



TABLE OF CONTENTS

I. BACKGROUND ..... 3

II. TERMS OF PROPOSED SETTLEMENT ..... 3

III. ARGUMENT ..... 6

    A. *Johnson* Factors ..... 7

        1. Time and Labor ..... 7

        2. Novelty and Difficulty of the Questions and Requisite Skill ..... 8

        3. Contingency Fees and Awards in Similar Cases ..... 9

        4. Results Obtained ..... 12

        5. Counsel’s Experience, Reputation, and Ability ..... 12

        6. Undesirability of Case ..... 16

    B. Costs ..... 18

IV. CONCLUSION ..... 19

Pursuant to Fed. R. Civ. P. 23, Plaintiff Kathleen Fredericks, on behalf herself and the certified class and collective, requests an award of attorneys' fees and costs in connection with the proposed settlement resolving the above-captioned lawsuit.

## **I. BACKGROUND**

Plaintiff Kathleen Fredericks ("Plaintiff") brought this lawsuit individually and on behalf of other pilots who worked for Defendant Ameriflight, LLC ("Ameriflight") under a training repayment agreement, as she did. Plaintiff alleged in this lawsuit that Ameriflight's agreements and collections efforts violated various laws, including the Fair Labor Standards Act ("FLSA") and Texas common law. On November 25, 2024, this Court granted conditional certification of an FLSA collective, pursuant to 29 U.S.C. § 216(b). The Court also certified a class, pursuant to Federal Rule of Civil Procedure 23, with unlawful penalty claims under Texas common law. *See* ECF No. 109. As a result of the notice that was issued to all eligible members of the FLSA collective, a total of 19 individuals opted in to the federal minimum wage claims and are presently represented by the undersigned counsel.<sup>1</sup> The Rule 23 class comprises 39 individuals, six of whom are also members of the FLSA collective.

As a result of a full-day mediation with John B. Shipp of Shipp ADR, on September 25, 2025, and subsequent negotiations, the parties finally reached a proposed settlement to resolve all claims in this case.

## **II. TERMS OF PROPOSED SETTLEMENT**

The total amount of the settlement is \$425,000 ("Settlement Fund"). This amount is non-reversionary, meaning that no part of the Settlement Fund will revert back to Ameriflight. The settlement contemplates allocation of the Settlement Fund as follows: attorneys' fees in an

---

<sup>1</sup> An additional four opt-ins have been dismissed from the case because they failed to respond to discovery requests. *See* ECF No. 174.

amount not to exceed \$170,000; reasonable litigation costs incurred by class counsel, in an amount not to exceed \$45,000; a service award of \$10,000 for the named plaintiff, Kathleen Fredericks; costs of settlement administration in an amount not to exceed \$10,000; and the remainder of the Settlement Fund (“Net Settlement Fund”), an amount no less than \$190,000, to be distributed to the 19 opt-in plaintiffs.<sup>2</sup>

In addition to the monetary relief provided by the settlement, the settlement also entails substantial relief resulting from Ameriflight agreeing to forego collection of unpaid balances under the repayment agreements. Specifically, the training repayment agreements entered into by the 19 opt-in plaintiffs and the unlawful penalty class members will be declared null and void. In addition, Ameriflight will release entitlement to and discontinue all collections efforts under the agreements, which amounts to approximately \$852,128 in waived balances. Third, Ameriflight will decline to enforce the non-competition provisions of the contracts that certain class members signed.

The settlement contemplates Ameriflight making payment in installments. Within 35 days after an order from the Court granting final approval of the settlement, Ameriflight will deposit \$125,000 into the Qualified Settlement Fund established by the settlement administrator. Subsequent to this initial deposit, Ameriflight will deposit a total of \$300,000 into the Qualified Settlement Fund via monthly installments. Ameriflight will make a total of twelve (12) monthly deposits into the Qualified Settlement Fund of \$25,000 each, with the first monthly payment due 30 days after the initial deposit.

---

<sup>2</sup> In Plaintiff’s preliminary approval motion, ECF No. 178, Plaintiff represented that one unlawful penalty class member would also be eligible to receive full reimbursement of post-employment training amounts. Plaintiff based this representation on records provided by Ameriflight. The parties subsequently agreed that this individual was not eligible to participate in the settlement due to a release of claims he had signed in prior litigation.

