IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

GREENVILLE DIVISION

Wesley S. Mullinax, Billy Wesley Owen Addis, William D. Smith, Jr., and John T. Cox, all individually and on behalf of all other similarly situated individuals, Plaintiffs, vs. Parker Sewer & Fire Subdistrict, Defendant.	Civil Action No. 6:12-cv-01405-TMC **CONSENT MOTION TO APPROVE SETTLEMENT AGREEMENT, TO CERTIFY SETTLEMENT CLASS, TO AUTHORIZE CLASS NOTICE, AND TO SCHEDULE FAIRNESS HEARING**

Plaintiffs, Wesley S. Mullinax, Billy Wesley Owen Addis, William D. Smith, Jr., and John T. Cox, all individually and on behalf of all other similarly situated individuals, by and through their undersigned attorney and with the consent of Defendant, Parker Sewer & Fire Subdistrict, hereby file this Consent Motion to Approve Settlement Agreement, to Certify Settlement Class, to Authorize Notice to Class, and to Schedule Fairness Hearing. Plaintiffs respectfully request that the Court review and approve the terms of the proposed settlement of this action both as a collective action under the Fair Labor Standards Act, 29 U.S.C. § 216(b), and also as a class action under Rule 23, Fed. R. Civ. P., for Plaintiffs' claims under the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10 et seq. Plaintiffs also request the Court to approve the proposed apportionment of the settlement proceeds, after conducting a hearing about the fairness, reasonableness, and adequacy of the proposed settlement. Plaintiffs hereby submit a proposed notice of the settlement to be mailed or delivered to each opt-in Plaintiff under the FLSA collective action and to each potential class member under the Rule 23 class, informing them of the terms of the Settlement Agreement, advising

them of their rights under the proposed settlement, and giving them an opportunity to be heard about the final approval of the settlement.

The grounds for this motion are that the parties have reached an arms-length settlement of this matter after extensive, bona fide settlement negotiations including two mediation sessions; that the named Plaintiffs, as representatives of the class, believe that the proposed settlement is in the best interests of the class as a whole; and that all parties desire to conclude this matter without further expense, delay, and uncertainty of continued litigation. This motion is supported by the accompanying Memorandum of Law and the documents attached thereto.

Respectfully submitted,

s/ David E. Rothstein
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December 27, 2013

Greenville, South Carolina.

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I. Introduction

Plaintiffs, Wesley S. Mullinax, Billy Wesley Owen Addis, William D. Smith, Jr., and John T. Cox, all individually and on behalf of all other similarly situated individuals, by and through their undersigned attorney and with the consent of Defendant, Parker Sewer & Fire Subdistrict, hereby submit this Memorandum of Law in Support of Consent Motion to Approve Settlement Agreement, to Certify Settlement Class, to Authorize Class Notice, and to Schedule Fairness Hearing. (The Settlement Agreement executed by the parties is attached hereto as Exhibit A). As set forth in detail below, Plaintiffs respectfully request that the Court review and approve the terms of the proposed settlement of this action both as a collective action under the Fair Labor Standards Act, 29 U.S.C. § 216(b), and also as a class action under Rule 23, Fed. R. Civ. P., for Plaintiffs' claims under the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10 et seq.. Plaintiffs also request the Court to approve the proposed apportionment of the settlement proceeds, after conducting a hearing about the fairness, reasonableness, and adequacy of the proposed settlement. Attached

hereto as Exhibit B, Plaintiffs submit a proposed notice of the settlement to be mailed or delivered to each opt-in Plaintiff under the FLSA collective action and to each potential class member under the Rule 23 class, informing them of the terms of the Settlement Agreement, advising them of their rights under the proposed settlement, and giving them an opportunity to be heard about the final approval of the settlement.

II. Statement of the Case

This is a lawsuit under the Fair Labor Standards Act and the South Carolina Payment of Wages Act to recover unpaid overtime compensation and to recover compensation for "off the clock" work required by Defendant. Plaintiffs filed the Complaint on May 25, 2012, as a collective action under Section 16(b) of the FLSA and also as a traditional class action under Rule 23, Fed. R. Civ. P., for the alleged violations of the South Carolina wage payment statute. Although formal notice of the case has not been sent to potential class members, a total of 33 individuals, including the 4 named Plaintiffs, have filed forms to opt-in to the case to date.

Plaintiffs and members of the Plaintiff class are fire fighters currently or formerly employed by the Fire Department of Defendant, Parker Fire & Sewer Subdistrict, a special-purpose district located within Greenville County, South Carolina. Plaintiffs generally work a 24/48 schedule, meaning that they work a 24-hour shift followed by 48-hours off duty. Plaintiffs are paid by Defendant on a two-week pay cycle. Defendant also uses the Section 7(k) exemption in the FLSA based on a two-week work period corresponding to Defendant's pay periods.

Prior to May 1, 2012, Plaintiffs were scheduled to work 24-and-a-quarter-hour shifts, from 7:45 a.m. until 8:00 a.m. the next day, but were only paid based for 14-and-a-quarter-hours per shift. Defendant automatically deducted from each shift 8 hours for a sleeping period and two, one-hour

meal periods, for a total of 10 hours deducted from each 24-and-a-quarter-hour shift. Each Plaintiff was paid a pre-determined salary every two weeks based on an annual salary amount, divided by 26 pay periods. Plaintiffs did not receive additional pay for sleep interruptions or meal interruptions, nor did Plaintiffs receive any additional pay for late calls shortly before the end of a shift, for emergency call-backs on their days off, for required training outside of their normal schedule, or for "volunteering" for Fire Safety Week activities outside of their regular schedule. The Fire Chief had implemented an ad hoc system of "comp time" to award employees paid time off on an hour-for-hour basis for additional time worked beyond each firefighter's regular schedule.

Effective May 1, 2012, Defendant changed its line firefighters' pay from a salary to an hourly amount by converting the annual salaries of each person to an hourly equivalent. To perform this conversion, Defendant's payroll department divided the annual salary of each person by 1,732.8 hours, which was the expected number of hours each person would work in a year based on 14.25 hours per shift and 121.6 shifts per year. After May 1, 2012, Defendant continued to deduct 8 hours per shift for sleep and 2 hours per shift for meals, but Defendant began to pay the firefighters when their sleep-periods were actually interrupted by a call to duty.

Plaintiffs have challenged several aspects of the payroll policies and practices of Defendant's Fire Department that existed prior to May 1, 2012, and from May 1, 2012 until the date of the Settlement Agreement. First, Plaintiffs assert that they are owed additional amounts for sleep interruptions prior to May 1, 2012, which were not accounted for or paid when Plaintiffs were called to an emergency during the designated sleep period. Plaintiffs also assert that Defendant could not deduct any sleep time, under the applicable regulations, 29 C.F.R. §§ 553.222 and 785.22, because the actual practice of the Fire Department was that shifts were exactly 24-hours long, not greater than

24 hours. Second, Plaintiffs challenge the two-hour deductions for meal periods both before and after May 1, 2012, because Plaintiffs were not completely relieved of duty during any portion of their scheduled shifts. Third, Plaintiffs assert that Defendant's practice of not compensating Plaintiffs for training or "volunteer" time outside of an employee's regular shift was unlawful "off-the-clock" work. Finally, Plaintiffs contend that Defendant's practice of using "comp time" on an hour-for-hour basis in lieu of additional pay was unlawful.

Defendant has denied that its pay practices were unlawful prior to May 1, 2012. Defendant asserts that the new pay plan was not intended to fix any violations of state or federal law, but rather was intended to bring the Fire Department in line with other departments within the District whose employees were paid on an hourly basis, as well as to address an unfunded, contingent future liability for Fire Department employees' unused, accumulated leave upon retirement.

III. Issues in Dispute

There remain a number of disputed legal and factual issues in this case. The largest dispute in this case centers on the sleep-time exemption. Plaintiffs contend that Defendant cannot deduct sleep-time under the applicable regulations because the practice of the Fire Department was to work shifts of exactly 24-hours, not greater than 24 hours. The sleep-time exemption for public employers who elect to pay their employees under Section 7(k) is found at 29 C.F.R. § 553.222, which provides that sleep-time can only be deducted if the employee is scheduled for a tour of duty of greater than 24 hours; if the tour of duty is exactly 24 hours, no deduction can be made for sleep time. Defendants assert that even if Plaintiffs are not required to work for the full 15 minutes beyond the 24-hour shift, there is some overlap between the on-coming and off-going shifts; thus, by definition, the firefighters' shifts are greater than 24 hours.

Plaintiffs also assert that prior to May 1, 2012, Defendant never monitored interruptions to sleep and never counted sleep-time interruptions as compensable time. Defendant responds that based on its review of the call logs, none of the Plaintiffs ever worked work more than 106 hours in any 2-week period to trigger overtime compensation, even if the sleep interruptions were counted as compensable time. Defendant also asserts that the straight-time "comp time" awarded by the Chief occasionally for extra work was gratuitous and was not intended to serve as overtime compensation under the FLSA.

Another sharply disputed issue is whether the Plaintiffs' salaries prior to May 1, 2012 were intended to be compensation for 14.25 hours pers scheduled shift, as asserted by Plaintiffs, or for all hours worked up to 106 hours in a two-week period, as asserted by Defendant. Plaintiffs assert that Defendant's formula for converting each employee's annual salary to an effective hourly rate during the change in the pay plan on May 1, 2012, demonstrates that the firefighters' compensation was intended to pay them for only their regular schedule of 14.25 hours or work per shift. According to Defendant, the terms of employment notice and the District's employee handbook provide that the stated annual salary was intended to pay each firefighter for up to 106 hours in each pay period and that the firefighters were not entitled to any additional compensation unless and until they exceeded the overtime threshold of 106 hours per 2-week pay period.

