

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
MINNEAPOLIS DIVISION**

JAMES FUTRELL and CHRIS
ROGERS, each individually and on behalf
of all others similarly situated,

v.

CARGILL, INCORPORATED

Case No. 0:22-cv-00969-JRT-TNL
FLSA Collective Action
FED. R. CIV. P. 23 Class Action

Judge John R. Tunheim

Magistrate Judge Tony N. Leung

**PLAINTIFFS' EXHIBITS IN SUPPORT OF
UNOPPOSED MOTION TO APPROVE SETTLEMENT AGREEMENT**

Ex.	Description
A	Settlement Agreement
B	Declaration of Matthew S. Parmet

Respectfully submitted,

/s/ Matthew S. Parmet

By: _____

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

JAMES FUTRELL AND CHRIS ROGERS,)
 each individually and on behalf of all others)
 similarly situated,)
)
 Plaintiffs,)
)
 v.)
)
 CARGILL, INCORPORATED,)
)
 Defendant.)

Case No. 0:22-CV-00969-JRT-DJF
FLSA Collective Action

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “**Settlement Agreement**”) is entered into by and between Plaintiffs James Futrell and Chris Rogers (“**Plaintiffs**”), on behalf of themselves, and on behalf of all members of the Putative FLSA Collective (as that term is defined herein) and Cargill, Incorporated, including its past, present, and future parent companies, subsidiaries (direct and indirect), predecessors, successors, affiliates, and divisions (collectively “Cargill”) (together, Plaintiffs, the Putative FLSA Collective and Cargill are the “**Parties**”), pertaining to the alleged failure of Cargill during the time period December 6, 2021 to January 23, 2022, to accurately pay employees due to the Ultimate Kronos Group (“**Kronos**”) experiencing a cybersecurity incident with respect to Kronos Private Cloud, which Cargill used for certain payroll and timekeeping functions for certain non-exempt employees of Cargill and various corporate entities related to Cargill (the “**Kronos Outage**”).

WHEREAS, on April 15, 2022, Plaintiffs commenced litigation under the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 *et seq.*, and state law in the U.S. District Court for the District of Minnesota (the “**Court**”) in the above captioned matter (the “**Lawsuit**”), on behalf of themselves, and on behalf of all current or former non-exempt employees of Cargill who worked in the United States at any time since the onset of the Kronos Outage;

WHEREAS, the Parties determined to attempt to resolve the claims on a global basis and retained mediator Hunter Hughes, Esq. to assist in that effort. After the provision of data and other information from Cargill and upon investigation by Plaintiff and his counsel of the claims in the Lawsuit, on May 15, 2023, the Parties participated in a day-long mediation session facilitated by Mr. Hughes, during which the Parties discussed the claims and defenses relating to the Lawsuit. Subsequent to the mediation the Parties considered a mediator’s proposal submitted by Mr. Hughes, which was ultimately accepted by both Parties;

WHEREAS, the Parties have made a thorough and independent investigation of the facts and law relating to the allegations in the Lawsuit. In entering into this Settlement Agreement, the Parties have considered: (a) the facts developed during an informal confidential exchange of information and the law applicable thereto; (b) the facts and law developed during the motion



practice on Cargill's Motion to Dismiss; (c) the attendant risks of continued litigation and the uncertainty of the outcome of the claims alleged; and (d) the desirability of consummating this settlement according to the terms of this Settlement Agreement. The Parties have each concluded that the terms of this Settlement Agreement are fair, reasonable and adequate, and that it is in their best interests to settle the Lawsuit pursuant to the terms set forth herein; and

WHEREAS, in order to avoid the expense and burdens of further litigation, the Parties on behalf of themselves and for the benefit of all Releasees (as defined below) desire to resolve any and all suits, actions, causes of action, claims, or demands based on putative violations of the FLSA as well as putative violations of any state or local law related or pertaining to Cargill's alleged failure to accurately pay employees for all hours worked and all claims under the FLSA and any state or local law for the time period December 6, 2021 through January 23, 2022, relating to or arising out of the Kronos Outage, including, without limitation, all state, local, and federal claims for unpaid wages (whether minimum wage or overtime), failure to timely pay wages, failure to record hours worked, paystub and/or wage statement requirements, regular rate claims, reimbursement, and all related claims for statutory damages or penalties, interest, liquidated damages, attorneys' fees, costs, expenses, and all other such amounts, and including, without limitation, all claims that have been asserted in the Lawsuit or that could have been asserted in the Lawsuit nationwide.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises hereinafter set forth, the Parties agree as follows:

DEFINITIONS

1. Definitions. The following terms used in this Settlement Agreement shall have the meanings ascribed to them below:

- a. "Putative FLSA Collective" means all non-exempt employees, regardless of exact job, position held, or title, employed by Cargill or any direct or indirect subsidiary of Cargill in the United States during the Release Period, who were employed in a job position that used (or would have used but for the Kronos Outage), Kronos Private Cloud to track their hours worked, who worked more than forty hours in one or more workweeks during the Release Period, and who were underpaid for such hours worked in one or more workweeks during the Release Period. Each such individual shall be a "Putative FLSA Collective member."
- b. "Release Period" means December 6, 2021, through and including January 23, 2022.
- c. "FLSA Collective" means those Putative FLSA Collective members who have participated in this settlement by timely cashing, depositing, or otherwise negotiating their Settlement Check.
- d. "Releasees" means Cargill, Incorporated and each of its past, present, and future parent companies, subsidiaries (direct and indirect), predecessors, successors, affiliates, and divisions, as well as each of their and each of Cargill's agents; managers; owners; members; officers; directors; partners; investors; legal

representatives; accountants; trustees; executors; administrators; real or alleged alter egos; predecessors; successors; transferees; assigns; attorneys; and insurers.

- e. “Plaintiffs’ Counsel” or “Collective Counsel” means PARMET PC and MORGAN & MORGAN, P.A.
- f. “Cargill’s Counsel” means Faegre Drinker Biddle & Reath LLP.
- g. “Settlement Administrator” refers to the third-party settlement administrator, to be mutually agreed upon by the Parties, which will be retained to perform at least the following duties: (i) mailing notice, settlement checks, and applicable tax forms to Putative FLSA Collective members; (ii) notifying the Parties of FLSA Collective Members who join this settlement; and (iii) calculating individual settlement awards, including any appropriate withholdings.
- h. “General Release Payment” means each of the payments described in Section 11.
- i. “Gross Settlement Amount.” The Gross Settlement Amount is Two Million, Four Hundred Thousand Dollars and No Cents (\$2,400,000.00) inclusive of payment for: (a) all FLSA Collective members; (b) the General Release Payments to Plaintiffs; (c) all attorneys’ fees, costs, and litigation expenses approved by the Court; (d) the FLSA Collective Members’ share of applicable federal, state, and local taxes required to be withheld by Cargill; and (e) all costs and fees owed to the Settlement Administrator incurred in the administration of this settlement.
- j. Collective Settlement Amount. The amount remaining from the Gross Settlement Amount after the following amounts have been deducted: (i) amount approved by the Court and Affirmed by the Court for General Release Payments to Plaintiffs; (ii) the amount approved by the Court and Affirmed by the Court for the FLSA Collective’s attorneys’ fees, expenses, and costs; and (iii) the amount owed for Settlement Administration costs to the Settlement Administrator for performing any duties necessary to administer the settlement (“Administration Costs”).
- k. Collective Groups. The following are the Collective Groups that comprise the Putative FLSA Collective and FLSA Collective. The Collective Groups have been determined based upon the complete pay and time period at issue, as a result of the allegations at issue in the Lawsuit. The Parties acknowledge that Putative Collective and FLSA Collective members may fall within one or more of the following Collective Groups. The total number of unique employees in the Putative FLSA Collective (inclusive of all Collective Groups) is approximately 24,944.
 - i. “Net-Under” means those Putative FLSA Collective and FLSA Collective members who were potentially underpaid during the Kronos Outage. The total number of unique employees in this group is approximately 8,158.
 - ii. “Net-Under New York Employees” means those Putative FLSA Collective and FLSA Collective members who were potentially underpaid during the

Kronos Outage and were employed in New York during this time period. The total number of unique employees in this group is approximately 135.

- iii. “Net-Over” means those Putative FLSA Collective and FLSA Collective members who Cargill contends were overpaid during the pay periods corresponding with the Kronos Outage. The total number of unique employees in this group is approximately 16,786.

2. No Admission of Liability or Determination as to the Merits. Releasees deny the allegations made in the Lawsuit and deny that they engaged in any wrongdoing or violation of law. Except for purposes of this settlement, neither this Settlement Agreement, nor any document referred to herein, nor any action taken to carry out this Settlement Agreement, may be used in any way as an admission, concession, or indication by or against Releasees of any fault, wrongdoing, or liability whatsoever.

