

[Sample Letter 3–Non-Opt-in Plaintiff Receiving Payment–State-law Claim Only]

**Kevin Faile et al. v. Lancaster County, South Carolina**

Civil Action No. 0:10-cv-2809-CMC  
(Lancaster County EMS Overtime Case)

To: [Name]  
From: David E. Rothstein, Attorney for Plaintiffs  
Date: January \_\_\_\_, 2012  
Re: Payments Under Proposed Class Action Settlement

The named parties have agreed to a settlement of the above-titled lawsuit. This settlement and the proposed plan for distributing/apportioning the settlement proceeds are, however, subject to court approval. The purpose of this letter and the accompanying documents is to notify you of the proposed settlement and your rights under it (including the amounts you may receive), and to explain how you may comment on or object to the settlement or plan of distribution/apportionment.

According to personnel records of Lancaster County, you worked for the Lancaster County EMS Department during the period between October 29, 2007 and October 29, 2010. You did not file a timely Consent to Join Lawsuit form to opt-in to the Plaintiffs' claims under the Fair Labor Standards Act ("FLSA" or "Federal Claim"), so you are not entitled to any payment for those claims. You are, however, a member of a class pursuing state-law claims under the South Carolina Payment of Wages Act ("State Claim"), because you did not opt out of the State Claim. Your State Claim will be resolved (and released) by this settlement.

**READ THE ENCLOSED NOTICE CAREFULLY– THIS IS ONLY A SUMMARY**

Under the settlement, the County will, in addition to paying some other expenses, pay \$1.5 million into a settlement fund, which Plaintiffs' steering committee and counsel propose should be allocated as follows: \$500,000 to attorney's fees, \$35,000 to litigation costs, \$67,500 to incentive/service payments to the named Plaintiffs and steering committee members for their assistance in advancing the case, and \$897,500 to payment of individual claims. If this allocation plan is approved, you would receive \$ \_\_\_\_\_ for your State Claim (backpay for working 15 minutes of each 24-hour shift "off the clock").

As explained in more detail in Section 5 of the enclosed Notice, this payment represents 100% of the back-pay amount Plaintiffs' expert has calculated you are owed, less any amounts already paid by the County.

Half of your payment amount will be considered back-pay (subject to various withholdings) and half will be considered liquidated damages (treated as taxable, non-wage income, not subject to withholdings). Section 4 of the Notice provides additional information regarding these distinctions, potential tax consequences, and your individual responsibility for securing tax advice.

**Fairness Hearing and Important Deadlines.** The proposed settlement and allocation plan will be reviewed by the United States District Court at a fairness hearing on **March 8, 2012**. However, any comments on or objections to the settlement and proposed allocation plan, appearances of counsel, or requests to be heard at the fairness hearing must be filed with the Court by **February 27, 2012**. Section 6 of the attached Notice explains in detail your rights and obligations if you wish to comment on or object to the settlement or any aspect of the allocation. Additional information relating to this case and settlement can be found on the Internet at [www.rothsteinlawfirm.com](http://www.rothsteinlawfirm.com).

You do not need to do anything if you do not want to comment, object, file an appearance, or speak at the fairness hearing.

#### **IMPORTANT DATES**

- February 27, 2012** – **Deadline for filing objections, comments, appearances, and requests to be heard**
  
- March 8, 2012** – **Fairness Hearing** (at 1:30 p.m. in the Matthew J. Perry, Jr., Federal Courthouse, 901 Richland St., Columbia, SC 29201, in Courtroom II)