With regard to the meal times, prior to May 1, 2012, Defendant asserts that there is no remedy under the FLSA for back pay because even if the meal times were compensable, no Plaintiff ever exceeded 106 hours in any two-week pay period during the 3-years preceding the filing of the lawsuit, even if meal times and sleep interruptions were properly counted as compensable time. For meal periods after May 1, 2012, Plaintiffs contend that Defendant's potential liability for unpaid

meal times is much more likely.

Other contested issues in this case include whether to apply the general 2-year statute of limitations under the FLSA or the 3-year statute of limitations for willfulness; whether Plaintiffs would be entitled to liquidated damages on some or all of their claims under the FLSA or treble damages under the South Carolina Payment of Wages Act; and the statutory award for attorney's fees and costs under both statutes.

IV. Settlement Negotiations

The proposed Settlement Agreement in this case is the product of extensive, arms-length settlement negotiations, which culminated after two separate mediation sessions on February 6, 2013 and March 1, 2013, before attorney Brian P. Murphy. Mr. Murphy has extensive experience representing both plaintiffs and defendants in employment cases, as well as serving as mediator in scores of employment cases. Mr. Murphy also appeared before an executive session meeting of Defendant's Board of Commissioners as part of the mediation process.

Prior to the mediation sessions, the parties had exchanged and responded to each other's written interrogatories and requests for production and had conducted a total of 7 depositions. Defendants produced thousands of pages of documents and made other voluminous call reports and payroll data available for a representative sample of employees in the Fire Department for the 3-year period covered by the lawsuit. At the time of the mediation, discovery had substantially been conducted, and the disputed legal and factual issues had been sharply defined.

Plaintiffs were represented at the mediation by the undersigned attorney for Plaintiffs, David E. Rothstein, and most of the named Plaintiffs and the members of the Plaintiffs' Steering Committee attended both mediation sessions. Defendant was represented at the mediations by its

counsel, Thomas L. Stephenson and Stephen T. Savitz; and District Commissioners James Gillespie and Patrick Hadden attended both mediation sessions in person on behalf of Defendant.

V. Proposed Settlement Terms

The proposed Settlement Agreement provides that Defendant will make a gross payment of $300,000.00 in complete settlement of this action, including attorney's fees and costs. Plaintiffs have proposed, and Defendant has agreed not to contest, the following apportionment of the settlement proceeds: (1) $90,000.00 for attorney's fees; (2) $5,500.00 for reimbursement of costs; (3) $15,000.00 as service or incentive payments to the named Plaintiffs and the members of the Plaintiffs' Steering Committee, with individual amounts of $5,000.00 for the lead Plaintiff, $3,000.00 each for the two other named Plaintiffs who were actively employed at the time of the filing of the suit, $2,000.00 for the fourth named Plaintiff who retired shortly after the suit was filed, and $1,000 each for the two additional members of the Plaintiffs' Steering Committee who had substantial involvement in the case from the beginning; and (4) the remaining settlement proceeds of $189,500.00 paid to members of the Plaintiff class based on their pro-rata share of the potential value of the collective group's back-pay claims, based on a formula that considers each employee's salary, dates of active employment, and opt-in date (if applicable). Per the parties' agreement, all payments to class members will be apportioned as 50% to back pay, subject to payroll withholdings and retirement contributions (reported as W-2 income), and 50% to liquidated damages (reported as 1099 income). This allocation is appropriate to maximize the amount of each class member's cash payout and lessen the burden of withholdings for Social Security and Medicare for both the employees and Defendant. The service or incentive payments to the named Plaintiffs and members of the Plaintiffs' Steering Committee will not be subject to withholding as back-pay, but would be

treated as non-wage compensation (also reported as 1099 income).

A. Payments to Individual Class Members

The $300,000.00 proposed settlement amount is a fair, adequate, and reasonable resolution of this claim, given the disputed legal and factual issues presented and the anticipated costs and delays of continued litigation. For mediation purposes, Plaintiffs' counsel illustrated the potential back-pay amounts for a hypothetical Plaintiff who was employed throughout the 3-year limitations period under the FLSA's best-case scenario. If every sleep and meal period prior to May 1, 2012 should have been counted as compensable time, the hypothetical Plaintiff should have received credit for 10 additional hours of work per shift. During pay periods where a firefighter worked five, 24-hour shifts in a two-week pay period, he would have earned the equivalent of 127 hours of pay (106 hours of straight-time and 14 hours of overtime). During pay periods where a firefighter worked only four, 24-hour shifts in a two-week pay period, he would have earned 96 hours of pay, all at straight time since the 106-hour overtime threshold of Section 7(k) is not reached. Over a three-year period, a fire-fighter should have earned an average of 3,033.33 hours of compensable time per year. Under Defendant's system prior to May 1, 2012, each employee was only paid an average of 1,728.95 hours per year, at 14.25 hours per shift of straight-time. This would leave an unpaid amount of 1,304.38 hours per year. Plaintiffs' counsel concedes that the likelihood of achieving the best-case scenario is very remote.

Plaintiffs' counsel and the Plaintiffs' Steering Committee determined that the unpaid meal times since May 1, 2012, provides a much more realistic measure of the settlement value of the case. From May 1, 2012 until the date of the mediation, which was approximately 9 months, each firefighter had worked an average of 93 shifts, based on the regular schedule of working every third

day. If two hours of every shift were unpaid, each employee would have been shorted approximately 186 hours of pay. Across the entire Fire Department, which has a full force of 75 line firefighters (25 per shift, 3 shifts), Defendant would owe 13,950 hours of pay to all potential Plaintiffs for the unpaid meal times. Using an average hourly rate of $19.00 per hour, Defendant's back-pay liability would be approximately $265,050.00 for meal times.

Defendant has denied that it owes any back-pay prior to May 1, 2012, under the old pay plan. Under the new pay plan, Defendant asserts that any compensation for meal times would only be due if an employee's meal breaks were interrupted to the extent that they could not get a lunch or dinner on a particular shift. Defendant also asserted that the District's finances have been declining based on shrinking property tax revenues from Greenville County and increasing expenses, particularly with employee health benefits and retirement, and that continued litigation would require drastic budge adjustments, such as lay-offs or pay cuts in the future.

Based on the competing considerations, the parties negotiated the proposed settlement figure of $300,000.00, which is well within the range of potential outcomes for the Plaintiff class, given the unresolved legal and factual issues in the case. Plaintiffs' counsel has performed a more detailed and specific settlement apportionment calculation that considers the following factors for each member of the Plaintiff class: (1) dates of active employment in non-exempt positions (including consideration of any extended leaves of absence or periods of disability, such as for workers' compensation); (2) corresponding rates of pay; (3) weighting of claims based on respective time periods; and (4) whether each individual has opted in to the FLSA claims and, if so, the date the opt-in form was filed with the Court. On average, each class member will receive a payment of $2,037.63, pre-tax, after payment of attorney's fees and costs (not including the service or incentive

payments to the named Plaintiffs and the members of the Plaintiffs' Steering Committee). Attached hereto as Exhibit F is a print-out of the detailed summary of the calculations for each class member. Plaintiffs' counsel will submit the actual spreadsheet in electronic form to the Court in camera for consideration before the fairness hearing. Individualized letters will be sent to each class member explaining whether they are receiving money under the settlement and describing their range of damages and how their proportionate share of the payments was calculated.

B. Attorney's Fees and Costs

The proposed apportionment of the settlement provides for attorney's fees of thirty percent (30%) of the gross amount of the common settlement fund, or a total of $90,000 for attorney's fees, plus $5,500 for reimbursement of actual costs in connection with the case. Plaintiffs' counsel has agreed to discount his attorney's fees by 10% of the one-third contingency fee provided for in the fee agreements with the named Plaintiff class representatives. Plaintiffs' counsel will address the issues relating to attorney's fees and costs in a separate motion, with supporting memorandum of law and attachments.

C. Service Payments to Named Plaintiffs and Steering Committee Members

The proposed apportionment of the settlement also provides for the payment of additional amounts to the named Plaintiffs and to the members of the Plaintiffs' Steering Committee in the total amount of $15,000.00. This amount will be divided as $5,000.00 to the lead Plaintiff, Wesley Mullinax; $3,000.00 each to the other two named Plaintiffs who were active employees at the time the lawsuit was filed, Bill Addis and William Smith; $2,000.00 to named Plaintiff, Terry Cox, who had announced his planned retirement at the time the lawsuit was filed; and $1,000.00 each to the two other members of the Plaintiffs' Steering Committee, Jeffrey Crites and Randy Drew.

It is very common in class and collective cases for service or incentive payments to be paid to named Plaintiffs or class representatives in addition to their proportionate share of the recovery. Such payments compensate Plaintiffs for their additional efforts, risks, and hardships they have undertaken as class representatives on behalf of the group in filing and prosecuting the action. Service or incentive payments are especially appropriate in employment litigation, where "the plaintiff is often a former or current employee of the defendant, and thus, by lending his name to the litigation, he has, for the benefit of the class a whole, undertaken the risk of adverse actions by the employer or co-workers." Frank v. Eastman Kodak Co., 228 F.R.D. 174, 187 (W.D.N.Y. 2005). Courts around the country have approved substantial incentive payments in FLSA collective actions and other employment-related class actions. See, e.g., In re Janney Montgomery Scott LLC Fin. Consultant Litigation, 2009 WL 2137224, *12 (E.D. Pa. Jul. 16, 2009) (approving incentive payments of $20,000 each to three named Plaintiffs) (copy of unpublished decision attached); Stevens v. Safeway, Inc., C/A No. 2:05-cv-01988-MMM-SH, pp. 18-20 (C.D. Cal. Feb. 25, 2008) (awarding incentive payments of $20,000 and $10,000 each to named Plaintiffs) (copy of unpublished decision attached); Frank, 228 F.R.D. at 187 (approving incentive award to class representative of $10,523.37, which represented 8.4% of the total settlement fund); Bredbenner v. Liberty Travel, Inc., 2011 WL 1344745, *22-23 (D.N.J. Apr. 8, 2011) (approving incentive payments of $10,000 to eight named plaintiffs; citing 2006 study referenced in 4 Newberg on Class Actions § 11.38, at 11-80, that showed average incentive award to class representatives to be $16,000) (copy of unpublished decision attached); Wineland v. Casey's General Stores, Inc., 267 F.R.D. 669 (S.D. Iowa 2009) (approving incentive payments of $10,000 per named plaintiff and $1,000 for each deponent in FLSA case on behalf of over 11,000 cooks and cashiers employed by convenience store

chain); Clark v. Ecolab, Inc., 2010 WL 1948198 (S.D.N.Y. May 11, 2010) (approving $10,000 service awards to 7 named plaintiffs in hybrid class/collective action involving unpaid overtime) (copy of unpublished decision attached); and Hoffman v. First Student, Inc., 2010 WL 1176641, *3 (D. Md. Mar. 23, 2010) (affirming $3,000 service payments to seven lead plaintiffs in FLSA case of over 750 school bus driver and aides, with total gross recovery of $1.55 million) (copy of unpublished decision attached).