RELEASE

3. Release. In consideration for the benefits to be received by Plaintiffs and the FLSA Collective members under this settlement:

- a. Plaintiffs and the FLSA Collective members shall be deemed to have released and forever discharged Releasees from all suits, actions, causes of action, claims, or demands based on putative violations of the FLSA as well as putative violations of any state or local law related or pertaining to Releasees’ alleged failure to accurately pay employees for all hours worked and all claims under the FLSA and any state or local law for the Release Period, relating to or arising out of the Kronos Outage, including, without limitation, all state, local, and federal claims for unpaid wages (whether minimum wage or overtime), failure to timely pay wages, failure to record hours worked, paystub and/or wage statement requirements, regular rate claims, reimbursement, and all related claims for statutory damages or penalties, interest, liquidated damages, attorneys’ fees, costs, expenses, and all other such amounts, and including, without limitation, all claims that have been asserted in the Lawsuit or that could have been asserted in the Lawsuit nationwide, including but not limited to:
 - i. All claims for unpaid wages, including but not limited to regular wages, minimum wages, and overtime wages in accordance with state, local, or federal law;
 - ii. All claims for liquidated damages under the FLSA and all claims for penalties, interest, or other damages of any kind under any other applicable state or local wage-and-hour law;
 - iii. All claims relating to the calculation or payment of wages, failure to timely pay wages, failure to record hours worked, paystub requirements, regular rate claims, recoupment of overpayment, reimbursement, and all related claims for statutory damages or penalties arising under the FLSA and/or any other applicable state or local wage-and-hour law or common law;

- iv. All claims for conversion, breach of contract, quantum meruit, unjust enrichment, theft of labor, or other common law or statutory cause of action related to any alleged failure to pay for work performed or to be performed; and
 - v. All related claims for interest, costs, and attorneys' fees.
- b. **Release Printed on Settlement Checks to Putative FLSA Collective Members.** The Parties agree to include mutually agreed upon release language in the form attached on Exhibit C on each settlement check tendered to Putative FLSA Collective members.
- c. **General Release by Plaintiffs.** In exchange for payment of a General Release Payment, Plaintiffs release the Releasees from all claims or disputes made (or that could have been made) under federal, state or local law, common law, statute or regulation, including, but not limited to: (1) any and all wage-and-hour claims of any nature whatsoever, including claims for alleged misclassification, salary basis violations, overtime pay, minimum wages, non-payment of wages, meal or rest periods, paid and unpaid time off, waiting time penalties, unfair business practices, and any other pay practices of any kind, including retaliation; (2) any and all claims of discrimination, harassment or retaliation including, but not limited to, claims for age discrimination under the Age Discrimination in Employment Act ("ADEA"), disability claims, retaliation claims, employee benefits claims; and (3) any claim, dispute, damages, or allegation of any nature whatsoever arising under any federal, state or local common law, regulation, constitution, or statute against any of the Releasees based on facts or circumstances existing up through and including the date of this Agreement. Excluded from this general release are any claims that cannot be waived as a matter of express law, including the right to file a charge with or participate in an investigation conducted by any federal, state, or local EEOC or fair employment practice agency; provided, however, that Plaintiffs waive any right to recover any monetary damages or other relief for any claim waived by this general release should any agency pursue a claim on their behalf.

SETTLEMENT IMPLEMENTATION

4. Approval of Settlement.

- a. All terms of this Settlement Agreement are contingent upon the approval of the settlement and certification by the Court of the FLSA Collective for settlement purposes only.
- b. Within 14 calendar days of the execution of this Settlement Agreement, Plaintiff shall file a motion for approval of this settlement with the Court and for dismissal of the Lawsuit with prejudice.
- c. Cargill may join in the motion, but shall not oppose a motion made under this section unless any provision of the motion is inconsistent with this Settlement

Agreement or the factual information Cargill has previously submitted to the Court regarding its response to the Kronos Outage. Cargill shall be given four business days to review and propose reasonable revisions to the motion for approval before it is filed.

- d. Provided the Court approves this settlement, Collective Counsel and Cargill's Counsel shall cooperate to secure the approval and dismissal with prejudice of the Lawsuit.
- e. The Parties agree that if the Court declines to approve this settlement the Parties agree to meet and confer in good faith to resolve any issues identified by the Court and to resubmit a revised settlement to the Court for approval. If the Parties cannot agree to resolve a dispute, they agree to take the dispute to the previous mediator, Hunter Hughes, Esq., to attempt to resolve such dispute.

5. Stipulation for Certification.

- a. The Parties hereby stipulate, for settlement purposes only, to the following:
 - i. Certification of the of the Putative FLSA Collective, for settlement purposes only, as defined herein, pursuant to 29 U.S.C. § 216(b);
 - ii. Notification of the settlement to the Putative FLSA Collective, as defined herein, pursuant to 29 U.S.C. § 216(b), in the form of the notice attached hereto as **Exhibit A** (the "**Notice of Settlement**");
 - iii. The designation of Plaintiffs as the Named Plaintiffs and Collective Representatives; and
 - iv. The appointment of Plaintiffs' Counsel as Collective Counsel.
- b. If the settlement is not approved by the Court, Cargill's stipulations pursuant to this Section 5 shall ultimately be null and void, and may not be used or relied upon by anyone for any purpose whatsoever in this Lawsuit, or any other judicial, administrative, or arbitral proceeding. For the avoidance of doubt, in the event the settlement described in this Settlement Agreement is not approved by the Court or the Effective Date described in Section 6 does not occur, Cargill does not waive, and instead expressly reserves, its right to challenge and assert all arguments about the propriety of certification of any FLSA collective. The Parties further agree that, other than to effectuate the settlement of this Lawsuit, the certification of the FLSA Collective for settlement purposes and all documents related thereto, including this Agreement and all accompanying exhibits and all orders entered by the Court in connection with this Agreement, shall not be admissible in any judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, including without limitation any wage-and-hour litigation against any of the Releasees.

- c. The settlement is contingent upon the Court's certification of the FLSA Collective and Court approval of the notice to the Putative FLSA Collective members without material modifications, as defined in this Settlement Agreement. If the FLSA Collective is not certified by the Court or if notice of the settlement to the FLSA Collective or the Putative FLSA Collective is not approved by the Court and/or is materially modified in any way, the Settlement Agreement may be voided at either Party's option.

6. Effective Date. The settlement shall become effective when all the following events have occurred:

- a. This Agreement has been executed by Plaintiffs and Cargill;
- b. The Court has approved the settlement, including by certifying the FLSA Collective and approving notice to the Putative FLSA Collective, as defined in this Settlement Agreement, in the form of the Notice of Settlement; and
- c. The Court's entry of an Order Approving Settlement and the Court's Order regarding attorneys' fees, costs, and general release awards all become final because the following has occurred: (a) the expiration of three (3) business days after the time to file a motion to alter or amend the Final Approval Order under Federal Rule of Civil Procedure 59(e) has passed without such a motion having been filed; (b) the expiration of three (3) business days after the time in which to appeal the Order Approving Settlement has passed without any appeal having been filed (which date shall be deemed to be thirty-three (33) days following entry of the Order Approving Settlement); and (c) if such motion to alter or amend is filed, or if an appeal is taken, three (3) business days after a determination of such motion or appeal that permits the consummation of the settlement.

SETTLEMENT FUNDS AND AWARD CALCULATION

7. Settlement Amount.

- a. **Gross Settlement Amount.** The total settlement amount to be made available in the "common fund" is Two Million, Four Hundred Thousand Dollars and No Cents (\$2,400,000.00) (the "**Gross Settlement Amount**").
- b. **No Recoupment of Overpayments.** Cargill re-affirms its previous commitment not to recoup any overpayment amounts made to FLSA Collective members resulting from the Kronos Outage that have not yet been collected by Cargill. The approximate overpayment amount is \$15,987,824.
- c. **Funding of Settlement.** Within 10 days of the Effective Date, Cargill shall cause to be deposited into an interest-bearing escrow account designated as a Qualified Settlement Fund pursuant to the Internal Revenue Code (the "**QSF**") designated by Plaintiffs and under the control of the Settlement Administrator, the amount of \$2,400,000.00.

- d. **Settlement Awards.** Each of the Putative FLSA Collective members shall be mailed a Settlement Check consisting of his or her settlement award from the Collective Settlement Amount (each a "**Settlement Award**"). The formula for distribution of the Collective Settlement Amount is set forth on **Exhibit B** and shall be calculated by the Settlement Administrator.