Payments to opt-in plaintiffs, representing full reimbursement of post-employment training repayments, will issue within 30 days after the settlement effective date. Payment will be made based on preference indicated during the notice process (check, Venmo, PayPal, Zelle). If no preference is indicated, or if adequate information is not provided to implement that preference, payment will be made by check, which will expire within 120 days of issuance.

Within 120 days after the settlement effective date (after Ameriflight makes the third monthly installment payment of \$25,000), the payment will issue to the opt-in plaintiffs, representing compensation to them for their free-and-clear minimum wage liquidated damages.

Within 150 days after the settlement effective date (after Ameriflight makes the fourth monthly installment payment of \$25,000) the payment will issue to the settlement administrator for the Court-approved amount of settlement administration costs.

Within 180 days after the settlement effective date (after Ameriflight makes the fifth monthly installment payment of \$25,000), payment representing reimbursement of litigation costs will issue, in the amount approved by the Court.

Within 360 days after the settlement effective date (after Ameriflight has completed all monthly installment payments), payment representing attorneys' fees will issue in the amount approved by the Court.

The settlement agreement calls for a narrowly-defined release of claims, with the sole exception of the named plaintiff, who will sign a general release of claims in exchange for receiving the service award. The 19 opt-in plaintiffs will release Ameriflight "of and from all known and unknown claims for an unlawful kickback and/or failure to pay wages free and clear under the Fair Labor Standards Act, and any other claims that were asserted or that could have been asserted under state or federal wage and hour laws based on the facts alleged in the

operative complaint.” The 39 unlawful penalty class members will release Ameriflight “of and from the unenforceable penalty claim that was asserted or could have been asserted based on the facts alleged in the operative complaint.”

### III. ARGUMENT

Courts frequently favor an award of attorneys’ fees and costs from a common fund, as called for by the proposed settlement in this case. As the Supreme Court has explained:

[T]his Court has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys’ fee from the fund as a whole. . . . Jurisdiction over the fund involved in the litigation allows a Court to prevent . . . inequity by assessing attorney’s fees against the entire fund, thus spreading fees proportionately among those benefited by the suit.

*Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (citations omitted).

The proposed settlement agreement allocates \$170,000 of the common fund toward attorneys’ fees and up to \$45,000 toward costs. The requested award is supported by an analysis of the factors laid out in *Johnson v. Ga. Highway Exp., Inc.*, 488 F.2d 714, 718 (5th Cir. 1974).

Those factors are: “(1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the claimant’s attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the claimant or the circumstances; (8) the amount of recovery involved and the results obtained; (9) counsel’s experience, reputation, and ability; (10) the “undesirability” of the case; (11) the nature and length of the professional relationship with the claimant; and (12) awards in similar cases.”

*Plunkett v. FirstKey Homes LLC*, No. 3:23-CV-2684-L-BN, 2024 WL 5315330, at \*8 (N.D. Tex. Nov. 21, 2024), *report and recommendation adopted sub nom. Plunkett v. First Key Homes LLC*, No. 3:23-CV-2684-L-BN, 2024 WL 5075065 (N.D. Tex. Dec. 11, 2024).

**A. Johnson Factors****1. Time and Labor**

The attorneys in this case have each invested significant time and labor in this litigation, as demonstrated by the table below.

	<b>Principal Contributions</b>	<b>Hours</b>	<b>Rate</b>	<b>Lodestar</b>
Rachel Dempsey Towards Justice	-Lead counsel -Initial investigation -Development of legal theories and litigation strategy -Drafting complaint -Briefing motion to dismiss opposition -Briefing class/collective certification and reply -Briefing motion to dismiss counterclaim reply -Reviewing and editing other briefs -Reviewing and editing discovery requests and responses -Defending attorney for opt-in deposition -Mediation and settlement	222.7	\$800	\$178,160
Juno Turner Towards Justice	-Consultant re: FLSA and litigation strategy	17.3	\$800	\$13,840
Ashley Tremain Tremain Artaza PLLC	-Local counsel -Expertise re: TRAP litigation and Texas restraint of trade law -Reviewing and editing briefs and discovery -Mediation and settlement	91.815 <sup>3</sup>	\$800	\$73,453
Rachel Smit Fair Work, P.C.	-Lead discovery counsel -Taking attorney for all depositions -Defending attorney for named plaintiff and opt-in plaintiff deposition -Supervision of discovery associate -Oversight of class/collective notice process, including notice of settlement -Briefing opposition to motion to transfer -Briefing motion to dismiss counterclaim	166.6	\$800	\$133,280