Here, the total of the service payments requested by Plaintiffs of $15,000.00 represents 5% of the gross amount of the settlement in this case. The largest proposed amount for the lead Plaintiff ($5,000.00) represents 1.667% of the gross settlement. The average proposed service payment among the 6 members of the Plaintiffs' Steering Committee is $2,500.00, and is approximately 59.28% of the average $4,217.35 payment that the six Committee members will receive on their underlying claims, apart from the incentive payments.

The lead Plaintiffs and the members of the Steering Committee have devoted substantial amounts of time to this case, and all believe that they have undertaken great personal, career risks in serving as the driving force behind this lawsuit against the District. The lead Plaintiff has devoted hundreds of hours to the case, including interviewing and selecting counsel, reviewing pleadings, assisting with discovery responses, sitting for depositions and attending the depositions of all witnesses in the case, participating in strategy meetings with the committee, communicating with counsel about all aspects of the case, and participating in the mediations of this case. (See Affidavit Wesley Mullinax, attached hereto as Exhibit C). The proposed amounts of service payments to the three other named Plaintiffs and the two remaining committee members were based on their corresponding risks and level of involvement in the case.

VI. Discussion

A. Collective Actions Under the FLSA

The FLSA's "collective action" provision allows one or more employees to bring an action for overtime compensation "for and in behalf of himself or themselves and other employees who are similarly situated." 29 U.S.C. § 216(b); Hoffman-LaRoche, Inc. v. Sperling, 493 U.S. 165, 169 (1989). Unlike a traditional class action, under Rule 23, Fed. R. Civ. P. where, once certified, class members are deemed parties to the action unless they affirmatively "opt out" of the class, those employees who wish to participate in a collective action under the FLSA's statutory framework must affirmatively "opt-in" by giving written consent to join in the action as a party plaintiff. The standard for determining whether the potential plaintiffs are "similarly situated" for a collective action under the FLSA is a "fairly lenient one." Choimbol v. Fairfield Resorts, Inc., 475 F. Supp. 2d 557, 562 (E.D. Va. 2006).

B. Rule 23 Class Actions

Rule 23 of the Federal Rules of Civil Procedure governs traditional class actions, or what are referred to as "opt-out" class actions. The United States Supreme Court has noted that the drafters of Rule 23 intended class actions to be available to address situations where a group of people seek to vindicate the rights of injured persons who otherwise would be without sufficient strength or inclination to bring the alleged wrong-doer into court on an individual basis. Amchem Prods.. Inc. v. Windsor, 512 U.S. 591 (1997). Class certification under Rule 23 is especially appropriate in a wage and hour case where the amount of wages claimed by each individual employee might not justify the risk and expense of individual law suits, but where the putative class can combine their claims and resources to vindicate their common grievances together. See, e.g., McLaurin v. Prestage

Foods, Inc., 271 F.R.D. 465, 475-76 (E.D.N.C. 2010). As the Fourth Circuit Court of Appeals has recognized, "class actions . . . 'afford aggrieved persons a remedy if it is not economically feasible to obtain relief through the traditional framework of multiple individual damages actions.'" Gunnells v. Healthplan Servs., Inc., 348 F.3d 417, 424 (4th Cir. 2003) (quoting 5 James Wm. Moore et al., Moores's Federal Practice §23.02 (3d ed. 1999)).

To have a case certified for class treatment, a plaintiff class representative must first satisfy the four elements of Rule 23(a): numerosity, commonality, typicality, and adequacy of representation. Fed. R. Civ. P. 23(a). Once this threshold showing is made, the claims must fit into one or more of the categories of permissible class actions described in Rule 23(b). Courts have broad discretion in deciding whether or not to certify a class action under Rule 23. Reiter v. Sonotone Corp., 442 U.S. 330 (1979). In evaluating the appropriateness of a case for class certification, the Court should not consider the factual merits of the case or the strengths or weaknesses of the underlying claims. Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974). Once a court is satisfied that the requirements of Rule 23 are met, class certification is a matter of right. United States Parole Comm'n v. Geraghty, 445 U.S. 388, 403 (1980).

As discussed in detail below, Plaintiffs can establish all of the prerequisites for class certification under Rule 23, for the claims under the South Carolina Payment of Wages Act.

1. Numerosity

The first requirement for class certification under Rule 23 is numerosity. A plaintiff must show that "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). There is no magic number required to establish numerosity. See Brady v. Thurston Motor Lines, 726 F.2d 136, 145 (4th Cir. 1984). The Fourth Circuit has held that a potential class

consisting of eighteen persons is sufficiently numerous to meet Rule 23(a)(1). See Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass'n, 375 F.2d 648, 653 (4th Cir. 1967); see also Rodger v. Electronic Data Sys. Corp., 160 F.R.D. 532, 535 (E.D.N.C. 1995) (holding that "a class of as few as twenty-five to thirty members raises a presumption that joinder would be impracticable").

This case easily appears to satisfy the numerosity requirement. Although approximately 33 persons have already filed opt-in forms under the FLSA claims to date, it appears from Defendant's payroll records that the potential class size is approximately 92 persons. In other words, just over one-third of the potential class members have already joined this action under the FLSA opt-in procedures.

2. Commonality

Rule 23(a)(2) next requires that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). All full-time, line firefighters in Defendant's Fire Department were subjected to the same standard policies and procedures of the District for purposes of the claims under the South Carolina Payment of Wages Act. Thus, commonality is clearly established.

3. Typicality

The third prerequisite for class certification is that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Courts have recognized that the requirements of commonality and typicality are quite similar and often merge. See, e.g., Kidwell v. Transportation Comm. Int'l Union, 946 F.2d 283, 305 (4th Cir. 1991). The Fourth Circuit has stated that the "threshold requirements of commonality and typicality are not high; Rule 23(a) requires only that resolution of the common questions affect all or a

substantial number of the class members." Brown v. Nucorp Corp., 576 F.3d 149, 153 (4th Cir. 2009) (internal quotation omitted).

The claims of the named Plaintiffs are quite typical of the claims of the putative class members. Again, all members of the putative class were subjected to the same wage and hour policies and practices of the Defendant's Fire Department; all were non-exempt workers; and all had the number of hours they actually worked reduced by eight hours of sleep time and two hours for meal times for each shift, for which they received no pay.

4. Adequacy of Representation

The fourth element of Rule 23(a) is that "the representative parties will fairly and adequately protect the interests of the class." Rule 23(a)(4). This element typically involves a two-fold inquiry: (1) Plaintiffs' class counsel must be qualified, experienced, and generally able to conduct the proposed litigation, and (2) the named class representatives must not have any conflict of interest with the claims of the absent class members. U.S. Fidelity & Guar. Co. v. Lord, 585 F.2d 860, 873 (8th Cir. 1978).

As set forth in the Affidavit of David E. Rothstein, which is attached hereto as Exhibit E, Plaintiffs' counsel is a capable and competent employment lawyer, with extensive experience in federal court and specifically with claims under the Fair Labor Standards Act and Rule 23 classes. Plaintiffs' counsel is confident that he has fairly and adequately represented the interests of the class, based on his experience in employment and labor law.

In addition, neither Plaintiffs nor Plaintiffs' counsel are aware of any potential conflict of interest with absent class members. The burden of proof is actually on the party opposing class certification to demonstrate that the representation of the class by Plaintiffs' and their chosen counsel

would be inadequate for some particular reason. Lewis v. Curtis, 671 F.2d 779, 788 (3d Cir.), cert. denied, 459 U.S. 880 (1982). Plaintiffs and their counsel earnestly believe that they have fairly and adequately represented the interests of the class in this matter.

5. Rule 23(b) Categories

After the four threshold requirements of Rule 23(a) are met, a class action is appropriate for certification in three types of cases enumerated in Rule 23(b). To be certified as a class action, a case need to satisfy only one of the Rule 23(b) criteria. Georgine v. Amchem, 83 F.3d 610, 624 (3d Cir. 1996), aff'd, 521 U.S. 591 (1997).

Here, Plaintiffs seek certification under Rule 23(b)(3) for its claims under the South Carolina Payment of Wages Act. Rule 23(b)(3) provides that class action treatment is appropriate in cases where "the court finds that the questions or law or fact common to the class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Rule 23(b)(3) identifies four matters that the Court should consider in making its requisite findings of "predominance" and "superiority":

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
>
> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
>
> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
>
> (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 26(b)(3).

This case clearly involves common issues of law and fact between Plaintiffs and all members of the putative class. The proposed class action would be far superior than having each potential class member file an individual lawsuit. Plaintiffs are not aware of any interest each individual member of the putative class would have in individually controlling his or her own action. Although a significant number of similarly situated employees have already filed consent forms to opt in to the FLSA collective action, a number of potential class members have not joined the case for whatever reason.