8. Process for Mailing the Notice of Settlement and Settlement Checks to Putative FLSA Collective Members.

- a. Within 10 calendar days after the Effective Date, Cargill shall provide the Settlement Administrator with a list, in Microsoft Excel or Comma Separated Value format, of the names, employee numbers, social security numbers, last known physical addresses, and email addresses (where included in Cargill's employee records) of all Putative FLSA Collective members ("**Collective List**"), so that the Settlement Administrator can process and mail the Notice of Settlement and Settlement Awards to all Putative FLSA Collective members.
- b. Within 14 days of the Settlement Administrator's receipt of the Collective List and funds in the QSF, the Settlement Administrator will, in the following order: (1) determine the amount of the Collective Settlement Amount (as defined in Section 1(h)) available for distribution to the Putative FLSA Collective members; (2) using the formulas set forth in Exhibit B, issue the Notice of Settlement and the Settlement Award (consisting of a Settlement Check) to all Putative FLSA Collective members by USPS First Class U.S. Mail ("Check Issuance Date") and (3) disburse to Plaintiffs' Counsel the attorneys' fees and cost payment approved by the Court via wire, with instructions to be provided by Plaintiffs' Counsel. The Settlement Administrator shall certify in writing to the Parties' counsel the date that such mailing has been made.
- c. Prior to mailing, the Settlement Administrator will use all standard skip tracing devices or similar means to verify the accuracy of all physical addresses in the Collective List in order to ensure, to the extent reasonably practicable, that the Notice of Settlement and Settlement Awards are sent to all Putative FLSA Collective members at the physical addresses most likely to result in receipt of the Notice of Settlement and Settlement Award. This will include running the addresses through the National Change of Address database. With respect to returned envelopes, the Settlement Administrator will use reasonable diligence to obtain a current address and re-mail the envelope to such address within 10 days of the receipt of the returned envelope. Any Notices returned undeliverable during the Administration Period (defined below) shall be traced up to two times to obtain a new address and be re-mailed by First Class U.S. Mail.
- d. Each Settlement Check shall be valid for 90 days after issuance. In the event that a Settlement Check is lost or damaged, the Putative FLSA Collective member may request, at any time within the 90-day period, that a replacement check be issued. Within 21 days of a request for reissuance, a check for the amount of the expired

check shall be issued to the requesting Putative FLSA Collective member, which shall be valid for 90 days after issuance.

- e. Any portion of the Collective Settlement Amount that is unclaimed by members of the FLSA Collective shall be returned to Cargill. The total amount of any uncashed checks shall revert back to Cargill.
- f. All fees and costs incurred by the Settlement Administrator in administering this settlement, which shall include but not be limited to all fees and costs for: reproducing the Notice of Settlement; producing checks for FLSA Collective Members; postage to send the Notice of Settlement and settlement checks to FLSA Collective Members; notifying the Putative FLSA Collective members of the Lawsuit; performing skip tracing services; mailing appropriate tax forms to FLSA Collective Members; and other fees reasonably incurred by the Settlement Administrator and approved by the Parties (the “**Administration Costs**”) shall be paid to the Settlement Administrator from the Gross Settlement Amount.
- g. The “**Administration Period**” is the period of time beginning on the date when the Gross Settlement Amount is paid to the Settlement Administrator through the later of:
 - i. the date that all of the settlement checks have been cashed and/or deposited by FLSA Collective members; or
 - ii. where the time for requesting a replacement check has passed for all FLSA Collective members and any replacement check requested has been issued, the date on which all uncashed and/or deposited checks (including replacement checks) have expired.
- h. Within 30 days following the conclusion of the Administration Period (“Final Accounting Date”), the Settlement Administrator shall provide a full accounting to Collective Counsel and Cargill’s Counsel (“Final Accounting”) which will include the following:
 - i. The total Administration Costs;
 - ii. The total amount of the cashed and/or deposited settlement checks (the “**Claimed Collective Settlement Amount**”);
 - iii. The names of FLSA Collective Members who cashed their Settlement Award; and
 - iv. The total amount of the Collective Settlement Amount remaining in the QSF which shall be returned to Cargill.
- i. **Reversion Date.** Funds due back to Cargill as set forth in the Final Accounting will be returned to Cargill via wire within 30 days of the Final Accounting Date. Cargill will provide wiring instructions to the Settlement Administrator.

9. Treatment of Settlement Awards by Collective Groups.

- a. The entire amount of Settlement Award for each FLSA Collective Member will constitute liquidated damages in connection with the FLSA Collective members' claims under the FLSA and state law. No taxes or withholdings will be deducted, and the FLSA Collective members will be solely responsible for paying all applicable taxes. The Settlement Administrator will issue to each FLSA Collective member here an IRS Form 1099.
- b. Each FLSA Collective member will be responsible for the payment of any additional local, state, or federal taxes or withholdings resulting from or attributable to the payments received.

10. Collective Counsel's Attorneys' Fees and Costs.

- a. Plaintiffs and/or Collective Counsel may petition the Court for an award of attorneys' fees and expenses in conjunction with the Parties' settlement in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount. Cargill shall not oppose a request for fees and expenses up to and including this amount.
- b. The funds for the payment of approved attorneys' fees and expenses shall be paid to Collective Counsel by the Settlement Administrator at the same time as the Putative FLSA Collective members' Settlement Awards are mailed as outlined in paragraph 8(b) above.
- c. The attorneys' fees and costs paid by the FLSA Collective shall constitute full satisfaction of Releasees' obligations to pay amounts to any person, attorney, or law firm for attorneys' fees or costs in the Lawsuit on behalf of FLSA Collective members, and shall relieve Releasees from any other claims or liability to any other attorney or law firm for any attorneys' fees or costs to which any of them may claim to be entitled on behalf of FLSA Collective members.
- d. An IRS Form 1099 shall be provided to Collective Counsel by the Settlement Administrator for the payment of attorneys' fees and expenses made to Collective Counsel through Releasees. Each firm constituting Collective Counsel shall be solely and legally responsible to pay applicable taxes on the payment made to that firm.

11. General Release Payment. In exchange for signing a General Release releasing all claims against Releasees, which is set forth above in Section 3, Plaintiffs may seek approval of a payment not to exceed \$5,000.00 each. This award is in addition to Plaintiffs' individual Settlement Awards, if any. Cargill agrees not to object to such application. The General Release Payment shall be treated as non-wage penalties and liquidated damages, to be reported on an IRS Form 1099 (box 3) and shall not be subject to FICA and FUTA withholding taxes. The General Release Payments shall be paid from the Gross Settlement Amount.

12. No Claim Based Upon Distributions or Payments in Accordance With This Settlement Agreement. No person shall have any claim against Plaintiffs, any FLSA Collective member, Releasees, the Settlement Administrator, Collective Counsel, or Cargill's Counsel based on distributions or payments made in accordance with this Settlement Agreement.

MISCELLANEOUS

13. Cargill's Legal Fees. Cargill's legal fees, costs, and expenses in the Lawsuit shall be borne by Cargill.

14. Nullification of the Settlement Agreement. In the event the settlement does not become final for any reason, this Settlement Agreement shall be null and void, and the Parties shall be returned to the status quo ante. If this occurs, the Parties shall proceed in all respects as if the Settlement Agreement had not been executed subject to the provisions in Sections 2 and 16.

15. Severability. If for any reason any term or provision of this Settlement Agreement is held to be invalid or unenforceable to any extent, then (a) such term or provision will be interpreted, construed, or reformed to the extent reasonably required to render the same valid, enforceable, and consistent with the original intent underlying such provision; (b) such term or provision will remain in effect to the extent that it is not invalid or unenforceable; and (c) such invalidity or unenforceability will not affect any other term or provision of this Settlement Agreement; provided however, that the paragraphs included in Section 3 (Release, Gross Settlement Amount, and Collective Settlement Amount) are material terms whose inclusion is essential to this Settlement Agreement. If any term or provision is held to be invalid or unenforceable to any extent, or if is edited or reformed in any way, then this Settlement Agreement may be voided at either Party's option. The Parties agree to cooperate to address and resolve any such issues as they arise, and to use reasonable, good-faith efforts to uphold the settlement reached by the Parties.

16. Inadmissibility of Settlement Agreement. Except for purposes of (a) settling the Lawsuit or (b) enforcing this Agreement, neither this Settlement Agreement, nor its terms, nor any document, statement, proceeding, or conduct related to this Agreement, nor any reports or accounts thereof, shall be construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to the Parties, including, without limitation, evidence of a presumption, concession, indication, or admission by any of the Parties of any liability, fault, wrongdoing, omission, concession, or damage.

17. Computation of Time. For purposes of this Settlement Agreement, if the prescribed time period in which to complete any required or permitted action expires on a Saturday, Sunday, or legal holiday (as defined by Federal Rule of Civil Procedure 6(a)(6)), such time period shall be continued to the following business day.

18. Amendment or Modification. This Settlement Agreement may be amended or modified only by a written instrument signed by the Parties or their successors in interest or by duly authorized counsel for such persons or entities. Any such amendment or modification will only become effective upon approval by the Court. Other than a Court deadline, any deadline in this Agreement may be extended by agreement of the Parties.

