

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

Kevin Faile, Louis C. Roman, Alan R.)	Civil Action No. 0:10-cv-2809-CMC
DePalma, and Brian Scott Craton, all)	
individually and on behalf of all)	
other similarly situated individuals,)	NOTICE OF PROPOSED
)	SETTLEMENT OF CLASS
Plaintiffs,)	ACTION LAWSUIT
)	
vs.)	
)	
Lancaster County, South Carolina,)	
)	
Defendant.)	
_____)	

TO: All individuals employed by Defendant (Lancaster 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, Counsel for Plaintiffs Kevin Faile, Louis C. Roman, Alan R. DePalma, and Brian Scott Craton

RE: Proposed Settlement of class-action lawsuit filed under the Fair Labor Standards Act and the South Carolina Payment of Wages Act against Lancaster 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, Rock Hill 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 Lancaster 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 Thursday, March 8, 2012, at 1:30 p.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 27, 2012, as instructed in further detail below.

1. Description of the Lawsuit

On October 29, 2010, Plaintiffs Kevin Faile, Louis C. Roman, Alan R. DePalma, and Brian Scott Craton, filed this lawsuit against Lancaster 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 sleep-time from hours worked by 24-hour shift employees; and by routinely requiring EMS Employees who worked 24-hour shifts to work 15 minutes beyond each scheduled shift without compensation. 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 the United States Department of Labor, and that it had reasonable grounds to believe that it paid its EMS 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 (Lancaster 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

Federal Claim. To participate under the Federal Claim, you must have "opted in" by filing a Consent to Join Lawsuit form. If you did so by the deadline set in the earlier notice (October 31, 2011), you are 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' attorney and expert witnesses 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 have filed Consent to Join Lawsuit forms 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.

State Law Claim. Participation in the State Law Claim is automatic unless a potential class member opted out of the case. Because the Court did not receive any "opt-out" forms by the

deadline previously established by the Court, all potential class members under the State Law Claim will be bound by the final settlement of this action with respect to the claim asserted under the South Carolina Payment of Wages Act.

Some individuals have already received payment from the County for backpay relating to overtime work or “off the clock” work in the County’s EMS Department. The proposed settlement agreement has taken such payments into account so that those individuals will not receive a double recovery for the same amounts of backpay. If you have already received some payment from the County for backpay within the past year, your recovery under the terms of the proposed settlement may be reduced or eliminated.

4. Terms of Proposed Settlement

The Plaintiffs’ Steering Committee (comprised of the four named Plaintiffs and three additional opt-in Plaintiffs selected by their peers) participated in mediation of this case on December 21, 2011, along with authorized representatives of Lancaster County. 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 Plaintiffs and the Lancaster 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 \$1.5 million in full settlement of the case. Plaintiffs will seek (and Defendant agrees not to oppose) the following allocation of the settlement proceeds:

- (1) \$500,000 to Rothstein Law Firm, PA for attorney’s fees;
- (2) \$35,000 to Rothstein Law Firm, PA as reimbursement for out-of-pocket costs associated with the case;
- (3) \$67,500 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 \$4,500, \$9,000, or \$18,000, depending on the level of involvement and participation in this case by each committee member;
- (4) \$897,500 will remain for distribution to members of the class as follows:
 - (a) 100% of all class members’ backpay under the South Carolina Payment of Wages Act (total of \$91,881.87) calculated for a three-year period from October 29, 2007 to October 29, 2010;
 - (b) 100% of all opt-in class members’ backpay claims under the Section 7(k) component of the FLSA claim, for overtime compensation for working greater than 40 hours in a work-week, rather than after 106

hours in a 2-week pay period (total of \$500,578.76) calculated for a three-year period from October 29, 2007 to October 29, 2010; and

- (c) the remaining \$305,039.37 of the total settlement proceeds distributed to opt-in members of the FLSA class on a pro rata (proportionate) basis based on the value of each individual's potential claim compared to the total value of all class members' potential claims collectively.