Plaintiffs are not aware of any other litigation concerning this matter against Defendant.

Next, this Court appears to be a perfectly acceptable forum for litigating this matter. Presumably, all potential class members work (or previously worked) in Greenville County, and most of them reside in Greenville County or one of the neighboring counties in South Carolina.

Finally, Plaintiffs are not aware of any difficulties in managing the proposed case as a class action. Hybrid actions involving both opt-in and opt-out class claims have been approved by other courts within the Fourth Circuit and elsewhere. See, e.g., McLaurin v. Prestage Foods, Inc., 271 F. Supp. 2d 465 (E.D.N.C. 2010) (approving collective action under FLSA and Rule 23 class under the North Carolina Wage and Hour Act); see also Osby v. Citigroup, Inc., 2008 WL 2074102, at *3, n.2 (W.D. Mo. May 14, 2008) ("District court cases permitting FLSA collective actions to proceed simultaneously with Rule 23 stat actions are legion."). Plaintiffs submit that a carefully worded notice to potential class members, such as the proposed notice attached hereto as Exhibit B, can avoid unnecessary confusion between the two different types of claims and the two different procedures for class treatment.

Plaintiffs respectfully request that the Court order that proposed Notice be sent to all potential

members of the collective action by first-class mail or by hand delivery, and that these potential parties be provided 30 days from the date of the mailing of the Notice to file a Consent to Join Lawsuit form in order to become a party hereto, to file an Opt-out Form to exclude themselves from participating in the settlement, or to file a comment or objection to the settlement.

C. Class/Collective Action Settlement

Settlements of class actions under Rule 23, Fed. R. Civ. P., and collective actions under the FLSA require court approval. Rule 23(e) provides that "a class action shall not be dismissed without approval of the court." Fed. R. Civ. P. 23(e). A court's primary concern in evaluating a proposed class action settlement is protecting absent class members whose rights are affected by the proposed settlement, but who were not direct participants in the settlement negotiations. Kovacs v. Ernst & Young (In re Jiffy Lube Securities Litigation), 927 F.2d 155, 158 (4th Cir. 1991). To approve a class action settlement, a court must ensure that the interests of all class members have been protected, and the court must be convinced that the settlement is "fair, reasonable, and adequate." Wineland v. Casey's General Stores, Inc., 267 F.R.D. 669, 676 (S.D. Iowa 2009). Although the Fourth Circuit Court of Appeals has not directly articulated that standard for approving a settlement under the FLSA, district courts within the Fourth Circuit have incorporated the same standard that is generally applied in evaluating settlements of Rule 23 classes. See Lomascolo v. Parsons Brinckerhoff, Inc., 2009 WL 3094955, *11 (E.D. Va. Sept. 28, 2009) (copy of unpublished decision attached); Hoffman v. First Student, Inc., 2010 WL 1176641, *2 (D. Md. Mar. 23, 2010) (copy of unpublished decision attached).

The Fourth Circuit has articulated a well-established test to determine whether a proposed class-action settlement should be approved, which includes consideration of the following factors:

(1) the extent of discovery conducted, (2) the stage of the proceedings, (3) the absence of bad faith or collusion in the settlement, and (4) the experience of counsel who has represented plaintiffs in the settlement negotiations. Flinn v. FMC Corp., 528 F. 2d 1169, 1173 (4th Cir. 1975); In re Jiffy Lube, 927 F.2d at 158-59. Other courts within the Fourth Circuit have applied the factors from the seminal case of City of Detroit v. Grinnell Corp., 495 F.2d 448 (2d Cir. 1974), in assessing the substantive fairness of a class-action settlement. See South Carolina Nat'l Bank v. Stone, 749 F. Supp. 1419, 1423 (D.S.C. 1990) (citing Grinnell, 495 F.2d 448). The Grinnell case was actually cited with approval by the Fourth Circuit in Flinn. 528 F.2d at 1172-73. The so-called Grinnell factor are: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. Grinnell, 495 F.2d at 463. Approval of settlements in collective actions under the FLSA generally involves less stringent standards than Rule 23 class settlements. Clark v. Ecolab, Inc. 2010 WL 1948198, * 7. "Courts approve FLSA settlements when they are reached as a result of contested litigation to resolve bona fide disputes." Id. (citing Lynn's Food Stores, Inc. V. United States, 679 F.2d 1350, 1353 n.8 (11th Cir. 1982)).

Courts greatly favor the settlements of cases and allowing litigants to achieve their own resolution of disputes. Lomascolo, 2009 WL 3094955, at *10. Although the district court has broad discretion in approving a settlement of a class action case, there is a "strong presumption in favor

of finding a settlement fair." Id. A settlement fairness hearing is not a trial, and the court should defer to the evaluation and judgment of experienced trial counsel in weighing the relative strengths and weaknesses of the parties' respective positions and their underlying interests in reaching a compromise. Id.

1. Procedural Fairness

Approval of a class settlement requires the court to ensure that both procedural and substantive fairness are achieved. Procedural fairness is accomplished by providing court-approved notice of the proposed settlement to those whose rights may be affected by the settlement, and affording them an opportunity to be heard about the settlement. Here, the proposed notice attached hereto as Exhibit B plainly describes the terms of the proposed settlement and informs the members of the Plaintiff class of their rights to be heard at the fairness hearing.

The proposed notice of the settlement will be sent to all opt-in class members and to any current or former employees of Defendant's Fire Department who are potentially members of the Plaintiff class. The relatively small and well-defined nature of the class makes actual notice of the action relatively easy, as does the fairly tight-knit community of Fire Department employees in the Parker Subdistrict. The proposed notice provides adequate, advanced notice of the fairness hearing and it thoroughly discusses the terms of the settlement and how the settlement was reached. Attached to each notice will be an individualized letter explaining the range of potential damages for the class as a whole and how each class member's proportionate share of the damages was calculated. A copy of the proposed letter is attached hereto as Exhibit D.

2. Substantive Fairness

The substantive fairness prong of the court's evaluation of the settlement focuses on whether

the settlement is "reasonable, adequate and fair." Applying the Flynn factors to this case confirms that the settlement is appropriate and in the best interests of the class as a whole.

First, as discussed in detail above, both sides have conducted extensive discovery in this case. Plaintiffs served interrogatories, requests for production, and requests for admission on Defendant. Defendant produced over 3,500 pages of documents, plus three years of worth of payroll and attendance records for each employee of the Fire Department during the relevant period. Plaintiffs took the depositions of 2 fact witnesses, plus a Rule 30(b)(6) deposition of Defendant. See Affidavit of David E. Rothstein, ¶ 13 (attached hereto as Exhibit E). Defendant's counsel took the depositions of the four named Plaintiffs. Clearly, sufficient discovery was conducted in this case to make both sides fully aware of the factual issues in the case.

Second, there is no evidence that the settlement was reached through fraud or collusion between counsel or the parties. The mediation was conducted before an attorney who has extensive experience in labor and employment law, both as a practitioner and as a mediator, and the proposed Settlement Agreement was reached after extensive, bona fide, arms-length negotiations. The decisions made on behalf of Plaintiffs were made by a Steering Committee after thorough debate and deliberation. There is no evidence or even suggestion that the settlement was affected by any improper considerations, such as undue influence, duress, intimidation, or coercion. See Rothstein Affidavit, ¶¶ 14-17.

Next, the settlement agreement was adopted by Plaintiffs at the recommendation of the undersigned Plaintiffs' counsel, who has significant experience in employment and labor law in South Carolina. Plaintiffs' counsel graduated from law school in 1993 from the University of South Carolina School of Law, where he was in the top five of his class and was the Editor in Chief of the

South Carolina Law Review. He served as a judicial law clerk to two prominent and well-respected federal judges for the first three years of his legal career and has been in private practice for over 17 years, where his primary practice area has been in employment and labor law. Plaintiffs' counsel has been a Certified Specialist in Employment and Labor Law by the South Carolina Supreme Court since February 2006, and was recertified in 2011. He has been involved in several class action or collective action cases, both under Rule 23, Fed. R. Civ. P. and the FLSA. (Rothstein Affidavit, ¶¶ 3-12). Plaintiffs' counsel's experience and understanding of the FLSA strongly support the Court's approval of the proposed settlement.

Fourth, the proposed settlement has been approved by all members of the Plaintiffs' Steering Committee. To the extent that any objections to the settlement are raised before or at the fairness hearing, Plaintiffs' counsel is confident that he can fully defend and justify the proposed settlement of this case.

Finally, the settlement amount is adequate when viewed against the risks, expenses, and delays inherent in continued litigation. As noted previously, the most hotly contested issue in the case is the sleep-time issue. Present Fourth Circuit precedent on this issue does not provide clear legal guidance about whether Defendant was entitled to deduct any sleep-time under 29 C.F.R. § 785.22. See Roy v. Lexington County, South Carolina, 141 F.3d 533, 546-47 (4th Cir. 1998). Although it would certainly be possible for Plaintiffs to receive a higher recovery after trial, it would also be possible for Plaintiffs to receive a lower net recovery after trial, especially considering the expense and delay inherent in continued litigation and possible appeals. In light of all of these risks, Plaintiffs made a reasonable decision to settle this case for the terms set forth in the proposed Settlement Agreement.

VII. Conclusion

For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the proposed Settlement Agreement, authorize the sending of the proposed notice of settlement to all class members, schedule a settlement fairness hearing, and grant final approval of the settlement of this matter, including the proposed apportionment of the settlement proceeds, after providing a reasonable opportunity for any class members to comment on or object to the proposed settlement.