19. Entire Settlement Agreement. This Settlement Agreement constitutes the entire agreement between the Parties, and no oral or written representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement other than the representations, warranties, and covenants contained and memorialized in such documents. All prior or contemporaneous negotiations, memoranda, agreements, understandings, and representations, whether written or oral, are expressly superseded hereby and are of no further force and effect. Each of the Parties acknowledges that, in entering into this Settlement Agreement, they have not relied on any promise, representation, or warranty, express or implied, not contained in this Agreement.

20. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of Plaintiffs, the FLSA Collective, Releasees, and each of their heirs, beneficiaries, executors, administrators, successors, transferees, successors, or assigns.

21. Counterparts. This Settlement Agreement may be executed in one or more counterparts, including by electronic signature, facsimile, or email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

22. Cooperation and Drafting. The Parties have cooperated in the drafting and preparation of this Settlement Agreement; hence the drafting of this Settlement Agreement shall not be construed against any of the Parties. The Parties agree that the terms and conditions of this Settlement Agreement were negotiated at arm's-length and in good faith by the Parties, and the terms and conditions reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel, or the full and unimpeded opportunity to consult with such legal counsel.

23. Bona Fide Dispute. The Parties agree this Settlement Agreement is a resolution of a bona fide dispute and related claims. Nothing in this Settlement Agreement constitutes an admission that Releasees violated any applicable law.

24. Captions. The captions or headings of the sections and paragraphs of this Settlement Agreement have been inserted for convenience of reference only and shall have no effect on the construction or interpretation of any part of this Settlement Agreement.

25. Authority of Cargill's Signatories. By executing this Settlement Agreement, Cargill represents and warrants that it is a business entity, existing and in good standing under the laws of its state of formation, and that the person executing this Settlement Agreement on its behalf is fully authorized to bind it. The person executing this Settlement Agreement on each entity's behalf likewise represents and warrants that they have been authorized to execute and enter into this Settlement Agreement on behalf of the respective entity.

26. Continuing Jurisdiction. This Agreement is subject to the continuing jurisdiction of the Court to construe, interpret and enforce the provisions of this Agreement and to supervise the administration and distribution of the resulting settlement funds.

27. Signature. An electronic or facsimile signature shall be deemed to be an original for all purposes.

28. Choice of Law and Venue of Disputes. This Settlement Agreement shall be construed under Minnesota law, without regard to any choice of law principles, except to the extent any law of the United States governs any matter set forth, in which case federal law shall govern. Any dispute arising under this Settlement Agreement shall have venue exclusively in the United States District Court for the District of Minnesota.

29. Acknowledgment. Each Party executing this Settlement Agreement confirms they are doing so knowingly and voluntarily and that they have read this Settlement Agreement, have understood it, and have entered into it after being advised by their respective attorneys, or with the complete opportunity to do so.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as follows:

James Futrell
individually and on behalf of the FLSA Collective

Date: _____



Chris Rogers
individually and on behalf of the FLSA Collective

08 / 10 / 2023
Date: _____

DocuSigned by:

465A87485915477
On behalf of Cargill, Inc.

Date: 10/24/2023

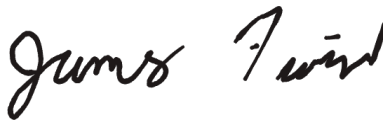
Name Patty Babler

Title Vice President, Human Resources

28. Choice of Law and Venue of Disputes. This Settlement Agreement shall be construed under Minnesota law, without regard to any choice of law principles, except to the extent any law of the United States governs any matter set forth, in which case federal law shall govern. Any dispute arising under this Settlement Agreement shall have venue exclusively in the United States District Court for the District of Minnesota.

29. Acknowledgment. Each Party executing this Settlement Agreement confirms they are doing so knowingly and voluntarily and that they have read this Settlement Agreement, have understood it, and have entered into it after being advised by their respective attorneys, or with the complete opportunity to do so.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as follows:



James Futrell
individually and on behalf of the FLSA Collective

Date: 08 / 10 / 2023

Chris Rogers
individually and on behalf of the FLSA Collective

Date: _____

On behalf of Cargill, Inc.

Date: _____

Name

Title

EXHIBIT A
NOTICE OF SETTLEMENT
(Attached)

NOTICE OF SETTLEMENT OF WAGE CLAIMS FOR CERTAIN EMPLOYEES OF CARGILL

TIME-SENSITIVE, COURT-AUTHORIZED NOTICE

*** This is not an advertisement from a lawyer. ***

This Notice explains your legal rights and options regarding a settlement with Cargill for employee wage claims regarding the Kronos outage beginning in December 2021

1. What is this about?

A lawsuit was filed against Cargill, Incorporated (“Cargill”) for unpaid or delayed overtime wages under a federal law, the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.*, and related state-law claims.

The lawsuit involves non-exempt employees who worked in the United States for Cargill or any direct or indirect subsidiary of Cargill (collectively, “Cargill Employees”) and whose pay was potentially affected by the Kronos system outage, which affected pay periods for days worked between December 6, 2021, and January 23, 2022.

The lawsuit was filed by Cargill workers who claim they and other Cargill Employees were not timely or accurately paid wages during and after an outage of Cargill’s Kronos timekeeping and payroll system, which affected the pay periods for days worked between December 6, 2021, and January 23, 2022. The case is *Futrell v. Cargill, Incorporated*, Case No. 0:22-cv-00969-JRT-DJF, in the United States District Court for the District of Minnesota.

The Court has not determined that Cargill is liable or did anything wrong. Instead, the plaintiffs and Cargill reached a settlement to resolve the case. The Court overseeing the lawsuit has approved that settlement, which pays money to all Cargill Employees who worked more than 40 hours in any week during the Kronos outage; who were underpaid during one or more weeks of the Kronos outage; and who choose to join this settlement.

2. Why am I getting this notice?

You have been identified as a Cargill Employee who worked during the Kronos outage and who is eligible to recover money from the settlement. In order to recover money, you must join the settlement by cashing the enclosed check. If you do not join the settlement by cashing the enclosed check, you will not receive any money.

3. What is my share of the settlement?

Some Cargill Employees affected by the Kronos outage were underpaid during the outage compared to what they would have been if the outage hadn’t happened. Others were overpaid. After Kronos access was restored, Cargill completed a reconciliation process to compare pay received during the outage to what employees would have received if the outage hadn’t happened. If an employee was underpaid during the outage, Cargill made a reconciliation payment of the full amount underpaid. A significant majority of employees were overpaid during the outage. Your settlement payment is based on your hours worked for Cargill or a Cargill subsidiary and the amount you were paid during the Kronos outage. Based on this reconciliation, each employee, including you, was classified as an underpaid or overpaid employee.

If you were **underpaid**, Cargill previously issued you an additional payment in the total amount of the underpayment, and, for then-current employees, an additional amount that was 50% of the net underpayment. In connection with this settlement, you are receiving one additional payment representing “liquidated damages,” which is a proportional amount of the wages at issue based on the amount in the settlement fund. This payment is a minimum of \$40.00.

If you were **overpaid**, you are receiving one check representing “liquidated damages” in the amount of \$30.00. This payment is being made to resolve any potential claims you might have. Cargill has previously stated that it will not seek to recover any further overpayments from overpaid Cargill Employees. Cargill reaffirms its commitment not to recover any such overpayments from individuals who cash their settlement check.

4. How do I get the money offered?

To join the settlement:	If you choose to be included in the settlement, all you need to do is deposit or cash the enclosed check.
CASH THE CHECK	
To stay out of the settlement:	If you do not want a payment from this settlement and you do not want to release certain claims you may have against Cargill or its subsidiaries related to or arising out of the Kronos outage, then do not deposit or cash the enclosed check. By doing nothing, you give up the possibility of getting money from the settlement of this lawsuit.
DO NOTHING	

5. What happens if I cash the check I received?

If you deposit or cash the enclosed check, you agree to the following:

You will be acknowledging that you are represented by PARMET PC and MORGAN & MORGAN, P.A. (together, the “Collective Attorneys”) and that you will be bound by the terms of the attorney-client agreement signed by the lead plaintiffs in the lawsuit. You will **not** have to pay the Collective Attorneys any money directly. Attorneys’ fees and costs will be paid as part of the as a percentage of the overall settlement recovery funded by Cargill.

You will be waiving and releasing all claims against Cargill for unpaid or delayed wages, including overtime and penalties, related to the Kronos outage, for days worked between December 6, 2021, and January 23, 2022. The full scope of this release is set forth on the check enclosed with this notice.

6. What does the Court think?

While the Court approved this settlement, the Court did not determine that Cargill (or anyone else) did anything wrong. The Court did not determine you are owed any money. Instead, this is a settlement payment.

Do not contact the Court regarding this settlement. The Court must remain neutral in this matter and cannot give you advice.

7. What does Cargill think?

Cargill does not agree it did anything wrong and believes you were paid correctly and fairly for your work. Cargill also does not think a collective action (group lawsuit) is appropriate. Cargill believes this settlement is a fair solution to this lawsuit and encourage all employees to join in this settlement. No adverse employment action will be taken against you whether or not you join this settlement and cash or deposit your settlement checks.

