

[\*\*NOTE: The Settlement Agreement filed with the Consent Motion to Approve Settlement Agreement, to Authorize Notice to Class, and to Schedule Fairness Hearing was unsigned as of the date of filing, January 16, 2012. A signed copy of the Settlement Agreement was filed with the Court on January 24, 2012, and is available for review as a separate document on this web-site.]

## **Exhibit A**

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

ROCK HILL DIVISION

Kevin Faile, Louis C. Roman, Alan R. DePalma,)	C.A. No. 0:10-cv-2809-CMC
and Brian Scott Craton, all individually and on )	
behalf of all other similarly situated individuals, )	
)	
Plaintiffs, )	<b>SETTLEMENT AGREEMENT, RELEASE</b>
)	<b>AND WAIVER</b>
vs. )	
)	
Lancaster County, South Carolina, )	
)	
Defendant. )	
_____ )	

Plaintiffs, Kevin Faile, Louis C. Roman, Alan R. DePalma, and Brian Scott Craton, individually and on behalf of all other similarly situated members of the classes certified and conditionally certified by Order of the Court entered August 25, 2011 (the “EMTs”), and Lancaster County (the “County”) agree as follows:

1. **Definitions.** When used in this Agreement, the term “EMTs” shall refer not only to the named plaintiffs and class members collectively, but shall also refer to each of them individually. The term “County” shall refer not only to Lancaster County, but also to its current and former officials and employees.

2. **Release and Dismissal of Claims.** For and in consideration of the mutual promises contained in this Agreement, and upon approval by the Court, the EMTs, for themselves and their heirs and assigns, will dismiss, release, acquit, forever discharge, and covenant not to sue the County 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 County policy; any express or implied agreement with the EMTs; 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.

3. **Exceptions.** Nothing in the foregoing paragraph shall be construed to release or waive any claims asserted in the lawsuit captioned *Kevin Faile and Meredith B. Gainey v. Lancaster County, South Carolina, et al.*, Civil Action Number 0:11-cv-2206-CMC.

4. **Settlement Proceeds and Allocation.** The County shall pay the gross sum of \$1,500,000.00 (“Settlement Proceeds”) in complete settlement of this matter. The parties agree that the Plaintiffs will seek, and the County will not oppose, the following allocation of the Settlement Proceeds:

a. **Attorney’s Fees and Costs.** Of the Settlement Proceeds, \$500,000.00 is allocated as attorney’s fees. The sum of \$35,000.00 is allocated as costs, which includes, but is not limited to, expert witness fees and costs, filing fees, travel expenses, and court reporter expenses. The attorney’s fees and costs shall be paid directly by the County to the Plaintiffs’ attorney, Rothstein Law Firm, PA.

b. **Plaintiffs’ Committee Service Payments.** The named plaintiffs and the members of the class who participated as members of the plaintiffs’ steering committee will receive additional payments from the Settlement Proceeds for their service on the committee. The total service payments are \$67,500.00, which shall be allocated as follows:

i. A steering committee service payment of \$4,500.00 each shall be paid to Larry Adams, Katherine Holloway, and Helen Ortega.

*ii.* A named plaintiff service payment of \$9,000.00 each shall be paid to Al DePalma and Brian Scott Craton.

*iii.* A lead named plaintiff service payment of \$18,000.00 each shall be paid to Kevin Faile and Louis Roman.

*c.* *Distribution of Remainder.* The remaining sum of \$897,500.00 from the Settlement Proceeds shall be distributed to the members of the class as follows:

*i.* All class members shall receive 100% of their back-pay amount on the State Law Claim for the alleged failure to pay for time worked “off the clock” after the shifts while transitioning duties to the oncoming crew, for 3 years as calculated by Plaintiffs’ Economic Expert, Dr. Jeffrey Yankow. Deducted from such amounts shall be any sums already paid to any State Law Class Member by the County. The total amount to be distributed to the class under the State Law Claims is \$91,881.87. State Law Class Members who have already received payments from the County equal to or in excess of their proportionate share of the damages as calculated by Plaintiffs’ Expert will not receive any additional payment from this Settlement.