Respectfully submitted,

s/ David E. Rothstein
David E. Rothstein, Fed. ID No. 6695
ROTHSTEIN LAW FIRM, PA
514 Pettigru Street
Greenville, South Carolina 29601
(864) 232-5870 (O)
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derothstein@mindspring.com

Attorney for Plaintiffs

December 27, 2013

Greenville, South Carolina.

Mullinax et al. v. Parker Sewer & Fire Subdistrict,
C/A No. 6:12-cv-01405-TMC

Index of Exhibits to Consent Motion to Approve Settlement Agreement

Exhibit No.	Description
A	Settlement Agreement, Release and Waiver
B	[Proposed] Notice of Proposed Settlement of Class Action Lawsuit
C	Affidavit of Wesley S. Mullinax
D	[Proposed] Letter to Class Members
E	Affidavit of Plaintiffs' Counsel, David E. Rothstein
F	Summary of apportionment calculations

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Wesley S. Mullinax, Billy Wesley Owen Addis, William D. Smith, Jr., and John T. Cox, all individually and on behalf of all similarly situated individuals, Plaintiff, v. Parker Sewer & Fire Subdistrict, Defendant.	C.A. No. 6:12-cv-01405-TMC **SETTLEMENT AGREEMENT, RELEASE AND WAIVER**

Plaintiffs Wesley S. Mullinax, Billy Wesley Owen Addis, William D. Smith, Jr., and John T. Cox, all individually and on behalf of all other similarly situated individuals agree as follows:

1. For and in consideration of the mutual promises contained in this Agreement, the named plaintiffs, for themselves and their heirs and assigns, dismiss, release, acquit, forever discharge, and covenant not to sue Parker Sewer & Fire Subdistrict for any claims that were raised in the above-captioned case or that arose out of the same transaction(s) or occurrence(s) as the subject of the above-captioned case, including claims under any Parker Sewer & Fire Subdistrict policy; any express or implied agreement with the firefighters; the Fair Labor Standards Act (29 U.S.C. §§ 201, *et seq.*); the South Carolina Payment of Wages Law (S.C. Code Ann. §§ 41-10-10, *et seq.*); the common law; or any other statutes, regulations, and Executive Orders of the United States and/or the State of South Carolina.

2. Parker Sewer & Fire Subdistrict shall pay the gross sum of $300,000.00 ("Settlement Proceeds") in complete settlement of this matter to be allocated as mutually negotiated in mediation and applied by counsel for the Plaintiffs and Defendants. It shall include alleged back wages, liquidated damages, costs and attorney's fees. It is understood and agreed

the sum shall apply to all members of the purported class of opt-in and opt-out plaintiffs for a three year period from the filing of this lawsuit. The Settlement Proceeds shall be distributed to the members of the class on a pro rata basis based on the value of each class member's potential claims compared to the total value of all class members' potential claims collectively.

3. The parties agree that attorney's fees, costs, and liquidated damages shall not be deemed to be wage-based compensation and no withholding shall be deducted from that sum. State and Federal Income Taxes and other required payroll withholdings shall be deducted from the amounts allocated to back wages, as shall the employees' contribution to the South Carolina Retirement System in accordance with and to the extent required by state law and the rules and regulations of the South Carolina Retirement System. Parker Sewer & Fire Subdistrict shall pay its share of retirement contribution to payees in addition to the back-pay amount previously stated.

4. The parties further agree that neither counsel for the firefighters nor counsel for Parker Sewer & Fire Subdistrict has given them any advice concerning the taxability of the payments to be made to them or on their behalf under this Agreement.

5. This Agreement is subject to approval by Parker Sewer & Fire Subdistrict and ultimately by the Court. The parties agree that nothing in this Agreement shall be construed as an admission of liability by Parker Sewer & Fire Subdistrict.

IN WITNESS WHEREOF, the undersigned have set their signatures on the dates indicated below.

[Signatures on following page]

Wesley S. Mullinax

3-13-2013
Date

Billy Wesley Owen Addis

Billy Wesley Owen Addis

03/13/13
Date

William D. Smith, Jr.

3-13-13
Date

John T. Cox

03/13/2013
Date

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ATTORNEY FOR PLAINTIFFS

Date 3/13/2013

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STEPHEN T. SAVITZ (FID 3738)
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ssavitz@gsblaw.net

ATTORNEYS FOR DEFENDANT

Date 3/19/13

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Wesley S. Mullinax, Billy Wesley Owen Addis, William D. Smith, Jr., and John T. Cox, all individually and on behalf of all other similarly situated individuals, Plaintiffs, vs. Parker Sewer & Fire Subdistrict, Defendant.	Civil Action No. 6:12-cv-01405-TMC **NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT**

TO: **All individuals employed by Defendant (Parker Sewer & Fire Subdistrict) in its Fire Department at any time between May 25, 2009 and March 19, 2013, who were non-exempt employees and who meet either or both of the following requirements:**

(a) worked 24-hour shifts, but were not paid additional amounts for all interruptions to sleep-time by a call to duty, or for additional hours beyond their regularly scheduled shifts, such as National Fire Prevention Week or training; or

(b) had time deducted from their compensable time for meals on any shift where they were not completely relieved of duty during any meal period.

FROM: Rothstein Law Firm, PA of Greenville, South Carolina, Counsel for Plaintiffs, Wesley S. Mullinax, Billy Wesley Owen Addis, William D. Smith, and John T. Cox.

RE: Proposed Settlement of class-action lawsuit filed under the Fair Labor Standards Act and the South Carolina Payment of Wages Act against Parker Sewer & Fire Subdistrict.

This Notice is provided in connection with a lawsuit pending in the United States District Court for the District of South Carolina, Greenville Division ("the Court"). You are receiving this Notice because Defendant's personnel records indicate that you may fall within the definition of the Plaintiff class as set forth in this Notice as a current or former employee of the Parker Sewer & Fire Subdistrict Fire Department. **The representatives of the Plaintiff class and Defendant have reached an agreement to settle this case under terms described in further detail below, subject**

to approval by the Court. The Court has reviewed the terms of the proposed settlement and has authorized the sending of this Notice, but has made no final determination about whether to approve the settlement and allocation of proceeds.

This Notice serves four purposes:

(1) it informs you of the terms of the proposed settlement and proposed allocation of settlement proceeds;
(2) it gives you information about the lawsuit to help you evaluate the fairness of the settlement;
(3) it advises you how your rights may be affected by the settlement and allocation; and
(4) it tells you what to do if you want to express support for or opposition to any aspect of the settlement or allocation.

The Court has scheduled a "Fairness Hearing" for Tuesday, March 11, 2014, at 10:00 a.m. to review the proposed settlement and allocation of proceeds. The Court will consider any objections to or arguments in favor of the proposed settlement and allocation at the Fairness Hearing. You are welcome to attend, but are not required to do so. However, if you wish to be heard at the Fairness Hearing, you must submit a written comment/objection to the Court on or before February 24, 2014, as instructed in further detail below.

1. Description of the Lawsuit

On May 25, 2012, Plaintiffs, Wesley S. Mullinax, Billy Wesley Owen Addis, William D. Smith, and John T. Cox, filed this lawsuit against Parker Sewer & Fire Subdistrict, in the United States District Court for the District of South Carolina. Plaintiffs allege in this suit that they were employed by Defendant's Fire Department as line fire suppression personnel and that Defendant violated the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 et seq. ("FLSA") in the following regards: by routinely requiring them to work in excess of one-hundred six (106) hours per two-week pay period, but failing to pay them at the rate of one-and-a-half times their regular rate of pay for any overtime hours, as required by section 7(a) of the FLSA, 29 U.S.C. § 207(a); by improperly deducting sleep-time from hours worked by 24-hour shift employees, even when such time was interrupted by a call to duty; by deducting meal times from hours worked by 24-hour shift employees; and by not compensating Plaintiffs for all hours worked. Plaintiffs have also alleged that Defendant's failure to compensate them for overtime work and other hours as required by the FLSA was knowing, willful, intentional, or done in bad faith. Plaintiffs seek damages for unpaid overtime, plus liquidated damages in an amount equal to the unpaid overtime, as well as attorney's fees and costs. The claim under the FLSA will be referred to in this Notice as the "Federal Claim." Plaintiffs also seek damages, including treble damages and attorney's fees under the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10 et seq. The claim under the South Carolina Payment of Wages Act will be referred to in this Notice as the "State Law Claim."

Defendant has denied that it has violated the FLSA or the South Carolina Payment of Wages

Act. In addition, Defendant has asserted that it acted in good faith, based on advice from legal counsel and the United States Department of Labor, and that it had reasonable grounds to believe that it paid its Fire Department employees in accordance with the overtime pay requirements of the FLSA and in accordance with South Carolina law.

2. Composition of Plaintiff Class and Collective Action

Plaintiffs have sued on behalf of themselves and also on behalf of all other similarly situated employees of Defendant, specifically including the following persons:

> **All individuals employed by Defendant (Parker Sewer & Fire Subdistrict) in its Fire Department at any time between May 25, 2009 and March 19, 2013, who were non-exempt employees and who meet either or both of the following requirements:**
>
> **(a) worked 24-hour shifts, but were not paid additional amounts for all interruptions to sleep-time by a call to duty, or for additional hours beyond their regularly scheduled shifts, such as National Fire Prevention Week or training; or**
>
> **(b) had time deducted from their compensable time for meals on any shift where they were not completely relieved of duty during any meal period.**

You are receiving this Notice because Defendant's personnel records indicate that you may be among the class of potential Plaintiffs in this action.

3. Your Right to Participate in the Proposed Settlement

Federal Claim. To participate under the Federal Claim, you must "opt in" by filing a Consent to Join Lawsuit form. If you do by the deadline set forth herein, you will be a member of the Plaintiff class under the Federal Claim, and your legal claim(s) under the FLSA (if any) will be affected by the final settlement of this action.