8. How long do I have to make a decision?

You can deposit or cash the enclosed check within 90 days of the date it was issued. If you lose or damage the check during that 90-day period, you can contact the Collective Attorneys to request that a replacement check be issued. Any reissued replacement check will be valid for 90 days after issuance.

9. I still have questions. Where can I get more information?

This Notice is only a summary. If you would like, you can obtain certain documents related to the case. However, the deadline for cashing your check will not be extended.

If you have any questions about the collective action or your legal rights, you should contact the attorneys for the group of Cargill employees:

Matthew S. Parmet
PARMET PC
2 Greenway Plaza, Ste. 250
Houston, TX 77046
phone 713 999 5228
team@parmet.law

Andrew R. Frisch
MORGAN & MORGAN, P.A.
8581 Peters Rd., Ste. 4000
Plantation, FL 33324
phone 954 327 5352
fax 954 327 3017
afrisch@forthepeople.com

EXHIBIT B

FORMULA FOR DISTRIBUTION OF SETTLEMENT

- For the Collective Groups, the Collective Settlement Amount, as defined in Paragraph 1 of the Settlement Agreement, shall be allocated as follows, following the deduction of court-approved attorneys' fees and costs, the General Release Payments, and administrative fees and costs (including those of the Settlement Administrator) from the Gross Settlement Amount:
 1. For the "Net-Over" group: an estimated amount of \$503,580, with each individual allocated \$30.
 2. For the "Net-Under New York Employees" group: an estimated amount of \$67,500, to be allocated on a pro-rata share of \$500 per person to each Putative FLSA Collective member who falls within this category.
 3. For the "Net-Under" group: all funds in the Collective Settlement Amount less the payments to the "Net-Over" and "Net-Under New York Employees" described above, to be allocated on a pro-rata share of their underpaid amount as compared to the total amount of the "Net-Under" Putative FLSA Collective members' aggregate underpayment amount. The actual amounts distributed will be determined by the portion of the Collective Settlement Amount allocated to the "Net Under" group as described herein. For example, if a Putative FLSA Collective member's personal underpayment amount was 0.1% of the total "Net-Under" Putative FLSA Collective members' aggregate underpayment amount, then that claimant shall receive 0.1% of the portion of the Collective Settlement Amount allocated to the "Net-Under" group, as described herein. However, "Net-Under" Putative FLSA Collective members shall each receive a minimum of \$40.00 from the net settlement amount if their pro-rata share results in a potential payment of less than \$40.00. This may require the Settlement Administrator to recalculate the pro rata shares. In no way will this result in an increase of the Gross Settlement Amount.

EXHIBIT C

SETTLEMENT CHECK LANGUAGE

Attention: By cashing, depositing, transferring, or otherwise negotiating the enclosed check you are agreeing to a full and complete release of any and all wage-and-hour claims, including under the Fair Labor Standards Act and any state/local law, related to the Kronos Outage from December 6, 2021 through January 23, 2022 that you may have against the Releasees. The wage-and-hour claims you are releasing include all known or unknown claims for any wage-and-hour violations, including but not limited to, claims related to minimum wage, overtime, wage rate, timing of payment, timekeeping, paystubs and/or wage statements, or time worked related to the Kronos Outage and including all related claims for penalties, interest, and attorneys' fees. The wage-and-hour claims you are releasing specifically include claims that you raised or could have raised as an opt-in plaintiff in the lawsuit: *James Futrell, et al., individually and on behalf of all others similarly situated v. Cargill Incorporated*, Case No. 0:22-cv-00969. The Releasees include: (1) Cargill, Incorporated, (2) Cargill, Incorporated's current or former parent companies, subsidiary companies (indirect and direct), and/or related, affiliated, companies, partnerships, and/or joint ventures; and (3) each of their respective past, present, and future employees, trustees, officers, partners, principals, directors, stockholders, owners, representatives, assigns, attorneys, agents, insurers, employee benefit program administrators, and fiduciaries.

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
MINNEAPOLIS DIVISION**

JAMES FUTRELL and CHRIS
ROGERS, each individually and on behalf
of all others similarly situated,

v.

CARGILL, INCORPORATED

Case No. 0:22-cv-00969-JRT-TNL
FLSA Collective Action
FED. R. CIV. P. 23 Class Action

Judge John R. Tunheim

Magistrate Judge Tony N. Leung

DECLARATION OF MATTHEW S. PARMET

I, Matthew S. Parmet, am over 18 years of age, of sound mind, and fully competent to make this declaration. I have personal knowledge of the facts herein. I testify as follows:

A. BACKGROUND & EXPERIENCE

1. I am an attorney for Plaintiffs in the above-referenced matter.
2. I am licensed to practice law in Texas, Arizona, California, Colorado, Louisiana, and Pennsylvania. My license is currently active and in good standing in all these states.
3. In addition, I am admitted to practice law before the United States Supreme Court, the United States Courts of Appeals for the Fifth, Ninth, and Tenth Circuits, and numerous United States District Courts.¹
4. I have practiced law with PARMET PC since May 2018. Prior to that time, I practiced law with BRUCKNER BURCH PLLC beginning in September 2015, with SICO WHITE HOELSCHER HARRIS & BRAUGH LLP beginning in March 2013, and with DOYLE RAIZNER LLP beginning in October 2010. In each of these positions, my practice primarily focused on various aspects of litigation on behalf of plaintiffs, including high-value, complex litigation.
5. I am involved in several professional legal organizations. I have served on the Board of Directors for the Houston Trial Lawyers Association since 2011, and

¹ District Courts are identified on Exhibit 1.

Ex. B

I previously served on the Board of Directors for the Seventh Amendment Political Action Committee. I am a member of several other organizations, including the National Employment Lawyers Association, the Texas Employment Lawyers Association, and the Mexican American Bar Association of Houston, and in the past, I have been a member of several other organizations, including the Attorneys Information Exchange Group, the Texas Trial Lawyers Association, the Houston Bar Association, the Houston Young Lawyers Association, and the California Employment Lawyers Association. In addition, I have prepared a number of continuing legal education papers for presentation at various engagements.

6. I have been listed as a “Rising Star Super Lawyer” by the Texas Monthly and Texas Lawyer magazines for 2018, 2019, 2020, 2021, 2022, and 2023.
7. Attached to this declaration are a true and correct copy of my current resume (Exhibit 1) and a listing of attorneys’ fee awards obtained through work on behalf of my clients (Exhibit 2). These documents contain additional information about my knowledge, skill, experience, training, and education.
8. I am familiar with the standards of practice required by, and regularly practiced in, federal courts, including those in Tennessee and the Sixth Circuit. The opinions in this declaration are based on my knowledge, training, skills, and experience, as well as the applicable law, and an analysis of relevant issues as outlined in this declaration.
9. Successful handling of cases such as this requires particularized expertise and experience, qualities possessed by Plaintiffs’ counsel.
10. My Firm and I have litigated hundreds of wage-and-hour cases as lead or co-counsel and maintains a particular focus on wage-and-hour litigation.
11. My Firm and I have litigated wage-and-hour cases nationwide in at least 39 states, including Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming.
12. My Firm and I have reviewed and become familiar with a large body of documents and information concerning wage-and-hour litigation, which benefits cases such as this and maximizes the settlement value of the case. Our experience in this field has also resulted in a familiarity with the evidence and

testimony necessary to the successful prosecution of cases such as this. In all, my Firm and I have secured settlements in wage-and-hour cases on behalf of many clients.

B. FLSA LITIGATION REGARDING KRONOS OUTAGE

13. Plaintiffs retained Plaintiffs' counsel to assist in recovery for claims for unpaid wages and related damages against their employer, Cargill.
14. The suit claimed that Cargill delayed or failed to pay wages, including overtime wages, to themselves and other non-exempt employees of Cargill after a time and payroll system outage beginning on or about December 11, 2021.
15. That time and payroll outage was the result of an alleged cyberattack on the cloud-based Kronos system, operated and maintained by the Ultimate Kronos Group, Inc. (UKG).
16. As a result of the alleged cyberattack on the Kronos system, Cargill's time and payroll systems became inaccessible to Cargill for an extended period of time (the "Kronos Outage").
17. The Kronos Outage resulted in the delayed or non-payment of wages, including overtime, to non-exempt Cargill employees.
18. Plaintiffs claimed that, under the FLSA and applicable state law, they were owed any overtime wages that had not been paid during the Kronos Outage, as well as their regular pay for any hours worked during a week in which they also worked overtime.
19. Plaintiffs claimed they were also owed liquidated damages, attorney fees, and costs, as provided for under the FLSA and applicable state law.
20. Plaintiffs also alleged that other, similarly situated employees were subject to the same pay practice as a result of the Kronos Outage, and that their claim should be certified as a collective action under the FLSA, as well as a class action under applicable state laws.
21. Cargill has denied, and continues to deny, any wrongdoing regarding their time and pay practices during and after the Kronos Outage, including the method and timeliness of calculating and paying wages.
22. My Firm, and the Morgan & Morgan team working on this matter, both maintain a particular focus on class and collective action wage-and-hour cases like this one.

