honor Award, United States Department of State, 2001. I also am a trained community mediator.

42. I currently serve as Interim Co-Lead Class Counsel in *Authors Guild et al. v. OpenAI Inc. & Microsoft Corp. et al.*, 1:23-08292-SHS (S.D.N.Y.) (with Mr. Dozier) and Co-Lead Class Counsel for the Medical Monitoring Class in *In Re: Valsartan, Losartan, and Irbesartan Products Liability Litigation*, MDL 2875 (D.N.J.). I recently served as Co-Lead Class Counsel in *Cottle v. Plaid Inc.*, No. 4:20-cv-03056-DMR, ECF No. 184 (N.D. Cal., July 20, 2022), a fintech privacy and anti-spoofing class action and settlement class. I was among the attorneys representing the classes in the *Goldman Sachs* and *Bank of America* matters mentioned in the paragraphs below, and I represented the City of Philadelphia in the *Wells Fargo* matter mentioned below.

43. Wesley Dozier also served as an attorney on this case. Mr. Dozier is a Class of 2019 graduate of Vanderbilt Law School. In his short time in practice, he has gained a variety of legal experience, including representing individuals in criminal proceedings, representing a class of detainees in a jail conditions case, and representing business and government entities in civil defense practice.

44. Lieff, Cabraser, Heimann & Bernstein, LLP ("LCHB") is an international law firm of approximately 125 attorneys with offices in San Francisco, New York, Nashville, and Munich. LCHB's practice focuses on complex and class action litigation involving civil rights,

employment, sexual abuse and gender violence, whistleblower, consumer, digital privacy, financial and securities fraud, antitrust, mass tort, and product liability matters. LCHB's Employment Practice Group has received multiple national accolades for its work prosecuting discrimination and other civil rights litigation. For example, in 2022, Chambers Research ranked LCHB's Employment Practice Group as a "Band 1" (top tier) of plaintiff-side employment departments in California. In 2015, the Recorder named LCHB's Employment Practice Group as a Litigation Department of the Year in the category of California Labor and Employment Law. Benchmark Plaintiff, a guide to the nation's leading plaintiffs' firms, has given LCHB's Employment Practice Group a Tier 1 national ranking, its highest rating. The Legal 500 guide to the U.S. legal profession has also recognized LCHB as having one of the leading plaintiffs' employment practices in the nation.

45. Lieff Cabraser has extensive experience litigating and settling employment and discrimination cases as well as other complex matters, and it has played a lead role in prosecuting numerous such class and/or collective actions, including those below:

- *Chen-Oster v. Goldman Sachs*, No. 10- cv-6950 (S.D.N.Y.): $215 million settlement reached in 2023 after 13-year-litigation; preliminary approval granted in 2023 and no objections lodged; final approval granted in October 2023.

- *Vedachalam v. Tata Consultancy Servs.*, No. C 06-0963 CW, 2013 U.S. Dist. LEXIS 100796 (N.D. Cal.): $29.75 million settlement in 2013 for certified class of Indian employees alleging that the defendant paid less than what was promised.

- *Cruz v. U.S., Estados Unidos Mexicanos, Wells Fargo Bank, et al.*, No. 01-0892-CRB (N.D. Cal.): hotly-litigated case resulting in a settlement on behalf of Mexican workers whose wages were withheld.

- *City of Philadelphia v. Wells Fargo*, (E.D. Pa. 2019): racial justice Title VIII case resulting in $10 million funded toward housing programs.

- *Calibuso v. Bank of America Corp.*, 299 F.R.D. 359 (E.D.N.Y. 2014): preliminarily approving $39 million settlement of Rule 23 class claims based on

federal Title VII discrimination and state laws as well as 29 U.S.C. § 216(b) collective claims based on the Equal Pay Act.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 25, 2024, in Washington, DC.

*/s/ Mark Hanna*____________________
Mark Hanna

Executed on April 25, 2024, in New York, NY.

