

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

Anna C. DeWitt, David Hodge,)	Civil Action No. 4:11-cv-00740-RBH
Lena M. Quick, Lynette Hudson, and)	
Jennifer E. Amerson, all individually)	
and on behalf of all other similarly)	
situated individuals,)	
)	NOTICE OF PROPOSED
Plaintiffs,)	SETTLEMENT OF COLLECTIVE
vs.)	ACTION LAWSUIT
)	
Darlington County, South Carolina,)	
)	
Defendant.)	
_____)	

TO: **All individuals employed by Defendant (Darlington County, South Carolina) in its EMS Department at any time within the three years prior to joining this lawsuit, who were non-exempt employees and who meet either or both of the following requirements:**

- (a) worked in excess of forty (40) hours in any given work week, but did not receive overtime compensation of at least one and a half times their regular hourly wage for any and all overtime hours; or**
- (b) were required to work more time than was actually included in their compensable time.**

FROM: Rothstein Law Firm, PA of Greenville, South Carolina, and Louthian Law Firm, P.A. of Columbia, South Carolina, Counsel for Plaintiffs Anna C. DeWitt, David Hodge, Lena M. Quick, Lynette Hudson, and Jennifer E. Amerson

RE: Proposed Settlement of class-action lawsuit filed under the Fair Labor Standards Act and the South Carolina Payment of Wages Act against Darlington County, South Carolina

This Notice is provided in connection with a lawsuit pending in the United States District Court for the District of South Carolina, Florence Division (“the Court”). You are receiving this Notice because the County’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 Darlington County EMS Department. **The representatives of the Plaintiff class and the Defendant County 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 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 Friday, December 6, 2013, at 10:30 a.m., in a Third Floor Courtroom of the McMillian Federal Building and Courthouse, 401 West Evans Street, Florence, SC 29501 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 **November 21, 2013**, as instructed in further detail below.

1. Description of the Lawsuit

On March 28, 2011, Plaintiffs, Anna C. DeWitt, David Hodge, Lena M. Quick, Lynette Hudson, and Jennifer E. Amerson, filed this lawsuit against Darlington County, South Carolina, in the United States District Court for the District of South Carolina. Plaintiffs allege in this suit that they were employed by Defendant’s EMS Department as paramedics and emergency medical technicians 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 forty hours per week, 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 four hours of “down time” from hours worked by 24-hour shift employees; and by improperly deducting one hour of each shift for meal times. Plaintiffs have also alleged that Defendant’s failure to compensate them for overtime work and other hours as required by the FLSA was knowing, wilful, 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. Plaintiffs’ complaint also included a claim under the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10 et seq. Plaintiffs have determined that the State Law Claim is duplicative of the Federal Claims, and they have agreed to withdraw their 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 and that it had reasonable grounds to believe that it paid its EMS employees in accordance with the overtime pay requirements of the FLSA.

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 (Darlington County, South Carolina) in its EMS Department at any time within the three years prior to joining this lawsuit, who were nonexempt employees and who meet either or both of the following requirements:

(a) worked in excess of forty (40) hours in any given work week, but did not receive overtime compensation of at least one and a half times their regular hourly wage for any and all overtime hours, or

(b) were required to work more time than was actually included in their compensable time.

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

To participate in the proposed settlement, you must have "opted in" by filing a Consent to Join Lawsuit form, or you must file such form on or before **November 21, 2013** (see Attachment A). If you file or have filed such a form, you are a member of the Plaintiff class, 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 the County's payroll records, EMS schedules, and work records and have calculated a range of potential amounts of unpaid overtime compensation (if any) due for each employee of Defendant's EMS Department during the relevant period. Based on this review of the applicable records, we have determined that a few people who might otherwise be members of the Plaintiff class are not, in fact, owed any additional compensation for unpaid overtime. Merely because you filed a Consent to Join Lawsuit form does not mean that you will receive any payment under the proposed settlement.

4. Terms of Proposed Settlement

The Plaintiffs' steering committee (comprised of the lead named Plaintiff and two additional

opt-in Plaintiffs selected by their peers) participated in mediation of this case on February 1, 2013, along with authorized representatives of Darlington County. At the conclusion of the mediation process, the parties reached an agreement to settle this case. That agreement is memorialized in an agreement (“Settlement Agreement”), which has been approved by the Plaintiffs and the Darlington County Council and filed with the Court. The terms of the proposed settlement, including proposed allocation of settlement proceeds, include the following:

(A) The County will make a payment in the gross amount of \$225,000.00 in full settlement of the case. Plaintiffs will seek (and Defendant agrees not to oppose) the following allocation of the settlement proceeds:

- (1) \$37,500.00 to Rothstein Law Firm, PA for attorney’s fees;
- (2) \$37,500.00 to Louthian Law Firm, P.A. for attorney’s fees;
- (3) \$1,763.03 to Rothstein Law Firm, PA as reimbursement for out-of-pocket costs associated with the case;
- (3) \$7,500.00 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 \$2,500.00, \$1,000.00, or \$500.00, depending on the level of involvement and participation in this case by each committee member;
- (4) \$140,736.97 will remain for distribution to opt-in members of the FLSA class on a pro rata basis based on the value of each individual’s potential claim compared to the total value of all opt-in class members’ potential claims collectively.