23. Besides a focus on wage-and-hour litigation in general, our Firms have filed suit against over 45 different employers across the country regarding the Kronos outage—which involve the same or similar allegations as this case.
24. To my knowledge, our Firms have filed more cases stemming from the Kronos outage at issue than any other attorneys.
25. Several of these matters, like this one, have already resolved.
26. In the course of litigating these Kronos Outage-related cases, our Firms have reviewed and become familiar with a large body of documents and information concerning the subject matter of this litigation, which benefits cases such as this and maximizes their values.
27. The information and experience acquired by Plaintiffs' counsel includes information regarding the Kronos outage, the Kronos system, employers' interactions with UKG during and after the outage, and the valuation and structures of settlements in related litigation.
28. The Firms' knowledge and experience in this general field of law, and the Kronos Outage wage-and-hour litigation in particular, has also resulted in a familiarity with the evidence necessary to the successful prosecution of cases such as this.

C. PLAINTIFFS' AGREEMENT WITH COUNSEL

29. Plaintiffs' were unable to pay Plaintiffs' counsel on an hourly basis and to pay in advance the costs of litigation, which were certain to be very significant in a wage-and-hour individual or collective/class action. Plaintiffs' counsel therefore agreed to handle the matter on a contingency basis.
30. Plaintiffs and Plaintiffs' counsel agreed that Plaintiffs would pay a maximum of 40% of contingent fee of any monies, interest, or property recovered—unless Plaintiffs' counsel was able to recover a greater amount in fees awarded by a court or negotiated with Defendants. The agreement further called for Plaintiffs' counsel to advance all costs necessary to investigate, evaluate, and pursue the claims, which costs were to be reimbursed to Plaintiffs' counsel out of Plaintiffs' share of settlement money.
31. Plaintiffs and Plaintiffs' counsel also agreed that Plaintiffs would owe no attorneys' fees in the event that no recovery was made.
32. In all, Plaintiffs' counsel, working on contingency, had a large risk of loss for the time and efforts spent working on this matter.

D. UNDERLYING LITIGATION

33. This case was settled after substantial investigation and work by Plaintiffs and Plaintiffs' counsel.
34. Among the issues that the Parties disputed included: whether Cargill still owed any wages to Plaintiffs and similarly situated employees; whether the alleged FLSA violations were made in good faith and on reasonable grounds; and the propriety of proceeding as a collective under the FLSA.
35. The work undertaken by Plaintiffs and Plaintiffs' counsel included:
 - Investigation of Cargill and its management and structure;
 - Review of Department of Labor database and records;
 - Review of court records for similar or related cases involving Cargill and its related corporate entities;
 - Review of legal authority, including court orders and administrative guidance, regarding legal issues before and during the course of the lawsuit;
 - Drafting, filing, and serving Plaintiffs' original and amended complaint;
 - Reviewing and responding to Cargill's Motion to Dismiss and legal authorities;
 - Drafting and sending Plaintiffs' disclosures and informal discovery;
 - Reviewing Plaintiffs and opt-in Plaintiffs' documents and production;
 - Interviewing Plaintiffs and potential opt-ins;
 - Reviewing Cargill's production, including payroll and time documents and data;
 - Analyzing and processing data for Plaintiffs and the potential collective's payroll, including creating a damage model for the data;
 - Attending a full-day mediation; and
 - Negotiating and finalizing the Parties' Settlement Agreement and approval documents.

36. In addition, this case was mediated with Hunter Hughes during a full-day mediation on May 15, 2023.
37. Mr. Hughes is a highly sought-after and successful employment class/collective action mediator.
38. At the conclusion of mediation, Mr. Hughes made a mediator proposal, which the Parties ultimately accepted.
39. Although the Parties reached a preliminary settlement, the Parties still negotiated over the following several months to finalize all the terms and reduce their agreement to a final settlement.
40. In all, this case was resolved through the extensive efforts of Plaintiffs' counsel and the expenditure of a great deal of time and energy.
41. My Firm and the Morgan & Morgan team working on this matter in the normal course of business, maintain records of time, date, and work performed in FLSA matters such as this.
42. Based upon my review of the time records, as well as my Firm's and the Morgan & Morgan file in this matter, the time spent by Plaintiffs' counsel to date far in this matter is at least 380 hours.
43. Based on past experience, I estimate Plaintiffs' counsel's duties fulfilling Plaintiffs' obligations under the settlement agreement, administering the settlement, and responding to Plaintiffs' and putative collective members' inquiries will take Plaintiffs' counsel at least another 60 hours of work.

E. SUCCESSFUL RESOLUTION OF THIS CASE

44. The Parties to this matter reached a settlement agreement after extended, arm's-length negotiations.
45. In reaching the settlement and distribution of funds, I have not participated in any fraud or collusion. Nor am I aware of, nor do I believe there was, any fraud or collusion on the part of anyone in securing the settlement and distribution of funds.
46. I request that this court approve the attorneys' fees in the amount of 4.6% of the common fund, which is equal to 35% of the net settlement fund to be distributed to the collective.
47. Plaintiffs' attorneys' fees in this case are in line with Eighth Circuit precedent.

48. In my experience and to the best of my knowledge, firms operating on a contingency basis in similar cases most often seek attorney fees ranging from 1/3 to 40% of the gross settlement amount, or even 45%, and sometimes as much as 50% if a final judgment has been entered. Very seldom do firms operating on a contingency basis in similar cases accept such cases with attorneys' fees lower than 40% once a matter has entered litigation.
49. Further, based upon my knowledge and experience, most law firms today take the majority of, or all, contingency-based cases with an attorney fee agreement of 40% of the gross settlement amount once a matter has entered litigation (and, in particular, those law firms operating in the Tennessee legal market).
50. Here, Plaintiffs' counsel has agreed to take fees as a percentage of the new cash settlement fund **only**, rather than the potential value of the entire gross settlement amount, which represents the actual value of the benefit that achieved for the collective.
51. Thus, the requested fee of 4.6% of the gross settlement amount (35% of the new net settlement fund) is fundamentally reasonable and customary, as Plaintiffs' counsel has worked extremely hard on the case, devoted a large amount of time to the case, risked significant capital, and achieved an excellent and expeditious result in a difficult and risky case.
52. Like any other wage-and-hour case, because of its complexity, it is assumed that the resources necessary to prosecute such a case may preclude employment on other cases.
53. Plaintiffs' counsel, working on contingency, had 100% of the risk of loss, advanced considerable costs, which had Plaintiffs not recovered anything from Cargill, would have been lost, and Plaintiffs' counsel would have carried various advanced costs, as well as unrecoverable time spent.
54. Given all these facts and factors, the skills required to present the case, the time and costs expended to achieve the results, the reputation of counsel in the community, and the results achieved on behalf of the clients, the fees and litigation expenses requested for Plaintiffs' settlement as shown are reasonable and necessary, and is less than the amount agreed upon at the outset in writing by contract between Plaintiffs and Plaintiffs' counsel.

55. Plaintiffs' counsel also requests reimbursement of reasonable and necessary expenses, as follows:

Cost	Amount
Court Fees	\$ 402.00
Service	\$ 65.00
Copies	\$ 57.50
Postage	\$ 23.34
Mediation	\$ 10,000.00
Admissions	\$ 300.00
Travel and Incidental	\$ -
Legal Research	\$ 363.60
Certificates of Good Standing	\$ -
TOTAL	\$ 11,211.44

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

Executed on November 15, 2023.

/s/ Matthew S. Parmet

Matthew S. Parmet

CURRICULUM VITAE OF MATTHEW SCOTT PARMET

LICENSES & ADMISSIONS:

State Bars and Supreme Courts

Texas, 2009	California, 2014	Pennsylvania, 2022
Louisiana, 2010	Colorado, 2019	Arizona, 2022

Supreme Court of the United States

United States Courts of Appeals for the Fifth, Ninth, and Tenth Circuits

United States District Courts

D. Arizona	E.D. Louisiana	M.D. Pennsylvania
E.D. Arkansas	M.D. Louisiana	W. D. Pennsylvania
W.D. Arkansas	W.D. Louisiana	E.D. Tennessee
C.D. California	D. Maryland	M.D. Tennessee
E.D. California	E.D. Michigan	W.D. Tennessee
N.D. California	W.D. Michigan	E.D. Texas
S.D. California	E.D. Missouri	N.D. Texas
D. Colorado	D. Nebraska	S.D. Texas
Dist. of Columbia	D. New Mexico	W.D. Texas
C.D. Illinois	D. North Dakota	E.D. Wisconsin
N.D. Illinois	N.D. Ohio	W.D. Wisconsin
N.D. Indiana	W.D. Oklahoma	
S.D. Indiana	E.D. Pennsylvania	

LEGAL EXPERIENCE:

PARMET PC

Attorney

Houston, TX
May 2018 – Present

- Representing plaintiffs in wage-and-hour class and collective actions throughout the United States, as well as select personal injury plaintiffs and commercial litigants.