*ii.* Class members who opted in to the Fair Labor Standards Act portion of the lawsuit (“FLSA Class Members”) shall receive 100% of their back-pay amount on the claim under the County’s improper use of Section 7(k), whereby the County paid overtime only after 106 hours every 2-week pay period, rather than after 40 hours each work-week, for 3 years as calculated by Dr. Yankow. The total amount to be distributed to the FLSA Class Members under the Section 7(k) claim is \$500,578.76.

*iii.* The remaining settlement proceeds in the amount of \$305,039.37 shall be distributed to FLSA Class Members 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, as calculated by Dr. Yankow.

d. *Wages, Taxes and Retirement Contributions.* The parties agree that attorney's fees, costs, and plaintiffs' committee service payments shall not be deemed to be wage-based compensation and no withholding shall be deducted therefrom. Of the remaining Settlement Proceeds distributed to the class members under subparagraph c., half of such amount shall be allocated to back wages for the alleged improper payment of wages and overtime alleged in the Complaint. The other half shall be allocated as liquidated damages under the Fair Labor Standards Act. 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. The County's share of retirement contributions to Class Members based on the back-pay amounts shall be in addition to the Settlement Proceeds set forth above. The parties further agree that neither counsel for the EMTs nor counsel for the County has given them any advice concerning the taxability of the payments to be made to them or on their behalf under this Agreement.

e. *Mediation Expenses.* In addition to the Settlement Proceeds set forth above, the County agrees to pay for all of the expenses of both mediations in this case. The County shall pay the expenses of the second mediation directly to Franklin D. Shuler, Jr., Esq. of the law firm Turner Padgett Graham & Laney, P.A. The County shall reimburse Plaintiffs' counsel \$1,083.14, which represents half of the total expenses associated with the first mediation.

f. *Costs of Notice and Settlement Administration.* In addition to the

Settlement Proceeds set forth above, the County also agrees to mail notification of the Settlement to the Class Members and to distribute the Settlement Proceeds to the Class Members as set forth in this Agreement and to bear the costs associated therewith.

g. *Timing of Payments.* This Agreement and its terms, including the proposed allocations, are subject to approval by the Court. Should any class member or other individual with standing to do so object to the settlement and this Agreement, no payments shall be made under this Agreement until the time to appeal the Court's ruling on such objections has expired. The County agrees that it will make its best efforts to issue the payments under this Agreement within 30 days of approval by the Court, or if objections are filed, within 30 days of expiration of the time to appeal.

5. *No Admission of Liability.* The parties agree that nothing in this Agreement shall be construed as an admission of liability by the County. The parties further agree that, except to the extent that liability may have been admitted in any Court filing, the County has not admitted liability to the EMTs.

6. *Authorization to Conclude Settlement and Litigation.* The parties authorize their attorneys to take all actions necessary to conclude the settlement expressed in this Agreement and to forever end the litigation, including entry of a stipulation of dismissal with prejudice and consent to all orders that may be necessary.

7. *Supervision and Enforcement.* The parties agree that, to the extent it is necessary, supervision of execution of this Agreement, and any matters relating to the enforcement of this Agreement, shall be by the United States District Court for the District of South Carolina. The parties specifically consent to the retention of jurisdiction over this lawsuit by the District Court for such purposes.

8. ***Execution in Counterparts.*** This Agreement may be executed in counterparts. Such counterparts shall together constitute one and the same document.

9. ***Understanding and Complete Agreement.*** The undersigned agree that this Agreement represents the complete agreement of the parties and fully merges all previous oral and written agreements on the topics contained herein. The parties further agree that they have had an opportunity to discuss any questions about the Agreement with their attorneys, and that they understand the Agreement.

\* \* \*

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

For the Plaintiffs' Committee

For Lancaster County

\_\_\_\_\_  
Kevin Faile

\_\_\_\_\_  
By: Steve Willis  
Its: Administrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: Christopher W. Johnson  
Its: Attorney

\_\_\_\_\_  
Louis Roman

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

*Pursuant to authorization received by  
Council on December 22, 2011.*

\_\_\_\_\_  
Al DePalma

Attest: \_\_\_\_\_  
Debbie Hardin,  
Clerk to Council

\_\_\_\_\_  
Date

\_\_\_\_\_  
Brian Scott Craton

\_\_\_\_\_  
Date

*Approved as to form:*

\_\_\_\_\_  
Dave E. Rothstein

\_\_\_\_\_  
Date