<sup>3</sup> Attorney Tremain has discounted her logged hours by half, in an exercise of billing discretion. Tremain Dec. ¶¶ 5-6.

	-Reviewing and editing other briefs -Drafting mediation statement -Mediation and settlement -Briefing preliminary and final approval motions			
Alisha Patel Fair Work, P.C.	- Responded to discovery requests on behalf of 18 opt-in plaintiffs -Communicated and coordinated with opt-in plaintiffs -Defended opt-in deposition	94.7	\$250	\$23,675
Persis Yu SBPC	-Developing initial relationship with named plaintiff	12.4	\$800	\$9,920
Khandice Lofton, SBPC	-Investigating potential claims -Drafting initial research memo	33.8	\$400	\$13,520
Claire Torchiana Formerly at SBPC	-Assisting in development of litigation strategy -Assisting with drafting of the complaint. -Reviewing and editing briefs	14.6	\$400	\$5,840
	<b>TOTAL</b>	<b>653.9</b>		<b>\$451,687</b>

Although this case was litigated by a large team, the table demonstrates that they litigated this case efficiently, using a division of labor that resulted in minimal duplication of effort.

The \$170,000 fee sought does not come close to covering the lodestar fees of counsel, resulting in a so-called “multiplier” of less than one. More precisely, Plaintiff seeks an award of attorneys’ fees that is 38% of her counsel’s lodestar fees.

## 2. Novelty and Difficulty of the Questions and Requisite Skill

This “wage and hour case presented novel and complex issues that remain unsettled” under Fifth Circuit law, much as the issues in *James v. Boyd Gaming Corp.*, No. 19-2260-DDC-ADM, 2022 WL 4482477, at \*15 (D. Kan. Sept. 27, 2022), were unsettled under Tenth Circuit law. As this Court noted in its ruling on Ameriflight’s motion to dismiss, “there are no Fifth Circuit cases on point” with respect to Plaintiff’s FLSA free-and-clear and kickback theories. See ECF No. 91 at p. 8.

In addition, courts have recognized that FLSA collective actions, especially those that “involve difficult or novel issues under the FLSA” and that “involve . . . extensive factual matters,” require skills that individual FLSA cases do not. *See, e.g., Bell v. Sw. Bell Tel. L.P.*, No. 20-00826-CV-W-BP, 2022 WL 22883435, at \*3 (W.D. Mo. May 18, 2022). Moreover, this particular case required attorneys skilled in not just FLSA collective actions, which are relatively common in the Northern District of Texas, but also hybrid FLSA collective / Rule 23 class actions, which are less common in this judicial district.

Lastly, Plaintiff’s Texas statutory claim required the application of the Texas restraint of trade statute to a repayment agreement that “isn’t a classic covenant not to compete,” as this Court characterized Ameriflight’s argument. ECF No. 91 at p. 12. The fact that this Court did not certify a class under this theory does not diminish Plaintiff’s success in defeating Ameriflight’s motion to dismiss this claim, or predict the demise of Plaintiff’s individual claim if this litigation had continued.