BRUCKNER BURCH PLLC

Associate Attorney

Houston, TX
September 2015 – May 2018

- Represented plaintiffs in wage-and-hour class and collective actions throughout U.S.

SICO WHITE HOELSCHER HARRIS & BRAUGH LLP

Associate Attorney

Houston, TX
March 2013 – September 2015

- Represented plaintiffs in high-value, complex catastrophic injury and death cases, with emphasis on products liability, automotive and tire defects, commercial vehicle collisions, third-party claims arising from workplace injuries, and general negligence.

DOYLE RAIZNER LLP

Associate Attorney

Houston, TX
October 2010 – February 2013

- Represented plaintiffs in personal injury, Jones Act/maritime injury, insurance bad faith, Texas Deceptive Trade Practices Act, commercial vehicle collisions, products liability, toxic torts, and commercial litigation.

EDUCATION:

TULANE UNIVERSITY LAW SCHOOL

New Orleans, LA

Juris Doctor

May 2009

Honors: *Tulane Environmental Law Journal*—Senior Managing Editor, Volume 22

COLLEGE OF LIBERAL ARTS, UNIVERSITY OF TEXAS

Austin, TX

Bachelor of Arts in Psychology and Spanish with Honors

December 2005

Honors: *Phi Beta Kappa* Society

Psi Chi, National Honors Society in Psychology

Liberal Arts Honors Program

Activities: *Sigma Alpha Mu* Fraternity

AWARDS & RECOGNITION:

Texas Monthly / Texas Lawyer Magazines

Rising Star Super Lawyer, 2018, 2019, 2020, 2021, 2022, 2023

CERTIFICATIONS:

Guardian/Attorney ad Litem, State Bar of Texas, 2020 – present

PROFESSIONAL ORGANIZATIONS:

Houston Trial Lawyers Association, 2010 – present

Board of Directors, 2011 – present

Mexican American Bar Association, 2018 – present

National Employment Law Project, 2023 – present

National Employment Lawyers Association, 2015 – present

Texas Employment Lawyers Association, 2020 – present

PUBLICATIONS:

Comment, *Mitigation Models Inch Toward a Full Review: Even When Effective, the Fish and Wildlife Coordination Act Remains Overshadowed by NEPA*, 21 TUL. ENVTL. L.J. 449 (2008)

Recent Development, *Lemon v. Geren*, 22 TUL. ENVTL. L.J. 475 (2009)

SELECT SETTLEMENTS AND ATTORNEYS' FEES AWARDS

SETTLEMENTS IN WAGE-AND-HOUR LITIGATION

Wage-and-hour cases in which Mr. Parmet served as counsel of record, had significant involvement on behalf of plaintiffs, and resulted in court-supervised settlements, with court-approved attorneys' fees, include:

Marshall v. Coca-Cola Consolidated Inc., No. 3:22-cv-00214-RJC-SCR, ECF No. 27 (W.D.N.C. Oct. 18, 2023) (granting final approval of settlement of overtime claims for FLSA collective action and Rule 23 class action under North Carolina state law, including attorneys' fees as percentage of common fund)

Cordes v. Energage, LLC, No. 2:21-cv-02641-CMR, ECF No. 52 (E.D. Pa. Oct. 4, 2023) (granting final approval of settlement of overtime claims for FLSA collective action and Rule 23 class action under Arizona Wage Act, including attorneys' fees as percentage of common fund)

Harvey v. Community Health Network, Inc., No. 1:22-cv-00659-RLM-MJD, ECF No. 104 (S.D. Ind. Sept. 18, 2023) (granting final approval of settlement of overtime claims for FLSA collective action and Rule 23 class action under Indiana state law, including attorneys' fees as percentage of common fund)

Henderson v. CDR Maguire, Inc., No. 1:22-cv-23163-DPG, ECF No. 43 (S.D. Fla. Jul. 25, 2023) (approving settlement of FLSA collective action, including separate award of attorneys' fees and costs)

Westmorlan v. Merlin Global Servs. LLC, No. 3:21-cv-00970-BEN-MSB, ECF No. 44 (S.D. Cal. Jul. 10, 2023) (granting final approval of settlement of overtime claims for FLSA collective action and Rule 23 class action under California Labor Code, including separately negotiated attorneys' fees and expenses)

Blakley v. Masonite Corp., No. 2:22-cv-00105-HSO-BWR, ECF No. 41 (S.D. Miss. Jul. 5, 2023) (approving settlement of individual FLSA claims, including separately negotiated attorneys' fees and expenses)

Estevez v. Change Healthcare, Inc., No. 3:22-cv-00327, ECF No. 35 (M.D. Tenn. Jun 13, 2023) (approving settlement in FLSA collective action, including attorneys' fees of 40% of new monetary portion of settlement fund and expenses)

Woodruff v. Kaiser Aluminum Corp., No. 3:22-cv-00333, ECF No. 31 (M.D. Tenn. May 4, 2023) (approving settlement in FLSA collective action, including attorneys' fees of 40% of new monetary portion of settlement fund and expenses)

Henderson v. Johnson Controls Inc., No. 2:22-cv-00414, ECF No. 26 (E.D. Wisc. Apr. 20, 2023) (approving settlement in FLSA collective action, including attorneys' fees and expenses as percentage of settlement fund)

Stevens v. PepsiCo, Inc., No. 7:22-cv-00802-NSR, ECF No. 79 (S.D.N.Y. Apr. 4, 2023) (granting final approval of settlement of overtime claims for FLSA nationwide collective action and Rule 23 class action under New York law, California Labor Code, and CAFA, including attorneys' fees award as percentage of common fund)

Anstead v. Sacred Heart Health System, Inc., No. 3:22-cv-02553-MCR-HTC, ECF No. 42 (N.D. Fla. Mar. 27, 2023) (granting final approval of settlement of overtime claims for FLSA nationwide collective action and Rule 23 class action, including attorneys' fees award as percentage of common fund)

Sanchez v. Stonegate Senior Living, LLC, No. 3:22-cv-00864-E, ECF No. 21 (N.D. Tex. Feb. 14, 2023) (approving settlement in FLSA collective action, including attorneys' fees of 40% of new monetary portion of settlement fund and expenses)

Makiyama v. Yamato Transp. U.S.A., Inc., No. 2:21-cv-03719-GW-PVC, ECF No. 75 (C.D. Cal. Dec. 15, 2022) (approving attorneys' fees of 40% of recovery in individual wage-and-hour settlement under FLSA and California Labor Code)

Syas v. Texas Children's Hospital Plan, Inc., No. 4:21-cv-01532, ECF No. 42 (S.D. Tex. Nov. 1, 2022) (approving attorneys' fees of 40% of recovery in FLSA settlement)

McDaniel v. KNM Holdings, LLC, No. 4:21-cv-00599, ECF No. 22 (S.D. Tex. Jul. 20, 2022) (approving attorneys' fees of 40% of recovery in FLSA settlement)

Cabanez v. Assist on Call, Inc., No. 3:20-cv-09470-VC, ECF No. 57 (N.D. Cal. Mar. 31, 2022) (granting final approval of settlement of FLSA collective action overtime claims, California Labor Code Rule 23 class action claims, and California Private Attorneys General Act claims, including attorneys' fees award as percentage of common fund)

Venable v. Am. Consulting & Testing Inc., No. 6:20-cv-01232-RRS-PJH, 2022 WL 595738 (W.D. La. Feb. 25, 2022) (recommending approval of FLSA collective action, including attorneys' fees of 40% of recovery), *adopted by* 2022 WL 741698 (W.D. La. Mar. 10, 2022)

Herrera v. EOS IT Mgmt. Sols., Inc., No. 5:20-cv-01093-LHK, ECF No. 75 (N.D. Cal. Dec. 20, 2021) (approving attorneys' fees in FLSA collective action)

Virgin v. TruWest Credit Union, No. 2:21-cv-00838-SPL, ECF No. 22 (D. Ariz. Sept. 13, 2021) (approving confidential FLSA settlement of individual claims, including separate award of attorneys' fees)

Paredes v. CNC Oilfield Servs., LLC, No. 5:20-cv-00600-FB-RBF, ECF No. 49 (W.D. Tex. Sept. 8, 2021) (approving attorneys' fees of 40% of recovery in FLSA collective action settlement)

Leja v. Brousseau Mgmt. Co. LLC, No. 3:19-cv-00269-BAJ-EWD, ECF No. 68 (M.D. La. Aug. 4, 2021) (approving FLSA collective action settlement, including separately negotiated attorneys' fees and expenses in addition to plaintiffs' recovery)

