

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Kevin Faile, Louis C. Roman, Alan R. DePalma,)
and Brian Scott Craton, all individually and on)
behalf of all other similarly situated individuals,)

Plaintiffs,)

vs.)

Lancaster County, South Carolina,)

Defendant.)
_____)

C.A. No. 0:10-cv-2809-CMC

**CONSENT ORDER GRANTING
CONDITIONAL CERTIFICATION
OF A COLLECTIVE ACTION UNDER
THE FAIR LABOR STANDARDS ACT,
CERTIFICATION OF A
FED. R. CIV. P. 26(b)(3) CLASS,
AND NOTICE**

This matter comes before the court on Plaintiffs’ motion for (1) conditional certification of a collective action as to Plaintiffs’ Fair Labor Standards Act (“FLSA”) claims, (2) certification of a litigation class under Rule 23(b)(3) of the Federal Rules of Civil Procedure as to Plaintiffs’ State Wage Payment Act claims, and (3) authorization of a hybrid notice to be sent to putative members of the collective action and Rule 23(b)(3) class (collectively “Classes”). Plaintiffs submitted a proposed notice with attachments through which putative members of the Classes could opt in to the collective action for purposes of pursuing their FLSA claims and opt out of the Rule 23(b)(3) class through which the State Wage Payment Act claims are being pursued.

Defendant consented to conditional certification of the collective action (FLSA claims) and certification of a Rule 23(b)(3) litigation class (state law claims) with the stipulation that changes be made to the notice. Those changes as well as additional changes suggested by the court have been incorporated into the notice attached to this order. The parties have also consulted and agreed to time frames and procedures for providing notice to the putative class members and affording them an opportunity to opt in to the collective action and to opt out of the Rule 23(b)(3) class.

The court, therefore, finds as follows:

(1) Conditional certification of the FLSA collective action is appropriate based on the facts presented in Plaintiffs' motion. The named Plaintiffs, additional Plaintiffs who have filed opt-in notices to-date, and other persons to be noticed all worked similar schedules of twenty-four hours on followed by forty-eight hours off, and all worked under the same pay plan.

(2) Based on the facts presented in Plaintiffs' motion and Defendant's stipulation, certification of a litigation class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is appropriate as to the state-law claims. Numerosity is satisfied as the proposed class consists of approximately 100 individuals, over fifty of whom have already opted in. The work schedules and pay plans were the same or substantially similar for the named Plaintiffs and the proposed class members demonstrating both typicality and commonality. Plaintiffs' counsel appears to be able to adequately represent the class. That at least half of the potential class has opted in indicates there is no compelling interest in each individual member controlling his or her own claims. Finally, this court is an acceptable forum for litigation of the claims and is not an unreasonable distance from Lancaster County where the work at issue was performed and the surrounding counties in which some members of the Classes reside.

(3) The notice attached to this Order as Attachment 1 is appropriate to provide notice to the potential members of both Classes.

(4) The forms attached to this Order as Attachments 2 and 3 are appropriate for allowing the potential members of both Classes to include or exclude themselves from the opt-in and/or opt-out Classes.

Accordingly, it is ORDERED that Plaintiffs' motion for conditional class certification is

GRANTED as modified by this Order. In addition, the following time frames and procedures shall apply for sending the notices to the putative class members and for receiving any forms back from them:

1. Within three (3) days of entry of this Order, Defendant will provide Plaintiffs with addresses, or last known addresses, of employees who are to receive notice.
2. Within three (3) days of entry of this Order, Plaintiffs' and Defendant's counsel will jointly provide to Defendant postage-paid, pre-addressed return envelopes for inclusion with the notices.
3. Within five (5) days of entry of this Order, Defendant will, by mail or hand delivery, send the notice and forms to the putative class members along with the return envelopes provided by counsel. Notices need not be mailed to members who have already opted in.
4. Counsel for Plaintiffs will mail a reminder to the putative class members thirty (30) days prior to the deadline to respond. The language of the reminder shall be as follows:

To: Current and Former Employees of Lancaster County EMS
Department

From: David E. Rothstein, Esq., Counsel for Plaintiffs

Date: [Date--30 days from opt-in deadline]

Re: Kevin Faile et al. v. Lancaster County, SC, Civil Action No.
0:10-cv-2809-CMC (Lancaster County EMS Overtime Case)

This is a reminder that all opt-in forms to join this case under the Fair Labor Standards Act and all opt-out forms to exclude yourself from the class-action claims under the S.C. Payment of Wages Act are due on or before [Add deadline date]. If you have any questions or need additional forms, you may contact the attorney for the class, David E. Rothstein, as follows:

David E. Rothstein
Rothstein Law Firm, PA
514 Pettigru Street
Greenville, SC 29601
(864) 232-5870

derothstein@mindspring.com
www.rothsteinlawfirm.com

Of course, you are also free to consult with another attorney of your own choice, at your own expense.

5. Putative class members will have sixty (60) days from the date of the notice to return their opt-in/opt-out forms. Timeliness will be determined based on post-mark date.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
August 25, 2011