### **3. Contingency Fees and Awards in Similar Cases**

Plaintiff’s attorneys took this case on a contingency-fee basis, as is typical in FLSA collective actions and Rule 23 class actions. Contingency-fee practice is viable only if attorneys, having received little or nothing for their work on some cases, receive more in other cases than they would if they charged hourly fees. Courts have long recognized this reality. *See, e.g., Hensley v. Eckerhart*, 461 U.S. 424, 448 (1983) (noting that “[a]ttorneys who take cases on contingency, thus deferring payment of their fees until the case has ended and taking upon themselves the risk that they will receive no payment at all, generally receive far more in winning cases than they would if they charged an hourly rate”); *In re Union Carbide Corp. Consumer Products Business Securities Litigation*, 724 F. Supp. 160, 168 (S.D.N.Y. 1989) (“Contingent fee arrangements implicitly recognize the risk factor in litigation and that the

winning cases must help pay for the losing ones if a lawyer who represents impecunious plaintiffs, or those plaintiffs not so fully committed as to put their own money where their mouth is, will remain solvent and available to serve the public interest.”).

By permitting clients to retain attorneys without having to pay for hourly fees out-of-pocket, this system provides critical access to the courts for people who otherwise would not be able to find competent counsel. That access is particularly important for the effective enforcement of public protection statutes, including the FLSA.<sup>4</sup> It is well recognized that “private suits provide a significant supplement to the limited resources available to [government enforcement agencies] for enforcing [public protection] laws and deterring violations.” *Reiter v. Sonotone Corp.*, 442 U.S. 330, 344 (1979).

When awarding fees from a common fund, the “percentage of the fund” method has substantial advantages over the lodestar method. *See, e.g., Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 964 (E.D. Tex. 2000) (“The lodestar method voraciously consumes enormous judicial resources, unnecessarily complicates already complex litigation, and inaccurately reflects the value of services performed.”). The advantages of the percentage method include that it is result-oriented, and therefore promotes a more efficient use of attorney time, whereas the lodestar method “penalizes expedient success” and discourages early settlement. *Id.*

The amount of fees requested in this case represents 40% of the common fund. This is well within the range that has been approved by federal courts in common fund cases resulting in

---

<sup>4</sup> “Fee awards in wage and hour cases should ‘encourage members of the bar to provide legal services to those whose wage claims might otherwise be too small to justify the retention of able, legal counsel.’” *Fisher v. SD Prot. Inc.*, 948 F.3d 593, 603 (2d Cir. 2020) (S.D.N.Y. Jan. 7, 2010) (counsel bringing cases under the FLSA “advance[e] Congress’s goals under the FLSA to ensure a ‘fair day’s pay for a fair day’s work’” and “to guard against ‘the evil of “overwork” as well as “underpay””) (internal citations omitted).

a substantial recovery for the collective/class. *See, e.g., Plunkett v. FirstKey Homes LLC*, No. 3:23-CV-2684-L-BN, 2024 WL 5315330, at \*10 (N.D. Tex. Nov. 21, 2024) (awarding 40% of common fund to attorneys in FLSA case), *report and recommendation adopted sub nom. Plunkett v. First Key Homes LLC*, No. 3:23-CV-2684-L-BN, 2024 WL 5075065 (N.D. Tex. Dec. 11, 2024); *Vassallo v. Goodman Networks, Inc.*, No. 15CV97-LG-CMC, 2016 WL 6037847, at \*4 (E.D. Tex. Oct. 14, 2016) (awarding fees representing 39.78 percent of the common fund in FLSA case); *Lackey v. SDT Waste & Debris Servs., LLC*, No. CIV.A. 11-1087, 2014 WL 4809535, at \*3 (E.D. La. Sept. 26, 2014) (awarding fees representing 40 percent of the common fund in FLSA case).

Moreover, there is precedent for taking into account the value of “debt forgiveness” when determining the common fund percentage. *See, e.g., Melby v. Am.’s MHT, Inc.*, No. 3:17-CV-155-M, 2018 WL 10399003, at \*4 (N.D. Tex. July 5, 2018); *Cosgrove v. Citizens Auto. Fin., Inc.*, No. CIV.A. 09-1095, 2011 WL 3740809, at \*8 (E.D. Pa. Aug. 25, 2011) (approving attorney’s fee award of \$1.25 million where defendant paid \$2.9 million into settlement fund and debt relief was valued at \$7.75 million, resulting in an award of “approximately 11.7% of the settlement fund, including debt relief”). Taking into account Ameriflight’s agreement to forego collections on any balances owed by the collective/class, the total value of the settlement is approximately \$1.28 million. The fees requested by Plaintiff’s counsel represent only 13.3 % of that value.