Plaintiffs' attorneys have conducted an extensive review of Defendant's payroll records, Fire Department schedules and run reports, and other work records and have calculated a range of potential amounts of unpaid overtime compensation (if any) due for each employee of Defendant's Fire Department during the relevant period.

State Law Claim. Participation in the State Law Claim is automatic unless a potential class member "opts out" of the case.

The Court has allowed this case to proceed as both a collective action under the Federal Claims and as a class action under the State Law Claims. These two claims involve very different class action procedures. To clarify: there is one lawsuit with two different claims and two

corresponding classes. You may choose to be a member of one class or both classes, or you may choose to exclude yourself entirely from both classes.

Under the Federal Claims, class members must "opt in" to the case to join the lawsuit by filing a consent form as provided on Attachment A. If you are within the group of persons defined above and believe that Defendant failed to pay you overtime compensation and other wages as required by the FLSA, you may join the Federal Claims in this suit (that is, you may "opt in" to this lawsuit). To do so, you must complete and cause to be filed with the Court a "Consent to Join Lawsuit" form (Attachment A), on or before February 24, 2014.

With regard to the State Law Claims, if you are within the group of persons defined above you are automatically a member of the class unless you file a form to "opt out" of the case on or before February 24, 2014. An "Opt-out" Form is provided as Attachment B. You will be bound by the outcome of this case on any issues involving the State Law Claims unless you notify Plaintiff's counsel or the Court that you wish to exclude yourself from the class by filing an "Opt-out" Form (Attachment B).

It is entirely your decision whether or not to join this lawsuit. You are not required to join this lawsuit; however, as explained below, you MUST take action if you want to JOIN the Federal Class or to EXCLUDE YOURSELF from the State Law Class. Please read the remainder of this notice carefully to understand what action you should take.

4. Effect of Joining Lawsuit

If you decide to join the Federal Claims in this suit by filing a "Consent to Join Lawsuit" form, you will be bound by the proposed settlement of this case, if it is approved by the Court. If you opt in to this case, your interests will be represented by the named Plaintiffs through their attorneys, as counsel for the Class, unless you hire your own attorney.

5. Legal Effect of Not Joining in Lawsuit

If you decide not to join this suit under the Federal Claims and if you file an "Opt-out" Form under the State Law Claims, you will not be affected by the settlement of this case. You will not receive any money, or other relief, paid in settlement of this matter. If you fall within the definition of the class defined in Section 2 above, you have the right not to join the class and to file your own lawsuit, if you choose. You are free to consult with a lawyer regarding whether or not you may file your own lawsuit.

6. Terms of Proposed Settlement

The Plaintiffs' Steering Committee (comprised of the four named Plaintiffs and two additional opt-in Plaintiffs selected by their peers) participated in two mediation sessions of this case on February 6, 2013, and March 1, 2013, along with authorized representatives of Parker Sewer &

Fire Subdistrict. At the conclusion of the mediation process, the parties reached an agreement to settle this case. That agreement is memorialized in a Settlement Agreement, Release, and Waiver ("Settlement Agreement"), which has been approved by the named Plaintiffs and the Parker Sewer & Fire Subdistrict Board of Commissioners and filed with the Court. The terms of the proposed settlement, including proposed allocation of settlement proceeds, include the following:

(A) Defendant will make a payment in the gross amount of Three Hundred Thousand Dollars ($300,000.00) in full settlement of the case. Plaintiffs will seek (and Defendant agrees not to oppose) the following allocation of the settlement proceeds:

(1) $90,000.00 to Rothstein Law Firm, PA for attorney's fees;
(2) $5,500.00 to Rothstein Law Firm, PA as reimbursement for out-of-pocket costs associated with the case;
(3) $15,000.00 in total paid to the named Plaintiffs and the members of the Plaintiffs' steering committee as service/incentive payments, to be paid in individual amounts of $1,000.00, $2,000.00, $3,000.00, or $5,000.00, depending on the level of involvement and participation in this case by each committee member;
(4) $189,500.00 will remain for distribution to members of the class, based on an apportionment calculation based on each employee's salary history, dates of employment, and opt-in date (if any).

(B) For those individuals who receive a payment under the proposed settlement, Plaintiffs will ask the Court to approve treatment of 50% of the total amount as back pay, and 50% as payment for liquidated damages. Defendant will make regular payroll withholdings for state and federal income taxes, Social Security and Medicare on the amounts treated as back pay. In addition, the back pay amounts will be subject to retirement contributions to the South Carolina Retirement System. No withholdings will be made on the portion of the settlement proceeds that represent liquidated damages although these payments may be subject to income tax as explained below.

Your W-2 form for 2014 from Defendant will include the payments treated as back pay, as well as any other wages you receive from Parker Sewer & Fire Subdistrict in 2014. You will also receive a 1099 form from the District for 2014 reflecting the liquidated damages portion of your settlement payment as "non-wage income." W-2s and/or 1099 forms will only be issued to the extent required by law.

****PLEASE NOTE: Any amount received from the settlement of this lawsuit is taxable income even though some is "non-wage" income. Neither the Plaintiffs' attorney, nor any representative of Defendant is providing any advice regarding the tax consequences of the settlement payments beyond this general information. You are strongly encouraged to seek the advice of a CPA, tax lawyer, or other competent professional to appropriately account for any settlement payments on your 2014 income tax returns.**

You are receiving an individualized letter with this Notice which advises you whether you will receive any payment from the proposed settlement. If our review and analysis of the District's payroll records and other documentation reflects that you are owed compensation by the District that letter will indicate the amount you will receive if the Court approves the allocation as proposed above. Some of the factors affecting distributions to individual class members are discussed below (Section 7). If you have additional questions regarding your calculations, you may contact Plaintiff's counsel (information provided below at Section 9).

7. Factors Affecting Distributions

Individuals Receiving Payment. To date, a total of 33 individuals (including the four named Plaintiffs) have opted in to the Federal Claim as of the date Plaintiffs' filed the motion for the Court to approve the settlement.

If we have determined that you are not owed any back pay, you will receive a letter notifying you of that fact, and you will not be entitled to any payments from the proposed settlement.

How Proposed Distributions to Individuals were Determined. Plaintiffs' counsel reviewed Defendant's payroll records and the schedules and work records of Defendant's Fire Department, to determine whether individuals receiving this Notice were paid all of the compensation to which they were entitled under the FLSA and the South Carolina Payment of Wages Act at any time between May 25, 2009 and March 19, 2013.

Proposed distributions for the Federal Claim are, likewise, based on actual personnel and payroll records. Each person's proposed distribution is based on a proportionate or pro rata share based on consideration of the following factors: (1) dates of active employment in non-exempt positions only (excluding any extended leaves of absence or periods of disability such as workers' compensation); (2) corresponding rates of pay during relevant times; (3) weighting of claims based on potential time periods; and (4) whether each individual has opted in to the FLSA claims and, if so, the date the opt-in form was filed with the Court.

All documents relating to the case and the proposed settlement are available on the Internet at www.rothsteinlawfirm.com, or by contacting Plaintiffs' attorney as set forth in Section 9 below.

8. Settlement Fairness Hearing

The Court has scheduled a hearing for Tuesday, March 11, 2014, at 10:00 a.m. to decide whether the settlement and proposed allocation are fair, reasonable, and adequate. The fairness hearing will be held in the G. Ross Anderson, Jr. Federal Building and United States Courthouse, 315 South McDuffie Street, Anderson, SC 29624. This hearing is open to the public and you are welcome, but not required, to attend.

You do **not** need to attend to receive any payment under the settlement. You also do **not**

need to attend to make a comment about or to raise any objection to, the proposed settlement as you may do either by filing a written document with the Court. **However, if you would like to be heard during the Fairness Hearing or if you have any comment or objection to any part of the proposed settlement and allocation, you must notify the Court in writing, no later than February 24, 2014.** You may use the attached form (Attachment C) to submit any comment or objection about the proposed settlement, or you may submit a signed letter to the Court setting forth your position. Any letter submitted to the Court must include the following information: (1) the caption of the case (Wesley S. Mullinax et al. v. Parker Sewer & Fire Subdistrict, Civil Action No. 6:12-cv-01405-TMC); (2) your full name and address; (3) the dates you worked for Parker Sewer & Fire Subdistrict, and what position(s) you held with Defendant; and (4) the specific grounds for your objection or other comments about the proposed settlement.

The deadline for submitting comments or objections to the Court is February 24, 2014. Your correspondence must be received by the Court or postmarked no later than this deadline to be considered. Any correspondence to the Court should be addressed as follows: Clerk of Court, United States District Court, 901 Richland Street, Columbia, SC 29201. Any letter, comment or objection timely filed with the Court will be made a part of the public record in this case and will be considered by the Court in making the final settlement approval decision.

9. Your Options Regarding Legal Representation

The Court has approved the following attorney to serve as counsel to the Plaintiff class:

David E. Rothstein, Esquire
ROTHSTEIN LAW FIRM, PA
514 Pettigru Street
Greenville, South Carolina 29601

You have the right to be represented in this matter by (1) the attorney for the named Plaintiffs (at no expense to you beyond payments made from the settlement fund), (2) an attorney of your own choosing (at your own expense), or (3) yourself (that is, you may speak or file documents on your own behalf without an attorney, also known as representing yourself pro se). If you wish to represent yourself or to be represented by an attorney other than the Rothstein Law Firm at the fairness hearing, you or your own attorney must file a document on or before February 24, 2014, indicating your intent. You may include your statement regarding representation with your comment or objection or file a separate notice of appearance. Absent such a filing by February 24, 2014, you will be represented by the attorney representing the named Plaintiffs as class representatives.