*/s/ Rachel Geman*____________________
Rachel Geman

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

JANE DOE, JOHN DOE #1, and JOHN DOE #2, ***individually and on behalf of all others similarly situated,*** **Plaintiffs,** **v.** **MASTERCORP INC.,** **Defendant.**	___ Civ. ___ (___)(___) **Class and Collective Action Complaint**

DECLARATION OF RACHEL BETTS

I, Rachel Betts, pursuant to 28 U.S.C § 1746, declare under penalty of perjury as that the following is true and correct to the best of my knowledge and belief :

1. I am over the age of 21 years and competent to make this declaration.

2. I am a Manager of Accounts Payable in the Accounting Department at MasterCorp, Inc. ("MasterCorp"). I have been employed in my current role since November 2020 when I joined MasterCorp. . I am familiar with MasterCorp's accounts payable practices, including with respect to its staffing vendors such as Perennial Pete and its affiliated entities or companies (collectively "Perennial Pete").

3. I have been made aware that the Plaintiffs and MasterCorp have worked on a settlement and as part of that process Perennial Pete workers who were billed to MasterCorp need to be identified.

4. I have been tasked by MasterCorp's attorneys with reviewing MasterCorp's records to identify as best we are able, the individuals whom Mastercop is aware of that fall into Plaintiffs' alleged "Class" or "Class Members" of additional plaintiffs, which I understand is

defined in the Plaintiffs' Complaint as "employees of Perennial Pete or its affiliated entities or companies (or other related subcontractors of MasterCorp.) who are Colombian nationals or of Colombian origin and who provided housekeeping services at hotels and resorts where MasterCorp was responsible for housekeeping between March 19, 2021 and the date of preliminary approval of the settlement (the "Class Period")." .

5. After review, I have identified approximately 205 individuals who may fall into the definition of Class Members of potential plaintiffs in this case.

6. As part of my work for this Declaration, I primarily reviewed documents and invoices Perennial Pete emailed to MasterCorp, billing for workers used by Perennial Pete to provide housekeeping services to MasterCorp. Perennial Pete would provide in pdf form an excel type spread sheet that listed names and hours as backup or support for its invoice. The invoices typically identified the location the work was performed and a dollar amount for the number of hours the Perennial Pete workers and an additional fee charged by Perennial Pete for a total billed amount. MasterCorp would pay Perennial Pete pursuant to these invoices and it is my belief or understanding that Perennial Pete then in turn paid its workers.

7. At the request of MasterCorp's attorneys, I have prepared a list of names using the Perennial Pete data, which I have also quality checked against housing lists MasterCorp had for workers who stayed in housing provided by MasterCorp. MasterCorp would receive a credit from Perennial Pete for its workers who used MasterCorp provided housing and I have used those Perennial Pete housing lists to compare to and verify my list. I also engaged in quality checking the list by conferring with and working with management in the MasterCorp HR department to make sure my list did not inadvertently include MasterCorp W-2 employees.

8. Based on this process, I have created a list of 205 individuals who were billed to MasterCorp by Perennial Pete for work performed on behalf of MasterCorp who were employees of or workers from Perennial Pete or its affiliated entities or companies who provided housekeeping services at hotels and resorts where MasterCorp was responsible for housekeeping between March 19, 2021 (which was the first time period invoiced) and the present. Based on my review I believe that the number 205 is a good and reasonable approximation of the workers Perennial Pete provided to MasterCorp, recognizing that we do not have access to their employee or worker files (if any).

I declare under the penalties of perjury that this declaration has been examined by me and that its contents are true and correct to the best of my information, knowledge, and belief.

Date: April 9th, 2024

Rachel Betts
MasterCorp, Inc.