Lastly, it is “not uncommon in FLSA cases for attorneys’ fees awards to exceed the damages recovered by employees.” *James v. Boyd Gaming Corp.*, No. 19-2260-DDC-ADM, 2022 WL 4482477, at \*13 (D. Kan. Sept. 27, 2022). This is because “FLSA cases often involve

ordinary, everyday workers who are paid hourly wages and favorable outcomes frequently result in limited recoveries.” *Id.*, quoting *Fisher v. SD Prot. Inc.*, 948 F.3d 593, 603–04 (2d Cir. 2020).

The requested award in this settlement agreement is consistent with the vital role that contingency arrangements play in making legal counsel available to workers who cannot afford hourly fees.

#### **4. Results Obtained**

The results obtained by Plaintiff’s counsel are worthy of the award sought.

The net settlement fund that the settlement contemplates being entirely allocated to the 19 opt-in plaintiffs is \$190,000, which is enough to completely reimburse opt-ins for all post-employment repayments made to Ameriflight and provide compensation to opt-ins for the conditional nature of the wage payments made by Ameriflight. *See* ECF No. 178 at 10-11. The value of the “debt forgiveness” negotiated by Plaintiff and her counsel for both the opt-ins and the Rule 23 class is approximately \$852,128. When added to the total dollar amount of the settlement, \$425,000, the total value of the settlement is \$1.28 million.

This “highly favorable” outcome, *Plunkett*, 2024 WL 5315330, at \*8, must be evaluated even more favorably in light of the parties’ genuine dispute over the application of the FLSA and its interpretative regulations to Ameriflight’s practices, as well as the fact that Plaintiff has achieved through this settlement agreement the full range of relief that she sought for the Rule 23 unlawful penalty class, where that outcome was by no means certain.

#### **5. Counsel’s Experience, Reputation, and Ability**

The named plaintiff in this matter, Kathleen Fredericks, found and retained counsel that are exceptionally experienced and adept at developing legal strategies to address the wide range of coercive practices that employers have adopted, nation-wide, to skirt federal and state employment laws. Two of the entities serving as class counsel are not-for-profit organizations

that are dedicated to, respectively, fighting for “a country where every worker has the dignity of fair compensation, freedom from discrimination, a safe workplace, on-time pay, and the power and voice to effectively demand those basic rights” (Towards Justice), and “fighting corrupt corporations and broken public programs that drive American families into debt” (SBPC).

Lead counsel on the case, Rachel Dempsey, is a 2015 graduate of Yale Law School, who clerked for the Ninth Circuit Court of Appeals and the United States District Court, Central District of California after law school. Dempsey Decl. ¶¶ 9-10. From 2007 – 2021, she worked in the class action practice of Outten & Golden, “the largest employee-side law firm in the country.” *Id.* ¶ 13. She then joined Towards Justice as a staff attorney, where she “specializes in complex cases and class action litigation, including wage and hour, antitrust, employment, forced labor, and unfair competition cases.” *Id.* ¶¶ 14, 16. In 2025, she became Towards Justice’s Associate Director. *Id.* ¶ 15. She is or has been counsel of record in numerous cases across the country involving Training Repayment Agreement Provisions (“TRAP” agreements). *Id.* ¶ 17.<sup>5</sup>

Local counsel on the case, Ashley Tremain, is a 2008 graduate of Washington University School of Law, who has “become somewhat of a go-to expert in the State of Texas on the issue of TRAP Agreements,” having “achieved success in these cases in several forums,” and “given multiple CLE presentations to other lawyers on this issue, including at State Bar sponsored events.” Tremain Decl. ¶¶ 9, 2. She has “tried multiple cases to verdict or judgment in the Dallas County District Courts, the United States District Courts (Northern District of Texas), and in multiple private arbitrations in Texas and California.” *Id.* ¶ 17. She has “also successfully