10. Further Information

If you have any questions about the settlement, you may contact the Rothstein Law Firm at (864) 232-5870, or on the Internet at www.rothsteinlawfirm.com. A copy of the Complaint and Answer in this case, along with the Settlement Documents, will be available through a link on the

firm's web-site. Copies of the public settlement documents and other information can also be obtained by calling, writing or e-mailing Plaintiffs' counsel as follows:

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(864) 241-1386 (facsimile)
derothstein@mindspring.com
www.rothsteinlawfirm.com

Attorney for Plaintiffs

Telephone calls will generally be received Monday through Friday, 8:30 a.m.-5:00 p.m., EST. Telephone messages may also be left after hours on the firm's voicemail.

11. The Court's Authorization of this Notice

The contents of this Notice have been reviewed and authorized by the United States District Court for the District of South Carolina, Timothy M. Cain, United States District Court Judge, the presiding judge in this matter. Judge Cain has not yet made a final determination about the validity of the proposed settlement.

Do NOT contact Judge Cain or other court personnel about this matter, other than by filing a letter or comment/objection form (Attachment C) with the Clerk of Court. The Court must remain impartial and cannot make any comment on your rights other than as set forth in this notice.

For further information on your rights, please contact the named Plaintiffs' attorney listed in Sections 9 & 10 above, or any attorney of your choice.

12. Protection Against Retaliation

The Fair Labor Standards Act prohibits anyone from retaliating against you in any manner for your participation in this lawsuit.

* * *

Date of Notice: _____

_____

David E. Rothstein
ROTHSTEIN LAW FIRM, PA
514 Pettigru Street
Greenville, South Carolina 29601
(864) 232-5870
(864) 241-1386 (facsimile)
derothstein@mindspring.com
www.rothsteinlawfirm.com

(Attachment A–To Join Federal Class)

CONSENT TO JOIN LAWSUIT
(Pursuant to 29 U.S.C. § 216(b))

Wesley S. Mullinax et al. v. Parker Sewer & Fire Subdistrict
(Parker Fire Department Overtime Case)

Civil Action No. 6:12-cv-01405-TMC

Please type or print in ink the following:

1. Name: _____

2. Address: _____

_____
City State Zip Code

3. Phone: _____ (work) _____ (home/mobile)

4. Dates of Employment with Parker Fire Department: _____

5. Position(s) with District: _____

6. I understand that this suit is brought under the Fair Labor Standards Act to recover unpaid overtime compensation. As a current or former employee of the Parker Sewer & Fire Subdistrict, I hereby consent, agree, and opt-in to become a party plaintiff herein and to be bound by any settlement of this action or adjudication of the Court.

7. I hereby authorize Plaintiffs' counsel of record to file this Consent with the Clerk of Court.

8. I hereby further authorize the named Plaintiffs herein to retain their counsel of record or to select new counsel, as they shall determine in their discretion, and I hereby further authorize such counsel to make all decisions with respect to the conduct and handling of this action, including the settlement thereof, as they deem appropriate or necessary, subject to the approval of the Court.

Date: _____ _____
Signature

_____
Print or Type Name

(Attachment B–To Exclude Yourself from State Law Class)

"OPT-OUT" FORM
(South Carolina Payment of Wages Act Claim)

Wesley S. Mullinax et al. v. Parker Sewer & Fire Subdistrict
(Parker Fire Department Overtime Case)

Civil Action No. 6:12-cv-01405-TMC

Please type or print in ink the following:

1. Name: _____

2. Address: _____

_____
City State Zip Code

3. Phone: _____ (work) _____ (home/mobile)
(Phone numbers optional)

4. I am a member of the Class described in the Notice. However, I do not wish to participate in the claims under South Carolina law, and I hereby opt out of the Class. I understand and acknowledge that I will not be bound by the settlement or judgment in this Lawsuit and that I will not receive any benefit from this Lawsuit if there is a settlement or judgment in favor of the Class. I further understand that I will remain free to pursue any legal claims I may have against Defendant, Parker Fire & Sewer Subdistrict, in a separate lawsuit, if I so choose.

Date: _____ _____
Signature

_____
Print or Type Name

Name and Address of Attorney (if any): _____

_____

(Attachment C–Comment or Objection about Proposed Settlement)
Wesley S. Mullinax et al. v. Parker Sewer & Fire Subdistrict
(Parker Fire Department Overtime Case)

Civil Action No. 6:12-cv-01405-TMC

Complete and submit this form to the Court on or before February 24, 2014, only if you have a comment or objection to the proposed settlement. You do not need to submit this form or any additional information to receive payment under the terms of the settlement. Return all forms to: Clerk of Court, United States District Court for the District of South Carolina, 901 Richland Street, Columbia, SC 29201.

Please type or print in ink the following:

1. Name: _____

2. Address: _____

_____
City State Zip Code

3. Dates of Employment with Parker Sewer & Fire Subdistrict: _____

4. Position(s) with Parker Fire Department: _____

5. Do you plan to attend and speak at the fairness hearing? ☐ Yes ☐ No

6. Comments or detailed basis for objection (Attach additional pages if necessary):

_____

_____

_____

_____

_____

_____

_____

Exhibit C

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

GREENVILLE DIVISION

Wesley S. Mullinax, Billy Wesley Owen Addis, William D. Smith, Jr., and John T. Cox, all individually and on behalf of all other similarly situated individuals, Plaintiffs, vs. Parker Sewer & Fire Subdistrict, Defendant.	Civil Action No. 6:12-cv-01405-TMC **AFFIDAVIT OF WESLEY S. MULLLINAX**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

PERSONALLY appeared before me Wesley S. Mullinax, who, after being duly sworn, deposes and states the following:

1. My name is Wesley S. Mullinax. I am older than eighteen years of age. The statements in this Affidavit are based upon my own personal knowledge.

2. I am the lead, named Plaintiff in the above-captioned case. I was primarily involved in the decision to file this lawsuit on behalf of the current and former employees of the Parker Sewer & Fire Subdistrict Fire Department. I served on the Plaintiffs' Steering Committee and was present for every meeting of the Committee.

3. I have spent hundreds of hours of my own time in connection with the is case since May 2012, from meeting with and interviewing attorneys, organizing meetings of the potential Plaintiffs, attending meetings of the Plaintiffs' Steering Committee, and coordinating the distribution

WSM

of consent forms for opt-in Plaintiffs, to reviewing pleadings, assisting with the preparation of discovery responses, preparing for and attending depositions, and attending the mediation sessions. I have been the main point of contact between our attorney, Mr. Rothstein, and the group of opt-in Plaintiffs and have done my best to keep the Committee and the opt-in Plaintiffs informed of any and all developments in this case.

4. I undertook the burden of serving as the lead Plaintiff in this action, despite the great risk to my professional career in doing so.

5. I was present for both mediation sessions in this case. I have reviewed the Settlement Agreement in this case, and it accurately reflects the terms of the settlement the Steering Committee voluntarily reached with the County in this case. I voted in favor of the settlement because I believe that it is fair and reasonable and in the best interest of the class of Plaintiffs as a whole.

6. We understand that by agreeing to settle this case, we are giving up our right to proceed to a trial in this matter; however, we are willing to compromise the value of the lawsuit some to avoid the uncertainties of a trial and to avoid the expense and delay of continuing the discovery and litigation of this case.

7. Mr. Rothstein has explained in great detail the legal and factual issues that are in dispute in this case. We understand that there are several unresolved questions of fact and law that could make the outcome of a trial uncertain. There is a very real risk that we could recover less than the amount of the settlement if we went to trial on this case, plus the additional costs of going forward could reduce our net recovery from a trial. Mr. Rothstein explained that the potential for appeals in this case could delay any recovery even further, by up to another 18 months to two years.

8. I am very satisfied with the legal services provided to us by our lawyer in this case,

Mr. Rothstein. He has kept me and the Steering Committee fully informed about the progress of the case and has always been available to answer my questions throughout the case. I believe that Mr. Rothstein worked diligently throughout case, and his efforts certainly increased the value of this case.

9. The named Plaintiffs and I have agreed to pay Mr. Rothstein's law firm a contingency fee of one-third (33.33%) of any recovery they received on behalf of the Plaintiffs in this case, either by way of settlement or verdict, plus reimbursement of actual costs. We probably would not have been able to afford to file this lawsuit if we had to pay an attorney up front, by the hour, and had to advance the litigation costs up front. I believe that Mr. Rothstein's proposed fees are fair and reasonable. I also believe that the expenses incurred by Mr. Rothstein's law firm appear to be reasonable.

10. I sincerely believe that the proposed settlement is in the best interest of the Plaintiff class in this case.

FURTHER AFFIANT SAYETH NOT.

Wesley S. Mullinax

SWORN to and subscribed before me,

this 26th day of November, 2013

H. Lorraine Miller

Notary Public for South Carolina

My commission expires: March 29, 2017

H. LORRAINE MILLER NOTARY PUBLIC SOUTH CAROLINA

H. Lorraine Miller
NOTARY PUBLIC
State of South Carolina
My Commission Expires
March 29, 2017

Exhibit D

Wesley S. Mullinax et al. v. Parker Sewer & Fire Subdistrict
Civil Action No. 6:12-cv-01405-TMC
(Parker Fire Department Overtime Case)

To: [Name]
From: David E. Rothstein, Attorney for Plaintiffs
Date: December ____, 2013
Re: Payments Under Proposed Class Action Settlement

A settlement has been reached in the above-titled lawsuit. The purpose of this letter and the accompanying documents is to notify you of the settlement and your rights under the settlement. You have been identified as a potential class member in this case, or you have previously submitted a Consent to Join Lawsuit form in this case, whereby you opted to join this action to pursue claims under the Fair Labor Standards Act ("FLSA").

The FLSA generally requires employers to pay overtime compensation of time-and-a-half to employees who work more than 40 hours in any given workweek. State and Federal laws also require an employer to compensate employees for all hours worked, subject to certain exemptions, such as bona fide sleep and meal periods under certain circumstances. Based on our review of the Parker Sewer & Fire Subdistrict's Payroll Records and the schedules and work records of the Parker Fire Department, we believe that you were not paid all of the compensation you were entitled to under the FLSA or the South Carolina Payment of Wages Act, between May 25, 2009 and March 19, 2013.