Exhibit 3

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Jane Doe and John Does 1 and 2, on behalf of themselves and all others similarly situated, Plaintiffs, -against- MasterCorp, Inc., Defendant.	INDEX NO. **DECLARATION OF THE HONORABLE GERALD BRUCE LEE IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT AND DIRECTION OF NOTICE UNDER FED. R. CIV. P. 23(e) AND 29 U.S.C. § 216(b)**

I, the (Ret.) Honorable Gerald Bruce Lee, declare as follows:

1. I am a professional mediator with The McCammon Group, and served as the mediator for the settlement negotiations in the above-captioned litigation. I am a Certified Mediator in the State of Virginia and a retired District Judge on the U.S. District Court for the Eastern District of Virginia. I make this Declaration in support of Plaintiffs' Unopposed Motion for Preliminary Approval of the Class and Collective Action Settlement and Direction of Notice Under Fed. R. Civ. P. 23(e) and 29 U.S.C. § 216(b) (the "Motion for Preliminary Approval").

2. I have personal knowledge of the facts set forth in this Declaration based on my role as the mediator in the above-captioned litigation. If called upon to testify, I could and would testify competently to the truth of the matters stated herein.

General Background

3. I have been a lawyer since 1976. Before ascending to the bench in 1992, I was a trial lawyer for 15 years, including as a partner at Cohen, Dunn & Sinclair in Alexandria, VA. In 1992, I was elected to serve as a judge on the 19th Judicial Circuit of Virginia (Fairfax). On May

22, 1998, after approximately six years of judicial service, I was nominated by President Bill Clinton to serve as a District Judge on the U.S. District Court for the Eastern District of Virginia. I was confirmed by the U.S. Senate on October 8, 1998.

4. After serving as a federal judge for nineteen years (and as a judge for 25), I retired from judicial service and joined The McCammon Group as a professional mediator. I have presided over hundreds of successful mediations, many of them in complex matters.

Settlement Discussions and Mediation

5. In June 2023, the Parties sought my availability to mediate their dispute.

6. On July 24, 2023, I held a lengthy pre-mediation call with the Parties, during which we covered initial positions and the procedural steps I recommended the Parties undertake.

7. The Parties submitted mediation briefing on August 25, 2023.

8. With the assistance of a translator, I then conducted extensive interviews of the Named Plaintiffs on September 14 and 15, 2023. These interviews took place in the presence of Plaintiffs' counsel and MasterCorp's counsel.

9. In addition to the above, I had ex parte sessions with counsel for each Party in the weeks leading up to the mediation.

10. The two-day mediation took place on October 23 and 24, 2023. In these virtual sessions among the Parties, counsel made vigorous presentations regarding their client's positions on contested issues. Both Parties negotiated aggressively, effectively, and at arm's length.

11. While the Parties remained at impasse at the close of the mediation sessions on October 24, I continued to work with the Parties by telephone, which ultimately resulted in an agreement on October 25, 2023.

12. The agreement reached in October 2023 was based on the Parties' understanding of a class size of approximately 210-214 individuals, and premised on the idea of further confirmatory discovery.

The Material Terms of Settlement

13. Pursuant to the terms agreed to after the mediation, MasterCorp initially agreed to pay Plaintiffs and the Proposed Settlement Class and Collective $4.9 million in a non-reversionary common fund. I am informed that the Parties later increased this amount to $4.95 million in a non-reversionary common fund, which was another compromise where the Parties took into account, on the one hand, the additional passage of time, but, on the other, a slightly smaller class size (205).

14. In exchange, Plaintiffs, on behalf of the Class and Collective, agreed to dismiss and release their claims against MasterCorp.

Conclusion

15. In light of the factual, legal and damages issues facing the parties and the risks and expense of further litigation, a settlement that provides for approximately $4.95 million of value to Plaintiffs and the Settlement Class and Collective is an exceptional result.

16. Each term of the proposed settlement was heavily negotiated and is the product of arm's-length discussions and compromise among experienced and able counsel.

17. Based on, and as a result of the foregoing, I believe that this is a fair, adequate, and reasonable settlement of all the claims against MasterCorp, and I respectfully recommend that it be approved by the Court.

I, Gerald Bruce Lee, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed this ____ day of April, 2024, in _________, Virginia.

____
Hon. Gerald Bruce Lee