---

<sup>5</sup> *Morris v. Frontier Airlines, Inc.*, 1:25-cv-03912 (D. Colo.); *Byron et al. v. Avant Healthcare Professionals, LLC*, 6:23-cv-01645-WWB-LHP (M.D. Fla.); *Dorta et al. v. SpecialtyCare, Inc.*, 3:23-cv-00892 (M.D. Tenn.); *O’Brien v. Smoothstack, Inc.*, 01:23-cv-00491-RDA-LRV (E.D. Va.); and *Scally v. PetSmart LLC*, 4:22-cv-06210-YGR (N.D. Cal.).

argued an appeal before the Fifth Circuit Court of Appeals, securing reversal of a grant of summary judgment.” *Id.*

Discovery counsel, Rachel Smit, is a 2013 graduate of Boston University School of Law. She received a two-year fellowship from the Skadden Fellowship Foundation to work in the Employment Law Unit at Greater Boston Legal Services following graduation. Smit Decl. ¶¶ 17-18. She then joined the law firm, Fair Work, P.C., where she has served as class counsel in numerous cases in the transportation industry. Smit Decl. ¶¶ 20-21, 23. Her work as class counsel includes *Montoya v. CRST Expedited*, which she co-counseled with Fair Work founder, Hillary Schwab, wherein the defendant’s practices vis-à-vis a training repayment agreement were held, at summary judgment, to have violated the Iowa Consumer Fraud Act. *Montoya v. CRST Expedited, Inc.*, 404 F. Supp. 3d 364, 373 (D. Mass. 2019). The *Montoya* litigation resulted in a \$12.5 million settlement that benefited approximately 37,575 current and former drivers. Smit Decl. ¶ 24.

Persis Yu is Deputy Executive Director & Managing Counsel at the Student Borrower Protection Center (“SBPC”). SBPC’s role in this litigation included developing the initial relationship with the named plaintiff, investigating her potential claims, engaging Towards Justice and assisting in the development of the litigation strategy, drafting the initial research memo, and assisting with the drafting of the complaint, among other tasks. Yu Decl. ¶¶ 1-3. Yu is a 2009 graduate of Seattle University School of Law. *Id.* ¶ 5. After law school, she received an Equal Justice fellowship to work at Empire Justice Center, a non-profit legal services organization in Rochester, New York, where she “focused on credit reporting issues facing low-income consumers, specifically in the areas of accuracy, housing, and employment” and “represented low-income consumers in state and federal litigation.” *Id.* ¶ 6. From 2011 to 2021,

she worked at the National Consumer Law Center and served as the director of its Student Loan Borrower Assistance Project, where she “led a team of attorneys to advocate on behalf of low-income student loan borrowers, and engaged in federal litigation.” *Id.* ¶ 7.<sup>6</sup>

The hourly rates used to calculate lodestar fees is summarized in the table below. The \$800 rate used for Attorneys Dempsey, Turner, Tremain, Smit, and Yu is more than justified in light of their experience, reputation, and abilities, described above, as well as objective measures of prevailing hourly rates in the market.

<b>Timekeeper</b>	<b>Firm</b>	<b>Years of Experience</b>	<b>Rate</b>
Rachel Dempsey	Towards Justice	11	\$800
Juno Turner	Towards Justice	20	\$800
Ashley Tremain	Tremain Artaza PLLC	18	\$800
Rachel Smit	Fair Work, P.C.	13	\$800
Alisha Patel	Fair Work, P.C.	2	\$300
Persis Yu	SBPC	17	\$800
Khandice Lofton	SBPC	5	\$400
Claire Torchiana	<i>Formerly at</i> SBPC	3 (at time of work)	\$400

In the Northern District of Texas, attorneys who began their legal careers in the 2000s, as did Attorneys Turner, Tremain, and Yu, have received fee awards in employment cases with

---

<sup>6</sup> See, e.g., *Barber v. Devos et al*, 1:2020-cv-01137 (D.D.C.); *Munroe v. Radius Global Solutions, LLC*, 01:2020cv10986 (D. Mass); *Bodor v. Maximus Federal Services, Inc.*, 05:2019-cv-05787 (E.D. Pa); *Robinson v. National Student Clearinghouse*, 01:2019-cv-10749 (D. Mass); *National Consumer Law Center v. United States Department of Education*, 01:2019-cv-10739 (D. Mass); *National Consumer Law Center v. Department of Education*, 01:2018-cv-12399 (D. Mass); *National Consumer Law Center v. United States Department of Education*, 01:2018-cv-10763 (D. Mass); *American Civil Liberties Union Foundation, Inc. et al v. United States Department of Education*, 01:2016-cv-10613 (D. Mass).