Based on the District's records, we have calculated a range of potential back pay amounts based on different legal and factual assumptions. For individuals who were employed for the entire 3-year statute of limitations, that amount could range from a best-case scenario of over 1,300 hours of pay per year, for unpaid sleep and meal periods, to a more likely-case scenario of 186 hours for unpaid meal times from May 1, 2012 through the date of the mediation, February 6, 2013. The District's attorneys deny that any back pay is owed to any Fire Department Employees.

The proposed settlement apportionment is based on a methodology used by Plaintiffs' counsel. Plaintiffs' counsel calculated a proportionate share of the total distribution for each person based on the following criteria: (1) dates of active employment in non-exempt positions only (excluding any extended leaves of absence or periods of disability such as workers' compensation); (2) corresponding rates of pay during relevant times; (3) weighting of claims based on potential time periods; and (4) whether each individual has opted in to the FLSA claims and, if so, the date the opt-in form was filed with the Court. According to our calculations, your pro-rata share of the total potential damages claim of the entire group of plaintiffs collectively is [Column 3–percent]. Under the terms of the proposed settlement agreement, your pro-rata portion of the remaining settlement proceeds, after payment of attorney's fees, costs, service payments to the Plaintiffs' Steering Committee members is [Column 4--$ dollar amount]. Your total, gross payment under the proposed settlement is [Column 5–Total]. **Please note that individual payment amounts are subject to**

change based on whether any potential claimants opt in or opt out of the proposed settlement after the date of this Notice.

Under the terms of the proposed settlement agreement, half of your payment amount will be considered back-pay, subject to regular withholdings for income taxes, Social Security, Medicare, and retirement contributions to the South Carolina State Retirement System. If required by IRS rules, you will receive a W-2 form from the District including the amount of the payment and the corresponding deductions. The other half of the payment will be considered liquidated damages and will not be subject to withholdings; **however, such payments are taxable as income**. If required by IRS rules, you will receive a 1099 form from the District for the liquidated damages portion of the payment. **Neither Plaintiffs' counsel, Defendant's counsel, nor any representative of Parker Sewer & Fire Subdistrict is providing you with any advice regarding the tax consequences of these payments. You are strongly encouraged to seek the advice of a competent tax professional to determine how these payments will affect your tax liability for 2014. Each plaintiff is solely responsible for the tax consequences of these payments**.

The proposed settlement will be reviewed by the United States District Court for the District of South Carolina. Please review the Notice accompanying this letter to understand your rights in connection with the proposed settlement and how you can raise any comments or objections to the Court prior to the fairness hearing. Additional information can be found on the Internet at www.rothsteinlawfirm.com.

Exhibit E

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

GREENVILLE DIVISION

Wesley S. Mullinax, Billy Wesley Owen Addis, William D. Smith, Jr., and John T. Cox, all individually and on behalf of all other similarly situated individuals, Plaintiffs, vs. Parker Sewer & Fire Subdistrict, Defendant.	Civil Action No. 6:12-cv-01405-TMC **AFFIDAVIT OF PLAINTIFFS' COUNSEL, DAVID E. ROTHSTEIN**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

PERSONALLY appeared before me David E. Rothstein, who, after being duly sworn, deposes and states the following:

1. My name is David E. Rothstein. I am older than eighteen years of age. The statements in this Affidavit are based upon my own personal knowledge.

2. I am counsel for Plaintiffs in the above-captioned case.

3. I am an attorney in good standing and have been licensed to practice law by the State of South Carolina since November 15, 1993, and by the State of North Carolina since April 11, 2008. I am also admitted to practice before the United States District Court for the District of South Carolina, the United States District Court for the Western District of North Carolina, the United States Court of Appeals for the Fourth Circuit, and the United States Supreme Court.

4. I graduated cum laude from the University of South Carolina School of Law on May 14, 1993, where I was Editor in Chief of the South Carolina Law Review, a member of the Order of the Coif, and a member of the Order of the Wig and Robe.

5. Upon graduation from law school, I served as a judicial law clerk to the Hon. Joseph F. Anderson, Jr., United States District Court Judge for the District of South Carolina, from August 1993 to August 1995. Thereafter, I served as a judicial law clerk to the Hon. Robert F. Chapman, then Senior United States Circuit Court Judge for the Fourth Circuit Court of Appeals, from August 1995 to October 1996.

6. I worked as an associate attorney at the law firm of Nexsen Pruet Jacobs & Pollard, LLP, in Columbia, South Carolina, from October 1996 to January 1999, where the majority of my practice involved employment law. While employed at the Nexsen Pruet firm, I represented both employers and employees in employment litigation and appeals.

7. I worked as an associate attorney at the law firm of Gergel Nickles & Solomon, P.A., in Columbia, South Carolina, from January 1999 to June 30, 2005, where the majority of my practice involved employment law.

8. I was a shareholder in the law firm of Burnette & Rothstein, P.A. from July 1, 2005 until July 31, 2010, when I moved to Greenville and formed Rothstein Law Firm, PA. Almost all of my current practice involves employment law and litigation.

9. I have been a Certified Specialist in Employment and Labor Law since February 2006. I was re-certified in 2011. Although I primarily represent individual employees in employment-related matters, my firm also represents several small employers in employment-related matters.

10. I currently serve as an associate member of the South Carolina Board of Law Examiners, which position I have held since January 2007.

11. I have had extensive experience in employment litigation, both as an attorney and as a judicial law clerk to two federal judges. In addition, I have written several articles and made several CLE presentations on employment law or related topics. I am a member of the Employment Law Sections of the South Carolina Bar, the South Carolina Trial Lawyers Association, and the National Employment Lawyers Association. I am immediate past Chair of the Employment and Labor Law Section Council of the South Carolina Bar, and I am a member of the Specialization Advisory Board for Employment and Labor Law through the South Carolina Supreme Court's Commission on CLE and Specialization.

12. Throughout my career, I have been involved in several class actions under Rule 23 of the Federal Rules of Civil Procedure, as well collective actions under the Fair Labor Standards Act. I was involved as trial counsel in the case of Johnson v. Collins, one of the largest class actions in the history of South Carolina, which lead to the demise of the video poker industry in South Carolina. I have also handled numerous individual cases and collective actions under the Fair Labor Standards Act for improperly paid overtime.

13. Plaintiffs have conducted substantial discovery in this case, involving one set of interrogatories and requests for production, seven depositions, and the review of over 3,500 of pages of documents, including information relating to payroll, work schedules, time-keeper records, and summaries of Fire Department dispatches for the 3-year period covered by the lawsuit.

14. Based on my experience in employment and labor law, both as a judicial law clerk and in private practice, I believe that the Settlement Agreement in this case is a fair and reasonable

settlement of Plaintiffs' claims against Defendant, Parker Sewer & Fire Subdistrict.

15. There remain a number of unsettled legal and factual issues in this case, including whether the sleep-time deductions were appropriate, whether meal-time deductions were appropriate, whether the District would be required to pay liquidated damages, and whether the Court or the jury would find a willful violation so as to extend the statute of limitations under the FLSA to three years. In addition, further analysis of the Parker Fire Department's pay and hour records would involve a tremendous investment of time and resources by expert auditors and economists, which might not be cost effective in terms of the final result.

16. I have carefully explained to the named Plaintiffs and the other members of the Plaintiffs' Steering Committee the legal issues that remain unresolved in this case, as well as the costs, uncertainty, and delay that would be involved in taking this case to trial. In addition we have discussed the possibility of appeals to the Fourth Circuit Court of Appeals. I believe that the Plaintiffs and the Committee members have understood my conversations with them about these issues, and they have been fully engaged and informed at all stages of this case.

17. The Settlement Agreement in this case was the product of good-faith, arms-length negotiations between both sides. I am not aware of any fraud or collusion in the settlement process, nor am I aware of any party being threatened, coerced, or intimidated into voting for the settlement. All terms of the proposed settlement have been thoroughly debated among the Plaintiffs' Steering Committee, and all final decisions were made by at least a majority vote of the Committee.

FURTHER AFFIANT SAYETH NOT.

David E. Rothstein

SWORN to and subscribed before me,

this 27th day of December, 2013

H. Lorraine Miller (L.S.)
Notary Public for South Carolina

My commission expires: 3/29/17.

H. LORRAINE MILLER NOTARY PUBLIC SOUTH CAROLINA

H. Lorraine Miller
NOTARY PUBLIC
State of South Carolina
My Commission Expires
March 29, 2017

SEALED
PER TEXT ORDER [34]

Exhibit F

Summary of Settlement Apportionment Calculations

Mullinax et al. v. Parker Sewer & Fire Subdistrict,
C/A No. 6:12-cv-01405-TMC

Unpublished Decisions

(1) In re Janney Montgomery Scott, LLC Financial Consultant Litigation, 2009 WL 2137224 (E.D. Pa. July 16, 2009)

(2) Stevens v. Safeway, Inc., C/A No. 2:05-cv-1988-MMM-SH (C.D. Cal. Feb. 25, 2008) (slip op.)

(3) Bredbenner v. Liberty Travel, Inc., 2011 WL 1344745 (D.N.J. Apr. 8, 2011)

(4) Clark v. Ecolab, Inc., 2010 WL 1948198 (S.D.N.Y. May 11, 2010)

(5) Hoffman v. First Student, Inc., 2010 WL 1176641 (D. Md. Mar. 23, 2010)

(6) Lomascolo v. Parsons Brinckerhoff, Inc., 2009 WL 3094955 (E.D. Va. Sept. 28, 2009)

[Note: Actual text of unreported cases not included in interests of space. Documents available upon request from Plaintiffs' counsel.]