(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. The County 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 2013 W-2 form from the County will include the payments treated as back pay, as well as any other wages you receive from the County in 2013. You will also receive a 1099 form from the County for 2013 reflecting the liquidated damages portion of your settlement payment (and any service/incentive payments, if applicable) 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, the Defendant’s attorney, nor any representative of the County 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 2013 income tax returns.**

(C) The County has also agreed to pay for the entire cost of the mediation in this action.

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 County's payroll records and other documentation reflects that you are owed compensation by the County, 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 5). If you have additional questions regarding your calculations, you may contact Plaintiff's counsel (information provided below at Section 7).

5. Factors Affecting Distributions

Individuals Receiving Payment. A total of 23 individuals (including the five named Plaintiffs) have opted in to the Federal Claim. Based on our calculations, 23 of these opt-in Plaintiffs will receive payments under the proposed settlement.

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

How Proposed Distributions to Individuals were Determined. Plaintiffs' counsel reviewed Darlington County's payroll records and the schedules and work records of the Darlington County EMS 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 between March 21, 2008 and November 22, 2010.

The distribution of the settlement proceeds is a pro-rata (proportionate) distribution based on how each opt-in Plaintiff's total potential back-pay claim compares to the total potential back-pay claims of all opt-in Plaintiffs. Both the number used for the individual claim and the number used for all opt-in claims are based on the best-case scenario damages figures as determined by Plaintiffs' counsel. The calculations produced a range of back pay amounts for the entire class of opt-in Plaintiffs to be between \$192,547.92 and \$319,136.97 collectively, depending on different legal assumptions. The County disputed those estimates based on its own counsel's calculations which determined the potential back-pay amount for all Darlington County EMS employees to be between \$18,629.12 and \$109,581.05.

A more detailed discussion of the calculations is set forth in a Brief filed by Plaintiffs' counsel on July 18, 2013. The Brief and other 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 8 below.

6. Settlement Fairness Hearing

The Court has scheduled a hearing for Friday, December 6, 2013, at 10:30 a.m. to decide whether the settlement and proposed allocation are fair, reasonable, and adequate. The fairness hearing will be held in the McMillian Federal Building and Courthouse, 401 West

Evans Street, Florence, SC 29501, in a Third Floor Courtroom. 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 November 21, 2013.** You may use the attached form (Attachment B) 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 (Anna C. DeWitt et al. v. Darlington County, South Carolina, Civil Action No. 4:11-cv-00740-RBH); (2) your full name and address; (3) the dates you worked for Darlington County and what position(s) you held with the County; 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 November 21, 2013. 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.

7. Your Options Regarding Legal Representation

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

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

Herbert W. Louthian, Esq.
LOUTHIAN LAW FIRM, P.A.
The Marlboro Building, Suite 300
1116 Blanding Street
Columbia, South Carolina 29201

You have the right to be represented in this matter by (1) the attorneys 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 **November 21, 2013**, 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 **November 21, 2013**, you will be represented by the attorney representing the named Plaintiffs as class representatives.

8. 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:

David E. Rothstein, Esquire
ROTHSTEIN LAW FIRM, PA
514 Pettigru Street
Greenville, South Carolina 29601
(864) 232-5870
(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.

9. 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, R. Bryan Harwell, United States District Court Judge, the presiding judge in this matter. Judge Harwell has not yet made a final determination about the validity of the proposed settlement.

Do NOT contact Judge Harwell or other court personnel about this matter, other than by filing a letter or comment/objection form (Attachment A) 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.

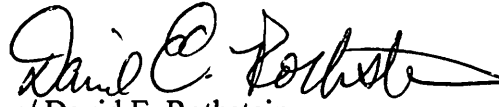
For further information on your rights, please contact the named Plaintiffs' attorney listed in Section 8 above, or any attorney of your choice.

* * *

10. 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: October 4, 2013



s/ David E. Rothstein

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Columbia, South Carolina 29201
(803) 256-4274 (O)
(803) 256-6033 (Facsimile)

(Attachment A-Consent to Join Lawsuit Form)

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

Anna C. DeWitt et al. v. Darlington County, South Carolina
(Darlington County EMS Overtime Case)

Civil Action No. 4:11-cv-00740-RBH

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 Darlington County EMS: _____

5. Position(s) with County: _____

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 Darlington County EMS, 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–Comment or Objection about Proposed Settlement)
Anna C. DeWitt et al. v. Darlington County, South Carolina
(Darlington County EMS Overtime Case)

Civil Action No. 4:11-cv-00740-RBH

Complete and submit this form to the Court on or before November 21, 2013, 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 Darlington County EMS: _____

4. Position(s) with County: _____

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):