rates as high as \$1,105 (in 2022 dollars), \$1,060 in (2022 dollars), and \$800 (in 2018 dollars).<sup>7</sup>

*See also* Tremain Decl. ¶ 44. Attorneys who began their legal careers in the 2010s, as did Attorneys Dempsey and Smit, have been awarded fees with rates as high as \$1,180 (in 2021 dollars) and \$985 (in 2022 dollars). Smit Decl. ¶ 29.

A cross-check with the Fitzpatrick Matrix, used in the District of Columbia to determine “reasonably hourly rates . . . in cases in which a fee-shifting statute permits the prevailing party to recover ‘reasonable’ attorney’s fees,”<sup>8</sup> results in 2025 hourly rates in a similar range: \$738 (11 years of experience), \$850 (20 years of experience), \$829 (18 years of experience), \$768 (13 years of experience), and \$818 (17 years of experience).

The rate of \$800, used to calculate the lodestar for the undersigned attorneys in this litigation, is eminently reasonable when evaluated against these measures of reasonableness. *See also Plunkett*, 2024 WL 5315330, at \*10 (finding \$775 a reasonable hourly rate for lead counsel in 2024); *Hill v. Schilling*, No. 3:07-CV-2020-L, 2022 WL 1321548, at \*5 (N.D. Tex. May 3, 2022) (taking judicial notice of hourly rate of 2013 law school graduate of \$860 in 2021, which had subsequently been raised to \$935 per hour in 2022).

## 6. Undesirability of Case

Cases that include FLSA claims brought as collective actions on behalf of similarly situated individuals are expected to be labor intensive, because of the realistic possibility that a significant percentage of opt-ins will need to respond to discovery requests and sit for

---

<sup>7</sup> *See* Texas Employment Lawyers Association, *2025 Attorney’s Fees Hourly Rates Yearbook*, at p. 42-43, available at [mytela.org/feeyearbook](http://mytela.org/feeyearbook), citing *In re: Red River Waste Sol., LP*, No. 21-42423 (Bankr. N.D. Tex. Dec. 27, 2022), ECF No. 1288 at p. 2; *Thomas v. Cook Children’s Health Care Sys.*, No. 20-cv-01272 (N.D. Tex. May 16, 2022), ECF No. 138-3, at p. 119; and *In re: 4 West Holdings, Inc.*, No. 18-30777 (Bankr. N.D. Tex. May 2, 2019), ECF No. 1485 at p. 2.

<sup>8</sup> A copy of the most recent Fitzpatrick Matrix and its explanatory notes is attached as Exhibit 1 to the declaration of Persis Yu.

depositions. *Cf. Acevedo v. Brightview Landscapes, LLC*, No. CV 3:13-2529, 2017 WL 4354809, at \*17 (M.D. Pa. Oct. 2, 2017) (“Unlike Rule 23 opt-out classes, counsel for FLSA must spend time and effort locating and notifying possible plaintiffs, who must then opt into the action to proceed. They are not absent class members and counsel may be required to directly communicate, interview, and work with these various opt-in plaintiffs.”).

In this case, Plaintiff’s counsel needed to respond to not one but 19 sets of discovery requests, and defend three depositions conducted in-person in Dallas, as well as one deposition conducted in-person in Fair Work’s Boston office. And Ameriflight easily could have demanded to take the depositions of all 18 opt-in plaintiffs. Firms that take FLSA collective action cases must be willing to front the cost of notice and be capable of devoting significant resources to opt-in discovery for short, but intense, periods of litigation. In the experience of undersigned counsel, these features of the FLSA dissuades many firms from bringing FLSA claims on a collective action basis.

