



**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](http://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](http://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](mailto:derothstein@mindspring.com)  
[www.rothsteinlawfirm.com](http://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.

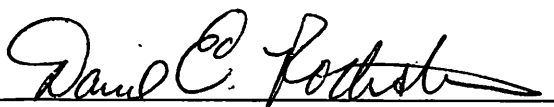
#### **12. Protection Against Retaliation**

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

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Date of Notice: 1/10/2014



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[www.rothsteinlawfirm.com](http://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):

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