Wells v. Colonial Compliance Systems, Inc., No. 3:19-cv-07810-WHO, ECF No. 42 (N.D. Cal. Feb. 4, 2021) (approving FLSA settlement, including \$21,200 in attorneys' fees and \$1,412.43 in expenses)

Johnson v. Power Performance, Inc., No. 6:20-cv-01471-RRS-PJH, ECF No. 17 (W.D. La. Feb. 1, 2021) (entering agreed judgment in FLSA case of \$5,600 for attorneys' fees and costs for recovery by one plaintiff of \$24,312.68)

Lewis v. All About You Home Healthcare, Inc., No. 2:18-cv-01409-JDC-KK, ECF No. 94 (W.D. La. Jun. 22, 2020) (approving FLSA collective action settlement, including separate settlement of attorneys' fees)

Moresi v. Resource Energy Ventures and Constr. Co., LLC, No. 6:15-cv-02224-MJJ-CBW, ECF No. 110 (W.D. La. Sept. 13, 2019) (approving attorneys' fees of \$49,908.37 for recovery by FLSA collective action plaintiffs of \$23,183.26)

Williams v. Jackson Hands of Change, LLC, No. 2:19-cv-00646-GGG-MBN, ECF No. 25 (E.D. La. Sept. 11, 2019) (approving attorneys' fees of 40% of recovery in FLSA settlement)

Baker v. DrilTech, LLC, No. 6:16-cv-00309-SMH-CBW, ECF No. 36 (W.D. La. May 15, 2018) (approving attorneys' fees of 40% of recovery in FLSA collective action settlement)

Matthews v. Priority Energy Svcs., LLC, No. 6:15-cv-00448-RWS-KNM, ECF No. 148 (E.D. Tex. Apr. 20, 2018), *adopted by* ECF No. 149 (E.D. Tex. May 11, 2018) (approving attorneys' fees of 40% of recovery in FLSA collective action settlement)

Daniels v. Prod. Mgmt. Indus., LLC, No. 6:15-cv-02567-UDJ-PJH, ECF No. 66 (W.D. La. Apr. 20, 2018), *adopted by* ECF No. 67 (W.D. La. May 3, 2018) (approving attorneys' fees of 40% of recovery in FLSA collective action settlement)

Johnson v. Pat Williams Constr., LLC, No. 1:17-cv-00591-JTT-MLH, ECF No. 36 (W.D. La. Mar. 16, 2018) (approving attorneys' fees of 40% of recovery in FLSA collective action settlement)

Shay v. Bass Fishing & Rentals, LLC, No. 2:15-cv-01472-JRG, ECF No. 84 (E.D. Tex. Jan. 31, 2018) (approving attorneys' fees of 37.5% of recovery in FLSA collective action settlement)

Comeaux v. Quality Energy Svcs., Inc., No. 6:15-cv-02510-RGJ-PJH, ECF No. 78 (W.D. La. Jul. 20, 2017) (approving attorneys' fees of 40% of recovery in FLSA collective action settlement)

Crow v. ProPetro Svcs., Inc., No. 7:15-cv-00149-RAJ, ECF No. 87 (W.D. Tex. Jun. 20, 2017) (approving attorneys' fees of 40% of recovery in FLSA collective action settlement)

Legros v. Mud Control Equip., Co., No. 6:15-cv-01082-RFD-PJH, ECF No. 74 (W.D. La. Mar. 6, 2017) (approving attorneys' fees of 40% of recovery in FLSA collective action settlement)

Riddle v. Detel Wireless, LLC, No. 1:16-cv-00433-DDD-JPM, ECF No. 31 (W.D. La. Mar. 3, 2017) (approving attorneys' fees of 40% of recovery in FLSA collective action settlement)

Cantu v. Circle Bar A, Inc., No. 5:15-cv-00468-XR, ECF No. 52 (W.D. Tex. Jun. 23, 2016) (approving attorneys' fees of 40% of recovery in FLSA collective action settlement)

Travis v. CAB Logistics, Inc., No. 5:15-cv-00351-RP, ECF No. 59 (W.D. Tex. Jun. 6, 2016) (approving attorneys' fees of 35% of recovery in FLSA collective action settlement)

NON-SETTLEMENT ATTORNEYS' FEES AWARDS IN WAGE-AND-HOUR LITIGATION

Wage-and-hour cases in which Mr. Parmet served as counsel of record, had significant involvement on behalf of plaintiffs, and resulted in court-awarded attorneys' fees, include:

Keddy v. Oneflow Energy Svcs., LLC, No. 5:17-cv-00142-C, ECF No. 20 (W.D. Okla. Jan. 9, 2018) (awarding attorneys' fees of \$7,860.50 on hourly basis in FLSA action)

Andrews v. Pacific Process Systems., Inc., No. 2:16-cv-01135-CB, ECF No. 49 (W.D. Pa. Nov. 30, 2017) (awarding attorneys' fees of \$24,740.50 on hourly basis and costs of \$2,177.48 in action to recover for breach of FLSA collective action settlement agreement)

SETTLEMENTS IN OTHER LITIGATION

Other cases in which Mr. Parmet served as counsel of record, had significant involvement on behalf of plaintiffs, and resulted in court-supervised settlements, with court-approved attorneys' fees, include:

Tapia v. Sanchez, No. 2015-10119 (Tex. Dist.—Bexar [224th] Aug. 25, 2023) (approving minor settlement, including attorney's fees and expenses, in dram shop and auto collision case involving death of minor's mother)

Camero v. White, No. 2018-75608 (Tex. Dist.—Harris [281st] Mar. 10, 2022) (approving minor settlement, including attorney's fees and expenses, in auto collision case involving deaths of minor's parents)

Guzman v Cooper/Ports America, LLC, OWCP Case: LS-08433386, Order Approving Agreed Settlement – Section 8(i) (Dept. of Labor, Mar. 1, 2022) (approving wrongful death settlement under Longshore and Harbor Workers' Compensation Act, including attorneys' fees and costs)

In re M. R., No. 19PR30040 (Colo. Dist.—Grand Cnty. Jan. 24, 2020) (approving settlement for minor who suffered personal injuries when struck by snowmobile operated by ski patroller at ski resort in *Roberts v. Intrawest/Winter Park Opers. Corp.*, No. 2018CV7 (Colo. Dist.—Grand Cnty.))

Hernandez v. Am. Pac. Indus., Inc. (Cal. Sup. Ct.—L.A. Cnty. Nov. 13, 2015) No. BC496576 (approving confidential settlement, including attorneys' fees, for minors' personal injuries and wrongful death of parent in product liability case)

Bruce v. P&U Carriers, Inc., No. 2013-CVS-736 (N.C. Sup. Ct.—Halifax Cnty. Oct. 5, 2015) (approving confidential minor settlement, including attorneys' fees, in trucking case involving wrongful death of father)

Evans v. PMT Express, LLC, No. 4:13-cv-00210-FL, ECF No. 95 (E.D.N.C. Jul. 6, 2015) (approving confidential minor settlement, including attorneys' fees, in trucking case involving wrongful death of mother)

Smith v. Baker Concrete Constr., Inc., No. V 13 387 (Tenn. Cir. Ct.—Bradley Jun. 26, 2015) (approving confidential settlement, including attorneys' fees, for minors in case involving their fathers' wrongful death)

Tillman v. Quality Aquatics Pool Mgmt., LLC, No. 2013-22656 (Tex. Dist.—Harris [165th] Jan. 20, 2015) (approving confidential settlement, including attorney's fees, for minor with permanent hypoxic brain injury)

M. M. v. G.I. Trucking Co. (Cal. Sup. Ct.—L.A. Cnty. Aug. 20, 2014) (approving confidential minor settlement, including attorneys' fees, in trucking case involving wrongful death of father)

Vu v. Angel Tours, Inc., No. 2010-44296 (Tex. Dist.—Harris [295th] Feb. 14, 2011) (approving confidential minor settlement in action consolidated with *Jacobs v. Angel Tours, Inc.*, No. 2008-67196 (Tex. Dist.—Harris [295th]))

NON-SETTLEMENT ATTORNEYS' FEES AWARDS IN OTHER LITIGATION

Other cases in which Mr. Parmet served as counsel of record, had significant involvement on behalf of a party, and resulted in court-awarded attorneys' fees, include:

Enzybac LLC v. Clearport Int'l Inc., No. 2018-40026, Interlocutory Default Judgment (Tex.—Harris Dist. [113th] Dec. 21, 2018) (awarding attorneys' fees, costs, and expenses of \$21,645.00), *vacated on other grounds*, Agreed Order for New Trial (Tex.—Harris Dist. [113th] Mar. 1, 2019)

Valley Forge Ins. Co. v. Barrera, No. 2008-44947 (Tex. Dist.—Harris [113th] Jul. 15, 2011) (entering judgment for attorneys' fees of \$28,200 for successful defense jury verdict)