(B) For those individuals who receive a payment under the proposed settlement, Plaintiffs and the County have agreed that 50% of the total amount will be treated as backpay 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 backpay. In addition, the backpay 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 2012 W-2 form from the County will include the payments treated as backpay, as well as any other wages you receive from the County in 2012. You will also receive a 1099 form from the County for 2012 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 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 2012 income tax returns.**

(C) The County has also agreed to pay for the entire cost of both mediations 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 8).

5. Factors Affecting Distributions

Individuals Receiving Payment. A total of 58 individuals (including the four named Plaintiffs) have opted in to the Federal Claim. Based on our calculations, 54 of these opt-in Plaintiffs will receive payments under the proposed settlement. An additional five persons who did not opt in to the Federal Claim will receive payment under the state-law portion of the proposed settlement.

If we have determined that you are not owed any backpay or if you have already received

payment from the County equal to or greater than our backpay calculation, 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 and experts reviewed Lancaster County's payroll records and the schedules and work records of the Lancaster 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 October 29, 2007 and October 29, 2010.

State Law Claim. Proposed distributions for the State Law Claim are based on a review of those records to determine how often each class member worked a 24-hour shift during the relevant three-year period. An assumption was made that each 24-hour shift was followed by an additional fifteen minutes of off-the-clock work. The proposed distribution pays for that work, in full, using an overtime wage rate of one-and-a-half times your "regular rate" of pay. If you received "short-week payments" from the County, your "regular rate" includes the value of those short-week payments. If you did not receive "short-week" payments, your "regular rate" of pay is your stated rate of pay at the relevant time.

Federal Claim – 7(k) Component. Proposed distributions for the 7(k) component of the Federal Claim are, likewise, based on actual time records. For opt-in Plaintiffs, overtime is recalculated for the full three-year period based on an assumption overtime should have been paid for hours worked over 40 per work-week, rather than hours worked over 106 per two-week pay period. The hourly wage used for this calculation is again based on your "regular rate" of pay, at time-and-a-half. Any amounts already paid by the County have been deducted.

Federal Claim – Other Components Including Sleep Time. The remaining distribution is a pro-rata (proportionate) distribution based on how each opt-in Plaintiff's total potential backpay claim compares to the total potential backpay 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' expert economist. That economist calculated a range of backpay amounts for the entire class of opt-in Plaintiffs to be between \$353,910.91 and \$2,168,591.70 collectively, depending on different legal assumptions. The County disputed those estimates based on its own expert's calculations which set the maximum backpay amount for all Lancaster County EMS employees for the three-year period at \$353,437.25. That expert also concluded that some individuals (including some opt-in Plaintiffs) were actually overpaid in the total amount of \$19,128.67.

A more detailed discussion of the calculations of the State Law Claim and the different components of the Federal Claim is set forth in a Supplemental Brief filed by Plaintiffs' counsel on January 19, 2012. The Supplemental 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 **Thursday, March 8, 2012, at 1:30 p.m. to decide whether the settlement and proposed allocation are fair, reasonable, and adequate.** The fairness hearing will be held in the Matthew J. Perry, Jr. Federal Courthouse, 901 Richland Street, Columbia, SC 29201, in Courtroom II. 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 27, 2012.** You may use the attached form (Attachment A) 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 (Kevin Faile et al. v. Lancaster County, Civil Action No. 0:10-cv-2809-CMC); (2) your full name and address; (3) the dates you worked for Lancaster 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 February 27, 2012. 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 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 27, 2012, 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 27,

2012, 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 documents relating to the Settlement, 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, Cameron McGowan Currie, United States District Judge, the presiding judge in this matter. Judge Currie has not yet made a final determination about the fairness of the proposed settlement.

Do NOT contact Judge Currie 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: _____

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Important Dates:

Objection/Comment Deadline - February 27, 2012

Fairness Hearing - March 8, 2012