In addition, the relatively novel nature of the legal theories asserted by Plaintiff in this case meant that there was a realistic possibility that there would be no recovery of attorneys’ fees and costs after summary judgment, trial, or appeal. For this reason, as well, the case was one that many attorneys would avoid as an undesirable case. *See, e.g., Vassallo*, 2016 WL 6037847, at \*6 (labor intensive cases with high risk of no recovery are undesirable cases); *Reynolds v. Fid. Invs. Institutional Operations Co., Inc.*, No. 1:18-CV-423, 2020 WL 92092, at \*3 (M.D.N.C. Jan. 8, 2020) (“Class and collective wage and hour cases require intensive resources, and—particularly when counsel operate, as here, on a contingency basis—pursuing these cases involves opportunity costs and risk.”).

Lastly, the nature of the installment payments negotiated by Ameriflight increases the risk that counsel will not get paid for their time, especially since the agreement contemplates that attorneys' fees will be paid from the final installments.

## **B. Costs**

Plaintiff's counsel seeks an award of costs in the amount of \$37,158. It is well established that counsel who obtain a settlement on behalf of a class are entitled to reimbursement of litigation expenses that were reasonably incurred in connection with the litigation. *Acevedo*, 2017 WL 4354809, at \*20 ("Counsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action."), quoting *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001).

The costs in this case are described in the declaration of Attorney Smit, ¶37 and include the following categories:

Filing fees and <i>pro hac vice</i> fees (D.P.R. and N.D. Tex.)	\$2,000
Depositions	\$6,699
Expert	\$15,238
Notice administration	\$1,975
Mediation	\$4,000
Travel and lodging for depositions and mediation (attorneys, named plaintiff, and opt-in plaintiffs)	\$6,852
<b>Total</b>	<b>\$37,158</b>

The costs incurred in this matter are reasonable and in line with costs associated with similar litigation. *See, e.g., James*, 2022 WL 4482477, at \*13 (approving \$85,000 as reasonable costs in FLSA case, of which \$32,000 was for Westlaw charges, which are not included in Plaintiff's costs in the present matter); *Reynolds*, 2020 WL 92092, at \*4 (\$33,931 for "mailing costs, online legal research, long-distance telephone use, expert and mediator fees, travel

expenses for mediation and court proceedings, and court filing fees” are “reasonable out-of-pocket expenses ... which are normally charged to a fee-paying client, in the course of providing legal services” in hybrid FLSA/state law wage case), *quoting Singleton v. Domino’s Pizza, LLC*, 976 F. Supp. 2d 665, 689 (D. Md. 2013).

#### **IV. CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that the Court approve an award of attorneys’ fees of \$170,000 and litigation costs in the amount of \$37,158, to be paid from the proposed settlement fund of \$425,000. Plaintiff will submit a proposed order with her final approval motion, in advance of the final fairness hearing, which is scheduled for May 7, 2026.

Date: April 13, 2026

Respectfully submitted,  
/s/ Rachel Smit

Rachel Smit\*  
rachel@fairworklaw.com  
FAIR WORK, P.C.  
192 South St. Suite 450  
Boston, MA 02111, USA  
Tel: (617) 841-8188

Ashley Tremain (State Bar No. 24066209)  
ashley@tremainartaza.com  
TREMAIN ARTAZA PLLC  
4925 Greenville Ave Ste. 200  
Dallas, TX 75206  
Tel: (469) 573-0229

Rachel Williams Dempsey\*  
rachel@towardsjustice.org  
David Seligman\*  
david@towardsjustice.org  
TOWARDS JUSTICE  
PO Box 371680, PMB 44465  
Denver, CO 80237-5680  
Tel: (720) 441-2236

Persis Yu\*  
persis@protectborrowers.org  
STUDENT BORROWER PROTECTION  
CENTER (a fiscally sponsored project of  
Shared Ascent Fund)  
1025 Connecticut Ave NW, #717  
Washington, DC 20036  
Tel: (202) 670-3871

*Attorneys for Plaintiff and the Putative Class  
and Collective*

\*Admitted *pro hac vice*

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel(s) of record.

Date: April 13, 2026

*/s/ Rachel Smit*

\_\_\_\_\_  
Rachel Smit